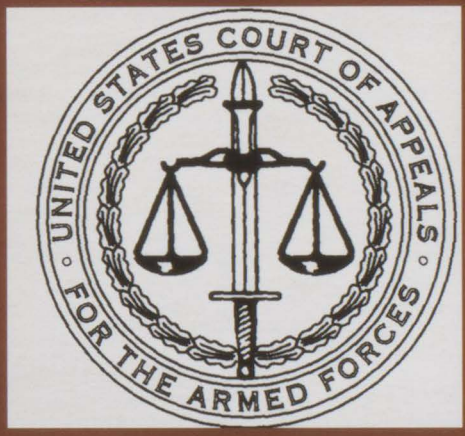
ANNUAL REPORT

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, 2004 to September 30, 2005

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, 2004 to September 30, 2005

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SECTION 1

JOINT ANNUAL REPORT OF THE CODE COMMITTEE

JOINT ANNUAL REPORT OF THE

CODE COMMITTEE PURSUANT TO THE UNIFORM CODE OF MILITARY JUSTICE

October 1, 2004 to September 30, 2005

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

The Code Committee met on May 17, 2005, to consider various matters pertaining to the administration of military justice. The meeting was open to the public. The Code Committee received a briefing from Colonel Michael Child, U.S. Army, Chairman of the Joint Service Committee on Military Justice. Colonel Child informed the Committee that the 2001 annual review was implemented by Executive Order in 2004. The order amended Rules for Courts-Martial 707, 806, 1107, and 1108, clarifying speedy trial rules, modifying procedures for control of spectators at courts-martial, adding a provision on sentence reassessment by a superior authority, and clarifying the authority to remit or suspend sentences. The Joint Service Committee's 2002 and 2003 annual reviews are pending at the Office of Management and Budget. Substantive changes in these reviews include provisions requiring a specific statement in the referral action that a case is referred as a capital case, moving the language concerning the unreasonable multiplication of charges from the discussion portion of the Manual for Courts-Martial to the main text, requiring 12 court members in capital courts-martial, and incorporating rules for handling sealed exhibits.

The 2002 and 2003 annual reviews of the Joint Service Committee also contain provisions requiring the question of the lawfulness of an order to be determined by the military judge, increasing the maximum punishment for threat or hoax offenses, providing guidelines for the convening of courts-martial by joint and combatant commanders, and providing a waiver provision for purposes of appellate review of any issue regarding the denial of a challenge for cause where the defense counsel uses a peremptory challenge against the same member who was unsuccessfully challenged for cause.

Colonel Child stated that the Department of Defense completed internal coordination of the 2004 annual review and forwarded the review to the Department of Justice. Substantive changes in the 2004 annual review involve the use of a video-teleconference at courts-martial, the inclusion of offenses of causing death or injury to an unborn child and

patronizing a prostitute. The 2005 annual review contains proposals to delete the words "without consent" from Articles 120 and 125, UCMJ, to establish degrees of force for rape, forcible sodomy, and indecent assault, to add stalking as an offense, and to consolidate various other sexual-related offenses under Article 134, UCMJ. He added that other proposals under consideration would allow an appearance by an accused at certain sessions under Article 39(a) by remote means, such as videoconferencing, so long as a defense counsel is present in the courtroom at the site of the Article 39(a) session, amending the statute of limitations for rape, murder, and child abuse, revising Military Rules of Evidence 412 and 513, and giving authority to military judges over post-trial processing.

Senior Judge Robinson Everett also addressed the Code Committee and encouraged consideration of proposals to give the accused at courts-martial the option of being sentenced by the military judge after conviction by court members, to change references from the "law of war" to the "law of armed conflict," to give the United States Court of Appeals for the Armed Forces discretionary review of the actions of military commissions, to allow Supreme Court review of cases in which petitions for grant of review have been denied, and to enlarge the Court's jurisdiction to include the review of administrative actions involving service members.

By motion, the Code Committee referred these suggestions to the Joint Service Committee or a subcommittee for review.

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

H. F. "SPARKY" GIERKE
Chief Judge

SUSAN J. CRAWFORD
Associate Judge

ANDREW S. EFFRON
Associate Judge

JAMES E. BAKER
Associate Judge

CHARLES E. "CHIP" ERDMANN
Associate Judge

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

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

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

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

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

Professor GREGORY E. MAGGS
Public Member

Professor EDWARD J. IMWINKELRIED
Public Member

SECTION 2

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

REPORT OF THE

UNITED STATES COURT OF APPEALS

FOR THE ARMED FORCES
October 1, 2004 to September 30, 2005

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 2005 Term of the Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, Title 10, § 946, United States Code.

THE BUSINESS OF THE COURT

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

During the 2005 Term of the Court, the Court admitted 305 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 33,508.

PUBLIC AWARENESS PROJECT
(PROJECT OUTREACH)

In furtherance of a practice established in 1987, the Court scheduled several special sessions and heard oral arguments outside its permanent courthouse in Washington, D.C., during the 2005 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, without objection of the parties, at the Franklin Pierce Law Center, Concord, New Hampshire; the Vermont Law School, South Royalton, Vermont; Harvard Law School, Cambridge, Massachusetts; the University of South Dakota School of Law, Vermillion, South Dakota; the University of North Dakota School of Law, Grand Forks, North Dakota; Quantico Marine Corps Base; the George Washington University School of Law, Washington, D.C.; the American Bar Association meeting in Chicago, Illinois, using the courtroom of the United States Court of Appeals for the Seventh Circuit; aboard the USS Ronald Reagan (CVN-76) at sea; and the University of San Diego School of Law, San Diego, California.

JUDICIAL VISITATIONS

During the 2005 Term of Court, the Judges of the Court, consistent with past practice and their ethical responsibility to oversee and improve the entire military criminal justice system, participated in professional training programs for military and civilian lawyers, spoke to professional groups of judges and lawyers, and visited with judge advocates, military judges, commanders, and other military personnel at various military installations.

JUDICIAL CONFERENCE

On May 18 and 19, 2005, the Court held its annual Judicial Conference at the Catholic University of America, Columbus School of Law, Washington, D.C. The program for this Judicial Conference was certified for credit to meet the continuing legal education requirements of State Bars throughout the United States. The conference opened with welcoming remarks by Dean William F. Fox, Jr., of the Columbus School of Law and the Honorable H. F. "Sparky" Gierke, Chief Judge, United States Court of Appeals for the Armed Forces. They were followed by speakers for this year's conference, including Supreme Court Justice Sandra Day O'Connor; Mr. David M. Crane, The Prosecutor for the Special Court for Sierra Leone; Senior Judge Jack B. Weinstein of the United States District Court for the Eastern District of New York; Major General Yishai Beer, President of the Israeli Military Court of Appeals and Professor of Law at Hebrew University in Jerusalem; Professor Lee D. Schinasi, Barry University School of Law; Professor Anne M. Coughlin, University of Virginia School of Law; Major Christopher W. Behan and Major Jeffrey C. Hagler, Judge Advocate General's School, United States Army, Charlottesville, Virginia; Professor Stephen A. Saltzburg, George Washington University School of Law; Professor David Wippman, Cornell University School of Law; Professor Clifford S. Fishman, Catholic University of America; Professor Paul Butler, George Washington University School of Law; and Lieutenant Colonel David Fillman, U.S. Air Force, Office of the Judge Advocate General of the Air Force.

H. F. "SPARKY" GIERKE
Chief Judge

SUSAN J. CRAWFORD
Associate Judge

ANDREW S. EFFRON
Associate Judge

JAMES E. BAKER
Associate Judge

CHARLES E. "CHIP" ERDMANN
Associate Judge

USCAAF STATISTICAL REPORT

2005 TERM OF COURT

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 2004

Master Docket	51
Petition Docket	215
Miscellaneous Docket	6
TOTAL	272

CUMULATIVE FILINGS

Master Docket	149
Petition Docket	779
Miscellaneous Docket	44
TOTAL	972

CUMULATIVE TERMINATIONS

Master Docket	113
Petition Docket	742
Miscellaneous Docket	44
TOTAL	899

CUMULATIVE PENDING OCTOBER 1, 2005

Master Docket	87
Petition Docket	252
Miscellaneous Docket	6
TOTAL	345

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
Master Docket	61	2	50	113
Petition Docket	0	0	742	742
Miscellaneous Docket	1	0	43	44
TOTAL	62	2	835	899

FILINGS (MASTER DOCKET)

Remanded from Supreme Court	0
Returned from Court of Criminal Appeals	0
Mandatory appeals filed	0
Certificates filed	2
Reconsideration granted	0
Petitions granted (from Petition Docket)	145
TOTAL	147

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	61		
Reversed in whole or in part	51	Signed	61
Granted petitions vacated	0	Per curiam	2
Other disposition directed	1	Mem/order	50
TOTAL	113	TOTAL	113

PENDING (MASTER DOCKET)

Awaiting briefs	27
Awaiting oral argument	35
Awaiting lead case decision (trailer cases)	20
Awaiting final action	5
TOTAL	87

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	779
Petitions for new trial filed	0
Petitions for reconsideration granted	0
Returned from Court of Criminal Appeals	0
TOTAL	779

TERMINATIONS (PETITION DOCKET)

Petitions for grant denied	581		
Petitions for grant granted	145	Signed	0
Petitions for grant dismissed	5	Per curiam	0
Petitions for grant withdrawn	11	Mem/order	742
TOTAL	742	TOTAL	742

PENDING (PETITION DOCKET)

Awaiting briefs	87
Awaiting Central Legal Staff review	129
Awaiting final action	36
TOTAL	252

FILINGS (MISCELLANEOUS DOCKET)

Remanded from Supreme Court	0
Writs of error coram nobis sought	0
Writs of habeas corpus sought	3
Other extraordinary relief sought	18
Writ appeals sought	23
TOTAL	44

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions denied	31		
Petitions granted	2		
Petitions dismissed	3		
Petitions withdrawn	2	Signed	1
Petitions remanded	6	Per curiam	0
Other	0	Mem/order	43
TOTAL	44	TOTAL	44

PENDING (MISCELLANEOUS DOCKET)

Awaiting briefs	4
Awaiting staff review	0
Awaiting final action	2
TOTAL	6

RECONSIDERATIONS

ALL CASES

Begin pending	3
Filings	11
TOTAL	14
End pending	0

DISPOSITIONS

Granted	0
Denied	14
TOTAL	14

MOTIONS

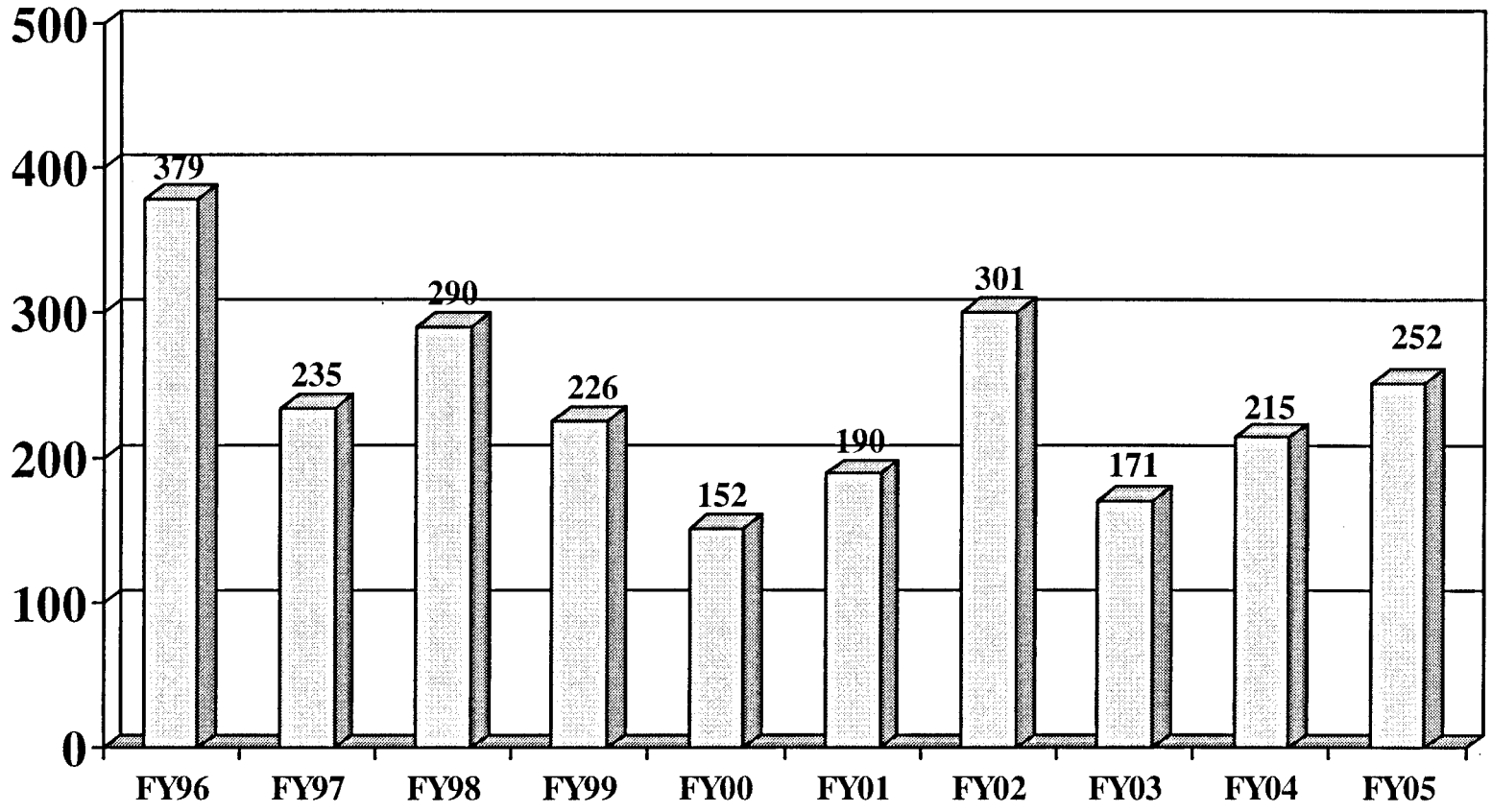
ALL MOTIONS

Begin pending	19
Filings	545
TOTAL	564
End pending	30

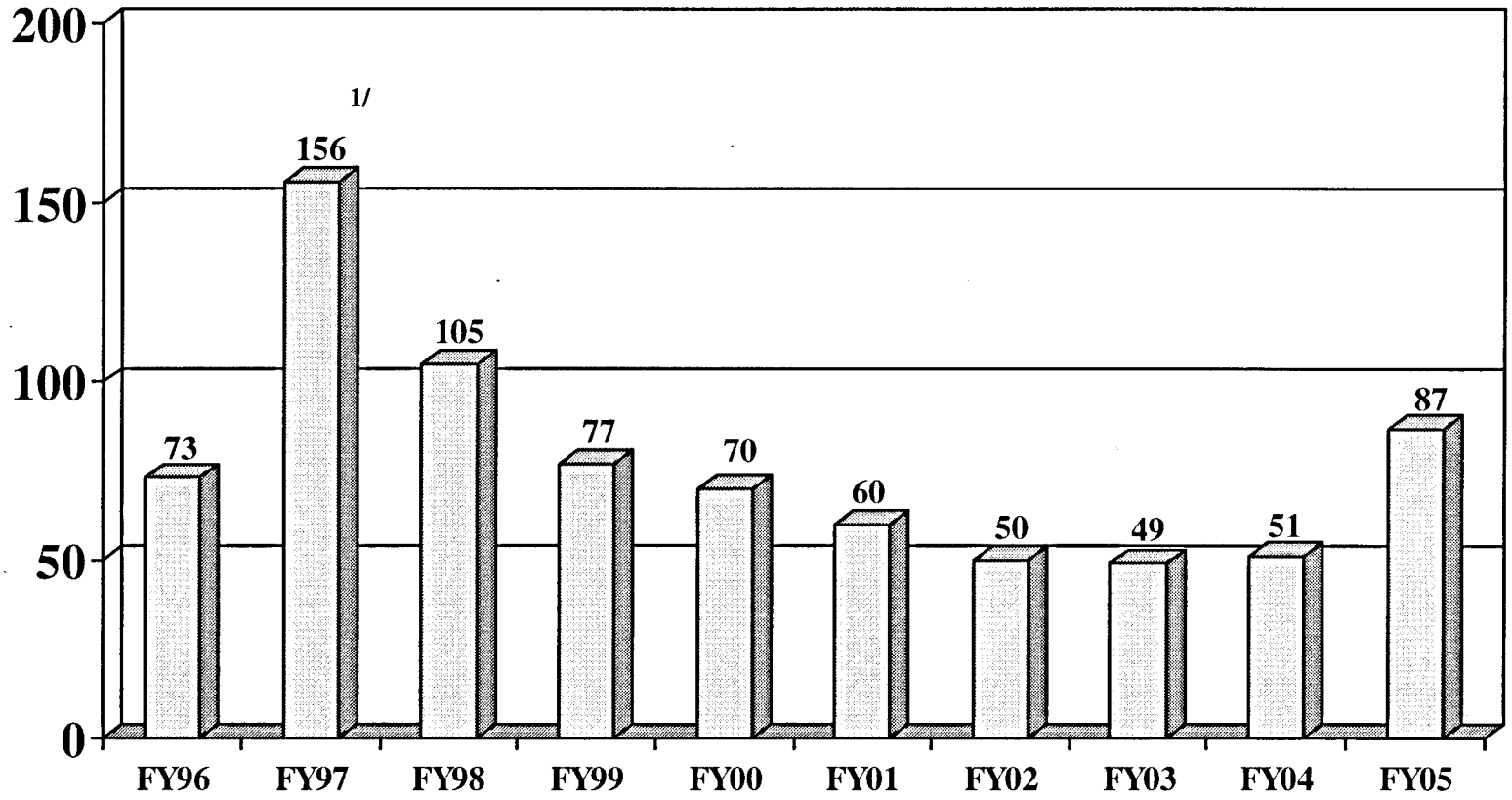
DISPOSITIONS

Granted	482
Denied	52
Other	0
TOTAL	534

Petition Docket Year End Pending

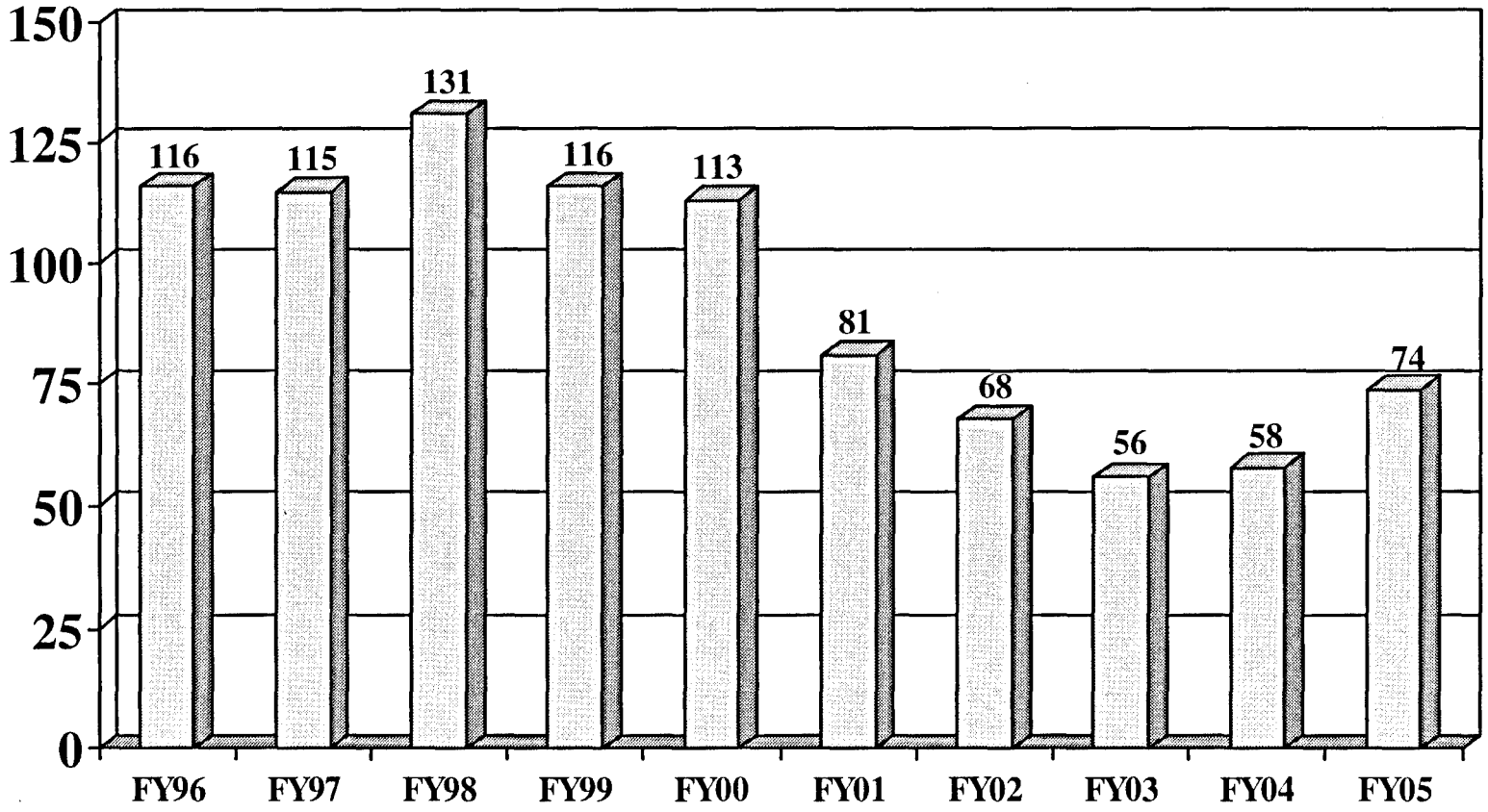


Master Docket Year End Pending

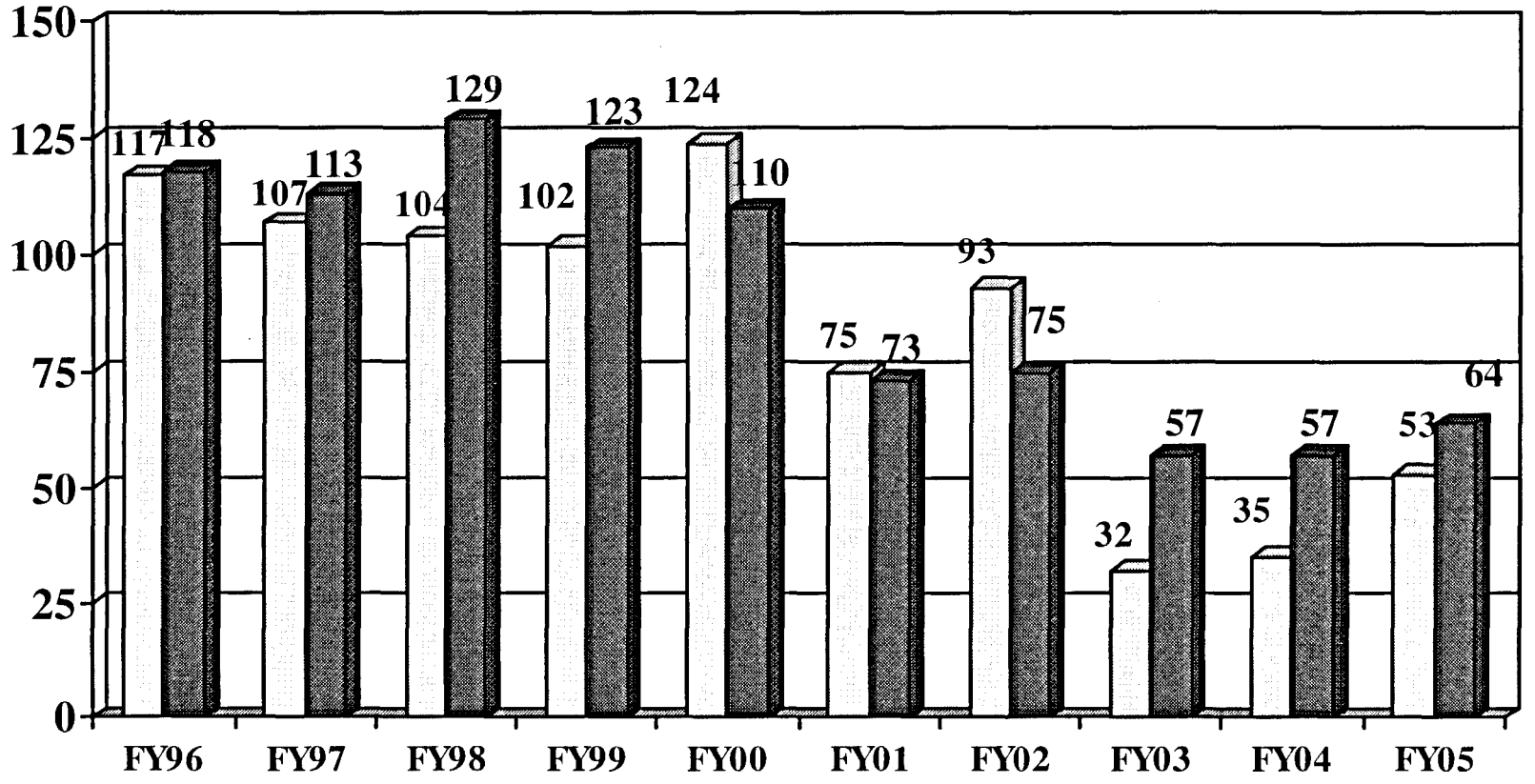


1/ This figure does not include 133 trailer cases to United States v. Gorski, No. 97-0034/AF.

Oral Arguments Per Year



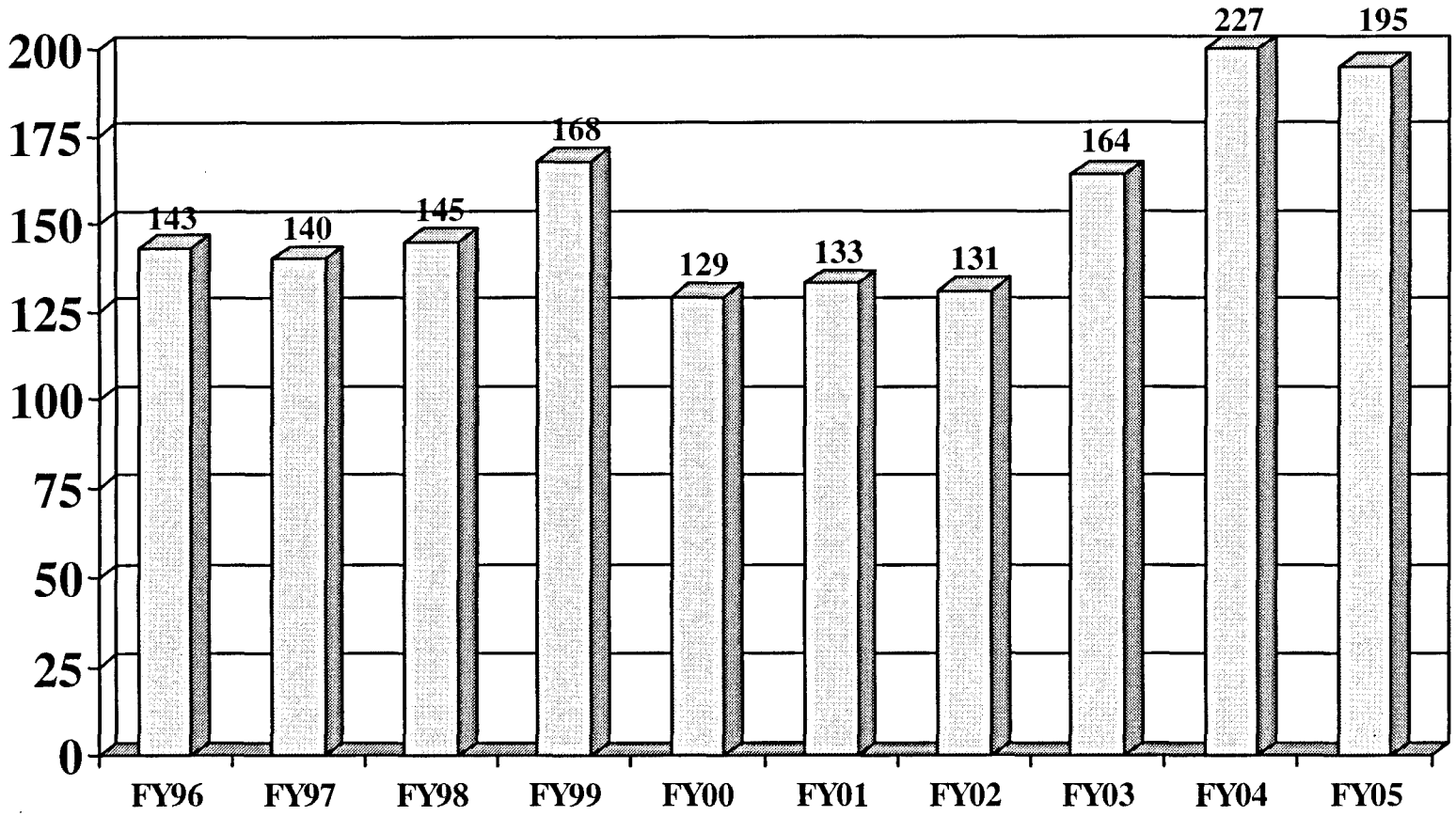
Total Opinions Per Year



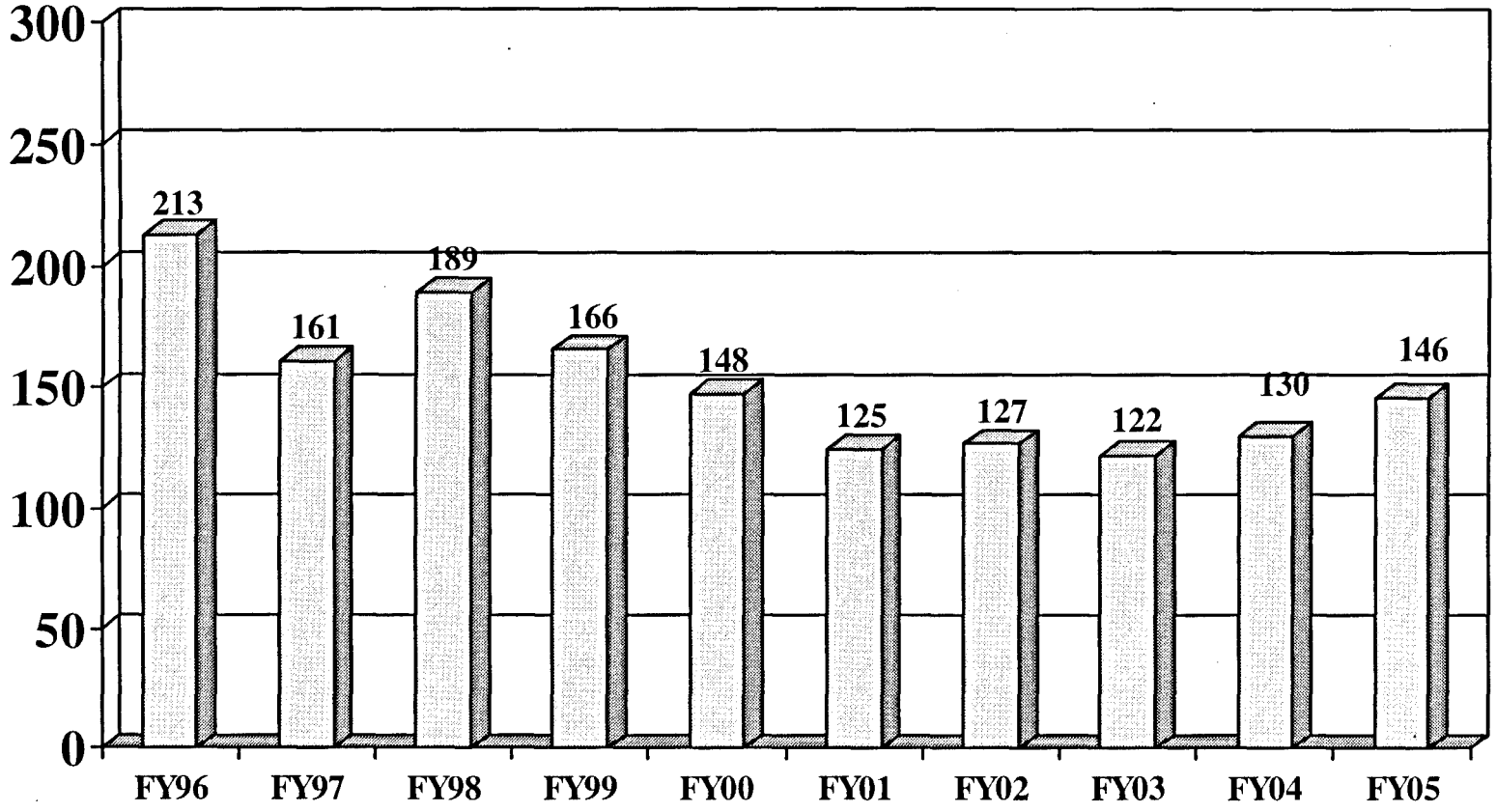
□ TOTAL SEPARATE OPINIONS (CONCUR, CONCUR IN THE RESULT, AND DISSENT)

■ TOTAL COURT OPINIONS

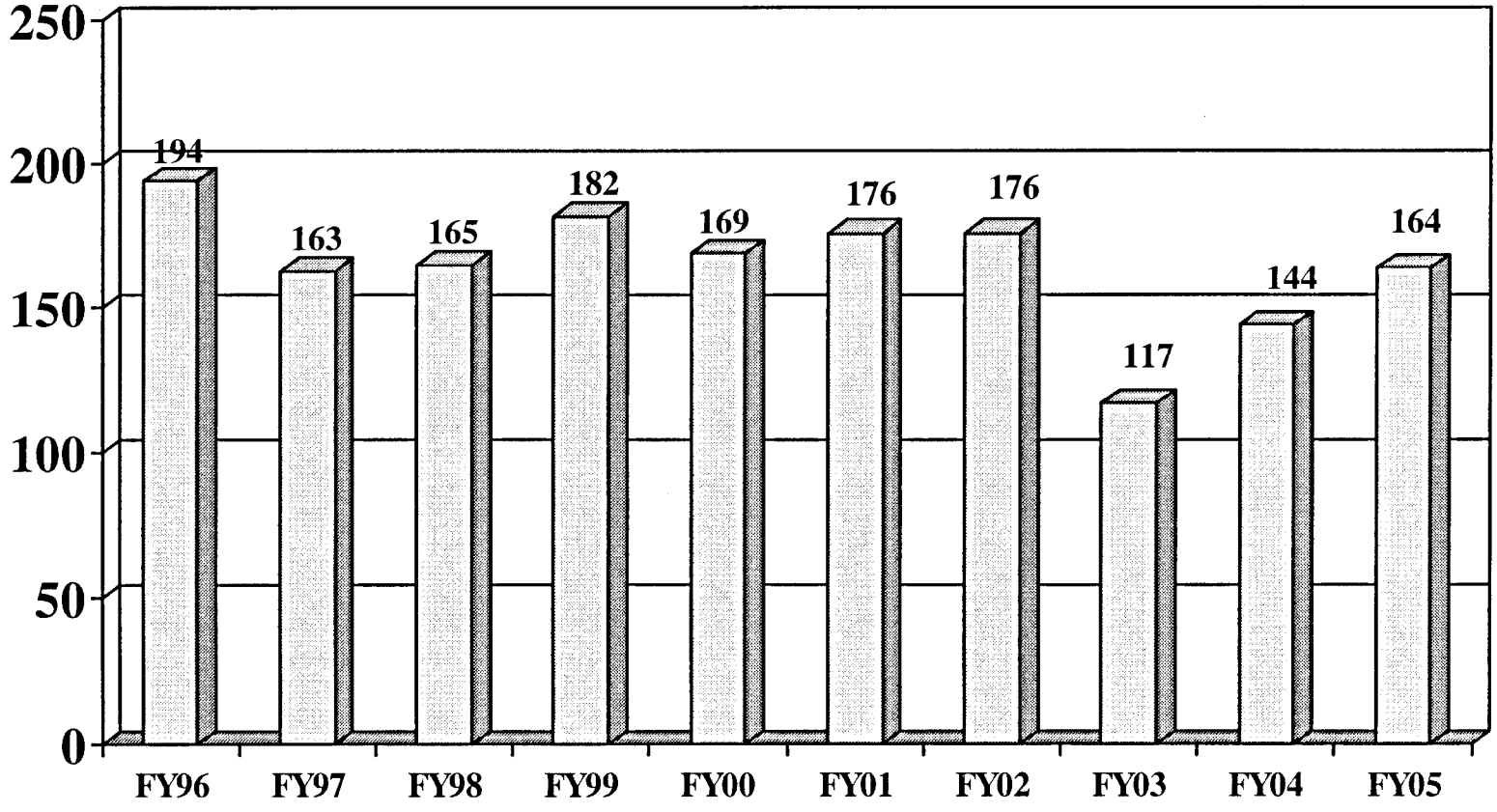
Days from Petition Filing to Grant



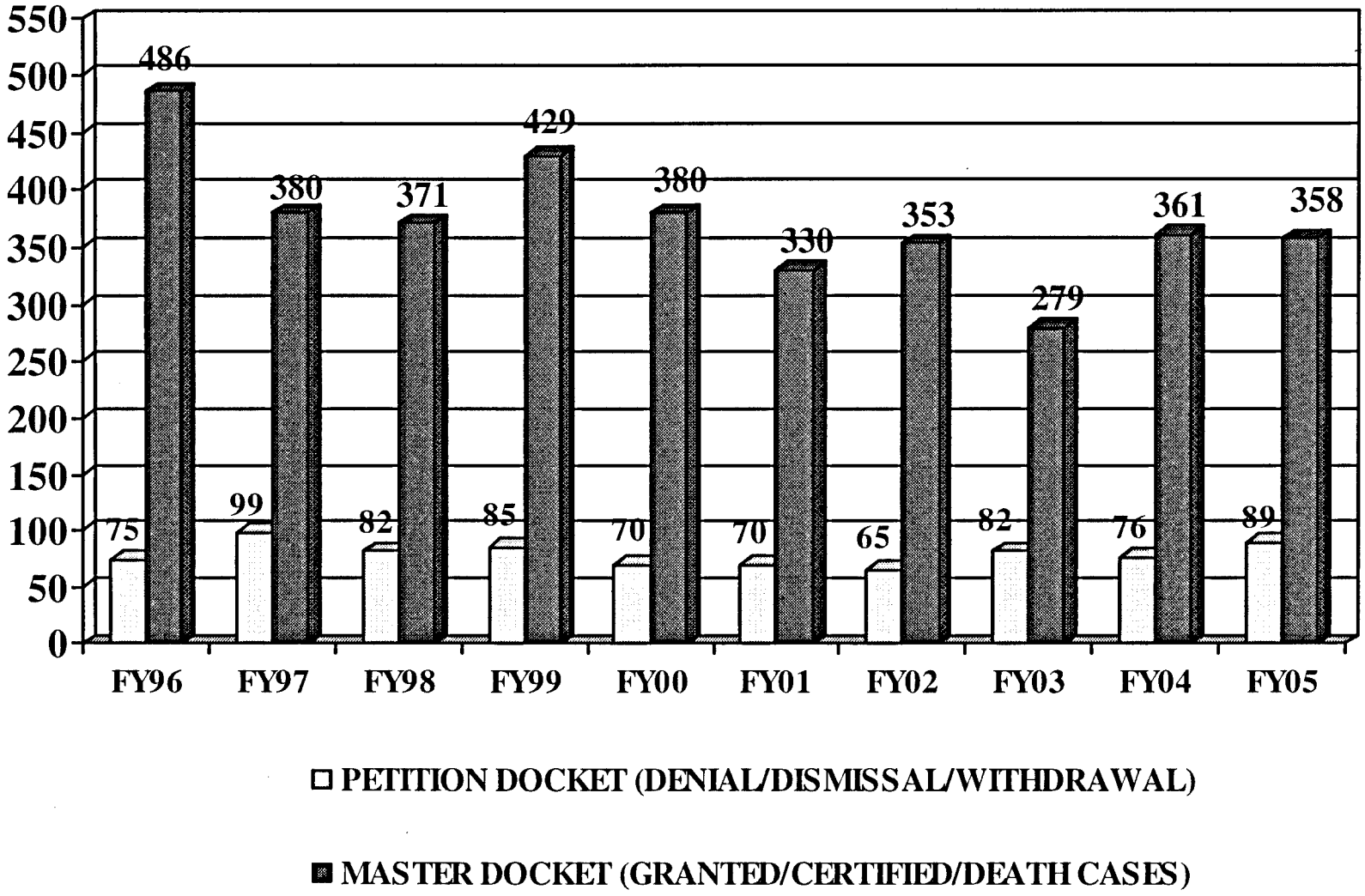
Days from Petition Grant to Oral Argument



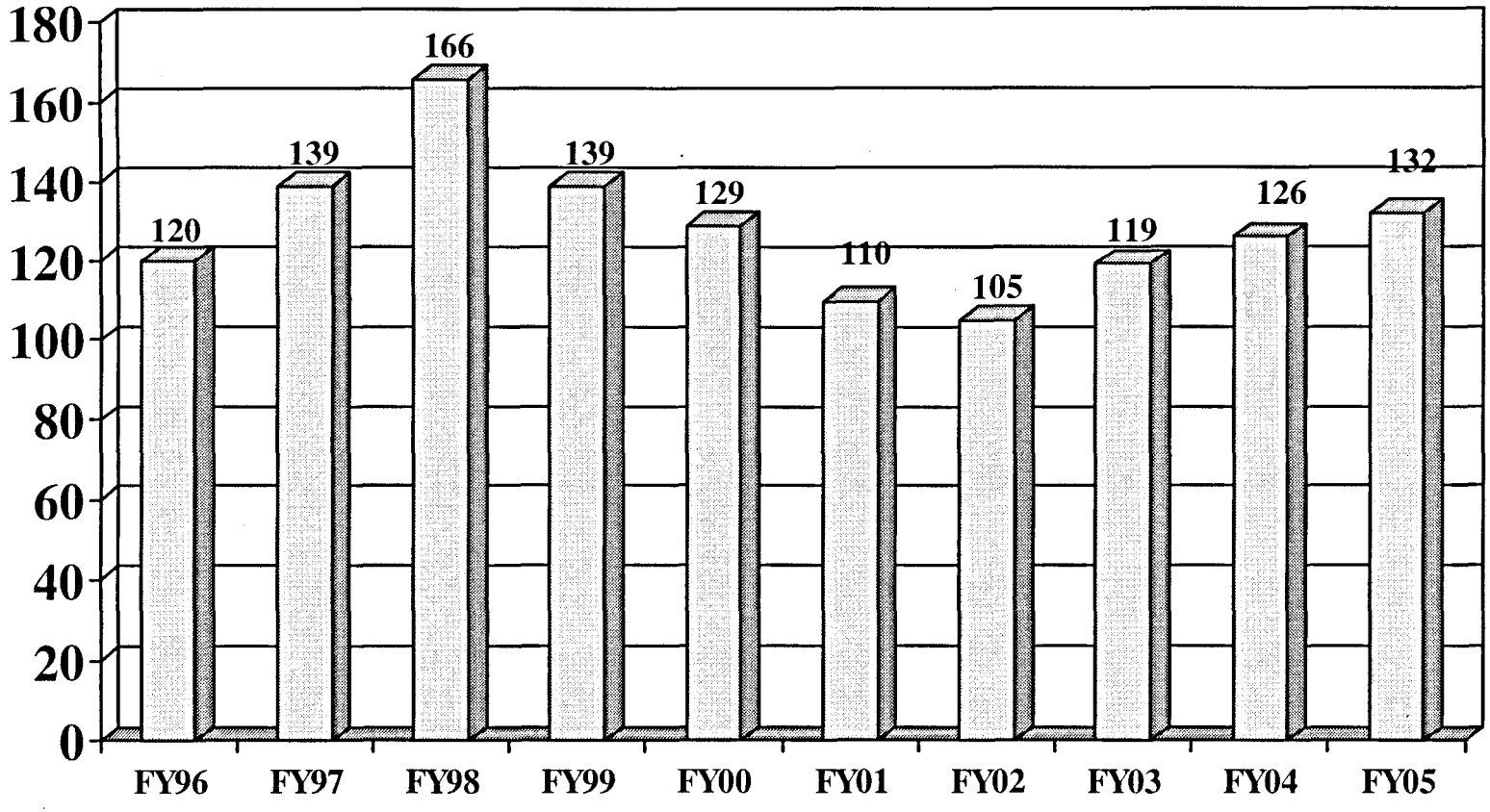
Days from Oral Argument to Final Decision



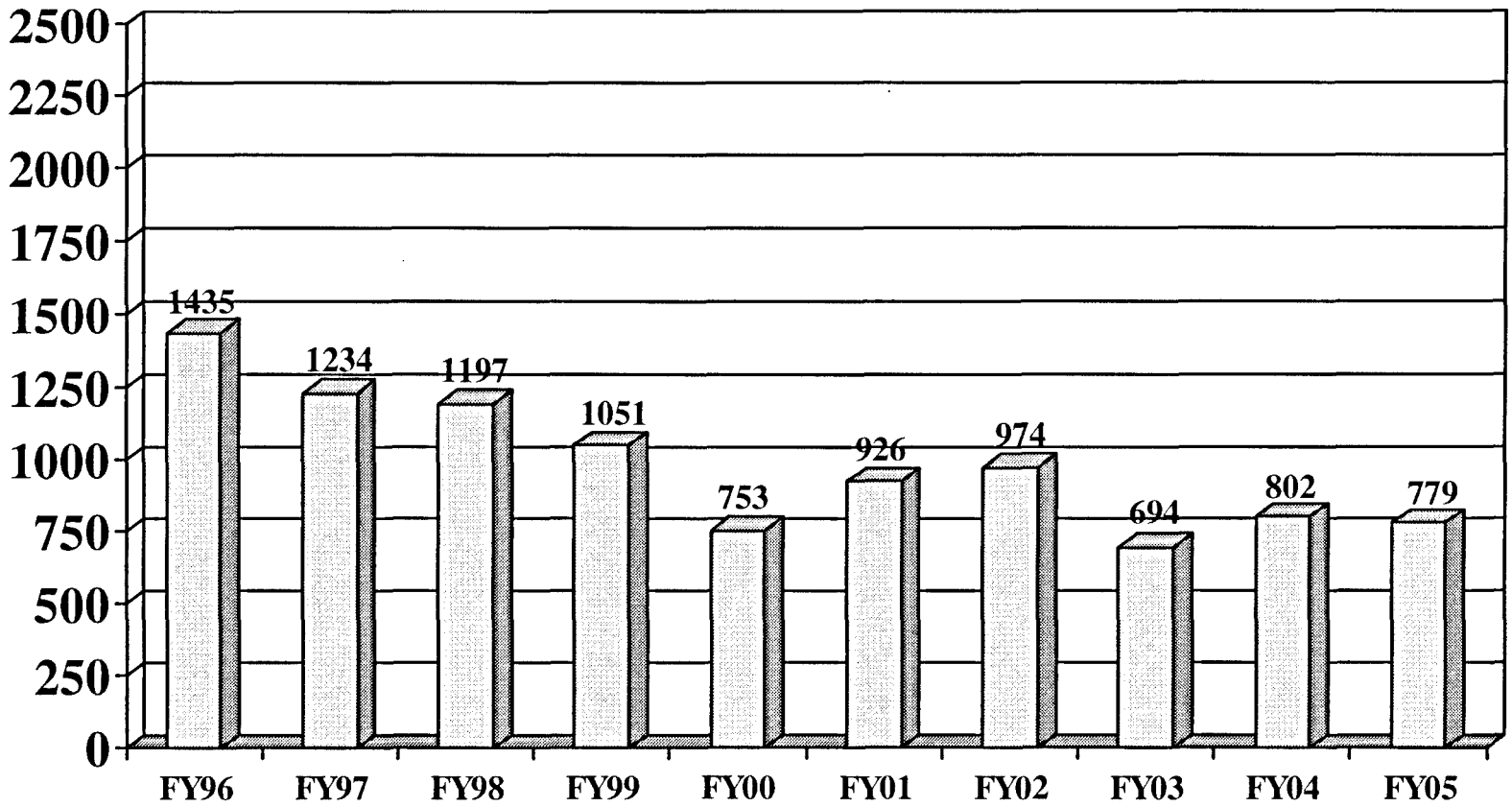
Days from Petition Filing to Final Decision



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, 2004 TO SEPTEMBER 30, 2005

On 30 September 2005, the Army's end strength was 492,728 Regular Army personnel on duty (compared to 494,291 at the end of FY 04). Additionally, there were 189,005 mobilized Army Reserve and 331,177 Army National Guard personnel supporting operations in Afghanistan, Iraq, Bosnia, Kosovo, and the Middle-East.

During this time frame, fiscal year 2005 (FY 05), and in compliance with Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General and senior members of his staff visited 44 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 monitor courts-martial world-wide, review and prepare military publications and regulations, and develop and draft changes to the Manual for Courts-Martial (MCM) and the UCMJ. Through its Field Operating Agencies, OTJAG provided judicial and appellate services, advice, assistance, and professional education to ensure the efficient administration of military justice.

THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL

The Judge Advocate General's Corps established a Military Paralegal Degree Program in coordination with the American Bar Association (ABA) and three partner universities. The ABA has approved three program options for JAGC enlisted paralegal Soldiers at the College of Mount St. Joseph, Eastern Michigan University, and the University of Great Falls. These programs apply to all JAGC paralegals (active and reserve) who have completed the AIT course after April of 2001. The ABA has authorized participating universities to grant college credit hours of paralegal study based upon an analysis of the individual Soldier' s education record.

The Judge Advocate General's Legal Center and School continues to explore better ways of delivering education to members of the Judge Advocate General's Corps in the field. The recent hiring of a Chief of Distance Education in the Legal Center will help to bring this effort to fruition.

A major renovation of the Decker Auditorium was completed earlier this year and has been a huge success. Large courses are comfortably held in that facility, including this year's World-Wide CLE course. The auditorium also serves as an excellent facility for major events, such as Chair Lectures. We were honored this fall to have former Secretary of State Lawrence Eagleburger present the Hugh J. Clausen Lecture in Leadership. Finally, we are continuing our project with the Library of Congress to digitize materials, including materials regarding the original drafting of the Uniform Code of Military Justice.

SIGNIFICANT MILITARY JUSTICE ACTIONS

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

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

	FY03	FY04	FY05
White House inquiries	37	237	33
Congressional and other inquiries	185	234	214
Clemency petitions (Article 74, UCMJ)	3	3	1
Officer Dismissals	17	18	19
Article69review	122	88	96
Freedom of Information Act/Privacy Act	3	6	22

A continuing project for the Criminal Law Division is "eJustice," the development of a web-based military justice management system. The system is designed to provide users worldwide with the capability of executing military justice actions, including the management of non-judicial punishment, adverse administrative actions, and courts-martial. The JAG Corps initiated field operational testing of this system, designated as eJustice Version 1.1 (V1.1), in May through July 2005. The test system included execution and management of Article 15s, Administrative Separations, Letters of Reprimand, Investigation Tracking, and Trial Defense client services. This operational test was conducted at a total of 7 locations: 5 active component installations (Ft. Drum, Ft. Meade, Ft. Belvoir, Ft. Eustis, and the Military District of Washington) and 2 Regional Readiness Commands (RRCs) (Pittsburgh, PA and Little Rock, AR). The operational test was an overall success and these locations continue to use eJustice. Further expansion of eJustice to other installations has been delayed, based on the decision to outsource further application development to a private vendor using commercial off-the-shelf (COTS) software. Development of the eJustice application using COTS software will continue in FY 06.

In FY 05, the Criminal Law Division forwarded a major revision of Army Regulation 27-10, Military Justice, to the U.S. Army Publishing Agency. The publication culminates several years of staff work, resulting in a comprehensive revision of the regulation reflecting numerous changes in recent law and procedures. Changes include providing guidance on the

Military Extraterritorial Jurisdiction Act, clarifying procedures to recall Reserve Soldiers to active duty for purposes of court martial, and updating the Victim Witness Liaison program based on changes in DoD policy. The new regulation's effective date is 16 December 2005 and it is available for review at http://www.usapa.army.mil.

In FY 03 and 04, the Criminal Law Division prepared the final recommendations TJAG made to the Acting Secretary of the Army in two Army death sentence cases requiring action by the President. In FY 05, the Acting Secretary of the Army recommended approval of the death sentence in both cases and forwarded the cases to the Secretary of Defense. After the Secretary of Defense's review in FY 05, the Secretary of the Army forwarded one of the cases to the President for final action. The other case remains with the Office of the Secretary of Defense.

The JAG Corps enhanced its Victim Witness Program by sending 61 victim/witness liaison personnel to the Department of Justice Fourth National Symposium on Victims of Federal Crime, Atlanta, Georgia during March 2005.

JOINT SERVICE COMMITTEE ON MILITARY JUSTICE

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

In January 2005, the Army assumed the role of Executive Chair of the JSC, and, during FY 05, the JSC completed its twenty first annual review of the MCM. At the beginning of the calendar year, the JSC voted to consider numerous proposals for change to the UCMJ and the MCM including, but not limited to, broader contempt power for military judges, modifying the process by which panel members are selected, revising guilty plea practice, and streamlining post-trial processing. The highest priorities of these proposals were considered during 2005 and several more of the proposals will be considered in the upcoming calendar year.

Highlights of the annual review's proposed changes include: amendments to Rules for Court-Martial (R.C.M.) that authorize the Military Judge sua sponte to overturn finding of guilty at any time prior to authentication of the Record of Trial under R.C.M. 917 and 1102 and allow the Secretary of Defense, at his discretion, to make a recommendation on capital changes under R.C.M. 1204(c)(2); amendments to the Military Rules of Evidence (M.R.E.) that exclude crimes against "de facto" children from

the spousal privilege, M.R.E. 504, and define "clergyman's assistant" under the clergy privilege, M.R.E. 503; sentence enhancers for child victims of aggravated assault under Article 128, Assault; an increase in maximum punishment of confinement from 7 years to 20 years under Article 124, Maiming; and the addition of specific offenses for voyeurism and child endangerment under Article 134.

On 14 October 2005, the President signed an Executive Order (EO) implementing amendments to the MCM based on the JSC's 2002/2003 annual review cycle. The JSC continues to monitor the processing of an additional draft EO to implement the changes proposed in the 2004 annual review, which is pending Presidential approval.

Pursuant to the 2005 Department of Defense Authorization Act, a subcommittee of the JSC prepared a report for Congress with the objective of determining what changes are required to improve the ability of the military justice system to address issues relating to sexual assault and to conform the Uniform Code of Military Justice and the Manual for Courts-Martial more closely to other Federal laws and regulations that address such issues. The Department of Defense recommendation on the issue, along with the JSC subcommittee report, was forwarded to Congress in April 2005. The JSC is prepared to quickly finalize MCM implementing provisions and forward a draft EO for presidential signature for legislative changes to sexual assault offenses under the UCMJ.

U.S. ARMY JUDICIARY

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

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

The Clerk of Court receives records of trial for review by the U.S. Army Court of Criminal Appeals (ACCA) under Article 66, Uniform Code of Military Justice (UCMJ), appeals under Article 62, UCMJ, and Petitions for Extraordinary Relief. More than 1,100 records of trial and over 4,400 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 over 950 ACCA decisions upon all personnel not in confinement and closed over 900 courts-martial cases during the past year.

ACCA maintains a website at https://www.jagcnet.army.mil/acca. During FY 05, ACCA issued 18 opinions of the court and 236 memorandum opinions. These opinions are available on the Court's website. The Court also issued 740 short-form decisions. Applications for admission to the bar for ACCA and rules of the court are also published and available for downloading at the website.

The Clerk of Court and Deputy Clerk for Records Control and Analysis provided instruction to Staff Judge Advocates, Military Judges, LL.M. degree candidates taking the military justice elective, court reporters, and those individuals attending military justice courses at The Judge Advocate General's Legal Center and School.

The Clerk of Court is the custodian of the Army's permanent court-martial records dating from 1939. Inquiries about courts-martial are received from federal and state investigative agencies, law enforcement offices, military historians, media, veterans, and convicted persons. 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, many expedited requests are received from state sexual offender registries.

	FY03	FY04	FY05
Freedom of Information Act	166	132	180
Privacy Act	73	66	110
Certified Copies of Convictions	375	354	213
Total Number of Requests	614	552	503

The Deputy Clerk of Court for Operations and her staff also provide assistance to overseas trial jurisdictions by preparing non-DOD civilians to travel and testify at courts-martial held overseas. This assistance included making travel arrangements, assisting with requests for expedited passport processing, and issuing invitational travel orders. During FY 05, this office processed 154 such requests.

Trial Judiciary

A significant caseload increase in FY 2005 kept nineteen active duty military judges, one mobilized Army Reserve military judge, and fourteen reserve military judges not on active duty busy presiding over all special and general courts-martial worldwide. Army judges tried well over 1500 original trials and *DuBay* hearings, the most trials since 1992, when the numbers of active and reserve Army judges were significantly higher.

A request for restoration of three military judge positions deleted during the Army drawdown in 1992 is still pending, but one over strength judge was assigned to ease the workload. The Army realigned its six judicial circuits to attempt to equalize travel and workload among the circuits. Trials in Afghanistan, Kuwait, and Iraq totaled 141 cases for the FY, bringing the total number of cases tried in hostile fire pay zones to nearly 300 cases since the beginning of the Global War on Terrorism.

Army judges continue to preside over high profile cases, including those arising out of detainee operations in Iraq and Afghanistan. Reserve military judges presided over a number of complex Article 32 hearings, including cases in which a capital referral was contemplated. One capital trial was completed; Sergeant Akbar received a death sentence in a Fort Bragg court-martial in April 2005.

Military judges continued to play an active role in their military and civilian communities, speaking to college audiences, local bar associations, state bar continuing legal education courses, and to the National Association of Women Judges about the military justice system.

TRIAL DEFENSE SERVICE

The U.S. Army Trial Defense Service (USATDS), a criminal defense organization for Soldiers consisting of approximately 130 active component and 170 Reserve component personnel, provided high quality, professional defense counsel to Soldiers throughout the Army from 63 active duty installations and 54 Reserve locations worldwide. USATDS counsel defended Soldiers facing the entire range of allegations under the Uniform Code of Military Justice.

USATDS detailed one or more counsel to all Army special and general courts-martial referred in FY 05. USATDS counsel also carry a large workload in addition to representation at courts-martial. That additional Soldier support in the last six fiscal years follows.

	FY00	FY01	FY02	FY03	FY04	FY05
Administrative Boards	597	826	918	1,215	830	885
Nonjudicial Punishment	30,633	35,786	40,769	39,382	38,429	36,216
Consultations	24,051	33,546	37,476	36,382	39,882	39,895

USATDS defended deployed forces around the world in Iraq, Kuwait, Afghanistan, Central Asia, Bosnia, and Kosovo. A provisional TDS Region, known as Region IX, was established in 2003, and it now includes 22 TDS attorneys and 11 paralegals located in 5 field offices and 6 branch offices throughout Iraq, Kuwait, and Afghanistan. Despite the hazardous duty and austere environment, Region IX TDS counsel are providing the highest quality advocacy for deployed Soldiers, including representation at courts-martial, administrative boards, and other military justice actions. Currently, one defense counsel stationed in Kosovo defends Soldiers in Kosovo and Bosnia.

Since the start of FY 03, a regulatory change has enabled USALSA to fund all defense counsel travel for courts-martial, beginning with the initial detailing of counsel to a client. This funding arrangement has improved the overall quality of service to the Soldier client. By getting actively involved in cases at the earliest stages, defense counsel have successfully negotiated non-punitive dispositions of cases that otherwise may have been disposed of at courts-martial.

Building on the formal Memorandum of Understanding (MOU) made in 2001, the Trial Defense Service and the Defense Appellate Division (DAD) continue to foster a close working relationship. During FY 05, DAD and TDS worked together on one appeal by the United States under Article 62, UCMJ. TDS counsel also coordinated with DAD counsel on several cases, including whether a writ was appropriate, assistance in a *Dubay* hearing, and the appropriateness of raising certain issues in R.C.M. 1105 matters.

USATDS counsel continue to foster a close working relationship with reserve defense counsel assigned to the 154th and the 22d Trial Defense Service Legal Services Organizations (TDS LSOs). The 154th TDS LSO, consisting of 128 commissioned officers, a warrant officer and 21 enlisted paralegals, defends Soldiers assigned to units in the Eastern half of CONUS and in Europe. The 22d TDS LSO, consisting of 64 commissioned officers and 19 enlisted paralegals, defends Soldiers in the Western half of CONUS and Asia. Some individual USATDS offices have established joint training programs with their local reserve USATDS personnel, and they have conducted highly successful joint training conferences. The Chief, U.S. Army Trial Defense Service, exercises technical supervision over the TDS LSOs. He is responsible for the performance of defense counsel and provides oversight for the units' training and readiness. Reserve support to active component TDS offices remains outstanding. Currently, reservists provide back-fill support to deployed counsel and paralegals at installations in CONUS and Germany. Moreover, several reserve judge advocates have served and are serving as deployed defense counsel in Iraq, Kuwait, Afghanistan, and Kosovo. One reserve paralegal is currently serving in Iraq.

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

expanding their knowledge of military justice, with particular emphasis on evidentiary objections and arguments. USATDS counsel in Europe conducted semi-annual regional workshops. USATDS counsel in Europe also attended the USAREUR Criminal Law CLE, which was sponsored by The Judge Advocate General's Legal Center and School. Throughout the year, individual USATDS counsel are also given numerous opportunities to attend CLEs sponsored by The Judge Advocate General's Legal Center and School and sister military schools, as well as civilian sponsored CLEs.

GOVERNMENT APPELLATE DIVISION

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

In FY 05, GAD consisted of the Chief, Deputy Chief, two branch chiefs, ten appellate advocates, and three civilian paralegals. Additionally, throughout the year, six temporary active duty Reservists (TTADS) were activated for six month periods to assist with writing briefs. The GAD filed 1,059 final briefs with the ACCA and 17 with the CAAF. FY 05 is notable for the strong push made to reduce the backlog of 529 cases pending before the ACCA. By activating TTADS, instituting a two day a month "Knock Out a Brief Day" program, developing subject matter experts, and dramatically improving the GAD brief bank, the backlog was reduced by 157 cases during the fiscal year, ending with just 372 cases remaining to be briefed in the Division.

During FY 05, the Government Appellate Division also presented oral argument in 23 cases before the ACCA and in 22 cases before the CAAF. Four of the oral arguments before the CAAF were Outreach Arguments presented at law schools located in New Hampshire, Vermont, South Dakota, and Chicago, Illinois. A fifth was presented to the Marine Corps Staff College at Quantico, Virginia.

TRIAL COUNSEL ASSISTANCE PROGRAM

The United States Army Trial Counsel Assistance Program (TCAP) fulfilled its mission of providing information, advice, training opportunities, and trial assistance to trial counsel worldwide. In FY 05, TCAP's team of five officers and one civilian assistant was augmented with three additional counsel to assist with TCAP's expanded mission of serving as prosecutors in several high-profile detainee abuse cases. As a third branch of the Army's Government Appellate Division, TCAP is able to link trial counsel and appellate counsel together to resolve issues of common

importance to the successful prosecution of courts-martial. TCAP serves as the prosecutor's appellate advocate for extraordinary writs and Government appeals during the prosecution of a case and as the Government's advocate during habeas corpus litigation of cases that have passed through the ordinary course of appellate review.

TCAP provided five basic categories of services during FY 2005: (1) telephone/e-mail/website assistance; (2) advocacy training courses and other training events; (3) dissemination of information; (4) trial assistance; and, (5) appellate assistance. In doing so, TCAP personnel accomplished the following: (1) responded to an average of over 150 telephonic and e-mail requests for assistance per month with the new TCAP website receiving over 3,000 hits in its first month of operation; (2) conducted four regional advocacy training conferences, providing hundreds of hours of continuing legal education to approximately 150 judge advocates and 30 Army Criminal Investigation Division agents; (3) completed a courtroom simulation program for trial counsel in the field; (4) published a monthly newsletter containing updates from the courts and practical tips for trial counsel; (5) actively assisted in the prosecution of several high-profile cases including US v. Akbar, a capital case, and detainee abuse cases from Abu Ghraib and Bagram; and, (6) responded to ten habeas corpus petitions.

In response to the emerging need for expertise in litigating both high profile and classified cases, TCAP has assumed the lead role in several courts-martial. Notwithstanding this fact, TCAP has focused on its primary function of assisting counsel in the field. During FY 05, TCAP greatly expanded its audience by including RC judge advocates in all areas of its mission.

DEFENSE APPELLATE DIVISION

The Defense Appellate Division provides appellate representation before the Army Court of Criminal Appeals, the Court of the Appeals for the Armed Forces, and the Supreme Court of the United States for Soldiers convicted at courts-martial who have been adjudged either a punitive discharge or confinement for one year or more. The Division also assists Trial Defense Counsel in identifying issues and preparing writs filed in the various courts.

During FY 05, the division received 959 new cases. Appellate defense attorneys filed briefs in 907 cases before the Army Court of Criminal Appeals, 330 supplements to petitions for review with the Court of Appeals for the Armed Forces, and 14 final briefs with the Court of Appeals for the Armed Forces. Appellate defense counsel also filed 316 miscellaneous motions before the Army Court and 87 miscellaneous pleadings before the CAAF. Counsel argued 21 cases before the Army Court and 25 cases before the CAAF.

The number of new cases has risen since FY 2004 from an average of 74 new cases per month to an average of 80 cases. Counsel have also increased their average cases filed per month from 10 to 11.

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 2002 to 30 Nov 2003	1 Dec 2003 to 30 Nov 2004
Foreign Offense Citations	5,874	4,593
Total Civilian	1,473	1,265
Total Military	4,401	3,328
Exclusive Foreign Jurisdiction	133	110
Concurrent Jurisdiction	4,268	3,218
Traffic Offenses	526	372
Foreign Jurisdiction Recalls	683	477

During this reporting period, foreign authorities released to U.S. authorities 7 of the 110 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 2,844 of the 3,218 cases. Overall, the U.S. obtained waivers in 88.3% of all exclusive and concurrent jurisdiction cases. This figure reflects an increase of 1.5% in obtaining such waivers compared to the previous reporting period.

During the last reporting period, civilian employees and dependents were involved in 1,473 offenses. Foreign authorities released 200 of these cases (13.6% of the total of that reporting period) to U.S. military authorities for administrative action or some other form of disposition. In this reporting period, civilian employees and dependents were involved in 1265 offenses. The foreign authorities released 434 of these cases (34.5% of the current total of this reporting period). This figure represents an increase of 20.9% in obtaining releases of foreign criminal jurisdiction over civilian employees and dependents.

During this reporting period, foreign authorities tried a total of 685 cases involving U.S. personnel. 22 trials, or 3.2%, resulted in acquittals. Those convicted were sentenced as follows: 17 cases resulted in executed confinement, 59 cases resulted in suspended confinement, and 587 cases (85.7% of the total trials) resulted in only fines or reprimands.

PROFESSIONAL RESPONSIBILITY

The Standards of Conduct Office (SOCO) manages TJAG's professional responsibility program. This professional responsibility program is comprised of the following: (1) administratively reviewing alleged ethics violations and allegations of mismanagement for credibility; (2) tasking supervisory Army lawyers to run field inquiries; (3) reviewing reports of inquiry; and, (4) advising TJAG on appropriate resolution of ethics cases. SOCO also oversees the operation of TJAG's Professional Responsibility Committee and its issuance of advisory ethics opinions.

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

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

Notices and Complaints during FY 2005

Credibility Reviews. 36 notices and complaints had administrative dispositions after credibility reviews determined that no inquiries were warranted (19 less than FY 04's 55 administrative dispositions).

Inquiries. 20 inquiries were conducted and closed (3 more than FY 04's 17 closed inquiries). 11 inquiries were founded (the same as 11 founded and closed inquiries during FY 04).

LITIGATION

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

The Army is currently defending the historical practice of allowing line officers to defend Soldiers at special courts-martial. In Payne v. Secretary of the Army, the plaintiff filed suit in the United States District Court for the District of Columbia challenging the qualifications of his non-attorney defense counsel. Mr. Payne, a former Army enlisted Soldier, was convicted of negligent homicide at a special court-martial in November 1960. He was represented by a military defense counsel who was not an attorney. This practice is consistent with Article 19, UCMJ, which provides that military defense counsel at a special court-martial need not be attorneys as long as the sentence does not exceed six months confinement or forfeiture of more than two-thirds pay per month for six months. Plaintiff petitioned the ABCMR in 1992, and again in 2004, challenging the qualifications of his defense counsel, but he was denied relief. He has filed suit claiming that he was denied his Sixth Amendment right to counsel and challenging the ABCMR's denial of relief. The government has filed a motion to dismiss, arguing that: (1) plaintiff's claim is barred by the statute of limitation; (2) his military defense counsel satisfied constitutional requirements; and, (3) the ABCMR lacked the authority to overturn plaintiff's court-martial conviction. A decision on the government's motion is pending.

In a highly-publicized case that has lingered for many years, Michael New continues to challenge his court-martial conviction. In December 2004, in New v. Secretary of Defense, the United States District Court for the District of Columbia dismissed New's challenge to his court-martial conviction for refusing to wear the proper uniform. SPC New was tried by court-martial in 1996 for refusing to wear the United Nations insignia on his uniform during preparation for deployment to Macedonia. He was convicted of disobeying a lawful order and sentenced to a bad-conduct discharge. Military appellate courts affirmed the conviction. Mr. New then sued in district court, challenging his court-martial conviction on the basis that the order to wear the UN insignia was unlawful. The court agreed with the Army that the important issues raised by New had been fully litigated in the military proceedings and were thus non-reviewable. The district court also found his other challenges were either barred by the political question doctrine or were meritless. New appealed the district court's dismissal of his complaint to the Court of Appeals for the District of Columbia Circuit. Appellate briefs have been filed and the case is pending.

The Army successfully defended against a double-jeopardy claim by an Army physician who was court-martialed after entering into a pretrial diversion program with the D.C. Corporation Counsel for the same misconduct. On 31 March 2005, the United States Court of Federal Claims granted summary judgment to the Army in Ragard v. Army after concluding that plaintiff's constitutional rights were not abridged by his court-martial conviction. On 14 October 1997, CPT Ragard was arrested by a national park police officer in Washington, D.C., for engaging in oral sex in a public place. After plaintiff's arrest, the Office of the D.C.

Corporation Counsel charged him with indecent exposure. Prior to trial, plaintiff was voluntarily placed in a pretrial diversion program. Pursuant to this program, he completed forty hours of community service and the D.C. Corporation Counsel's Office dismissed the indecent exposure charge. Later that month, the Army preferred court-martial charges against CPT Ragard based on the same misconduct. Despite his claims that the court-martial amounted to double jeopardy, plaintiff admitted during the providence inquiry that he committed the offense of sodomy. Plaintiff was subsequently convicted and dismissed from the military and his dismissal was affirmed on appeal. He argued in his civil complaint that he was entitled to reinstatement in the military, back pay, retroactive promotions, and constructive service credit because the Army violated his double jeopardy protection under the Fifth Amendment and refused to abide by the pretrial diversion agreement plaintiff entered into with the D.C. Corporation Counsel's Office. The Army argued that the court-martial was not double jeopardy since plaintiff was never tried for an offense by the D.C. Corporation Counsel Office and hence, never put in jeopardy. Additionally, the Army argued that it was not bound by the Pretrial Diversion Agreement plaintiff entered into with the D.C. Corporation Counsel since that office is not a federal entity. After considering the merits of plaintiff's claims, the court agreed with the Army.

EDUCATION AND TRAINING

The cornerstone mission of the Criminal Law Department of The Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia, is to develop, improve, and sustain excellence in the practice of military criminal law. Events in the last year once again brought military justice to the forefront, and the Criminal Law Department continued instruction on subjects ranging from substantive criminal law to technical litigation skills, while at the same time supporting on-going operations by deploying one professor to Operation Iraqi Freedom for the first several months of 2005.

Advocacy training continues to be one of the Criminal Law Department's top priorities. The Department devotes significant effort to training each Basic Course student on trial advocacy skills. In order to improve preparation of our new Judge Advocates in military justice, including advocacy skills, the Criminal Law Department instituted major changes to its Basic Course Curriculum in the summer of 2005. The theme of the instruction is "The Anatomy of a Court-Martial." The faculty employs a fact scenario based on an actual criminal case to walk the students through the substance and process of a criminal case in the military justice system from the initial report of the offense to trial and conviction or acquittal of the alleged offender. Every student completes a series of twelve clinical events tied to the fact pattern over the course of approximately two and one-half weeks of instruction, including a neutral trial memorandum

that addresses numerous potential issues in the case. The clinical events involve the students acting as both trial and defense counsel and culminate with a negotiated guilty plea and contested court-martial exercise. The fact scenario also incorporates mandatory training in the Department of Defense and Department of the Army Sexual Assault Response Program, including changes to victim-witness initiatives.

In addition to improvements to the Basic Course Criminal Law curriculum, the Criminal Law Department made some changes to the Graduate Course Criminal Law curriculum as well, adding elective offerings in "Military Justice – Looking Ahead," designed to focus military justice supervisors on preempting appellate issues at the trial level, and "Computers and Military Justice," which focuses on three areas: the search and seizure of computers and other electronic evidence; the substantive crimes and defenses in the computer crimes area; and, evidentiary foundations for computer and electronic evidence.

This past spring, the Criminal Law Department welcomed the Army Court of Criminal Appeals to TJAGLCS in order for the Court to hear an oral argument in a pending case. The 166th Basic Course, the 54th Graduate Course, and the 23d Criminal Law Advocacy Course observed the fine oral arguments of both sides, and asked general questions of the military appellate judges following the argument. All attendees also reviewed the appellate briefs for both sides and received the written opinion in the case issued by the court.

The Department also continued providing instruction to military justice managers with a heavy emphasis placed on pre and post-trial processing. The forty-five students of the 11th Military Justice Managers Course received significant instruction on the practical "how to" of courts-martial pre and post-trial processing, as well as substantive law instruction. As in the past three courses, justice managers received a number of resources on CD-Rom for use in the field, including examples of case tracking systems and *The Advocacy Trainer*, to assist them in both their mission and to effectively continue teaching advocacy to their subordinate counsel. Guest speakers addressed topics that included criminal law management issues arising in operations in Iraq and Afghanistan, a view from a regional defense counsel, and comments from the Chief Trial Judge of the Army.

The Criminal Law Department continued to offer advanced advocacy training in the 23rd and 24th Criminal Law Advocacy Courses, in addition to advanced advocacy training electives for the Graduate Course. The two-week Criminal Law Advocacy Courses (CLAC) afforded more than 100 trial advocates more individualized and specialized trial advocacy training. In fact, due to high demand for the course, including personnel from the Reserve Component and counsel slated to deploy to Iraq and Afghanistan, the Department once again increased the size of the course from fifty-six

(seven groups of eight) to sixty-four (eight groups of eight). For each course, the students performed rigorous small-group practical exercises on essential litigation skills, from opening statement through closing argument. Eight reserve component officers from around the country assisted the Department with the 24th CLAC course, 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 capacities. Their assistance with advocacy training is an invaluable resource for the Department. Due to the recently inaugurated DIMA program, many officers were able to return for the basic course advocacy training exercises as well, and to assist with continuous updating of the Department's Crimes and Defenses Handbook, an invaluable publication 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 48th 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 Twenty-Ninth Criminal Law New Developments Course attended by over 250 judge advocates from all services, which this year included a Twenty-Fifth Anniversary Celebration for the United States Army Trial Defense Service. In addition to hosting courses, Department professors taught classes to Reserve Component judge advocates at numerous Reserve On-Site Conferences, as well as providing case updates to appellate counsel and judges at the Judge Advocate Association Appellate Conference and the Fulton Conference in the fall. Professors also presented instruction at the Court of Appeals for the Armed Forces Conference and Interservice Military Judges Course in the spring. One of the Department's professors also provided instruction in military capital litigation and High Profile Case Management at the Naval Justice School in Newport, Rhode Island.

Finally, the Criminal Law Department was extremely pleased to host a distinguished speaker last spring. RADM (Ret) John D. Hutson, Dean and President, Franklin Pierce Law Center, and a retired Navy Judge Advocate General, presented the 33d Hodson Lecture on Criminal Law. RADM Hutson delivered a thought-provoking presentation concerning the ongoing debate over treatment of detainees in military custody.

PERSONNEL, PLANS, AND POLICIES

The attorney strength of the active component Judge Advocate General's Corps at the end of FY 05 was 1,603 (including general officers). This total does not include 66 officers attending law school while participating in the Funded Legal Education Program. The attorney strength of the reserve component Judge Advocate General's Corps at the end of FY 05 was 2,286 and the strength of the Army National Guard at the end of FY 05

was 625. The diverse composition of our attorney population included 119 African-Americans, 48 Hispanics, 83 Asians and Native Americans, and 416 women. The FY 05 end strength of 1,603 compares with an end strength of 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, 1,541 in FY 96, and 1,561 in FY 95. The grade distribution of the Corps' attorneys was 5 general officers, 132 colonels, 226 lieutenant colonels, 313 majors, and 932 captains. An additional 90 warrant officers, 492 civilian attorneys, and 1,495 enlisted paralegals supported legal operations worldwide. As of the end of FY 05, over 650 Army JAG personnel (officer and enlisted, active and reserve component) were deployed in operations in Iraq, Kuwait, Afghanistan, Djibouti, Qatar, Bosnia, Kosovo, Cuba, the Horn of Africa (afloat), and Honduras.

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

APPENDIX - U.S. ARMY MILITARY JUSTICE STATISTICS

Report Period: FISCAL YEAR 2005

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	825	777	48	+27.5%
BCD SPECIAL [A]	700	680	20	+3.4%
NON-BCD SPECIAL	0	0	0	-100.0%
SUMMARY	1,252	1,170	82	+5.8%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+40.0%

PART 2 – DISCHARGES APPROVED [B]

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	116 (+ 31)
NUMBER OF BAD-CONDUCT DISCHARGES	250
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	313

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	511
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	443
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	189

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

TOTAL ON HAND BEGINNING OF PERIOD		146 [C]
GENERAL COURTS-MARTIAL	[D]	
BCD SPECIAL COURTS-MARTIAL	[D]	
REFERRED FOR REVIEW		1077 [C]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED		1032 [E]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD		191 [C]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+7.5%

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

NUMBER	975
PERCENTAGE	90.53%

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	323 of 1077	32.08%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+4.19%
PERCENTAGE OF TOTAL PETITIONS GRANTED	41 of 283	14.49%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-12.77%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA		3.97%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-15.35%

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

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		5	
RECEIVED		7	
DISPOSED OF		3	
GRANTED	0		
DENIED	2		
NO JURISDICTION	0		
WITHDRAWN	1		
TOTAL PENDING AT END OF PERIOD		9	
PART 8 – ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		652	
SPECIAL COURTS-MARTIAL		624	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		173	
SPECIAL COURTS-MARTIAL		76	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		24	
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		492,728	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		45,299	
RATE PER 1,000		91.94	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+8.20%	

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, 2004 TO SEPTEMBER 30, 2005

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 Jennifer S. Herold, JAGC, USN, relieved Captain Ken Bryant as the Division Director, and Lieutenant Commander Christopher D. Connor, JAGC, USN, relieved Lieutenant Commander Ken Ian as the Deputy Director. The Criminal Law Division was staffed with five active duty judge advocates and two civilian support personnel. The Criminal Law Division was supported by 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 for punitive discharge; staffs requests for JAG authorization to refer charges for trial by court-martial after adjudication of similar charges by State or foreign courts; provides JAG representative to Naval Clemency and Parole Board; coordinates court orders and warrants of attachment; provides written opinions to Board for Correction of Naval Records (BCNR); reviews records of trial forwarded to JAG for review under Article 69(a) and (b), UCMJ; reviews requests forwarded to JAG for consideration under Article 73, UCMJ; and publishes timely guidance to all military justice practitioners in the Department of the Navy.

In addition, the Division Director, Code 20, serves as Special Assistant for Military Justice, Naval Legal Service Command (NAVLEGSVCCOM), and advises Commander, NAVLEGSVCCOM regarding policies, plans, resources and procedures affecting the military justice mission of NAVLEGSVCCOM. In that capacity, the Division Director assists Commander, NAVLEGSVCCOM, in Article 6, UCMJ, inspections of NAVLEGSVCCOM commands and detachments. In fiscal year 2005, the Division Director, Code 20, participated in the Article 6, UCMJ, inspections of NAVLEGSVCCOM commands in the Mid-Atlantic and Northeast portions of the United States.

The JSC 2005 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 the creation of two new crimes prejudicial to the good order and discipline of the services. Specifically, the Review included a new crime of voyeurism and a new crime of child endangerment, as well as a proposed maximum sentence to the new stalking statute enacted by Congress in the National Defense Authorization Act.

In accordance with the functions described above, the data below represents a small part of the Division's day-to-day duties for fiscal year 2005:

Congressional and other external inquiries	60
Internal inquiries	165
Proposals for changes to the Manual for Courts-Martial, Manual for the Judge Advocate General, and Navy Regulations	21
Post Trial Delay issues	5
Legislative Review	31
Statistical data compilation/review	13
Requests for Immunity	10
Review of instructions/directives/regulations	43
Requests for Courts-Martial Convening Authority	26
Requests to exercise courts-martial jurisdiction	9
Petitions to Board for Correction of Naval Records	4

Requests for Warrants of Attachment	3
Review of requests for Certification of cases to the Court of Appeals for the Armed Forces	7
Petitions for pardon or clemency	6
Officer Dismissals	44
Article 69(a) and Article 69(b) review	43
Freedom of Information Act/Privacy Act	313

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

Legal issues addressed included: the use of prior uncharged acts of child molestation in a child molestation case; testimonial vice non-testimonial evidence under *Crawford v. Washington*, 541 U.S. 36 (2004); the scope of appellate review in cases remanded by our superior court; the impact of *Lawrence v. Texas*, 539 U.S. 558 (2003) on the UCMJ offense of adultery; the constitutionality of 18 U.S.C. § 2257 requiring individual records of performers be maintained by operators of pornographic internet web sites; application of the Right to Financial Privacy Act, 12 U.S.C. §§ 3401-3422; whether the lack of fixed terms of appellate judges is a violation of constitutional due process.

The court continued to submit for posting all published and authored decisions within one day of release and a digest of each posted case on its web page. The court also posts these decisions on the Navy Knowledge Online intranet.

APPELLATE DEFENSE DIVISION (Code 45)

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

Organization. Captain Pamela A. Holden, JAGC, USN, and Lieutenant Colonel Joseph R. Perlak, USMC, served as the Division Director and Deputy Director for the entire fiscal year. The Appellate Defense Division was staffed with 18 active duty Navy and Marine Corps judge advocates and 4 civilian support personnel.

Reserve Branch. The Appellate Defense Division was supported by 37 Navy and Marine Corps Reserve judge advocates. Reserve attorneys filed 1755 cases, representing 86% of the total initial pleadings for the year. The Division's supporting Reserve units are: NR NAVJAG 109, Colunthus, Ohio; NR NAMAPA (Defense) 111, Oklahoma City, Oklahoma; NAVJAG 519, Los Angeles, California; and NAVJAG 211, Fort Worth, Texas. Additionally, the Division received volunteer support from four Naval Reserve judge advocates from Voluntary Training Unit 614. The Marine Corps Reserve contingent consisted of five independently assigned Reserve judge advocates.

Appellate Representation. A total of 2001 new cases were docketed at NMCCA and received in the Appellate Defense Division. At the end of fiscal year 2005, the total number of cases pending initial review was 364. This represents a 268-case reduction from the number of cases pending initial review at the end of last fiscal year. The Division also achieved another significant reduction in the number of cases pending initial pleadings in excess of one year. On October 1, 2003, there were a total of 234 cases in a 7th or higher enlargement. On September 30, 2004, that number was reduced to 82. By September 30, 2005, that number was further reduced to 16.

As depicted below, in fiscal year 2005 the Appellate Defense Division filed 2127 initial pleadings with the NMCCA. This number was comprised of 1541 merit submissions, 43 summary assignments, and 543 briefs. A total of 226 cases were petitioned to CAAF, with 43 grants of review issued.

NMCCA	**FY 03**	**FY 04**	**FY 05**
Briefs Filed	433	520	543
Total Cases Filed	2094	1966	2127
USCAAF			
Petitions Filed	240	201	226
Supplements Filed	174	161	207
Briefs Filed	12	19	26

U.S. Supreme Court			
Petitions Filed	3	1	2

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

Assistance to Trial Defense Counsel. The Appellate Defense Division provided advice and support to Navy and Marine Corps trial defense counsel around the world. The Division maintained a rotating Field Call watch comprised of experienced appellate attorneys who replied to short-fused questions from trial defense counsel and assisted in preparing and filing extraordinary writs. The Division 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)

In accordance with Article 70, UCMJ, the primary mission of the Appellate Government Division is to represent 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.

For most of the fiscal year, the Division was staffed with 12 active duty judge advocates and 2 civilian employees. Colonel Ralph F. Miller, USMC, relieved Colonel William K. Lietzau, USMC, as the Division Director. Commander Charles Purnell, JAGC, USN, continued as the Deputy Director.

Reserve support continued to be critical to the accomplishment of the Appellate Government's mission. The Division was supported by 16 Navy Reservists from 2 Navy Reserve Detachments NAVJAG 116 (Detroit) and NAMARA 116 (Minneapolis) and 3 Marine Corps Officers as Individual Mobilization Augmentees. During the summer of 2005, four law student interns supported the Division.

Filings at the NMCCA increased by more than 45% this fiscal year, and the number of filings at the CAAF increased significantly as well. Indeed, the number of full briefs filed by the Government at the CAAF increased by more than 70%. The following chart sets forth Code 46's filings for the last five fiscal years:

	FY 01	FY 02	FY 03	FY 04	FY 05
NMCCA					
Briefs filed	395	798	761	542	700
Other pleadings	277	456	475	222	425
CAAF					
Briefs filed	41	45	12	22	38
Other Pleadings	82	91	152	73	115

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

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

During fiscal year 2005, the Division's judge advocates participated in two oral argument outreaches sponsored by the CAAF. The CAAF oral argument outreaches were held at the University of San Diego School of Law and on board USS RONALD REAGAN (CVN 76). Participation in these programs served to educate and inform students and military members alike about the fairness and professionalism of the military justice system.

NAVY-MARINE CORPS TRIAL JUDICIARY

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

The Navy-Marine Corps Trial Judiciary (NMCTJ) consists of 34 active duty and 18 reserve judges serving in 12 circuits and 4 branch offices. During fiscal year 2005, NMCTJ provided judicial services in 359 general courts-martial and 1612 special courts-martial. These numbers are consistent with the number of general and special courts-martial tried in fiscal year 2004.

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

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

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) is commanded by Rear Admiral Bruce MacDonald, JAGC, USN, who also serves as the Deputy Judge Advocate General of the Navy. NAVLEGSVCCOM includes 265 judge advocates, 1 Civil Engineer Corps Officer, 31 Limited Duty (Law) Officers, 203 Legalmen, and 255 civilians. NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, family members, and retirees from 58 offices world-wide: 8 Naval Legal Service Offices (NLSO5) , 5 Trial Service Offices (TSOs), 2 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 assistance for claims processing and adjudication, and training judge advocates, legalmen, and other DoD personnel. During fiscal year 2005, NAVLEGSVCCOM provided counsel for 180 general courts-martial, 531 special courts-martial, 199 Article 32s, 932 administrative separation boards, processed over 41,561 claims, provided over 250,128 legal assistance services, and provided command assistance services for over 3,900 commands.

NAVAL JUSTICE SCHOOL

Organization. Naval Justice School (NJS) reports to Commander, NAVLEGSVCCOM for administrative and operational control. Commander, Naval Education and Training Command (CNETC) is NJS' major resource sponsor. Commander, NAVLEGSVCCOM consults with CNETC on matters relating to the effectiveness of instruction and administration of training at NJS. Additionally, Commanding Officer, NJS consults with Commanding Officer, Center for Service Support on these same matters. The main NJS facility is located in Newport, Rhode Island. Teaching detachments are based in San Diego, California, and Norfolk, Virginia (areas of Fleet concentration). A one-person Branch Office is co-located with the U.S. Army's The Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

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

In fiscal year 2005, NJS provided instruction to more than 12,000 students worldwide (including 32,761 in resident courses ranging in length from 2 days to more than 10 weeks).

Academic Programs. NJS has eight "core" courses. These courses are:

- Basic Lawyer Course (BLC). This nine-week course, offered four times annually, provided 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 and administrative law. Upon graduation, judge advocates are certified per Article 27(b), UCMJ. Fiscal year 2005 graduates: 136.

- Basic Operational Law Training (BOLT). Added to the curriculum this year, this one-week course is offered to all Navy and Coast Guard Accession judge advocates either right before or right after the Basic Lawyer Course. This course runs parallel with the USMC BOLT course, which is coordinated by USMC Headquarters for all Marine Corps Basic Lawyer Course students. Instruction includes classroom lectures and group seminar exercises in topics that include 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.

- Accession Legalman Course. This nine-week course trains Navy enlisted personnel selected for conversion to the Legalman rating. The course is divided into two distinct phases: military justice paralegal training and court reporting. There were no Legalmen *accession* students in fiscal year 2005, due to the potential rating merger with Yeomen, Religious Program Specialist, and Cryptologic Technician-Administration.

- Basic Legal Services Specialist Course. This 9 1/2-week course, offered 4 times annually, provides accession legal 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 2005 graduates: 85.

- Senior Officer Course in Military Justice and Civil Law. This one-week course trains senior officers in the execution of the legal responsibilities of command with instruction in nonjudicial punishment, court-martial procedures, administrative law, and operational law topics including rules of engagement/rules for use of force, law of armed conflict, and law of the sea. In Fiscal year 2005, this course was offered 30 times in 10 different locations, training 850 officers.

- Legal Officer Course. This three-week course prepares non-lawyer "legal officers" to perform a host of military law functions in commands not large enough to warrant assignment of a judge advocate. In fiscal year 2005, this course was offered 16 times in 3 different locations, with 513 graduates.

- Legal Clerk Course. Legal Clerks are typically assigned to assist non-lawyer legal officers within a command as a collateral duty. This 2-week course provides training in the preparation of legal forms and reports, service record entries, nonjudicial punishment, and court-martial procedures. In fiscal year 2005, the course was offered 16 times in 2 locations, graduating 315 students.

- Senior Enlisted Leadership Course (SELC) in Military Justice and Civil Law. This three-day course provides senior enlisted leaders of all services training in a wide range of military law with primary focus on military justice matters. In Newport, the SELC is incorporated into the core curriculum at the Navy's Senior Enlisted Academy. In fiscal year 2005, the SELC was offered 9 times in 3 different locations, reaching 297 students. In Newport, this training was provided to 1,560 students at the Senior Enlisted Academy.

Continuing Legal Education. In addition to the "core" courses, NJS provided 31 continuing legal education (CLE) courses. Most of these courses focused primarily upon military justice with training including: intermediate and advanced trial advocacy skills; computer crimes; legal research and writing; national security cases; prosecuting and defending complex cases; reserve updates; and a number of paralegal courses.

Training was provided to active duty and reserve judge advocates and enlisted legal professionals from the Sea Services, Army, Air Force, and foreign countries in military justice and other topics including, operational law, administrative law, legal assistance, and estate planning. In fiscal year 2005, 31 distinct courses were offered 46 times in 11 different locations, reaching 919 active duty and 567 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 annually to discuss new initiatives and opportunities for cross-training and to increase cooperation and efficiency in the training of legal personnel within the Department of Defense.

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

Additional Training. NJS participated in the Expanded International Military Education and Training Program, a security assistance program mandated by Congress. The primary focus of this instruction is on military justice and procedure. In fiscal year 2005, NJS instructors provided this type of training in Afghanistan, Argentina, Bosnia, Honduras, Mauritius, and Zambia. Additionally, NJS worked closely with the Defense Institute of International Legal Studies to develop training materials and classes for the newly formed judge advocate general branch of the Afghanistan National Army and participated in two separate training visits to Afghanistan.

Navy Professional Military Education. NJS instructors developed seven separate legal training modules, covering topics in operational law, military justice, and standards of conduct/ethics, which will be used for the Navy Professional Military Education (NPME) program. In the near future, NPME raining modules will be required for all Navy personnel to complete via Navy Knowledge Online (NKO).

Deployments. Two NJS instructors deployed to Iraq in support of Operation Iraqi Freedom in fiscal year 2005; one in support of Second Marine Expeditionary Force (II MEF) and the other in support of Task Force 134 Detainee Operations.

MARINE CORPS ACTIVITIES

There are approximately 422 active duty Marine judge advocates and 415 Reserve Marine judge advocates. Additionally, there are 18 warrant officers, 508 legal specialists, and 39 court reporters working in the legal offices. These Marines support the Fleet Marine Forces in the

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

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

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

The Marine Corps accesses 35 judge advocates a year from civilian law schools and private practice. Approximately 10 judge advocates per year are lateral transfers from other Marine Corps occupational fields via the Law Education Program. The Marine Corps continues to have more applicants than openings and is able to use a board process to screen all applicants to ensure the highest quality are accepted. Applicants come from diverse backgrounds and all have law degrees from ABA accredited law schools. They have higher than average LSAT scores and have successfully completed the rigorous Marine Corps Officer Candidate Course training program.

The process of becoming a Marine Corps judge advocate is four-fold. First, eligible applicants must attend Officer Candidate School (OCS) in Quantico, Virginia. This strenuous ten-week course is designed to test a candidate's leadership and physical abilities. Successful completion leads

to a commission as a Second Lieutenant. Second, all Marine Corps officers attend The Basic School (TBS). The Basic School is a rigorous, six-month program that provides each lieutenant the foundation to be an infantry platoon commander. The phrase "every Marine a rifleman" applies even to judge advocates. Third, each judge advocate must complete the Basic Lawyer Course at the Naval Justice School in Newport, Rhode Island. Finally, each judge advocate must successfully complete the newly implemented Basic Operational Law Training (BOLT) course. BOLT provides judge advocates a week of training in operational and international law. Successful completion of OCS, TBS, the Basic Lawyer Course, and BOLT culminates in designation as a Marine judge advocate.

Upon reporting to their commands, various continuing legal education training opportunities are available to include command and Headquarters, U.S. Marine Corps sponsored programs. Currently, training opportunities are available at each of the service judge advocate schools. Additionally, various civilian continuing legal education opportunities are provided for judge advocates. Approximately 12 judge advocates each year are selected for advanced (L.L.M) training at civilian law schools and the Army's Judge Advocate General's Legal Center and School. Additionally, each year, five to six judge advocates attend a military specific training course such as the Expeditionary Warfare School, Command and Staff College, or the Naval War College.

The Marine Corps warrant officer and enlisted members also undergo a significant training regime. On average, 9 enlisted Marines are enrolled in a stenography/scopist course and each year 18 enlisted Marines attend the Legal Service Specialist Mid-Career Course at Naval Justice School. The Marine Corps also had six enlisted Marines attend the Law Office management course at Maxwell Air Force Base, Alabama, and the Senior Noncommissioned Officer Management course at Charlottesville, Virginia. In addition, the Marine Corps has 38 legal specialists and 1 court reporter filling non-legal billets as Drill Instructors, Recruiters, and Marine Security Guard. Currently, enlisted Marines are encouraged to enroll in paralegal programs and have the opportunity to attend legal education courses offered by the Marine Corps, Army, Navy, and Air Force, including the Legalman/Legal Services Specialist Mid-Career Course and Legal Research and Writing at the Naval Justice School.

The average debt for new Marine Corps judge advocates is $68,841. The Law School Education Debt Subsidy (LSEDS) has been approved for another year in the Marine Corps. Captains who have completed their initial active duty obligation and intend to accept career designation in the Marine Corps are eligible. Selection to major is the upper parameter for eligibility. Thirty thousand dollars is the authorized payment to be made in yearly installments of $10,000. Officers accepting LSEDS incur a further three-year commitment.

The following chart contains military justice statistical information for the Marine Corps in fiscal year 2004 and 2005.

Fiscal Year	End strength	GCM	SPCM	SCM	Total Courts	NJP
FY04	177,480	150	1,261	928	2,339	8,985
FY05	180,029	187	1,137	1,022	2,346	13,386

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

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

Report Period: FY 2005

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	359	339	20	+1.5%
BCD SPECIAL	1610	1549	61	-14%
NON-BCD SPECIAL	0	0	0	0%
SUMMARY	1980	1968	12	1.3%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				- 4.6%

PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES [B]	122
NUMBER OF BAD-CONDUCT DISCHARGES	171
SPECIAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF BAD-CONDUCT DISCHARGES	1528

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	308
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	1527
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	28

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

TOTAL ON HAND BEGINNING OF PERIOD		1203
GENERAL COURTS-MARTIAL	465	
BCD SPECIAL COURTS-MARTIAL	738	
REFERRED FOR REVIEW		1876
GENERAL COURTS-MARTIAL	318	
BCD SPECIAL COURTS-MARTIAL	1558	
TOTAL CASES REVIEWED		2088]
GENERAL COURTS-MARTIAL	446	
BCD SPECIAL COURTS-MARTIAL	1642	
TOTAL PENDING AT CLOSE OF PERIOD		991
GENERAL COURTS-MARTIAL	375	
BCD SPECIAL COURTS-MARTIAL	616	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+1%

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

NUMBER	1876
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	226	-10.8%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+ .2%
PERCENTAGE OF TOTAL PETITIONS GRANTED	48	21.2%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+ 8.3%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA		2.3%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+ 84%

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		2	
RECEIVED		17	
DISPOSED OF		7	
GRANTED	0		
DENIED	7		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		12	
PART 8 – ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		278	
SPECIAL COURTS-MARTIAL		1512	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		81	
SPECIAL COURTS-MARTIAL		98	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		42	
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		542,970	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		31,702	
RATE PER 1,000		5.8%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+10%	

SECTION 5

REPORT OF THE
JUDGE ADVOCATE GENERAL OF THE AIR FORCE

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
OCTOBER 1, 2004 TO SEPTEMBER 30, 2005

THE AIR FORCE COURT OF CRIMINAL APPEALS

The Air Force Court of Criminal Appeals rendered 476 decisions in fiscal year 2005. The Court continued its "Project Outreach" program, hearing oral arguments at installations around the country as a means of exposing Air Force members and the public to the appellate process of the military justice system. During this period, the Court heard argument at the United States Air Force Academy in Colorado Springs, Colorado, on whether evidence obtained during a search should be suppressed based upon an alleged violation of the 4th Amendment, which further tainted a confession. The Court also heard oral argument at the Air Force Judge Advocate General (AFJAG) School at Maxwell Air Force Base, Alabama, on whether the record of trial in the case before the court was incomplete and whether the military judge erred by preventing the defense from impeaching the testimony of the deceased baby's father.

The Court lost the Chief Judge, one Senior Judge, one Associate Judge, and two reserve judges to retirement and one Associate Judge moved on to a new assignment this fiscal year. Subsequently, the Court welcomed a new Chief Judge, Colonel Bruce T. Brown, who joined the Court from his position as Staff Judge Advocate of Air Education and Training Command. Colonel James Moody became a Senior Judge on the Court after serving as an Associate Judge since 2003. The Court also welcomed Colonel Daniel Fincher, Lieutenant Colonel Christopher Mathews, and Lieutenant Colonel Joseph Jacobson.

TRIAL JUDICIARY

The Air Force Trial Judiciary had 22 active duty trial judges, 9 reserve trial judges, and 9 noncommissioned officers assigned throughout 5 judicial circuits worldwide. The military judges' duties include: presiding over all general and special courts-martial tried in the United States Air Force; serving as investigating officers IAW Article 32, Uniform Code of Military Justice (UCMJ); serving as legal advisors for officer discharge boards and other administrative boards; conducting parole violation hearings; and presiding at public hearings held to consider draft environmental impact statements. In fiscal year 2005, the judges presided over 973 general and special courts-martial, nearly a 10% increase over FY 04.

At the division headquarters, Colonel David F. Brash is serving as the Chief Trial Judge. In June, Lieutenant Colonel Dawn R. Eflein assumed duties as the Deputy Chief Trial Judge after serving as a Military Trial Judge in the Pacific Circuit.

The Trial Judiciary conducted the 31st Interservice Military Judges Seminar at Maxwell AFB, Alabama from 18 to 22 April. The seminar provided extensive continuing legal education and cross-feed among military trial judges. Over 110 military judges from all services attended.

Our judges participated in or conducted several other training sessions during this period. In April, Colonel Brash instructed at the Advanced Trial Advocacy Course at the AFJAG School. In May, Colonel Brash instructed new military judges at the Military Judges Course at the Army Judge Advocate General Legal Center and School (TJAGLCS), University of Virginia, Charlottesville, Virginia. Colonel Brash also made annual supervisory visits and trained trial and defense counsel at each circuit workshop.

Two military trial judges attended courses at the National Judicial College in Reno, Nevada. Lieutenant Colonel James "Brad" Roan attended "Evidentiary Issues" in April, and Colonel Barbara Brand attended "Handling Capital Cases."

GOVERNMENT TRIAL & APPELLATE COUNSEL DIVISION

APPELLATE GOVERNMENT COUNSEL

At the division headquarters, Lieutenant Colonel Gary F. Spencer served as the Chief, Government Trial and Appellate Counsel Division and Lieutenant Colonel Robert V. Combs served as the Chief, Appellate Government Counsel. Colonel Spencer deployed from April to September 2005 to serve as legal advisor to the NATO Air Component Command Headquarters, Izmir, Turkey.

In October 2004, division counsel attended the United States Court of Appeals for the Armed Forces (USCAAF) Symposium sponsored by The Judge Advocate's Association at Catholic University School of Law. In November 2004, division personnel attended the Criminal Law New Developments Course at TJAGLCS. This course covered the previous year's military cases in the areas of criminal law. In addition to providing new counsel an update in criminal law developments, it was an opportunity for appellate counsel and trial counsel to discuss ways to better serve the base legal offices; and it provided an opportunity for our counsel to establish contacts with their counterparts in the sister Services. In May 2005, appellate counsel, including reserve counsel, attended the USCAAF Judicial Conference at Catholic University School of Law. These gatherings provided current information on appellate issues and guidance on appellate practice.

Appellate government counsel prepared and provided an appellate update on USCAAF and AFCCA decisions and trends in case law at trial counsel workshops at each of the five circuits. Additionally, division personnel, including circuit trial counsel, provided instruction on myriad military justice topics at two Trial Defense and Advocacy Courses, the Advanced Trial and Defense Advocacy Course, at various Major Command (MAJCOM) Staff Judge Advocate (SJA) conferences, and at a DoD Domestic Violence Policy Workshop.

Appellate government counsel have contributed to "Project Outreach," sponsored by USCAAF and AFCCA, by conducting oral arguments before audiences at various locations. These arguments helped educate attendees on the fairness and professionalism of the military justice system.

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

Currently, there are seven reserve judge advocates assigned as appellate government counsel. They continue to provide superb support, greatly assisting the division in carrying out its mission. In addition to preparing written briefs, a number of reserve counsel presented oral arguments before USCAAF and AFCCA during the fiscal year.

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

AFCCA	**FY 01**	**FY 02**	**FY 03**	**FY 04**	**FY 05**
Briefs Filed	203	181	230	226	159
Cases Argued	20	12	13	14	11

USCAAF	**FY 01**	**FY 02**	**FY 03**	**FY 04**	**FY 05**
Briefs Filed	46	99	51	69	73
Cases Argued	32	28	31	15	29

SUPREME COURT	**FY 01**	**FY 02**	**FY 03**	**FY 04**	**FY 05**
Petition/Waivers Filed	1	0	0	0	5
Briefs Filed	0	0	0	0	0

CIRCUIT TRIAL COUNSEL

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

APPELLATE DEFENSE DIVISION

Training for our appellate defense counsel remains one of the division's highest priorities. This training included the Criminal Law New Developments Course, the Judicial Conference sponsored by USCAAF, and a Military Appellate Advocacy Symposium sponsored by the Judge Advocates Association. Two appellate defense attorneys attended the Computer Crimes Course and two attended the Legal Aspects of Sexual Assault Course.

Appellate defense counsel served as adjunct faculty members at the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course at the AFJAG School at Maxwell AFB, AL. Appellate defense counsel routinely serve as instructors at the Area Defense Counsel Orientation Courses.

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

Appellate defense counsel have contributed to "Project Outreach," sponsored by USCAAF and AFCCA, by conducting oral arguments before audiences at the United States Air Force Academy, The AFJAG School, Harvard Law School, and Grand Forks AFB, ND. These arguments helped educate attendees on the fairness and professionalism of the military justice system.

The Division Chief and Law Office Manager joined with the Appellate Division Chiefs from the Army, Navy, and Coast Guard to tour the United States Disciplinary Barracks (USDB) at Fort Leavenworth, KS. The trip has resulted in better communication with the Army legal office at the USDB as well as the Air Force Prisoner Liaison office, and ultimately better services for their clients.

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

AFCCA	FY 01	FY 02	FY 03	FY 04	FY 05
Briefs Filed	481	525	512	502	376
Cases Argued	14	12	12	14	11

USCAAF	FY 01	FY 02	FY 03	FY 04	FY 05
Supplements to Petitions	457	412	219	274	268
Grants Briefs	31	33	22	19	32
Oral Arguments	31	28	26	14	29

SUPREME COURT	FY 01	FY 02	FY 03	FY 04	FY 05
Petition	6	3	3	1	0
Briefs in Opposition	0	0	0	0	0
Briefs on the Merits	0	0	0	0	0

TRIAL DEFENSE DIVISION

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

The Division is staffed with 84 ADCs stationed at 70 bases worldwide. They are assisted by 72 DPs. The Division has 21 CDCs and 5 CCDCs. The CCDCs, along with 1 8 of the CDCs, are stationed at circuit offices located at Boiling AFB, DC, Randolph AFB, TX, Travis AFB, CA, Ramstein AB, Germany, and Yokota AB, Japan. A single defense paralegal manager is assigned to each of the circuits.

The continuing success of the Air Force's ADC Program is largely attributable to its independence and its energized personnel. To ensure the best representation for Air Force clients, training remains the division's top priority. On a continuing basis, each CCDC and CDC provides on-the-job training and mentoring to ADCs. Newly appointed defense counsel received formal training at the ADC Orientation held at Boiling AFB in June and August and at annual workshops conducted by each circuit. Each circuit also conducts DP training at the annual workshops. In addition, the division ensures each ADC has attended the Trial and Defense Advocacy Course and that all CDCs have attended the Advanced Trial Advocacy Course. The Division provides adjunct faculty members for these two courses held at the AFJAG School. Selected defense counsel also attend Air Force in-residence force development education.

MILITARY JUSTICE DIVISION

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

During the past year, the Military Justice Division: provided 86 formal opinions concerning AFBCMR applications; received 183 inquires in specific cases requiring formal written replies to senior officials, including the President and members of Congress; and reviewed 65 records of trial for review under Article 69a, UCMJ, and 3 records under Article 69b, UCMJ. The division presented the ninth annual Military Justice Administration Workshop at the AFJAG School, a "back to basics" one-week workshop attended by both judge advocates and paralegals. The division also instructed base legal office chiefs of military justice at an 18th Air Force workshop held at Scott Air Force Base, IL.

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

Finally, division representatives played a pivotal role in the twenty-first annual review of the Manual for Courts-Martial (MCM). The review resulted in proposed amendments to: specify two new paragraphs in Part IV, Article *134*, UCMJ, proscribing voyeurism and child endangerment; increase the maximum punishments for assaults against child victims and for maiming; amend the Military Rules of Evidence to define "clergyman's assistant," and include crimes against "de facto" children in the exception to the spousal privilege; amend the Rules for Courts-Martial to specifically allow the Service Secretaries and Secretary of Defense to make recommendations in capital cases; and amend the Discussion in the Rules for Courts-Martial to clarify that, in rehearings only, the sentence that may be approved (as opposed to adjudged), is limited to the sentence previously approved.

CLEMENCY, CORRECTIONS AND OFFICER REVIEW DIVISION

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

At the end of fiscal year 2005, 547 Air Force personnel were in confinement. Of those, 96 inmates were in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and 75 were serving time in the Federal Bureau of Prisons (BOP) system. A total of 7 inmates were enrolled in the Air Force Return-to-Duty Rehabilitation (RTDR) Program during this period, with 1 graduating and being returned to duty. The number of Air Force inmates on parole at the end of fiscal year 2005 was 162, a 2 percent increase from last fiscal year. The President pardoned one former Air Force member tried by court-martial. The office workload of cases sent to the Secretary increased by 30% over last fiscal year, with 19 cases acted upon.

The division briefed each of the five Circuit Workshops on its area of practice, and division representatives received professional education themselves at the American Correctional Association annual convention.

AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

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

AFJAG School Courses

The AFJAG School conducted 44 classes (some courses are held more than once a year) in fiscal year 2005 for 3,518 students. Courses, seminars, and workshops conducted at the AFJAG School included:

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

Off-Site Courses

The AFJAG School conducts four "Annual Surveys of the Law" for judge advocates and paralegals in the Air Force Reserve and Air National Guard. The surveys provide concise legal updates and extensive reviews of recent developments in military justice. The surveys are conducted at a civilian conference facility in Denver, Colorado. Three hundred sixty-one students attended the courses conducted in January 2005. The Advanced Environmental Law Course was also taught off-site in Washington D.C. This course provides a policy overview and update on significant changes in the law for DoD environmental professionals at the policy level. Forty-two students attended the course.

Distance Learning (DL) Courses

The AFJAG School conducted two DL courses, the Air Force Systems and Logistics Contracting Course and the Fiscal Law Course, by live satellite broadcast (one-way video and two-way audio) to more than 100 DoD sites throughout the United States. Approximately 1,400 personnel participated in DL courses in fiscal year 2005.

Outside Teaching

In addition to teaching AFJAG School courses, faculty members provide over 1,200 academic hours of instruction annually on a wide range of legal topics in other colleges, schools, and courses within Air University. These include: Air War College; Air Command and Staff College; Squadron Officer School; College of Aerospace Doctrine, Research, and Education; School of Advanced Airpower Studies; International Officer School; Officer Training School; Senior Noncommissioned Officer Academy; USAF First Sergeant Academy; Professional Military Comptroller School; Group Commanders' Course; Wing Commanders' Seminar; Advanced Personnel Officer Course; and the Chaplain Orientation Course. Additionally, the faculty provides instruction at other schools, courses, and conferences throughout the world. In fiscal year 2005, AFJAG School personnel instructed at the Inter-American Air Force Academy; USAF Special Operations School; U.S. Army Judge Advocate General School; and the SOUTHCOM Legal Engagement Conference.

The AFJAG School participates in the Expanded International Military Education and Training (E-IMET) program, one of several security assistance programs mandated by Congress. The program promotes U.S. foreign policy goals as established in the Foreign Assistance Act. The E-IMET Program involves joint U.S. military training teams teaching human rights, military justice, civilian control of the military, the law of armed conflict, rules of engagement, and general democratic principles in countries designated as emerging democracies. Faculty from the AFJAG School participated in five E-IMET missions in fiscal year 2005. E-IMETs were conducted for Honduras, Afghanistan, Iraq, Mozambique and Bolivia.

Publications

Each year, the AFJAG School publishes two issues of *The Air Force Law Review,* a professional legal journal consisting of articles of interest to Air Force judge advocates, civilian attorney advisors, and others with an interest in military law. *The Law Review* is a scholarly legal publication that encourages candid discussion of relevant legislative, administrative, and judicial developments. Additionally, four issues of *The Reporter,* the Department's quarterly legal publication containing articles of general interest, were produced and distributed. The AFJAG School continues to distribute large quantities of its most popular publication, *The Military Commander and the Law,* a 550+ page compendium of concise legal papers addressing issues confronting military commanders. The printed version was updated in Fiscal Year 2004 and more than 1 5,000 copies were printed and distributed worldwide. An electronic version is available on-line at http://milcom.jag.af.mil.

LEGAL INFORMATION SERVICES

During fiscal year 2005, the Legal Information Services (JAS) Directorate continued to exploit the force-multiplying power inherent in information technology (IT) by upgrading and refining existing platforms and services as well as developing new programs.

JAS developed and launched an upgraded version of the "WebMAG" program. WebMAG is designed to help wing-level legal offices effectively and efficiently track and manage cases they process in Federal Magistrate's Courts.

The directorate developed and launched WebDOCS and acquired Interwoven Worksite to replace DocuShare. These programs help Air Force legal offices at all command levels store more documents on JAS servers and enhance their ability to manage the documents. In addition, JAS increased storage capacity six-times over its previous capacity. They also increased data security and availability by completely replacing existing server storage.

JAS also developed a "real-time" (synchronous) online education capability by acquiring fifty (50) software licenses for Elluminate Live! This allows a live instructor to teach real-time over the worldwide web, while receiving student feedback. This furthers the JAS Distance Education development initiative by adding virtual classroom training capability to the Judge Advocate Distance Education program. JAS also launched a new, more effective version of the knowledgeWorks Learning Management System for self-paced (asynchronous) distance education, which can better track student progress.

The directorate also acquired $550,000 worth of notebook computers, desktop computers, docking stations, and printers for the field with year-end funds.

JAS implemented a new, more robust Unit License Software Management program and completed the JAG Applications Server System Security Authorization Agreement (SSAA) certification and accreditation package. JAS also developed and launched the NASA Legal Team web site and procured Consolidated Legal Research for the Department of the Army. JAS fielded a Legal Subject Matter Expert finder to match legal assistance attorneys with volunteer reservists that had expertise in particular areas of law.

On 21 April 2005, Colonel Pamela D. Stevenson assumed duties as the Director of Legal Information Services. Colonel Stevenson promotes IT as a leadership issue: "Automate legal office processes, so that you can fully mentor and lead legal office professionals. Save time with automation, so that you can spend more time with your team."

PERSONNEL

As of 30 September 2005, the Air Force Judge Advocate General's Corps had 1283 judge advocates on active duty. Company grade officers (lieutenants and captains) made up approximately 48% of that number (616). Slightly more than 27% were majors (351) and 15% were lieutenant colonels (195). Almost 9% of the Corps were colonels (115) and above, including one major general and five brigadier generals. The Air Force Judge Advocate General's Corps Reserve includes 903 Air Force Reserve IMA, Air Force Reserve unit-assigned, and Air National Guard judge advocates, of whom 7% (63) are company grade officers and 79% (708) are field grade officers (majors and lieutenant colonels). The remaining 14% consists of 128 colonels, two brigadier generals, and two major generals.

JACK L. RIVES
Major General, USAF
Deputy Judge Advocate General
Performing Duties of The Judge Advocate General
10 U.S.C. § 8037

APPENDIX - U. S. AIR FORCE MILITARY JUSTICE STATISTICS

Report Period: FISCAL YEAR 2005

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	422	388	34	+18.539%
BCD SPECIAL	517	268	39	+0.058%
NON-BCD SPECIAL [A]		210		
SUMMARY	144	144	0	-0.083%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+5.453%

PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES	49	
NUMBER OF BAD-CONDUCT DISCHARGES	240	
SPECIAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF BAD-CONDUCT DISCHARGES	268	

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	292	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	251	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	65	

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

TOTAL ON HAND BEGINNING OF PERIOD		638	
GENERAL COURTS-MARTIAL	[C]		
BCD SPECIAL COURTS-MARTIAL	[C]		
REFERRED FOR REVIEW		530	
GENERAL COURTS-MARTIAL	[C]		
BCD SPECIAL COURTS-MARTIAL	[C]		
TOTAL CASES REVIEWED		476 [D]	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
TOTAL PENDING AT CLOSE OF PERIOD		721	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (476/527)			- 9.677

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

NUMBER	524/530	
PERCENTAGE	98.87%	

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

PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF (255/537)	47.486%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	- 3.724%
PERCENTAGE OF TOTAL PETITIONS GRANTED (53/255)	20.784%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+ 2.974%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (53/530)	10.000%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+ 0.880%

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

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		1	
RECEIVED		3	
DISPOSED OF		2	
GRANTED	0		
DENIED	2		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	
PART 8 – ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE		624	
GENERAL COURTS-MARTIAL		262	
SPECIAL COURTS-MARTIAL		362	
TRIALS BY MILITARY JUDGE WITH MEMBERS		315	
GENERAL COURTS-MARTIAL		160	
SPECIAL COURTS-MARTIAL		155	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		17	
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		362,593	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		8,386	
RATE PER 1,000		23.13	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-2.77%	

EXPLANATORY NOTES

[A] The Air Force does not convene non-BCD SPCMs. Of the 517 SPCMs tried, there were 268 convictions with a BCD adjudged, 210 convictions without a BCD adjudged and 39 acquittals.
[B] Includes 21 officer dismissals
[C] GCM and SPCM were not tracked separately.
[D] Includes only decisions issued

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, 2004 to September 30, 2005

PERSONNEL AND TRAINING

The Coast Guard has 183 officers designated as judge advocates serving on active duty, of which 140 are serving in legal billets and 43 are serving in general duty billets. Among the 43 military attorneys serving "out-of-specialty" billets are the Commander of the Eighth Coast Guard District in New Orleans; the Deputy Director of Operations, U.S. Northern Command; Director, Joint Inter-Agency Task Force West; Deputy Assistant Commandant for Intelligence; Special Assistant to the Vice President of the United States; and other commanding and executive officers of Coast Guard cutters, groups, marine safety offices, training centers, and support commands. The Coast Guard also employs 73 civilian attorneys ranging from GS-12 to SES.

The Coast Guard sent attorneys to 35 different courses of instruction during this fiscal year, primarily at the various service JAG schools. 82% of Coast Guard attorneys attended one or more courses of continuing legal education. Twenty-one Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as judge advocates at the successful completion of their studies. Additionally, one judge advocate is attending the graduate course at the Army Judge Advocate General's Legal Center and School and will graduate in 2006 with a Masters of Law (LLM) degree in military law and another is a Fellow in the Center for Law and Military Operations. Nineteen Coast Guard officers (including seven funded postgraduate program studies and twelve direct-commissioned lawyers) completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified under Article 27(b), UCMJ.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

The judges on the U.S. Coast Guard Court of Criminal Appeals during fiscal year 2005 were:

Chief Judge Joseph H. Baum
Judge David J. Kantor
Judge Lane I. McClelland
Judge Michael A. Hamel (until termination of his Court duties on 3 June 2005 after transfer)
Judge Gilbert E. Teal
Judge Gary 5. Felicetti

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

On 18 and 19 May 2005, Judge McClelland and the Clerk of the Court attended the Judicial Conference of the United States Court of Appeals for the Armed Forces (USCAAF) at the Columbus School of Law at Catholic University. On 11 through 14 July 2005, Judge Felicetti attended a course at the National Judicial College on Scientific Evidence and Expert Testimony. On 14 September 2005, Judge Felicetti, as the Coast Guard Court's representative, participated on a panel of judges from all the service courts at the Judge Advocates Association 2005 Appellate Advocacy Seminar, which was sponsored by USCAAF. On 22 and 23 September 2005, Judges McClelland, Teal, and Felicetti, and the Clerk of Court participated in the William S. Fulton, Jr., Appellate Military Judges Conference and Training Seminar at the Federal Judicial Center in Washington, D.C. On 26 through 29 September 2005, Judge Felicetti attended a course at the National Judicial College on Advanced Evidence. During the past year, the Clerk of the Court chaired the Young Lawyer's Division of Capitol Hill Chapter (CHC) of the Federal Bar Association (FBA) and is currently the Treasurer of the CHC of the FBA.

During the year, Chief Judge Baum continued as a member of the USCAAF's Rules Advisory Committee.

MILITARY JUSTICE ORGANIZATION

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

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

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

TRAINING OPPORTUNITIES WITH OTHER SERVICES

To improve the trial advocacy skills and experience levels of Coast Guard Judge Advocates, the Judge Advocate General has arranged for Coast Guard Trial Counsel to be assigned for limited periods of time (usually three months), to certain installations which have a robust military justice practice. Coast Guard Judge Advocates have thus far been assigned to Marine Corps Base Quantico, Marine Corps Base Camp Lejeune, Navy Trial Service Office East in Norfolk, Virginia, and the Army's Trial Counsel Assistance Program in 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 2005 and, where indicated, records received during each of the four preceding fiscal years. The number of courts-martial vary widely from year to year, but this is not a reliable indicator of the administration of military justice given the relatively small number of courts-martial overall.

Fiscal	Year	05	04	03	02	01
General	Courts-Martial	07	12	08	04	15
Special	Courts-Martial	45	27	18	23	17
Summary	Courts-Martial	21	12	20	11	18
Total		73	51	46	38	50

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains the Coast Guard, Fiscal Year 2005 military justice statistics.

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

APPENDIX - U.S. COAST GUARD MILITARY JUSTICE STATISTICS

Report Period: 1 OCTOBER 2004 - 30 SEPTEMBER 2005

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	7	5	2	-58%
BCD SPECIAL	45	45		+66%
NON-BCD SPECIAL	00	00	0	UNCHANGED
SUMMARY	21	21	0	+83%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+45%

PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL NUMBER OF DISHONORABLE DISCHARGES	0	
NUMBER OF BAD-CONDUCT DISCHARGES	5	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	25	

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	7	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	25	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	0	

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

TOTAL ON HAND BEGINNING OF PERIOD		21	
GENERAL COURTS-MARTIAL	10		
BCD SPECIAL COURTS-MARTIAL	11		
REFERRED FOR REVIEW		31*	
GENERAL COURTS-MARTIAL	5		
BCD SPECIAL COURTS-MARTIAL	25		
TOTAL CASES REVIEWED		24*	
GENERAL COURTS-MARTIAL	9		
BCD SPECIAL COURTS-MARTIAL	14		
TOTAL PENDING AT CLOSE OF PERIOD		28	
GENERAL COURTS-MARTIAL	6		
BCD SPECIAL COURTS-MARTIAL	22		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+9%	

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

NUMBER	30	
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	4/29	14%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+2%
PERCENTAGE OF TOTAL PETITIONS GRANTED	2/4	50%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+23%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA	2/29	7%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-5%

* Including 1 extraordinary writ.

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

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		0	
RECEIVED		0	
DISPOSED OF		0	
GRANTED	0		
DENIED	0		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	

PART 8 – ORGANIZATION OF COURTS		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL	6	
SPECIAL COURTS-MARTIAL	45	
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL	1	
SPECIAL COURTS-MARTIAL	0	

PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ		
NUMBER OF COMPLAINTS	4	

PART 10 – STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	40,908	

PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	1,411	
RATE PER 1,000	34.50	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-9.35%	