

**ANNUAL REPORT**  
of the  
**CODE COMMITTEE**  
on  
**MILITARY JUSTICE**



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

For the Period  
October 1, 2003 to September 30, 2004

**ANNUAL REPORT**  
SUBMITTED TO THE  
**COMMITTEES ON ARMED SERVICES**  
of the  
**United States Senate**  
and the  
**United States House of Representatives**  
and to the  
**SECRETARY OF DEFENSE,**  
**SECRETARY OF HOMELAND SECURITY,**  
and  
**SECRETARIES OF THE**  
**ARMY, NAVY, AND AIR FORCE**

PURSUANT TO THE  
UNIFORM CODE OF MILITARY JUSTICE  
For the Period  
October 1, 2003 to September 30, 2004

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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, 2003 to September 30, 2004**

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 Gregory E. Maggs and Professor Edward J. Imwinkelried, Public Members appointed by the Secretary of Defense, submit their annual report on the operation of the Uniform Code of Military Justice pursuant to Article 146, Uniform Code of Military Justice, Title 10, § 946, United States Code.

The Code Committee met on September 22, 2004, to consider various matters pertaining to the administration of military justice. The meeting was open to the public. The Code Committee received a briefing from the Chairman of the Joint Service Committee, Captain Kenneth R. Bryant, Judge Advocate General's Corps, U.S. Navy. Captain Bryant stated that the committee's 2001 annual review was submitted as a draft Executive Order containing changes to Rules for Courts-Martial 707, 806, 1107, and 1108, clarifying speedy trial rules, amending procedures for control of spectators at courts-martial, adding a provision on sentence reassessment by a superior authority, and clarifying the authority to remit or suspend sentences. The 2002 and 2003 annual reviews, which were also sent to Office of Management and Budget, contain changes that will provide a definition of a "capital" case and require the convening authority to affirmatively refer an offense as capital if the death penalty is to be authorized, prohibit the unreasonable multiplication of charges, require not less than 12 court members in capital courts-martial, provide guidance on the marking, handling and examination of sealed exhibits, and issue procedures in handling cases from joint commands.

Captain Bryant added that the 2004 annual review includes a proposal to use remote testimony for interlocutory matters and pre-sentencing hearings, and another to add offenses for cases involving the death or injury to an unborn child or the patronizing of a prostitute.

Captain Bryant also reported on other initiatives under examination by the Joint Service Committee, including a revision of Article 143 of the Uniform Code of Military Justice to extend the statute of limitations for child abuse offenses to the life of the child or five years, whichever is greater, modification of Article 125 in view of Lawrence v. Texas, and the study of a comprehensive sexual offense statute.

Following Captain Bryant, Colonel Denise Vowell, U.S. Army, briefed the Code Committee on a recent military justice study which is currently under review within the Army. Colonel Vowell said that this study concluded that military commanders should continue to decide who is tried, what offenses are charged, the level of the court-martial, and whether clemency should be afforded. The study also considered an enlargement of the authority of military judges to cover the time from preferral of charges or imposition of restraint, whichever occurs first, through the date the record of trial is received by appellate authorities. She said that the study concluded that, Article 98, which has not been used, should be repealed, and the contempt power under Article 48 should be amended to mirror that held by federal judges.

Colonel Vowell reported that the study also recommended changing the manner by which court members are selected and the procedure used by military judges in taking guilty pleas, to make sentences effective when adjudged (except for death and punitive discharge cases), to authorize electronic records of trial, to eliminate the requirement for a post-trial staff judge advocate's recommendation, to enact a comprehensive sexual offense statute, and to incorporate in the Manual for Courts-Martial specific offenses covering child neglect, child pornography, and identity theft.

Senior Judge Robinson Everett also addressed the Code Committee and made several proposals. First, he suggested that the accused should be able to elect to be sentenced by the military judge after findings have been made by court members. Second, he proposed consideration of amending Articles 18 and 21 of the Code by adding words referring to the "Law of Nations" rather than the "Law of War." Next, he recommended that the U.S. Court of Appeals for the Armed Forces be granted authority to conduct discretionary review of case tried by military tribunals. Lastly, he recommended that the Court's authority under the All Writs Act should be enlarged, that there be a re-examination of life tenure for the judges of the Court, and that a more effective manner be developed to review administrative discharges, particularly "other than honorable" discharges.

The Code Committee referred Senior Judge Everett's proposals to the Joint Service Committee for further review.

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 Committee 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.

H. F. "SPARKY" GIERKE  
Chief Judge

SUSAN J. CRAWFORD  
Associate Judge

ANDREW S. EFFRON  
Associate Judge

JAMES E. BAKER  
Associate Judge

CHARLES E. "CHIP" ERDMANN  
Associate Judge

Major General THOMAS J. ROMIG, USA  
The Judge Advocate General of the Army

Rear Admiral JAMES E. McPHERSON, JAGC, USN  
The Judge Advocate General of the Navy

Major General JACK L. RIVES, USAF  
Deputy Judge Advocate General of the Air Force

Rear Admiral JOHN E. CROWLEY, JR., USCG  
The Judge Advocate General of the Coast Guard

Brigadier General KEVIN SANDKUHLER, USMC  
Staff Judge Advocate to the Commandant of  
the Marine Corps  
Headquarters, United States Marine Corps

Professor GREGORY E. MAGGS  
Public Member

Professor EDWARD J. IMWINKELRIED  
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**

**October 1, 2003 to September 30, 2004**

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 2004 Term of the Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, Title 10, § 946, United States Code.

**THE BUSINESS OF THE COURT**

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

During the 2004 Term of the Court, the Court admitted 332 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 33,203.

On September 30, 2004, Susan J. Crawford completed a five-year term as Chief Judge. H.F. "Sparky" Gierke assumed the office of Chief Judge on October 1, 2004.

**PUBLIC AWARENESS PROJECT  
(PROJECT OUTREACH)**

In furtherance of a practice established in 1987, the Court scheduled several special sessions and heard oral arguments outside its permanent Courthouse in Washington, D.C., during the 2004 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, without objection of the parties, at Offutt Air Force Base and Creighton University School of Law in Omaha, Nebraska, the Catholic University, Columbus School of Law, Washington, D.C., William and Mary School of Law, Williamsburg, Virginia, the University of Maryland School of Law, Baltimore, Maryland, Georgetown University Law Center, Washington, D.C., and the United States Coast Guard Academy, New London, Connecticut.

The Court hopes that those who attend Project Outreach hearings from both the military and civilian communities will garner further appreciation for the United States military, the UCMJ, and the essential role both play in providing for the national security of the United States.

### **JUDICIAL VISITATIONS**

During the 2004 Term of Court, the Judges of the Court, consistent with past practice and their ethical responsibility to oversee and improve the entire military criminal justice system, participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited with judge advocates, military judges, commanders, and other military personnel at various military installations.

### **JUDICIAL CONFERENCE**

On May 18 and 19, 2004, the Court held its annual Judicial Conference at the Catholic University of America, Columbus School of Law, Washington, D.C. The program for this Judicial Conference was certified for credit to meet the continuing legal education requirements of State Bars throughout the United States. The conference opened with welcoming remarks by the Honorable Susan J. Crawford, Chief Judge, United States Court of Appeals for the Armed Forces, followed by speakers for this year's conference, including Mr. Bryan Garner of LawProse, Inc., the Honorable Joe D. Whitley, General Counsel, Department of Homeland Security, Senior Judge Wayne E. Alley, U.S. District Court for the Western District of Oklahoma, Lieutenant Colonel David Robertson and Major Ernest Harper of the Judge Advocate General's School, United States Army, Charlottesville, Virginia, Deputy Solicitor General Michael R. Dreeben, Professor Stephen A. Saltzburg, George Washington University School of Law, Lieutenant General Edward G. Anderson, III, Deputy Commander, U.S. Northern Command, Professor Peter B. Rutledge, Catholic University of America, Professor David C. Baldus, University of Iowa College of Law, and Lieutenant Colonel David Fillman, U.S. Air Force, Office of the Judge Advocate General of the Air Force.

H.F. "SPARKY" GIERKE  
*Chief Judge*

SUSAN J. CRAWFORD  
*Associate Judge*

ANDREW S. EFFRON  
*Associate Judge*

JAMES E. BAKER  
*Associate Judge*

CHARLES E. "CHIP" ERDMANN  
*Associate Judge*

USCAAF STATISTICAL REPORT

2004 TERM OF COURT

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 2003

Master Docket .....	49
Petition Docket .....	171
Miscellaneous Docket .....	<u>4</u>
TOTAL .....	224

CUMULATIVE FILINGS

Master Docket .....	136
Petition Docket .....	802
Miscellaneous Docket .....	<u>29</u>
TOTAL .....	967

CUMULATIVE TERMINATIONS

Master Docket .....	134
Petition Docket .....	758
Miscellaneous Docket .....	<u>27</u>
TOTAL .....	919

CUMULATIVE PENDING OCTOBER 1, 2004

Master Docket .....	51
Petition Docket .....	215
Miscellaneous Docket .....	<u>6</u>
TOTAL .....	272

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER</u>	<u>CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket .....	53	4		77	134
Petition Docket .....	0	0		758	758
Miscellaneous Docket .....	<u>0</u>	<u>0</u>		<u>27</u>	<u>27</u>
TOTAL .....	53	4		862	919

FILINGS (MASTER DOCKET)

Remanded from Supreme Court .....	0
Returned from Court of Criminal Appeals....	1
Mandatory appeals filed .....	0
Certificates filed .....	5
Reconsideration granted .....	0
Petitions granted (from Petition Docket)...	<u>130</u>
TOTAL .....	136

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed .....	63	
Reversed in whole or in part .....	71	Signed .... 53
Granted petitions vacated .....	0	Per curiam ... 4
Other disposition directed .....	<u>0</u>	Mem/order .. <u>77</u>
TOTAL .....	134	TOTAL ..... 134

PENDING (MASTER DOCKET)

Awaiting briefs .....	11
Awaiting oral argument .....	24
Awaiting lead case decision (trailer cases)	11
Awaiting final action .....	<u>5</u>
TOTAL .....	51

FILINGS (PETITION DOCKET)

Petitions for grant of review filed .....	801
Petitions for new trial filed .....	1
Petitions for reconsideration granted .....	0
Returned from Court of Criminal Appeals ...	<u>0</u>
TOTAL .....	802

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed .....	2	
Petitions for grant denied .....	618	
Petitions for grant granted .....	130	
Petitions for grant remanded .....	0	Signed ..... 0
Petitions for grant withdrawn .....	8	Per curiam .. 0
Other .....	<u>0</u>	Mem/order.. <u>758</u>
TOTAL .....	758	TOTAL .... 758

PENDING (PETITION DOCKET)

Awaiting briefs .....	85
Awaiting Central Legal Staff review .....	88
Awaiting final action .....	<u>42</u>
TOTAL .....	215

FILINGS (MISCELLANEOUS DOCKET)

Remanded from Supreme Court .....	0
Writs of error coram nobis sought .....	3
Writs of habeas corpus sought .....	5
Other extraordinary relief sought .....	5
Writ appeals sought .....	<u>16</u>
TOTAL .....	29

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn .....	0	
Petitions remanded .....	1	
Petitions granted .....	1	
Petitions denied .....	25	Signed .... 0
Petitions dismissed .....	0	Per curiam. 0
Other .....	<u>0</u>	Mem/order.. <u>27</u>
TOTAL .....	27	TOTAL ..... 27

PENDING (MISCELLANEOUS DOCKET)

Awaiting briefs .....	1
Awaiting Writs Counsel review .....	2
Awaiting final action .....	<u>3</u>
TOTAL .....	6

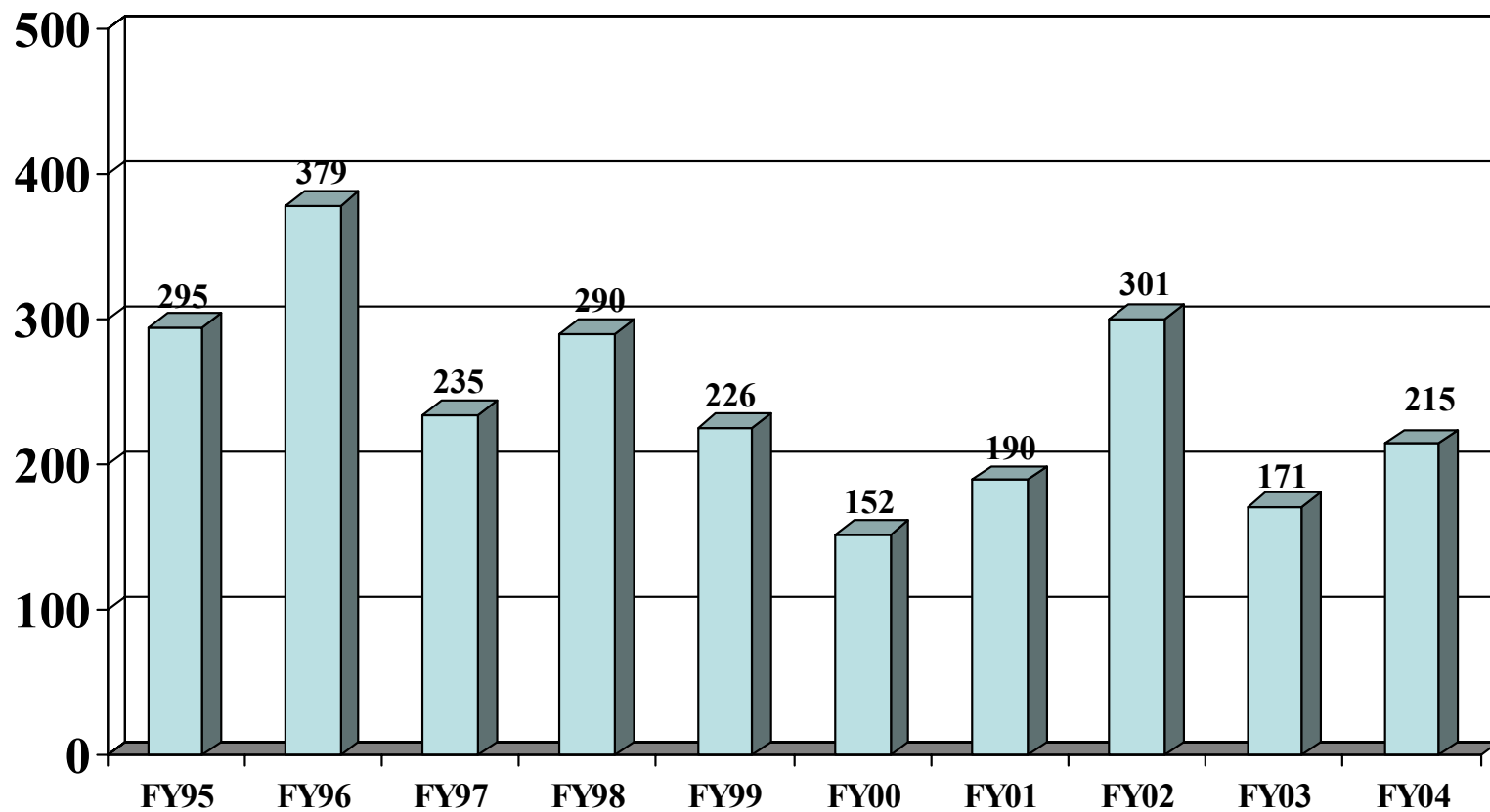
RECONSIDERATIONS & REHEARINGS

<u>CATEGORY</u>	<u>BEGIN</u>	<u>FILINGS</u>	<u>END</u>	<u>DISPOSITIONS</u>		
	<u>PENDING</u>		<u>PENDING</u>	<u>Granted</u>	<u>Denied</u>	<u>Total</u>
All Cases .....	0	11	3	0	8	8

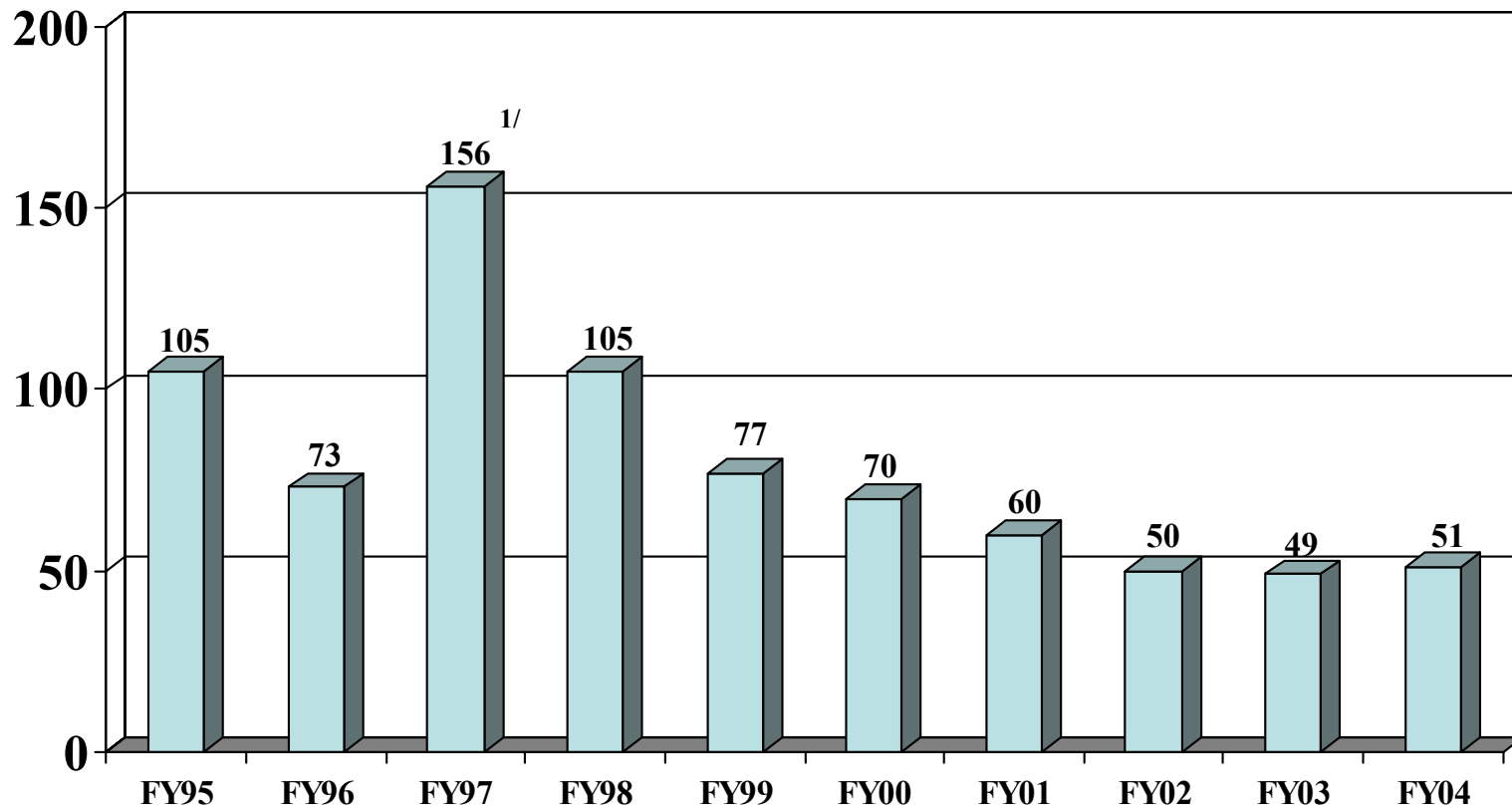
MOTIONS ACTIVITY

<u>CATEGORY</u>	<u>BEGIN</u>	<u>FILINGS</u>	<u>END</u>	<u>DISPOSITIONS</u>			
	<u>PENDING</u>		<u>PENDING</u>	<u>Granted</u>	<u>Denied</u>	<u>Other</u>	<u>Total</u>
All motions .....	12	392	19	347	38	0	385

# Petition Docket Year End Pending

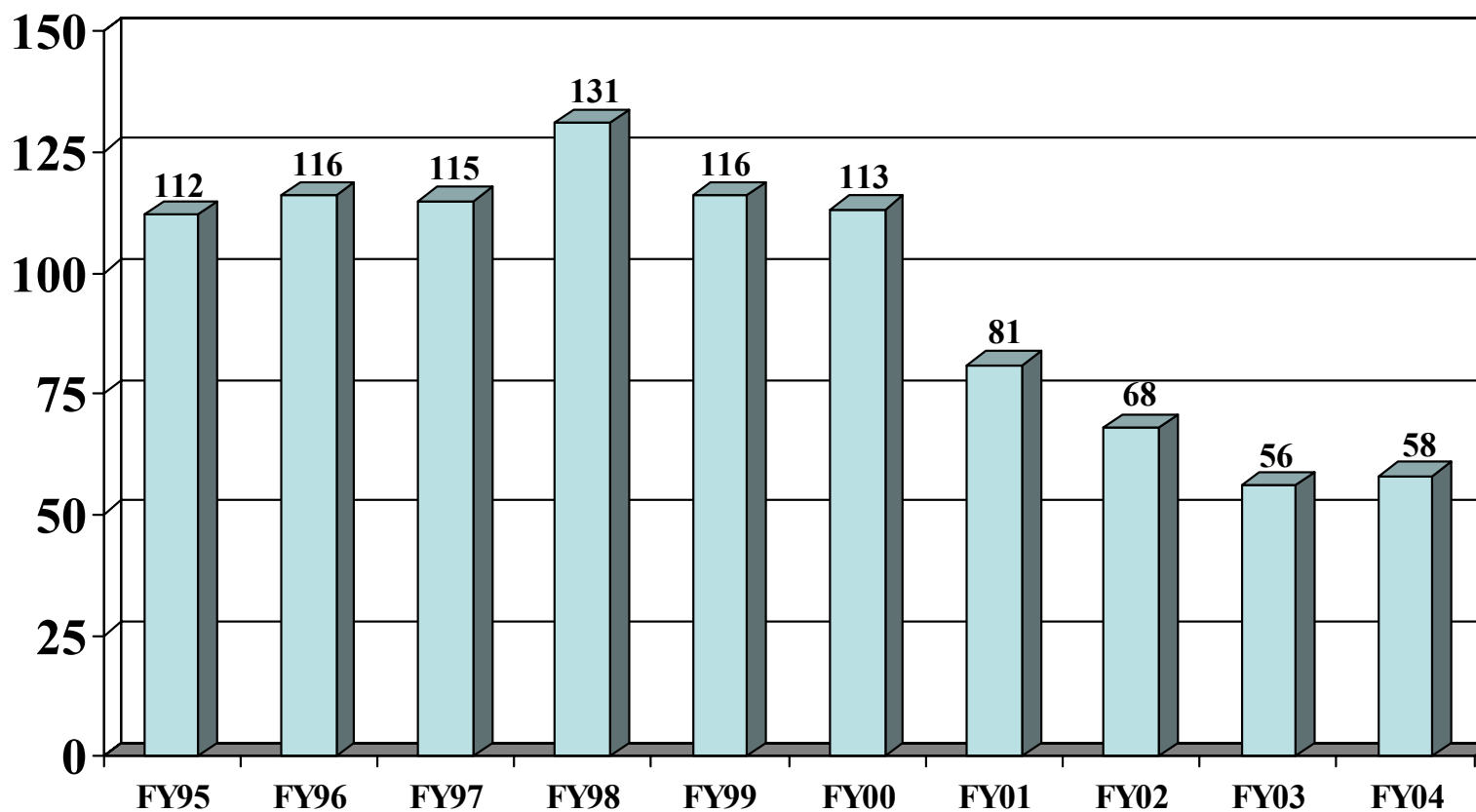


# Master Docket Year End Pending



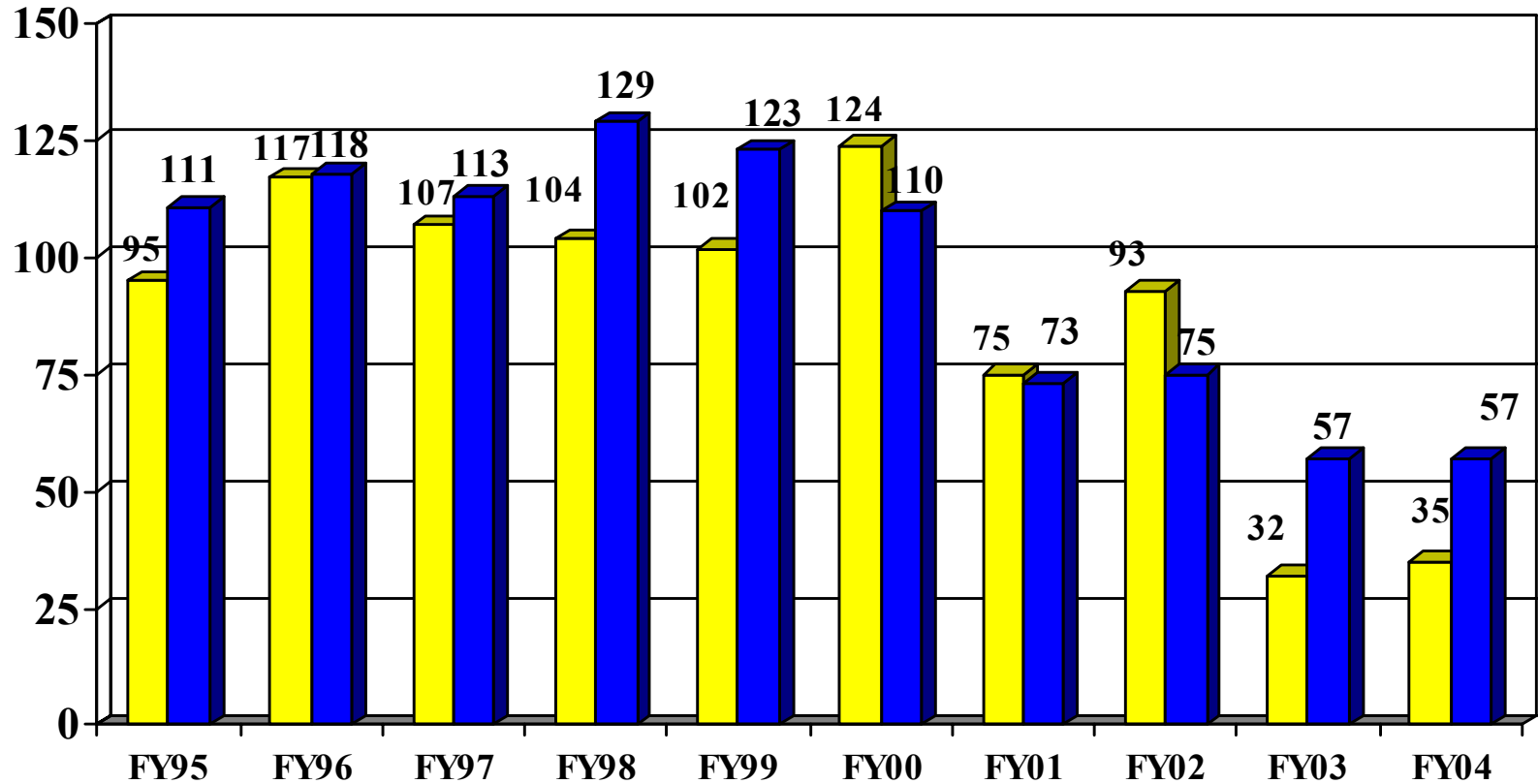
1/ This figure does not include 133 trailer cases to United States v. Gorski, No. 97-0034/AF.

# Oral Arguments Per Year





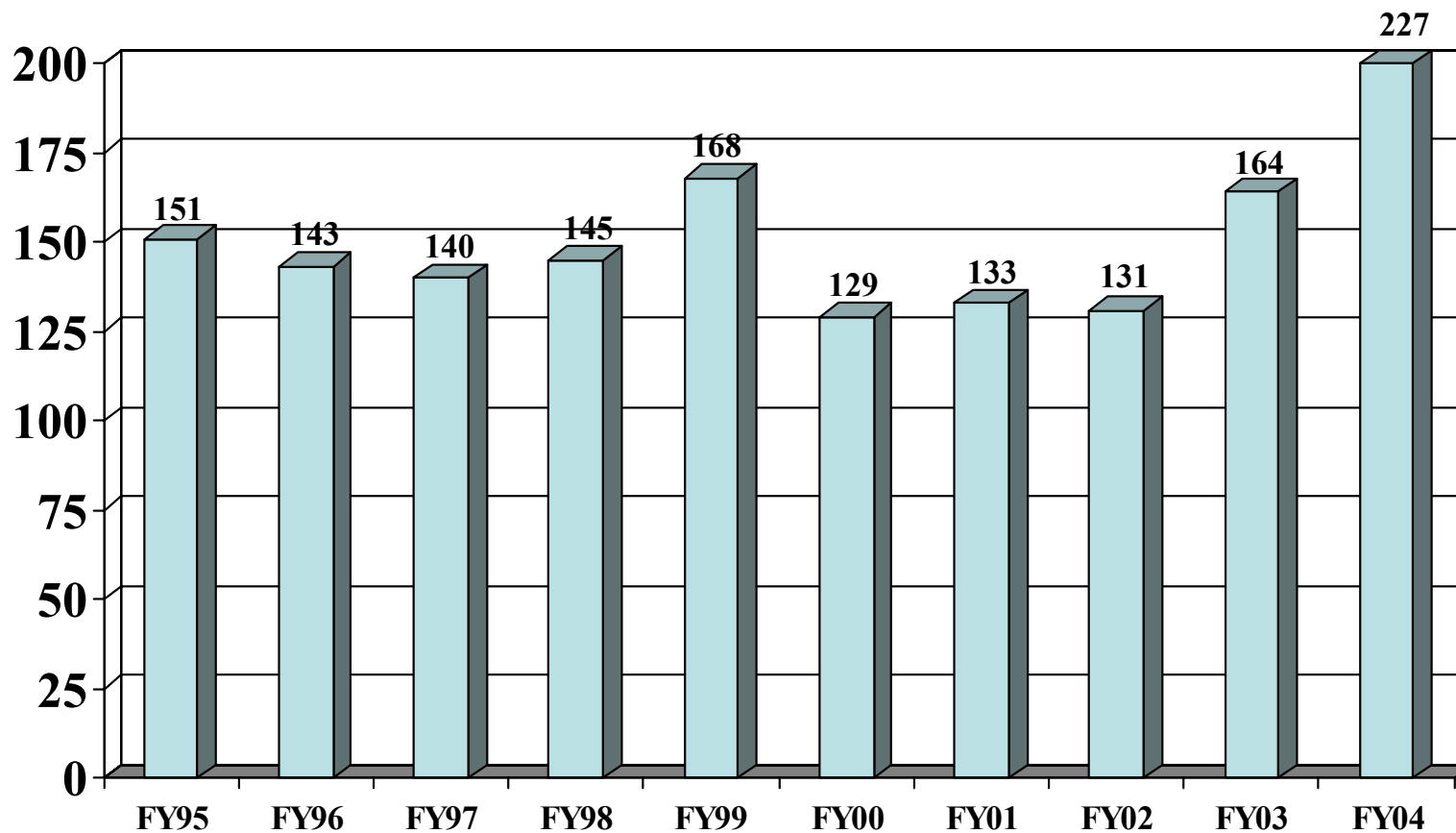
# Total Opinions Per Year



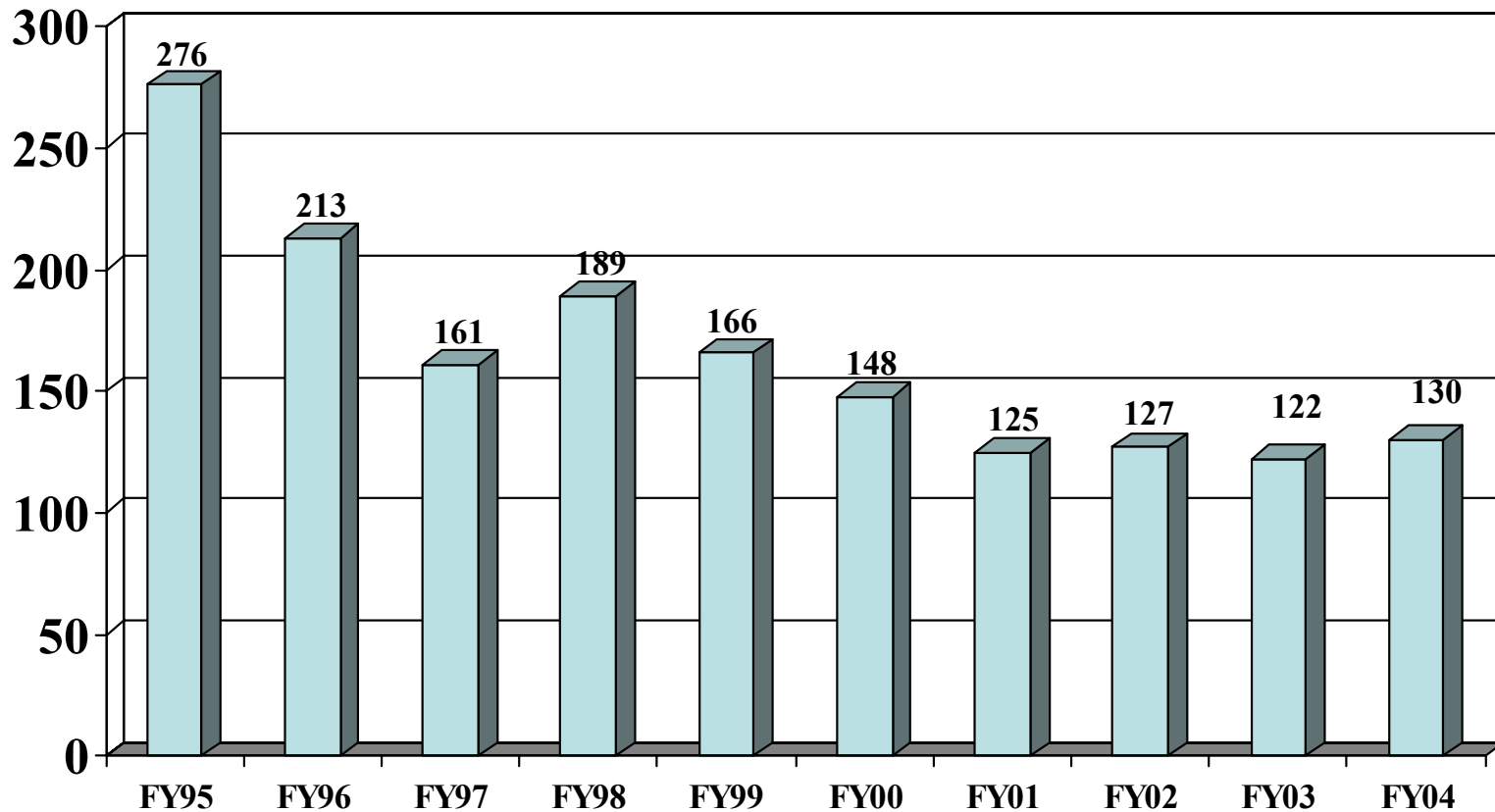
■ TOTAL SEPARATE OPINIONS (CONCUR, CONCUR IN THE RESULT, AND DISSENT)

■ TOTAL COURT OPINIONS

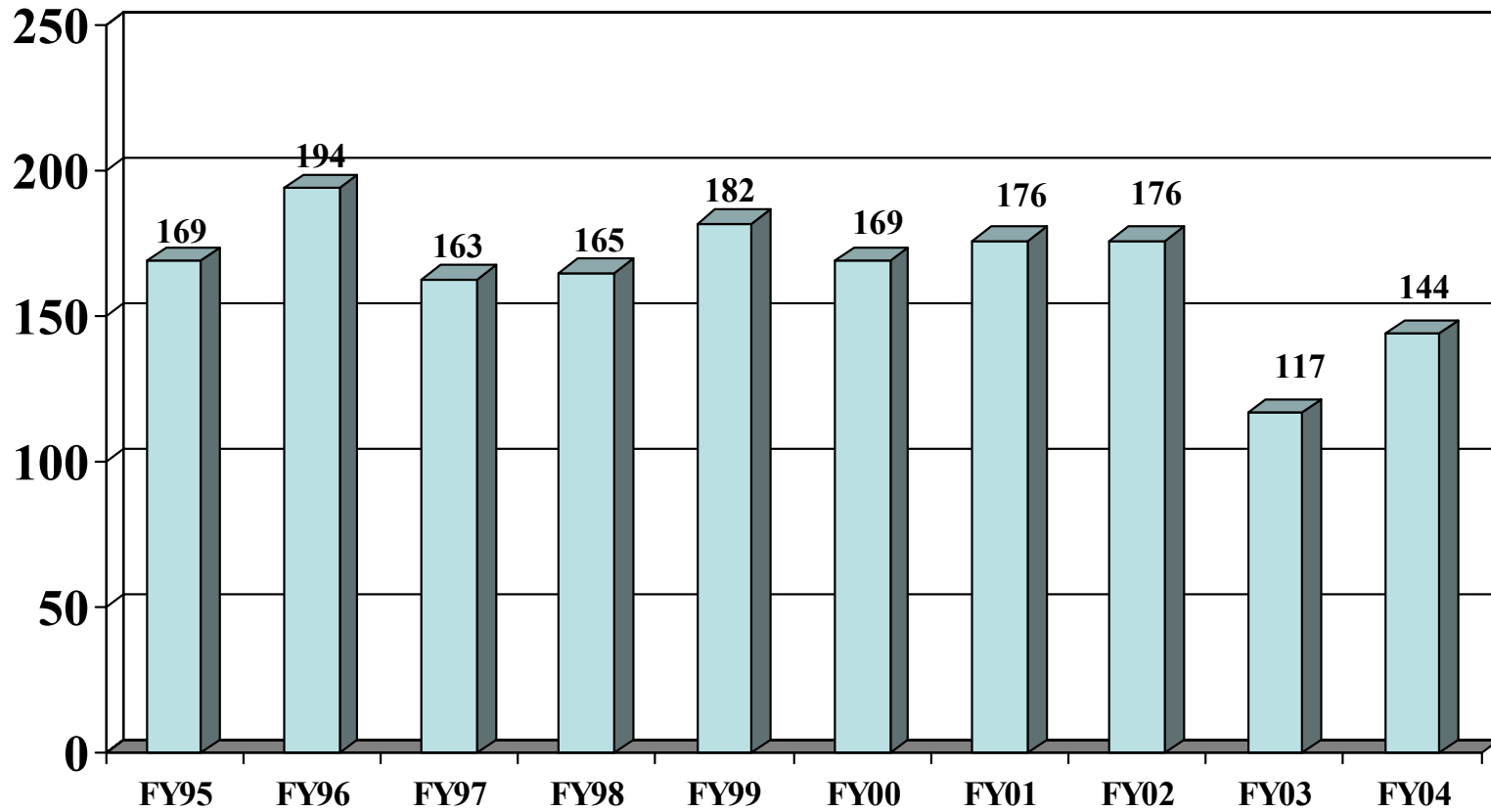
# Days from Petition Filing to Grant



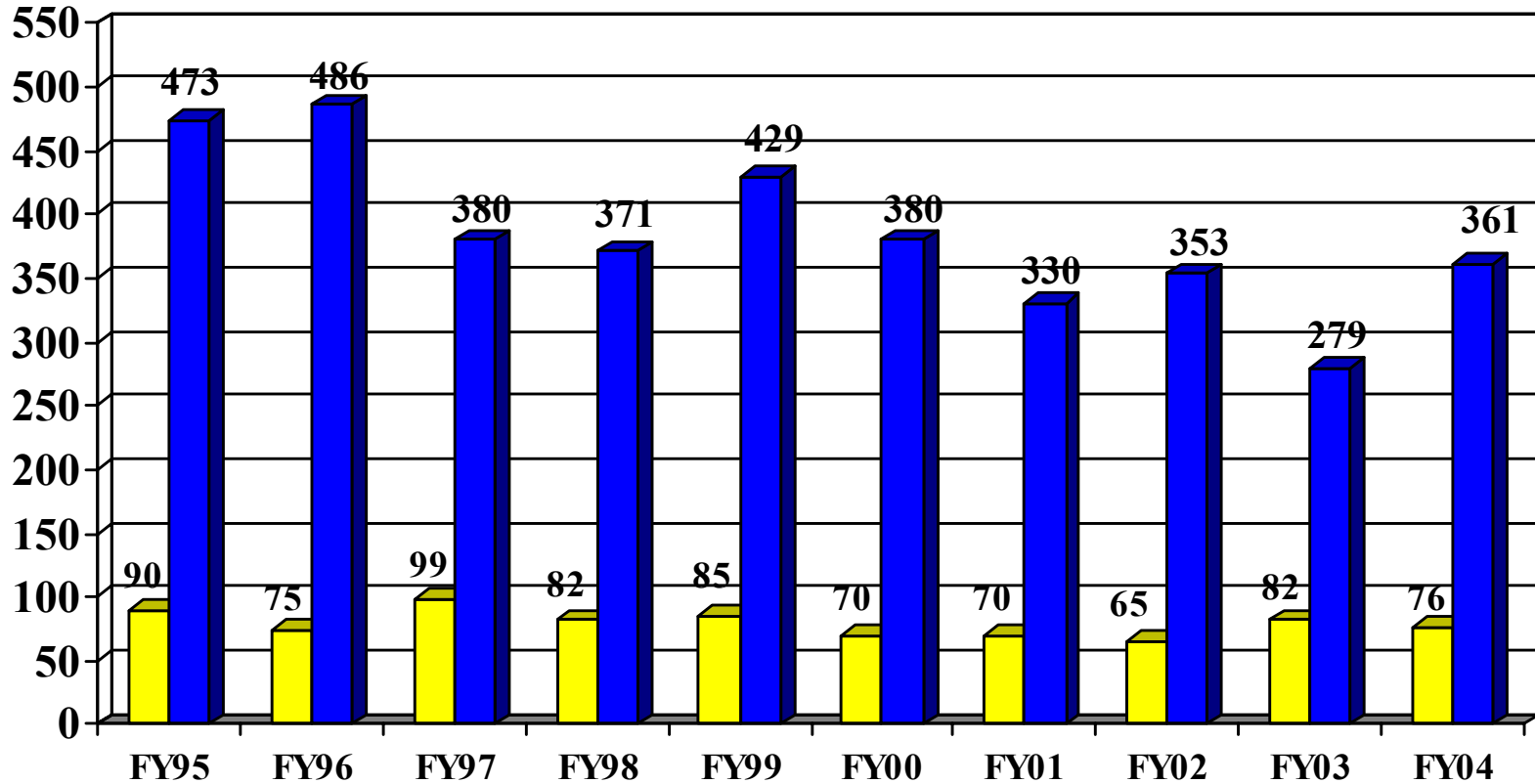
# Days from Petition Grant to Oral Argument



# Days from Oral Argument to Final Decision



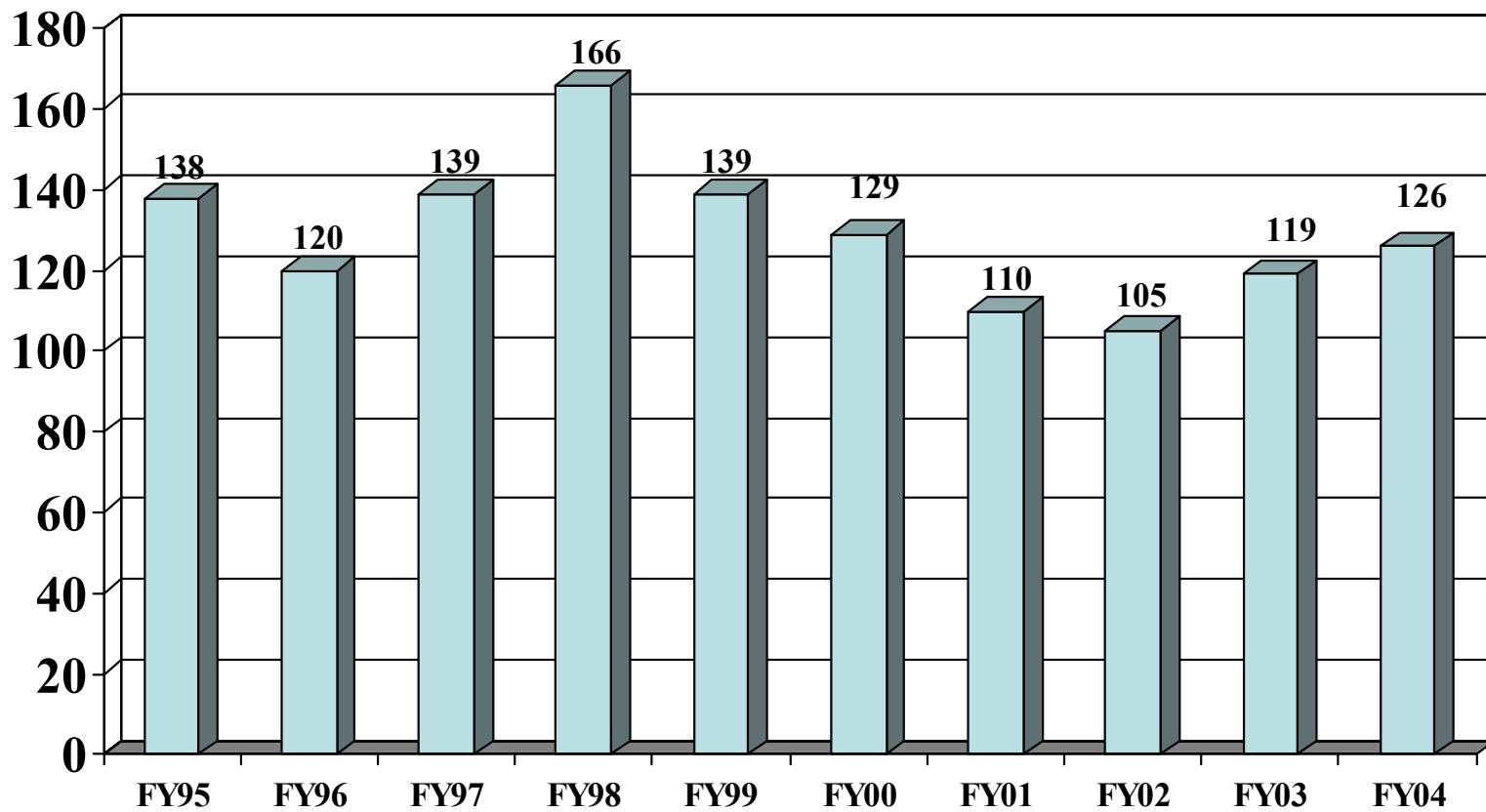
# Days from Petition Filing to Final Decision



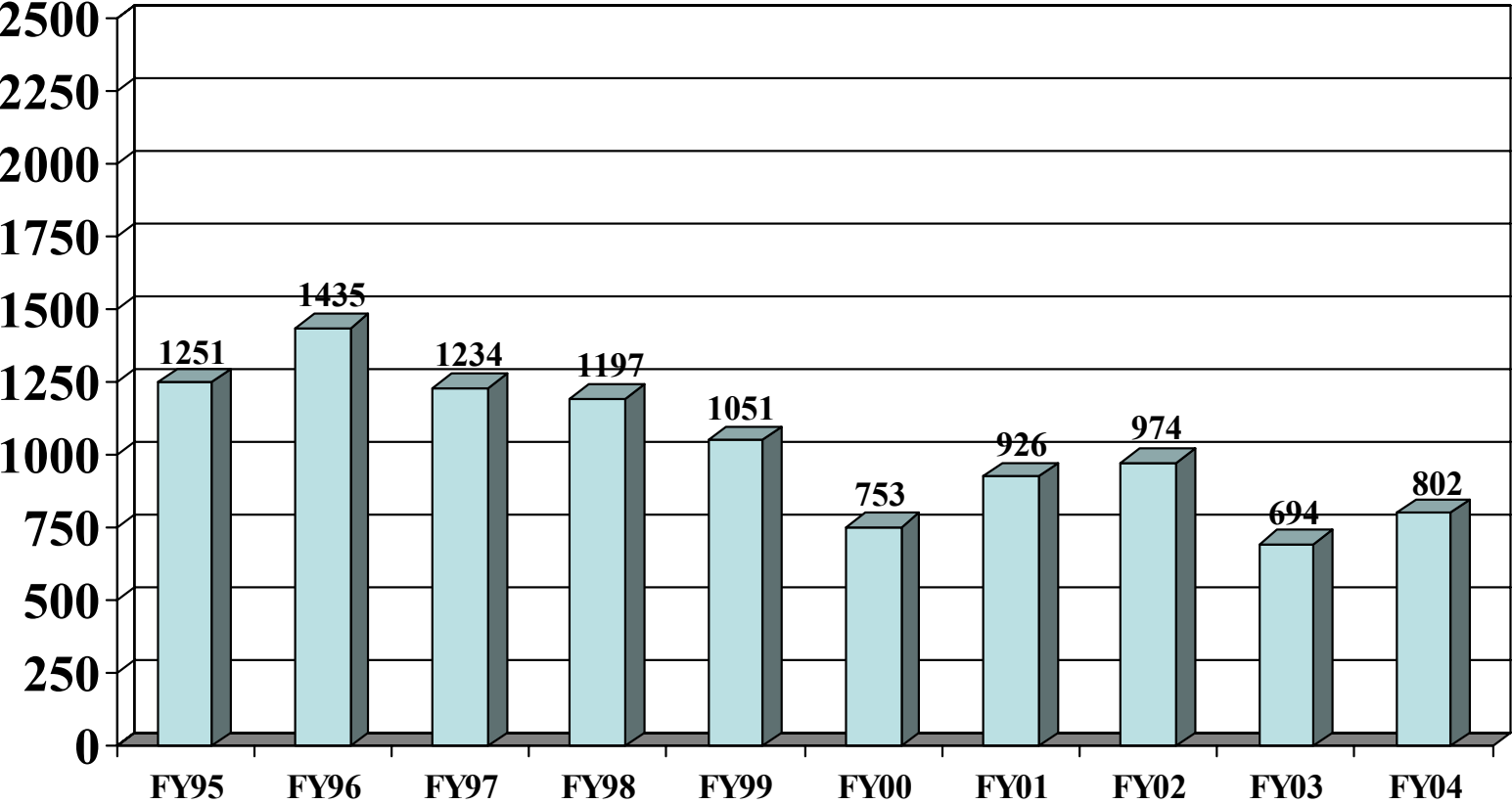
■ PETITION DOCKET (DENIAL/DISMISSAL/WITHDRAWAL)

■ MASTER DOCKET (GRANTED/CERTIFIED/DEATH CASES)

# Days from Filing to Final Decision in All Cases



# Total Petitions Filed Per Year



## **SECTION 3**

### **REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY**



**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY  
OCTOBER 1, 2003 TO SEPTEMBER 30, 2004**

During fiscal year 2004 (FY 04) and in compliance with Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General and senior members of his staff made 27 official visits at 27 installations in the United States and overseas. With the U.S. Army's continued significant with deployments in Iraq and Afghanistan and their effects on legal operations world-wide, the Office of The Judge Advocate General (OTJAG) continued to monitor courts-martial world-wide, review and prepare military publications and regulations, and develop and draft changes to the Manual for Courts-Martial (MCM) and the UCMJ. Through its Field Operating Agencies, OTJAG provided judicial and appellate services, advice, assistance, and professional education to ensure the efficient administration of military justice. The Army end strength number for this year includes 494,291 Regular Army personnel on duty as of 30 September 2004, as reported by the Army G1. The Army end strength was 493,563 for FY 03. Additionally, there were 204,131 mobilized Army Reserve and 342,918 Army National Guard personnel supporting operations in Afghanistan, Iraq, Bosnia, Kosovo, and the Middle-East.

**THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL**

On 17 June 2004, The Judge Advocate General activated The Judge Advocate General's Noncommissioned Officer's Academy (NCOA) that moved from the previously existing academy at Fort Jackson, South Carolina. The movement of Noncommissioned Officers Academy brings another asset under the Legal Center and School that offers the ability to incorporate training, doctrine, force structure, and combat developments while centralizing all officer, warrant officer and enlisted training at the JAG School. This effort, in combination with the newly created Legal Center and School last year, marks a significant milestone towards forging the future of The Judge Advocate General's Corps and the U.S. Army.

**SIGNIFICANT MILITARY JUSTICE ACTIONS**

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

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

	<u>FY 02</u>	<u>FY 03</u>	<u>FY 04</u>
White House inquiries	33	37	237
Congressional and other inquiries	206	185	234
Clemency petitions (Article 74, UCMJ)	8	3	3
Officer Dismissals	19	17	18
Article 69 review	90	122	88
Freedom of Information Act/Privacy Act	9	3	6

A continuing project for the Criminal Law Division is "eJustice," the development of a web-based military justice management system. In October 2004, the Army JAG Corps assigned two full-time subject matter experts to work on this project, a colonel and master sergeant, both very experienced in military justice. The JAG Corps will initiate field testing of this system in CY05. The system will provide users worldwide with the capability of executing the Army's Military Justice System. This project will improve the Army Court-Martial Information System (ACMIS), which currently manages all Special and General Courts-Martial in which an arraignment has occurred. The eJustice project will manage all courts-martial, non-judicial punishment, and all adverse reprimands or administrative discharges initiated by commanders. The Criminal Law Division in FY 03 and 04 prepared final recommendations in two Army death sentence cases requiring action by the President. Action by the Acting Secretary of the Army was taken in CY 04 and transmitted to OSD for forwarding to the President for final action. The JAG Corps enhanced its Victim Witness Program by training 55 victim/witness liaison personnel at regional training conferences conducted in Southbridge, Massachusetts (June) and Denver, Colorado (August).

#### **JOINT SERVICE COMMITTEE ON MILITARY JUSTICE**

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

During FY 04, the JSC completed its twentieth annual review of the MCM. This review was published in the Federal Register for public comment on 15 Sep 04 and a public meeting was held on 15 Oct 04 to receive comments from interested parties. Highlights of the annual review's proposed changes include: amendments to Rules for Court-Martial (R.C.M.) that allow the use of remote means to provide testimony for interlocutory matters and presentencing; the addition of MCM provisions such as elements, sample specifications, explanations, etc. to recently passed legislation, 10 U.S.C. § 919a Art. 119a, Death or Injury of an Unborn Child; and the addition of patronizing a prostitute as a specific offense under Art. 134 (within the current pandering and prostitution offense, Art. 134).

The JSC drafted an Executive Order (EO) to amend the MCM to implement these proposed changes. On 3 Dec 04, the President signed an Executive Order implementing amendments to the MCM based on the JSC's 2001 annual review cycle. The JSC continues to monitor the processing of an additional draft EO to implement the changes proposed in the consolidated review cycles of 2002 and 2003, which is pending Presidential approval.

The JSC is completing an analysis of how sexual assault cases may be prosecuted more effectively, and what effect the Supreme Court's decision in the case of *Lawrence v. Texas* may have on military law. Pursuant to the 2005 Department of Defense Authorization Act, the JSC is preparing a report for Congress with the objective of determining what changes are required to improve the ability of the military justice system to address issues relating to sexual assault and to conform the Uniform Code of Military Justice and the Manual for Courts-Martial more closely to other Federal laws and regulations that address such issues. The report is due to Congress by 1 Mar 05.

In the next calendar year, the Army will become the Executive Agent for the JSC. At that time, the Army will submit to the JSC numerous proposals for change to the UCMJ and the MCM including, but not limited to, broader contempt power for military judges, modifying the process by which panel members are selected, revising guilty plea practice, and streamlining post-trial processing.

**MILITARY JUSTICE STATISTICS**  
**STATISTICAL SUMMARY: FY 04**  
(See table insert, attached)

**U.S. ARMY LEGAL SERVICES AGENCY**

The U.S. Army Legal Services Agency, a field operating agency of OTJAG, includes the following organizations involved in the administration of military justice: the U.S. Army Judiciary, the Government Appellate Division, the Defense Appellate Division, the Trial Defense Service, and the Trial Counsel Assistance Program.

## 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 1,050 records of trial and over 3,900 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 840 Courts-Martial cases during the past year.

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

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

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

	<u>FY 02</u>	<u>FY03</u>	<u>FY04</u>
Freedom of Information Act	188	166	132
Privacy Act	60	73	66
Certified Copies of Convictions	<u>417</u>	<u>375</u>	<u>354</u>
Total Number of Requests	665	614	552

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

## Trial Judiciary

During FY 2004, military judges presided over the trial of all Army special and general courts-martial worldwide, to include 137 trials in Iraq, Afghanistan, Kuwait, and Bosnia. This brings the number of cases tried in deployed environments since the beginning of the Global War on Terrorism to 154, as of 30 September 2004. The eighteen active duty trial judges were augmented with one USAR judge on a voluntary extension of her call to active duty to support Operations Enduring Freedom and Iraqi Freedom. The remaining thirteen Army Reserve judges ably tried cases throughout the world during periods of annual training. Judges presided over both Article 32 hearings and trials in an unusually large number of high-profile cases arising out of combat operations and mobilizations of reserve and National Guard soldiers. Rarely charged offenses, such as looting, consorting with the enemy, mutilation of a corpse, and aiding the enemy made their appearance in military courtrooms worldwide. Efforts to ensure Soldiers' 6<sup>th</sup> Amendment confrontation rights were complicated by deployments of witnesses, victims, and accused Soldiers. The caseload remained roughly equivalent to that of FY 2003, and down only slightly from FY 2002, in spite of widespread troop deployments. Army judges played significant roles in the Military Justice Review Committee's fresh look at modernizing the UCMJ and the MCM. The Trial Judiciary published two new Benchbooks, one for use in trials of enemy prisoners of war and another for trial of civilians under occupation law. Trial judges continued to play a vital role in the advocacy training provided trial and defense counsel through Bridging the Gap sessions after most trials, Gateway to Practice training for newly assigned advocates (including many mobilized reservists) and judges, participation in TDS and TCAP seminars, and in providing formal instruction at the Criminal Law Advocacy Courses, the Military Justice Managers' Course, and the Graduate Course military justice electives.

### U.S. ARMY TRIAL DEFENSE SERVICE

The U.S. Army Trial Defense Service (USATDS), a defense service consisting of approximately 130 active duty and 170 reserve attorneys provided high quality, professional defense services to soldiers throughout the Army from 63 active duty installations worldwide and 54 reserve locations. USATDS counsel defended soldiers facing the entire range of allegations under the Uniform Code of Military Justice.

USATDS detailed one or more counsel to every Army special and general courts-martial referred in FY04. USATDS counsel also carry a large workload unrelated to representation at courts-martial. The workload unrelated to courts-martial in the last six years is displayed below.

	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Administrative Boards	698	597	826	918	1,215	830
Nonjudicial Punishment	31,595	30,633	35,786	40,769	39,382	38,429
Consultations	26,794	24,051	33,546	37,476	36,382	39,882

USATDS provided defense services to deployed forces around the world, including Iraq, Kuwait, Bosnia, Kosovo, Afghanistan, and Central Asia. Currently there are 21 defense attorneys, along with seven enlisted paralegals, deployed throughout the provisionally established USATDS Region IX. That region includes Iraq, Afghanistan, and Kuwait. This region has been in effect since July 2003. Despite the hazardous duty and austere environment in Region IX, TDS counsel are providing high quality representation throughout the region, including representation at contested courts-martial in the Iraqi Theater of Operations.

Since the start of FY03, a regulatory change has enabled USALSA to fund all defense counsel travel for courts-martial, beginning with the initial detailing of counsel to a given client. This funding arrangement has improved the overall quality of service to the soldier/client. By getting actively involved in cases at the earliest stages, in many instances defense counsel have successfully negotiated non-punitive dispositions of cases that otherwise may have been disposed of at courts-martial.

Over the past six years, TDS has seen an overall increase in both the number of courts-martial and their complexity. However, the number of courts-martial seems to have peaked in FY 02 at 1365. Since then, it decreased slightly to 1284 in FY 03 and again slightly to 1243 in FY 04. The Rules of Practice Before Army Courts-Martial, which were revised in May 2004, have placed an increased emphasis on formality, especially where motions practice is concerned. This change is likely to foster an increase in the complexity of future courts-martial.

Concerning the allegations of detainee abuse at the Abu Ghraib prison, TDS has been tracking at the Headquarters level which counsel represent which clients, in order to prevent any conflicts of interest from arising. Despite the large numbers of clients, it has been necessary to detail counsel from outside TDS for only a few cases. Such cases have included detailing counsel who have served recently in TDS but who are now assigned in other billets in the JAG Corps.

Building on the formal Memorandum of Understanding (MOU) established in 2001, the Trial Defense Service and the Defense Appellate Division (DAD) continue to foster a very close working relationship. Most recently, DAD and TDS worked together at a Continuing Legal Education (CLE) course in Germany. Also, during FY04, DAD counsel and TDS counsel worked together on 3 writs and 1 direct appeal. These joint efforts were very successful and both sides look forward to more collaboration in the future.

In FY04 TDS provided detailed input for defense-specific military justice matters in furtherance of the E-justice paperless program for tracking military justice actions. This input included frequent meetings with the Criminal Law Division of the Office of the Judge Advocate General, as well as meetings with the technical experts who are designing the software for the program. Field-testing of the E-justice system is expected to take place in FY05.

TDS counsel continue to foster a close working relationship with reserve defense counsel assigned to the 154<sup>th</sup> and the 22d Trial Defense Service Legal Services Organizations (TDS LSOs). The 154<sup>th</sup> TDS LSO, consisting of 122 commissioned officers, a warrant officer and 24 enlisted paralegals, provides defense services to soldiers assigned to units in the Eastern half of CONUS and in Europe. The 22d TDS LSO, consisting of 65 commissioned officers and 20 enlisted paralegals, provides defense services to soldiers assigned to units in the Western half of CONUS and Asia. Some individual TDS offices have established joint training programs with their local reserve TDS personnel and have conducted highly successful joint training conferences. The Chief, U.S. Army Trial Defense Service, exercises technical supervision over the reserve TDS LSOs. He is responsible for the performance of defense counsel services and provides oversight for the units' training and readiness. Reserve support to active duty TDS offices remains outstanding, with reserve officers providing critical support at Fort Hood, Fort Stewart and Fort Bragg, as well as other offices with increased caseloads. Reserve judge advocates have also deployed overseas to Germany as backfills for active duty defense counsel who deployed to Iraq. Finally, several reserve judge advocates have volunteered, have served, and are serving in Iraq, Afghanistan, and Kosovo, as deployed defense counsel.

Continuing Legal Education (CLE) Training for TDS counsel was conducted in weeklong, consolidated regional workshops, attended by active duty and reserve TDS counsel, as well as counsel from other services. The multi-region/multi-service approach to CLEs resulted in more productive and informative CLEs, benefiting all attendees. The training for all CLEs was designed to assist TDS counsel in honing their advocacy skills and expanding their knowledge of discrete military justice topics. All training sessions included extensive practical exercises and individual critiques by experienced attorneys. In Korea, TDS continued to cross-train with the Marines in Okinawa. The training focused TDS counsel on honing their courtroom skills and expanding their knowledge of military justice

with particular emphasis on evidentiary objections and arguments. TDS counsel in Europe conducted semi-annual joint regional workshops, as well as sending senior defense counsel to a management workshop for a week in November 2004. Throughout the year, individual TDS counsel are also given numerous opportunities to attend CLE's sponsored by the Army Judge Advocate General's School, sister military schools, as well as civilian sponsored CLE's.

#### **TRIAL COUNSEL ASSISTANCE PROGRAM**

The United States Army's Trial Counsel Assistance Program (TCAP) continued its mission of providing information, advice, training opportunities, and trial assistance to American military prosecutors worldwide. Composed of five Army judge advocates and supported by a civilian secretary, TCAP also serves as a third branch of the Army's Government Appellate Division and utilizes this position to link trial and appellate counsel together to resolve issues of common import to the successful prosecution of courts-martial. In that light, TCAP serves as the prosecutor's appellate advocate for extraordinary writs during the prosecution of a case and as the Government's advocate during habeas corpus litigation of cases that have passed through the ordinary course of appellate review. In tandem, these dual missions for TCAP buttress the fieldwork of trials by court-martial and enhance the appellate finality of ensuing convictions.

TCAP provided assistance in all five basic categories of services during FY04: (1) telephone, e-mail, and website forum inquiry assistance; (2) advocacy training courses and other training events; (3) dissemination of publications on a variety of subjects; (4) trial assistance; (5) appellate assistance. In so doing, TCAP personnel accomplished the following: (1) responded to an average of over 100 telephonic and email requests for assistance per month; (2) conducted five regional advocacy training conferences in the United States, providing over 165 hours of continuing legal education to approximately 145 military judge advocates and 23 Army Criminal Investigation Division agents; (3) provided electronic and paper copies of countless articles and other publications to judge advocates around the world; (4) responded to messages and inquiries posted on the TCAP WEB site; (5) actively participated in the preparation and trial of numerous courts-martial; and (6) responded to two extraordinary writs and government appeals filed in either the Army Court of Criminal Appeals (ACCA) or the Court of Appeals for the Armed Forces (CAAF), as well as 8 answers and returns to habeas corpus petitions filed with various Offices of the U.S. Attorney or with the United States Court of Appeals for several circuits.

In response to the emerging need for expertise in litigating high profile and classified cases, TCAP has assumed a lead role in several courts-martial. As the Army at war generates incidents that result in courts-martial, the expertise to handle classified information at those proceedings has come to the forefront. TCAP has become extremely active in



providing guidance and litigation support to those cases involving classified information. TCAP has assisted in cases arising out of the Joint Task Force at Guantanamo Bay, Cuba and the prisoner-abuse cases out of both the Abu Ghraib prison in Iraq and Bagram, Afghanistan. Additionally, TCAP personnel provided litigation support to three murder cases to include one case referred capital. With the Department of Defense expanding use of Task Forces, TCAP foresees an increased workload in litigation support at courts-martial in FY 05 in jurisdictions without a fully augmented military justice section.

### FOREIGN CRIMINAL JURISDICTION

As the Executive Agent for foreign criminal jurisdiction, the Army, through the International and Operational Law 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 2001 to <u>30 Nov 2002</u>	1 Dec 2002 to <u>30 Nov 2003</u>
Foreign Offense Citations	5,303	5,874
Total Civilian	1,084	1,473
Total Military	4,219	4,401
Exclusive Foreign Jurisdiction	191	133
Concurrent Jurisdiction	4,028	4,268
Traffic Offenses	371 <sup>1</sup>	526
Foreign Jurisdiction Recalls	472	683

During this reporting period, foreign authorities released to U.S. authorities 12 of the 133 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 3,706 cases. Overall, the U.S. obtained waivers in 86.8% of all exclusive and concurrent jurisdiction cases. This figure reflects a 5.8% decrease in obtaining such waivers from 2001-2002, when the relevant figure was 3,731 cases (92.6%).

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<sup>1</sup> In the previous reporting period, we erroneously used the category "Traffic/Other Minor Offenses" and reported 371 cases. The correct category is "Traffic Offenses" and the correct data for the reporting period should have been 350 cases.

During the last reporting period, civilian employees and dependents were involved in 1,084 offenses. Foreign authorities released 225 of these cases (20.8 % of this total) to U.S. military authorities for administrative action or some other form of disposition. In this reporting period, civilian employees and dependents were involved in 1,473 offenses. The Foreign authorities released 200 of these cases (13.6 % of the current total of this reporting period).

This reporting period, foreign authorities tried a total of 958 cases. Thirteen trials, or 1.4%, resulted in acquittals. Those convicted were sentenced as follows: 24 cases resulted in executed confinement, 87 cases resulted in suspended confinement, and 834 cases (87.1% of the total trials) resulted in only fines or reprimands.

### **PROFESSIONAL RESPONSIBILITY**

The Standards of Conduct Office (SOCO) manages TJAG's professional responsibility program. This program comprises: (1) administratively reviewing complaints for credibility, (2) tasking judge advocates to run field inquiries concerning professional misconduct allegations, (3) reviewing reports of inquiry, and (4) advising TJAG on appropriate resolution of ethics cases. SOCO oversees the operation of TJAG's Professional Responsibility Committee and its issuance of advisory opinions.

The office also oversees professional responsibility training within the Army. SOCO attorneys: (1) give informal one-on-one ethics advice, (2) present ethics topics at professional events, and (3) help judge advocates (in close communication with The Judge Advocate General's Legal Center and School) to give training programs at commands and offices.

Additionally, SOCO actively manages information to: (1) track ethics cases, (2) release information under the Freedom of Information and Privacy Acts, and (3) keep an attorney ethics web site.

#### *Notices and Complaints During FY 2004*

Credibility Reviews. 55 notices and complaints had administrative disposition after credibility reviews determined that no inquiries were warranted (down 13 percent from FY 2003's 63 administrative dispositions).

Inquiries. 17 inquiries were conducted and closed (1 less inquiry than FY 2003). 11 inquiries were founded (compared with 7 founded inquiries of the 18 total inquiries closed during FY 2003).

## LITIGATION

Litigation Division defends numerous federal court challenges to military personnel policies involving the involuntary activation of Reserve soldiers and the involuntary retention of soldiers beyond their term of service pursuant to the Stop Loss policy:

In Parrish v. Rumsfeld, et al, (E.D.N.C.), an Individual Ready Reserve (IRR) officer challenges his orders to active duty. CPT Parrish completed his Reserve Officers Training Corps (ROTC) scholarship Military Service Obligation (MSO) in December 2003; however, he did not request to resign his commission until June 2004, one month after receiving orders to active duty. Pursuant to 10 U.S.C. § 12203, appointments of officers are indefinite, and the Army is holding 1LT Parrish's request to resign in abeyance until after he reports to active duty. Parrish filed suit, seeking a preliminary injunction to prevent his activation. After a hearing, on September 1, 2004, the District Court denied Parrish's request for preliminary relief. CPT Parrish has orders to report to active duty on 9 January 2005. The Court has yet to rule on the government's motion to dismiss/motion for summary judgment.

In Ferriola v. Rumsfeld, et al, (S.D.N.Y.), a Reserve officer assigned to a Military Police unit challenged his orders to active duty. CPT Ferriola completed his ROTC scholarship MSO in February 2004. Ferriola, who had previously mobilized with his Reserve unit in support of Operation Iraqi Freedom (OIF), submitted his resignation request in June 2004. Subsequently, he was involuntarily reassigned to another unit that had been activated and was subject to Stop Loss. Ferriola filed suit on October 22, 2004 challenging his orders to active duty. On November 3, 2004, the Chief, Army Reserve approved Ferriola's resignation request and issued orders discharging him from the Army.

In Rhone v. Rumsfeld, et al, (S.D.N.Y.), an IRR soldier challenged his orders to active duty, alleging action must be taken on his application for conscientious objector status prior to his activation. After a hearing, on November 1, 2004, the Court denied his request for a preliminary injunction enjoining the Army from requiring him to report for active duty on November 2, 2004.

In Doe v. Rumsfeld, et al, (E.D.Calif.), an anonymous soldier assigned to 2668th Transportation Company, a California Army National Guard unit, filed a habeas petition and request for preliminary relief. Doe enlisted in the "Try One" National Guard program whereby a soldier leaving active duty can enlist in the National Guard for one year. In February 2004, Doe extended his enlistment one additional year. His enlistment ends on or about May 1, 2005, but Stop Loss will prevent him from leaving the military at that time. Doe's unit was recently activated for a two year tour of duty one of which will be in Iraq (mid-December deployment). On

November 22, 2004, the Court of Appeals for the 9<sup>th</sup> Circuit affirmed the District Court's decision denying Doe's request for a preliminary injunction to enjoin the Army from deploying him to Iraq pending his challenge to the military's Stop Loss policy. Litigation Division has filed an opposition to the habeas petition and is waiting a decision from the District Court.

### **EDUCATION AND TRAINING**

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. Events in the last year once again brought military justice to the forefront, and the Criminal Law Department continued instruction on many different subjects, ranging from substantive criminal law to technical litigation skills, all while one Department Professor deployed in support of Operation Iraqi Freedom.

Advocacy training continues to be one of the Criminal Law Department's top priorities. The Department devotes significant effort to training each Basic Course and Advanced Trial Advocacy Course student on trial advocacy skills. Basic Course students serve as trial counsel or defense counsel in two advocacy exercises: a guilty plea court-martial; and a contested court-martial.

The Department also continued instruction to military justice managers with a heavy emphasis on pre and post-trial processing. The forty-four students of the 10th Military Justice Managers Course received significant instruction on the practical "how to" of court-martial pre and post-trial processing as well as substantive law instruction. As in the past three courses, justice managers received a number of resources on CD-Rom for use in the field, including examples of case tracking systems, as well as *The Advocacy Trainer*, to assist them in their mission and to effectively continue teaching advocacy to their subordinate counsel. Guest speakers addressed topics ranging from criminal law management issues arising in operations in Iraq and Afghanistan, a view from a regional defense counsel, comments from the Chief Trial Judge of the Army, Colonel Denise Vowell, and others greatly enhanced the program of instruction.

The Criminal Law Department continued to offer advanced advocacy training in the 21st and 22d Criminal Law Advocacy Courses in addition to advanced advocacy training electives for the Graduate Course. The two-week Criminal Law Advocacy Courses (CLAC) afforded more than 100 trial advocates more individualized and specialized trial advocacy training. In fact, due to high demand for the course, including personnel from the Reserve Component and counsel slated to deploy to Iraq and Afghanistan, the Department increased the size of the 22d Criminal Law Advocacy Course from fifty-six (seven groups of eight) to sixty-four (eight groups of eight).

For each course, the students performed rigorous small-group practical exercises on essential litigation skills from opening statement through closing argument. Eight Drilling Individual Mobilization Augmentees (DIMA) from around the country assisted the Department with the 22d CLAC course, providing invaluable knowledge and insight from both their prior military experience and their current civilian practice. Many of the Department's DIMA Professors serve as Assistant United States Attorneys or Federal Public Defenders in their civilian capacity. Their assistance with advocacy training is an invaluable resource for the Department. Due to the newly established Drilling IMA program, many new USAR officers were able to return for the basic course advocacy training exercises as well. The new program allows the officers to drill for pay and points for periods other than the two weeks of active duty annually. Previously, the officers drilled for points only during those other periods.

In addition to the Military Justice Managers Course and the Criminal Law Advocacy Courses, the Criminal Law Department hosted a variety of continuing legal education courses, including the 47th Military Judge's Course. 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 managed the 27th Criminal Law New Developments Course attended by over 200 judge advocates from all services. In addition to hosting courses, Department professors taught classes to Reserve Component judge advocates at numerous Reserve On-Site Conferences as well as providing case updates to appellate counsel and judges and counsel at the Judge Advocate Association Appellate Conference and the Fulton Conference in the fall. Professors also presented instruction at the Court of Appeals for the Armed Forces Conference and Interservice Military Judges Course in the spring. One of the Department's professors also provided instruction in military capital litigation at the Naval Justice School in Newport, Rhode Island.

Finally, the Criminal Law Department was extremely pleased to host a distinguished lawyer and advocate last spring. Frank W. Dunham, Jr., the Public Defender for the Eastern District of Virginia, the first person to hold that position, delivered the 32d Hodson Lecture on Criminal Law. Mr. Dunham delivered a magnificent presentation concerning his representation of two of the highest profile defendants in the nation, Zacarias Moussaoui and Yaser Esam Hamdi.

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

The attorney strength of the active component Judge Advocate General's Corps at the end of FY 04 was 1,547 (including general officers). This total does not include 66 officers attending law school while participating in the Funded Legal Education Program. The attorney strength of the reserve component Judge Advocate General's Corps at the end of FY 04 was 2,308 and the strength of the Army National Guard at the end of FY 04 was 541. The diverse composition of our attorney population included 130

African-Americans, 52 Hispanics, 76 Asians and Native Americans, and 412 women. The FY 04 end strength of 1,547 compares with an end strength of 1,506 in FY 03, 1,474 in FY02, 1,462 in FY 01, 1,427 in FY 00, 1,426 in FY 99, 1,499 in FY 98, 1,523 in FY 97, 1,541 in FY 96, 1,561 in FY 95, 1,575 in FY 94, and 1,646 in FY 93. The grade distribution of the Corps' attorneys was 5 general officers; 129 colonels; 219 lieutenant colonels; 308 majors; and 886 captains. An additional 90 warrant officers, 465 civilian attorneys, and 1,576 enlisted paralegals supported legal operations worldwide. As of the end of FY04, over 550 Army JAG personnel (officer and enlisted, active and reserve component) were deployed in operations in Iraq, Kuwait, Afghanistan, Djibouti, Qatar, Bosnia, Kosovo, Cuba, the Horn of Africa (afloat), and Honduras.

**THOMAS J. ROMIG**  
**Major General, USA**  
**The Judge Advocate General**

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

Report Period: FISCAL YEAR 2004

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	647	628	19	-6.1%
BCD SPECIAL [A]	677	663	14	+5.1%
NON-BCD SPECIAL	5	5	0	-76.2%
SUMMARY	755	711	44	-12%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-5.8%

**PART 2 – DISCHARGES APPROVED [B]**

GENERAL COURTS-MARTIAL ( CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)		111 + 18	
NUMBER OF BAD-CONDUCT DISCHARGES		240	
SPECIAL COURTS-MARTIAL			
NUMBER OF BAD-CONDUCT DISCHARGES		330	

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	446
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	410
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	174

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

TOTAL ON HAND BEGINNING OF PERIOD		120 [C]
GENERAL COURTS-MARTIAL	[D]	
BCD SPECIAL COURTS-MARTIAL	[D]	
REFERRED FOR REVIEW		1002 [C]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED		976 [E]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD		146 [C]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		29.6%

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

NUMBER	878
PERCENTAGE	87.63%

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF 310 of 1002	30.94%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-17.67%
PERCENTAGE OF TOTAL PETITIONS GRANTED 47 of 312	15.06%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+13.15%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA	4.69%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-9.46%

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

<b>PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ</b>			
TOTAL PENDING BEGINNING OF PERIOD		2	
RECEIVED		14	
DISPOSED OF		11	
GRANTED	0		
DENIED	10		
NO JURISDICTION	1		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		5	
<b>PART 8 – ORGANIZATION OF COURTS</b>			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		520	
SPECIAL COURTS-MARTIAL		603	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		127	
SPECIAL COURTS-MARTIAL		79	
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>			
NUMBER OF COMPLAINTS		32	
<b>PART 10 – STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH		494,291	
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		42,004	
RATE PER 1,000		84.97	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-2.49%	

**EXPLANATORY NOTES**

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



# **SECTION 4**

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

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

**OCTOBER 1, 2003 TO SEPTEMBER 30, 2004**

**SUPERVISION OF THE ADMINISTRATION OF  
MILITARY JUSTICE**

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

**CRIMINAL LAW DIVISION (CODE 20)**

Mission. Oversees military justice policy within the Department of the Navy; drafts legal and policy advice for JAG on a wide variety of military justice matters; reviews all legislative and regulatory proposals affecting military justice; represents the Navy in regular meetings of the Joint Service Committee on Military Justice (JSC), which is the principal vehicle for staffing amendments to the UCMJ and the Manual for Courts-Martial (MCM), served as JSC Chairman and Executive Secretary during 2004; staffs all amendments to Secretarial and JAG regulations implementing the UCMJ; reviews all decisions of military appellate courts; staffs JAG certification of cases decided by the NMCCA for review by the Court of Appeals for the Armed Forces (CAAF); reviews all CAAF decisions, advising of all important issues and recommending appeal to the U.S. Supreme Court where appropriate; coordinates amendments to Chapter 1, Manual of the Judge Advocate General (JAGMAN); staffs requests for Secretarial designation as general and special court-martial convening authority and for Secretarial substitution of administrative for punitive discharge; staffs requests for JAG authorization to refer charges for trial by court-martial after adjudication of similar charges by State or foreign courts; provides JAG representative to Naval Clemency and Parole Board; provides informal professional ethics advice service for all Navy and Marine Corps judge advocates engaged in trial work; coordinates court orders and warrants of attachment; provides written opinions to Board for Correction of Naval Records (BCNR); reviews records of trial forwarded to JAG for review under Article 69(a) and (b), UCMJ; reviews requests forwarded to JAG for consideration under Article 73, UCMJ; and publishes timely guidance to all military justice practitioners in the Department of the Navy.

In addition, the Division Director, Code 20, serves as Special Assistant for Military Justice, Naval Legal Service Command (NAVLEGSVCCOM), and advises Commander, NAVLEGSVCCOM regarding policies, plans, resources, and procedures affecting the military justice mission of NAVLEGSVCCOM. In that capacity, the Division Director assists Commander, NAVLEGSVCCOM, in Article 6, UCMJ, inspections of NAVLEGSVCCOM commands and detachments. In 2004, the Division Director, Code 20, participated in the Article 6, UCMJ, inspections of NAVLEGSVCCOM commands in the Pacific and in the southeast portion of the United States.

The JSC 2004 Annual Review was forwarded to the General Counsel, Department of Defense (DoD), during Navy tenure as Chairman and Executive Secretary, JSC. Items in the Review included, among other things, the implementation of the DoD technology in courts-martial study, addition of an offense of "Patronizing a Prostitute," and amendments to the MCM to reflect the addition of Article 119a, UCMJ ("Unborn Victims of Violence Act of 2004").

During the past year, the Military Justice Division reviewed 41 records of trial under Article 69a, UCMJ and 28 records under Article 69b, UCMJ. One petition under Article 73, UCMJ was denied during the year. The one petition that was pending at the end of fiscal year 2003 was denied.

#### **Navy-Marine Corps Court of Criminal Appeals**

The Navy-Marine Corps Court of Criminal Appeals issued decisions in 2,069 cases during fiscal year 2004. During that same period the court docketed 1,508 new cases for review.

Legal issues addressed included: unlawful command influence; the application of Wharton's Rule; the legality of various provisions in pretrial agreements in which the accused limits or waives certain rights; termination of in personam jurisdiction; whether an individual can be convicted of leaving the scene of a single-vehicle accident; witness sequestration; when an accused who dies post-trial is entitled to abatement of his case; acceptable limitations on an accused's right to make an unsworn statement; and the accused's right to prevent the military judge from instructing the members on the accused's right to remain silent at trial.

At the start of fiscal year 2004 the Court was staffed with eight appellate judges sitting in four decisional panels, including one panel for national security cases, two active duty commissioners, three Reserve appellate judges, three Reserve commissioners, and five civilian employees. By the end of fiscal year 2004, the Court was staffed with ten appellate judges, two active duty commissioners, five Reserve appellate judges, seven Reserve commissioners, and five civilian employees. In the fourth quarter of fiscal year 2004, the Court received 180 additional man-days of Reserve support, which were spread among assigned Reserve judges and commissioners, and three ad hoc commissioners.

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

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

Organization. Captain Pamela A. Holden, JAGC, USN, reported to the Appellate Defense Division on October 1, 2003, and served as the Director for the entire fiscal year. The Deputy Director, Lieutenant Colonel Eric B. Stone, USMC, was relieved by Lieutenant Colonel Joseph Perlak, USMC, in July 2004.

The staffing of the Appellate Defense Division was increased to a total 21 active duty Navy and Marine Corps Judge Advocates. In an effort to reduce the number of cases pending initial review, the Division was also augmented with two mobilized reserve attorneys and two temporary duty attorneys. The Division was fully staffed with civilian personnel and was augmented for the entire year with a Reserve Legalman Chief to provide support to the Reserve Program.

Reserve Branch. The Appellate Defense Division relied heavily on the invaluable support of 37 Navy and Marine Corps Reserve judge advocates. Reserve attorneys filed 1,536 cases, representing 78% of the total initial pleadings for the year.

The Division's supporting Reserve units maximize productivity with flexible drilling, where their duties permit them to work from home or offices rather than expending the added time and expense of traveling to a local Reserve Center. The Division's supporting Reserve units are: NR NAVJAG 109, Columbus, Ohio; NR NAMARA (Defense) 111, Oklahoma City, Oklahoma; NAVJAG 519, Los Angeles, California; and NAVJAG 211, Fort Worth, Texas. Additionally, the Division received volunteer support from four Naval Reserve judge advocates from Voluntary Training Unit 614. The Marine Corps Reserve contingent consisted of five independently assigned Reserve judge advocates.

Appellate Representation. A total of 1,508 new cases were docketed at the NMCCA and received in the Appellate Defense Division. At the end of fiscal year 2004, the total number of cases pending initial review was 632. This represents a 406-case reduction from the number of cases pending initial review at the end of last fiscal year. The Division also achieved

a two-thirds reduction in the number of cases pending initial pleadings in excess of one year. On October 1, 2003, there were a total of 234 cases in a seventh or higher enlargement. On September 30, 2004, that number was reduced to 82. The Division continues to work a successful plan to further reduce the number of cases pending initial pleadings.

As depicted below, the Appellate Defense Division filed 1966 initial pleadings with the NMCCA. This number was comprised of 1368 merit submissions, 78 summary assignments, and 520 briefs. Division counsel engaged in oral argument before the NMCCA in 8 cases.

A total of 201 cases were petitioned to CAAF, with 26 grants of review issued. Division counsel engaged in oral argument before the CAAF in 21 cases.

Below is a comparison of this year's Appellate Defense statistics with those of the previous two fiscal years

<b>NMCCA</b>	<b>FY 02</b>	<b>FY 03</b>	<b>FY 04</b>
Briefs Filed	677	433	520
Total Cases Filed	2406	2094	1966
Oral Arguments	8	10	8
<b>USCAAF</b>			
Petitions Filed	290	240	201
Supplements Filed	237	174	161
Briefs Filed	13	12	19
Oral Arguments	11	7	21
<b>U.S. Supreme Court</b>			
Petitions Filed	0	3	1

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

Assistance to Trial Defense Counsel. The Appellate Defense Division provided advice and support to Navy and Marine Corps trial defense counsel around the world. The Division maintained a rotating Field Call watch comprised of experienced appellate attorneys who replied to short-fused questions from trial defense counsel and assisted in preparing and filing extraordinary writs. The Division has also instituted a Trial Defense Counsel Outreach Training Program in order to provide training on recent appellate developments and important trial issues represent three enlisted Marines convicted of capital offenses with sentences that included the death penalty.

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

The primary mission of the Appellate Government Division is to represent the United States at the appellate level in general and special courts-martial arising from the Navy and Marine Corps, pursuant to Article 70, UCMJ. 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.

For most of the fiscal year, the Division was staffed with nine active duty judge advocates, but by the end of fiscal year 2004, the end strength had increased to eleven active duty judge advocates and two civilian staff members. Colonel William K. Lietzau, USMC, relieved Colonel Michael E. Finnie, USMC, as the Division Director. Commander Charles Purnell, JAGC, USN, relieved Commander Robert P. Taishoff, JAGC, USN, as the Deputy Director.

Reserve support continued to be critical to the accomplishment of the Appellate Government's mission. The Division was supported by 14 Navy Reservists from two Navy Reserve Detachments (NMAVJAG 116 (Detroit) and NAMARA 116 (Minneapolis)) and four Marine Corps Officers as Individual Mobilization Augmentees. The Division was also supported during the summer of 2004 by a law student intern, a Navy lieutenant participating in the funded Law Education Program.

Filings at the NMCCA decreased modestly for the year, while they increased at the CAAF. Flooding from Hurricane Isabelle was a major disruption to the Division's operations for the year. The following chart sets forth Appellate Government's filings for the last four fiscal years:

	<b>FY 01</b>	<b>FY 02</b>	<b>FY 03</b>	<b>FY 04</b>
<b>NMCCA</b>				
Briefs filed	395	798	761	542
Other pleadings	277	456	475	222
<b>CAAF</b>				
Briefs filed	41	45	12	22
Other Pleadings	82	91	152	73

The Division maintained an active Trial Counsel Assistance Program, providing advice and counsel to trial counsel and staff judge advocates by telephone and e-mail concerning active trial cases on hundreds of occasions. Appellate Government also represented the Government in a number of government appeals and extraordinary writs. Issues in these cases included jurisdictional and evidentiary rulings by military judges, among other issues.

The Division continued its representation of the United States in three capital cases: *United States v. Quintanilla*, and the companion cases of *United States v. Walker* and *United States v. Parker*.

During fiscal year 2004, the Division's judge advocates participated in four oral argument outreaches sponsored by the NMCCA and CAAF. The NMCCA oral argument was held at the Roger Williams University Law School. CAAF oral argument outreaches were held at William and Mary College of Law, Georgetown University Law School, and American University Law School. Participation in these programs served to educate and inform students at these institutions about the fairness and professionalism of the military justice system.

#### **NAVY-MARINE CORPS TRIAL JUDICIARY**

The Navy-Marine Corps Trial Judiciary is a joint Navy-Marine Corps activity led by the Chief Judge. Its mission is to provide certified military judges for Navy and Marine Corps general and special courts-martial. The Judiciary is organized into 12 judicial circuits and is supported by Naval Reserve and Marine Corps Reserve Individual Mobilization Augmentees.

The Navy-Marine Corps Trial Judiciary (NMCTJ) consists of 32 active duty and 23 reserve judges serving in 12 circuits and four branch offices. During fiscal year 2004, NMCTJ provided judicial services in 313 general courts-martial and 1872 special courts-martial. These numbers are consistent with the number of general and special courts-martial tried in fiscal year 2003.

NMCTJ provided judicial services to Fleet and Shore activities, and to Marine Forces in the United States and around the world. Members of the Trial Judiciary participated in continuing education at the Army Judge Advocate General's School, the Interservice Military Judges Seminar at Maxwell Air Force Base, and various courses at the National Judicial College in Reno, NV.

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

### **NAVAL LEGAL SERVICE COMMAND**

Naval Legal Service Command (NAVLEGSVCCOM) is commanded by Commander, NAVLEGSVCCOM, who also serves as the Deputy Judge Advocate General of the Navy. NAVLEGSVCCOM includes 293 Judge Advocates, 1 Civil Engineer Corps Officer, 16 Limited Duty (Legal) Officers, 204 Legalmen, and 208 civilians. NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, family members, and retirees from 58 offices world-wide: eight Naval Legal Service Offices (NLSOs), five Trial Service Offices (TSOs), two Regional 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 assistance for claims processing, and adjudication, and training judge advocates, legalmen, and other DOD personnel. During fiscal year 2004, NAVLEGSVCCOM provided counsel for 167 General Courts-martial, 615 Special Courts-martial, 193 Article 32s, 943 Administrative Boards, processed over 41,000 claims, provided over 264,793 legal assistance services, and provided command assistance services for over 3,900 commands.

NAVLEGSVCCOM is currently fielding the Military Justice model of the HELM (Home Electronic Legal Manager) system for time management. HELM will allow the practitioner the ability to manage cases electronically and allow HQ, NLSC the ability to reach down and collect productivity data.

Two Regional Legal Service Office pilot projects, RLSO Northwest and RLSO Europe and Southwest Asia, were initiated during fiscal year 2004. The Regional Legal Service Office concept will combine all regional Staff Judge Advocates with the local Trial Service Office.

### **NAVAL JUSTICE SCHOOL**

Organization. Naval Justice School (NJS) reports to Commander, Naval Legal Service Command (CNLSC) for administrative and operational control. Commander, Naval Education and Training Command (CNETC) is NJS's major claimant and resource sponsor. CNLSC consults with CNETC on matters relating to the effectiveness of instruction and administration of training



at NJS. Additionally, Commanding Officer, NJS consults with Commanding Officer, Center for Service Support on these same matters. The main NJS facility is located in Newport, Rhode Island. Teaching detachments are based in San Diego, California, and Norfolk, Virginia (areas of Fleet concentration), while a one-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, limited duty officers (LAW), and legalmen to ensure their career-long professional development and readiness; to provide comprehensive formal training to all Sea Service judge advocates and other legal personnel to promote justice and ensure the delivery of quality legal advice and other services to the commander; and to train commanders and senior officers in the practical aspects of military law to enable them to perform their command and staff duties, and train other personnel to assist in the sound administration of military justice.

In fiscal year 2004, NJS provided instruction to more than 12,000 students worldwide (including 3,806 in resident courses ranging in length from 2 days to more than 9 weeks).

Academic Programs. NJS has seven "core" courses, each with primary focus on military justice. These courses are:

- Basic Lawyer Course. This 9-week course, offered four times annually, provides accession training for all judge advocates in the Navy, Marine Corps, and Coast Guard. The course includes extensive training in military justice and court-martial advocacy, as well as training in legal assistance, operational law, and administrative law. Upon graduation, judge advocates are certified per Article 27(b), UCMJ. Fiscal year 2004 graduates: 128.
- Accession Legalman Course. This 9-week course, offered several times annually, trains Navy enlisted personnel selected for conversion to the Legalman rating. The course is divided into two distinct phases: military justice paralegal training and court-reporting. Fiscal year 2004 graduates: 74.
- Basic Legal Specialist Course. This 9 1/2-week course, offered four times annually, provides accession level training to junior enlisted Marines seeking the Military Occupational Specialty of Marine Corps Legal Services Specialist. Curriculum consists of training in military justice, post trial review, and legal administration. Fiscal year 2004 graduates: 89.

- 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. In Fiscal year 2004, this course was offered 24 times in 11 different locations, training 672 officers.
- 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. In fiscal year 2004, this course was offered 16 times in 3 different locations, with 512 graduates.
- 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. In fiscal year 2004, the course was offered 16 times in 2 locations, graduating 296 students.
- 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 fiscal year 2004, the SELC was incorporated into the core curriculum at the Navy's Senior Enlisted Academy in Newport. In 2004, the SELC was offered 11 times in 7 different locations, reaching 337 students.
- Continuing Legal Education. In addition to the "core" courses, NJS provided 34 continuing legal education (CLE) courses. Most of these courses focused primarily upon military justice with training including: intermediate and advanced trial advocacy skills; computer crimes; legal research and writing; national security cases; prosecuting and defending complex cases; reserve updates; and a number of paralegal courses. Training was provided to active duty and reserve judge advocates and enlisted legal professionals from the Sea Services, Army, Air Force, and foreign countries in military justice and other topics including, operational law, administrative law, legal assistance, and estate planning. In fiscal year 2004, 34 distinct courses were offered 51 times in 7 different locations, reaching 954 active duty and 682 reserve legal professionals.

Coordination. Through the Interservice Legal Education Review Committee (ISLERC), Commanding Officer of NJS and Commandants of the Army and Air Force JAG Schools meet semi-annually to discuss new initiatives and opportunities for cross-training and to increase cooperation and efficiency in the training of legal personnel within the Department of Defense.

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

Additional Training. NJS participated in the Expanded International Military Education and Training Program, a security assistance program mandated by Congress. The primary focus of this instruction is on military justice and procedure. In 2004, NJS instructors provided this type of training in Argentina, Nigeria, Bosnia, and Columbia. NJS also worked closely with the Defense Institute of International Legal Studies and provided extensive training to 40 senior foreign military and government attorneys participating in the Military Law Development Program. NJS instructors also provided 411 hours of instruction, primarily in military law and procedure, to 8,231 students at 8 different schools and conferences throughout the United States.

### **MARINE CORPS ACTIVITIES**

There are approximately 450 active-duty Marine judge advocates and 415 Reserve Marine judge advocates. Additionally, there are 19 warrant officers, 450 legal specialists, and 39 court reporters working in the legal offices. These offices support the Fleet Marine Forces in the continental United States, overseas, and on deployment throughout the world. Our drilling Reserve judge advocate community provides substantial support to each of our offices in all functional areas.

Marine Corps judge advocates perform a variety of missions. They work in the military criminal justice system as prosecutors, defense counsel, military judges, appellate defense counsel, or appellate government counsel in cases of all descriptions. Legal assistance judge advocates assist Marines, Sailors, military retirees, and family members in estate planning, domestic relations law, consumer law, tax law, property law, landlord and tenant law, debtor and creditor law, adoptions, and citizenship cases. Marine judge advocates also advise commanders during military operations, review military operational plans and provide advice on the Law of War, rules of engagement, and domestic law relating to the employment of force and support of our allies. Other proactive areas include pre-mobilization legal assistance, environmental law, civil law, contract law, international law, claims and tort law, and labor law.

Since Marine Corps judge advocates are unrestricted line officers, many also serve in non-legal billets. For example, this year, Marine judge advocates served as Commanding Officer, Marine Corps Security Forces Company, Kings Bay, Georgia; Commanding Officer, Marine Corps Security Forces Company, Bremerton, Washington; Commanding Officer, Support Battalion, Marine Corps Recruit Depot, Parris Island, South Carolina; Commanding Officer, 1st Recruit Training Battalion, Marine Corps Recruit Depot, Parris Island, South Carolina; Commanding Officer, 2d Recruit Training Battalion, Marine Corps Recruit Depot, Parris Island, South Carolina; Commanding Officer, 4th Recruit Training Battalion, Marine Corps Recruit Depot, Parris Island, South Carolina; Commanding Officer, 2d Recruit Training Battalion, Marine Corps Recruit Depot, San Diego, California; Commanding Officer, Headquarters Battalion, Barstow, California; and Commanding Officer, Marine Security Guard Battalion, Company B, Nicosia, Cyprus.

The Marine Corps accesses 45 judge advocates a year from civilian law schools and private practice. Approximately 10 judge advocates per year are lateral transfers from other Marine Corps occupational fields via the Law Education Program. The Marine Corps continues to have more applicants than openings and is able to use a board process to screen all applicants to ensure the highest quality are accepted. Applicants come from diverse backgrounds and all have law degrees from ABA accredited law schools. They have higher than average LSAT scores and have successfully completed the rigorous Marine Corps Officer Candidate Course training program.

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

Upon reporting to their commands, various continuing legal education training opportunities are available to include command and Headquarters, U.S. Marine Corps sponsored programs. Currently, training opportunities are available at each of the service judge advocate schools. Additionally, various civilian continuing legal education opportunities are provided for judge advocates. Approximately 12 judge advocates each year are selected

for advanced (L.L.M.) training at civilian law schools and the Army's Judge Advocate General's Legal Center and School. Additionally, each year, five to six judge advocates attend a military specific training course such as the Expeditionary Warfare School, Command and Staff College, or the Naval War College.

The Marine Corps warrant officer and enlisted members also undergo a significant training regime. On average, 11 enlisted Marines are enrolled in a stenography/scopist course and each year 30 enlisted Marines attend the Legal Service Specialist Mid-Career Course at Naval Justice School. The Marine Corps also had six enlisted Marines attend the Law Office management course at Maxwell Air Force Base, Alabama, and the Senior Noncommissioned management course at Charlottesville, Virginia. In addition, the Marine Corps have 34 legal specialists and one court reporter filling non-legal billets as Drill Instructors, Recruiters, and Marine Security Guard. Currently, enlisted Marines are enrolled in paralegal programs and have the opportunity to attend legal education courses offered by the Marine Corps, Army, Navy, and Air Force, including the Legalman/Legal Services Specialist Mid-Career Course and Legal Research and Writing at the Naval Justice School.

The average debt for new Marine Corps judge advocates is \$68,841. Following the other services, the Law School Education Debt Subsidy (LSEDS) has now been approved and is undergoing implementation in the Marine Corps. Captains who have completed their initial active duty obligation and intend to augment into the regular Marine Corps are eligible. Selection to major is the upper parameter for eligibility. Thirty thousand dollars is the authorized payment to be made in yearly installments of \$10,000. Officers accepting LSEDS incur a further 3-year commitment. The following chart contains military justice statistical information for the Marine Corps in fiscal year 2003 and 2004.

Fiscal Year	End strength	GCM	SPCM	SCM	Total Courts	NJP	Total Adseps
FY04	177,480	150	1261	928	2,339	8,985	9,051
FY03	177,779	145	818	782	1,745	8,344	7,096

**MICHAEL F. LOHR**  
**Rear Admiral, JAGC, U.S. Navy**  
**The Judge Advocate General of the Navy**

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

Report Period: FY 2004

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	313	282	31	-.6%
BCD SPECIAL	1872	1807	65	+1.0%
NON-BCD SPECIAL	0	0	0	0%
SUMMARY	1954	1924	30	-1.8%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-.5%

**PART 2 – DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL ( CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES			105	
NUMBER OF BAD-CONDUCT DISCHARGES			163	
SPECIAL COURTS-MARTIAL ( SA LEVEL)				
NUMBER OF BAD-CONDUCT DISCHARGES			1289	

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL		264	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL		1237	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL		23	

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

TOTAL ON HAND BEGINNING OF PERIOD		1764	
GENERAL COURTS-MARTIAL	709		
BCD SPECIAL COURTS-MARTIAL	1055		
REFERRED FOR REVIEW		1508	
GENERAL COURTS-MARTIAL	270		
BCD SPECIAL COURTS-MARTIAL	1238		
TOTAL CASES REVIEWED		2069	
GENERAL COURTS-MARTIAL	520		
BCD SPECIAL COURTS-MARTIAL	1549		
TOTAL PENDING AT CLOSE OF PERIOD		1203	
GENERAL COURTS-MARTIAL	465		
BCD SPECIAL COURTS-MARTIAL	738		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD			-4.3%

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

NUMBER	1508	
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	201	-10.6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-.6%
PERCENTAGE OF TOTAL PETITIONS GRANTED	26	12.9%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-9.9%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA		1.8%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+18.2%

**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		20	
RECEIVED		17	
DISPOSED OF		28	
GRANTED	0		
DENIED	28		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		9	
<b>PART 8 – ORGANIZATION OF COURTS</b>			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		241	
SPECIAL COURTS-MARTIAL		1746	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		72	
SPECIAL COURTS-MARTIAL		126	
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>			
NUMBER OF COMPLAINTS		123	
<b>PART 10 – STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH		550,677	
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		28,659	
RATE PER 1,000		5.2	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+1.3%	

# **SECTION 5**

## **REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE**



**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE  
OCTOBER 1, 2003 TO SEPTEMBER 30, 2004**

**THE AIR FORCE COURT OF CRIMINAL APPEALS**

The Air Force Court of Criminal Appeals rendered 527 decisions in fiscal year 2004. This represents a significant (31%) increase from last fiscal year's 402 decisions. The Court continued its "Project Outreach" program, hearing oral arguments at installations around the country as a means of exposing Air Force members and the public to the appellate process of the military justice system. During this period, the Court heard argument at Scott Air Force Base, Illinois, on whether an airman's uncorroborated admission of pre-service drug use to a fellow airman was sufficient to corroborate her subsequent confession to law enforcement personnel. The Court also heard oral argument at the Air Force Judge Advocate General (AFJAG) School at Maxwell Air Force Base, Alabama, whether it was plain error for the military judge to allow an expert witness to testify about the truthfulness of the victim in a forcible sodomy case.

The Court lost one Senior Judge to retirement this fiscal year, and welcomed Colonel Craig Smith to the bench. Colonel Smith joined the Court from his position as Chief of the Military Justice Division, Air Force Legal Services Agency.

**TRIAL JUDICIARY**

The Air Force Trial Judiciary had 21 active duty trial judges, 7 reserve trial judges, and 9 noncommissioned officers assigned throughout 5 judiciary circuits worldwide. The military judges' duties include: presiding over all general and special courts-martial tried in the United States Air Force; serving as investigating officers IAW Article 32, UCMJ; serving as legal advisors for officer discharge boards and other administrative boards; conducting parole violation hearings; and presiding at public hearings held to consider draft environmental impact statements. In fiscal year 2004, the judges presided over 890 general and special courts-martial, a 7% increase over FY 03.

At the division headquarters, Colonel David F. Brash, formerly Chief Circuit Military Judge (CCMJ), Pacific Circuit, replaced Colonel John J. Powers as Chief Trial Judge. Colonel Powers retired from active duty with over 30 years of service. Lieutenant Colonel Rodger A. Drew, Jr., Deputy Chief Trial Judge, assumed Staff Judge Advocate duties at Grand Forks AFB, ND.

The Trial Judiciary conducted the 30<sup>th</sup> Interservice Military Judges' Seminar (IMJS) at Maxwell AFB, AL, 20 - 23 April. The seminar provided extensive continuing legal education and cross-feed among military trial judges. Over 110 military judges from all services attended, along with one Canadian military judge. Shortly before the IMJS, Colonel Brash and Colonel Powers presided over the second annual AETC Moot Court Competition, which was held at Maxwell AFB in April.

Our judges have participated in or conducted several other training sessions during this period. In May, Colonel Powers and Lieutenant Colonel Drew provided instruction to the new military judges at the Military Judges' Course at the Army Judge Advocate General School, University of Virginia, Charlottesville VA. Colonel Powers attended the Annual Survey of the Law in Denver, CO, and attended a conference on the Legal and Policy Implications of Courtroom Technology in Williamsburg, VA. Colonel Powers and Lieutenant Colonel Drew conducted a number of training sessions including two ADC Orientation briefings. Lieutenant Colonel Drew also trained new ADCs on the Computer Benchbook. Colonel Brash and Colonel Powers also made supervisory visits and conducted training to trial and defense counsel at all circuit workshops.

Air Force military judges were active in professional associations, including the American Bar Association, the Federal Bar Association, and various state and local bar associations. Lieutenant Colonel Drew was nominated for the ABA Judicial Division's William R. McMahon Award. His nomination was based on his trailblazing work in developing and improving computerized tools for military judges, such as the Computer Benchbook and the Judges' Reference. Colonel Linda Murnane served as the 2003 - 2004 Chair of the Military Courts Committee, National Conference of Specialized Court Judges, Judicial Division, American Bar Association. In August 2004, Lieutenant Colonel Drew replaced Colonel Murnane as the Chair of the Military Courts Committee. In January 2004, Colonel Murnane participated as part of a Mobile Education Team (MET), on behalf of the Defense Institute of International Legal Studies (DIILS) in Kigali, Rwanda. Last May, Colonel Murnane also participated in a DIILS trip to Papua New Guinea.

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

### **APPELLATE GOVERNMENT COUNSEL**

In October 2003, division counsel attended the CAAF Symposium sponsored by The Judge Advocate's Association at Catholic University School of Law. In November 2003, Division personnel attended the Criminal Law New Developments Course at the Army Judge Advocate General School. This course covered the last year's military cases in the areas of criminal law. In addition to providing new counsel an update in criminal law developments, it was an opportunity for appellate counsel and trial counsel to discuss ways to better serve the base legal offices; and it provided an opportunity for our counsel to establish contacts with their counterparts in the sister services. Appellate counsel also attended a computer crimes course in

February 2004. In May 2004, appellate counsel, including reserve counsel, attended the CAAF Judicial Conference at Catholic University School of Law. These gatherings provided current information on appellate issues and guidance on appellate practice. Finally in October 2004, appellate government counsel, including one reserve counsel, provided in-depth training at the Military Justice Administration Course (MJAC) conducted at the Air Force Judge Advocate General (AFJAG) School.

Appellate government counsel prepared and provided an appellate update on CAAF and AFCCA decisions and trends in case law at trial counsel workshops at each of the five circuits and at TJAG's GCM Conference. Additionally, division personnel, including circuit trial counsel, provided instruction on myriad military justice topics at an Operations Law Course, two Trial Defense and Advocacy Courses, the Advanced Trial and Defense Advocacy Course, at various SJA conferences, and the Staff Judge Advocate Course.

Appellate government counsel have contributed to "Project Outreach," sponsored by the Court of Appeals for the Armed Forces and the Air Force Court of Criminal Appeals, by conducting oral arguments before audiences at the United States Air Force Academy, The AFJAG School, Scott Air Force Base, Harvard Law School, Creighton University School of Law, and Offutt Air Force Base. These arguments helped educate attendees on the fairness and professionalism of the military justice system.

Also, at the invitation of laboratory personnel, an appellate government counsel visited the Air Force Drug Testing Laboratory at Brooks AFB, TX, to review the lab's procedures from the viewpoint of an experienced trial practitioner.

The division produced a number of important publications this year, including the Appellate Update, the Circuit Watch, Pocket Parts, the Advocacy Continuing Education (ACE) Newsletters and the 2004 Trial Counsel Desk book. These documents were also placed on the Division's website, providing practitioners easy and immediate access to the latest in military justice case law.

Currently, there are nine reserve judge advocates assigned as appellate government counsel. They continue to provide superb support, greatly assisting the division in carrying out its mission. In addition to preparing written briefs, two reserve counsel presented oral arguments before the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces during the fiscal year.

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

<b>AFCCA</b>	<b><u>FY 00</u></b>	<b><u>FY 01</u></b>	<b><u>FY 02</u></b>	<b><u>FY 03</u></b>	<b><u>FY 04</u></b>
Briefs Filed	151	203	181	230	226
Cases Argued	19	20	12	13	14
<b>USCAAF</b>	<b><u>FY 00</u></b>	<b><u>FY 01</u></b>	<b><u>FY 02</u></b>	<b><u>FY 03</u></b>	<b><u>FY 04</u></b>
Briefs Filed	23	46	99	51	14
Cases Argued	28	32	28	31	15
<b>SUPREME COURT</b>	<b><u>FY 00</u></b>	<b><u>FY 01</u></b>	<b><u>FY 02</u></b>	<b><u>FY 03</u></b>	<b><u>FY 04</u></b>
Petition Waivers Filed	1	1	0	0	0
Briefs Filed	0	0	0	0	0

#### **CIRCUIT TRIAL COUNSEL**

Manning authorizations for the fiscal year included 17 Circuit Trial Counsel (CTC) at 3 CONUS circuit offices and 2 CTCs each at the Pacific and European circuits. The CTCs in all five judicial circuits conducted workshops for base-level prosecutors. Circuit Trial Counsel also showcased their talents at the Air Force Judge Advocate General School, teaching as adjunct instructors at the Trial and Defense Advocacy Course and the Advanced Trial and Defense Advocacy Course.

#### **APPELLATE DEFENSE DIVISION**

Training for our appellate defense counsel remains one of the division's highest priorities. This training included the Criminal Law New Developments Course, the Judicial Conference sponsored by the U.S. Court of Appeals for the Armed Forces, and a Military Appellate Advocacy Symposium sponsored by the Judge Advocates Association. In addition, two of our appellate defense counsel attended the *Winning Brief* seminar sponsored by LawProse, Inc., and two of our attorneys attended an Advanced Legal Writing Course. Three attorneys attended a legislative history training seminar at the Library of Congress in Washington, DC.

Appellate defense counsel served as adjunct faculty members twice at the Trial and Defense Advocacy Course and once at the Advanced Trial Advocacy Course at the Air Force Judge Advocate General School at Maxwell AFB, AL. Appellate defense counsel also served as instructors at two Area Defense Counsel Orientation Courses.

Appellate defense counsel continued to support trial defense counsel in the field by actively participating in defense counsel workshops in the Pacific, European, Eastern, and Central circuits. Appellate defense counsel also kept trial defense counsel in the field updated on new appellate developments in military criminal law via our *Newsletter for Defense Practitioners*. Appellate defense counsel contributed to "Project Outreach."

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

<b>AFCCA</b>	<b><u>FY 00</u></b>	<b><u>FY 01</u></b>	<b><u>FY 02</u></b>	<b><u>FY 03</u></b>	<b><u>FY 04</u></b>
Briefs Filed	399	481	525	512	502
Cases Argued	15	14	12	12	14
<b>USCAAF</b>	<b><u>FY 00</u></b>	<b><u>FY 01</u></b>	<b><u>FY 02</u></b>	<b><u>FY 03</u></b>	<b><u>FY 04</u></b>
Supplements to Petitions	330	457	412	219	274
Grants Briefs	28	31	33	22	19
Cases Argued	25	31	28	26	14
<b>SUPREME COURT</b>	<b><u>FY 00</u></b>	<b><u>FY 01</u></b>	<b><u>FY 02</u></b>	<b><u>FY 03</u></b>	<b><u>FY 04</u></b>
Petitions	1	6	3	3	1
Briefs in Opposition	0	0	0	0	0
Briefs on the Merits	0	0	0	0	0

#### **TRIAL DEFENSE DIVISION**

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

The Division is manned with 83 ADCs stationed at 70 bases worldwide. They are assisted by 72 DPs. The Division has 21 CDCs and 5 CCDCs. The CCDCs, along with all but three of the CDCs, are stationed at the circuit offices located at Bolling AFB, DC, Randolph AFB, TX, Travis AFB, CA, Ramstein AB, Germany, and Yokota AB, Japan. A single defense paralegal manager is assigned to each of the circuits.

The continuing success of the Air Force's Area Defense Counsel Program is largely attributable to its independence and its energized personnel. To ensure the best representation for Air Force clients, training remains the division's top priority. On a continuing basis, each CCDC and CDC provides on-the-job training and mentoring to ADCs. Newly

appointed defense counsel receive formal training at the Area Defense Counsel Orientation held at Bolling AFB in June and September and at annual workshops conducted by each Circuit. Each circuit also conducts DP training at annual workshops. In addition, the division ensures each ADC has attended the Trial and Defense Advocacy Course and that all CDCs have attended the Advanced Trial Advocacy Course. The Division also provides adjunct faculty members for these two courses held at the Air Force Judge Advocate General School.

### **MILITARY JUSTICE DIVISION**

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

During the past year, the Military Justice Division: provided 79 formal opinions concerning AFBCMR applications; received 169 inquiries in specific cases requiring either formal written replies to senior officials, including the President and members of Congress; and reviewed 29 records of trial for review under Article 69a, UCMJ, 11 records under Article 69b, UCMJ, and 2 records under Article 73, UCMJ. The division also sponsored a DoD Victim and Witness Assistance Training Conference, attended by 108 DoD members. The division also presented the eighth annual Military Justice Administration Workshop at the Air Force Judge Advocate General School, a "back to basics" one-week workshop attended by 102 judge advocates and paralegals.

Lastly, division representatives played a pivotal role in the twentieth annual review of the MCM and the DoD review on how the services respond to sexual assault. The former review resulted in proposed amendments to: create a new UCMJ article proscribing the act of patronizing a prostitute; implement the Unborn Victims of Violence Act by making it a separate punishable offense (an Article 119a, UCMJ violation) to injure or kill an unborn child during the commission of an act of violence against a pregnant mother; and amend the MCM to allow the use of video tele-conferencing (VTC) technology during Article 39a sessions and VTC and telephonic technology during the sentencing phase of courts-martial. The DoD review resulted in a new DoD sexual assault prevention policy designed to improve prevention of sexual assault, enhance victim support and increase accountability.

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

The Division's primary responsibilities continue to be: (1) recommend appropriate disposition of statutorily required sentence review actions by the Secretary of the Air Force in officer and cadet dismissal cases; (2) recommend action by The Judge Advocate General or the Secretary of the Air Force, as appropriate, to effect statutorily authorized clemency for members of the Air Force under a court-martial sentence; (3) represent The Judge Advocate General on the Air Force Clemency and Parole Board; (4) make recommendations for the Secretary of the Air Force to the Attorney General on Presidential Pardon applications by court-martialed Air Force members; and (5) advise The Judge Advocate General and the Security Forces Center on corrections issues.

At the end of fiscal year 2004, 440 Air Force personnel were in confinement. Of those, 83 inmates were in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and 71 were serving time in the Federal Bureau of Prisons (BOP) system. A total of 11 inmates were enrolled in the Air Force Return-to-Duty Rehabilitation (RTDR) Program during this period, with 6 graduating and being returned to duty. The number of Air Force inmates on parole at the end of fiscal year 2004 was 165, a 22 percent increase from last fiscal year.

### **AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL**

The Air Force Judge Advocate General (AFJAG) School is one of eight professional continuing education schools in Air University's Ira C. Eaker College for Professional Development at Maxwell Air Force Base, Alabama. The AFJAG School is located in The William L. Dickinson Law Center, a 56,000 square foot academic facility dedicated in 1993. The Dickinson Law Center also houses the David C. Morehouse Center for Paralegal Studies and the Air Force Legal Information Services Division (JAS). The AFJAG School provides legal education and training to attorneys and paralegals from all military services, other federal agencies, and many foreign countries. The AFJAG School faculty provides instruction at several Air University schools and colleges as well as courses throughout the Department of Defense. The AFJAG School publishes *The Reporter*, *The Air Force Law Review*, and *The Military Commander and the Law*. The AFJAG School maintains AFJAG Department liaison with civilian professional organizations, law schools, and states requiring continuing legal education.

### **AFJAG School Courses**

The AFJAG School conducted 42 classes (some courses are held more than once a year) in fiscal year 2004 for 4,273 students. Courses, seminars, and workshops conducted at the AFJAG School included:

Accident Investigation Board Legal Advisor  
Advanced Environmental Law  
Advanced Labor and Employment Law  
Advanced Trial Advocacy  
Career Services Officers  
Claims and Tort Litigation  
Deployed Air Reserve Components Operations and Law  
Deployed Fiscal Law and Contingency Contracting  
Environmental Law  
Environmental Law Update  
Federal Employee Labor Law  
Federal Income Tax Law  
Housing Privatization  
Information Operations Law  
International Law  
Judge Advocate Staff Officer  
Law Office Manager  
Legal Aspects of Information Operations  
Legal Aspects of Sexual Assault  
Military Judges  
Military Justice Administration  
Negotiation and Appropriate Dispute Resolution  
Operations Law  
Paralegal Apprentice  
Paralegal Craftsman  
Reserve Forces Judge Advocate  
Reserve Forces Paralegal  
Staff Judge Advocate  
Trial and Defense Advocacy

#### **Off-Site Courses**

The AFJAG School conducts four "Annual Surveys of the Law" for judge advocates and paralegals in the Air Force Reserve and Air National Guard. The surveys provide concise legal updates and extensive reviews of recent developments in military justice. The surveys are conducted at a civilian conference facility in Denver, Colorado. In January 2004, 416 students attended the survey course. The Advanced Environmental Law Course was also taught off-site in Washington D.C. This course provides a policy overview and update on significant changes in the law for DoD environmental professionals at the policy level. Forty-six students attended this environmental law course.

#### **Distance Learning (DL) Courses**

The AFJAG School conducted two DL courses, the Air Force Systems and Logistics Contracting Course and the Fiscal Law Course, by live satellite broadcast (one-way video and two-way audio) to more than 50 Air Force and Army sites throughout the United States. Approximately 1,550 personnel participated in DL courses in fiscal year 2004.



## **Outside Teaching**

In addition to teaching AFJAG School courses, faculty members provide over 1,200 academic hours of instruction annually on a wide range of legal topics in other colleges, schools, and courses within Air University. These include: Air War College; Air Command and Staff College; Squadron Officer School; the College of Aerospace Doctrine, Research, and Education; the School of Advanced Airpower Studies; International Officer School; Officer Training School; Senior Noncommissioned Officer Academy; USAF First Sergeant Academy; Professional Military Comptroller School; Group Commanders' Course; Wing Commanders' Seminar; Advanced Personnel Officer Course; and the Chaplain Orientation Course. Additionally, the faculty performs more than 1,000 hours of instruction annually in other schools, courses, and conferences throughout the world. In fiscal year 2004, AFJAG School personnel instructed at the Inter-American Air Force Academy; USAF Special Operations School; U.S. Army Judge Advocate General School; American Society of Military Comptrollers Conference; SOUTHCOM Legal Engagement Conference; and the Federal Bar Association Contracting Conference.

The AFJAG School participates in the Expanded International Military Education and Training (E-IMET) program, one of several security assistance programs mandated by Congress. The program promotes U.S. foreign policy goals as established in the Foreign Assistance Act. The E-IMET Program involves joint U.S. military training teams teaching human rights, military justice, civilian control of the military, the law of armed conflict, rules of engagement, and general democratic principles in countries designated as emerging democracies. AFJAG School faculty participated in four E-IMET missions in fiscal year 2004. E-IMETs were conducted for Honduras, Romania, Albania, and the Czech Republic.

## **Publications**

Each year, the AFJAG School publishes two issues of *The Air Force Law Review*, a professional legal journal consisting of articles of interest to Air Force judge advocates, civilian attorney advisors, and others with an interest in military law. *The Law Review* is a scholarly legal publication that encourages candid discussion of relevant legislative, administrative, and judicial developments. Additionally, four issues of *The Reporter*, the Department's quarterly legal publication containing articles of general interest, were produced and distributed. The AFJAG School continues to distribute large quantities of its most popular publication, *The Military Commander and the Law*, a 550+ page compendium of concise legal papers addressing issues confronting military commanders. The printed version was updated in Fiscal Year 2004 and more than 15,000 copies were printed and distributed worldwide. An electronic version is available on-line at <http://milcom.jag.af.mil>.

## **LEGAL INFORMATION SERVICES**

During fiscal year 2004, the Legal Information Services (JAS) directorate continued its mission to leverage Air Force legal capabilities and services with the latest advancements in information technology. JAS developed and launched several new innovative software and program initiatives, while continuing to upgrade and refine existing programs, platforms, and services.

As a result of continuing product reviews, JAS upgraded several existing capabilities. The Automated Military Justice Analysis and Management Systems (AMJAMS) was upgraded to include rehearing information. Also, "WebPDI" was developed and launched in order to collect and track JAG personnel assignment preferences and the database is now "tied" to information contained in the ROSTER database. A query server multi-engine search tool was added to the Federal Legal Information Through Electronics (FLITE) system to make searches faster and more effective. JAS also updated the public version of the TJAG public web site to give it a more professional appearance and make it more user friendly.

In addition to upgrading existing applications, JAS created several new programs to assist judge advocates, paralegals, and civilian personnel by automating certain functions. For example, JAS created and launched a Patent and Royalty Tracking program for the Air Force General Counsel's Office. JAS also created and launched "WebMag," which is an information collection and tracking program to assist wing-level legal offices in coordinating and managing their Federal Magistrate Court programs.

Additionally, JAS purchased and launched Case Management Software from Law Manager to assist litigation teams in managing their cases. Early in the year, JAS created and implemented a new project-tracking system that was programmed entirely by JAS production staff. This new system, called "Projects," helps JAS track its many ongoing projects and produces management displays and reports. This program was made available on FLITE for use by base offices.

Another new program called "Suspense" was developed and is available for use. Suspense is a program that enables users to assign, review, annotate, and track tasks. In a continuous effort to save money, JAS completed a review of all law library book purchases, created a core library matrix, and fielded a new version of the Network Resource Allocation and Management System (NetRAMS).

JAS replaced the Air Force Judge Advocate General (AFJAG) School Access database for the Judge Advocate Staff Officer Course (JASOC) with a new application for tracking students and course information. This new program has a direct connection to the Course Nominating System and Roster to easily create class rosters and track student course completion.

JAS acquired a license for "knowledgeWorks," a learning management system (LMS), from techniques.org. This system, named Judge Advocate Distance Education or "JADE," gives the Air Force JAG Corps an "in-house" capability to both create and distribute distance-training modules over the Internet. JAS is also developing the capability to create distance-learning courseware in a collaborative effort with the AFJAG School.

Finally, JAS renewed agreements for web hosting services with the Coast Guard General Counsel's Office, the Boards of Correction of Military Records, the Court of Appeals for the Armed Forces, the Air Force General Counsel's Office, and the Defense Contracting Management Agency.

#### **PERSONNEL**

As of 30 September 2004, the Air Force Judge Advocate General's Corps had 1377 judge advocates on active duty. Company grade officers (lieutenants and captains) made up approximately 49% of that number (673). Slightly more than 27% were majors (376) and 14% were lieutenant colonels (201). Almost 9% of the Corps were colonels (121) and above, including two major generals and four brigadier generals.

**JACK L. RIVES**  
**Major General, USAF**  
**Deputy Judge Advocate General**

**APPENDIX - U. S. AIR FORCE MILITARY JUSTICE STATISTICS**

Report Period: FISCAL YEAR 2004

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	356	316	40	+1.404%
BCD SPECIAL	514	264	46	+8.36%
NON-BCD SPECIAL [A]		204		
SUMMARY	157	154	3	+35.66%
<b>OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT</b>				<b>+45.42%</b>

**PART 2 – DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL ( CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES			83*
NUMBER OF BAD-CONDUCT DISCHARGES			192
SPECIAL COURTS-MARTIAL ( CA LEVEL)			
NUMBER OF BAD-CONDUCT DISCHARGES			264

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	286
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	261
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	29

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

TOTAL ON HAND BEGINNING OF PERIOD		591
GENERAL COURTS-MARTIAL	[B]	
BCD SPECIAL COURTS-MARTIAL	[B]	
REFERRED FOR REVIEW		537
GENERAL COURTS-MARTIAL	[B]	
BCD SPECIAL COURTS-MARTIAL	[B]	
TOTAL CASES REVIEWED		527
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD		638
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (402:527)		+23.7%

**PART 5 – APPELLATE COUNSEL REQUESTS BEFORE**

**U.S. AIR FORCE COURT OF CRIMINAL APPEALS (CCA)**

NUMBER	544:547
PERCENTAGE	99.45%

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

PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF (381/564)	51.21%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-1.02%
PERCENTAGE OF TOTAL PETITIONS GRANTED (49/275)	17.81%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-10.62%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (49/537)	9.12%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-5.73%

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

<b>PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ</b>			
TOTAL PENDING BEGINNING OF PERIOD		1	
RECEIVED		2	
DISPOSED OF		2	
GRANTED	0		
DENIED	2		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		1	
<b>PART 8 – ORGANIZATION OF COURTS</b>			
TRIALS BY MILITARY JUDGE ALONE		532	
GENERAL COURTS-MARTIAL		213	
SPECIAL COURTS-MARTIAL		319	
TRIALS BY MILITARY JUDGE WITH MEMBERS		338	
GENERAL COURTS-MARTIAL		143	
SPECIAL COURTS-MARTIAL		195	
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>			
NUMBER OF COMPLAINTS		19	
<b>PART 10 – STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH		376,044	
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		9741	
RATE PER 1,000		25.90	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+1.18%	

**EXPLANATORY NOTES**

[A] The Air Force does not convene non-BCD SPCMs. Of the 514 SPCMs tried, there were 264 convictions with a BCD adjudged, 204 convictions without a BCD adjudged and 46 acquittals.

[B] GCM and SPCM were not tracked separately.

\* Includes 26 officer dismissals

## **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, 2003 to September 30, 2004**

**COURTROOM DEDICATION**

On December 2, 2003, a dedication ceremony was held to commemorate the opening of a new courtroom for the Coast Guard Court of Criminal Appeals in Arlington, Virginia. This marks the first time the Court has had a dedicated courtroom facility. Speakers at the dedication ceremony included then Chief Judge Susan Crawford and the Honorable William K. Suter, Clerk of the U.S. Supreme Court.

**PERSONNEL AND TRAINING**

The Coast Guard has 177 officers designated as judge advocates serving on active duty, of which 139 are serving in legal billets and 38 are serving in general duty billets. Among the 38 military attorneys serving "out-of-specialty" are the Commander of the Eighth Coast Guard District in New Orleans, Special Assistant to the President in the Office of Homeland Security; Deputy Director of Operations, U.S. Northern Command; Director, Joint Inter-Agency Task Force West and other commanding and executive officers of Coast Guard cutters, groups, marine safety offices, training centers, and support commands. The Coast Guard also employs 69 civilian attorneys ranging from GS-12 to SES.

The Coast Guard sent attorneys to 35 different courses of instruction during this fiscal year, primarily at the various service JAG schools. 82% of Coast Guard attorneys attended one or more courses of continuing legal education. Twenty-one Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as judge advocates at the successful completion of their studies. Eight students will graduate in 2005, six will graduate in 2006, and seven will graduate in 2007. Additionally, one judge advocate is attending the graduate course at The Army Judge Advocate General's Legal Center and School and will graduate in 2005 with a master's of law (LLM) degree in military law. 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 becoming 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 2004 were:

Chief Judge Joseph H. Baum  
Judge David J. Kantor  
Judge Gary A. Palmer (until his retirement on 1 July 2004)

Judge Thomas R. Cahill (until termination of his duties on 8 September 2004 after transfer)  
Judge Lane I. McClelland  
Judge Michael A. Hamel (administered oath on 25 May 2004)  
Judge Gilbert E. Teal (administered oath on 23 June 2004)  
Judge Gary E. Felicetti (administered oath on 8 September 2004)

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.

The Court traveled to George Mason University School of Law to hear oral argument before students and faculty in *United States v. Abdul-Rahman*, 59 M.J. 924 (C.G. Ct. Crim. App. 2004) on 20 February 2004 as part of Project Outreach, a program instituted by the United States Court of Appeals for the Armed Forces to expand awareness of the military justice appellate process by taking appellate hearings to the service academies, law schools, and other locations. After the hearing adjourned, in furtherance of Project Outreach objectives, the judges and appellate counsel entertained questions from the audience not pertaining to this case or its issues.

In April 2004, Judge Teal attended the Interservice Military Judges Seminar at the Air Force Judge Advocate General School at Maxwell AFB, in AL.

In April and May 2004, Judge Hamel and Judge Felicetti attended the Military Judges Course at the Army Judge Advocate General School in Charlottesville, VA.

On 8 September 2004, the judges participated in the Coast Guard's 2004 Legal Officers Conference, Military Justice Day at the Army Judge Advocate General School in Charlottesville, VA. The Conference that day included informative presentations and discussions on the "State of Military Justice," "Trial and Sentencing," "Post-Trial," a status report on the Coast Guard Court of Criminal Appeals and current trends in military law by Judge Lane McClelland.

On 16 and 17 September 2004, the judges participated in the William S. Fulton, Jr. Appellate Military Judges Conference and Training Seminar at the Federal Judicial Center in Washington, D.C. The conference was hosted by the U.S. Army Court of Criminal Appeals and featured an opening address by Judge "Sparky" Gierke. The conference also included informative presentations on "Standards of Review & Article 66(c), UCMJ" by Colonel Bill Barto, USA; "Judicial Review & the Manual for Courts-Martial" by Professor Gregory Maggs, George Washington University School of Law; "A Historical Perspective on the Military Appellate Courts" by Professor Jonathan Lurie, Rutgers University; "Amending the Manual for Courts-



Martial" by LTC Michele Shields, USA; "Due Process & Military Commissions" MG (ret.) John Altenberg, Jr., Appointing Authority, DLSA; "Judicial Ethics & Professional Responsibility" by Professor Ronald Rotunda, George Mason University School of Law; and "Selected topics in Criminal Law & Procedure" by The Judge Advocate General's School Faculty. Judge McClelland, Judge Hamel, Judge Teal, and Judge Felicetti were in attendance.

Chief Judge Baum served another term this past year as a member of the Rules Advisory Committee of the U.S. Court of Appeals for the Armed Forces.

### **MILITARY JUSTICE ORGANIZATION**

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

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

The Office of Military Justice at Coast Guard Headquarters is responsible for representing the United States in all courts-martial appeals and providing support to staff judge advocates and trial counsel throughout the Coast Guard. The office is also responsible for developing military justice policy for the Coast Guard, including participation on the Joint Service Committee (JSC) on Military Justice. Within the office, three officers are assigned primary duty as appellate government counsel.

### **TRAINING OPPORTUNITIES WITH OTHER SERVICES**

To improve the trial advocacy skills and experience levels of Coast Guard Judge Advocates, the Judge Advocate General has arranged for Coast Guard Trial Counsel to be assigned for limited periods of time (usually three months), to certain installations which have a robust military justice practice. Coast Guard Judge Advocates have thus far been assigned to Marine Corps Base Quantico, Marine Corps Base Camp Lejeune, Navy Trial Service Office East in Norfolk, Virginia, and the Army's Trial Counsel

Assistance Program in Falls Church, Virginia. This is in addition to the existing Memorandum of Understanding with the Navy that provides for four Coast Guard Judge Advocates to be assigned full-time as trial counsel or defense counsel at Navy installations.

**MILITARY JUSTICE STATISTICS**

**NOTE:** All statistics are based on the number of courts-martial records received and filed at Coast Guard Headquarters during fiscal year 2004 and, where indicated, records received during each of the four preceding fiscal years. The number of courts-martial vary widely from year to year, but this is not a reliable indicator of the administration of military justice given the relatively small number of courts-martial overall.

<u>Fiscal Year</u>	<u>04</u>	<u>03</u>	<u>02</u>	<u>01</u>	<u>00</u>
General Courts-Martial	12	08	04	15	10
Special Courts-Martial	27	18	23	17	23
Summary Courts-Martial	12	20	11	18	11
Total	51	46	38	50	44

**GENERAL COURTS-MARTIAL**

Eleven of the twelve accused tried by general courts-martial this fiscal year were tried by military judge alone. One elected to be tried by a general court-martial composed of officer and enlisted members. All twelve general courts-martial resulted in convictions. Four accused tried by general courts-martial were nonrated (pay grades E-1 through E-3), six were petty officers (pay grades E-4 through E-6), and two were commissioned officers (W-1 through O-9).

The following table summarizes the sentences adjudged in general courts-martial tried by military judge alone (eleven convictions):

<u>Sentence</u>	<u>Cases Imposed</u>
dishonorable discharge/dismissal-	4
bad conduct discharge - - - - -	7
confinement- - - - -	11
hard labor without confinement- - - - -	0
reduction in pay-grade - - - - -	9
finned (total \$0.00) - - - - -	0
restriction - - - - -	0
forfeiture of all pay and allowances - - - - -	4
partial forfeiture of pay and allowances - - - - -	0

The following table summarizes the sentences adjudged in general courts-martial tried by members (one conviction):

Sentence	Cases Imposed
dishonorable discharge	0
bad-conduct discharge	1
confinement	1
hard labor without confinement	0
reduction in pay-grade	1
fined (total \$0.00)	0
restriction	0
forfeiture of all pay and allowances	0
partial forfeiture of pay and allowances	0

The following table compares the frequency of imposition of the four most common punishments imposed at general courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Pay-Grade	Punitive Discharge/Dismissal
04	12	4 (33%)	12 (100%)	10 (83%)	12 (100%)
03	8	1 (13%)	5 (63%)	6 (75%)	5 (63%)
02	4	1 (25%)	3 (75%)	3 (75%)	4 (100%)
01	15	4 (27%)	14 (93%)	13 (87%)	10 (67%)
00	9	5 (56%)	7 (78%)	6 (67%)	6 (67%)

The following table shows the distribution of the 184 specifications referred to general courts-martial in fiscal year 2004.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts)	8
86 (absence without leave)	2
92 (failure to obey order or regulation)	13
93 (cruelty and maltreatment)	1
107 (false official statements)	7
112 (drunk on duty)	7
112a (wrongful use, possession, etc. of controlled substance)	16
120 (rape or carnal knowledge)	3
121 (larceny or wrongful appropriation)	4
123 (forgery)	4
125 (sodomy)	4
128 (assault)	4
134 (general)	<u>111</u>
	184

Twelve general courts-martial represent a 50% increase in general courts-martial records received and filed at Coast Guard Headquarters in FY 2004 over the previous fiscal year. The Coast Guard has averaged 10 general courts-martial per year over the last 5 years with four to fifteen cases a year.

**SPECIAL COURTS-MARTIAL**

Twenty-five of the twenty-seven accused tried by special courts-martial this fiscal year were tried by military judge alone. Two elected to be tried by special courts-martial with enlisted and officer members. Twenty-five of the special courts-martial resulted in convictions, two in acquittals, and fifteen accused received a BCD. Seven accused tried by special court-martial pled guilty to all charges and specifications. Seven of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), sixteen were petty officers (pay grades E-4 through E-6), four were chief petty officers (pay grades E-7 through E-9), and none were commissioned officers (W-1 through O-9).

The following table summarizes the sentences adjudged in the twenty-five special courts-martial cases.

Sentence	Cases Imposed
bad-conduct discharge - - - - -	15
confinement - - - - -	19
hard labor without confinement - - - - -	2
reduction in pay-grade - - - - -	24
fined (total \$0.00) - - - - -	1
restriction - - - - -	0
partial forfeiture of pay and allowances- - - - -	7
reprimand - - - - -	4

The following table compares the frequency of imposition of the four most common punishments imposed at special courts-martial in the past five fiscal years.

FY	Number of Convictions	Reduction in			
		Forfeitures	Confinement	Pay-Grade	BCD
04	25	7 (28%)	20 (80%)	24 (96%)	15 (60%)
03	18	2 (11%)	16 (88%)	15 (83%)	13 (72%)
02	23	9 (39%)	22 (96%)	17 (74%)	18 (78%)
01	17	9 (53%)	17 (100%)	12 (71%)	9 (53%)
00	23	8 (35%)	20 (87%)	19 (83%)	10 (43%)

The following table shows the distribution of the 177 specifications referred to special courts-martial in fiscal year 2004.

Violation of the UCMJ, Article	No. of Specs.
78 (accessory after the fact)- - - - -	1
80 (attempts)- - - - -	1
83 (fraudulent enlistment, appointment, or separation) - -	2
86 (unauthorized absence)- - - - -	7
89 (disrespect toward superior commissioned officer) - - -	1

90	(assaulting or willfully disobeying superior, commissioned officer) - - - - -	1
91	(insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer) - - - - -	4
92	(failure to obey order or regulation) - - - - -	40
93	(cruelty and maltreatment) - - - - -	1
95	(resistance, breach of arrest, and escape) - - - - -	1
107	(false official statement)- - - - -	16
108	(military property of United States - loss, damage, destruction, or wrongful disposition)- - - - -	1
109	(property other than military property of United States - waste, spoilage, or destruction) - - - - -	1
112a	(wrongful use, possession, etc. of controlled substance) - - - - -	27
120	(rape and carnal knowledge) - - - - -	2
121	(larceny or wrongful appropriation) - - - - -	6
123	(forgery) - - - - -	4
123a	(making, drawing, or uttering check, draft or order without sufficient funds)- - - - -	1
125	(sodomy)- - - - -	1
128	(aggravated assault)- - - - -	7
134	(general) - - - - -	<u>52</u>
		177

There was a 50% increase in special courts-martial received and filed at Coast Guard Headquarters this fiscal year over last fiscal year. Over the past five years the Coast Guard has averaged twenty-two special courts-martial per year with seventeen to twenty-seven special courts-martial a year.

**ADDITIONAL MILITARY JUSTICE STATISTICS**

Appendix A contains the Coast Guard, Fiscal Year 2004 military justice statistics.

**JOHN E. CROWLEY, JR.**  
**Rear Admiral, U. S. Coast Guard**  
**The Judge Advocate General of the Coast Guard**

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

Report Period: 1 OCTOBER 2003 - 30 SEPTEMBER 2004

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	12	12	0	+50%
BCD SPECIAL	27	25		+50%
NON-BCD SPECIAL	0	0	0	UNCHANGED
SUMMARY	12	12	0	-40%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+11%

**PART 2 – DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL				
NUMBER OF DISHONORABLE DISCHARGES			4	
NUMBER OF BAD-CONDUCT DISCHARGES			8	
SPECIAL COURTS-MARTIAL				
NUMBER OF BAD-CONDUCT DISCHARGES			15	

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL			12	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL			10	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL			0	

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

TOTAL ON HAND BEGINNING OF PERIOD			13	
GENERAL COURTS-MARTIAL		3		
BCD SPECIAL COURTS-MARTIAL		10		
REFERRED FOR REVIEW			28	
GENERAL COURTS-MARTIAL		13		
BCD SPECIAL COURTS-MARTIAL		15		
TOTAL CASES REVIEWED			22*	
GENERAL COURTS-MARTIAL		7		
BCD SPECIAL COURTS-MARTIAL		15		
TOTAL PENDING AT CLOSE OF PERIOD			21	
GENERAL COURTS-MARTIAL		10		
BCD SPECIAL COURTS-MARTIAL		12		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD				-12%

**PART 5 – APPELLATE COUNSEL REQUESTS BEFORE**

**U.S. COAST GUARD COURT OF CRIMINAL APPEALS (CCA)**

NUMBER	28	
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	3/26	12%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+4%
PERCENTAGE OF TOTAL PETITIONS GRANTED	3/11	27%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+2%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA	3/26	12%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+50%

\* United States v. St. Pierre, 59 M.J. 750 (C.G.Ct.Crim.App. 2004) was counted twice. The case was decided on 21 Jan. 04; later an order denying reconsideration was published on 5 Mar. 04. The court issued two opinions in United States v. Hughes. Initially, the case was decided on 21 May 04, and subsequently on 24 June 04 after granting reconsideration.

**APPENDIX - 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		0
RECEIVED		0
DISPOSED OF		0
GRANTED	0	
DENIED	0	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		0
<b>PART 8 – ORGANIZATION OF COURTS</b>		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		11
SPECIAL COURTS-MARTIAL		25
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		1
SPECIAL COURTS-MARTIAL		2
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>		
NUMBER OF COMPLAINTS		2
<b>PART 10 – STRENGTH</b>		
AVERAGE ACTIVE DUTY STRENGTH		40,226
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		1,764
RATE PER 1,000		43.85
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+2%