

**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, 2006 to September 30, 2007**

# **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, 2006 to September 30, 2007**

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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, 2006 to September 30, 2007**

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

The Code Committee met on May 15, 2007, to consider matters pertaining to the administration of military justice. The meeting was open to the public. After approving the minutes of the 2006 Code Committee meeting, Chief Judge Andrew S. Effron noted two pending items from the minutes. The first item concerned a proposal for giving the accused the option of sentencing by military judge alone after findings by court members. The matter was referred to the Joint Service Committee for consideration. The other item involved the request to obtain the views of the General Counsel, Department of Defense, on whether Articles 18 and 21, UCMJ, should be amended to substitute the words "law of nations" for "law of war." The matter is pending in the Department of Defense.

Colonel Scott R. Martin, U.S. Air Force, the Chair of the Joint Service Committee, informed the Committee that the recommendations in the 2004 annual reviews of the Joint Service Committee dealing with the use of remote testimony, the offenses of causing death or injury to an unborn child and stalking had been signed by the President in an Executive Order on April 18, 2007. The 2005 and 2006 recommendations were sent to the General Counsel, Department of Defense, for review on December 28, 2006. These recommendations involve the elements, lesser-included offenses, sample specifications and maximum punishments for Article 120, UCMJ, offenses, increasing the maximum punishment for maiming to 20 years, and deletion of various offenses under Article 134, UCMJ, that are covered now under Article 120. These recommendations also proposed changes to Rules for Court-Martial (RCM) 916 (to conform to Article 120), RCM 920 (burden of proof for mistake of fact), RCM 1004 (adding aggravating factor in capital cases for murder committed during commission of specified Article 120 offenses, and RCM 1204 (authorizing Service Secretaries and the Secretary of Defense to make recommendations in cases with approved capital sentences). The recommendations also propose amending Military Rule of Evidence (MRE) 412 (adding new Article 120 offenses), MRE 503 (defining clergyman's assistant), and MRE 504 (including a "de facto" child as a victim as an exception to the privilege).

Colonel Martin concluded by summarizing the proposed changes in the 2007 Annual Review that would eliminate the 14-day period for adjudged forfeitures and reductions to take effect, allow for electronic records of trial, clarify rules regarding the closure of Article 32, UCMJ, investigations, simplify the staff judge advocate's post-trial recommendations, expand the pre-trial role of military judges, and solidify the contempt power of military judges.

Lieutenant Colonel Jeff Colwell, U.S. Marine Corps, briefed the Code Committee on a proposal to amend Article 61, UCMJ, to allow an accused to waive appellate review as part of a written pretrial agreement. The proposal is pending before the Joint Service Committee.

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

Andrew S. Effron  
Chief Judge

James E. Baker  
Associate Judge

Charles E. "Chip" Erdmann  
Associate Judge

Scott W. Stucky  
Associate Judge

Margaret A. Ryan  
Associate Judge

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

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

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

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

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

Professor Edward J. Imwinkelried  
Public Member

Professor Gregory E. Maggs  
Public Member

## **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, 2006 to September 30, 2007**

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 2007 Term of the Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, Title 10, United States Code, § 946.

Chief Judge H.F. "Sparky" Gierke and Judge Susan J. Crawford retired on September 30, 2006, having completed their 15-year terms. Judge Andrew S. Effron became the Chief Judge on October 1, 2006. Judge Scott W. Stucky and Judge Margaret A. Ryan joined the Court on December 20, 2006.

**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. The Court's web site also contains a consolidated digest of past opinions of the Court, information on the Court's history and jurisdiction, the Rules of Practice and Procedure, previous Annual Reports, a schedule of upcoming hearings, audio recordings of past hearings, and information on clerkship opportunities, bar admission, electronic filing, and the Court's library.

During the 2007 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 34,116. Also during the Term, the Court established the position of Court Executive and appointed Keith L. Roberts to the position.

Following the recommendation of the Rules Advisory Committee and a period of public comment, the Court amended Rule 24 of the Rules of Practice and Procedure to require the filing of a Joint Appendix contemporaneously with the filing of the brief of the appellant or petitioner on and after August 1, 2007. The new Rule 24(f) was modeled after Rule 30 of the Federal Rules of Appellate Procedure.

On June 21, 2007, the Court amended its Term of Court policy.

Following the 2007 Term of Court, which ended on September 30, 2007, the subsequent Term of Court was designated as the October 2007 - August 2008 Term of Court (Transition), ending on August 31, 2008. The Term of Court beginning on September 1, 2008, and each Term thereafter, will be a 12-month Term of Court beginning on September 1 of each year and ending on August 31 of the following calendar year. The Terms will be designated as the September Term of Court of the year in which the Term begins. In the 2007 Term of Court, the Court met its goal of issuing opinions in all cases heard during the Term prior to the end of the Term. The last opinion of the Term was issued on June 22, 2007.

#### **JUDICIAL 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 2007 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, with the consent of the parties, at Southern University School of Law, Baton Rouge, Louisiana; Loyola University School of Law, New Orleans, Louisiana; the Mississippi College of Law, Jackson, Mississippi; the University of Pittsburgh School of Law, Pittsburgh, Pennsylvania; and Duquesne University School of Law, Pittsburgh, Pennsylvania. In addition, during the 2007 Term of Court, the Judges of the Court participated in a variety of professional training, speaking and educational endeavors on military installations, at law schools and before professional groups.

#### **JUDICIAL CONFERENCE**

On May 16 and 17, 2007, the Court held its annual Judicial Conference at the Catholic University of America, Columbus School of Law, Washington, D.C. The program for this Judicial Conference was certified for credit to meet the continuing legal education requirements of State Bars throughout the United States. The conference opened with welcoming remarks from the Honorable Andrew S. Effron, Chief Judge, United States Court of Appeals for the Armed Forces. He was followed by speakers for this year's conference, including Andrew G. Oosterbaan, U.S. Department of Justice; Professor James W. McElhaney, Case Western University School of Law and South Texas School of Law; Lieutenant Colonel Thomas A. Wagoner, Jr., USMC, Major Jeremy A. Ball, USA, Major Deidra J. Fleming, USA, and Major Howard H. Hoege, III, USA, of the Judge Advocate General's Legal Center and School, Charlottesville, VA; Professor Stephen F. Smith,

University of Virginia School of Law; Mr. Robert E. Reed, Office of the General Counsel, Department of Defense; Mr. John S. Cooke, Federal Judicial Center; Major General and Honorable Justice L.W. Roberts-Smith and Brigadier Ian D. Westwood, Australian Defense Force; Judge Abner Mikva, University of Chicago School of Law; Colonel Scott Martin, USAF, Chair, Joint Service Committee on Military Justice; and Colonel Dwight H. Sullivan, USMCR, Chief Defense Counsel, Office of Military Commissions.

Andrew S. Effron  
Chief Judge

James E. Baker  
Associate Judge

Charles E. "Chip" Erdmann  
Associate Judge

Scott W. Stucky  
Associate Judge

Margaret A. Ryan  
Associate Judge

**USCAAF STATISTICAL REPORT  
2007 TERM OF COURT**

**CUMULATIVE SUMMARY**

CUMULATIVE PENDING OCTOBER 1, 2006

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

CUMULATIVE FILINGS

Master Docket . . . . .	172
Petition Docket . . . . .	937
Miscellaneous Docket. . . . .	<u>23</u>
TOTAL . . . . .	1,132

CUMULATIVE DISPOSITIONS

Master Docket . . . . .	157
Petition Docket . . . . .	911
Miscellaneous Docket. . . . .	<u>20</u>
TOTAL . . . . .	1,088

CUMULATIVE PENDING OCTOBER 1, 2007

Master Docket . . . . .	53
Petition Docket . . . . .	266
Miscellaneous Docket. . . . .	<u>3</u>
TOTAL . . . . .	322

**OPINION SUMMARY**

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket . . . . .	54	1	102	157
Petition Docket . . . . .	0	0	911	911
Miscellaneous Docket	<u>0</u>	<u>0</u>	<u>20</u>	<u>20</u>
TOTAL	54	1	1,033	1,088

**MASTER DOCKET SUMMARY**

FILINGS

Petitions granted from the Petition Docket . . .	168
Certificates filed . . . . .	4
Mandatory appeals filed. . . . .	0
Remanded/Returned cases. . . . .	0
Reconsideration granted. . . . .	<u>0</u>
TOTAL . . . . .	172

DISPOSITIONS

Findings and sentence affirmed . . . . .	113
Reversed in whole or in part . . . . .	44
Granted petitions vacated . . . . .	<u>0</u>
TOTAL . . . . .	157

PENDING

Awaiting briefs . . . . .	22
Awaiting oral argument . . . . .	25
Awaiting lead case decision (trailer cases) . . .	6
Awaiting final action . . . . .	<u>0</u>
TOTAL . . . . .	53

**PETITION DOCKET SUMMARY**

FILINGS

Petitions for grant of review filed . . . . .	935
Petitions for new trial filed . . . . .	2
Petitions for reconsideration granted . . . . .	0
Returned cases . . . . .	<u>0</u>
TOTAL . . . . .	937

DISPOSITIONS

Petitions for grant of review denied . . . . .	733
Petitions for grant of review granted . . . . .	168
Petitions for grant of review withdrawn . . . . .	7
Petitions for grant of review dismissed . . . . .	<u>3</u>
TOTAL . . . . .	911

PENDING

Awaiting pleadings . . . . .	110
Awaiting Central Legal Staff review . . . . .	132
Awaiting final action . . . . .	<u>24</u>
TOTAL . . . . .	266

MISCELLANEOUS DOCKET SUMMARY

FILINGS

Writ appeals sought . . . . .	10
Writs of habeas corpus sought . . . . .	5
Writs of error coram nobis sought . . . . .	0
Other extraordinary relief sought . . . . .	<u>8</u>
TOTAL . . . . .	23

DISPOSITIONS

Petitions or appeals denied . . . . .	17
Petitions or appeals granted . . . . .	2
Petitions or appeals dismissed . . . . .	1
Petitions or appeals withdrawn . . . . .	0
Petitions or appeals remanded . . . . .	<u>0</u>
TOTAL . . . . .	20

PENDING

Awaiting briefs . . . . .	1
Awaiting staff review . . . . .	0
Awaiting final action . . . . .	<u>2</u>
TOTAL . . . . .	3

PETITIONS FOR RECONSIDERATION

ALL CASES

DISPOSITIONS

Begin Pending	6	Denied	24
Filed	<u>18</u>	Granted	<u>0</u>
TOTAL	24	TOTAL	24
End Pending	0		

MOTIONS

ALL MOTIONS

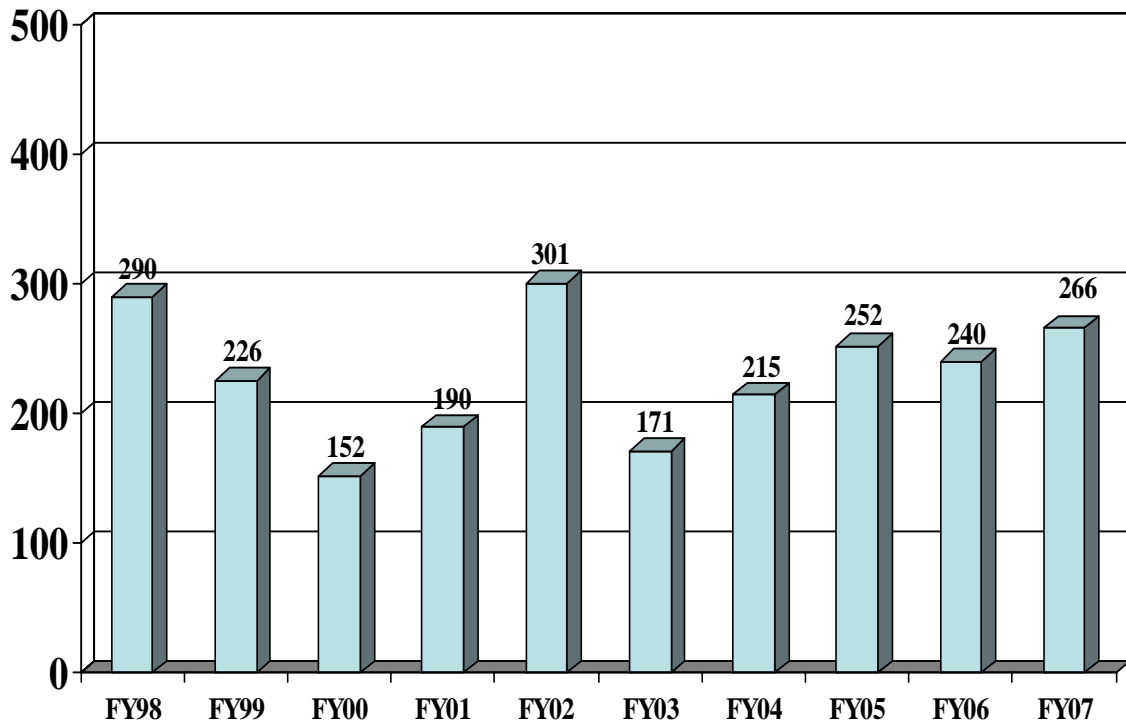
DISPOSITIONS

Begin Pending	8
Filed	<u>592</u>
TOTAL	600

Granted	525
Denied	<u>64</u>
TOTAL	589

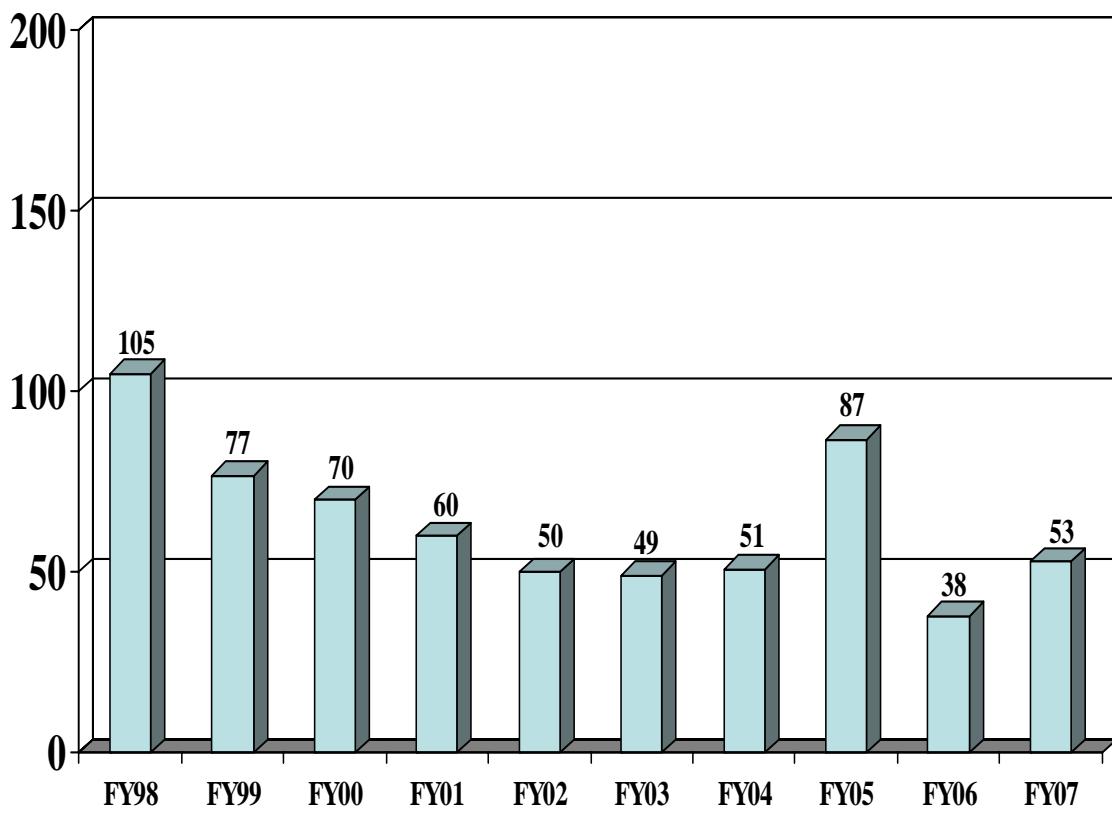
End Pending	11
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# Petition Docket Year End Pending

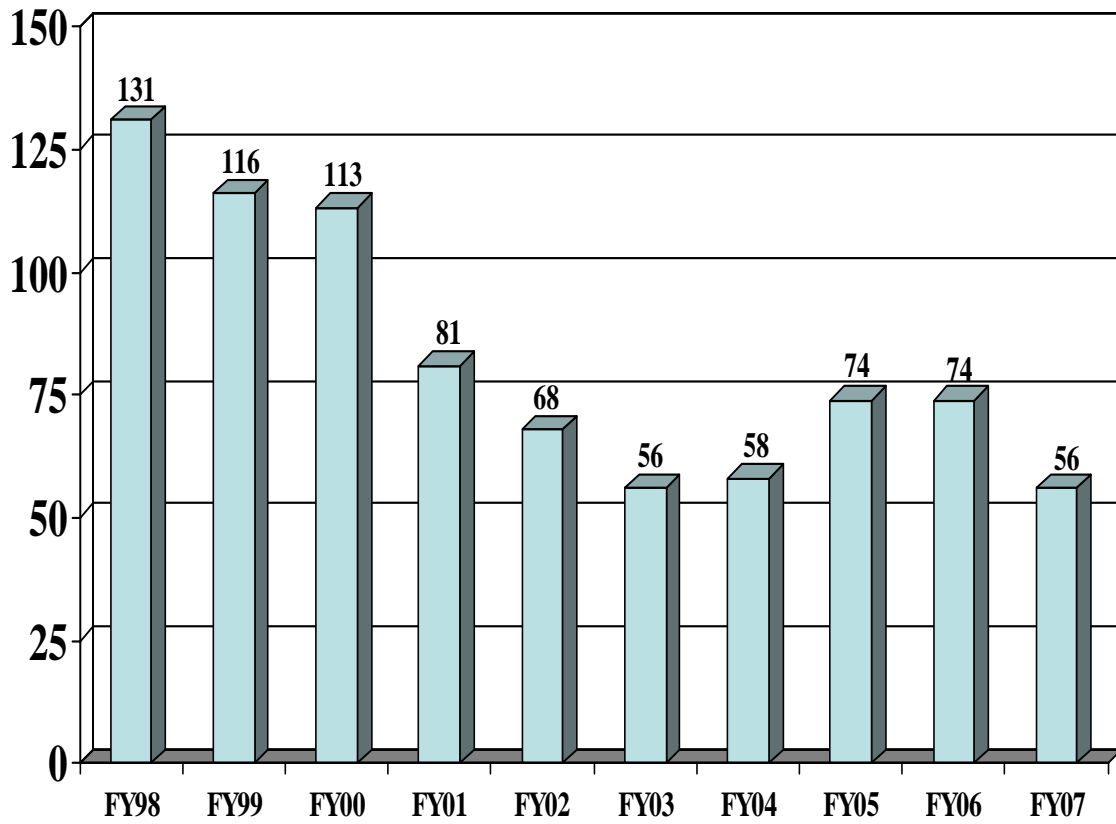




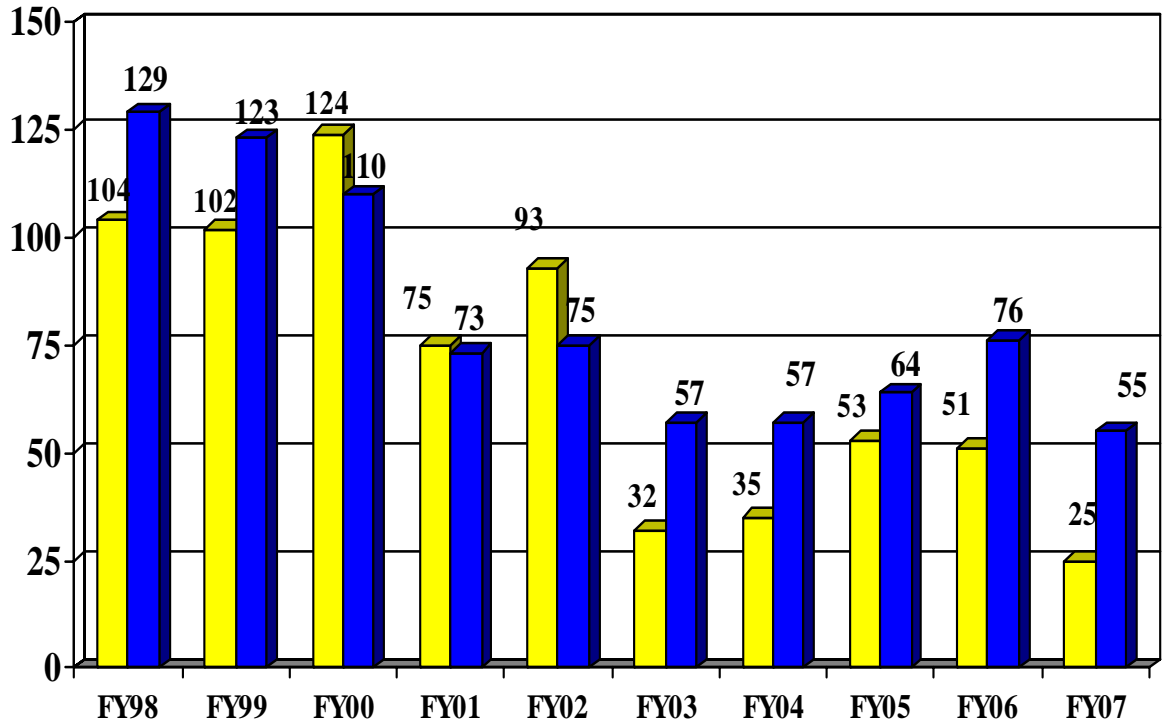
# Master Docket Year End Pending



## Oral Arguments Per Year



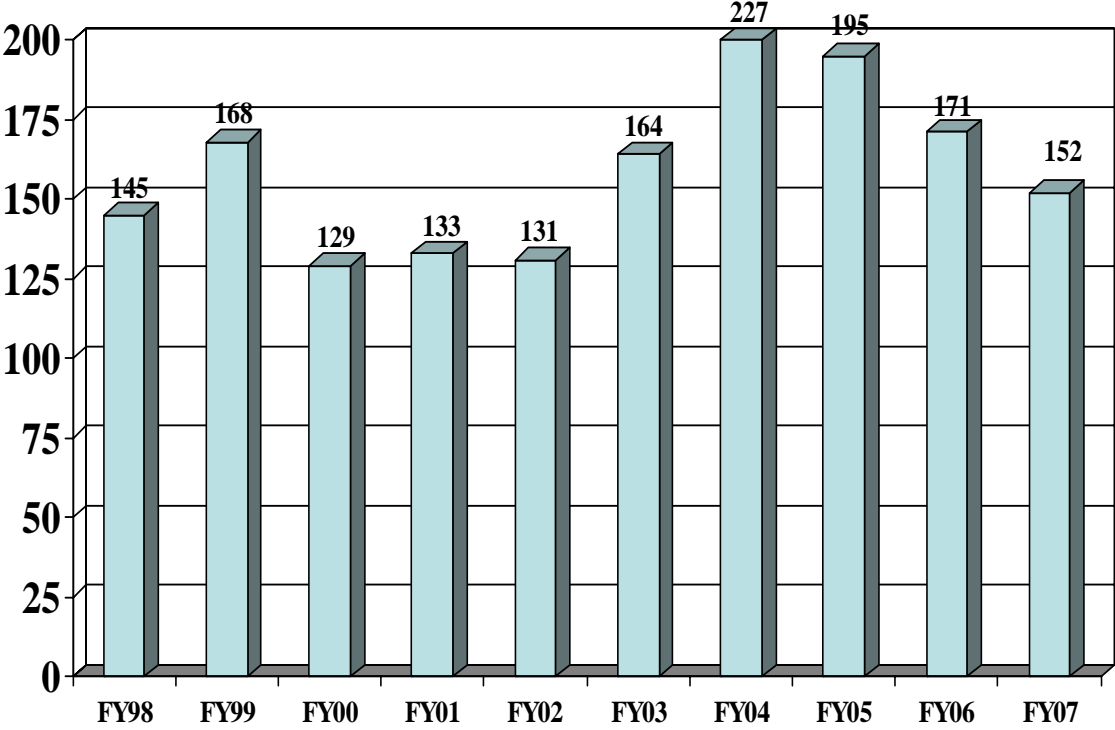
# Total Opinions Per Year



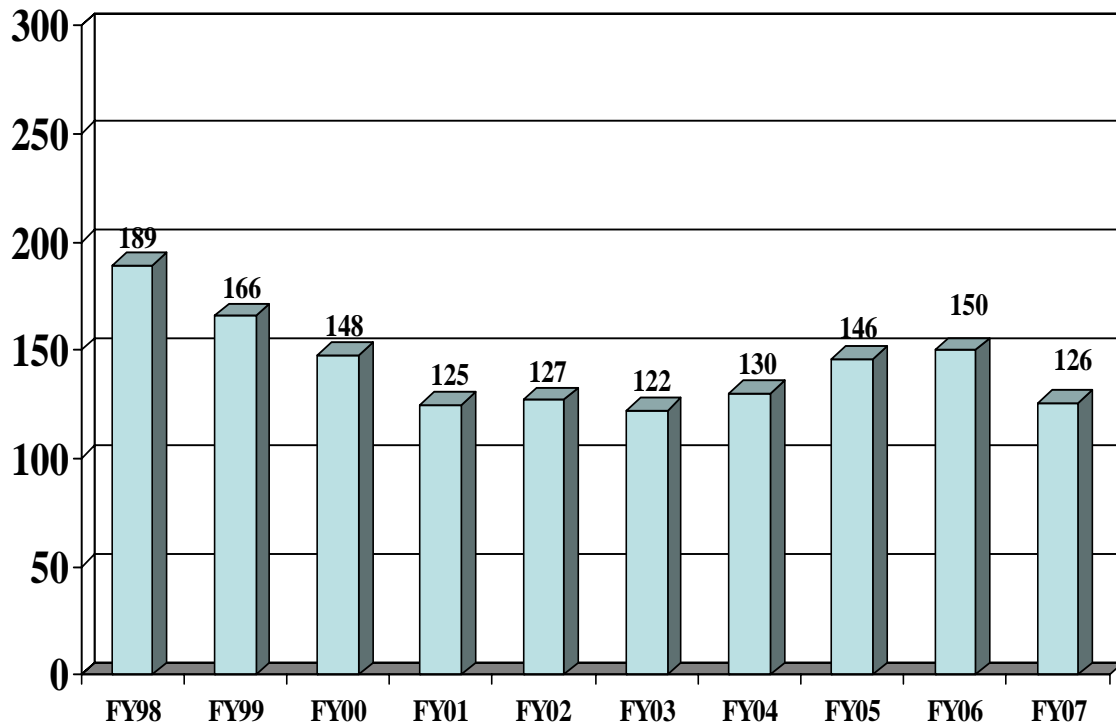
■ TOTAL SEPARATE OPINIONS (CONCUR, CONCUR IN THE RESULT, AND DISSENT)

■ TOTAL COURT OPINIONS

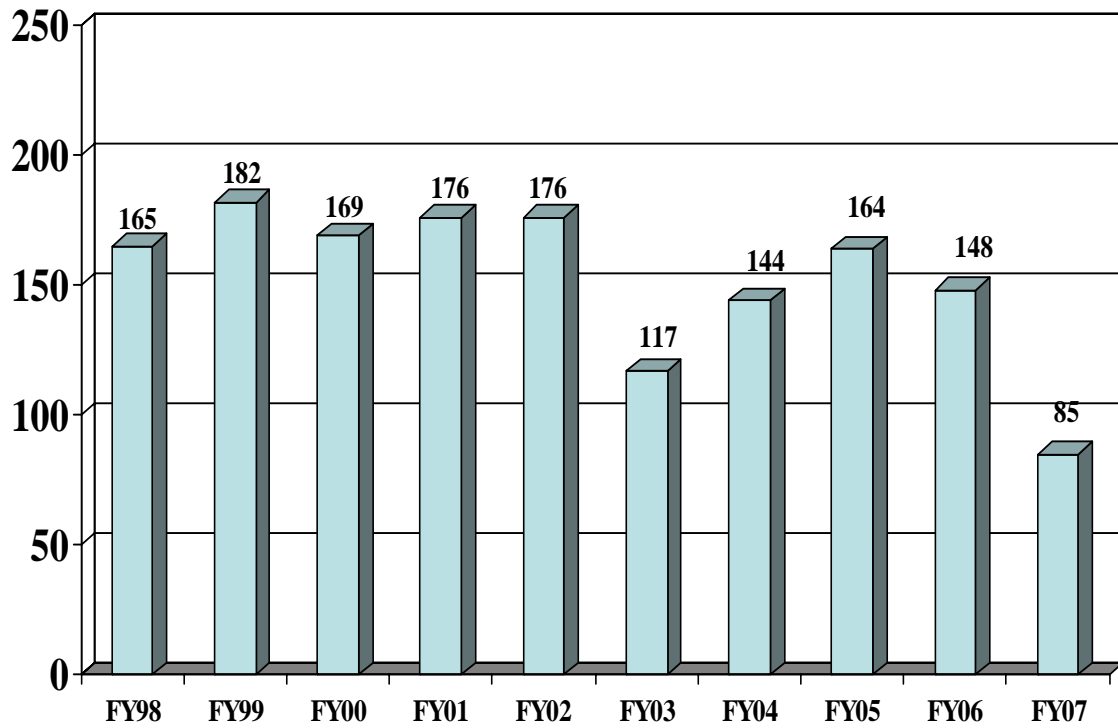
# Days from Petition Filing to Grant



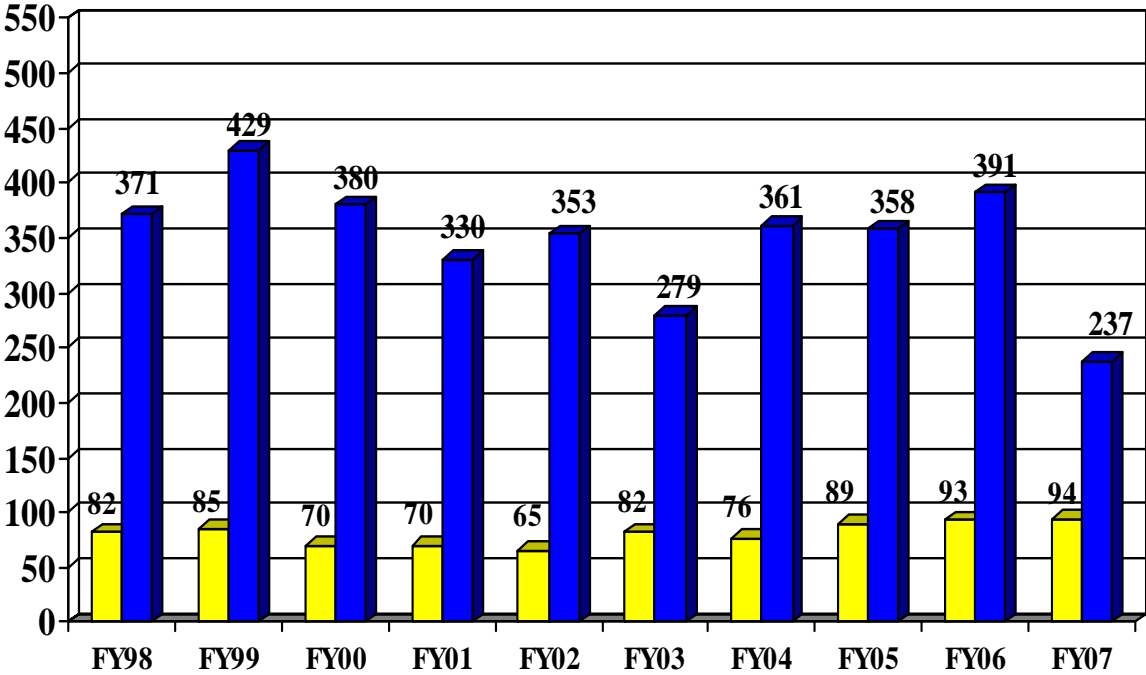
## Days from Petition Grant to Oral Argument



## Days from Oral Argument to Final Decision



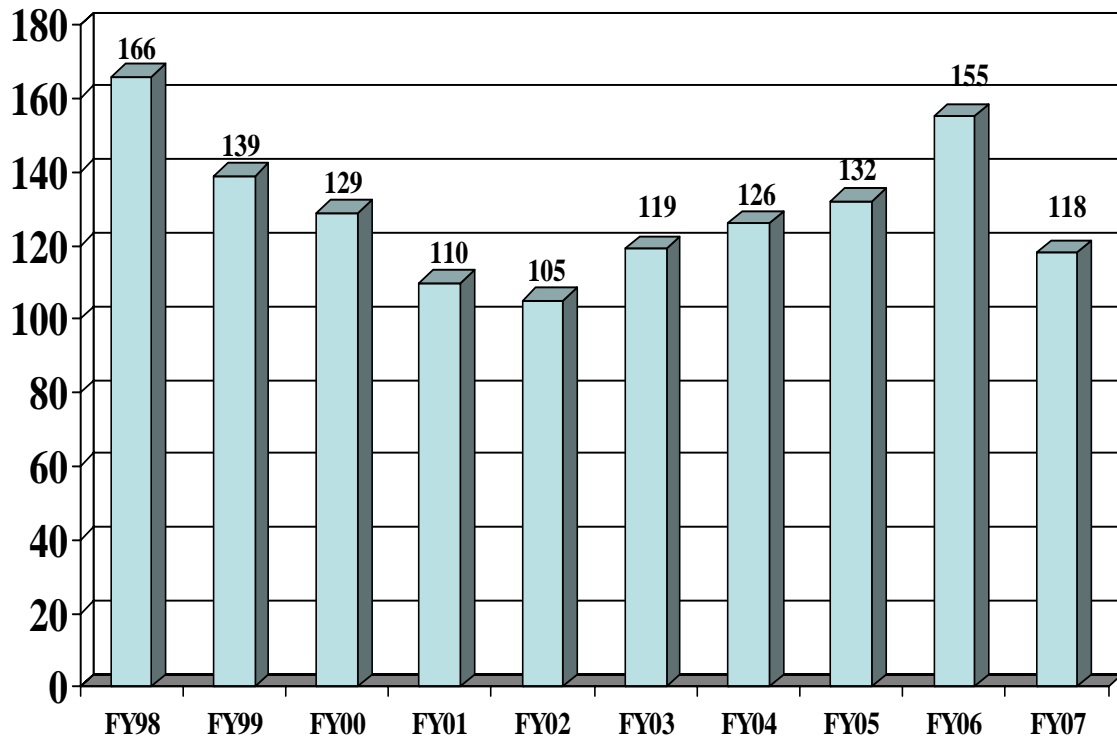
# Days from Petition Filing to Final Decision



■ PETITION DOCKET (DENIAL/DISMISSAL/WITHDRAWAL)

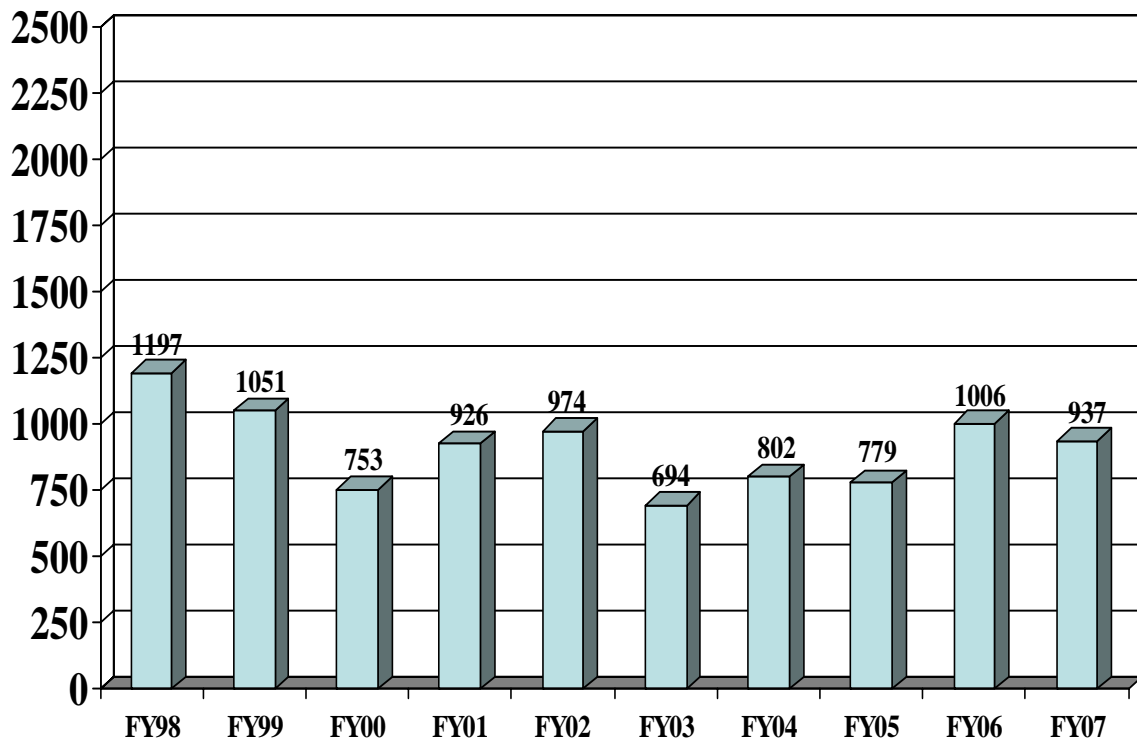
■ MASTER DOCKET (GRANTED/CERTIFIED/DEATH CASES)

## Days from Filing to Final Decision in All Cases





# Total Petitions Filed Per Year



# **SECTION 3**

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

**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY  
OCTOBER 1, 2006 TO SEPTEMBER 30, 2007**

During fiscal year 2007 (FY 07), and in compliance with Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General and senior members of his staff visited 27 installations and commands in the United States and overseas. With the U.S. Army's continued deployments in Iraq and Afghanistan and their effects on legal operations world-wide, the Office of The Judge Advocate General (OTJAG) continued to advise the Army leadership and develop policies to improve the provision of legal services to Army Commanders, Soldiers, and support activities world-wide. Structural changes and assignment prioritization have allowed the Judge Advocate General's (JAG) Corps to fully support the operational law needs of the Army while continuing to maintain a superior military justice system and provide the full range of support in other legal areas. In addition, the JAG Corps continues to invest in its future by maintaining a world class legal center and school in Charlottesville, Virginia, and placing an emphasis on recruiting and training the very best legal personnel.

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

The training of newly commissioned Judge Advocates for FY 07 continued consistent with the significant policy changes enacted in the fall of FY 06. Instead of a nonresident course, all newly commissioned Reserve Component (RC) Judge Advocates now attend the resident Officer Basic Course (OBC) at the LCS in Charlottesville, Virginia along with their Active Army Component (AC) counterparts. In addition, all newly commissioned Judge Advocates, including those from the RC, attend the four-week Direct Commissioned Officer Course (DCO) immediately following the completion of the OBC, unless in limited circumstances they receive a waiver from the Chief, Personnel, Plans and Training Office (PP&TO). This training program affords all newly commissioned Judge Advocates the opportunity to receive leadership training designed to instill the Warrior Ethos. The same training policy provides for follow-on attendance of the AC Judge Advocates at the Basic Officer Leadership Course (BOLC) II, a six week, branch-immaterial course in which the majority of training is conducted in a tactical or field environment. Beginning in October 2008, all RC Judge Advocates will attend BOLC II, as well. The Chief, PP&TO may waive the requirement for BOLC II attendance for both AC and RC Judge Advocates.

The development and implementation of the Judge Advocate Tactical Staff Officer Course (JATSOC) is a new on-line training program. In September 2007, graduates of the 173d Officer Basic Course were enrolled in the course.

The JATSOC provides much-needed instruction to new Judge Advocates in staff officer skills. The JATSOC consists of approximately 20 hours of online, self-paced instruction. All Judge Advocates will be automatically enrolled in JATSOC upon graduation from OBC. Those officers with more than 48 months of commissioned service as of 1 October 2007, or who have completed Combined Arms and Services Staff School (CAS3), are exempt from the JATSOC requirement. Judge Advocates who are required to take JATSOC will be notified via Army Knowledge Online (AKO) e-mail that they have been enrolled in the course. Those who are required to take the JATSOC will have 24 months from enrollment to complete the course.

#### **CRIMINAL LAW DEPARTMENT, TJAGLCS**

The cornerstone mission of the Criminal Law Department, TJAGLCS is to develop, improve, and sustain excellence in the practice of military criminal law. The need to hone these skills in the context of a joint, expeditionary, and modular force is paramount and occupies center stage in all curriculum review. Instruction touches a wide range of subjects from substantive criminal law to technical litigation skills, while at the same time providing critical reach-back capability in support of Operations Iraqi and Enduring Freedom.

Advocacy training continues to be one of the Criminal Law Department's top priorities. The Department devotes significant effort to training each OBC student on trial advocacy skills. In order to improve preparation of our new Judge Advocates in military justice, including advocacy skills, the Criminal Law Department instituted major changes to its Basic Course Curriculum in the summer of 2005, with continuing changes in 2006 and 2007. The theme of the instruction is "The Anatomy of a Court-Martial." The faculty employs a fact scenario based on an actual criminal case to walk the students through the substance and process of a criminal case in the military justice system from the initial report of the offense to trial and conviction or acquittal of the alleged offender. Every student completes a series of 12 clinical events tied to the fact pattern over the course of approximately two and one-half weeks of instruction, including a neutral trial memorandum that addresses numerous potential issues in the case. The clinical events involve the students acting as both trial and defense counsel, and culminate with a negotiated guilty plea and contested court-martial exercise. The fact scenario also incorporates mandatory training in the Department of Defense and Department of the Army Sexual Assault Response Program, including changes to victim-witness initiatives.

The Criminal Law Department continues to hone this curriculum to ensure relevant, operationally focused training. Most notably, the

Criminal Law Department increased the amount of advocacy instruction provided, and introduced the new Article 120 rape statute (effective 1 October 2007) throughout the training scenario.

The Criminal Law Department also continued instruction to military justice managers and senior paralegals with a heavy emphasis on pre and post-trial processing. The 55 students of the 13th Military Justice Managers Course received significant instruction on the practical "how to" of court-martial pre and post-trial processing as well as substantive law instruction. As in past courses, justice managers received a number of resources on CD-ROM for use in the field, including examples of case tracking systems, as well as *The Advocacy Trainer*, to assist them in their mission and to effectively continue teaching advocacy to their subordinate counsel. Guest speakers included the Chief, Defense Counsel Assistance Program, the Chief Trial Judge of the Army, the Deputy Clerk of the Army Court of Criminal Appeals, and the Senior Legal Advisor to the Army Review Boards Agency.

The Criminal Law Department continued to offer advanced advocacy training in the 27th and 28th Criminal Law Advocacy Courses (CLAC) in addition to advanced advocacy training electives for the Graduate Course. The two-week CLAC afforded more than 100 trial advocates individualized and specialized trial advocacy training. For each course, the students performed rigorous small-group practical exercises on essential litigation skills from opening statement through closing argument. RC officers from around the country assisted the Department with both the 27th and 28th CLAC courses, providing invaluable knowledge and insight from both their prior military experience and their current civilian practice. Many of the Department's Drilling Individual Mobilization Augmentee (DIMA) Professors serve as Assistant United States Attorneys or Federal Public Defenders in their civilian capacity. Their assistance with advocacy training is an invaluable resource for the Department. Due to the recently inaugurated DIMA program, many officers were able to return for the basic course advocacy training exercises as well, and to assist with continual updating of Department publications for the field.

In addition to the Military Justice Managers Course and the CLAC, the Criminal Law Department hosted a variety of continuing legal education courses, including the 50th Military Judge 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 31st Criminal Law New Developments Course attended by nearly 300 Judge Advocates from all services, including substantial representation from the trial and appellate

bench. In addition to hosting courses, Department professors taught classes to RC Judge Advocates at numerous Reserve On-Site Conferences, other venues including regional Trial Defense Service training, and the U.S. Army Europe criminal law conference. Professors presented instruction at the Court of Appeals for the Armed Forces Conference and Interservice Military Judges Course in the spring, as well as providing case updates to appellate counsel and judges at both the Judge Advocate Association Appellate Conference and the Fulton Judges Conference in the fall. One of the Department's professors also provided instruction as a panel member at a regional conference hosted by the National Institute of Military Justice.

The Criminal Law Department was extremely pleased to host a distinguished speaker last spring. The Honorable H.F. "Sparky" Gierke, Senior Judge of the Court of Appeals for the Armed Forces, presented the 35th Hodson Lecture on Criminal Law. Senior Judge Gierke delivered an engaging presentation detailing historical precedent and proposals for military justice practitioners to consider in shaping our system in the future.

#### **COURT REPORTER TRAINING DEPARTMENT, TJAGLCS**

The Court Reporter Training Department is responsible for training all Army and Air Force military and Department of Defense (DoD) civilian court reporters world-wide. The Army formally assumed the task of training all Air Force court reporters in April 2006. The Army adopted the new speech recognition technology method of transcript production, termed "redictation," in January 2006, and also purchased the digital recording equipment, ForTheRecord (FTR) Gold, at the beginning of FY 07 for all Army courtrooms and court reporters world-wide.

In a historical joint service effort between the LCS Court Reporter Training Department and the Senior Court Reporter Manager of the Air Force, both formally adopted the same method and equipment in January 2007, and both services continue to train and work together in their common court reporting mission both at the LCS and in the field.

Since the inception of the new speech recognition methodology and digital recording equipment, the Army has trained 26 senior military court reporters and 12 DA civilians in redictation via a newly developed two-week course designed to train all legacy court reporters.

Additionally, the Department has trained 23 Air Force civilian reporters and two Air Force Enlisted Court Reporters (ECRs) in the redictation method during FY 07.

The TJAGLCS has also trained 33 new reporters in the redictation method, as well as one DA civilian, one AF civilian, 5 Army Reserve Component, 3 National Guard, and 2 ECRs since the new method was formally adopted in January 2006.

Numerous advancements and joint training opportunities have been made in the curriculum of the Court Reporter Course. Students learn speech recognition with the latest versions of the Dragon Naturally Speaking software, as well as the latest developments in digital recording technology and record of trial production. Training also includes integrated opportunities with the Military Judge Course and the CLAC, as well as the OBC where court reporting students perform all court reporter duties in the mock trials held in each of these courses. This training is beneficial to not only the court reporters, but also to the students by providing a more realistic training environment.

A revised draft of AR 27-10, Chapter 25, Court Reporting, is being staffed with Criminal Law Division, OTJAG and will be included in the next update to AR 27-10.

#### **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 and serving as their proponent, reviewing other Army Regulations for legal sufficiency, providing legal opinions to the Army Staff related to military justice matters, producing and updating military justice publications, conducting statistical analysis and evaluation of trends that effect military justice within the Army, providing advice on military corrections issues, the Army drug testing program, sexual assault and victim assistance policies and federal prosecutions, responding to congressional inquiries and requests under the Freedom of Information Act, and conducting reviews of court-martial cases under Article 69 of the UCMJ to identify issues that may require corrective action.

6

Criminal Law Division case data and actions for the last three fiscal years are:

FY 05      FY 06      FY 07

White House inquiries	33	20	3
Congressional and other inquiries	214	130	109
Clemency petitions (Article 74, UCMJ)	1	0	3
Officer Dismissals	19	28	38
Article 69 review	96	115	106
Freedom of Information Act/Privacy Act	22	15	19

This year, the Criminal Law Division served as the focal point within the Army for implementing an expansion of court-martial jurisdiction over civilians. The 2007 National Defense Authorization Act amended Article 2(a)(10) of the UCMJ to provide for court-martial jurisdiction over persons (civilians) serving with or accompanying the force during times of declared war, as has historically been the case, as well as during contingency operations. The Criminal Law Division worked with the DoD Office of General Counsel in drafting policies concerning appropriate authority to exercise this jurisdiction. At the same time, the Criminal Law Division drafted a new chapter concerning civilian jurisdiction as an addition to the Army's military justice regulation and forwarded this draft to the field for review and comment. The Army also took the lead within the Joint Service Committee on Military Justice (JSC) to identify changes required within the Manual for Courts-Martial (MCM) in response to this expanded jurisdiction.

Through the JSC, the Army drafted several proposals for changes to the MCM that were approved by the JSC and included in a draft Presidential Executive Order, expected to be signed in FY 08. These proposals would be effective upon signature. One proposal expands the definition of "writing" to allow electronic records of trial to be served in lieu of paper copies and allows authentication of these records by digital signature after review of electronic copies. A second proposal allows, if authorized by service regulations, final orders directing discharge in courts-martial cases to be self-executing if the accused is no longer in confinement and on excess leave at the time the accused's case is certified as final. A third proposal clarifies that, when analyzing whether an accused complied with a lawful order, there is a presumption that an order requires immediate compliance. Another proposal increases the maximum term of confinement allowed as punishment in manslaughter cases where the victim is a child under the age of 16.

In conjunction with the OTJAG Information Technology Division, the Criminal Law Division renewed efforts to field eJustice, a web-based case management system for military justice offices within the Army. The system will allow for standardization of practice among all legal offices and the capability for centralized retrieval of information and Army-wide statistical analysis of this information. Plans



developed this year support a phased fielding of this system beginning in FY 08.

The Criminal Law Division completely revised the MCM in preparation of the publication of a new edition. The 2008 MCM will incorporate three Presidential Executive Orders and various statutory changes enacted since the 2005 edition was published. The scope and volume of changes makes this arguably the most significant change since the publication of the 1984 MCM. The new MCM will be published in early 2008, first electronically to be followed by publication in book form. In addition, two publications, DA PAM 27-7, Guide for Summary Court-Martial Trial Procedure, 15 April 1985, and DA PAM 27-17, Procedural Guide for Article 32(B) Investigating Officers, 16 September 1990, have been updated. The updates clarify procedures for officers to use when appointed to positions requiring them to analyze evidence and make rulings or recommendations based on their findings. Both publications will be published in 2008.

In furtherance of an initiative begun in FY 06, the Criminal Law Division published a Courtroom and Support Space Design and Appearance Guide for Staff Judge Advocates (SJAs). The guide is for use by SJAs who are planning to build new judicial centers or renovating existing courtrooms. The guide provides design details for architectural plans and specifications to be incorporated into these new courtroom projects. The Army Standard Courtroom Design is expected to be finalized in 2008 and will include these architectural design plans. This effort will be followed in 2008 by a technology plan for Army courtrooms.

The Criminal Law Division continued to track over 800 detainee-related investigations and other high profile cases. Maintaining information on these cases allowed the Division to report trends to The Judge Advocate General and to respond to Congressional and other inquiries with the most current information.

#### **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.

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#### 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 1,100 records of trial

and over 2,900 motions and briefs were referred to the three judicial panels of ACCA for appellate review.

The Office of the Clerk of Court served ACCA decisions upon all personnel not in confinement and closed over 1,500 courts-martial cases during the past year.

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

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

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

	<u>FY05</u>	<u>FY06</u>	<u>FY07</u>
Freedom of Information Act	180	255	227
Privacy Act	110	96	74
Certified Copies of Convictions	<u>213</u>	<u>199</u>	<u>329</u>
Total Number of Requests	503	550	630

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

FY 07 saw 19 active duty military judges, one mobilized US Army RC military judge, and 18 reserve military judges not on active duty preside over 1,468 general and special courts-martial worldwide; a number that includes all post-arraignment proceedings that did not necessarily result in completed trials, all government appeals/extraordinary writs, and all post-arraignment proceedings in which a court-martial case report had previously been submitted to ACCA. This figure represents a slight increase from FY 06. Trials in Iraq, Afghanistan, and Kuwait numbered 108 for FY 07, bringing the total number of cases tried in hostile fire combat pay zones to over 600 since May 2003. Army judges continued to preside over high profile cases, including the only officer tried for misconduct related to the Abu Ghraib prisoner abuse scandal and a desertion case stemming from an Army officer's moral opposition to the Iraq war. RC military judges were detailed as investigating officers in a number of complex Article 32 hearings, including cases involving capital referrals. Military judges continued playing an active role in their military and civilian communities, speaking to grade and high school audiences, local bar associations, civic organizations and state bar continuing legal education courses. A military judge provided instruction to Iraqi judges in Baghdad as part of a program to stand up the Iraqi judiciary, and a military judge briefed contingents of African and Korean judges as part of outreach efforts by the Department of State.

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

The U.S. Army Trial Defense Service (USATDS) has approximately 130 active duty and 180 RC attorneys. USATDS provides high quality, professional defense services to Soldiers throughout the Army from 63 active duty installations worldwide and 54 reserve locations. USATDS counsel defended Soldiers facing the entire range of allegations under the UCMJ.

USATDS detailed one or more counsel to every Army special and general courts-martial referred in FY 07. USATDS counsel carry large workloads, assisting Soldiers in myriad military justice related actions. Representation statistics for USATDS for FY 07 are:

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Courts-Martial - 1,370  
Administrative Boards - 732  
Nonjudicial Punishment - 42,882  
Consultations - 42,245

USATDS provided defense services to deployed forces around the world, including Iraq, Kuwait, Kosovo, and Afghanistan. USATDS

CENTCOM AOR mainly encompasses Iraq, Afghanistan, and Kuwait. Currently there is one Regional Defense Counsel, 18 Trial Defense Counsel, and 10 Paralegals deployed throughout USATDS CENTCOM AOR. This region was established in July 2003. USATDS Offices in Iraq are located in Tallil, Camp Victory (Baghdad), Camp Liberty (Baghdad), Taji, Balad, Ramadi, Contingency Operating Base Speicher, Mosul, and Kirkuk. In Kuwait, the TDS Office is located at Camp Arifjan. In Afghanistan, the TDS Office is located at Bagram Air Base.

The Defense Counsel Assistance Program (DCAP) continues to be an overwhelming success. DCAP is designed to assist with the training and education of defense counsel, while also supporting Headquarters, USATDS, with policy initiatives and military justice related issues. DCAP, staffed with five Judge Advocates, supports TDS counsel and their defense teams throughout the globe. DCAP's main focus is to provide training, resources, and assistance for the defense of Soldiers in both the reserve and active components. DCAP is a resource for Regional Defense Counsel and Senior Defense Counsel to improve the legal skills and knowledge base of their counsel and paralegals. It also functions as the lead division for the Chief, TDS on the development of future U.S. Army policies, as they impact TDS, as well as providing substantive policy analysis on issues stemming from doctrine, regulations, executive orders, and legislation. In addition, DCAP serves as the liaison with Defense Appellate Division, U.S. Army Legal Services Agency, for extraordinary writs by defense counsel. DCAP is one more effort by the Judge Advocate General's Corps to provide the best legal representation possible to every Soldier.

TDS counsel continue to foster a close working relationship with RC defense counsel assigned to the 154<sup>th</sup> and the 22d Trial Defense Service Legal Support Organizations (TDS LSOs). The 154<sup>th</sup> TDS LSO, consisting of 122 commissioned officers, one warrant officer and 24 enlisted paralegals, provides defense services to Soldiers assigned to units in the eastern half of the United States and throughout 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 the United States and Asia. Individual TDS offices have established joint training programs with local RC TDS personnel and have conducted highly successful joint training conferences.

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The Chief, USATDS, exercises technical supervision over RC TDS LSOs. The Chief is also responsible for the provision of defense counsel services and provides oversight for the units' training and readiness. Reserve support to active duty TDS offices continues to be outstanding, with RC Judge Advocates providing critical support at many active component installations in addition to locations such as Camp Shelby, Mississippi, Fort Dix, New Jersey, and Fort McCoy, Wisconsin. RC Judge Advocates have also deployed overseas to Germany

as backfills for AC forward deployed defense counsel. Several RC Judge Advocates are serving in Iraq, Afghanistan, and Kosovo as defense counsel. During any given month, TDS has anywhere from 30 to 40 mobilized reserve counsel and paralegals throughout the Army.

Headquarters, USATDS continued to support AC and RC awareness of the new National Guard TDS initiatives and National Guard TDS integration with our organization. Both TDS LSO commanders have built relationships with National Guard Trial Defense Teams (TDTs) and RDC Regional Trial Defense Teams (RTDTs) as the teams stand up. For the future, and as additional RTDTs and TDTs come on line, we intend to have them do as much of their Annual Training as possible with an AC TDS office to maximize training opportunities. Furthermore, we anticipate a move to 6 CONUS-based TDS LSOs. If this move occurs, the intent is to geographically align 6 AC CONUS-based TDS regions to these TDS LSOs. Finally, Headquarters, USATDS coordinated with the Legal Automation Army-Wide System Office to arrange for National Guard TDS attorney access to the Headquarters, USATDS web page and databases as well as the DCAP web page and databases.

#### **GOVERNMENT APPELLATE DIVISION**

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

In FY 07, GAD consisted of the Chief, the Deputy Chief, three branch chiefs, eight appellate attorneys, and three civilian paralegals. Additionally, during the year, seven RC Soldiers were activated to assist with brief writing and other duties. The GAD filed 1,225 briefs with the ACCA, 21 briefs with the CAAF, and 417 petition responses with CAAF.

FY 07 is notable for a dramatic increase in the number of writs and government appeals being filed that GAD is responsible for handling. In the past 12 months, GAD has worked on 11 writs or government appeals. In previous years these were rarely utilized.

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Additionally, GAD attorneys assisted the Trial Counsel Assistance Program (TCAP) with several death penalty/high visibility cases to include United States v. Murphy, United States v. Loving, United States v. Gray, United States v. Akbar II, United States v. Dodson, United States v. Forester, and United States v. Watada.

During FY 07, GAD also presented oral argument in 25 cases before the ACCA and 15 cases before the CAAF. One of the oral arguments

before the ACCA was an Outreach Argument at the United States Military Academy at West Point. One of the oral arguments before the CAAF was an Outreach Argument presented at Duquesne University.

#### Trial Counsel Assistance Program

TCAP continued its mission of providing information, advice, training, and assistance to trial counsel worldwide. Serving also as a GAD branch, TCAP links trial counsel and appellate counsel together to resolve issues of common concern in the successful prosecution of courts-martial. In light of this, TCAP serves as the prosecutor's appellate advocate for extraordinary writs and Government appeals on issues arising before final disposition.

TCAP's team of four officers and one civilian assistant continues to provide five basic categories of services: (1) telephone/e-mail website assistance; (2) advocacy training courses and other training events; (3) dissemination of information; (4) trial assistance; and (5) appellate assistance. In providing these services, TCAP accomplished the following in FY 07: (1) responded to an average of more than 250 telephonic and e-mail requests for assistance per month; (2) expanded and continued to maintain the TCAP website, which has now been accessed more than 20,000 times; (3) conducted three regional advocacy training conferences, attended by approximately 120 Judge Advocates, 10% of whom were from other services; (4) continued to conduct practical courses for new Judge Advocates ("TC 101: How to Be a Trial Counsel") in the field upon request; (5) conducted three "Introduction to Forensic Evidence" courses at the US Army Criminal Investigations Laboratory (USACIL) at Fort Gillem, Georgia, training over 40 Judge Advocates; (6) created a new trial counsel training course called "Deployed Justice" for deploying Judge Advocates, and provided this training on three occasions to a total of more than 50 attorneys and paralegals; (7) continued to foster a positive working partnership with the National Center for Missing and Exploited Children (NCMEC) to allow approximately 60 Judge Advocates to attend their training seminar for prosecuting attorneys called "Protecting Children From On Line Crime"; (8) collaborated with NCMEC by providing TCAP personnel as instructors during course break-out sessions;

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(9) TCAP personnel also served as instructors at various American Prosecutors Research Institute courses, which enhanced the reputation of the Judge Advocate General's Corps among the target audience of district attorneys throughout the country; (10) published a monthly newsletter containing updates on legal decisions and practical tips for trial counsel to use in prosecuting cases and handling recurring issues; (11) created and distributed the "TCAP Resource Disk" to Judge Advocates in the field, which included samples and templates of every document a trial counsel needs, information on how to handle a

classified case, a Capital Litigation file, and a database of sample motions featuring more than 400 motions; (12) actively assisted in the prosecution of several high-profile cases including *United States v. Martinez*, *United States v. Kruetzer*, *United States v. Steele*, *United States v. White* and *United States v. Watada*, as well as provided varying levels of support on dozens of active cases worldwide; and (13) represented the United States in numerous extraordinary writs and interlocutory appeals.

During FY 07, TCAP continued to be actively engaged with the Army RC and National Guard, sister services, and civilian counterparts. Approximately one-third of the requests for TCAP's assistance continued to come from the trial counsel in the Army RC and our sister services. Recognizing the RC's desire for assistance relating to military criminal justice matters, TCAP strives to include the RC in everything it does, such as when it provides copies of materials to the field. TCAP attorneys also provided training at Reserve on-sites for various Legal Support Organizations around CONUS. To further enhance the quality of legal work across the services, TCAP has invited the Army's sister services to its conferences. TCAP has also strengthened its relationships with the National District Attorney Association (NDAA) and the American Prosecutors Research Institute by serving as instructors for their courses. In turn, these organizations have given scholarships to TCAP to attend their training events. The information gained at these conferences has proven invaluable to counsel in the field. Additionally, if a trial counsel in the field has a question or needs particular assistance, TCAP's relationship with the NDAA allows us to reach out to and solicit responses from district attorneys around the country, thus expanding the pool of information available to military counsel in the field.

Finally, TCAP has established the foundation in FY 07 for growth and expansion within the next year. During the first two quarters of FY 08, TCAP will expand to include two reserve Judge Advocates to our organization - one from the US Army Reserve, and one from the United States Navy Reserve. Both attorneys will be assigned to TCAP and will fulfill their monthly service and annual training requirements as part of the TCAP team.

#### **DEFENSE APPELLATE DIVISION**

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

including preparation and filing of writs in the courts mentioned above.

During FY 07, the Division received 926 new cases. Appellate defense attorneys filed briefs in 1,188 cases before the ACCA, 449 supplements to petitions for review with the CAAF, and 14 final briefs with the CAAF. Appellate defense counsel also filed 222 miscellaneous pleadings before the ACCA and 104 miscellaneous pleadings before the CAAF. Appellate defense counsel orally argued 25 cases before the ACCA and 14 cases before the CAAF.

Also of note during FY 07, the Division filed two petitions for writ of certiorari before the Supreme Court of the United States. The Supreme Court denied the petition for certiorari in both cases (*United States v. Sanchez* and *United States v. Foerster*).

#### FOREIGN CRIMINAL JURISDICTION

As the DoD Executive Agent for the exercise of 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 2004 to 30 Nov 2005	1 Dec 2005 to 30 Nov 2006
Foreign Offense Citations	4,178	3,686
Total Civilian	903	808
Total Military	3,275	2,878
Exclusive Foreign Jurisdiction	119	94
Concurrent Jurisdiction	3,156	2,784
Traffic Offenses	230	226
Foreign Jurisdiction Recalls	306	384

During this reporting period, foreign authorities released to U.S. authorities 6 of the 94 exclusive foreign jurisdiction cases involving military personnel. In concurrent jurisdiction cases in which the foreign countries had the authority to assert primary jurisdiction, U.S. military authorities were able to obtain waivers of the exercise of this jurisdiction in 2,442 of the 2,784 cases. Overall, the U.S. obtained waivers in 87.7% of all exclusive and concurrent jurisdiction cases. This figure reflects a decrease of 6.2% in obtaining waivers compared to the previous reporting period.



During the last reporting period, civilian employees and dependents were involved in 903 offenses. Foreign authorities released 211 of these cases (23.3% of the total of that reporting period) to U.S. military authorities for administrative actions or some other form of disposition. In this reporting period, civilian employees and dependents were involved in 808 offenses. The foreign authorities released 98 of these cases (12.1% of the current total of this reporting period). This figure represents a decrease of 11.2% in obtaining releases of foreign criminal jurisdiction over civilian employees and dependents.

During this reporting period, foreign authorities tried a total of 639 cases involving U.S. personnel. Fourteen trials, or 2.2%, resulted in acquittals. Those convicted were sentenced as follows: 22 cases resulted in confinement, 44 cases resulted in suspended confinement, and 550 cases (86.1% of the total trials) resulted in only fines or reprimands.

#### LITIGATION

Civil lawsuits requiring federal courts to interpret the UCMJ are relatively few in number, but remain an important part of the Litigation Division's practice. Most suits are brought by former Soldiers seeking collateral review of military court-martial proceedings, usually via petitions for writs of habeas corpus filed in federal district courts, or in back-pay actions filed in the Court of Federal Claims. The following cases highlight the types of cases handled by the Army Litigation Division.

The highly-publicized case of *New v. Secretary of Defense* finally came to an end after more than a decade of litigation. Mr. Michael New challenged his 1996 court-martial conviction for refusing to wear the United Nations insignia on his uniform during the preparation for deployment to Macedonia. In May 2006, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the U.S. District Court for the District of Columbia's dismissal of Mr. New's complaint. The District of Columbia Circuit concluded that the district court had correctly ruled that the central issues in the case had been fully

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litigated in the military courts and were thus non-reviewable in the absence of fundamental error. The court further ruled that the remaining issues were without merit or barred by the political question doctrine. In August 2006, the District of Columbia Circuit denied Mr. New's request for a rehearing en banc. In November 2006, Mr. New filed a petition for a writ of certiorari, which the U.S. Supreme Court denied on 23 April 2007.

In *Armann v. Warden, FCI McKean*, the U.S. District Court for the Western District of Pennsylvania granted Mr. Kurtis Armann's request

for an evidentiary hearing in connection with his collateral challenge to his court-martial conviction. In March 1999, then-Private Armann pled guilty to attempted premeditated murder and conspiracy to commit premeditated murder and was sentenced to 38 years confinement and a dishonorable discharge. He had a pre-trial agreement limiting the sentence to 35 years confinement. In July 2000, Mr. Armann filed an appeal with the ACCA. The appeal alleged an absence of mental responsibility for the offenses due to taking various prescribed medications. In a summary opinion, ACCA found no legal error. In May 2001, Mr. Armann appealed to CAAF, arguing that he lacked sufficient mental capacity to stand trial because he had allegedly been administered Accutane, an issue not previously raised to ACCA. Mr. Armann also requested a new trial based on the Accutane issue. In a summary opinion, CAAF considered the matters, affirmed the ACCA opinion, and denied the request for new trial. In April 2004, Mr. Armann filed a petition for writ of habeas corpus in district court claiming that he had not been competent to stand trial as a result of the various medications he was taking at the time of his court-martial. On 31 May 2007, the district court ordered an evidentiary hearing. Believing that the district court erred in concluding that the military courts failed to accord full and fair consideration to Armann's claims, the Army sought authorization to pursue an interlocutory appeal. On 27 July 2007, the district court granted the government's motion for certification of order for interlocutory appeal to the U.S. Court of Appeals for the Third Circuit. The government filed its opening brief to the Third Circuit on 22 January 2008.

The Army also is litigating the merits of a habeas petition after the U.S. District Court for the Western District of Washington entered a preliminary injunction staying court-martial proceedings in *Watada v. Head*. In February 2007, 1LT Watada was charged with missing movement and four specifications of conduct unbecoming an officer. Pursuant to a pretrial agreement, 1LT Watada entered into a stipulation of fact in exchange for the dismissal of two of the specifications for conduct unbecoming an officer. During Watada's highly-publicized trial and over the objection of both parties, the military judge set aside the stipulation of fact.

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This resulted in a government motion for a mistrial, which the military judge granted. 1LT Watada then petitioned the ACCA to stay his court-martial, arguing retrial was barred by the double jeopardy clause. ACCA denied the petition because 1LT Watada had not moved to dismiss the retrial in the trial court. After the military judge denied his motion to dismiss, 1LT Watada filed a new petition with ACCA. ACCA denied his petition and rejected his claim, finding no abuse of discretion by the military judge. 1LT Watada then sought review of his double jeopardy claim before the CAAF. CAAF declined to review the case. 1LT Watada then filed a habeas petition in district court. On 8 November 2007, the district court found that 1LT Watada

had demonstrated a likelihood of success on the merits and ordered a stay of court-martial proceedings. The district court held that there was no manifest necessity for the mistrial, that the military judge abused his discretion in rejecting the stipulation of fact, and that the military judge did not adequately consider possible alternatives to a mistrial. To date, no briefing schedule has been set to address the merits of the habeas corpus petition. The Litigation Division is discussing the appropriateness of an appeal with the Department of Justice.

In *Howard-Pinson v. Secretary of the Army*, the Army successfully defended against allegations of constitutional deficiencies in a court-martial. Mr. Howard-Pinson, a former Soldier, was convicted of drug distribution by a general court-martial at Fort Campbell, Kentucky. He alleged that his confession was obtained in violation of the Fifth Amendment and *Miranda*. He raised this issue to the trial court, ACCA, and CAAF. Both military appellate courts rejected his claims. He then filed a petition for writ of habeas corpus in the U.S. District Court for the Eastern District of Virginia. The government moved to dismiss the petition on the grounds that the military courts had fully and fairly considered his claims and no constitutional violation had occurred. On 10 July 2006, the district court agreed and dismissed the petition. On 1 May 2007, the U.S. Court of Appeals for the Fourth Circuit affirmed the judgment of the district court. Howard-Pinson has not sought further review.

The Army is also defending against a court-martial collateral attack in *Ramsey v. Stansberry*. In 1995, Mr. Richard Joseph Ramsey pled guilty to rape, forcible sodomy, assault, burglary, and wrongfully communicating a threat, and was sentenced to 29 years confinement and a dishonorable discharge. In his petition for writ of habeas corpus filed in the U.S. District Court for the Eastern District of North Carolina on 23 October 2006, Mr. Ramsey argued that: (1) the CAAF order was not signed by the clerk of the court; (2) CAAF improperly failed to grant his motion for default judgment; (3) CAAF improperly failed to grant his motion for reconsideration; and (4) CAAF failed to conduct a de novo review of the record.

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He also alleged that ACCA improperly denied him the appointment of military counsel. On 18 July 2007, the district court ruled that the military courts had given full and fair consideration to Mr. Ramsey's claims and that any issue not raised to the military courts was waived and denied his petition. On 8 August 2007, Mr. Ramsey noticed an appeal to the U.S. Court of Appeals for the Fourth Circuit. Informal briefs were ordered and briefing completed in November 2007. A decision is pending.

The Army continues to defend against a challenge to court-martial jurisdiction in *Willenbring v. United States*. In 1992, Mr. Charles B. Willenbring was discharged from the active Army, but the very next day

he entered the United States Army Reserve. He later pled guilty to three specifications of rape committed while he was on active duty. He was sentenced to 36 years confinement and a dishonorable discharge. He was also convicted of four additional specifications of rape by the state of North Carolina. On 12 January 2004, Mr. Willenbring filed a petition for writ of habeas corpus, arguing, among other things, that the court-martial lacked jurisdiction over him because he had been honorably discharged after the offenses had been committed. On 28 June 2005, the U.S. District Court for the Eastern District of North Carolina denied his petition for a writ of habeas corpus. However, on 1 May 2006, the U.S. Court of Appeals for the Fourth Circuit ruled the district court had not addressed petitioner's jurisdictional argument and remanded the petition. The government argued that the military courts had fully addressed petitioner's jurisdictional challenge and properly found that the court-martial had jurisdiction. On January 16, 2007, the district court ruled that the court-martial had proper jurisdiction because there was not a complete termination of petitioner's military status when he transferred from AC to RC status. Mr. Willenbring appealed the district court decision to the Fourth Circuit. Informal briefs were ordered and briefing completed in March 2007.

The Army is also defending two challenges arising under the Freedom of Information Act (FOIA) arising out of court-martial proceedings. The first of these FOIA cases is *Loving v. United States*. Loving was convicted of murder in 1989 while on active duty at Fort Hood, Texas, and sentenced to death. Following unsuccessful appeals, his case was prepared for forwarding to the President of the United States for action on the execution of plaintiff's sentence. Plaintiff then filed a FOIA request seeking documents related to death penalty procedures and a Privacy Act request for documents containing opinions or recommendations regarding his death sentence. In September 2006, plaintiff filed administrative appeals and the current action in district court seeking release of the documents. After the Army released many of the documents, plaintiff refined his request to ten documents withheld by the Army as exempt under FOIA Exemption 5.

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These documents included the analysis and recommendations of The Judge Advocate General of the Army and the civilian chain of command to the President. The district court found that the documents were not "sentencing recommendations" under R.C.M 1006(f) and that R.C.M. 1204(c)(2) does not contain a provision for the disclosure of recommendations to the President. On 26 July 2007, the U.S. District Court for the District of Columbia granted the government's motion for summary judgment and dismissed plaintiff's case with prejudice. The case is pending appeal before the U.S. Court of Appeals for the District of Columbia.

In *MacLean v. Department of the Army*, the second FOIA case, the Army successfully defended its ability to neither confirm nor deny the

existence of records, known as a "Glomar denial," in response to a request for professional conduct investigations of Army Judge Advocates. In response to a FOIA request for the records of investigations completed on, and/or any disciplinary action taken against, Army Judge Advocates who issued allegedly "illegal" military subpoenas to civilians in connection with court-martial proceedings, the Army Standards of Conduct Office declined to confirm or deny the existence of any records. In July 2005, the plaintiff filed suit in the U.S. District Court for the Southern District of California to compel the production of the records, if any. Plaintiff also sought to enjoin the Secretary of the Army from the policy and practice of issuing a Glomar denial in response to a FOIA request. In a motion for summary judgment, the government argued that such a response was proper because the public interest in disclosure of the professional conduct files requested does not outweigh the privacy interests of the individual attorneys who may be the subjects of the files, if any files exist. On 6 March 2007, the court agreed, granting the government's motion for summary judgment. No appeal was filed.

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

On 30 September 2007, the Army's end strength was 636,778 Army personnel on active duty, including Active Guard and Reserve (AGR) and mobilized Soldiers, compared to 574,456 at the end of fiscal year 2006.

The attorney strength of the AC Judge Advocate General's Corps at the end of FY 07 was 1,643 (including general officers). This total does not include 62 officers attending law school while participating in the Funded Legal Education Program. The attorney strength of the RC Judge Advocate General's Corps at the end of FY 07 was 1,921 and the strength of the Army National Guard at the end of FY 06 was 575. The diverse composition of our AC attorney population included 121 African-Americans, 45 Hispanics, 75 Asians and Native Americans, and 414 women.

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The FY 07 AC end strength of 1,643 compares with an end strength of 1,638 in FY06, 1,603 in FY 05, 1,547 in FY 04, 1,506 in FY 03, 1,474 in FY 02, 1,462 in FY 01, 1,427 in FY 00, 1,426 in FY 99, 1,499 in FY 98, 1,523 in FY 97, and 1,541 in FY 96. The grade distribution of the Corps' AC attorneys was 4 general officers, 129 colonels, 226 lieutenant colonels, 363 majors and 896 captains. An additional 89 warrant officers, 494 civilian attorneys, and 1,378 enlisted paralegals supported legal operations worldwide. As of the end of FY 07, over 494 Army JAG personnel (officer and enlisted, AC and RC) had deployed in operations in Iraq, Egypt, Kuwait, Afghanistan, Djibouti, Qatar, Bosnia, Kosovo, Cuba, the Horn of Africa (afloat) and Honduras.

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

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

Report Period: FISCAL YEAR 2007

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	809	772	37	+8.0%
BCD SPECIAL [A]	625	610	15	+9.1%
NON-BCD SPECIAL	10	10	0	+66.7%
SUMMARY	1,223	1,128	95	+7.3%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+8.7%

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

GENERAL COURTS-MARTIAL ( CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)			114 (+22)	
NUMBER OF BAD-CONDUCT DISCHARGES			410	
SPECIAL COURTS-MARTIAL				
NUMBER OF BAD-CONDUCT DISCHARGES			358	

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL		557	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL		360	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL		221	

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

TOTAL ON HAND BEGINNING OF PERIOD		100 [C]	
GENERAL COURTS-MARTIAL	[D]		
BCD SPECIAL COURTS-MARTIAL	[D]		
REFERRED FOR REVIEW		1267 [C]	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
TOTAL CASES REVIEWED		1268[E]	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
TOTAL PENDING AT CLOSE OF PERIOD		99 [C]	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD			-4.2%

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

NUMBER	947	
PERCENTAGE	74.74%	

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	423 of 1268	33.36 %
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+1.46%
PERCENTAGE OF TOTAL PETITIONS GRANTED	40 of 399	10.03 %
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+1.83%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA		3.15%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-7.35%

**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		12	
DISPOSED OF		12	
GRANTED	3		
DENIED	8		
NO JURISDICTION	1		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	
<b>PART 8 - ORGANIZATION OF COURTS</b>			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		632	
SPECIAL COURTS-MARTIAL		576	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		177	
SPECIAL COURTS-MARTIAL		59	
<b>PART 9 - COMPLAINTS UNDER ARTICLE 138, UCMJ</b>			
NUMBER OF COMPLAINTS		37	
<b>PART 10 - STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH		636778	
<b>PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		45124	
RATE PER 1,000		70.86	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-4.92%	

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**

OCTOBER 1, 2006 TO SEPTEMBER 30, 2007

**SUPERVISION OF THE ADMINISTRATION OF  
MILITARY JUSTICE**

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

**CRIMINAL LAW DIVISION (CODE 20)**

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

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

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

The JSC 2007 Annual Review was forwarded to the Department of Defense (DoD), Office of General Counsel, in accordance with the JSC's ongoing review of the Manual for Courts-Martial. Among the items forwarded in the Annual Review were changes that simplify the required contents of staff judge advocates' post-trial recommendations, allow for electronic records of trial, and increase the punishment for voluntary and involuntary manslaughter when the crime is committed upon a child under 16 years of age.

During the past year, the Military Justice Division reviewed 36 records of trial under Article 69a, UCMJ and 10 records under Article 69b, UCMJ. Additionally, 2 petitions under Article 73, UCMJ were reviewed.

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

Legal issues addressed included: whether lying to a border patrol agent satisfied the officiality requirement for a violation of Article 107, UCMJ (false official statement); whether removal from life support constituted an intervening superseding cause sufficient to break the chain of causation to an involuntary manslaughter charge; whether at a rehearing on sentence the military judge may consider aggravation, extenuation, and mitigation evidence that did not exist at the time of the original sentencing; whether the accused may offer evidence of rehabilitative potential within the military or is limited to rehabilitative potential in society; whether the subsequent consent of a spouse can overcome the prior refusal of a suspect to consent to a search of his/her home; and the court adopted the definition of mental retardation from the American Association on Intellectual and Developmental Disabilities as it applies to the imposition of the death penalty in the Navy and Marine Corps. The court continued to submit for posting all published and authored decisions on the JAG web page and on Navy Knowledge Online.

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

Organization. Captain Robert Taishoff, JAGC, USN, reported in the summer of 2007 as the Division Director.

The Appellate Defense Division was staffed with 16 active duty Navy and Marine Corps judge advocates and 4 civilian support personnel.

The Appellate Defense Division was supported by 35 Navy and Marine Corps Reserve judge advocates. The Division's supporting Reserve units are: NR NAVJAG 109, Columbus, Ohio; NR NAMARA (Defense) 110, Oklahoma City, Oklahoma; NAVJAG 519, Los Angeles, California; and NAVJAG 211, Fort Worth, Texas. The Marine Corps Reserve contingent consisted of five independently assigned Reserve judge advocates. In addition, three Navy Reserve judge advocates were activated for periods ranging from two to eight months to assist in caseload management.

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

As depicted below, in fiscal year 2007, a total of 1165 new cases were docketed at NMCCA and received in the Appellate Defense Division. The Appellate Defense Division filed 1295 initial pleadings with 8 oral arguments at NMCCA. The initial pleadings include 415 briefs, 875 merit submissions, and 5 summary assignments. A total of 206 supplemental briefs to petitions were filed at CAAF, resulting in 29 full briefs and 18 oral arguments.

<b>NMCCA</b>	<b>FY 03</b>	<b>FY 04</b>	<b>FY 05</b>	<b>FY 06</b>	<b>FY 07</b>
Briefs Filed	433	520	543	471	415
Initial Pleadings	2094	1966	2127	1610	1295
<b>USCAAF</b>					
Petitions with Supplemental Briefs Filed	174	161	207	173	206
Briefs Filed	12	19	26	76	29
<b>U.S. Supreme Court Petitions</b>	3	1	2	9	6

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

Assistance to Trial Defense Counsel. The Appellate Defense Division provides advice and support to Navy and Marine Corps trial defense counsel around the world. The Division's experienced appellate attorneys reply to short-fused questions from trial defense counsel and assist in preparing and filing extraordinary writs. The Division also conducts a Trial Defense Counsel Outreach Training Program in order to provide training on recent appellate developments and important trial issues.

**APPELLATE GOVERNMENT DIVISION (CODE 46)**

Organization. The Division was staffed with 10 active duty judge advocates and 2 civilian administrative employees. Colonel Louis J. Puleo, USMC, replaced Colonel Ralph F. Miller, USMC, as the Division Director. Commander Paul C. LeBlanc, JAGC, USN, continued to serve as Deputy Division Director.

Reserve support continues to be critical to the accomplishment of our mission. Code 46 is currently supported by two Navy reserve units, NAVJAG 116 (Detroit, Michigan) and NAVJAG 116 (Minneapolis, Minnesota) and 4 Marine Corps Judge Advocates as Individual Mobilization Augmentees. Reserve personnel contributed an average of 13 briefs per month.

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

The migration from Nautilus to the Case Management Tracking Information System (CMTIS) is complete. This year's appellate activity is set forth in the following chart. CMTIS calculations for "Briefs Filed" include Government briefs, answers to supplements, and supplemental briefs. "Other Pleadings" include responses to extraordinary writs, motion responses, responses to Court Orders, and Petitions for Reconsideration. While the number of briefs filed by the Government has declined since the highs of 2006, the issues raised have become more complex. It is expected that during fiscal year 2008, the number of briefs and other pleadings will return to historical norms.

	<b>FY 02</b>	<b>FY 03</b>	<b>FY 04</b>	<b>FY 05</b>	<b>FY 06</b>	<b>FY 07</b>
<b>NMCCA</b>						
Briefs Filed	798	761	542	700	621	486
Other Pleadings	456	475	222	425	333	528
Oral Arguments	8	6	8	16	10	8
<b>CAAF</b>						
Briefs Filed	45	12	22	38	86	45
Other Pleadings	91	152	73	128	115	158
Oral Arguments	12	7	21	23	31	18

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

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

During fiscal year 2007, the Division's judge advocates participated in two oral arguments as part of United States Court of Appeals for the Armed Forces' legal outreach program to include those at Loyola University College of Law, New Orleans, Louisiana, and Southern University Law Center, Baton Rouge, Louisiana.

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

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

The NMCTJ consists of 27 active duty and 12 reserve judges serving in 6 judicial circuits. During fiscal year 2007, the NMCTJ provided judicial services in 297 general courts-marital and 1,049 special courts-martial. These numbers are consistent with the trend over the past few years of fewer courts-martial.

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

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

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

Naval Legal Service Command (NAVLEGSVCCOM) is commanded by Rear Admiral James W. Houck, who also serves as the Deputy Judge Advocate General of the Navy. NAVLEGSVCCOM includes 342 Judge Advocates, 1 Civil Engineer Corps Officer, 14 Limited Duty (Legal) Officers, 208 Legalmen, and 230 civilians. NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, family members, retirees, and eligible beneficiaries from

the other services at 99 offices world-wide. NAVLEGSVCCOM consists of eight Naval Legal Service Offices (NLSOs), nine Region Legal Service Offices (RLSOs), and the Naval Justice School. NAVLEGSVCCOM provides counsel for courts-martial, administrative boards, physical evaluation boards, legal assistance, and local commanders. NAVLEGSVCCOM also provides training for Navy, Marine Corps and Coast Guard judge advocates, legalmen, and other DoD personnel. During fiscal year 2007, NAVLEGSVCCOM provided counsel for 132 general courts-martial, 241 special courts-martial, 117 Article 32s, 400 Administrative Boards, provided 130,955 legal assistance services, and 137,688 command services for over 3,900 commands.

### **NAVAL JUSTICE SCHOOL**

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

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

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

In fiscal year 2007, NJS provided instruction to more than 15,995 students worldwide (including 3,870 in resident courses ranging in length from 3 days to 11 weeks). In addition to teaching at NJS courses, NJS instructors provide out-of-house teaching in military justice, administrative law, and operational law to other commands, including the Naval War College, Center for Naval Leadership, Officer Training Command, Senior Enlisted Academy, Surface Warfare Officers School Command, and the Defense Institute of International Legal Studies.

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

- Basic Lawyer Course (BLC). This 9-week course, offered 4 times annually, provides accession training for all judge advocates in the Navy, Marine Corps, and Coast Guard. The course includes extensive training in military justice and court-martial advocacy, as well as training in legal assistance, administrative law, and standards of conduct. Teaching methods include lecture, seminar, and practical exercises in both legal assistance skills and trial advocacy skills. Upon graduation, judge advocates are certified per Article 27(b), UCMJ. Fiscal year 2007 graduates: 135.
- Basic Operational Law Training (BOLT). This 1-week course is offered to all Navy and Marine Corps accession judge advocates either before or after the BLC. Instruction includes classroom lectures and group seminar exercises on the law of armed conflict, law of the sea, rules of engagement/rules for the use of force, command and control, operational environmental law, information operations, and handling classified information. Fiscal year 2007 graduates: 134.
- Accession Legalman Course. This 11-week course, offered 3 times annually starting in fiscal year 2008, trains Navy enlisted personnel selected for conversion to the Legalman rating. After a hiatus of almost 3 years, there were 10 Legalman accession graduates in the first newly revised course in fiscal year 2007. The course has been substantially revised to provide 10 ABA certified credits towards a paralegal degree or certificate in partnership with Roger Williams University. In addition to military specific training in military justice, court reporting, administrative investigations, and administrative separations, the course includes four college-level courses taught by NJS officer instructors: Ethics, Legal Research and Writing I, Introduction to Law, and Emerging Legal Technologies.
- Basic Legal Services Specialist Course. This 9½ week course, offered 4 times annually, provides accession level training to junior enlisted Marines seeking the Military Occupational Specialty of Marine Corps Legal Services Specialist. Curriculum consists of training in military justice, post trial review, and legal administration. Fiscal year 2007 graduates: 82.
- 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. Fiscal year 2007 graduates: 736.
- Legal Officer Course. This 3-week course prepares non-lawyer Legal Officers to perform a host of military law functions in commands not large enough to warrant assignment of a judge advocate. Fiscal year 2007 graduates: 504.



- Legal Clerk Course. Legal Clerks are typically assigned to assist non-lawyer Legal Officers within a command as a collateral duty. This 2-week course provides training in the preparation of legal forms and reports, service record entries, nonjudicial punishment, and court-martial procedures. Fiscal year 2007 graduates: 269.
- Senior Enlisted Leadership Course (SELC) in Military Justice and Civil Law. This 3-day course provides senior enlisted leaders of all services training in a wide range of military law with primary focus on military justice matters. In Newport, the SELC is incorporated into the core curriculum at the Navy's Senior Enlisted Academy. Fiscal year 2007 graduates: 441.

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

Training was provided to active duty and reserve judge advocates and enlisted legal professionals from the Sea Services, Army, Air Force, and foreign countries in military justice, operational law, administrative law, legal assistance, and estate planning.

*In fiscal year 2007, these resident courses reached 1,214 active duty and 586 reserve legal professionals.*

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

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

Deployments. In fiscal year 2007, six NJS instructors deployed to Iraq for 6 months in support of Task Force 134, Multi-National Force-Iraq.

## **MARINE CORPS ACTIVITIES**

There are approximately 463 active-duty Marine judge advocates and 403 Reserve Marine judge advocates. Additionally, there are 16 warrant officers, 558 legal specialists, and 38 court reporters working in the legal offices.

These offices support the Fleet Marine Forces in the continental United States, overseas, and on deployment throughout the world. Our drilling Reserve judge advocate community provides substantial support to each of our offices in all functional areas.

Marine Corps judge advocates perform all manner of legal services. In the military justice arena, they serve as prosecutors, defense counsel, military judges, and appellate counsel for both the government and service members. Before deploying, Marines must feel secure that their affairs are in order, and judge advocates are an essential part of this process. Our judge advocates assist Marines with issues involving estate planning, domestic relations law, consumer law, tax law, property law, landlord and tenant law, debtor and creditor law, adoptions, and citizenship cases. These services are offered not only to active duty service members, but also to family members and military retirees.

Marine lawyers also advise commanders during military operations, reviewing military operational plans and providing advice on the law of war, rules of engagement, and domestic law relating to the employment of force and support of our allies.

Other areas of practice include civil law, contract law, international law, claims and tort law, and labor law. In addition, because Marine Corps judge advocates are unrestricted line officers, many serve in non-legal billets. For example, a Marine judge advocate currently serves as the Naval Attaché in Oman and another instructs Naval ROTC at Florida A & M University. Additionally, five Marine judge advocates hold positions of command to include battalion commands in New Orleans, Hawaii, Headquarters Marine Corps, Parris Island, and command of the Marine Security Guard Companies in Abu Dhabi, United Arab Emirates.

In addition to the judge advocates, the Marine Corps legal community also includes Legal Administrative Officers, Legal Services Specialists, and Court Reporters. Legal Administrative Officers, who come from our Warrant Officer ranks, provide review and guidance in administrative investigations, preliminary inquiries, and claims against the government. Additionally, Legal Administrative Officers process all involuntary administrative separation cases, serve as recorders for administrative discharge boards, and serve as Foreign Claims Commissions during deployments and exercises. An enlisted Legal Services Specialist's responsibilities encompass every facet of legal administration with the exception of courts-martial reporting. The Legal Services Specialist's general duties include the legal operational, managerial, clerical, and administrative duties incident to a law center. Enlisted Court Reporters record the proceedings of special and general courts-martial, formal investigations, administrative boards, staff meetings, and other similar bodies (hearings) and prepare typewritten, summarized, or verbatim transcripts of these proceedings. Because of their capabilities, Marine Corps Court Reporters have been single-handedly supporting the Office of the Military Commissions. The Legal Administrative Officers, Legal Services Specialists, and Court Reporters are the administrative backbone of our legal community.

Stenography has served the USMC well for many years, but speech recognition appears best suited for our future. Test results of speech recognition (ratio of hours in court compared to hours to prepare a record) were impressive, with the newly trained speech recognition reporters at approximately the level of an experienced staff sergeant stenographer. Training costs, and the corresponding manpower costs, will be dramatically cut with a 10 week course vice 2 year course. The technology has also been validated by successful use in the other services. The intended plan is to merge our job classifications for stenographer and legal services specialist into one military occupational field specialty, with a skills designator for court reporting. This will allow us to train and assign court reporters properly, facilitate use of reporters in other functions when possible, and remedy the historically slow promotion rates for court reporters.

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

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

CLE and other training opportunities are available for judge advocates throughout their careers. In addition to a myriad of courses offered by each of the service judge advocate schools, HQMC provides funds for judge advocates to attend various civilian CLE courses.

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

In addition to advanced legal courses, judge advocates also have the opportunity to attend advanced military studies courses every year, such as the Expeditionary Warfare School, the Command and Staff College, one of the four services War Colleges, or various military fellowships.

The Law School Education Debt Subsidy (LSEDS) program went into effect during 2003 and has been approved for its fifth year. The average debt for new judge advocates is approximately \$80,100, with an average loan payment of \$500 per month. Captains who have completed their initial active duty obligation are eligible. The total authorized amount of LSEDS is \$30,000 to be paid in yearly installments of \$10,000, and officers accepting LSEDS incur an additional three-year commitment. The utilization of LSEDS assists the Marine Corps in retaining experienced judge advocates.

The majority of the judge advocates that are forward deployed are serving in support of the Global War on Terrorism (GWOT). The GWOT has created a tremendous challenge for the Marine Corps legal community, with judge advocates currently serving in Iraq, Afghanistan, Palestine, and Djibouti. In addition to the judge advocates that are permanently assigned to deploying Marine Corps forces, there is a significant requirement for individual augmentees (IAs) to provide additional legal services to various units throughout the Department of Defense. Marine Corps judge advocates currently serve as IAs with the Multinational Corps-Iraq, the Multinational Force-Iraq, Combined Forces Command Afghanistan, Combined Joint Task Force-Horn of Africa, the Central Criminal Court of Iraq, and the Criminal Investigation Task Force. While there has been no shortage of active duty volunteers, IA billets are also being filled with volunteers from the Marine Corps Reserve.

Since October 2001, the Marine Corps has deployed over 340 judge advocates and legal specialists to such sites as Iraq, Afghanistan, the Horn of Africa, Haiti, Guantanamo Bay, Bosnia, Colombia, Thailand, Sri Lanka, and Indonesia. Training and other preparation continues for another 30 legal personnel who will soon deploy in support of Operation Iraqi Freedom. Currently, 46 judge advocates, or 11% of the total Marine Corps judge advocate community is deployed in support of the GWOT, and during the last two years, judge advocates have deployed from virtually every Marine Corps installation, including Headquarters, U. S. Marine Corps.

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

<b>Fiscal Year</b>	<b>End Strength</b>	<b>GCM</b>	<b>SPCM</b>	<b>SCM</b>	<b>Total Courts</b>	<b>NJP</b>
<b>FY 07</b>	<b>180,169</b>	<b>149</b>	<b>800</b>	<b>1,262</b>	<b>2,211</b>	<b>15,012</b>
FY 06	180,416	120	964	1,262	2,346	13,217
FY 05	180,029	187	1,137	1022	2,346	13,386
FY 04	177,480	150	1,261	928	2,339	8,985
FY 03	177,779	145	818	782	1,745	8,344
FY 02	173,733	223	1,419	1,009	2,651	11,868

Overall, the total number of disciplinary actions has remained relatively consistent over the last several fiscal years.

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

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

Report Period: FY 2007

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	297	256	41	+6.8%
BCD SPECIAL	1049	931	118	-19.2%
NON-BCD SPECIAL	0	0	0	0%
SUMMARY	1505	1498	7	15.8%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-31%

**PART 2 – DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL ( CA LEVEL ) NUMBER OF DISHONORABLE DISCHARGES	119	
NUMBER OF BAD-CONDUCT DISCHARGES	127	
SPECIAL COURTS-MARTIAL ( CA LEVEL ) NUMBER OF BAD-CONDUCT DISCHARGES	793	

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	227	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	759	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	32	

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

TOTAL ON HAND BEGINNING OF PERIOD		814	
GENERAL COURTS-MARTIAL	231		
BCD SPECIAL COURTS-MARTIAL	583		
REFERRED FOR REVIEW		1111	
GENERAL COURTS-MARTIAL	289		
BCD SPECIAL COURTS-MARTIAL	822		
TOTAL CASES REVIEWED		1590	
GENERAL COURTS-MARTIAL	373		
BCD SPECIAL COURTS-MARTIAL	1217		
TOTAL PENDING AT CLOSE OF PERIOD		335	
GENERAL COURTS-MARTIAL	141		
BCD SPECIAL COURTS-MARTIAL	194		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-11%	

**PART 5 – APPELLATE COUNSEL REQUESTS BEFORE**

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

NUMBER	1111	
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	206	13%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+1%
PERCENTAGE OF TOTAL PETITIONS GRANTED	71	34%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+4%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA		12.9%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+9.5%

**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		17	
RECEIVED		13	
DISPOSED OF		15	
GRANTED	0		
DENIED	15		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		15	
<b>PART 8 – ORGANIZATION OF COURTS</b>			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		215	
SPECIAL COURTS-MARTIAL		944	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		82	
SPECIAL COURTS-MARTIAL		105	
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>			
NUMBER OF COMPLAINTS		73	
<b>PART 10 – STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH		517,963	
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		16693	
RATE PER 1,000		32	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-35.9%	

# **SECTION 5**

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



**REPORT OF**  
**THE JUDGE ADVOCATE GENERAL**  
**OF THE UNITED STATES AIR FORCE**  
**OCTOBER 1, 2006 TO SEPTEMBER 30, 2007**  
**THE AIR FORCE COURT OF CRIMINAL APPEALS**

The Air Force Court of Criminal Appeals (AFCCA) reviewed 540 cases in fiscal year 2007, reducing the number of cases pending before it by about 180 cases. In 2007, the Court heard three oral arguments through "Project Outreach" at Lackland Air Force Base in San Antonio, Texas; Maxwell Air Force Base in Montgomery, Alabama; and Chicago-Kent College of Law at the Illinois Institute of Technology, Chicago, Illinois. The Court is combining "Project Outreach" with JAG Corps recruiting goals by holding more oral arguments at civilian law schools and inviting local JAGs to assist with recruiting questions. Currently, there are Project Outreach arguments scheduled for early 2008 at Michigan State University's College of Law and the Louis D. Brandeis School of Law at the University of Louisville. The Court is also in the final stages of implementing a plan to allow for electronic filing of pleadings and motions, which will result in resource conservation and increased simplicity in communications with the Court.

In 2007, the Court saw a change in leadership with the retirement of the Chief Judge and a Senior Judge, as well as the departure of another Senior Judge and one Associate Judge due to a permanent change of station. The Court also lost its Chief Commissioner due to a permanent change of station and one Honors Law Clerk due to separation. The Court Administrator also retired after 20 years of active duty. As a result, the Court welcomed a new Chief Judge, two new Associate Judges, a new Chief Commissioner, a new Honors Law Clerk, a new Clerk of the Court, and a new Court Administrator.

A number of appellate military judges have taken part in judicial activities outside the realm of the Court. Four of the appellate military judges have been appointed to the United States Court of Military Commission Review (USCMCR). In accordance with the Military Commissions Act of 2006, the USCMCR has automatic appellate jurisdiction over any finding of guilty under the Act, which includes the criminal prosecution of "alien unlawful enemy combatants engaged in hostilities against the United States." In addition to this role, members of the Court have also been given primary responsibility for conducting Environmental Impact Hearings in accordance with the National Environmental Policy Act. The appellate military judges preside over the hearings, allowing for federal receipt of public comment on any potential change in base mission which could impact the environment. Finally, former military trial judges who now serve on the Court perform the duties of trial judge in military courts-martial to assist the trial judiciary as needed.

## TRIAL JUDICIARY

The Air Force Trial Judiciary Directorate (JAT) is vested with the responsibility to docket all Air Force general and special courts-martial and preside over an array of Federal hearings. The Directorate is staffed by twenty active duty judges, ten reserve judges, three paralegals, and a civilian. The Chief Trial Judge of the Air Force is responsible for all functions within JAT. The Office of the Chief Trial Judge is co-located with the Central Docketing Office (CDO) at Bolling AFB, Washington D.C. and includes the Deputy Chief Trial Judge, the JAT Office Manager, a civilian Clerk of Courts, and two docketing paralegals. The remaining JAT personnel, all trial judges, are now postured in a variety of geographically advantageous locations around the globe including, Kadena AB, Japan, Travis AFB, California, Nellis AFB, Nevada, Randolph AFB, Texas, Eglin AFB, Florida, Charleston AFB, South Carolina, and Ramstein AB, Germany. In 2007, JAT underwent extensive restructuring to maximize support to the Air Force mission and enhance the professional development of its personnel.

In 2007, JAT secured an opportunity to relocate a number of judge billets to bases with a traditionally high number of courts-martial and/or easy access to transportation hubs. In the summer of 2007, the two Pacific judges moved from Yokota AB, Japan, to Kadena AB, Okinawa, Japan. Kadena provides quick access to an international airport, generally manages the busiest military justice workload in the Pacific, and, as a fringe benefit, offers an arguably better standard of living on a tropical island versus the densely populated city of Tokyo. Two judge billets also left Washington, D.C., and transferred to Charleston AFB and to Eglin AFB. Closure of most northeastern Air Force installations over the last two decades impacted the need to maintain a large number of trial judges in Washington, D.C. As a result, two slots were moved to locations in the Southeast. Historically, Charleston maintains a steady case load. It also boasts easy access to I-95 and one of the larger airports in the area. Eglin enjoys similar benefits including easy access to several Florida and Georgia bases, and historically, it had served as the home station for at least one Air Force trial judge. As with Okinawa, both Charleston and Eglin offer locations often considered geographically desirable. Efforts are already underway to move four more judge billets in summer 2008 to McChord AFB, Washington, Offutt AFB, Nebraska, Sheppard AFB, Texas, and Buckley AFB, Colorado (the Sheppard and Buckley fills are anticipated in summer 2009).

The decision to move trial judges from five central locations to a diverse array of one- or two-judge locations presented a tremendous manpower advantage and a potentially concerning professional development challenge. The reposturing allowed JAT to eliminate all of its circuit administrator paralegal positions. In addition, the initiative, which moved judges closer to busy courtrooms and provided them with more efficient travel hubs, also meant the judges themselves could do more with less. Therefore, JAT will return three judge positions to The Judge Advocate General's Corps in summer 2008. Considering JAT's limited size, the manpower dividends from realignment are tremendous.

The aforementioned professional development concern was addressed with the establishment of a mentoring framework for junior judges. JAT sought to ensure junior judges maintained open communication with senior judges even though they did not physically interact on a day-to-day basis. The cross-feed of information and judicial mentorship is paramount given the limited number of Air Force judges. Therefore, as the old circuits stood-down and one- and two-judge billets arose, JAT implemented the creation of Chief Regional Military Judge positions. Chief Regional Military Judges provide judges with professional oversight, an experienced judicial resource, and a mentor who provides career advice and rating authority.

The creation of the Chief Regional Military Judge positions to ensure the professional development of judges dovetails with JAT's recently created "see-do" training program. New trial judges are now expected to first watch, and later preside over, a guilty-plea trial and also a litigated trial with members while under observation of a senior mentoring judge. The Chief Regional Military Judges serve as mentoring judges. The quasi-apprenticeship scenario for new judges allows them to learn their craft under expert tutelage while also fostering judicial collegiality and a healthy professional dialogue between geographically dispersed military judges.

JAT also leveraged technology to maintain high levels of support to its judges and to the base legal offices who require their presence. The five circuit websites were closed and a new, single JAT website was launched. The JAT website provides a single on line resource for trial judiciary matters. The website also provides a cyber-residence for the CDO. The Judiciary Docketing System (an interactive, on line judicial calendar), various docketing documents, and the hyper linked Uniform Rules of Practice Before Air Force Courts-Martial are all maintained on JAT's new website. Each stateside, active duty judge was also equipped with wireless technology enabling them to work within stringent Air Force security protocols and still maintain internet connectivity for research and communication while traveling. Plans are also already underway to link the Judiciary Docketing System with other military justice databases to expand its information capabilities, reinforce its on line capabilities, and allow for the creation and electronic delivery of CDO docketing documents.

The JAT restructuring also sought to align itself with the principles of the Air Expeditionary Force (AEF) deployment model. Until 2007, virtually every Air Force trial in CENTCOM's area of responsibility (AOR) was presided over by a judge from Europe. The Europe-centric nature of previous deployments placed a disproportionate burden on a single set of judges; concomitantly, it limited JAT's remaining judges from participating in a professionally rewarding opportunity. JAT's new deployment model now spreads deployments across JAT's geographic spectrum. Two judges are aligned in each AEF cycle in an enabler status. The two judges are trained and equipped to deploy and must be prepared to depart when requested by the AOR. As enabler assets, the judges will only deploy when requested and they will not occupy full-time deployed billets, nor will they forfeit their professional independence.

Deploying judges travel to the AOR to meet expeditionary demands, and then they rotate back to meet homestation demands. The frequency of enabler deployments is dictated by the level of operational need. The first set of AEF judges were postured in November 2007.

The Trial Judiciary has maintained a steady workflow throughout the year. In Fiscal Year 2007, Air Force trial judges presided over 650 general and special courts-martial. Judges have also presided over numerous post-trial hearings, sat as legal advisors in high-profile Article 32 hearings and administrative discharge boards, assisted as hearing officers for environmental impact statement hearings (including one front-page hearing attended by an audience of over 350), reviewed tens of thousands of pages of records of trial, and served as instructors in a number of different forums.

Air Force judges served as ambassadors for military justice in classrooms and through publication. Col Dawn Eflein, the Chief Trial Judge of the Air Force, participated in a Defense Institute of International Legal Studies program held in Buenos Aires with the Argentine Ministry of Defense to teach Argentine officials about sexual harassment and sexual assault issues. Col Eflein, Col Tom Cumbie, Lt Col John E. Hartsell, and Maj Bryan Watson also instructed new military judges at The Army Judge Advocate General's School, University of Virginia, Charlottesville, Virginia. Col Eflein and Lt Col Hartsell also lectured at a number of Judge Advocate Staff Officers' Courses at The Air Force Judge Advocate General's School (AFJAGS), AFLOA, Maxwell AFB, Alabama. Air Force judges also instructed at various trial advocacy courses and programs throughout the country and overseas to enhance practitioners' litigation skills. Finally, Lt Col Hartsell and Major Watson authored The Decay of "Divers" and the Future of Charging "On Divers Occasions" in Light of United States v. Walters, 59 MJ 391 (C.A.A.F. 2003), 61 A.F. L. Rev. (2007) (expected cite) to address the impact of recent case law on the court-martial process.

JAT continues to serve as the service sponsor for the Interservice Military Judges' Seminar (IMJS). IMJS is a joint forum attended by all Department of Defense trial judges and provides a means of ensuring military trial judges are kept up to date with recent developments in military criminal law and effective techniques of judicial management. The course includes a diverse curriculum that includes instruction, professional lectures, and seminars. Seminar topics include discussion and analysis of judge responsibilities at trial, courtroom procedures, rules of evidence, and recent court decisions significantly impacting the law. IMJS 2007 included briefings by service judges, Professor David A. Schlueter, Director of Trial Advocacy Programs, St. Mary's University School of Law, The Honorable Andrew S. Effron, Chief Judge, United States Court of Appeals for the Armed Forces, and The Honorable Terry Everett, United States House of Representatives, Second Congressional District, Alabama. The Air Force trial judges also participated in a VTC roundtable discussion with Major General Jack L. Rives, The Judge Advocate General. IMJS 2007 included over 120 attendees and it was hosted by The Air Force Judge Advocate General's School.

Members of the Trial Judiciary also distinguished themselves this year within a number of professional communities.

Col Eflein participated in a Congressional Caucus for women's issues attended by Congresswomen, Senators, and women serving as State Supreme Court Justices, Federal Circuit Chief Judges, and judicial leaders across the country. Col Dixie Morrow, who served as JAT's senior IMA, won the Judge Advocates Association, Outstanding Career Armed Services Attorney Award. Lt Col Hartsell, the Deputy Chief Trial Judge of the Air Force, won the American Bar Association Standing Committee on Armed Forces Law, Outstanding Military Service Career Judge Advocate Award. Two judges were also recognized for their efforts as ex-officio members of the Military Judges' Benchbook Committee. Col Stephen Woody and Lt Col Jennifer Whittier each earned the Army Achievement Medal for their extensive work in drafting pattern jury instructions and incorporating substantive changes to military sex crime offenses enumerated in the Uniform Code of Military Justice. Finally, MSgt Carmen Scott, JAT's Office Manager, won the Outstanding Paralegal Senior NCO of the Year (Karen Yates-Popwell) Award for HQ AF/JA.

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

#### **APPELLATE GOVERNMENT COUNSEL**

At the division headquarters, Colonel Gerald R. Bruce continued to serve as the Chief, Government Trial and Appellate Counsel Division; Lieutenant Colonel Robert V. Combs served as the Chief Appellate Government Counsel until December 2006, when Major Matthew Ward replaced him.

In October 2006, division counsel attended the United States Court of Appeals for the Armed Forces (USCAAF) Symposium at The George Mason University School of Law, sponsored by the Judge Advocate's Association. In November 2006, division personnel attended the Criminal Law New Developments Course at The Army Judge Advocate General's School. This course covered the previous year's military cases. In addition to providing new counsel an update in criminal law developments, it was an opportunity for appellate counsel and trial counsel to discuss ways to better serve base legal offices and each other; it also provided an opportunity for our counsel to establish contacts with counterparts in their sister services. In May 2007, appellate counsel, including reservists, attended the USCAAF Judicial Conference, held at Catholic University of America's Columbus School of Law. All these gatherings provided current information on appellate issues and guidance on appellate practice.

During this time, the division continued to fulfill its obligation to support war-fighting commanders by deploying an appellate counsel, Captain Dylan Blake Williams, to Iraq for a year-long tour beginning in August 2007. Captain Dan Breen also deployed in support of Operation Iraqi Freedom from January 2007 until May 2007. The division also has another appellate counsel deploying in November 2007 for a six-month tour in Iraq.

The division warmly welcomed four summer interns, law students who had completed their second year of law school and expressed an interest in service as judge advocates.

These young professionals significantly supported the division mission by conducting legal research and writing appellate briefs. Three of the four interns have since applied for and been offered direct appointments as Air Force judge advocates.

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

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

There are 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, a number of reserve counsel presented oral arguments before USCAAF and AFCCA during the fiscal year. Of note, the division's reserve paralegal is a law student at Widener University School of Law in Delaware, and was able to assist the office by researching issues related to several Answers to Assignments of Error.

A summary of Air Force Appellate Government practice follows:

<b>AFCCA</b>	<u><b>FY03</b></u>	<u><b>FY04</b></u>	<u><b>FY05</b></u>	<u><b>FY06</b></u>	<u><b>FY07</b></u>
Briefs Filed	230	226	159	207	267
Cases Argued	13	14	11	16	20
<b>USCAAF</b>	<u><b>FY03</b></u>	<u><b>FY04</b></u>	<u><b>FY05</b></u>	<u><b>FY06</b></u>	<u><b>FY07</b></u>
Briefs Filed	51	69	73	47	41
Cases Argued	31	15	29	25	24
<b>SUPREME COURT</b>	<u><b>FY03</b></u>	<u><b>FY04</b></u>	<u><b>FY05</b></u>	<u><b>FY06</b></u>	<u><b>FY07</b></u>
Petition/Waivers Filed	0	0	5	0	5
Briefs Filed	0	0	0	0	0

**SENIOR TRIAL COUNSEL**

Personnel authorizations for the fiscal year included 19 Senior Trial Counsel (STC) at 12 locations worldwide: three counsel at Bolling AFB, Washington, D.C., and three "instructor-litigators" at The Judge Advocate General's School at Maxwell AFB, Alabama, two counsel at Yokota AB, Japan,

Ramstein AB, Germany, and Randolph AFB, Texas, and one counsel each at Travis AFB, California, Nellis AFB, Nevada, Davis-Monthan AFB, Arizona, Peterson AFB, Colorado, Offutt AFB, Nebraska, Barksdale AFB, Louisiana, and Langley AFB, Virginia. This marks a dramatic change from the former geographically-based judiciary circuits. Senior trial counsel are detailed to prosecute cases by the division headquarters at Bolling AFB, and their primary responsibility is to represent the government in the most complex, litigated general courts-martial. They are also available for special courts-martial, discharge boards and other proceedings, as resources allow.

In the past year, senior trial counsel spent more than 2,500 days on temporary duty away from their home station, and represented the government in 195 courts-martial and 75 other proceedings, including three homicide cases. STCs embody the notion of one world, one circuit. STCs crossed any and all geographical boundaries to try cases, including serving as deployed counsel in Article 32 hearings and general courts-martial in the Southwest Asia Area of Operations.

The past year saw a continued emphasis on providing our STCs with the training and tools required for them to thrive. In addition to an across-the-board upgrade of STC information technology systems, STCs attended many hours of training designed to improve their advocacy skills. August saw the first-ever Senior Trial Counsel Orientation at Bolling AFB. The STC Orientation brought all 19 STCs together in one room for a week of training and networking with trial and appellate counsel. Former circuit counsel also attended to serve as mentors for the young counsel, and the week was a resounding success. Additionally, STCs attended the Trial Defense Advocacy Course, the Advanced Trial Advocacy Course, Prosecuting Complex Cases at the Naval Justice School, and the Protecting Children Online for Prosecutors Course conducted by the National Center for Missing and Exploited Children in Alexandria, Virginia.

#### **APPELLATE DEFENSE DIVISION**

Training for our appellate defense counsel remains one of the division's critical priorities, particularly because of frequent turnover in counsel. Training included the Criminal Law New Developments Course, the Judicial Conference sponsored by USCAAF, and a Military Appellate Advocacy Symposium sponsored by the Judge Advocates Association.

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

Appellate defense counsel have contributed to "Project Outreach," sponsored by USCAAF and AFCCA, by conducting oral arguments before audiences at the Mississippi College School of Law, AFJAGS, Lackland AFB, TX, Pittsburgh School of Law and Chicago-Kent College of Law.

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

Appellate defense division began FY07 with approximately 345 cases pending initial briefing to the AFCCA. The division reduced the number of cases pending initial briefing to the AFCCA to 209 cases by the end of the FY. During that same time period, the number of enlargements were reduced significantly.

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

**AFCCA**

	<u>FY 03</u>	<u>FY 04</u>	<u>FY05</u>	<u>FY 06</u>	<u>FY07</u>
Briefs Filed Cases Argued	512	502	376	638	541
	12	14	11	16	20

**USCAAF**

	<u>FY 03</u>	<u>FY 04</u>	<u>FY05</u>	<u>FY06</u>	<u>FY07</u>
Supplements to Petitions	219	274	268	371	261
Grant Briefs Cases Argued	22	19	32	18	24
	26	14	29	25	24

**SUPREME COURT**

	<u>FY 03</u>	<u>FY 04</u>	<u>FY05</u>	<u>FY06</u>	<u>FY07</u>
Petitions	3	1	0	0	9
Briefs in Opposition	0	0	0	0	0
Briefs on the Merits	0	0	0	0	0

**TRIAL DEFENSE DIVISION**

The Trial Defense Division was responsible for providing all trial defense services within the Air Force through Area Defense Counsel (ADC), Defense Paralegals (DP), Senior Defense Counsel (SDC), Deputy Chiefs, Trial Defense Division, Defense Paralegal Managers (DPM), and Instructor-Litigators (IL).



These personnel reported to the Chief, Trial Defense Division (JAJD), who reported to the Director, United States Air Force Judiciary (JAJ). The Chief, Trial Defense Division was assisted by the Deputy Chief, Policy and Training, and Office Manager.

The Division was staffed with 81 ADCs stationed at 69 bases worldwide. They were assisted by 70 DPs. The Division had 18 SDCs and 3 Deputy Chiefs, each of whom oversaw 6 SDCs. A DPM was assigned to each of the 3 Deputy Chiefs. The SDCs were stationed at Andrews AFB, MD, Langley AFB, VA, Charleston AFB, SC, Hurlburt Field, FL, Barksdale AFB, LA, Randolph AFB, TX, Sheppard AFB, TX, Tinker AFB, OK, Peterson AFB, CO, Offutt AFB, NE, McChord AFB, WA, Travis AFB, CA, Nellis AFB, NV, Davis-Monthan AFB, AZ, Yokota AB, Japan, Kadena AB, Japan, Lakenheath AB, United Kingdom, and Ramstein AB, Germany. Each SDC was co-located with the ADC office at their respective location. The division also had three I-Ls assigned to the AFJAGS. The I-Ls split their time between duties as instructors at AFJAGS and serving as defense counsel in top-priority cases, as directed by the Chief, Trial Defense Division. In 2006, the Air Force's newest ADC office was established at Al Udeid AB, Qatar, to serve clients in Southwest Asia. In 2007, the Al Udeid office handled more Article 15 actions than any other ADC office in the Air Force.

The continuing success of the Air Force's ADC Program is largely attributable to its independence and its energized personnel. To ensure the best representation for Air Force clients, training remains the division's top priority. On a continuing basis, each SDC provided on-the-job training and mentoring to the ADCs in their charge. Each Deputy Chief, in turn, mentored the SDCs in their charge. Newly appointed defense personnel received formal training at the SDC, ADC, and DP Orientations held at AFJAGS. Defense personnel also attended an annual Trial Advocacy Course conducted by AFJAGS. In addition, the division ensured each ADC attended the Trial and Defense Advocacy Course and that all SDCs attended the Advanced Trial Advocacy Course. The Division provided adjunct faculty members for these two courses held at AFJAGS. Selected defense counsel also attended Air Force in-residence force development education.

#### **MILITARY JUSTICE DIVISION**

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

During the past year, the Military Justice Division: provided 91 formal opinions concerning AFBCMR applications; received 129 inquires in specific cases requiring formal written replies to senior officials, including the President and

members of Congress; and reviewed 49 records of trial for review under Article 69a, UCMJ, and 5 records under Article 69b, UCMJ. The division presented the eleventh annual Military Justice Administration Workshop at the AFJAG School, a "back to basics" 1-week workshop attended by both judge advocates and paralegals. The division also instructed base legal office chiefs of military justice at an 18<sup>th</sup> Air Force workshop held at Scott Air Force Base, IL.

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

Finally, during the fiscal year, division representatives assumed the roles of Chairman and Executive Secretary, and Working Group Chairman, of the Joint Service Committee, playing pivotal roles in drafting Manual for Courts-Martial (MCM) implementing provisions and preparing a draft Executive Order for presidential signature for changes to the MCM.

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

At the end of fiscal year 2007, 457 Air Force personnel were in confinement. Of those, 86 inmates were in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and 88 were serving time in the Federal Bureau of Prisons (BOP) system. One inmate was enrolled in the Air Force Return-to-Duty Rehabilitation (RTDR) Program during fiscal year 2007, and one graduated and was returned to duty. The program moved from NAVCONBRIG, Charleston, South Carolina, to Lackland Air Force Base, Texas, on 1 August 2007. The number of Air Force members and former members on parole at the end of fiscal year 2007 was 116.

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

The Judge Advocate General's School (AFJAGS) is the educational arm of the Judge Advocate General's Corps. It is located at Maxwell Air Force Base, Alabama, and provides education and training in all aspects of the military justice system to attorneys and paralegals from all military Services, other federal agencies, and many foreign countries. Specifically, instruction is given in advocacy, procedure and administration. AFJAGS faculty also provides military justice instruction at several schools and colleges throughout Air University—the Air Force's center for education. Additionally, AFJAGS routinely publishes military and criminal justice items in The Reporter (a quarterly journal), The Air Force Law Review (published biannually) and The Military Commander and the Law (updated annually). AFJAGS monthly webcasts introduce subject matter experts and timely military justice topics to up to 50 base legal offices worldwide at one time.

Finally, the School has 13 distance learning military justice modules available to all judge advocates on the Judge Advocate Distance Education website.

Of the 40 classes offered at AFJAGS in Fiscal Year 2007 for 1,302 students, the following courses had military justice related materials associated with them:

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

In addition, AFJAGS hosted a CONUS Trial Advocacy Conference in San Antonio, Texas, for 143 judge advocates and paralegals.

#### **LEGAL INFORMATION SERVICES**

During fiscal year 2007, the Legal Information Services (JAS) Directorate continued to develop new tools and programs to further the use of information technology (IT) in the practice of military justice throughout the Air Force JAG Corps.

JAS continued to enhance the Automated Military Justice Analysis and Management System (AMJAMS) throughout the year. Last year, JAS brought the program into compliance with the Standard Desktop, but it was still a client-server program. In order to avoid the difficulties involved with distributing updates and upgrades to the field, JAS funded a contract for 1.9 million dollars to convert AMJAMS to an all web-based system. This new AMJAMS will stay in compliance with the desktop certification program and allay the necessity of disbursing client software around the Corps.

The directorate continued to develop and test the Area Defense Electronic Reporting (ADER) program. Presently the directorate is working on Spiral 2 of ADER, which will have better reporting capabilities for the defense community.

The Directorate has made numerous upgrades and improvements to a Foreign Criminal Jurisdiction (FCJ) program. In addition, the program contemplates

migrating FCJ from the Air Force Pentagon Communications Agency (AFPCA) server, which is a development server, to a production server in JAS.

This will reduce downtime and improve service to the justice community.

#### **PERSONNEL**

As of 30 September 2007, the Air Force Judge Advocate General's Corps had 1,220 judge advocates on active duty. Company grade officers (lieutenants and captains) made up 50% of that number (608). Slightly more than 24% were majors (300) and 16% were lieutenant colonels (194). Almost 10% of the Corps were colonels and above (118), including 2 major generals and 3 brigadier generals. The Air Force Judge Advocate General's Corps Reserve included 885 Air Force Reserve IMA, Air Force Reserve unit-assigned, and Air National Guard judge advocates, of whom 11% (97) were company grade officers and 74% (659) were field grade officers (majors and lieutenant colonels). The remaining 15% consisted of 125 colonels, 3 brigadier generals, and 1 major general.

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

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

Period: Fiscal Year 2007				
<b>PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)</b>				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE(+)/ DECREASE (-) OVER LAST REPORT
GENERAL	239	207	32	-29.91%
BCD SPECIAL	472	205	28	+ 3.74%
NON-BCD SPECIAL [A]		239		
SUMMARY	148	145	3	+ 5.71%
OVERALL RATE OF INCREASE ( + ) / DECREASE ( - ) OVER LAST REPORT				- 8.23%
<b>PART 2 - DISCHARGE APPROVED</b>				
GENERAL COURTS-MARTIAL (CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES [B]			50	
NUMBER OF BAD CONDUCT DISCHARGES			115	
SPECIAL COURT-MARTIAL (CA LEVEL)				
NUMBER OF BAD CONDUCT DISCHARGES			205	
<b>PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG</b>				
FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL			162	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL			203	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL			52	
<b>PART 4 - WORK LOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS</b>				
TOTAL ON HAND BEGINNING OF PERIOD			525	
GENERAL COURTS-MARTIAL		346		
BCD SPECIAL COURTS-MARTIAL		179		
REFERRED FOR REVIEW			362	
GENERAL COURTS-MARTIAL		160		
BCD SPECIAL COURTS-MARTIAL		202		
TOTAL CASES REVIEWED			540	
GENERAL COURTS-MARTIAL		305		
BCD SPECIAL COURTS-MARTIAL		235		
TOTAL PENDING AT CLOSE OF PERIOD			347	
GENERAL COURTS-MARTIAL		201		
BCD SPECIAL COURTS-MARTIAL		146		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (735/476)				-26.53%
<b>PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE AIR FORCE COURT OF CRIMINAL APPEALS</b>				
NUMBER	362/412			
PERCENTAGE	87.86%			

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

<b>PART 6 - U.S. COURT OF APPEALS FOR THE ARMED FORCES</b>			
PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF (381/564)		(376/735)	49.63%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD			- 1.53%
PERCENTAGE OF TOTAL PETITIONS GRANTED (68/376)			6.34%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD			- 11.75%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY AFCCA (60/404)		(68/735)	3.15%
RATE OF INCREASE ( + ) / DECREASE ( - )OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD			- 6.10%
<b>PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69</b>			
PENDING AT BEGINNING OF PERIOD		3	
RECEIVED		2	
DISPOSED OF		3	
GRANTED	1		
DENIED	1		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	
<b>PART 8 - ORGANIZATION OF COURT</b>			
TRIALS BY MILITARY JUDGE ALONE		528	
GENERAL COURTS-MARTIAL	135	193	
SPECIAL COURTS-MARTIAL	303	335	
TRIALS BY MILITARY JUDGE WITH MEMBERS		268	
GENERAL COURTS-MARTIAL	104	148	
SPECIAL COURTS-MARTIAL		120	
<b>PART 9 - COMPLAINTS UNDER ARTICLE 138</b>			
NUMBER OF COMPLAINTS	23		
<b>PART 10 - STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH	349,732		
<b>PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		7,038	
RATE PER 1,000		20.64%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-1.14%	

**EXPLANATORY NOTES**

[A] The Air Force does not convene non-BCD SPCMs. Of the 455 SPCMs tried, there were 200 convictions with a BCD adjudged, 239 convictions without a BCD adjudged and 28 acquittals.

[B] Includes 19 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, 2006 to September 30, 2007**

**PERSONNEL AND TRAINING**

The Coast Guard has 211 officers designated as judge advocates serving on active duty, of whom 160 are serving in legal billets and 51 are serving in "out-of-specialty" billets. Among the 51 military attorneys serving in "out-of-specialty" billets are flag officers who serve as the Commander of the Fifth Coast Guard District in Portsmouth; the Commander of the Ninth Coast Guard District in Cleveland; the Commander of the Seventeenth Coast Guard District in Juneau; and the Director, Global Maritime Intelligence Integration. Others serve as commanding and executive officers of Coast Guard cutters, sectors, marine safety offices, training centers, and support commands. The Coast Guard also employs 91 civilian attorneys ranging from GS-12 to SES.

The Coast Guard sent attorneys to 149 different courses of instruction during this fiscal year, primarily at the various service JAG schools. 69% of Coast Guard attorneys attended one or more courses of continuing legal education. Seventeen Coast Guard officers are currently studying law and will be certified as judge advocates at the successful completion of their studies. Additionally, one judge advocate is attending the Graduate Course at the United States Army Judge Advocate General's Legal Center and School and will graduate in May 2008 with a Master of Law (LLM) degree in military law and another judge advocate is currently a Fellow at the Center for Law and Military Operations. Fifteen Coast Guard officers (including six funded postgraduate program studies and nine direct-commissioned lawyers) completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified under Article 27(b), UCMJ.

**U. S. COAST GUARD COURT OF CRIMINAL APPEALS**

The judges on the U.S. Coast Guard Court of Criminal Appeals during fiscal year 2007 were:

*Chief Judge Joseph H. Baum (relinquished duties as Chief Judge on 22 January 2007 and retired on 31 January 2007)*

Chief Judge Lane I. McClelland (designated as Acting Chief Judge on 22 January 2007)

Judge David J. Kantor

Judge Gilbert E. Teal (assignment terminated on 1 November 2006)



Judge Gary E. Felicetti  
Judge Frederick W. Tucher  
Judge Thomas R. Cahill (Assigned and sworn in on  
26 January 2007)  
Judge Michael J. Lodge (Assigned and sworn in on  
26 January 2007)

In addition to the decisional work of the Court, as reflected in the Appendix, the judges of the Court have been involved in various professional conferences, committees and seminars during the past fiscal year.

On 16 and 17 May 2007, Judge McClelland attended the Judicial Conference of the United States Court of Appeals for the Armed Forces (USCAAF) at the Columbus School of Law at Catholic University. On 21 September 2007, Chief Judge McClelland participated in the William S. Fulton, Jr., Appellate Military Judges Conference and Training Seminar at George Mason University School of Law in Arlington, Virginia.

#### **MILITARY JUSTICE ORGANIZATION**

Thirteen staff judge advocates advise 15 officers exercising general court-martial jurisdiction and approximately 350 officers who exercise 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 Regional Legal Service Offices.

The Coast Guard has one general courts-martial judge and 10 collateral-duty special courts-martial judges. The Chief Trial Judge details all military judges to Coast Guard courts-martial. When the Chief Trial Judge was unavailable, courts-martial judges from other military services were detailed to general courts-martial.

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

**TRAINING OPPORTUNITIES WITH OTHER SERVICES**

To improve the trial advocacy skills and experience levels of Coast Guard Judge Advocates, the Judge Advocate General has arranged for Coast Guard trial counsel to be assigned for limited periods of time (usually three months), to certain installations which have a robust military justice practice. Coast Guard judge advocates have thus far been assigned to Marine Corps Base Quantico, Marine Corps Base Camp Lejeune, Marine Corps Base Camp Pendleton, Navy Trial Service Office East in Norfolk, Virginia, and the Army's Trial Counsel Assistance Program in Arlington, Virginia. This is in addition to the existing Memorandum of Understanding with the Navy that provides for four Coast Guard Judge Advocates to be assigned full-time as trial 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 2007 and, where indicated, records received during each of the four preceding fiscal years. The number of courts-martial varies widely from year to year; consequently, this is not a reliable indicator of the administration of military justice given the relatively small number of courts-martial overall.

Fiscal Year	07	06	05	04	03
General Courts-Martial	16	16	07	12	08
Special Courts-Martial	24	32	45	27	18
Summary Courts-Martial	31	31	21	12	20
Total	71	79	73	51	46

**ADDITIONAL MILITARY JUSTICE STATISTICS**

Appendix A contains the Coast Guard, Fiscal Year 2007 military justice statistics.

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

Appendix A: U. S. Coast Guard Courts-Martial/NJP Statistics for October 1, 2006 to September 30, 2007 (FY 2007)

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

Report Period: 1 OCTOBER 2006 - 30 SEPTEMBER 2007

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	16	13	03	-19%
BCD SPECIAL	24	23	01	-26%
NON-BCD SPECIAL	00	00	00	UNCHANGED
SUMMARY	31	31	00	UNCHANGED
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-7%

**PART 2 – DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL			
NUMBER OF DISHONORABLE DISCHARGES			02
NUMBER OF BAD-CONDUCT DISCHARGES			09
SPECIAL COURTS-MARTIAL			
NUMBER OF BAD-CONDUCT DISCHARGES			10

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL		11
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL		10
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL		02

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

TOTAL ON HAND BEGINNING OF PERIOD		28
GENERAL COURTS-MARTIAL	12	
BCD SPECIAL COURTS-MARTIAL	16	
REFERRED FOR REVIEW		24*
GENERAL COURTS-MARTIAL	11	
BCD SPECIAL COURTS-MARTIAL	10	
TOTAL CASES REVIEWED		25**
GENERAL COURTS-MARTIAL	06	
BCD SPECIAL COURTS-MARTIAL	16	
TOTAL PENDING AT CLOSE OF PERIOD		27
GENERAL COURTS-MARTIAL	17	
BCD SPECIAL COURTS-MARTIAL	10	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-8.70%

**PART 5 – APPELLATE COUNSEL REQUESTS BEFORE**

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

NUMBER	22
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	10/22	45%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+15%
PERCENTAGE OF TOTAL PETITIONS GRANTED	3/10	30%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+1%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA	3/22	14%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+5%

\* Includes three extraordinary writs in addition to courts-martial.

\*\* Includes three extraordinary writs in addition to courts-martial.

**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		10	
SPECIAL COURTS-MARTIAL		22	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		6	
SPECIAL COURTS-MARTIAL		2	
<b>PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ</b>			
NUMBER OF COMPLAINTS		3	
<b>PART 10 – STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH		41,498	
<b>PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		1437	
RATE PER 1,000		34.62	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-0.4%	