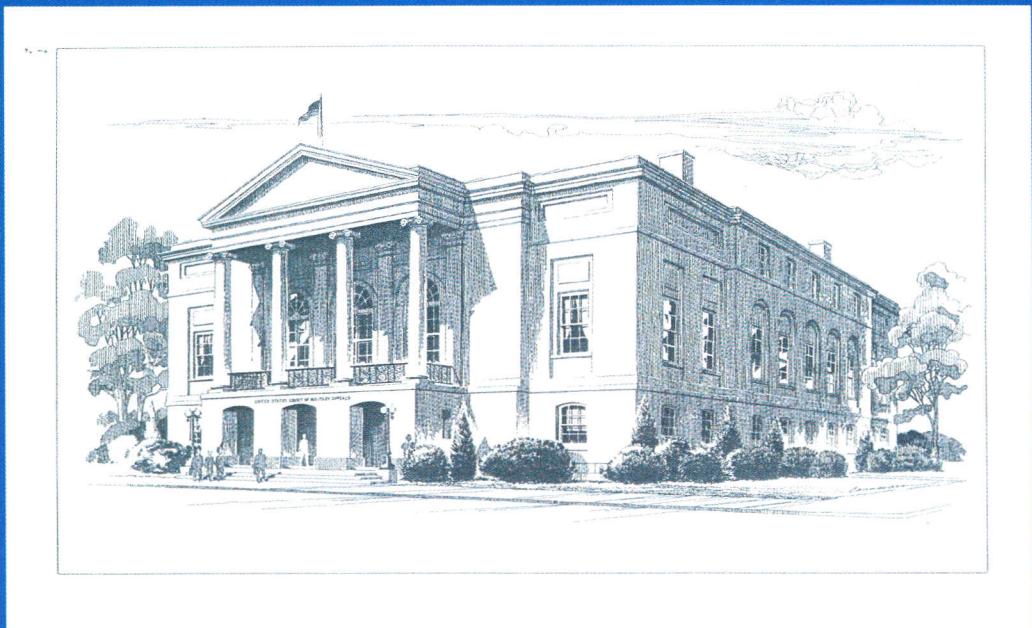


**ANNUAL REPORT
OF THE
CODE COMMITTEE ON MILITARY JUSTICE**



**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, 2007 to September 30, 2008**

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, 2007 to September 30, 2008**

CONTENTS

Section 1: JOINT ANNUAL REPORT OF THE CODE COMMITTEE

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

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

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

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

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

SECTION 1

JOINT ANNUAL REPORT OF THE CODE COMMITTEE

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

October 1, 2007 to September 30, 2008

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

The Code Committee met on March 4, 2008, to consider matters pertaining to the administration of military justice. The meeting was open to the public and was previously announced by notices in the Federal Register and on the Court's website.

After approving the minutes of the 2007 Code Committee meeting, Chief Judge Effron called upon Lieutenant Colonel Thomas Wand, U.S. Air Force, Executive Secretary of the Joint Service Committee, to provide a report on the work of the Joint Service Committee. Lieutenant Colonel Wand first informed the Code Committee of the issuance of the 2008 edition of the Manual for Courts-Martial. He then summarized the status of the recommendations of the Joint Service Committee. The 2004 recommendations, which were contained in Executive Order 13430, were signed by the President on April 18, 2007. The 2005 and 2006 recommendations, contained in Executive Order 13447, were signed on September 28, 2007. Included in this order were the conforming provisions for legislative changes made to Article 120, UCMJ.

Lieutenant Colonel Wand stated that the 2007 recommendations, which were published in the Federal Register, had been forwarded to the General Counsel of the Department of Defense. The contents of this review include provisions for laying the groundwork for allowing electronic records of trial, using abbreviated records of trial in cases terminated after findings, simplifying the requirements for the staff judge advocate's recommendation, providing for self-executing final orders when the accused is not in confinement and appellate review is complete, and clarifying the criteria for closing Article 32, UCMJ, hearings. Also included are recommendations to change Part IV of the Manual for Courts-Martial regarding the time for compliance to obey an order and to increase the maximum punishment for manslaughter in the case of a child victim.

Lieutenant Colonel Wand added that the 2007 Annual Review's legislative proposals are to eliminate the 14-day waiting period for adjudged forfeitures of pay and reductions in grade to take effect, and to conform the requirements of Articles 19 and 54, UCMJ, for verbatim transcripts and authentication of the record in cases reviewed under Article 66(b), UCMJ. Also, the Joint Service Committee is in the process of studying several proposals, including provisions for a new paragraph for the Manual for Courts-Martial on child pornography offenses, an amendment to Article 120, UCMJ, regarding burden shifting in cases involving affirmative defenses, a new section on jurisdiction over civilians, new rules for the protection of government information under Military Rules of Evidence 505 and 506, the creation of a rule governing pre-referral subpoena duces tecum power and solidifying the contempt power of military judges.

Subsequent to the Code Committee meeting, the 2007 recommendations, which were contained in Executive Order 13468, were signed by the President on July 24, 2008. They are published in the Federal Register at Vol. 73, No. 145 at pages 43827-39.

Also during this Term, the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110-181) amended Article 136, UCMJ, by adding subsection (c), to provide the Judges of the United States Court of Appeals for the Armed Forces the authority to administer oaths.

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

Andrew S. Effron
Chief Judge

James E. Baker
Associate Judge

Charles E. "Chip" Erdmann
Associate Judge

Scott W. Stucky
Associate Judge

Margaret A. Ryan
Associate Judge

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

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

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

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

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

Professor David A. Schlueter
Public Member

Mr. Michael D. Wims
Public Member

SECTION 2

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

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

October 1, 2007 to August 31, 2008

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 October 2007 - August 2008 Term of Court (Transition) 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.

As noted in last year's annual report, the Court has amended its Term of Court policy on June 21, 2007. See 65 M.J. 288 (2007). The term of court will now run from September 1 to August 31. This will afford the Court greater opportunity to hear cases at the outset of the term, facilitate the timely issuance of opinions, and enhance the ability of counsel to incorporate the case law from one term to the next.

THE BUSINESS OF THE COURT

The filing and disposition of cases are set forth in the attached statistical report and graphs. For this report, the statistics and graphs cover an eleven-month period, from October 1, 2007 to August 31, 2008. Additional information pertaining to specific opinions is available from the Court's published opinions and Daily Journal. Other dispositions may be found in the Court's official reports, the Military Justice Reporter, and on the Court's web site. The Court's web site also contains a consolidated digest of past opinions of the Court, information on the Court's history and jurisdiction, the Rules of Practice and Procedure, previous Annual Reports, a schedule of upcoming hearings, audio recordings of past hearings, and information on clerkship opportunities, bar admission, electronic filing and the Court's library.

During the October 2007 - August 2008 Term of Court (Transition), the Court again 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 July 15, 2008.

Following the recommendations of the Rules Advisory Committee, the Court amended Rules 21(f), 27(b), 30, and 36A of the Rules of Practice and Procedure. Prior to amendment the proposed changes were published for public comment in the Federal Register at Vol. 72, No. 229 at pages 67597-99 and Vol. 73, No. 124 at page 36378. These amendments were also published following adoption in the Military Justice Reporter at 66 M.J. 98-99 and 67 M.J. 16 (C.A.A.F. 2008). They established guidelines for the withdrawal of a petition for grant of review, set the maximum length for writ-appeal petitions, changed language from "working" days to "business" days to conform to language in other Rules, and instituted requirements for citations to supplemental authorities to call for reasons why the supplemental authorities are pertinent and significant, to limit the citation letter to 350 words, to require the attachment of the cited supplemental authorities, and to direct submission to the Court by overnight delivery or more expeditious means if filed less than five business days prior to oral argument.

During the October 2007 - August 2008 Term of Court (Transition), the Court admitted 283 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 34,399.

JUDICIAL OUTREACH

In furtherance of a practice established in 1987, the Court scheduled special sessions and heard oral arguments outside its permanent courthouse in Washington, D.C., during the October 2007 - August 2008 Term of Court (Transition). This practice, known as "Project Outreach," was developed as a part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, with the consent of the parties, at Indiana University-Purdue University at Indianapolis School of Law, Indianapolis, Indiana; Indiana University School of Law, Bloomington, Indiana; George Mason University School of Law, Arlington, Virginia; the Columbus School of Law, Catholic University of America, Washington, D.C.; the University of Montana School of Law, Missoula, Montana; and Malmstrom Air Force Base, Great Falls, Montana. In addition, the Judges of the Court participated in a variety of professional training, speaking and educational endeavors on military installations, at law schools and before professional groups.

CONTINUING LEGAL EDUCATION CONFERENCE

On March 5 and 6, 2008, the Court held its annual Continuing Legal Education Conference at the Columbus School of Law, Catholic University of America, Washington, D.C. The program for this Continuing Legal Education Conference was certified for credit to meet the continuing legal education requirements of State Bars throughout the United States. The conference opened with welcoming remarks from the Honorable Andrew S. Effron, Chief Judge, United States Court of Appeals for the Armed Forces. He was followed by speakers for this year's conference, including Professor Laura Dickinson of the University of Connecticut School of Law; Professor Michael Klarman of the University of Virginia School of Law; Professor David Segal of the University of Maryland; Seth Waxman, Esq., former Solicitor General of the United States; Admiral Michael Mullen, USN, Chairman of the Joint Chiefs of Staff; Rear Admiral Stephen Pietropaoli, USN (Retired), former Chief of Information for the Department of the Navy; Eric Schmitt of the New York Times; Jamie McIntyre of CNN; Dr. Jonathan Shay of the Department of Veterans Affairs; Major Dana J. Chase, USA, Major Kwasi Hawks, USA, and Major Howard H. Hoege, III, USA, of the Judge Advocate General's Legal Center and School, Charlottesville, Virginia; Major Ira Perkins, USAF, 15 Air Base Wing, Hickam Air Force Base, Hawaii; and Major W. James Annexstad, USAF, The Judge Advocate General's School, Maxwell Air Force Base, Alabama.

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
OCTOBER 2007 - AUGUST 2008 TERM OF COURT (TRANSITION)

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 2007

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

CUMULATIVE FILINGS

| | |
|-------------------------------|------------|
| Master Docket | 133 |
| Petition Docket | 836 |
| Miscellaneous Docket. | 24 |
| TOTAL | <u>993</u> |

CUMULATIVE DISPOSITIONS

| | |
|-------------------------------|--------------|
| Master Docket | 166 |
| Petition Docket | 848 |
| Miscellaneous Docket. | 21 |
| TOTAL | <u>1,035</u> |

CUMULATIVE PENDING SEPTEMBER 1, 2008

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

OPINION SUMMARY

| <u>CATEGORY</u> | <u>SIGNED</u> | <u>PER CURIAM</u> | <u>MEM/ORDER</u> | <u>TOTAL</u> |
|---------------------------|---------------|-------------------|------------------|--------------|
| Master Docket | 60 | 4 | 102 | 166 |
| Petition Docket | 0 | 0 | 848 | 848 |
| Miscellaneous Docket | 1 | 0 | 20 | 21 |
| TOTAL | 61 | 4 | <u>970</u> | <u>1,035</u> |

MASTER DOCKET SUMMARY

FILINGS

| | |
|--|------------|
| Petitions granted from the Petition Docket . . . | 128 |
| Certificates filed | 5 |
| Mandatory appeals filed. | 0 |
| Remanded/Returned cases. | 0 |
| Reconsideration granted. | 0 |
| TOTAL | <u>133</u> |

DISPOSITIONS

| | |
|--|------------|
| Findings and sentence affirmed | 117 |
| Reversed in whole or in part | 49 |
| Granted petitions vacated | 0 |
| TOTAL | <u>166</u> |

PENDING

| | |
|---|-----------|
| Awaiting briefs | 4 |
| Awaiting oral argument | 15 |
| Awaiting lead case decision (trailer cases) . | 1 |
| Awaiting final action | 0 |
| TOTAL | <u>20</u> |

PETITION DOCKET SUMMARY

FILINGS

| | |
|---|------------|
| Petitions for grant of review filed | 836 |
| Petitions for new trial filed | 0 |
| Petitions for reconsideration granted | 0 |
| Returned cases | 0 |
| TOTAL | <u>836</u> |

DISPOSITIONS

| | |
|---|------------|
| Petitions for grant of review denied | 715 |
| Petitions for grant of review granted | 128 |
| Petitions for grant of review withdrawn | 2 |
| Petitions for grant of review dismissed | 3 |
| TOTAL | <u>848</u> |

PENDING

| | |
|---|------------|
| Awaiting pleadings | 83 |
| Awaiting Central Legal Staff review | 107 |
| Awaiting final action | 64 |
| TOTAL | <u>254</u> |

MISCELLANEOUS DOCKET SUMMARY

FILINGS

| | |
|---|-----------|
| Writ appeals sought | 12 |
| Writs of habeas corpus sought | 3 |
| Writs of error coram nobis sought | 2 |
| Other extraordinary relief sought | 7 |
| TOTAL | <u>24</u> |

DISPOSITIONS

| | |
|--|-----------|
| Petitions or appeals denied | 18 |
| Petitions or appeals granted | 0 |
| Petitions or appeals dismissed | 2 |
| Petitions or appeals withdrawn | 0 |
| Petitions or appeals remanded | 1 |
| TOTAL | <u>21</u> |

PENDING

| | |
|---------------------------------|----------|
| Awaiting briefs | 1 |
| Awaiting staff review | 0 |
| Awaiting final action | 5 |
| TOTAL | <u>6</u> |

PETITIONS FOR RECONSIDERATION

ALL CASES

| | | | |
|---------------|-----------|---------|-----------|
| Begin Pending | 0 | Denied | 11 |
| Filed | <u>12</u> | Granted | 0 |
| TOTAL | <u>12</u> | TOTAL | <u>11</u> |
| End Pending | 1 | | |

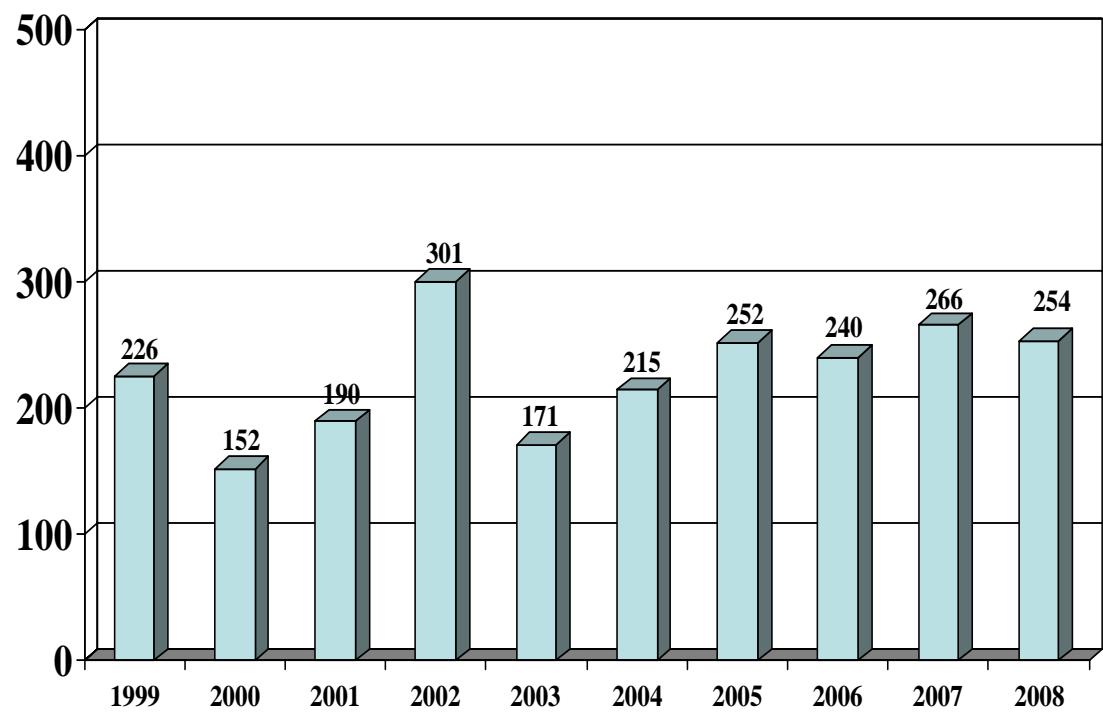
DISPOSITIONS

MOTIONS

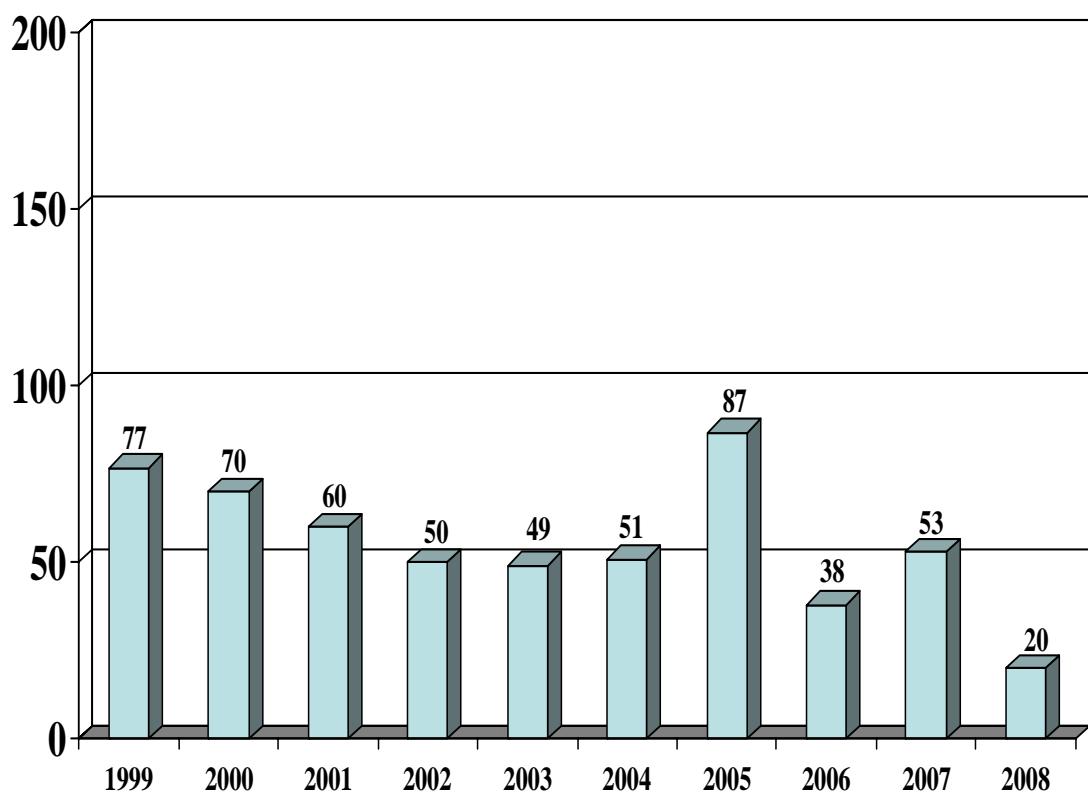
ALL MOTIONS

| | | | |
|---------------|------------|---------|------------|
| Begin Pending | 11 | Granted | 417 |
| Filed | <u>502</u> | Denied | 65 |
| TOTAL | <u>513</u> | TOTAL | <u>482</u> |
| End Pending | 31 | | |

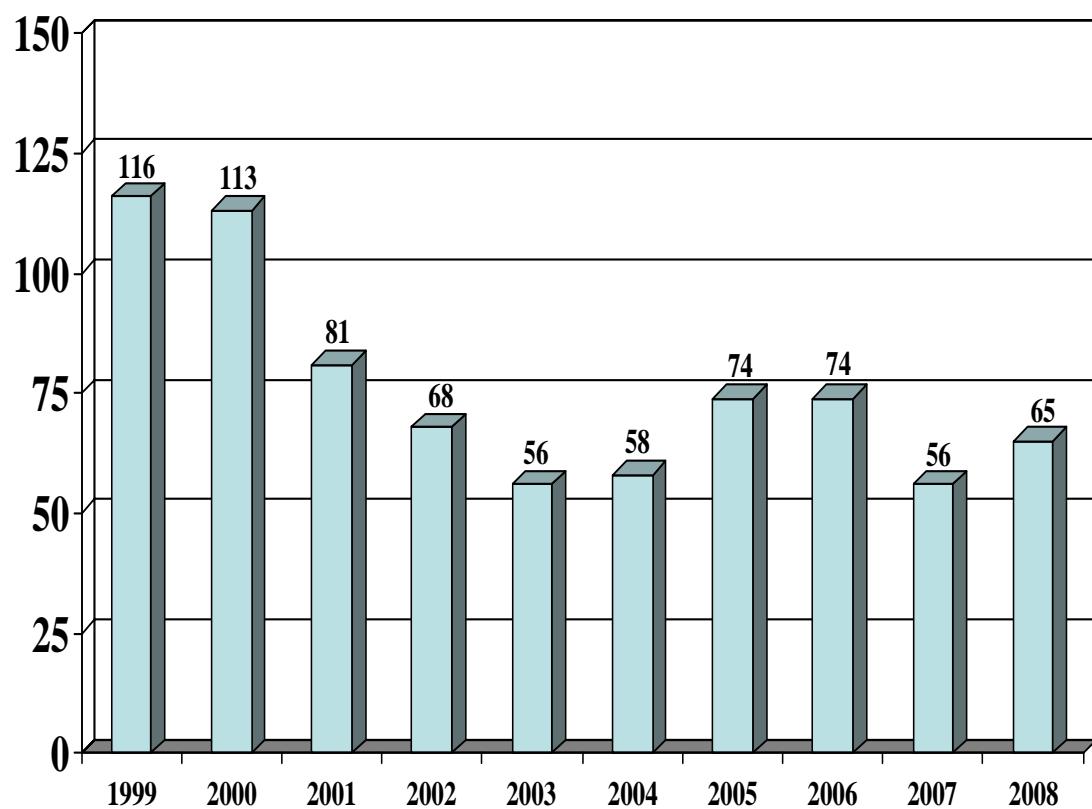
Petition Docket Year End Pending



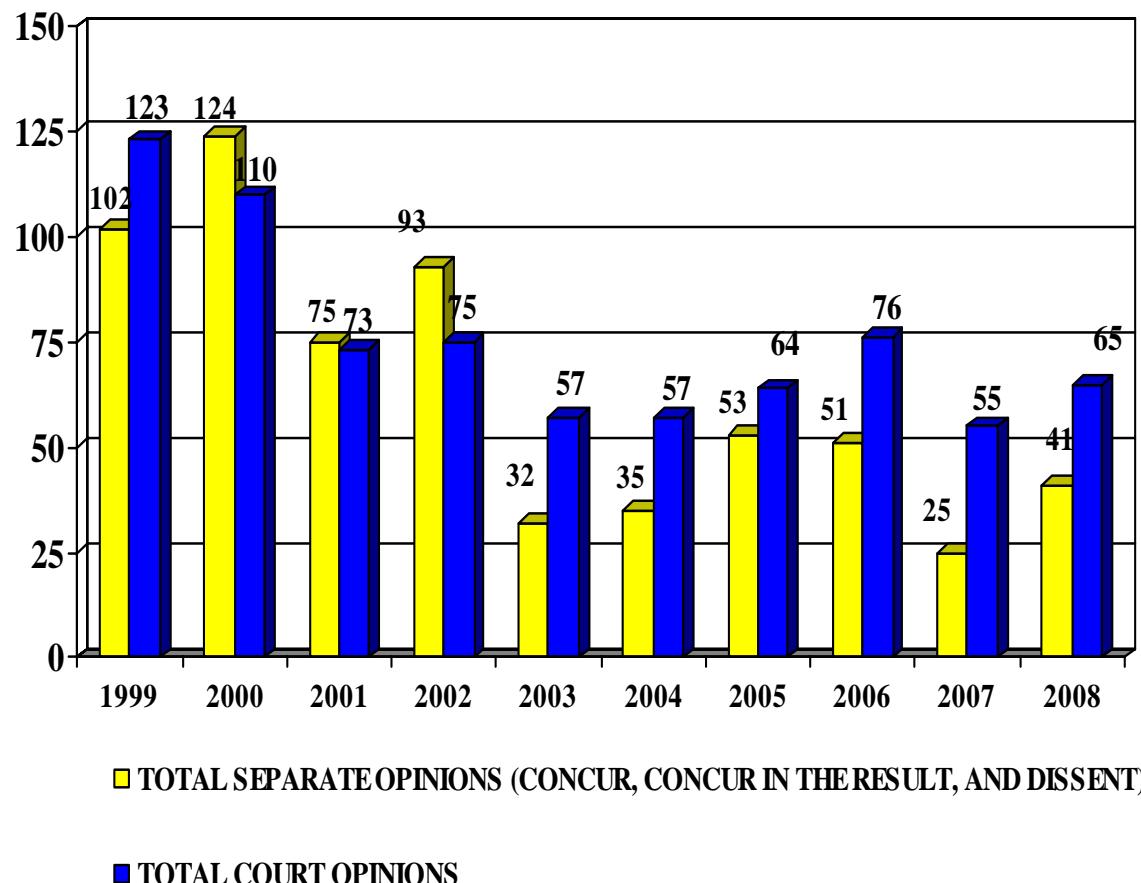
Master Docket Year End Pending



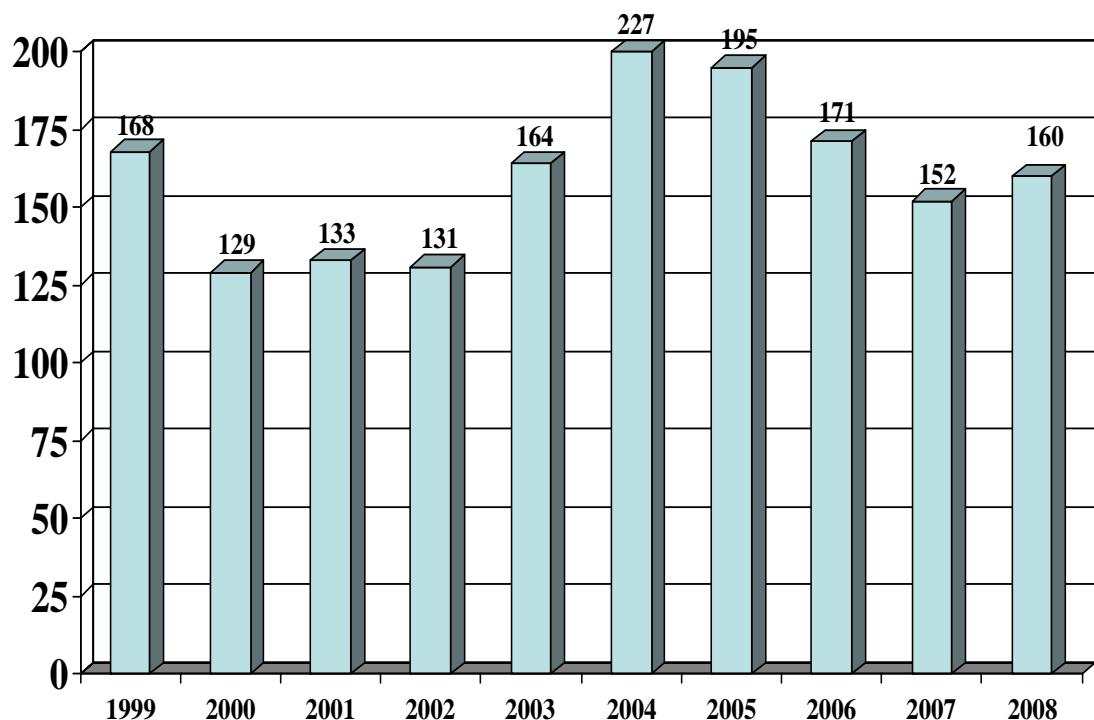
Oral Arguments Per Year



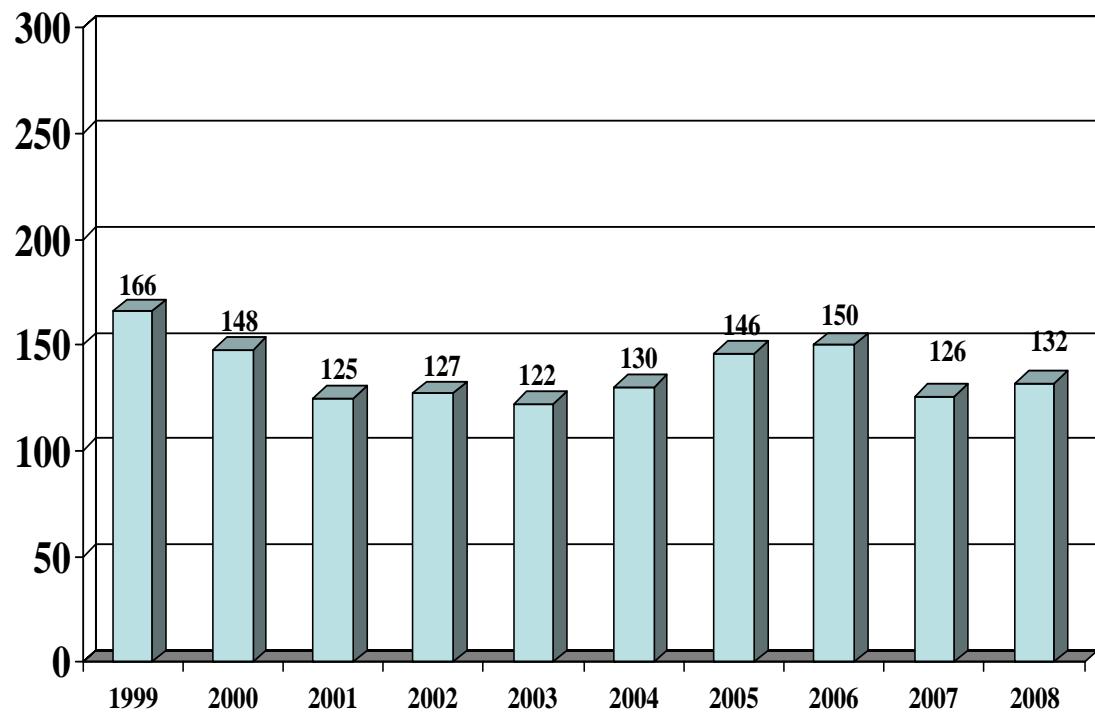
Total Opinions Per Year



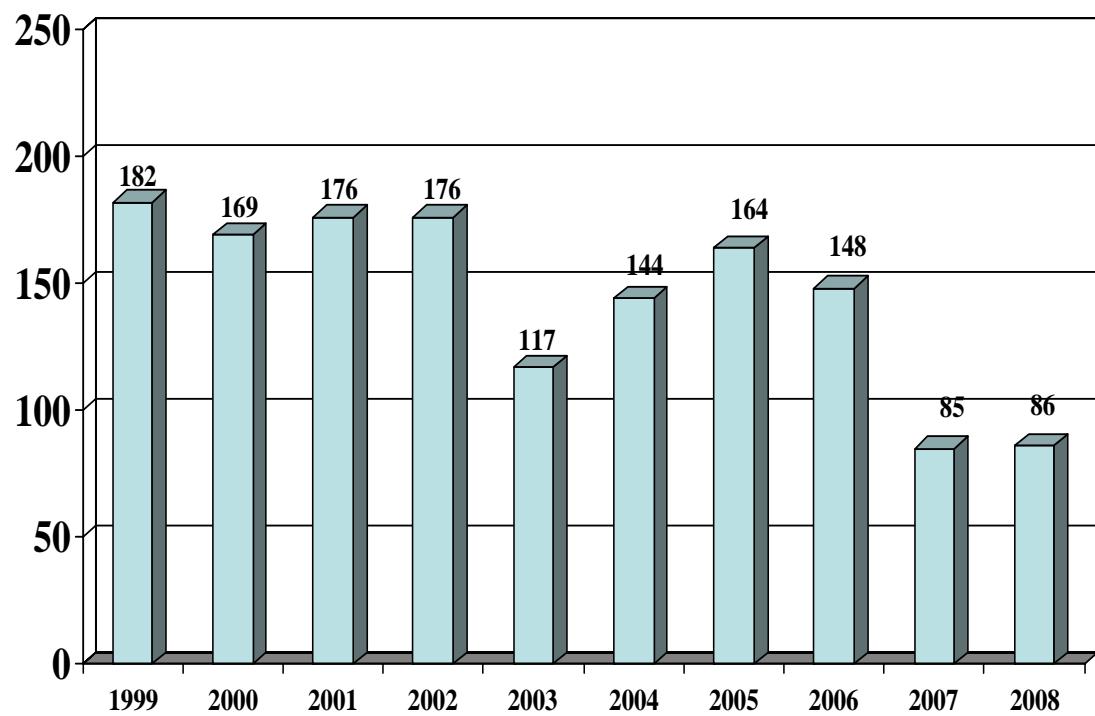
Days from Petition Filing to Grant



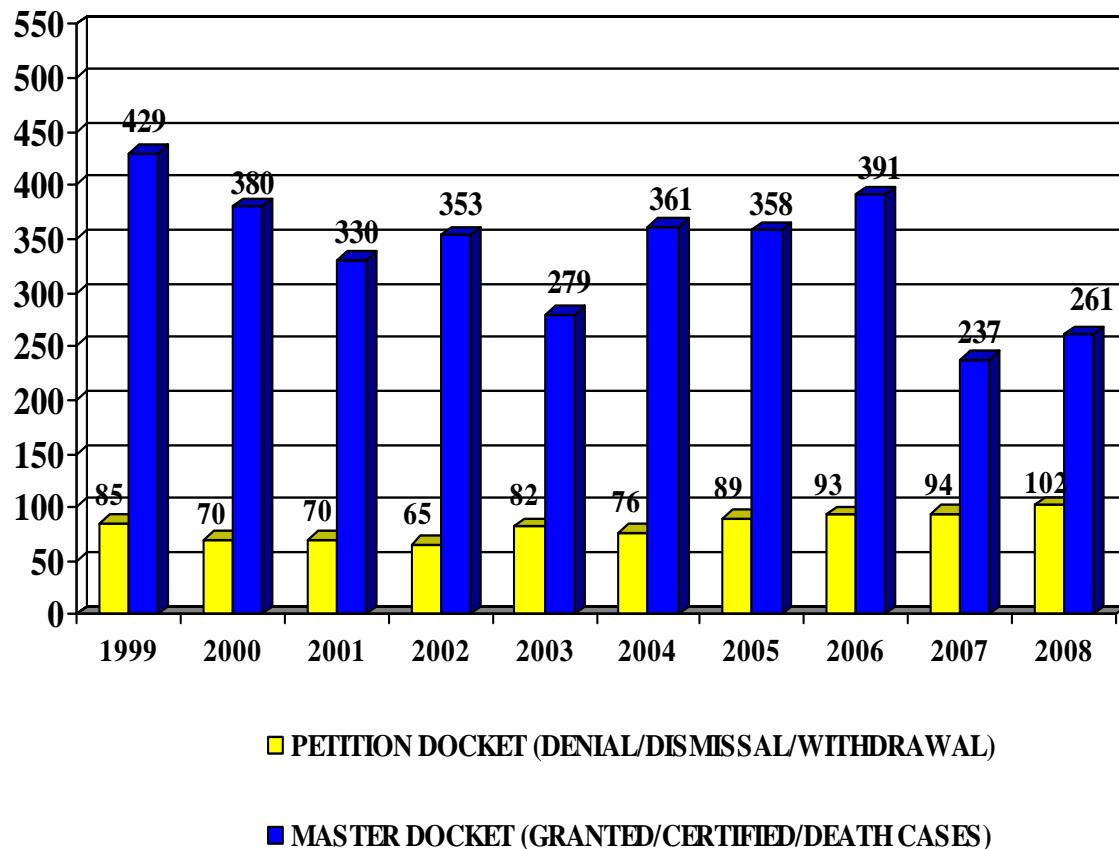
Days from Petition Grant to Oral Argument



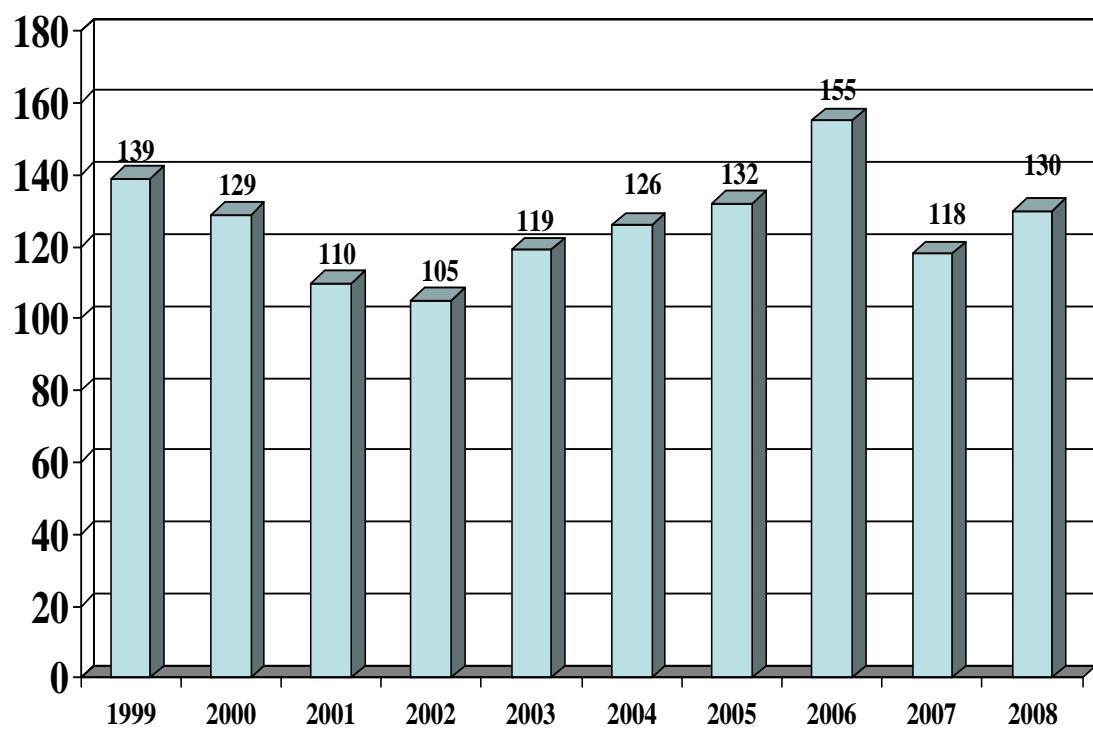
Days from Oral Argument to Final Decision



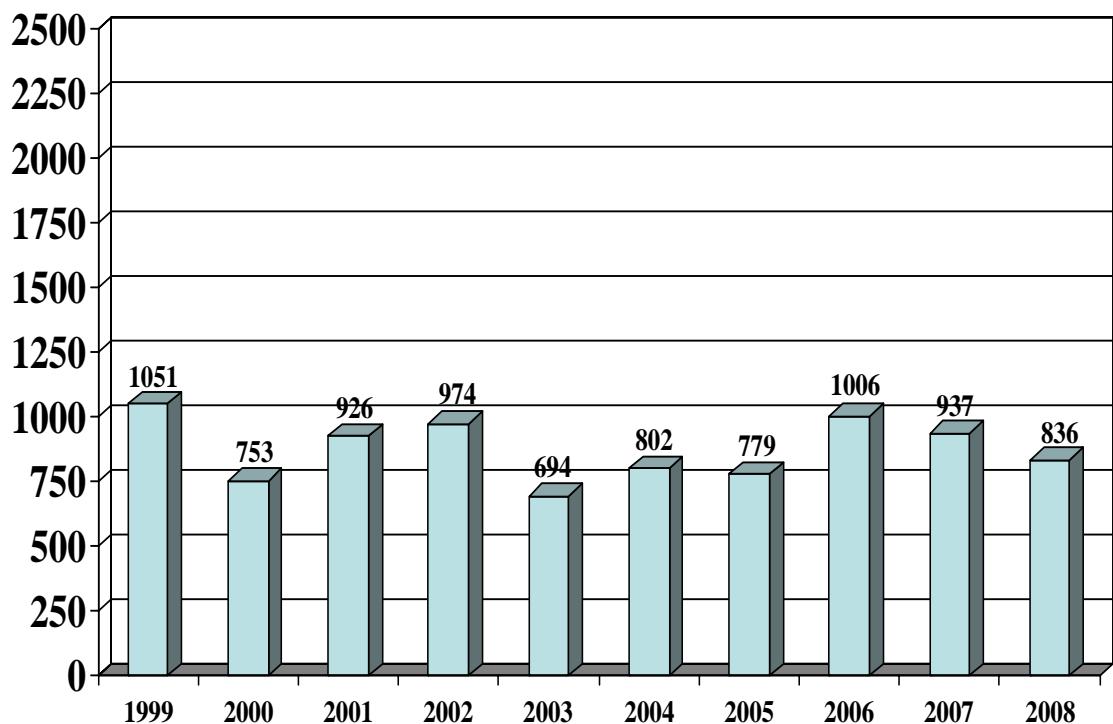
Days from Petition Filing to Final Decision



Days from Filing to Final Decision in All Cases



Total Petitions Filed Per Year



SECTION 3

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

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY
OCTOBER 1, 2007, TO SEPTEMBER 30, 2008

During fiscal year 2008 (FY 08), and in compliance with Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General and senior members of his staff visited 29 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 policy changes made in 2006 affecting the education of newly commissioned Judge Advocates were fully implemented as of 1 October 2008. All Judge Advocates of all components now attend the Officer Basic Course (OBC) in residence in Charlottesville, Virginia. Additionally, as of 1 October 2008, all Judge Advocates (with the exception of Funded Legal Education Program officers), including USAR and National Guard officers attend the four-week Direct Commissioned Officer's Course (DCO) and the six-week, branch immaterial, Basic Officer Leadership Course (BOLC) immediately following their course in Charlottesville. This additional 10 weeks of training and education affords all newly commissioned Judge Advocates the opportunity to receive leadership and Soldier Skills training that instills the Warrior Ethos. The Chief of the Personnel, Plans, and Training Office (PP&TO) at the Office of The Judge Advocate General (OTJAG) may waive attendance at these courses in limited circumstances.

Newly commissioned officers now also complete the Judge Advocate Tactical Staff Officer Course (JATSOC) within their first two years of service. This is a 20-hour online, self-paced course designed to introduce new Judge Advocates to key staff skills and processes that they need to succeed as a member of a staff - particularly in a deployed environment. All officers are enrolled in this course when they depart Charlottesville and must complete the course within two years of their arrival at their first duty station.

CRIMINAL LAW DEPARTMENT, TJAGLCS

The cornerstone mission of the Criminal Law Department of The Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia is to develop, improve, and sustain excellence in the practice of military criminal law. Military justice skills are critical in our joint and expeditionary force. Accordingly, 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 the global war on terrorism.

Advocacy training continues to be the Criminal Law Department's top priority. Approximately one-third of the criminal law instruction provided to each Basic Course student consists of small group trial advocacy training. This advocacy-heavy approach reflects the continuing evolution of a 2005 decision to shift the content of the Basic Course criminal law training towards advocacy. All criminal law instruction now revolves around "The Anatomy of a Court-Martial" exercise. The exercise consists of a fact scenario based on an actual criminal case which is used to walk 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. In addition to plenary criminal law instruction, each Basic Course student completes a series of twelve clinical events tied to the fact pattern over the course of seventeen days of instruction. This instruction also includes completing 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 Prevention and Response Program, including changes to victim-witness initiatives. The Criminal Law Department continues honing this curriculum to ensure relevant, operationally focused training. Most notably, the Criminal Law Department increased the amount of advocacy instruction provided, and incorporated reference to the new Article 120 rape statute (effective 1 October 2007) into 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 sixty-two students of the 14th 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 left with a number of resources on CD-Rom for use in the field, including samples of case tracking systems and *The Advocacy Trainer*, to assist them in organizing their caseload and to assist with providing continuing advocacy training at their home installations. Guest speakers included the Chief Trial Judge of the Army, representatives from the Defense Counsel Assistance Program, 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 29th and 30th Criminal Law Advocacy Courses in addition to advanced advocacy training electives for the Graduate Course. The two-week Criminal Law Advocacy Courses (CLAC) afforded more than 100 trial advocates more individualized and specialized trial advocacy training. For each course, the students performed rigorous small-group practical exercises on essential litigation skills from opening statement through closing argument. Reserve component officers from around the country assisted the Department with both the 29th and 30th 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 Drilling IMA program; many officers

were able to return for the basic course advocacy training exercises as well, and to assist with continual updating of Department publications for the field.

In addition to the Military Justice Managers Course and the Criminal Law Advocacy Courses, the Criminal Law Department hosted a variety of continuing legal education courses, including the 51st Military Judge Course. The Course is a joint effort by all the services, including the Coast Guard, to provide preparatory and refresher trainer for the newest members of the trial judiciary. The Department also managed the 32nd 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 Reserve Component 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. Two of the Department's professors also provided instruction to the 2008 Marine Corps Staff Judge Advocate's conference at Peterson Air Force Base in Colorado.

In March of 2008, TJAGLCS hosted an ACCA oral argument in the case of United States v. Hearn to allow OBC students to observe an actual appellate oral argument. BG Butch Tate, Chief Judge of the U.S. Army Court of Criminal Appeals, presided on a panel of three judges and then responded to procedural questions from the students after the oral argument.

Finally, the Criminal Law Department was extremely pleased to host a distinguished speaker last spring. Brigadier General Patrick Finnegan, Dean of the Academic Board, United States Military Academy presented the 36th Hodson Lecture on Criminal Law. BG Finnegan delivered an engaging presentation discussing the history and future of the Uniform Code of Military Justice.

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 worldwide. The Army formally assumed the task of

training all Air Force court reporters in April 2006. In January 2006, the Army also adopted the new speech recognition technology method of transcript production known as "redictation" and also purchased the digital recording equipment, For The Record (FTR) Gold, at the beginning of FY07 for all Army courtrooms and court reporters worldwide. With end of the year funding for FY08, the Army has purchased upgrades for the originally purchased FTR Gold systems to include upgrades for LogNotes, a digital note taking system that links digital audio with notes utilizing timestamp synchronization.

The relationship with the TJAGLCS Court Reporter Training Department and the Senior Court Reporter Manager of the Air Force continues to foster a joint

training environment at The Judge Advocate General's Legal Center and School. Continued use of FTR Gold and LogNotes by both the Army and Air Force allows for joint court reporter support in deployed and garrison environments. During FY08, the United States Marine Corps officially cancelled their stenographic machine typist training program and adopted the same process as the Army and Air Force for production of court-martial transcripts, except for the use of the LogNotes. Continuing efforts are being made to develop joint training authorizations with the USMC Court Reporters. These efforts include a proposal for changes in USMC training policy that could lead to creation of a single joint institution for DoD level training of all court reporters.

Since the introduction of the new speech recognition methodology and digital recording equipment, the Army has trained³⁴ Army and 18 DA civilian legacy court reporters in a two-week course designed to retrain legacy court reporters in the rediction method. Additionally, the Department has also trained a total of 28 Air Force civilian reporters and 2 Air Force Enlisted Court Reporters (ECRs) in the rediction method via the same two-week course.

During the FY08 training sessions, TJAGLCS trained a total of 27 new court reporters; including 16 active duty Army, 3 active duty Air Force, 4 Army Reserve, 3 Army National Guard, and 1 Air Force Civilian reporter. The total new court reporters trained since the inception of the rediction program in January 2006 stands at 60, including one DA civilian, two AF civilian, nine Army Reserve Component, six National Guard, and five ECRs.

Students in the two-week rediction course and the nine-week court reporter course are trained in realistic training situations and environments. Both courses include training on actual courtroom audio from courts-martial cases tried around the world. This practice, in turn, assists field offices by transcribing actual pending records of trial and thereby decreasing their caseloads. Additionally, students in the nine-week course also receive realistic joint training by participating in courtroom exercises built into the Criminal Law Advocacy Course, the Military Judge's course, and the Officer Basic Course. These realistic training opportunities have proven to be advantageous to all parties involved and translate into real word mission accomplishment.

Finally, a revised draft of AR 27-10, Chapter 26, 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, participating as members of the Joint Service Committee on Military Justice

(JSC), 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.

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

| | FY 06 | FY 07 | FY08 |
|------------------------------------|-------|-------|------|
| White House inquiries | 20 | 3 | 13 |
| Congressional and other inquiries | 130 | 109 | 132 |
| Clemency petitions (Article 74, | 0 | 2 | 6 |
| Officer Dismissals | 28 | 38 | 31 |
| Article 69 and other reviews | 115 | 106 | 131 |
| Freedom of Information Act/Privacy | 15 | 19 | 18 |

In FY 2008, The Judge Advocate General implemented several initiatives intended to ensure long-term institutional excellence in the practice of criminal law in the Army JAG Corps. He first directed rating scheme and duty position refinements at Brigade Combat Teams and Offices of the Staff Judge Advocate to maintain and improve supervision and provision of trial counsel services to commanders. Second, he initiated the skill identifier program offering Judge Advocates the opportunity to achieve 4 graduated levels of professional recognition, from Basic to Master Military Justice Practitioner, based on their level of skill and experience as practicing military criminal lawyers. Finally, as a result of the Army' new Sexual Assault Prevention and Response Program initiated in September 2008, The Judge Advocate General ultimately recommended, and the Secretary of the Army approved, the addition of 20 Judge Advocates to fill 5 Trial Counsel Assistance Program positions and 15 new Special Victim Prosecutor positions to be filled in FY 2009. As part of the same initiative, the Secretary of the Army also approved the hiring of 7 Highly Qualified Experts as support for the Army JAG Corps' effort to better address the prosecution and defense of sexual assault offenses. These initiatives were complemented by the publication of several practice aids, and the development of additional training regimens intended to provide comprehensive training and education on criminal law for all Judge Advocates throughout their respective careers.

Through the JSC, the Army endorsed several proposals for changes to the UCMJ and the MCM that were approved by the JSC and included: proposed amendment to Article 47 providing the use of subpoenas duces tecum prior to referral by trial counsel and investigating officers under Article 32; reconciliation of several provisions of the Rules for Courts-Martial with the new Article 2(a)(10) that extended jurisdiction over persons accompanying the force during contingency operations; and, provision of a definition of "military property" to resolve ambiguities in the definition and prosecution of such property offenses under the UCMJ.

In conjunction with the OTJAG Information Technology Division, the Criminal Law Division debuted Military Justice Online, a comprehensive web-based case management system for military justice offices within the Army. The system allows

for standardization of practice among all legal offices and the capability for centralized retrieval of information and Army-wide statistical analysis of this information.

In furtherance of an initiative begun in FY 06, the Criminal Law Division secured final approval for an Army Standard Courtroom Design, including a standard technology plan. The design is based on the Courtroom and Support Space Design and Appearance Guide for Staff Judge Advocates (SJAs) and provides parameters to build new judicial centers or renovate existing 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. 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 900 records of trial and over 1,900 motions and briefs were referred to one of the three judicial panels of ACCA for appellate review. The Office of the Clerk of Court served ACCA decisions upon all personnel not in confinement and closed over 1,500 Courts-Martial cases during the past year.

ACCA maintains a website at <https://www.jagcnet.army.mil/acca>. ACCA published opinions and unpublished memorandum opinions can be downloaded at the website. Applications for admission to the bar for ACCA, rules of the court, 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 accused. Because the Brady Bill requires the processing of handgun applications within three workdays, many expedited requests are received from the Federal Bureau of Investigation's National Instant Background Check System. Also, state sexual offender registries submit many requests.

| | FY06 | FY07 | FY08 |
|---------------------------------|------|------|------|
| Freedom of Information Act | 255 | 227 | 212 |
| Privacy Act | 96 | 74 | 88 |
| Certified Copies of Convictions | 199 | 329 | 272 |
| Total Number of Requests | 550 | 630 | 572 |

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

The nearly 1200 courts-martial tried in FY 2008 reflect a 10% decline from the same period a year ago. Army trial judges continue to preside over cases in deployed environments, with over 130 general and special courts-martial tried in Iraq, Kuwait and Afghanistan during this period, bringing to a total of over 650 since May 2003. Five trial judges were selected to preside as military judges for the Military Commissions convened in Guantanamo Bay, Cuba. The first court-martial of a civilian contractor accompanying an armed force during a time of declared war or contingency operation pursuant to the newly enacted Article 2(a)(10), UCMJ, was completed at Baghdad, Iraq. The accused pleaded guilty to wrongful appropriation, obstructing justice, and making a false official statement and was sentenced to 5 months confinement. The Judge Advocate General approved a new Code of Judicial Conduct for Army Trial and Appellate Judges, patterned after the 2007 ABA Model Code of Judicial Conduct. The Military Judges Benchbook Committee drafted new pattern instructions for use by military justice practitioners from all services implementing Congressional legislation enacting new substantive crimes under Articles 119a and 120, UCMJ. The Army Trial Judiciary homepage at www.jagcnet.army.mil/usatj added a link to allow members of the general public access to docket information on all Army courts-martial convened worldwide. The 150th Legal Services Organization (Trial Judiciary) welcomed COL Robert Smith as its new Commander and Chief Reserve Trial Judge. The 51st Military Judge Course graduated 41 Army, Navy, Marine Corps, Air Force and Coast Guard students and invested them as new military judges, to include the first female African-American military judge in the U.S. Army, LTC Kirsten Brunson, and the first Article III judge certified as a reserve military judge, Judge Frank Whitney of the United States District Court for the Western District of North Carolina. Military Judges continued playing an active role in their military and civilian communities, speaking to grade and high school audiences, local bar associations and civic organizations and state bar continuing legal education courses.

TRIAL DEFENSE SERVICE

The U.S. Army Trial Defense Service (USATDS) has approximately 137 active duty and 229 reserve attorneys. USATDS provides high quality, professional defense services to Soldiers throughout the Army from 57 active duty installations worldwide and 51 reserve locations.

USATDS detailed one or more counsel to every Army special and general court-martial referred in FY 08, defending soldiers facing the entire range of allegations under the Uniform Code of Military Justice. USATDS counsel carry a

large workload, assisting Soldiers in a myriad of other military justice related actions. The numbers for FY 08 are as follows:

Courts-Martial - 1,272
Administrative Boards - 461
Nonjudicial Punishment - 41,227
Consultations - 34,620

USATDS provided defense services to deployed forces around the world, including Iraq, Kuwait, Kosovo, and Afghanistan. USATDS CENTCOM AOR region was established in July 2003, mainly encompassing Iraq, Afghanistan, and Kuwait. USATDS Offices in Iraq are located in Camp Speicher (Tikrit), Joint Base Balad, Camp Liberty (Baghdad), Camp Victory (Baghdad), and Taji. There is also a USATDS Office at Camp Arifjan, Kuwait and one at Bagram, Afghanistan. Currently, USATDS has 1 Regional Defense Counsel, 17 Trial Defense Counsel, and 6 paralegals deployed throughout CENTCOM AOR. Defense counsel in Kuwait also provide legal support to Soldiers throughout the region, to include Qatar, Saudi Arabia, Djibouti and Egypt.

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 three Judge Advocates (a chief and two training officers), supports TDS counsel and their defense teams worldwide. DCAP's main focus is to provide training, resources, and assistance for the defense of Soldiers in the reserve and active components, and the National Guard. 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, conducting training locally, regionally and in theater on a regular basis.

In its continued effort to share the experiences and expertise of TDS attorneys, DCAP issued approximately 40 editions of "DCAP Sends" this year. DCAP is developing DC 101, a training class for new counsel certification which will premier in FY 2009. Additionally, DCAP functions as the lead division for the Chief, TDS, on the development of future U.S. Army policies as they impact TDS. It also provides 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 also provides assistance, as requested, to defense counsel in our sister services. DCAP is one more effort by the Judge Advocate General's Corps to provide the best legal representation possible to every Soldier.

Active duty TDS counsel continue to foster a close working relationship with reserve defense counsel assigned to the 154th and the 22d Trial Defense Service Legal Support Organizations (TDS LSOs). The 154th TDS LSO, consisting of 153 commissioned officers, 2 warrant officers, and 24 enlisted paralegals, provides defense services to Soldiers assigned to units in the Eastern half of the United States, Minnesota, Puerto Rico, and Europe. The 22d TDS LSO, consisting of 76 commissioned officers, 3 warrant officers, and 41 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 reserve TDS personnel and have conducted highly successful joint training conferences. The Chief, USATDS, exercises technical supervision over the reserve TDS LSOs. He is responsible for providing defense counsel services oversight for the units' training and readiness. Reserve support to active duty TDS offices continues to be outstanding, with reserve officers providing critical support at many active component installations in addition to locations such as Fort Snelling, Minnesota; Boston, Massachusetts; Fort Dix, New Jersey; and Mobile, Alabama. Reserve Judge Advocates have also deployed overseas to Germany as backfills for active duty forward deployed defense counsel. Several reserve defense counsel have served in Iraq, Afghanistan, and Kosovo. Additionally, reserve paralegals have held the front in paralegal support down-range. During any given month, TDS has anywhere from 30 to 40 reserve counsel and paralegals mobilized throughout the Army.

Headquarters, (HQ) USATDS continues to encourage Active Army (AA) and RC awareness of the new National Guard (NG) TDS initiatives and NG TDS integration with USATDS. The NG TDS office should be operational in 2009 since the new chief, COL Gary S. Owens, has been selected. The two TDS LSO commanders have built relationships with NG Trial Defense Teams (TDTs) and RDC Regional Trial Defense Teams (RTDTs) as the teams stand up. Moving forward, we plan to have TDTs and RTDTs conduct as much AT as possible with an AC TDS office to maximize training opportunities. Furthermore, we anticipate a move to 6 CONUS based TDS LSOs, which we intend to geographically align with our 6 AA CONUS based TDS regions. HQ, USATDS continues to coordinate with the Information Technology Division to arrange for NG TDS attorney access to the HQ, USATDS web page and databases as well as the DCAP web page and databases. Finally, DCAP conducted several training courses with the Air Force, Navy and Marine Corps trial defense offices.

USATDS will continue to provide comprehensive experiences to our counsel and the best defense available to our military clients.

GOVERNMENT APPELLATE DIVISION

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

In FY 08, GAD consisted of the Chief, the Deputy Chief, three branch chiefs, eight appellate attorneys, and three civilian paralegals. Additionally, during the year, seven Army Reserve Component Soldiers were activated to assist with brief writing, oral arguments, and other duties.

During the last fiscal year GAD filed 1,067 briefs with ACCA, 19 briefs with CAAF, and 461 petition responses with CAAF. GAD also presented oral argument in 25 cases before ACCA and 14 cases before CAAF. One of the oral arguments before ACCA was an Outreach Argument at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Two of the oral arguments before CAAF were

Outreach Arguments presented at the University of Montana Law School in Missoula and at Malmstrom Air Force Base in Great Falls, Montana.

The dramatic increase in the number of writs and government appeals noted in FY 07 continued in FY 08. This year, GAD worked on 15 writs and government appeals during the fiscal year. Historically, prior to FY 07, these options were rarely pursued.

GAD attorneys also assisted the Trial Counsel Assistance Program (TCAP) with several death penalty/high visibility cases to include *United States v. Martinez*, *United States v. Kreutzer*, *United States v. Hennis*, *United States v. Watada*, *United States v. Davila*, *United States v. Ali*, and *Loving v. United States*.

Trial Counsel Assistance Program (TCAP)

TCAP continued its mission of providing information, advice, training, and assistance to trial counsel worldwide. Serving in its role 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. TCAP also serves as the prosecutor's appellate advocate for extraordinary writs and government appeals on issues arising before final disposition.

TCAP's team of five officers and one civilian assistant continued to provide five basic categories of services: (1) telephone/e-mail/website assistance; (2) advocacy training courses and similar training events; (3) dissemination of information/newsletter and resource materials; (4) trial assistance; and (5) appellate assistance on extraordinary writs and government appeals. In providing these services, TCAP accomplished the following in FY 08: (1) responded to an average of more than 250 telephonic and e-mail requests for assistance per month; (2) updated, expanded and launched a new and more user friendly TCAP website which has been accessed 30,736 times since inception; (3) conducted five regional advocacy training conferences for over 125 trial counsel, 10% of whom were from other services; (4) conducted six prosecution based training courses for new Judge Advocates (TC 101) which trained over 100 Judge Advocates; (5) conducted three "Introduction to Forensic Evidence" courses at the U.S. Army Criminal Investigations Laboratory (USACIL) at Fort Gillem, Georgia, which trained over 40 Judge Advocates; (6) conducted five prosecution based training courses for deploying and back-filling Judge Advocates (Deployed Justice) which trained over 75 Judge Advocates and paralegals; (7) conducted two prosecution based training conferences in cooperation with the National Center for Missing and Exploited Children (Protecting Children From On Line Crime) which trained 24 Judge Advocates; (8) served as instructors at various American Prosecutors Research Institute (APRI) courses which enhanced the reputation of the Judge Advocate General's Corps among the target audience of district attorneys throughout the country; (9) served as instructor for the International Association of Prosecutors (IAP) conference on "New Technologies in Crime and Prosecution" in Singapore; (10) published monthly newsletters containing updates on legal decisions and practical tips for trial counsel; (11) updated and distributed the "TCAP Resource Disk" to Judge Advocates which contains thousands of sample documents, templates, and legal briefs related to all aspects of trial preparation and prosecution, to include numerous resource materials regarding national security cases, classified information cases, and capital murder cases;

(12) provided a trial counsel advisor for the Criminal Law Advocacy Course (CLAC) at Charlottesville, Virginia to assist 25 Judge Advocate students in the preparation of their moot court exercise; (13) actively assisted in the prosecution of high-profile cases in *United States v. Martinez*, *United States v. Kruetzer*, *United States v. Hennis*, *United States v. Davila*, *United States v. Watada*, *United States v. Gray*, *United States v. Newell*, *United States v. Clayborn*, *United States v. Shore*, *United States v. Corrales*, and *United States v. Ali*, as well as provided a wide range of advice and support to trial counsel on dozens of active cases worldwide; and (14) represented the United States in numerous extraordinary writs and interlocutory appeals before ACCA and CAAF.

During FY 08, TCAP also continued to be actively engaged with and provided services to the Army Reserve Component (RC) and the National Guard, our sister services, and our civilian counterparts. Approximately one-third of the requests for TCAP assistance continue to come from RC trial counsel in the Army and our sister services. Recognizing the RC's need for quality assistance relating to military criminal justice matters, TCAP has included the RC in all of TCAP's training opportunities. TCAP attorneys regularly provide training and advice to Judge Advocates at RC on-site conferences being conducted by Legal Support Organizations (LSO). Most recently, TCAP provided instruction to 35 Army RC Judge Advocates attending an on-site training conference for the 4th LSO located in New York City, New York. To further ensure and strengthen the support being provided to the RC, TCAP has created and formalized a RC support cell within TCAP which is comprised of RC Judge Advocates from the 151st LSO as well as a Navy RC Judge Advocate.

To enhance the quality of legal work across the military services, TCAP has invited Judge Advocates from the Navy, Air Force and Marine Corps to attend TCAP conferences, and TCAP has partnered with the Naval Justice School to provide instructors for the Navy's Complex Crime Course held at the NJS in Newport, Rhode Island. TCAP has also continued to solidify its relationship with its civilian counterparts in the National District Attorneys Association (NDAA) and the American Prosecutors Research Institute by providing instructors for their courses such as the APRI conference for the "Prevention of Sexual Violence Against Women." In turn, these organizations have provided TCAP with experienced prosecutors to serve as instructors at TCAP conferences. Due to this strong working relationship with NDAA and APRI, TCAP has also been provided access to the advice and counsel of district attorneys from all over the country and TCAP has, in turn, been able to relay this wealth of knowledge and experience to military prosecutors in the field.

DEFENSE APPELLATE DIVISION

The Defense Appellate Division (DAD) 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 where 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.

Of note, in U.S. v. Balboa, DAD assisted the defense by filing an extraordinary writ challenging the constitutionality of Article 120 relating to sexual assault of an impaired victim. DAD argued that the statute's double burden shifting scheme violates the Constitution, as does the statute's definition of consent which states that the element of "substantial incapacitation" can never equate to consent, thereby creating a mandatory presumption against the affirmative defense of consent and requiring the defense to disprove an element of the offense. DAD also argued that the Trial Judiciary is exceeding its lawful authority in its current practice of ignoring the new statute and applying the definitions and defenses from the older, superseded version of Article 120. In U.S. v. Mr. Muhammad Alaa Ali, DAD filed an extraordinary writ on behalf of Mr. Ali, a Canadian-Iraqi tried at court-martial under the new Art. 2, U.C.M.J., 10 U.S.C. Sec. 802(a)(10). On Mr. Ali's behalf DAD argued the amendment to the UCMJ was unconstitutional as it violated Article I and Mr. Ali's due process rights as a civilian and specifically requested appellate review of the case. The writ was denied by both the Army Court and the Court of Appeals for the Armed Forces.

During FY 08, the Division received 900 new cases. Appellate defense attorneys filed briefs in 1,032 cases before the ACCA, 464 supplements to petitions for review with the CAAF, 13 final briefs with the CAAF, and three petitions for certiorari with the Supreme Court of the United States. Appellate defense counsel also filed 220 miscellaneous pleadings before the ACCA and 153 miscellaneous pleadings before the CAAF. Appellate defense counsel orally argued 18 cases before the ACCA and 16 cases before the CAAF.

Appellate defenders continue fighting for Soldier rights which shape our military practice. Army appellate defense arguments in cases like U.S. v. Lopez de Victoria (holding that a newly extended statute of limitations can't resurrect an offense barred by the previous statute of limitations), U.S. v. Barrett (holding that AR 27-10 may not disqualify panel members on the basis of their military occupation), and U.S. v. Medina (holding that the Punitive General Article 134(a) and (b) are not per se lesser included offenses of Article 134(c)) continue to shape the practice of military justice for all of the services.

FOREIGN CRIMINAL JURISDICTION

As the Department of Defense 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 2005 to 30 Nov 2006 | | 1 Dec 2006 to 30 Nov 2007 |
|---------------------------------|------|---------------------------------|
| Foreign Offense Citations | 3,68 | 3,531 |
| Total Civilian | 808 | 880 |
| Total Military | 2,87 | 2,651 |

| | | |
|-------------------------|------|-------|
| Exclusive Foreign | 94 | 74 |
| Concurrent Jurisdiction | 2,78 | 2,577 |
| Traffic Offenses | 226 | 167 |
| Foreign Jurisdiction | 384 | 351 |

During this reporting period, foreign authorities released to U.S. authorities 10 of the 74 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 2,290 of the 2,651 cases. Overall, the U.S. obtained waivers in 88.9% of all exclusive and concurrent jurisdiction cases. This figure reflects an increase of 1.2% in obtaining waivers compared to the previous reporting period.

During the last reporting period, civilian employees and dependents were involved in 808 offenses. Foreign authorities released 98 of these cases (8.2% 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 880 offenses. The foreign authorities released 50 of these cases (5.7% of the current total of this reporting period). This figure represents a decrease of 2.5% in obtaining releases of foreign criminal jurisdiction over civilian employees and dependents. During this reporting period, foreign authorities tried a total of 534 cases involving U.S. personnel. Eight trials, or 1.5%, resulted in acquittals. Those convicted were sentenced as follows: 14 cases resulted in executed confinement, 35 cases resulted in suspended confinement, and 477 cases (89.3% of the total trials) resulted in only fines or reprimands.

PROFESSIONAL RESPONSIBILITY

The Professional Responsibility Branch (PRB) manages TJAG's professional responsibility program, which is comprised of the following: (1) administratively reviewing for credibility alleged violations of the Army Rules of Professional Conduct for Lawyers and allegations of mismanagement by supervisors; (2) tasking supervisory attorneys to conduct field inquiries; (3) reviewing reports of inquiry; (4) advising the Deputy Judge Advocate General (DJAG) on appropriate disposition of cases; and (5) overseeing the operation of TJAG's Professional Responsibility Committee. PRB also manages information to: (1) track inquiries; (2) release information when warranted under the Freedom of Information Act and Privacy Act; and (3) maintain a professional responsibility website on JAGCNET.

The Professional Responsibility Branch (PRB) is responsible for ensuring complaints against attorneys are properly processed and that the supervisor or the Deputy Judge Advocate General takes appropriate action. The inquiry process involves two steps - a credibility determination and, when appropriate, a follow on preliminary screening inquiry. The credibility determination is the initial screening process whereby the supervisor assesses whether there is credible evidence of misconduct by the subordinate attorney. If the supervisory Judge Advocate determines the evidence is credible, PRB will transition the investigation to a preliminary screening inquiry to investigate the questioned

conduct to determine whether it violated the Army Rules of Professional Conduct for Lawyers.

LITIGATION

Civil lawsuits 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.

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 Army Court of Criminal Appeals (ACCA). The appeal alleged an absence of mental responsibility for the offenses because he was taking various prescribed medications at the time of the offenses. In a summary opinion, ACCA found no legal error. In May 2001, Mr. Armann appealed to the Court of Appeals for the Armed Forces (CAAF), this time 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 took 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 took an interlocutory appeal to the U.S. Court of Appeals for the Third Circuit. After oral argument, the Third Circuit reversed the district court's order for an evidentiary hearing on 28 November 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 1LT Watada's highly-publicized trial and over the objection of both parties, the military judge set aside the stipulation of fact. 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. On 21 October 2008, the district court entered an order barring the military court from re-trying 1LT Watada on the missing movement charge and two of the four specifications of conduct unbecoming an officer because it would violate 1LT Watada's Fifth Amendment right to be free from double jeopardy. In December 2008, the Army recommended that the Department of Justice appeal the decision. The US Attorney's Office for the Western District of Washington has recommended against appeal of the decision.

The Army is also defending against a court-martial collateral attack in *Ramsey v. Stansberry*. In 1995, 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. 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 19 December 2007, the U.S. Court of Appeals for the Fourth Circuit denied Mr. Ramsey's appeal of the district court ruling and, on 20 February 2008, the court denied Mr. Ramsey's petition for rehearing and rehearing en banc. Mr. Ramsey filed a mandamus petition in the U.S. District Court for the Eastern District of North Carolina, which the court denied on 23 September 2008 finding that this was the second time Mr. Ramsey had raised the same issue in district court. On 16 October 2008, Mr. Ramsey filed a notice of appeal. Mr. Ramsey's petition to proceed *in forma pauperis* was granted and he filed his brief with the court on 25 November 2008. Mr. Ramsey never served the government with either the notice of appeal or his informal brief and, as a consequence, the government has not responded. On 6 January 2009, Mr. Ramsey sent the U.S. Court of Appeals for the Fourth Circuit a letter asking about the status of his case. The Court responded the same day by informing Mr. Ramsey that it received his informal brief and is considering his appeal. (Under the circumstances it is customary for the government to respond only if directed by the Court to do so.)

The Army continues to defend against a challenge to court-martial jurisdiction in *Willenbring v. United States*. In 1992, Charles B. Willenbring was discharged from the 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 16 January 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 active to reserve status. Mr. Willenbring appealed the district court decision to the Fourth Circuit. Informal briefs were ordered and briefing completed in March 2007. The Fourth Circuit held oral argument on 5 December 2008.

The Army is defending a challenge under the Freedom of Information Act (FOIA) arising out of court-martial proceedings, *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 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. 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(1) 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.

PERSONNEL, PLANS, AND POLICIES

On 30 September 2008, the Army's end-strength was 655,378 Army Soldiers on active duty, including Active Guard and Reserve (AGR) and mobilized Soldiers, compared to 636,778 at the end of fiscal year 2007. The attorney strength of the Active Army (AA) Judge Advocate General's Corps at the end of FY 08 was 1,647 (including general officers). This total does not include 58 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 08 was 1970 and the attorney strength of the Army National Guard at the end of FY 08 was 574. The diverse composition of our AA attorney population included 120 African-Americans, 54 Hispanics, 77 Asians and Native Americans, and 427 women. The FY 08 AA end-

strength of 1647 compares with an end-strength of 1643 in FY07, 1,638 in FY06, 1,603 in FY 05, 1,547 in FY 04, 1,506 in FY 03, 1,474 in FY 02, 1,462 in FY 01, 1,427 in FY 00, 1,426 in FY 99, 1,499 in FY 98, 1,523 in FY 97, and 1,541 in FY 96. The grade distribution of the Corps' AA attorneys was 5 general officers, 122 colonels, 232 lieutenant colonels, 365 majors and 923 captains. An additional 90 warrant officers, 515 civilian attorneys, and 1,484 enlisted paralegals supported legal operations worldwide. As of the end of FY 08, over 610 Army JAG personnel (officer and enlisted, AA 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
Lieutenant General, USA
The Judge Advocate General

APPENDIX – U.S. ARMY MILITARY JUSTICE STATISTICS

Report Period: FISCAL YEAR 2008

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

| TYPE COURT | TRIED | CONVICTED | ACQUITTALS | RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT |
|--|-------|-----------|------------|--|
| GENERAL | 674 | 631 | 43 | -16.7% |
| BCD SPECIAL [A] | 484 | 469 | 16 | -22.6% |
| NON-BCD SPECIAL | 4 | 4 | 0 | -60.0% |
| SUMMARY | 1,252 | 1,153 | 99 | +2.4% |
| OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT | | | | -19.5% |

PART 2 - DISCHARGES APPROVED [B]

| | | |
|--|----------|--|
| GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals) | 94 (+22) | |
| NUMBER OF BAD-CONDUCT DISCHARGES | 410 | |
| SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES | 339 | |

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

| | | |
|---|-----|--|
| FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL | 532 | |
| FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL | 335 | |
| FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL | 228 | |

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

| | | | |
|--|-----|----------|--|
| TOTAL ON HAND BEGINNING OF PERIOD | | 99 [C] | |
| GENERAL COURTS-MARTIAL | [D] | | |
| BCD SPECIAL COURTS-MARTIAL | [D] | | |
| REFERRED FOR REVIEW | | 1133 [C] | |
| GENERAL COURTS-MARTIAL | | | |
| BCD SPECIAL COURTS-MARTIAL | | | |
| TOTAL CASES REVIEWED | | 1167 [E] | |
| GENERAL COURTS-MARTIAL | | | |
| BCD SPECIAL COURTS-MARTIAL | | | |
| TOTAL PENDING AT CLOSE OF PERIOD | | 65 [C] | |
| GENERAL COURTS-MARTIAL | | | |
| BCD SPECIAL COURTS-MARTIAL | | | |
| RATE OF INCREASE (+) / DECREASE (-) OVER NUMBER OF CASES | | -8.0% | |
| REVIEWED DURING LAST REPORTING PERIOD | | | |

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

| | | |
|------------|--------|--|
| NUMBER | 1067 | |
| PERCENTAGE | 92.94% | |

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

| | | |
|---|-----|---------|
| PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF of 1167 | 461 | 39.50% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | | +18.41% |
| PERCENTAGE OF TOTAL PETITIONS GRANTED 47 of 499 | | 9.42 % |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | | -6.08% |
| PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA | | 4.03% |
| RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | | +27.94% |

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

| | | |
|--------------------------------------|--|--|
| TOTAL PENDING BEGINNING OF PERIOD | | |
| RECEIVED | | |
| DISPOSED OF | | |
| GRANTED | | |
| DENIED | | |
| NO JURISDICTION | | |
| WITHDRAWN | | |
| TOTAL PENDING AT END OF PERIOD | | |

PART 8 – ORGANIZATION OF COURTS

| | | |
|---------------------------------------|-----|--|
| TRIALS BY MILITARY JUDGE ALONE | | |
| GENERAL COURTS-MARTIAL | 536 | |
| SPECIAL COURTS-MARTIAL | 444 | |
| TRIALS BY MILITARY JUDGE WITH MEMBERS | | |
| GENERAL COURTS-MARTIAL | 138 | |
| SPECIAL COURTS-MARTIAL | 44 | |

PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ

| | | |
|----------------------|----|--|
| NUMBER OF COMPLAINTS | 21 | |
|----------------------|----|--|

PART 10 – STRENGTH

AVERAGE ACTIVE DUTY STRENGTH 655378

PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

| | | |
|---|--------|--|
| NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED | 44390 | |
| RATE PER 1,000 | 67.73 | |
| RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD | -4.42% | |

EXPLANATORY NOTES

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

SECTION 4

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

OCTOBER 1, 2007 TO SEPTEMBER 30, 2008

**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, continued to serve as the Deputy Director. The Criminal Law Division was staffed with five active duty judge advocates, three civilian support personnel, and two reserve units. NAVJAG 113 conducted Article 69(a), Article 69(b), and Article 73 reviews and NAVJAG 108 provided research and Action Officer support.

Mission. Administers military justice policy within the Department of the Navy; drafts legal and policy advice for JAG on a wide variety of military justice matters; reviews all legislative and regulatory proposals affecting military justice; represents the Navy in regular meetings of the Joint Service Committee (JSC) on Military Justice, which is the principal vehicle for staffing amendments to the UCMJ and the Manual for Courts-Martial (MCM); staffs all amendments to Secretarial and JAG regulations implementing the UCMJ, including Chapter 1, Manual of the Judge Advocate General (JAGMAN); reviews all decisions of military appellate courts; staffs JAG certification of cases decided by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) for review by the Court of Appeals for the Armed Forces (CAAF); staffs requests for Secretarial designation as general and special court-martial convening authority and for Secretarial substitution of administrative discharge 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 2008 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 clarified what punishments could be imposed on civilians tried at courts-martial, modifications of the definition of military property to make clear that it does not include all government property, and amendments to Appendices 21 and 23 to explain changes to certain Rules for Courts-Martial and Punitive Articles.

During the past year, the Military Justice Division reviewed 39 records of trial under Article 69a, UCMJ and 10 records under Article 69b, UCMJ. No petitions under Article 73, UCMJ were reviewed.

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

Legal issues addressed included: when the use of a complete, duplicate copy of an authenticated record of trial is permissible; the reasonableness of the time given to a substitute expert on addiction medicine to prepare to testify in a capital case on the issue of voluntary intoxication related to the issue of specific intent with regard to robbery and premeditated murder; the right of an accused in a capital case to have independent testing of the physical evidence admitted at trial; whether a military judge's decision to quash a subpoena for all film associated with an interview of an accused by a national television network fell within the Court's jurisdiction to review under Article 62(a)(1)(B), UCMJ; and whether the Court has jurisdiction under Article 62, UCMJ, to review a military judge's mistrial declaration. Additionally the Court added a case digest to its public web site, to which the Court continues to post all of its published and authored opinions.

APPELLATE DEFENSE DIVISION (Code 45)

Organization. Captain Robert Taishoff, JAGC, USN, continued to serve as the Division Director and Lieutenant Colonel Richard Posey, USMC, as the Deputy Director. The Appellate Defense Division was staffed with 14 active duty Navy and Marine Corps judge advocates and 4 civilian support personnel.

The Appellate Defense Division was supported by 31 Navy and Marine Corps Reserve judge advocates. The Division's supporting Navy 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 Navy Reserve Units are consolidating into the NAMARA 110 unit by the end of 2008. Captain Carol Lynch is the Commanding Officer of NAMARA 110. The Marine Corps Reserve contingent consisted of six independently assigned Reserve judge advocates.

Mission. The Appellate Defense Division represents Navy and Marine Corps appellants before the NMCCA, CAAF, and the U.S. Supreme Court. It also represents some appellants before the Navy Clemency & Parole Board. The Division provides assistance to trial defense counsel in the field by helping to file extraordinary writs before NMCCA and CAAF, 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 2008, a total of 1008 new cases were docketed at NMCCA and received in the Appellate Defense Division. The Appellate Defense Division filed 940 initial pleadings with 6 oral arguments at NMCCA. The initial pleadings include 230 briefs, 710 merit submissions, and 0 summary assignments. A total of 151 supplemental briefs to petitions were filed at CAAF, resulting in 27 full briefs and 32 oral arguments.

| NMCCA | FY 04 | FY 05 | FY 06 | FY 07 | FY 08 |
|--|-------|-------|-------|-------|-------|
| Briefs Filed | 520 | 543 | 471 | 415 | 230 |
| Total Cases Filed | 1966 | 2127 | 1610 | 1165 | 1008 |
| USCAAF | | | | | |
| Petitions with Supplemental Briefs Filed | 161 | 207 | 173 | 206 | 151 |
| Briefs Filed | 19 | 26 | 76 | 29 | 27 |
| U.S. Supreme Court Petitions | 1 | 2 | 9 | 6 | 6 |

Capital Litigation. All three Marine death penalty cases have been remanded to the convening authority or trial level courts.

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 3 civilian administrative employees. Colonel Louis J. Puleo, USMC, served as Division Director. Commander Paul C. LeBlanc, JAGC, USN, ended his tour as Deputy Division Director and was replaced by Mr. Brian K. Keller, former Marine judge advocate in the Division.

Reserve support continues to be critical to the accomplishment of Code 46's mission. Code 46 is currently supported by NAVJAG 116 (Minneapolis, Minnesota), after the disestablishment of NAVJAG 116 (Detroit, Michigan). Code 46 is also supported by 3 Marine Corps judge advocates as Individual Mobilization Augmentees. Reserve personnel contributed an average of 6 briefs per month.

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

This year's appellate activity is set forth in the following chart. The Case Management Tracking Information System (CMTIS) calculations for "Briefs Filed" include Government briefs, answers to supplements, and supplemental briefs. "Other Pleadings" include responses to extraordinary writs, motion responses, responses to Court Orders, and Petitions for Reconsideration. The number of NMCCA briefs filed by the Government has continued to decline to a new low of 232. As with last year, the complexity of issues and briefing has continued to rise. Moreover, not reflected in the chart below is the increasing stream of Article 62 appeals taken from trial court decisions; the number has risen from 0 in fiscal year 2006, to 8 in fiscal year 2007, to 11 in fiscal year 2008.

| | FY 03 | FY 04 | FY 05 | FY 06 | FY 07 | FY 08 |
|-----------------|-------|-------|-------|-------|-------|-------|
| NMCCA | | | | | | |
| Briefs Filed | 761 | 542 | 700 | 621 | 486 | 232 |
| Other Pleadings | 475 | 222 | 425 | 333 | 528 | 340 |
| Oral Arguments | 6 | 8 | 16 | 10 | 8 | 6 |
| CAAF | | | | | | |
| Briefs Filed | 12 | 22 | 38 | 86 | 45 | 37 |
| Other Pleadings | 152 | 73 | 128 | 115 | 158 | 146 |
| Oral Arguments | 7 | 21 | 23 | 31 | 21 | 32 |

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 two capital cases: *United States v. Walker* and *United States v. Parker*.

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

The Division worked closely in fiscal year 2008 with the Office of the DoD General Counsel as well as with the United States Solicitor General in preparing the Petition for Certiorari in *United States v. Denedo*, a case determining CAAF's jurisdiction to grant post-finality relief. The Solicitor General elected to file the petition, incorporating revisions from the Division and OGC, on 28 August 2008. The Supreme Court granted certiorari to review this issue.

During fiscal year 2008, the Division's judge advocates participated in four oral arguments as part of United States Court of Appeals for the Armed Forces' legal outreach program to include those at Indiana University School of Law-Bloomington, Indiana, George Mason University School of Law, Arlington, Virginia, and The Catholic University School of Law, Washington, D.C.

NAVY-MARINE CORPS TRIAL JUDICIARY (CODE 05)

The Navy and Marine Corps have a unified trial judiciary entitled the Navy-Marine Corps Trial Judiciary (NMCTJ). Its core mission is to provide certified military judges for Navy and Marine Corps general and special courts-martial. The NMCTJ is organized into six judicial circuits world-wide and is supported by Naval Reserve and Marine Corps Reserve Individual Mobilization Augmentees. Formerly led by Chief Judge Steven F. Day, Colonel, USMC (from 1 Oct 07 to 20 Jun 08), Captain Bruce W. MacKenzie, JAGC, USN, was invested as the Chief Judge on 20 June 2008. Lieutenant Colonel Eugene H. Robinson, Jr., USMC, was appointed to serve as Deputy Chief Judge in July 2008.

The NMCTJ consists of 26 active duty and 18 reserve judges. During fiscal year 2008, the judges of NMCTJ presided over 269 general courts-martial and 984 special courts-martial. The 2008 courts-martial operational tempo is consistent with the declining trend over the past several years of fewer overall courts-martial throughout the naval service.

The NMCTJ provided comprehensive and timely judicial services to Fleet and Shore activities, and to Marine Forces in the United States and around the world, including forward deployed combat zones such as Iraq and Afghanistan. Several judges also deployed as individual augmentees in non-judicial billets. Judges presided over numerous high-profile cases such as the separate incidents at Haditha and Hamdaniyah, Iraq, both as Article 32 investigating officers and presiding judges in courts-martial proceedings. Several judges were designated and appointed as trial judges for Military Commissions at Guantanamo Bay, Cuba. Colonel R. H. Kohlmann, USMC, Circuit Military Judge of Eastern Judicial Circuit, was appointed as the Chief Judge of the Military Commissions. Judges also performed duties as environmental impact statement hearing officers for several proceedings throughout the United States conducted pursuant to the National Environmental Policy Act.

Most members of the trial judiciary participated in the annual Interservice Military Judges Seminar (IMJS). Hosted this year for the first time by the

NMCTJ, IMJS was held at the National Judicial College (NJC) in Reno, Nevada, and included courses on Advanced Evidence and Judicial Writing. NMCTJ judges also attended various other courses throughout the year at the NJC. Successful completion of NJC courses may lead to receipt of a professional certificate, or potentially, a master's or doctorate degree. Many NMCTJ judges have received the professional certificate in Judicial Development, General Jurisdiction Trial Skills from the NJC. Several NMCTJ judges serve as adjunct faculty members at NJC, most notably the Chief Judge.

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

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) is commanded by Rear Admiral James W. Houck who also serves as the Deputy Judge Advocate General of the Navy. NAVLEGSVCCOM includes 349 Judge Advocates, 1 Civil Engineer Corps Officer, 14 Limited Duty (Legal) Officers, 193 Legalmen, and 241 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 2008, NAVLEGSVCCOM provided counsel for 120 general courts-martial, 215 special courts-martial, 128 Article 32s, 433 administrative boards, provided 127,330 attorney legal assistance services, 138,345 customer services, and 125,371 command services for over 3,900 commands.

NAVAL JUSTICE SCHOOL

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

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

Mission. To oversee formal training of sea service 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; to train commanders and senior officers in the practical aspects of military law to enable them to perform their command and staff duties; and to train other personnel to assist in the sound administration of military justice.

In fiscal year 2008, NJS provided instruction to more than 25,975 students worldwide (including 3,553 in resident courses ranging in length from 3 days to 11 weeks). In addition to teaching at NJS courses, NJS instructors provided out-of-house teaching in military justice, administrative law, and operational law to other commands, including the Naval War College, Center for Naval Leadership, Officer Training Command, Senior Enlisted Academy, Surface Warfare Officers School Command, and the Defense Institute of International Legal Studies.

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

1. Basic Lawyer Course. 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 2008 graduates: 139.
2. 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 Basic Lawyer Course. 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 2008 graduates: 116.
3. Accession Legalman Course. This 11-week course, offered 3 times annually, trains Navy enlisted personnel selected for conversion to the Legalman rating. The course provides 10 ABA certified credits towards a paralegal degree or certificate in partnership with Roger Williams University. In addition to military specific training in military justice, court reporting, administrative investigations, and administrative separations, the course includes four college-level courses taught by NJS officer instructors: Ethics, Legal Research and Writing I, Introduction to Law, and Emerging Legal Technologies. Fiscal year 2008 graduates: 61.
4. Basic Legal Services Specialist Course. This 9 1/2-week course, offered 4 times annually, provides accession level training to junior enlisted Marines seeking the Military Occupational Specialty of Marine Corps Legal Services Specialist. Curriculum consists of training in military justice,

post trial review, and legal administration. Fiscal year 2008 graduates: 111.

5. Senior Officer Course in Military Justice and Civil Law. This 1-week course trains senior officers in the execution of the legal responsibilities of command with instruction in nonjudicial punishment, court-martial procedures, and administrative law. Fiscal year 2008 graduates: 638.

6. Legal Officer Course. This 3-week course prepares non-lawyer Legal Officers to perform a host of military law functions in commands not large enough to warrant assignment of a judge advocate. Fiscal year 2008 graduates: 453.

7. Legal Clerk Course. Legal Clerks are typically assigned to assist non-lawyer Legal Officers within a command as a collateral duty. This 2-week course provides training in the preparation of legal forms and reports, service record entries, nonjudicial punishment, and court-martial procedures. Fiscal year 2008 graduates: 298.

8. Senior Enlisted Leadership Course (SELC) in Military Justice and Civil Law. This 3-day course provides senior enlisted leaders of all services training in a wide range of military law topics 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 2008 graduates: 468.

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 2008, these resident courses reached 757 active duty and 512 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 publishes the Naval Law Review, study guides, materials in support of academic programs, reference manuals designed to assist sea service commanders with implementation of the UCMJ, and any additional materials directed by higher authority.

Deployments. In fiscal year 2008, nine NJS instructors deployed to Iraq in support of Task Force 134, Multi-National Force-Iraq, and I Marine Expeditionary Force.

MARINE CORPS ACTIVITIES

There are approximately 450 active-duty Marine judge advocates and 420 Reserve Marine judge advocates. Additionally, there are 18 Marine warrant officers, 462 legal specialists, and 48 speech-recognition court reporters. These personnel work in legal offices in support of the Fleet Marine Forces in the continental United States, overseas, and on deployment throughout the world. Additionally, the drilling Reserve judge advocate community provides substantial support to each office in all functional areas.

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

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

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

Other areas of practice include civil law, contract law, international law, claims, tort law, and labor law. In addition, because Marine judge advocates are unrestricted officers, many serve in non-legal billets. Marine judge advocates currently hold command billets in New Orleans, Hawaii, Parris Island, Iwakuni, Henderson Hall, Headquarters Marine Corps, Abu Dahbi and Frankfurt. Marine judge advocates also serve in numerous non-legal staff billets throughout the Marine Corps, to include recruiting duty, providing martial arts instruction, and serving as Naval attaché in Dakar, Senegal and Azerbaijan.

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

administrative boards, staff meetings, and any other similar bodies (hearings) in which typewritten, summarized, or verbatim transcripts are required. The legal administrative officers, legal services specialists, and court reporters are the administrative backbone of the Marine Corps legal community.

Stenography served the USMC well for many years, but in September 2007, Marine Corps court reporting transitioned to speech recognition. Training costs and the corresponding manpower costs have been dramatically cut by eliminating the 2 year training pipeline required by stenography school and replacing it with a brand new 10-week course at the Naval Justice School. The speech recognition technology has been validated and proven successful in Navy/Marine Corps courtrooms. The Marine Corps has merged the job classification for stenographer with our legal services specialist (4421) and have identified the court reporter trained Marines with an additional skill designator. This has permitted flexible employment and assignment of all transitioning court reporters and is expected to significantly improve the historically slow promotion rates for court reporters. Ultimately, the transition will create a more well-rounded Marine Corps legal services specialist community.

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

Once selected by the Marine Corps Recruiting Command, these personnel must undergo a lengthy, four-step process to become a Marine judge advocate. First, future judge advocates must attend Officer Candidate School (OCS) in Quantico, Virginia. This strenuous ten-week course is designated to test a candidate's leadership and physical abilities. Successful completion of OCS is required before receiving a commission as a Marine Corps second lieutenant. Second, upon completion of OCS and successfully passing the bar examination of any state, all Marine Corps officers attend The Basic School (TBS), also located in Quantico, Virginia. Marine Corps officers are unrestricted line officers and are regularly called upon to perform duties outside of the legal community. The Basic School is a demanding six-month program that provides each second 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, officers focus on legal assistance, criminal law and procedure, administrative law, and military trial advocacy. Finally, upon completion of the Basic Lawyer Course, each officer must successfully complete the Basic Operational Law Training (BOLT) course. The one week BOLT course consists of operational and international law training. Successful completion of OCS, TBS, the Basic Lawyer Course, and the BOLT course culminates in the officer being designated a Marine judge advocate.

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

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

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

The Law School Education Debt Subsidy (LSEDS) program went into effect during 2003 and has been approved for its sixth year. The average debt for new judge advocates is approximately \$80,100.00, with an average loan payment of \$500.00 per month. Captains who have completed their initial active duty obligation are eligible. The total authorized amount of LSEDS is \$30,000.00 to be paid in yearly installments of \$10,000.00. Officers accepting LSEDS incur an additional three-year commitment on active duty. The utilization of LSEDS assists the Marine Corps in retaining experienced judge advocates.

The majority of Marine judge advocates who 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, and Djibouti. In addition to the judge advocates who 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 (MNC-I), the Multinational Force-Iraq (MNF-I), Combined Security Transition Command Afghanistan, Combined Joint Task Force-Horn of Africa, the Central Criminal Court of Iraq, Criminal Investigation Task Force as well as Civil Affairs and Provincial Reconstruction Team (PRT) billets across Iraq. 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, 11% of the total Marine Corps judge advocate community, are deployed in support of the GWOT. During the last two years, judge advocates have deployed from the vast majority of Marine Corps installations, including Headquarters, U.S. Marine Corps.

Military Justice 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.

| Fiscal Year | End Strength | GCM | SPCM | SCM | Total Courts | NJP |
|-------------|--------------|-----|-------|-------|--------------|--------|
| FY 08 | 198,505 | 163 | 692 | 1,373 | 2,228 | 10,425 |
| FY 07 | 180,169 | 149 | 800 | 1,262 | 2,211 | 15,012 |
| FY 06 | 180,416 | 120 | 964 | 1,262 | 2,346 | 13,217 |
| FY 05 | 180,029 | 187 | 1,137 | 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 |

While the number of general courts-martial have remained consistent over the years, special courts-martial have decreased, while we have experienced a substantial increase in summary courts-martial.

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

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

Report Period: FY 2008

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

| TYPE COURT | TRIED | CONVICTED | ACQUITTALS | RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT |
|--|-------|-----------|------------|---|
| GENERAL | 269 | 236 | 33 | -9% |
| BCD SPECIAL | 984 | 898 | 86 | -6% |
| NON-BCD SPECIAL | 0 | 0 | 0 | 0% |
| SUMMARY | 1713 | 1672 | 41 | 14% |
| OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT | | | | 4% |

PART 2 – DISCHARGES APPROVED

| | | | |
|-------------------------------------|-----|--|--|
| GENERAL COURTS-MARTIAL (CA LEVEL) | | | |
| NUMBER OF DISHONORABLE DISCHARGES | 126 | | |
| NUMBER OF BAD-CONDUCT DISCHARGES | 108 | | |
| SPECIAL COURTS-MARTIAL (CA LEVEL) | | | |
| NUMBER OF BAD-CONDUCT DISCHARGES | 665 | | |

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

| | | |
|---|-----|--|
| FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL | 222 | |
| FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL | 630 | |
| FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL | 42 | |

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

| | | | |
|--|-----|------|--|
| TOTAL ON HAND BEGINNING OF PERIOD | | 338 | |
| GENERAL COURTS-MARTIAL | 148 | | |
| BCD SPECIAL COURTS-MARTIAL | 198 | | |
| REFERRED FOR REVIEW | | 947 | |
| GENERAL COURTS-MARTIAL | 268 | | |
| BCD SPECIAL COURTS-MARTIAL | 679 | | |
| TOTAL CASES REVIEWED | | 937 | |
| GENERAL COURTS-MARTIAL | 272 | | |
| BCD SPECIAL COURTS-MARTIAL | 665 | | |
| TOTAL PENDING AT CLOSE OF PERIOD | | 348 | |
| GENERAL COURTS-MARTIAL | 139 | | |
| BCD SPECIAL COURTS-MARTIAL | 209 | | |
| RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES | | -41% | |
| REVIEWED DURING LAST REPORTING PERIOD | | | |

PART 5 – APPELLATE COUNSEL REQUESTS BEFORE

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

| | | |
|------------|------|--|
| NUMBER | 937 | |
| 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 (146) | 16% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | 3% |
| PERCENTAGE OF TOTAL PETITIONS GRANTED (55) | 38% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | 3% |
| PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA | 6% |
| RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | -29% |

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

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

| | | |
|-----------------------------------|----|--|
| TOTAL PENDING BEGINNING OF PERIOD | 43 | |
| RECEIVED | 49 | |
| DISPOSED OF | 51 | |
| GRANTED | 0 | |
| DENIED | 47 | |
| NO JURISDICTION | 0 | |
| WITHDRAWN | 0 | |
| TOTAL PENDING AT END OF PERIOD | 41 | |

PART 8 – ORGANIZATION OF COURTS

| | | |
|---------------------------------------|-------|--|
| TRIALS BY MILITARY JUDGE ALONE | 1,086 | |
| GENERAL COURTS-MARTIAL | 191 | |
| SPECIAL COURTS-MARTIAL | 895 | |
| TRIALS BY MILITARY JUDGE WITH MEMBERS | 167 | |
| GENERAL COURTS-MARTIAL | 78 | |
| SPECIAL COURTS-MARTIAL | 89 | |

PART 9 – COMPLAINTS UNDER ARTICLE 138, UCM

| | | |
|----------------------|----|--|
| NUMBER OF COMPLAINTS | 62 | |
|----------------------|----|--|

PART 10 – STRENGTH

| | | |
|------------------------------|---------|--|
| AVERAGE ACTIVE DUTY STRENGTH | 530,733 | |
|------------------------------|---------|--|

PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

| | | |
|--|--------|--|
| NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED | 21,778 | |
| RATE PER 1,000 | 41 | |
| RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD | 27% | |

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, 2007 TO SEPTEMBER 30, 2008

THE AIR FORCE COURT OF CRIMINAL APPEALS

The Air Force Court of Criminal Appeals (AFCCA) reviewed 390 cases in Fiscal Year 2008, reducing the number of cases pending before it by over 80 cases. In 2008, the Court heard four oral arguments through "Project Outreach" at Michigan State University College of Law, University of Louisville Louis D. Brandeis School of Law, Syracuse University College of Law, and Lackland Air Force Base (AFB) in San Antonio, Texas. The Court is combining "Project Outreach" with Judge Advocate General (JAG) Corps recruiting goals by holding more oral arguments at civilian law schools and inviting local JAGs to assist with recruiting questions. In 2008, the Court became the first and only military Court of Criminal Appeals permitting the e-mail filing of pleadings by military appellate counsel, civilian appellate counsel, and the appellants. This process was designed and implemented at no additional financial cost and has resulted in resource conservation.

In 2008, the size of the Court was reduced from nine to seven active-duty judges. The Court welcomed three new Associate Judges after the retirement of one Senior Judge and one Associate Judge and the departure of two Senior Judges and one Associate Judge due to permanent changes of station. Two of the three Honors Clerks assigned to the Court deployed in 2008. One served as the Deputy Staff Judge Advocate to the Office of the Administrative Review of the Detention of Enemy Combatants and the second served with the Criminal Investigation Task Force - Iraq.

In addition to performing their statutory responsibilities, members of the Court used their judicial experience to assist the Air Force and Department of Defense (DOD) in areas beyond the Court itself. Four of the appellate military judges serve on 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 and also hears appeals or issues taken prior to and during trial. Those judges on the Court with trial level judicial experience provide back-up support for the trial judiciary. During 2008, appellate judges served as trial judges at Ramstein Air Base (AB), Germany, Patrick AFB, Florida, Shaw AFB, South Carolina, and Hurlburt Field, Florida. Members of the Court continued to conduct 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, one of our judges participated in the State Department's "Open World Program - Rule of Law." The judge educated Russian judges about our military justice system and the appeals process.

TRIAL JUDICIARY

The Air Force Trial Judiciary Directorate (JAT) is responsible for docketing all Air Force general and special courts-martial and presiding over an array of Federal hearings. The Directorate is staffed by 17 active-duty judges, nine reserve judges, three paralegals, and one civilian employee. 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 (COO) 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, McChord AFB, Washington, Offutt AFB, Nebraska, Randolph AFB, Texas, Eglin AFB, Florida, Charleston AFB, South Carolina, and Ramstein AB, Germany. Efforts are underway to move two more judge billets in summer 2009 to Sheppard AFB, Texas, and Colorado Springs, Colorado.

The Trial Judiciary has maintained a steady workflow throughout the year. In Fiscal Year 2008, Air Force trial judges presided over 563 general and special courts-martial Judges have also presided over numerous post-trial hearings, sat as regal advisors in high-profile Article 32, Uniform Code of Military Justice (UCMJ), hearings and administrative discharge boards, assisted as hearing officers for environmental impact statement hearings, reviewed tens of thousands of pages of records of trial, and served as instructors in a number of different forums.

Until 2007, virtually every Air Force trial in Central Command'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 deployment model now spreads deployments across JAT's geographic spectrum. Two judges are aligned in each Air and Space Expeditionary Force cycle and are trained and equipped to deploy. They must be prepared to depart when requested. Two Air Force military judges deployed during 2008. Lt Col Douglas Cox served a four month tour in Iraq and Lt Col Carl Reed deployed as the staff judge advocate to Ali Al Salem Air Base, Kuwait. Col Dawn Eflein, the Chief Trial Judge of the Air Force, presided over the first Air Force court-martial in Afghanistan, serving as the trial judge at Bagram AB. Maj Chuck Wiedie presided over a court-martial at Barad AB, Iraq, and Col Steve Woody presided over a case at Ali Al Salem AB, Kuwait. Air Force judges have also presided over cases in Qatar and the United Arab Emirates. Currently, four trial judges are detailed to the Military Commissions in Guantanamo Bay, Cuba.

Air Force judges served as ambassadors for military justice in classrooms and through publication. Col Eflein, Col Tom Cumbie, Lt Col John Hartsell, and Maj Le Zimmerman instructed new military judges at The Army Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Col Eflein and Maj Kate Oler lectured at a number of Judge

Advocate Staff Officers' Courses at The Air Force Judge Advocate General's School (AFJAGS), Maxwell AFB, Alabama. Air Force judges also instructed at various trial advocacy courses and programs throughout the country and overseas to enhance practitioners' litigation skills.

Air Force military judges have shared their specialized knowledge and expertise by publishing articles in various journals. Maj Bryan Watson published two articles in the Air and Space Power Journal: "A Look Down the Slippery Slope: Domestic Operations, Outsourcing, and the Erosion of Military Culture," and "La Ley de la Inocencia Perdida: La Ley Internacional y la Realidad Moderna de los Nines Soldados" ("The Law of Lost Innocence: International Law and the Modern Reality of Child Soldiers,"). Lt Col Hartsell and Maj Watson published an article in the Reporter, When Lies Have Value. The Admissibility of Uncharged False Exculpatory Statements in Pre-Sentencing." Col Steven Ehlenbeck and Maj Joseph Kiefer published articles in the Reporter entitled "Judge Alone Sentencing" and "Using Technology in the Courtroom," respectively. Lt Col Reed published a book review on Unintended Consequences: The United States at War in Joint Forces Quarterly.

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 (JAJG). Major (now Lieutenant Colonel) Matthew Ward served as the Chief Appellate Government Counsel until July 2008, when Major Jeremy S. Weber replaced him.

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. Division personnel also attended the Criminal Law New Developments Course at The Army Judge Advocate General's Legal Center and School. This course covered the previous year's appellate 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 the sister services. Along these lines, appellate government counsel have actively built relationships with sister service appellate government divisions through participation in quarterly meetings and regular consultation on matters of common interest.

During this past year, the division continued to fulfill its obligation to support war-fighting commanders by deploying multiple personnel to Iraq. Lt Cal Rob May, a judge advocate administratively assigned to JAJG, is serving a year-long tour as Deputy Legal Advisor, Task Force 134. Capt Blake Williams deployed to Iraq for 365 days as part of Task Force 134, and Capt Jeff McBride deployed to Iraq for six months to join the Rule of Law Task Force. Two other Division personnel, Lt Col John Tat, a reservist, and MSgt Jeffrey Julig, also recently deployed to Iraq. Additionally, JAJG deployed several Senior Trial Counsel (STC) to prosecute courts-martial in the AOR.

The division warmly welcomed three 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 JAAG's mission by conducting legal research and writing appellate briefs and motions. All three interns have since applied for 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 a highly-acclaimed newsletter for staff judge advocates and trial counsel. In addition, 2008 marked the publication of the Trial Counsel Deskbook, the first update of this important reference book in four years. The Trial Counsel Deskbook is a 300-page-plus collection of relevant case law summaries on the full range of military justice issues trial practitioners face. These documents are on JAAG's updated and revamped web page, providing practitioners easy and immediate access to the latest in military justice case law.

Air Force appellate counsel created a comprehensive template for responding to defense petitions for certiorari to the US Supreme Court. The template was praised by the DoD General Counsel's Office and mandated as the model for all services to follow. JAAG also created a new Appellate Counsel Deskbook, which serves as an effective orientation primer for new counsel and reference for experienced advocates.

STC and appellate government counsel delivered several key military justice briefings at the Air Force Judge Advocate General Corps' annual KEYSTONE Worldwide Leadership Summit. Also, our trial and appellate counsel continued to provide critical field support, reach back capability, and military justice expertise to legal offices at all levels of command throughout the Air Force.

A summary of Air Force Appellate Government practice follows:

| | | | | | |
|---|-------------|-------------|-------------|-------------|-------------|
| JAJG obtains crucial trial and appellate counsel support from | FY04 | FY05 | FY06 | FY07 | FY08 |
| Briefs Filed | 226 | 159 | 207 | 267 | 188 |
| Cases Argued | 14 | 11 | 16 | 20 | 19 |
| USCAAF | FY04 | FY05 | FY06 | FY07 | FY08 |
| Briefs Filed | 69 | 73 | 47 | 41 | 41 |
| Cases Argued | 15 | 29 | 25 | 24 | 15 |
| SUPREME COURT | FY04 | FY05 | FY06 | FY07 | FY08 |
| Petitions Waivers Filed | 0 | 5 | 0 | 10 | 4 |
| Briefs Filed | 0 | 0 | 0 | 0 | 0 |

SENIOR TRIAL COUNSEL

Personnel authorizations for the fiscal year included 19 STC at the following 13 worldwide locations: three counsel at Bolling AFB, Washington, D.C.; three Instructor-Litigators (IL) at AFJAGS at Maxwell AFB, Alabama; two counsel each at Ramstein AB, Germany, and Randolph AFB, Texas; one counsel each at Yokota AB, Japan, Travis AFB, California, Nellis AFB, Nevada, Davis-Monthan AFB, Arizona, Peterson AFB, Colorado, Offutt AFB, Nebraska, Barksdale AFB, Louisiana, and Langley AFB, Virginia, and at a new position created at Osan AB, Korea. STCs are no longer limited to prosecuting cases in artificial geographical boundaries but rather can be detailed to any case throughout the world (a dramatic change from the former geographically-based circuit judiciary program). The detailing authority is at the division level at Bolling AFB, and the STC's primary responsibility is to represent the government in the most complex, litigated general courts-martial. They are also available for special courts-martial, discharge boards and other proceedings, as resources allow.

In the past year, STCs spent more than 1,956 days on temporary duty away from their home station, and represented the government in 156 courts-martial and 110 other proceedings, including two 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 the AOR. STCs have consistently supported at least two-thirds of all Air Force general courts-martial, as well as numerous special courts-martial and other military justice proceedings.

The past year saw a continued emphasis on providing STCs with the training and tools required to thrive as the Air Force's premier prosecutors. STCs attended many hours of training designed to improve their advocacy skills. In August, the annual STC Conference was held at Bolling AFB, which included a week of training and networking with trial and appellate counsel. Additionally, STC attended a civilian Career Prosecutors course, a civilian cyber law course, a course on prosecuting classified trials, an orientation to the United States Army Criminal Investigations Laboratory (USACIL) course, the Navy Computer Crimes

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 Air Force appellate defense counsel remains one of the division's critical priorities. Frequent turnover in counsel makes this invaluable. 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 always being available for telephone consults in appropriate instances. Appellate defense counsel also kept 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 Michigan State University's College of Law, the Louis D. Brandeis School of Law at the University of Louisville, Syracuse University College of Law, and the Trial Advocacy Conference at Lackland AFB, TX. These arguments helped educate attendees on the fairness and professionalism of the military justice system.

Appellate Defense Division began Fiscal Year 2008 with approximately 209 cases pending initial briefing to the AFCCA. The division reduced the number of cases pending initial briefing to the AFCCA to 175 cases by the end of the fiscal year. During that same time period, the number of requests for enlargement of time to file documents was significantly reduced.

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

| AFCCA | FY04 | FY05 | FY06 | FY07 | FY08 |
|--------------------------|-------------|-------------|-------------|-------------|-------------|
| Briefs Filed | 502 | 376 | 638 | 541 | 352 |
| Cases Argued | 14 | 11 | 16 | 20 | 14 |
| USCAAF | FY04 | FY05 | FY06 | FY07 | FY08 |
| Supplements to Petitions | 274 | 268 | 371 | 261 | 293 |
| Grant Briefs | 19 | 32 | 18 | 24 | 15 |
| Cases Argued | 14 | 29 | 25 | 24 | 15 |
| SUPREME COURT | FY04 | FY05 | FY06 | FY07 | FY08 |
| Petitions | 1 | 0 | 0 | 9 | 4 |
| Briefs on the Merits | 0 | 0 | 0 | 0 | 0 |

TRIAL DEFENSE DIVISION

The Trial Defense Division (JAJD) was responsible for providing all trial defense services within the Air Force through Area Defense Counsel (ADC), Defense Paralegals (DP), Senior Defense Counsel (SDC), Deputy Chiefs, JAJD, Defense Paralegal Managers (DPM), and Instructor Litigators (IL). These personnel reported to the Chief, JAJD, who reported to the Director, United States Air Force Judiciary. The Chief, JAJD, was assisted by the Chief, Policy and Training, and Office Manager.

The Division was staffed with 83 ADC stationed at 69 bases worldwide. They were assisted by 70 DP. JAJD had 18 SDC and three Deputy Chiefs, each of whom oversaw six SDC. A DPM was assigned to each of the three Deputy Chiefs. The SDC were stationed at Andrews AFB, Maryland, Langley AFB, VA, Charleston AFB, South Carolina, Hurlburt Field, Florida, Barksdale AFB, Louisiana, Randolph AFB, Texas, Sheppard AFB, Texas, Tinker AFB, Oklahoma, Peterson AFB, Colorado, Offutt AFB, Nebraska, McChord AFB, Washington, Travis AFB, California, Nellis AFB, Nevada, Davis-Monthan AFB, Arizona, Yokota AB, Japan, Kadena AB, Japan, 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 IL assigned to the AFJAGS. The IL split their time between duties as instructors at AFJAGS and serving as defense counsel in top-priority cases, as directed by the Chief, JAJD. In 2008, the Al Udeid, Qatar, office added a second ADC. For the second year in a row, the Al Udeid office handled more Article 15, UCMJ, actions than any other ADC office in the Air Force.

The continued 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 JAJD's top priority. On a continuing basis, each SDC provided on-the-job training and mentoring to the ADC in their charge. Each Deputy Chief, in turn, mentored the SDC in their charge. Newly appointed defense personnel received formal training at the SDC, ADC, and DP Orientations held at AFJAGS. Defense personnel also attended one of three regional Trial Advocacy Courses conducted by AFJAGS; one in the Pacific, one in Europe and one in the continental United States (CONUS). In addition, the division ensured each ADC attended the Trial and Defense Advocacy Course and that all SDC attended the Advanced Trial Advocacy Course. The Division provided adjunct faculty members for these two courses held at AFJAGS. Several SDC were able to attend a week long course at the USACIL, gaining significant insight into the *forensic testing* they perform.

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 on Military Justice (JSC). The division also provides representatives to all interservice activities involving military justice and support for the Article 146, UCMJ, Code Committee. Lastly, 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 71 formal opinions concerning AFBCMR applications; answered 99 inquiries in specific cases requiring formal written replies to senior officials, including the President and members of Congress; and reviewed 39 records of trial under Article 69a, UCMJ, and one record under Article 69b, UCMJ. The division presented the twelfth annual Military Justice Administration Workshop at the AFJAGS, a "back to basics" 1-week workshop attended by both judge advocates and paralegals. The division also instructed numbered air force legal office chiefs of military justice at a workshop hosted by 18th Air Force at Scott AFB, 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, Mr. Jim Russell, served as a principal trainer for judge advocates, sexual assault response coordinators and victim advocates.

During the fiscal year, the division chief, Col Scott Martin and his successor Cal Steve Thompson, served in the role of Chairman of the JSC. Lt Col Tom Wand served as Executive Secretary and Working Group Chairman. They played 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 2008, 328 Air Force personnel were in confinement. Of those, 82 inmates were in long-term confinement at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and 51 were serving their sentence in the Federal Bureau of Prisons system. Six inmates were enrolled in the Air Force Return-to-Duty Rehabilitation Program during Fiscal Year 2008, and one successfully completed the program and was returned to duty. The number of Air Force members and former members on parole at the end of Fiscal Year 2008 was 109.

AIR FORCE JUDGE ADVOCATE GENERAL'S SCHOOL

AFJAGS is the educational arm of the JAG Corps. It is located at Maxwell AFB, Alabama, and provides education and training in all aspects of the military 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 provide 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 14 distance learning military justice modules

available to all judge advocates on the Judge Advocate Distance Education website.

Of the 46 classes offered at AFJAGS in Fiscal Year 2008 for 1,927 students, the following courses included military justice related materials:

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 United States Trial Advocacy Conference in San Antonio, Texas, and for the first time a Pacific and European Trial Advocacy Conference focusing on voir dire and impeachment.

LEGAL INFORMATION SERVICES

During Fiscal Year 2008, the Legal Information Services Directorate (JAS) continued to develop new information technology (IT) tools and improve existing ones to better support military justice practice throughout the Air Force.

JAS continued work on the Automated Military Justice Analysis and Management System (AMJAMS) throughout the year, and is making steady progress toward moving AMJAMS to an entirely web-based application by the end of the CY 09. Moving to the Web is necessary to ensure AMJAMS stays in compliance with improved DoD and Air Force IT security requirements.

The directorate made the Judicial Docketing System (JDS) available to more users this year. JDS is a web-based calendar system that is the cornerstone of the new centralized docketing process. Expanding the user group eases synchronization of judicial assets, including court reporters, and maximizes efficiency in the administration of military justice.

JAS continued to improve Automated Defense Electronic Reporting (ADER), the primary IT tool used by the Air Force defense community to store case information. This year's improvements focused on making ADER more versatile in the realm of worldwide caseload management.

Finally, the directorate finalized the first ever joint Army and Air Force purchase of Computer Assisted Legal Research. This joint approach resulted in tremendous savings overall.

PERSONNEL

As of 30 September 2008, the Air Force JAG Corps had 1,198 judge advocates on active duty. Company grade officers (lieutenants and captains) made up nearly 50% of that number (601). Slightly more than 24% were majors (289) and 16% were lieutenant colonels (192). Almost 10% of the Corps were colonels and above (116), including one lieutenant general, one major general, and four brigadier generals. The Air Force JAG Corps Reserve included 884 Air Force Reserve Individual Mobilization Augmentees, Air Force Reserve unit-assigned, and Air National Guard judge advocates, of whom 14% (125) were company grade officers and 73% (641) were field grade officers (majors and lieutenant colonels).

The remaining 13% consisted of 113 colonels, three brigadier generals, and two major generals.



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

| APPENDIX - U.S. AIR FORCE MILITARY JUSTICE STATISTICS | | | | Period: Fiscal Year 2008 |
|---|---------|-----------|------------|--|
| PART 1 - BASIC COURTS-MARTIAL STATUS (Persons) | | | | |
| Type Court | Tried | Convicted | Acquittals | Rate of Increase (+) / Decrease (-) over Last Report |
| GENERAL | 203 | 174 | 29 | -15.06% |
| BCD SPECIAL | 360 | 174 | 22 | -23.73% |
| NON-BCD SPECIAL [A] | | 164 | | |
| SUMMARY | 105 | 103 | 2 | - - |
| OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT | | | | -22.24% |
| PART 2 - DISCHARGE APPROVED | | | | |
| GENERAL COURTS-MARTIAL (CA LEVEL) | | | | |
| NUMBER OF DISHONORABLE DISCHARGES [B] | | 58 | | |
| NUMBER OF BAD CONDUCT DISCHARGES | | 88 | | |
| SPECIAL COURT-MARTIAL ICA LEVEL) | | | | |
| NUMBER OF BAD CONDUCT DISCHARGES | | 174 | | |
| PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG | | | | |
| FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL | | 159 | | |
| FOR REVIEW UNDER ARTICLE 66 BCD SPECIAL COURTS-MARTIAL | | 156 | | |
| FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS- | | 40 | | |
| PART 4 - WORK LOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS | | | | |
| TOTAL ON HAND BEGINNING OF PERIOD | | 347 | | |
| GENERAL COURTS-MARTIAL | 201 | | | |
| BCD SPECIAL COURTS-MARTIAL | 146 | | | |
| REFERRED FOR REVIEW | | 306 | | |
| GENERAL COURTS-MARTIAL | 150 | | | |
| BCD SPECIAL COURTS-MARTIAL | 156 | | | |
| TOTAL CASES | | 390 | | |
| GENERAL COURTS-MARTIAL | 194 | | | |
| BCD SPECIAL COURTS-MARTIAL | 196 | | | |
| TOTAL PENDING AT CLOSE OF PERIOD | - | 263 | | |
| GENERAL COURTS-MARTIAL | 157 | | | |
| BCD SPECIAL COURTS-MARTIAL | 106 | | | |
| RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (390/540) | | | | -27.77% |
| PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE AIR FORCE COURT OF CRIMINAL APPEALS | | | | |
| NUMBER | 307/315 | | | |
| PERCENTAGE | 97.46 % | | | |

PART 6 - U.S. COURT OF APPEALS FOR THE ARMED FORCES

| | |
|--|-----------|
| PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF (261/390) | 66.92% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | +17.29% |
| PERCENTAGE OF TOTAL PETITIONS GRANTED (30/261) | 11.49% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING | +5.15% |
| PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED By (30/390) | 7.69% |
| RATE OF INCREASE (+) 1 DECREASE (- }OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | + 4 , 54% |

PART 7 - APPLICATIONS FOR RELIEF ARTICLE

| | |
|--------------------------------|---|
| PENDING AT BEGINNING OF PERIOD | 0 |
| RECEIVED | 1 |
| DISPOSED OF | 1 |
| GRANTED | |
| DENIED | |
| NO JURISDICTION | |
| WITHDRAWN | |
| TOTAL PENDING AT END OF PERIOD | 0 |

PART 8 - ORGANIZATION OF COURT

| | |
|---------------------------------------|-----|
| TRIALS BY MILITARY JUDGE ALONE | 285 |
| GENERAL COURTS-MARTIAL | |
| SPECIAL COURTS-MARTIAL | 188 |
| TRIALS BY MILITARY JUDGE WITH MEMBERS | 278 |
| GENERAL COURTS-MARTIAL | 106 |
| SPECIAL COURTS-MARTIAL | 172 |

PART 9 - COMPLAINTS UNDER ARTICLE 138

| | |
|--------------------------------|----|
| TOTAL PENDING AT END OF PERIOD | 17 |
|--------------------------------|----|

PART 10 - STRENGTH

| | |
|-------------------------------|-----------|
| AVERAGE ACTIVEW DUTY STRENGTH | 327 , 848 |
|-------------------------------|-----------|

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)

| | |
|--|---------|
| NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED | 7 , 018 |
| RATE PER 1,000 | 21.41% |
| RATE OF INCREASE(+)/DECREASE(-) OVER PREVIOUS PERIOD | + .77% |

EXPLANATORY NOTES

[A] The Air Force does not convene non-BCD SPCMs. Of the 360 SPCMs tried, there were 174 convictions with a BCD adjudged, 164 convictions without a BCD adjudged and 22 acquittals.

[B] Includes 21 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, 2007 to September 30, 2008

PERSONNEL AND TRAINING

The Coast Guard has 184 officers designated as judge advocates serving on active duty, of which 150 are serving in legal billets and 34 are serving in general duty billets. Those Coast Guard lawyers currently practicing law include officers assigned to NORTHCOM, AFRICOM, JIATF South, and as part of Multi-National Forces, Iraq. Among the 34 military attorneys serving in "out-of-specialty" billets are the Commander of the Fifth Coast Guard District in Portsmouth, Virginia; Commander of the Seventeenth Coast Guard District in Juneau, Alaska; Director, Global Maritime Intelligence Integration; and other commanding and executive officers of Coast Guard cutters, sectors, training centers, and support commands. The Coast Guard also employs 85 civilian attorneys ranging from GS-13 to SES.

The Coast Guard sent attorneys to 43 different courses of instruction during this fiscal year, primarily at the various service JAG schools. 50% of Coast Guard attorneys attended one or more courses of continuing legal education. Twenty-three Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as judge advocates at the successful completion of their studies. Additionally, one judge advocate is attending the graduate course at the United States Army Judge Advocate General's Legal Center and School and will graduate in 2009 with a Masters of Law (LLM) degree in military law and another is a Fellow in the Center for Law and Military Operations. Another judge advocate will begin the Sloan Fellows program at MIT beginning in June 2009. Sixteen Coast Guard officers (including seven 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 2008 were:

Chief Judge Lane I. McClelland Judge David
J. Kantor Judge Frederick W. Tucher Judge
Michael J. Lodge Judge Patrick J. McGuire
Judge Elisabeth A. Pepper Judge Frederick
J. Kenney

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

MILITARY JUSTICE ORGANIZATION

Thirteen staff judge advocates advise 15 officers exercising general court-martial jurisdiction and approximately 350 officers exercising special court-martial jurisdiction. Responsibility for detailing trial and defense counsel to general and special courts-martial rests with the 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 Region Legal Service Office Mid-Atlantic in Norfolk, Virginia, the Army's Trial Counsel Assistance Program in Arlington, Virginia. This is in addition to the existing Memorandum of Understanding with the Navy that provides for four Coast Guard Judge Advocates to be assigned full-time as trial counsel or defense counsel at Navy installations.

MILITARY JUSTICE STATISTICS

NOTE: All statistics are based on the number of courts-martial records received and filed at Coast Guard Headquarters during fiscal year 2008 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 | | 08 | 07 | 06 | 05 | 04 |
|------------------------|--|----|----|----|----|----|
| General Courts-Martial | | 13 | 16 | 16 | 07 | 12 |
| Special Courts-Martial | | 19 | 24 | 32 | 45 | 27 |
| Summary Courts-Martial | | 28 | 31 | 31 | 21 | 12 |
| Total | | 60 | 71 | 79 | 73 | 51 |

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains the Coast Guard, Fiscal Year 2008 military justice statistics.

WILLIAM D. BAUMGATNER
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, 2007 to September 30, 2008 (FY 2008)

APPENDIX - U.S. COAST GUARD MILITARY JUSTICE STATISTICS

Report Period: 1 OCTOBER 2007 - 30 SEPTEMBER 2008

| PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons) | | | | |
|--|-------|-----------|------------|--|
| TYPE COURT | TRIED | CONVICTED | ACQUITTALS | RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT |
| GENERAL | 13 | 12 | 01 | -9% |
| BCD SPECIAL | 19 | 19 | 00 | -8% |
| NON-BCD SPECIAL | 00 | 00 | 00 | UNCHANGED |
| SUMMARY | 28 | 28 | 00 | UNCHANGED |
| OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT | | | | +4% |

PART 2 - DISCHARGES APPROVED

| | | |
|---|----|--|
| GENERAL COURTS-MARTIAL NUMBER OF DISHONORABLE DISCHARGES | 00 | |
| NUMBER OF BAD-CONDUCT DISCHARGES | 09 | |
| SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES | 12 | |
| | | |

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

| | | |
|---|----|--|
| FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL | 09 | |
| FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL | 12 | |
| FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL | 03 | |

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

| | | |
|--|------|--|
| TOTAL ON HAND BEGINNING OF PERIOD | 27 | |
| GENERAL COURTS-MARTIAL | 17 | |
| BCD SPECIAL COURTS-MARTIAL | 10 | |
| REFERRED FOR REVIEW | 25* | |
| GENERAL COURTS-MARTIAL | 09 | |
| BCD SPECIAL COURTS-MARTIAL | 12 | |
| TOTAL CASES REVIEWED | 21** | |
| GENERAL COURTS-MARTIAL | 12 | |
| BCD SPECIAL COURTS-MARTIAL | 05 | |
| TOTAL PENDING AT CLOSE OF PERIOD | 31 | |
| GENERAL COURTS-MARTIAL | 14 | |
| BCD SPECIAL COURTS-MARTIAL | 17 | |
| RATE OF INCREASE (+) / DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | -16% | |

* Includes four extraordinary writs in addition to courts-martial.

** Includes four extraordinary writs in addition to courts-martial.

| PART 5 - APPELLATE COUNSEL REQUESTS BEFORE USCG COURT OF CRIMINAL APPEALS (CCA) | | |
|--|------|--|
| NUMBER | 21 | |
| 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 8/18 | 44% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | -1% |
| PERCENTAGE OF TOTAL PETITIONS GRANTED 3/8 | 37% |
| PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD | +7% |
| PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA 3/18 | 16% |

| PART 7 - APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ | | | |
|--|----|----|--|
| TOTAL PENDING BEGINNING OF PERIOD | | 00 | |
| RECEIVED | | 00 | |
| DISPOSED OF | | 00 | |
| GRANTED | 00 | | |
| DENIED | 00 | | |
| NO JURISDICTION | 00 | | |
| WITHDRAWN | 00 | | |
| TOTAL PENDING AT END OF PERIOD | | 00 | |

PART 8 - ORGANIZATION OF COURTS

| | | |
|---------------------------------------|----|--|
| TRIALS BY MILITARY JUDGE ALONE | 28 | |
| GENERAL COURTS-MARTIAL | 12 | |
| SPECIAL COURTS-MARTIAL | 16 | |
| TRIALS BY MILITARY JUDGE WITH MEMBERS | 04 | |
| GENERAL COURTS-MARTIAL | 01 | |
| SPECIAL COURTS-MARTIAL | 03 | |

PART 9 - COMPLAINTS UNDER ARTICLE 138, UCMJ

| | | |
|----------------------|----|--|
| NUMBER OF COMPLAINTS | 03 | |
|----------------------|----|--|

PART 10 - STRENGTH

| | | |
|------------------------------|--------|--|
| AVERAGE ACTIVE DUTY STRENGTH | 42,603 | |
|------------------------------|--------|--|

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

| | | |
|--|--------|--|
| NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED | 1395 | |
| RATE PER 1,000 | 32.74 | |
| RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD | -1.88% | |
| RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD | +2% | |