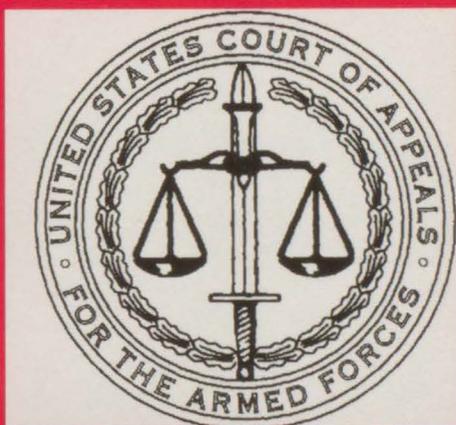


ANNUAL REPORT
of the
CODE COMMITTEE
on
MILITARY JUSTICE



INCLUDING SEPARATE REPORTS
of the
U.S. COURT OF APPEALS FOR THE ARMED FORCES,
THE JUDGE ADVOCATES GENERAL
OF THE U.S. ARMED FORCES,
AND THE CHIEF COUNSEL
OF THE U.S. COAST GUARD

For the Period
October 1, 2000 to September 30, 2001

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 TRANSPORTATION,

and

SECRETARIES OF THE

ARMY, NAVY, AND AIR FORCE

**PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE
For the Period
October 1, 2000 to September 30, 2001**

CONTENTS

Section 1: JOINT ANNUAL REPORT OF THE CODE COMMITTEE

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

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

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

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

Section 6: REPORT OF THE CHIEF COUNSEL OF THE COAST GUARD

SECTION 1

JOINT ANNUAL REPORT OF THE CODE COMMITTEE

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

October 1, 2000 to September 30, 2001

The Judges of the United States Court of Appeals for the Armed Forces, the Judge Advocate Generals of the Army, Navy, and Air Force, the Chief Counsel of the Coast Guard, the Director, Judge Advocate Division, Headquarters, United States Marine Corps, Professor Lee D. Schinasi, and United States Magistrate Judge Jacob Hagopian, 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, 10 USC § 946.

The Code Committee met during fiscal year 2001 to consider various matters pertaining to the administration of military justice. As in previous years, the meeting was open to the public. The Code Committee received a report from the Joint Service Committee concerning proposed changes to the Manual for Courts-Martial and the Uniform Code of Military Justice. Additionally, the Code Committee received a report from the Chairman of the Subcommittee to commemorate the 50th Anniversary of the Uniform Code of Military Justice. The Chairman noted events in last year's report and receipt of a letter from the President of the United States acknowledging the 50th Anniversary of the Uniform Code of Military Justice. The Chairman of the Subcommittee also observed that many other events had been conducted and articles had been published in various legal publications in honor of the anniversary.

The Code Committee also received a report from the Chairman of the Committee established by the National Institute of Military Justice for the purpose of addressing issues concerning proposed changes to the Uniform Code of Military Justice. The Chairman noted that the committee had recommended changes which included a modification of the convening authority's role in the military justice system, a modification of the military judge's role, the adoption of an Article of the Uniform Code of Military Justice which would codify several sexual offenses in the military, and various changes in capital cases.

Finally, the Code Committee requested reports from each of the services to provide data on the impact of extensions of time on appellate processing of cases.

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

SUSAN J. CRAWFORD
Chief Judge

EUGENE R. SULLIVAN
Associate Judge

H. F. "SPARKY" GIERKE
Associate Judge

ANDREW S. EFFRON
Associate Judge

JAMES E. BAKER
Associate Judge

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

Rear Admiral DONALD J. GUTER, USN
The Judge Advocate General of the Navy

Major General WILLIAM A. MOORMAN, USAF
The Judge Advocate General of the Air Force

Rear Admiral R. F. DUNCAN, USCG
Chief Counsel, U.S. Coast Guard

Brigadier General JOSEPH COMPOSTO, USMC
Director, Judge Advocate Division
Headquarters, United States Marine Corps

Professor LEE D. SCHINASI
Public Member

Magistrate Judge JACOB HAGOPIAN
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, 2000 to September 30, 2001

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 2001 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, Transportation, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, 10 USC § 946.

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.

Senior Judge Robinson O. Everett and Senior Judge Walter T. Cox III, were recalled and participated in the review and decision of several cases during the 2001 Term of Court.

During the 2001 Term of Court, the Court admitted 257 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 32,226.

**PUBLIC AWARENESS PROJECT
(PROJECT OUTREACH)**

In furtherance of a practice established in 1987, the Court scheduled several special sessions and heard oral arguments in selected cases outside its permanent Courthouse in Washington, D.C., during the 2001 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 quality of the military's criminal justice system. The Court conducted hearings during this period, without objection of the parties, at Georgetown University Law Center, Washington, D.C., St. Mary's University School of Law, San Antonio, Texas, the Supreme Court of Texas, Austin, Texas, and the United States Military Academy, West Point, New York.

"Project Outreach" has continued to promote an increased public awareness of the fundamental fairness of the military criminal justice system and the role of the Court in the overall administration of military justice throughout the world. The Court hopes that those who attend these hearings from both military and civilian communities will garner further appreciation for the United States military, the Uniform Code of Military Justice, and the essential role both play in providing for United States national security.

JUDICIAL VISITATIONS

During the 2001 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 staff judge advocates and commanders at various military installations throughout the world.

JUDICIAL CONFERENCE

On June 13 and 14, 2001, 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 numerous State Bars throughout the United States. The Conference opened with welcoming remarks and a presentation by the Honorable Susan J. Crawford, Chief Judge, United States Court of Appeals for the Armed Forces, followed by speakers for this year's Conference, including The Honorable Anthony J. Principi, Secretary of Veterans' Affairs, Professor Kenneth R. Feinberg, Georgetown University Law Center, Captain Kevin J. Barry, USCG (Ret.), Attorney at Law, The Honorable Walter T. Cox III, Senior Judge, United States Court of Appeals for the Armed Forces, Professor Jonathan Lurie, Rutgers University, Historian to the Court, Mr. Eugene R. Fidell, Attorney at Law, Colonel Charles R. Myers, USAF (Ret.), Professor Emeritus, United States Air Force Academy, Professor Lee D. Schinasi, Director, Center for Legal Education, University of Miami School of Law, Professor Jonathan R. Turley, George Washington University School of Law, Professor Stephen A. Saltzburg, George Washington University School of Law, Major Victor M. Hansen, USA, Professor, Criminal Law Division, The Army Judge Advocate General's School, Major Timothy C. MacDonnell, USA, Professor, Criminal Law Division, The Army Judge Advocate General's School, and Captain John E. Deaton, USMC, Instructor, Naval Justice School.

SUSAN J. CRAWFORD
Chief Judge

EUGENE R. SULLIVAN
Associate Judge

H.F. "SPARKY" GIERKE
Associate Judge

ANDREW S. EFFRON
Associate Judge

JAMES E. BAKER
Associate Judge

USCA STATISTICAL REPORT

2001 TERM OF COURT

CUMULATIVE SUMMARY

CUMULATIVE PENDING OCTOBER 1, 2000

Master Docket	70
Petition Docket	152
Miscellaneous Docket	<u>3</u>
TOTAL	225

CUMULATIVE FILINGS

Master Docket	131
Petition Docket	926
Miscellaneous Docket	<u>39</u>
TOTAL	1096

CUMULATIVE TERMINATIONS

Master Docket	141
Petition Docket	888
Miscellaneous Docket	<u>39</u>
TOTAL	1068

CUMULATIVE PENDING OCTOBER 1, 2001

Master Docket	60
Petition Docket	190
Miscellaneous Docket	<u>3</u>
TOTAL	253

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER</u>	<u>CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	70	2		69	141
Petition Docket	1	0		887	888
Miscellaneous Docket	<u>0</u>	<u>0</u>		<u>39</u>	<u>39</u>
TOTAL	71	2		995	1068

FILINGS (MASTER DOCKET)

Remanded from Supreme Court	0
Returned from Court of Criminal Appeals....	3
Mandatory appeals filed	0
Certificates filed	3
Reconsideration granted	0
Petitions granted (from Petition Docket)...	<u>125</u>
TOTAL	131

TERMINATIONS (MASTER DOCKET)

Findings & sentence affirmed	105	
Reversed in whole or in part	35	Signed 70
Granted petitions vacated	0	Per curiam .. 2
Other disposition directed	<u>1</u>	Mem/order .. <u>69</u>
TOTAL	141	TOTAL 141

PENDING (MASTER DOCKET)

Awaiting briefs	20
Awaiting oral argument	26
Awaiting lead case decision (trailer cases)	6
Awaiting final action	<u>8</u>
TOTAL	60

FILINGS (PETITION DOCKET)

Petitions for grant of review filed	898
Petitions for new trial filed	2
Cross-petitions for grant filed	26
Petitions for reconsideration granted	0
Returned from Court of Criminal Appeals ...	<u>0</u>
TOTAL	926

TERMINATIONS (PETITION DOCKET)

Petitions for grant dismissed	4	
Petitions for grant denied	738	
Petitions for grant granted	126	
Petitions for grant remanded	6	Signed 0
Petitions for grant withdrawn	13	Per curiam .. 0
Other	<u>1</u>	Mem/order.. <u>888</u>
TOTAL	888	TOTAL 888

PENDING (PETITION DOCKET)

Awaiting briefs	88
Awaiting Central Legal Staff review	18
Awaiting final action	<u>84</u>
TOTAL	190

FILINGS (MISCELLANEOUS DOCKET)

Remanded from Supreme Court	0
Writs of error coram nobis sought	0
Writs of habeas corpus sought	0
Other extraordinary relief sought	3
Writ appeals sought	<u>36</u>
TOTAL	39

TERMINATIONS (MISCELLANEOUS DOCKET)

Petitions withdrawn	0	
Petitions remanded	1	
Petitions granted	1	
Petitions denied	37	Signed 0
Petitions dismissed	0	Per curiam. 0
Other	<u>0</u>	Mem/order.. <u>39</u>
TOTAL	39	TOTAL 39

PENDING (MISCELLANEOUS DOCKET)

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

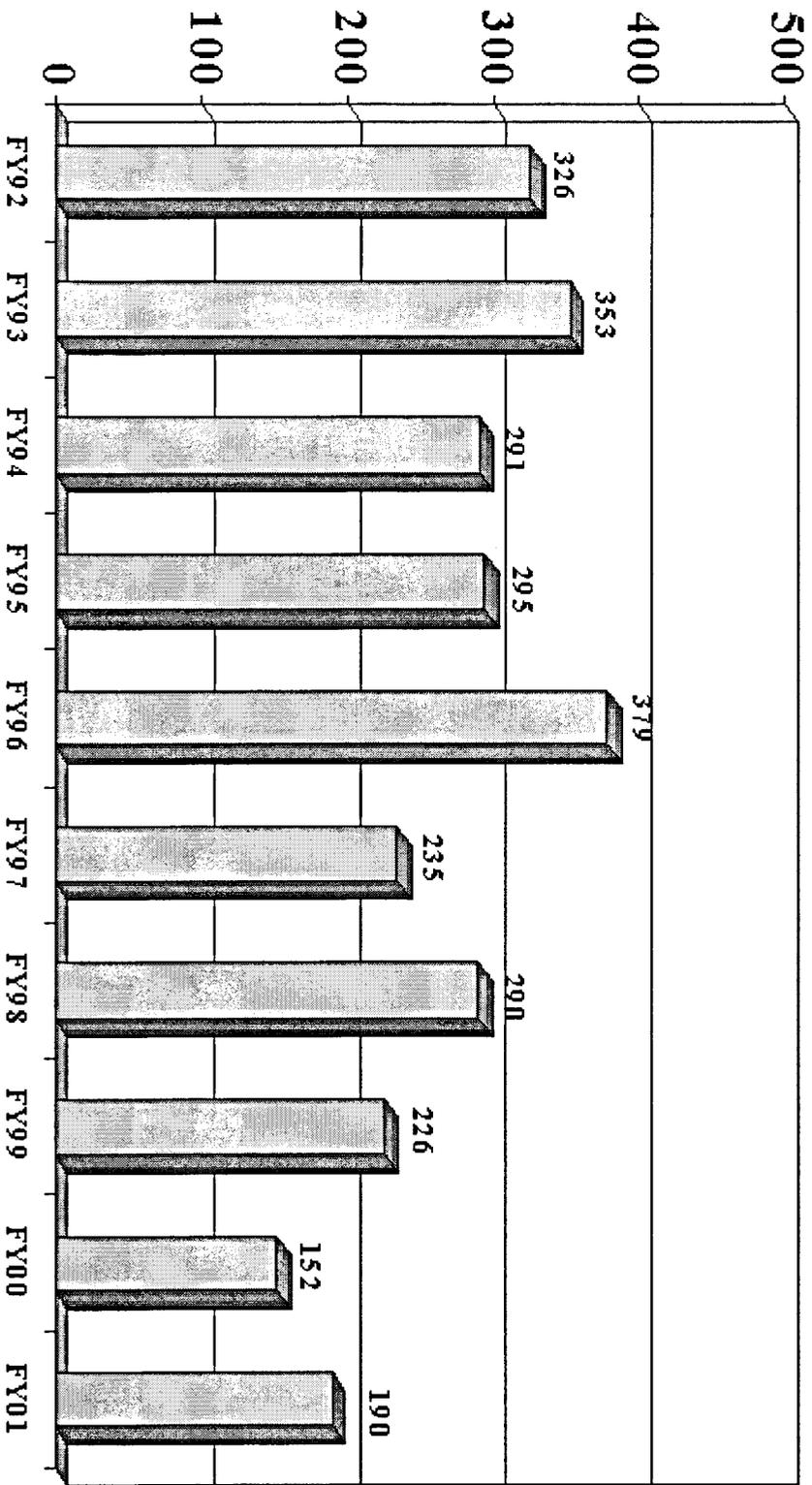
RECONSIDERATIONS & REHEARINGS

<u>CATEGORY</u>	<u>BEGIN</u>	<u>FILINGS</u>	<u>END</u>	<u>DISPOSITIONS</u>		
	<u>PENDING</u>		<u>PENDING</u>	<u>Granted</u>	<u>Denied</u>	<u>Total</u>
All Cases 4	12	0	0	16	16

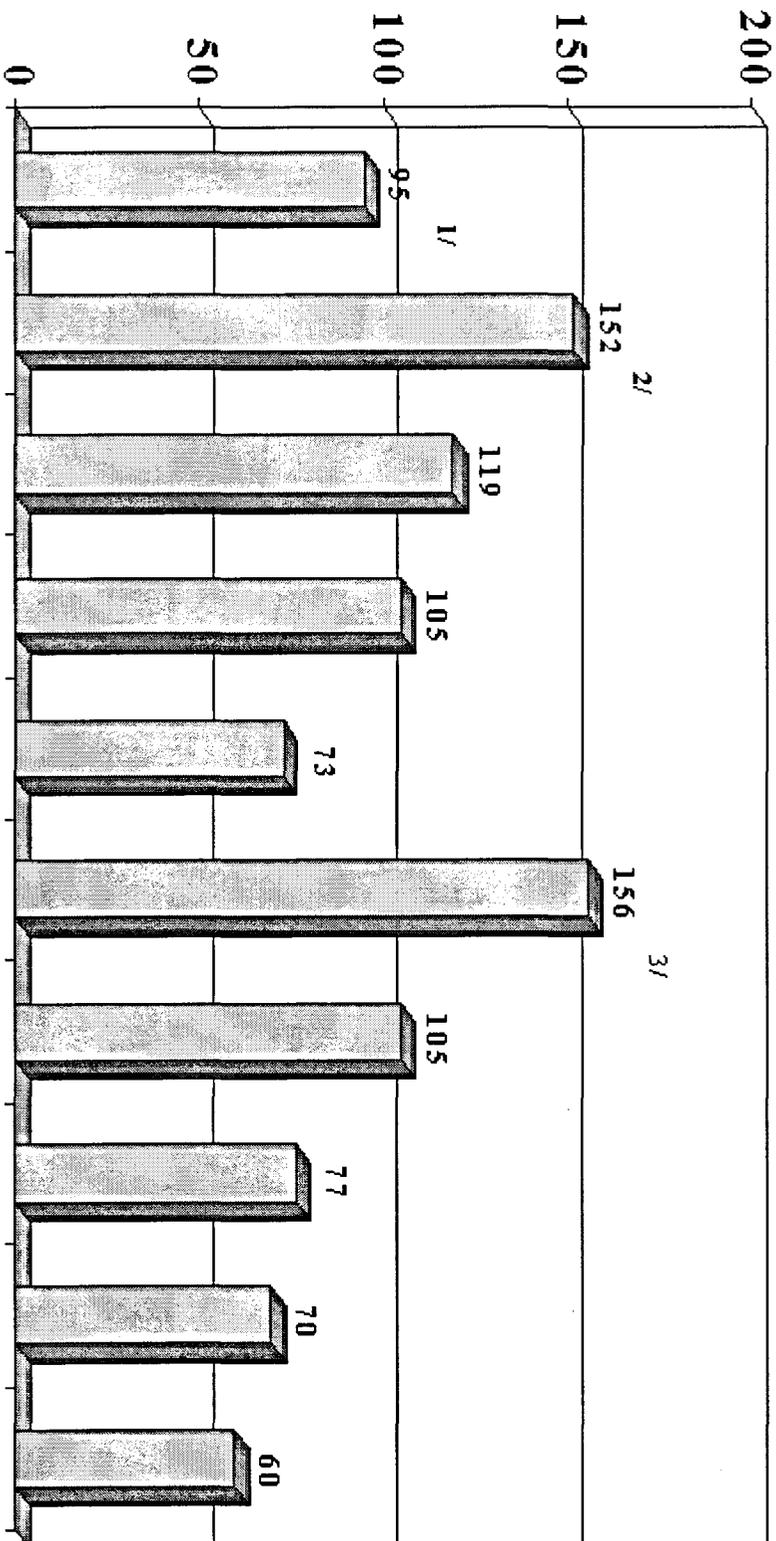
MOTIONS ACTIVITY

<u>CATEGORY</u>	<u>BEGIN</u>	<u>FILINGS</u>	<u>END</u>	<u>DISPOSITIONS</u>			
	<u>PENDING</u>		<u>PENDING</u>	<u>Granted</u>	<u>Denied</u>	<u>Other</u>	<u>Total</u>
All motions 12	480	7	414	69	2	485

Petition Docket Year End Pending



Master Docket Year End Pending

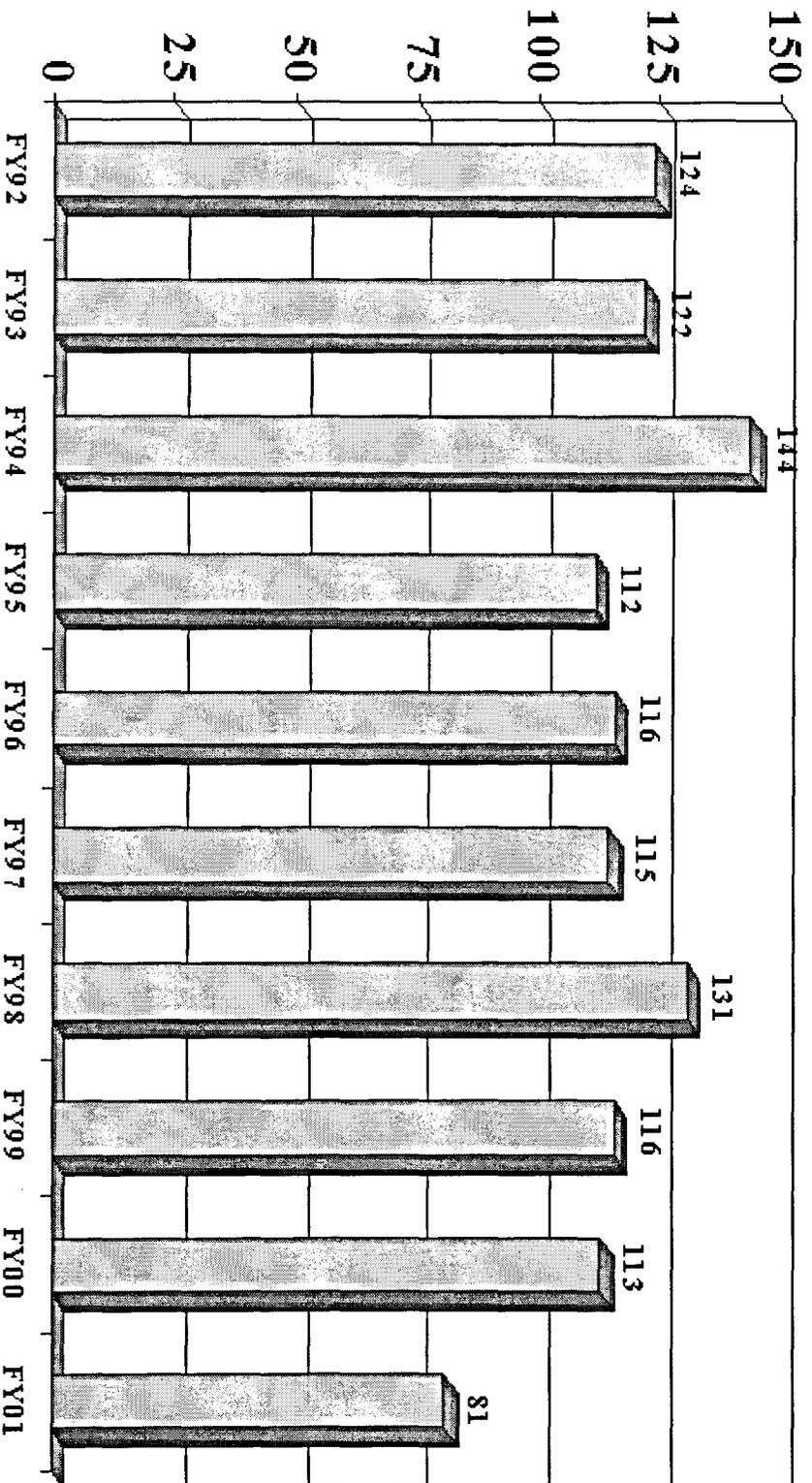


1/ This figure does not include 16 trailer cases to United States v. Watson, No. 68206/MC, and 8 trailer cases to United States v. Weiss, No. 67869/MC.

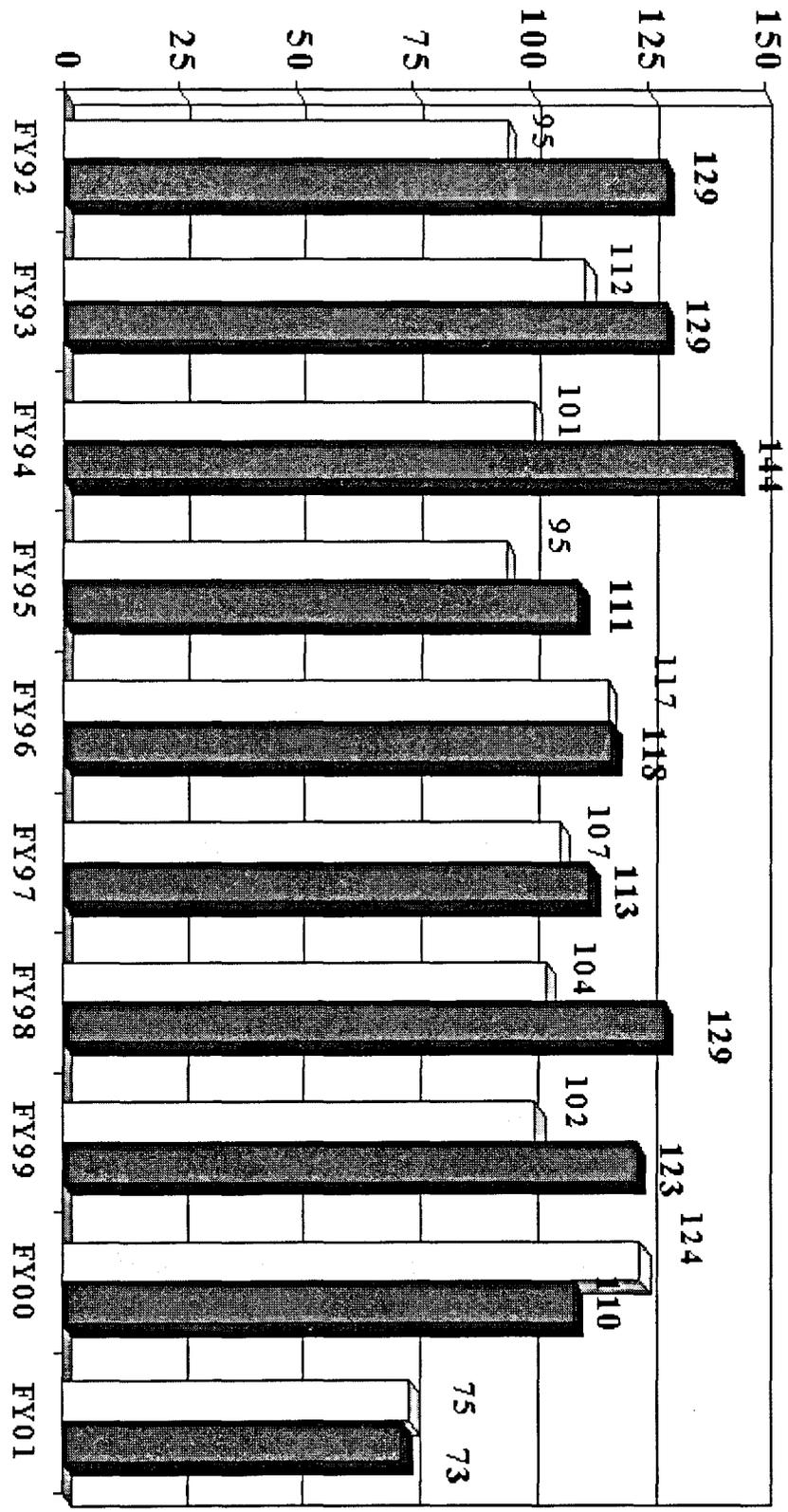
2/ This figure does not include 87 trailer cases to United States v. Mitchell, No. 93-1044/NA, and 9 trailer cases to United States v. Rexroat, No. 93-5007/AR.

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

Oral Arguments Per Year



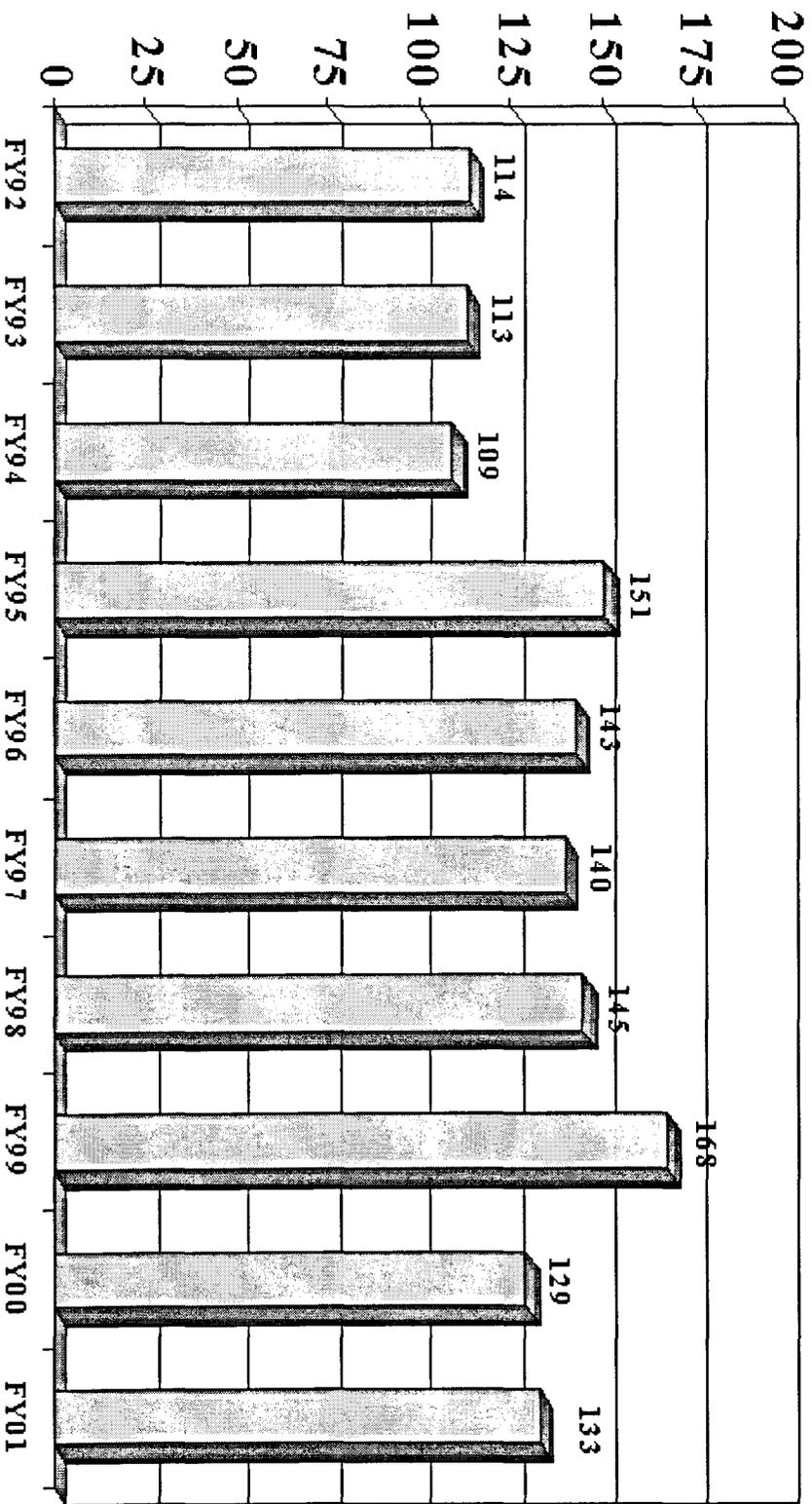
Total Opinions Per Year



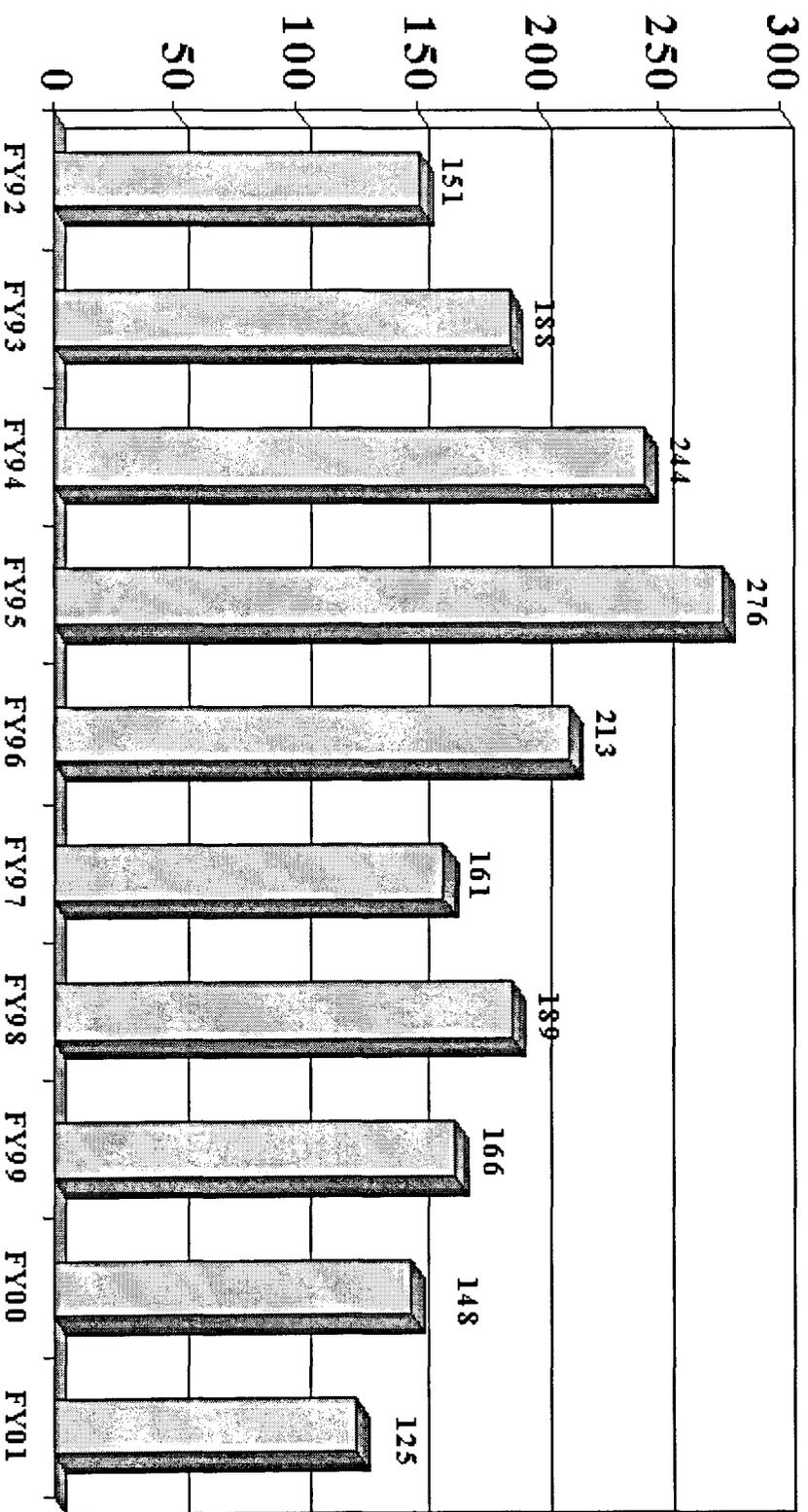
□ TOTAL SEPARATE OPINIONS (CONCUR, CONCUR IN THE RESULT, AND DISSENT)

■ TOTAL COURT OPINIONS

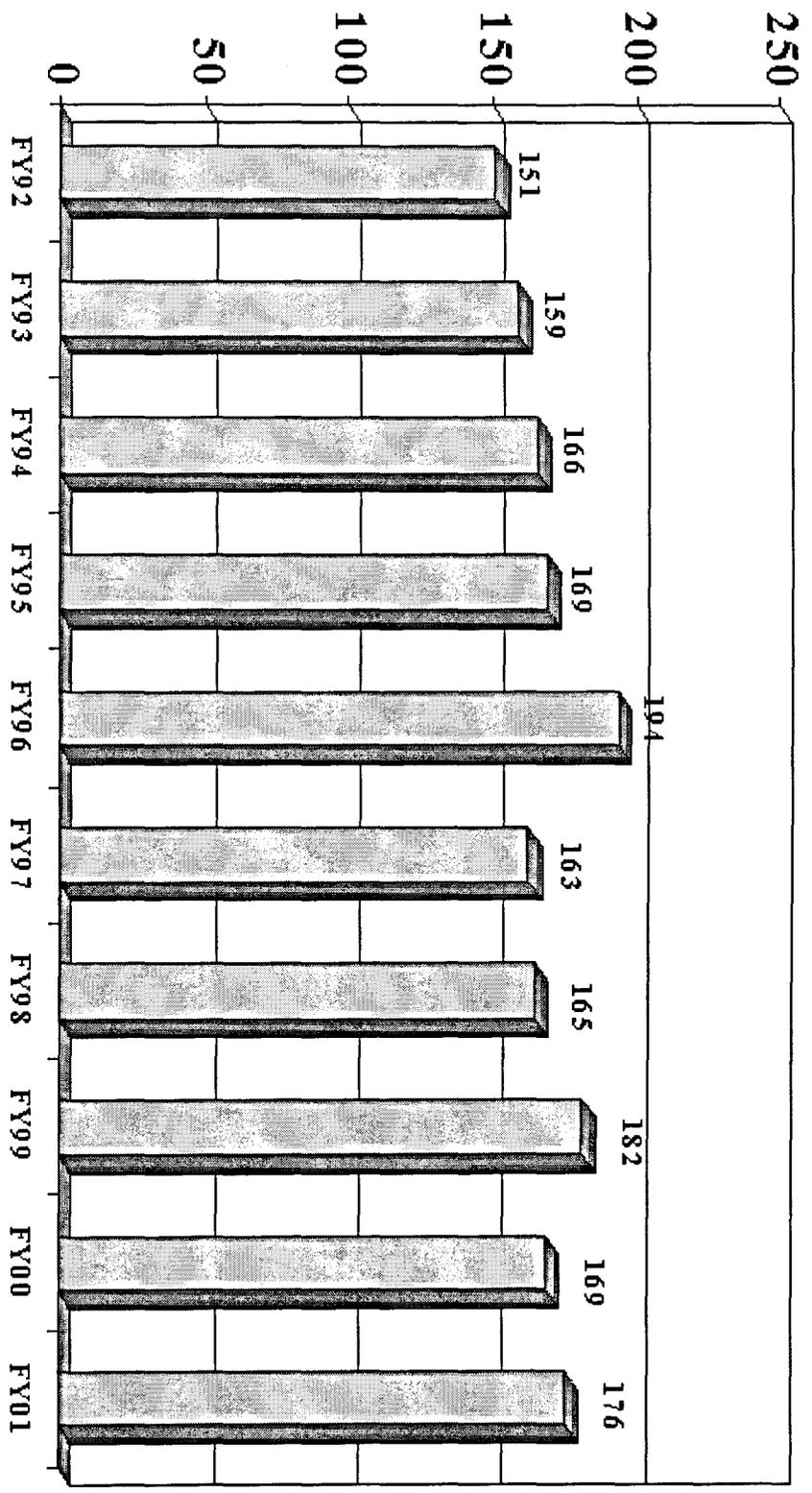
Days from Petition Filing to Grant



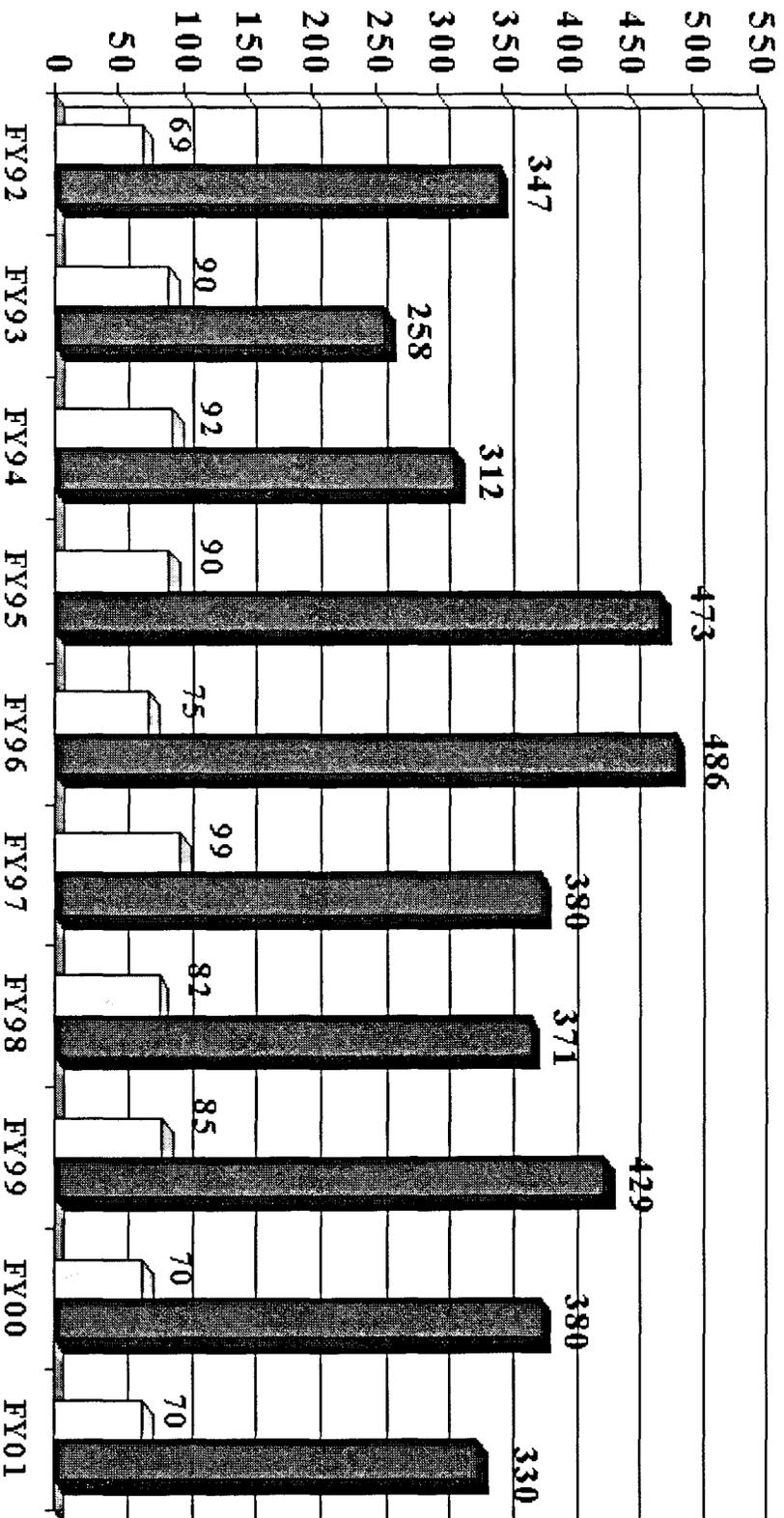
Days from Petition Grant to Oral Argument



Days from Oral Argument to Final Decision



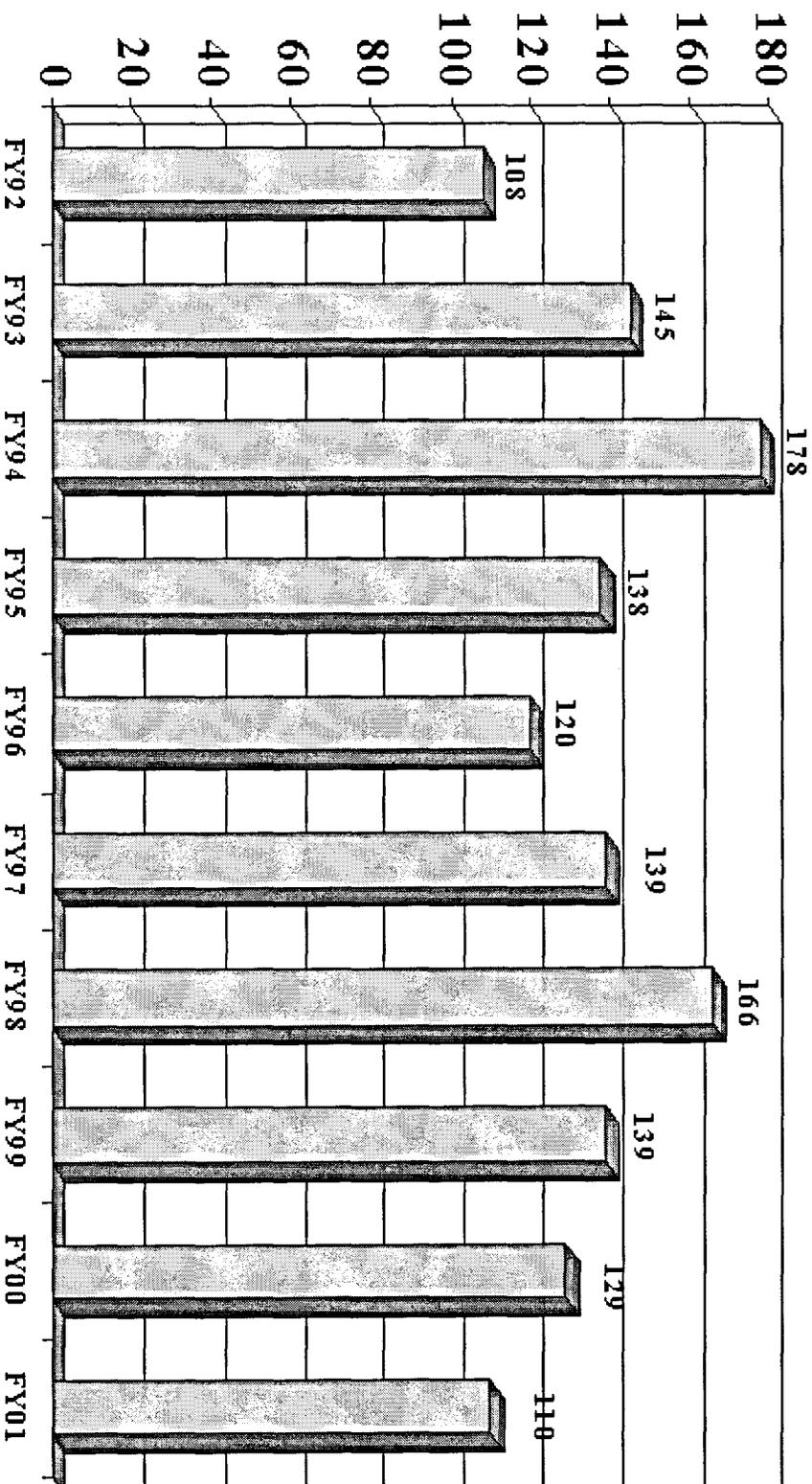
Days from Petition Filing to Final Decision



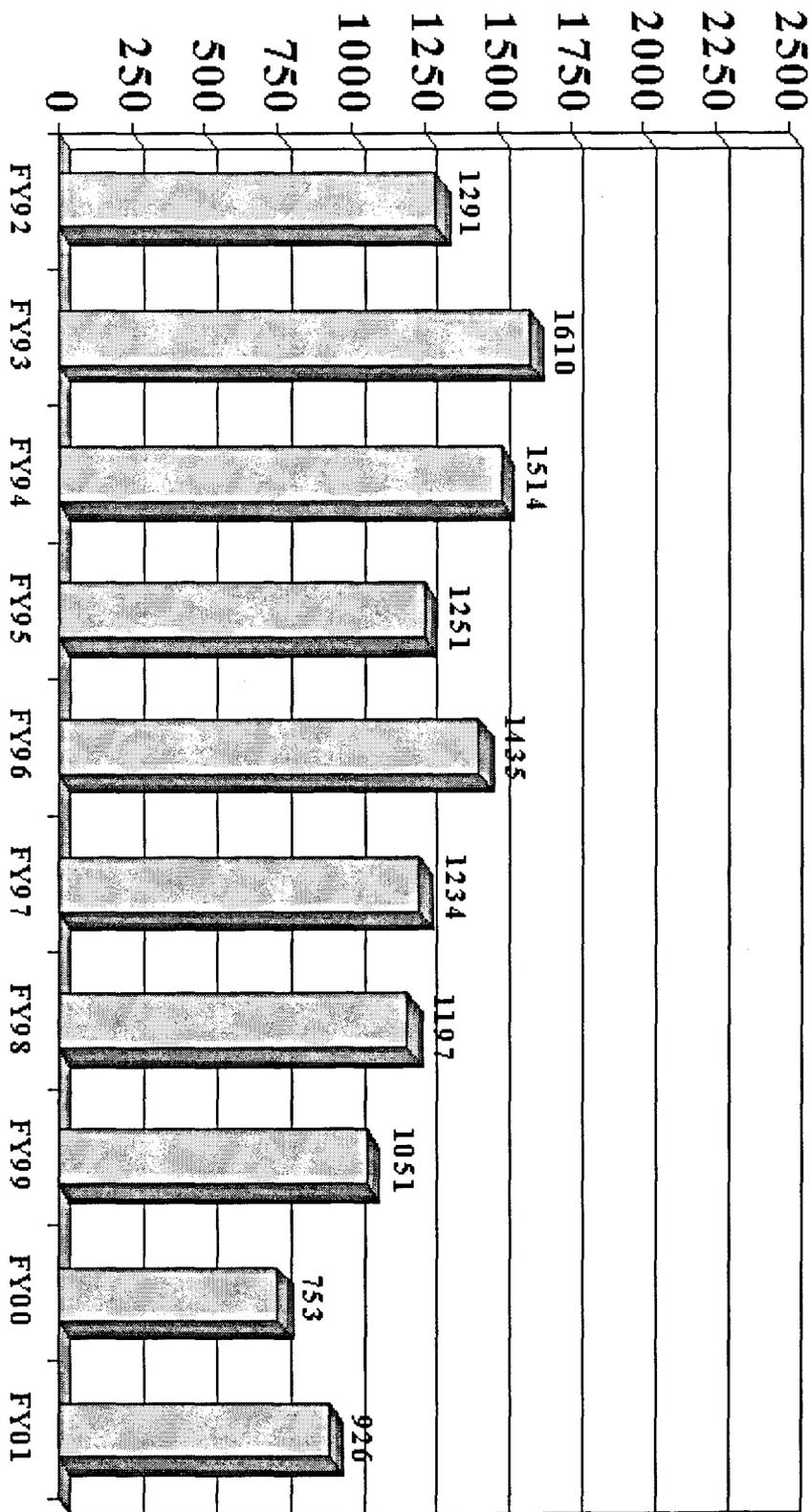
□ PETITION DOCKET (DENIAL/DISMISSAL/WITHDRAWAL)

■ MASTER DOCKET (GRANTED/CERTIFIED/DEATH CASES)

Days from Filing to Final Decision in All Cases



Total Petitions Filed Per Year



SECTION 3

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

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY
OCTOBER 1, 2000 TO SEPTEMBER 30, 2001

During fiscal year 2001 (FY 01) and in compliance with Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General and senior members of his staff made 22 official visits of field legal offices in the United States and overseas. In addition, the Office of The Judge Advocate General (OTJAG) continued to monitor courts-martial, 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. Numbers in this report are based on Army end strength of 480,801 in FY 01. The Army end strength was 482,170 in FY 00.

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 workload data for the last three fiscal years is displayed below:

	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>
White House inquiries	111	163	161
Congressional and other inquiries	330	312	272
Clemency Petitions, Article 74, UCMJ	8	8	5
Officer Dismissals	14	23	22
Freedom of Information Act/Privacy Act	63	54	13

On March 19, 2001, the U.S. Supreme Court denied the petition for writ of certiorari in United States v. Gray, 51 MJ 1 (1999), rendering the conviction in that case final. The case, as well as that in United States v. Loving, 517 U.S. 748 (1996), must now be transmitted to the President for his action on the sentence of death.

JOINT SERVICE COMMITTEE (JSC) ON MILITARY JUSTICE

The Army is the Executive Agent for publication of the Manual for Courts-Martial (MCM). The last edition published was the 2000 edition of the MCM commemorating the 50th Anniversary of the Uniform Code of Military Justice. It is available in hardcopy from the Government Printing Office at <http://www.gpo.gov/> or by telephone at (202) 512-1800; fax (202) 512-2250. The MCM is also available electronically at <http://www.usapa.army.mil/pdffiles/mcm2000.pdf>.

During FY 01, the JSC completed its seventeenth annual review of the MCM. This review was published in the Federal Register for public comment on 6 June 2001 and a public meeting was held on 19 July 2001 to receive comments from interested parties. Highlights of the annual review's proposed changes include the following: amendments to R.C.M. 307 giving guidance on pleading aggravating factors; R.C.M. 806 is amended to provide procedures to be followed, and standards to be applied, by the military judge in controlling public access to courts-martial proceedings; changes to R.C.M. 1103 providing that in a rehearing, the maximum sentence that can be adjudged is not limited by the prior adjudged sentence, but the convening authority cannot approve a greater sentence than that previously adjudged; R.C.M. 1108 now provides limitations on suspension or remission of a sentence to a sentence to life without possibility of parole; Mil. R. Evid. 103 is now in conformity with the Federal Rules of Evidence to provide that once a definitive ruling on the admissibility of evidence is made by the military judge it does not have to be raised again by the objecting party to preserve it as appellate issue; Mil. R. Evid. 404 now virtually mirrors the Federal Rules of Evidence and allows for a more balanced presentation of character evidence when the accused attacks the character of the victim; Mil. R. Evid. 701 now follows the changes to the Federal Rules and prevents a party from proffering an expert witness as a lay witness in order to avoid the gatekeeper and reliability requirements of Rule 702; Mil. R. Evid. 702 now mirrors the Federal Rules and provides guidance as to the factors to be considered in admitting expert testimony; Mil. R. Evid. 703 is again patterned after the new Federal Rules and precludes an expert from disclosing to the members inadmissible evidence that forms the basis for his expert opinion; Mil. R. Evid. 803 now permits a certificate to be used in lieu of a live witness to lay the foundation for admissibility of certain business records; two new elements are added to Article 120, Rape and Carnal Knowledge, and the sample specifications, covering two distinct categories of youthful victims; Article 125, Sodomy, adds similar age categories to the elements of the offense, and sample specification, to reflect the two distinct categories of sodomy based upon the age of the victim.

The JSC also drafted a consolidated Executive order (EO) to amend the MCM to implement three previous EOs from 1998, 1999, and 2000 that were not acted on before the change in administrations. This consolidated EO is pending executive approval at the end of FY 2001.

The JSC also continued its studies on joint military justice and proposals forwarded from a commission sponsored by the National Institute of Military Justice, also known as the Cox Commission.

MILITARY JUSTICE STATISTICS
STATISTICAL SUMMARY: FY 01
(See table insert, attached)

U.S. ARMY LEGAL SERVICES AGENCY

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

U.S. ARMY JUDICIARY

The U.S. Army Judiciary consists of the U.S. Army Court of Criminal Appeals, the Clerk of Court, the Examination and New Trials Division, and the Trial Judiciary.

The Clerk of Court receives records of trial for review under Article 66, Uniform Code of Military Justice. The cases are referred to one of the three judicial panels of the US Army Court of Criminal Appeals for appellate review. Also received are appeals under Article 62, Petitions for Extraordinary Relief, and Withdrawals from Appellate Review.

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

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

Inquiries received in FY 2001: 580
 Freedom of Information Act 214
 Privacy Act 74
 Certified Copies of Convictions 292

U.S. ARMY TRIAL DEFENSE SERVICE

The U.S. Army Trial Defense Service (USATDS), a defense service consisting of approximately 130 attorneys, provided high quality, professional defense services to soldiers throughout the Army from 55 offices worldwide. USATDS counsel defended soldiers facing the entire range of allegations under the Uniform Code of Military Justice.

USATDS counsel workload from FY 98 through FY 01 is displayed below.

	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>
General Courts-Martial	694	722	733	770
Special Courts-Martial	286	331	392	354
Administrative Boards	597	698	597	826
Nonjudicial Punishment	32,181	31,595	30,633	35,786
Consultations	28,668	26,794	24,051	33,546

USATDS provided defense services to deployed forces around the world, including Southwest Asia, Macedonia, Haiti, Kuwait, Hungary, Bosnia and Kosovo. TDS counsel worldwide continue to achieve phenomenal success at the pretrial stages of litigation. By getting actively involved in the case at its earliest stages, in many instances, defense counsel have successfully negotiated non-punitive dispositions of cases. At some locations, TDS maintained inter-service agreements to provide defense services to military personnel of sister services and TDS counsel continued to support soldiers at Physical Evaluation Boards.

Beginning in the summer 2001, TDS conducted a Force Design Update (FDU) in coordination with the Combat Developments Department of The Judge Advocate General's School. Through the FDU process, TDS examined and reviewed how best to provide trial defense services to the Army. Specifically, TDS examined the organization's current operational requirements and recommended changes to the doctrine, training, and organization.

TDS continues to expand its use of desktop video teleconference (DVTC) equipment to provide defense services to clients who are not co-located with TDS counsel. The technology has been used quite successfully, particularly at offices located outside the continental United States (OCONUS). At Fort Lewis, the technology has been so successful that the Regional Defense Counsel hopes to expand the service to provide DVTC capabilities to Hawaii with connectivity to the Atolls, Guam, and to Alaska. Likewise, throughout Germany, the DVTC technology has been very successful in providing defense services to remote locations. The Regional Defense Counsel in Wuerzberg hopes to expand the DVTC capabilities with connectivity from Germany to Kosovo and Bosnia.

In 2001, TDS entered into a formal Memorandum of Understanding with the Defense Appellate Division (DAD). The MOU established the procedures by which a case, in which the appellate court has ordered a rehearing on findings or sentence, is transferred from appellate counsel to trial defense counsel. TDS and DAD continue to foster a very close working relationship.

TDS 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 provides defense services to soldiers assigned to units in the Eastern half of CONUS and in Europe, and the 22d TDS LSO provides defense services to soldiers assigned to units in the Western half CONUS. Many individual TDS offices have established joint training program with their local reserve TDS personnel and have conducted highly successful joint training conferences. Reserve support to active duty TDS offices remains outstanding.

Continuing Legal Education (CLE) Training for TDS counsel was conducted in weeklong, consolidated regional conferences twice a year, attended by active duty TDS counsel and open to reserve TDS counsel as well. The multi-region approach to CLEs results in more productive and informative CLEs, benefiting all attendees. The FY 01 CLEs were conducted at Sonthofen, Germany; Fort Carson, CO; Lackland Air Force Base, TX; Las Vegas, NV; and at the Department of Justice's National Advocacy Center in Columbia, South Carolina. The National Advocacy Center is a new, state-of-the-art advocacy training facility that includes a fully automated 50-seat lecture hall and five fully automated courtrooms. The NAC is a self-contained training facility devoted almost entirely to advocacy. The facility provided the ideal environment for TDS counsel to focus on honing their courtroom skills and to expanding their knowledge of military justice.

TRIAL COUNSEL ASSISTANCE PROGRAM

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

TCAP provided five basic categories of services during FY 2001: (1) telephone/e-mail/and website forum inquiry assistance; (2) advocacy training courses and other training events; (3) dissemination of publications on a variety of subjects; (4) trial assistance; and (5) appellate assistance. In so doing, TCAP personnel accomplished the following: (1) responded to an average of over 100 telephonic and email requests for assistance per month; (2) conducted over a dozen advocacy training courses and other training events in the United States, Korea, and Germany, providing over 200 hours of continuing legal education to approximately 150 military judge advocates; (3) provided electronic and paper copies of countless articles and other publications to judge advocates around the world; (4) published daily "Trial Tip of the Day" messages on the TCAP internet website as well as responded to messages and inquiries posted therein; (5) actively participated in the preparation and trial of numerous courts-martial; and (6) responded to approximately 10 extraordinary writs and government appeals filed in either the Army Court of Criminal Appeals (ACCA) or the Court of Appeals for the Armed Forces (CAAF), as well as prepared 15 answers and returns to habeas corpus petitions filed with various Offices of the U.S. Attorney or with the United States Court of Appeals for several circuits. In September, two TCAP counsel presented oral argument on behalf of the United States in a habeas case before the U.S. Court of Appeals for the 3d Circuit.

In response to the need for vigorous investigation, prosecution and treatment of sexual abuse cases TCAP has re-tooled the scenario used in its training seminars. The new version trains participants in a "start-to-finish" approach employing complex facts and issues within a mock child abuse scenario that requires the students to research and argue their case under critical scrutiny. Additionally, based on a successful pilot study,

TCAP's website will soon include 26 training scenarios that allow the user to train himself on issues and legal principles involved in sexual abuse cases. TCAP will also soon utilize a database that captures the expertise of National Guard and Reserve judge advocates so to enhance the training value of the various training events. Finally, TCAP will host a seminar in September 2002 wherein attending judge advocates will learn up-to-date information and approaches to the prosecution of child sexual exploitation.

FOREIGN CRIMINAL JURISDICTION

As Executive Agent for foreign criminal jurisdiction, the Army, through the International and Operational Law Division, OTJAG, compiles information concerning the exercise of foreign criminal jurisdiction over U.S. personnel.

The data below, while not drawn from precisely the same reporting period used in other parts of this Report, provides an accurate picture of the exercise of foreign criminal jurisdiction during this reporting period:

	1 Dec 1998 to <u>30 Nov 1999</u>	1 Dec 1999 to <u>30 Nov 2000</u>
Foreign Offense Citations	5,233	4,440
Total Civilian	1,346	1,254
Total Military	3,887	3,186
Exclusive Foreign	183	190
Concurrent Jurisdiction	3,704	2,996
Traffic/Other Minor Offenses	430	283
Foreign Jurisdiction	708	435

With the exception of Exclusive Foreign Jurisdiction, there was a decrease in all categories. This decrease was proportional across all categories in certain major offenses, such as robbery, larceny, aggravated assault, simple assault, and drug offenses.

This year, foreign authorities released to U.S. authorities 11 of the 190 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 2,740 cases. Overall, the U.S. obtained waivers in 91.4% of all exclusive and concurrent jurisdiction cases. This figure reflects a 6.6% increase in such waivers from 1998-1999, when the relevant figure was 84.8%.

During the last reporting period, civilian employees and dependents were involved in 1,346 offenses. Foreign authorities released 254 of these cases (18.9% of this total) to U.S. military authorities for administrative action or some other form of disposition. This year, civilian employees and dependents were involved in 1,254 offenses. The foreign authorities released 94 of these cases (7.5% of the current total).

Foreign authorities tried a total of 1,064 cases. Ten trials, or 0.9%, resulted in acquittals. Those convicted were sentenced as follows: 23 cases resulted in executed confinement; 57 cases resulted in suspended confinement; and 974 cases (91.5% of the total trials) resulted in only fines or reprimands.

PROFESSIONAL RESPONSIBILITY

The Standards of Conduct Office (SOCO) manages TJAG's professional responsibility program. This program comprises (1) administratively reviewing complaints for credibility, (2) tasking judge advocates to run field inquiries concerning professional misconduct allegations, (3) reviewing reports of inquiry, and (4) advising TJAG on appropriate resolution of ethics cases. SOCO oversees the operation of TJAG's Professional Responsibility Committee and its issuance of advisory 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 judge advocates (in close communication with The Judge Advocate General's School) to give training programs at commands and offices.

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

During FY 2001:

- Credibility Reviews. 36 complaints were administratively closed after credibility reviews determined that no inquiries were warranted (up 29 percent from FY 2000's 28 administrative closures).
- Inquiries. Six inquiries were conducted and closed (down 70 percent from FY 2000's 20 closed inquiries).

Of the six closed inquiries, three resulted in findings of minor attorney misconduct:

- One prosecutor was counseled by his supervisor for improperly communicating with three represented soldiers.
- Two other attorneys received written reprimands from their supervisor after plagiarizing book reviews assigned for their office's professional development program.

LITIGATION

FY 01 was another busy year for Army attorneys defending the Department of the Army and its officials in civil litigation, as approximately 470 civil actions were filed in federal, state, and international courts. Cases that require civilian courts to interpret the UCMJ remain a small, but significant portion of this total. Most of these cases are by (former) soldiers seeking collateral review of courts-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. Other suits involve challenges to confinement conditions, to decisions to deny clemency or parole, to revoke parole, or to other administrative actions taken by confinement facility officials.

One case of particular note, Hall v. Department of Defense, involves a class action filed in 1997 by all inmates confined at the United States Disciplinary Barracks (USDB). The inmates claim they are subject to unsafe living conditions that violate the Eighth Amendment proscription against cruel and unusual punishment. They allege that the USDB main building is structurally unsound, that they are exposed to unsafe environmental conditions, and that they are improperly subjected to certain administrative practices. The district court denied the inmates' request for a preliminary injunction ordering the Army to transfer them to other correctional institutions. In January 1999, the Army filed a motion for summary judgment maintaining that there is no issue of fact that the inmates are not exposed to unsafe living conditions and that the administrative practices of which they complain are proper, accepted correctional methods. Plaintiffs' attorney later moved to dismiss the case, claiming that because the new DB will be completed in 2001, the issues presented by the lawsuit will be moot. The court dismissed the lawsuit with prejudice in February 2001. Several of the inmates, however, appealed to the U.S. Court of Appeals for the D.C. Circuit. In the interim, the Army Corps of Engineers moved back the completion date for the new DB to June 2002. The Court of Appeals has remanded the case to the district court to determine what effect, if any, the new completion date will have on the inmates' health and safety.

Litigation Division is also defending several cases challenging the Feres doctrine as it applies to military prisoners after their punitive discharges have been executed, but while they continue to serve sentences of confinement at the USDB and the Regional Confinement Facilities (RCFs). The lead case, Ricks v. Nickels, is before the 10th Circuit Court of Appeals and involves a military prisoner who alleges he suffered injuries at the USDB after he received his punitive discharge and therefore while he was no longer a servicemember for purposes of determining whether his injuries were incident to service. The appellate court should definitively decide the applicability of Feres to post-discharge military prisoners soon. These decisions will have broad ramifications for the USDB and all RCFs.

EDUCATION AND TRAINING

The Criminal Law Department of The Judge Advocate General's School (TJAGSA) in Charlottesville, Virginia continues to fine tune advocacy training and broaden the understanding of the military justice system.

Advocacy training is at the top of the Department's mission essential task list. The instructors concentrate their efforts to provide quality advocacy training to three Basic Courses and two Criminal Law Advocacy Courses each year. During the Basic Course, each student serves as a trial counsel or defense counsel in three exercises, an administrative separation board, a guilty plea, and a contested general court-martial. Additionally, in a capstone exercise, each student plays the role of trial counsel who must advise a special court-martial convening authority regarding several pending military justice decisions in a contentious sexual offense case.

Advanced advocacy training continued with the 15th and 16th Criminal Law Advocacy Courses. The Department trained 120 judge advocates from all branches of service during two intense two-week courses in the spring and fall. In addition to a concentrated course of evidence instruction, the trial and defense counsel developed skills necessary to try courts-martial, from opening statements to sentencing arguments. The Department was augmented by seasoned and experienced Reserve judge advocates, all trial practitioners. The augmentation allowed for unique, small-group instruction based on student strengths and weaknesses.

The Criminal Law Department hosted several short courses in addition to Basic Course and Graduate Course instruction. Forty-four judge advocates received in-depth instruction during the 44th Military Judges Course before certification as trial judges. The 7th Military Justice Managers Course began with a demonstration of the new voice recognition software training that is currently being fielded to court reporters.

The course also included blocks of instruction on forensic evidence and crime scene management in addition to heavy emphasis on post-trial processing of cases. The course deskbook may be obtained at the TJAGSA home page under the publication listing:
<http://www.jagcnet.army.mil/tjagsa>.

Of particular note last year, the Department hosted two special activities in observance of the 50th Anniversary of the Uniform Code of Military Justice. At the Worldwide CLE in October, the Department presented a historical retrospective titled Evolution of a System of Discipline and Justice, highlighting some of the more significant events in the Code's development. Additionally, the Department hosted a symposium of several primary participants of the My Lai trials. The former trial and defense counsel presented their thoughts and recollections of the Vietnam era trials, thereby preserving one of the significant events in the Code's history.

The Criminal Law Department hosted several distinguished guest speakers, including Colonels David L. Hayden, Adele H. Odegard, and Gary Smith, who provided sage trial advocacy advice to students of the 15th CLAC. Major General John D. Altenburg, Jr. culminated several years of delivering advocacy addresses with a popular and motivational presentation to the 16th CLAC. Students in that course also heard Colonel Denise K. Vowell present a view of trial advocacy from the bench. Mr. Andrew J. Oosterbaan of the Department of Justice presented an overview of federal prosecution of Internet crimes against children to the students of the 24th New Developments Course. The students also received a presentation on reforms in the Canadian military justice system. Brigadier General Wayne E. Alley, Retired, a federal judge in Oklahoma, opened the 44th Military Judges Course in May with his unique perspective on sitting as a trial judge. Mr. Oosterbaan returned to the School and presented a substantive crimes presentation regarding computer offenses. New military justice managers received descriptive and notable instruction on the post-trial processing of a court-martial from Colonel (Retired) Joseph A. Neurauter, Clerk of the Court, Army Court of Criminal Appeals. The Honorable Robinson O. Everett delivered the 29th Hodson Lecture in May. Judge Everett treated the audience with an insightful perspective of the first fifty years of Uniform Code of Military Justice.

PERSONNEL, PLANS, AND POLICIES

The strength of the Judge Advocate General's Corps at the end of FY 01 was 1,462 (including general officers). This total does not include 73 officers participating in the Funded Legal Education Program. The diverse composition of the Judge Advocate General's Corps included 126 African-Americans, 40 Hispanics, 54 Asians and Native Americans, and 371 women.

The FY 01 end strength of 1,462 compares with an end strength of 1,427 in FY 00, 1,426 in FY 99, 1,499 in FY 98, 1,523 in FY 97, 1,541 in FY 96, 1,561 in FY 95, 1,575 in FY 94, and 1,646 in FY 93. The grade distribution of the Corps was 5 general officers; 133 colonels; 215 lieutenant colonels; 309 majors; and 800 captains. Seventy-one warrant officers, 414 civilian attorneys, and 1,510 enlisted soldiers supported legal operations worldwide.

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

APPENDIX - U.S. ARMY MILITARY JUSTICE STATISTICS

Report Period: FISCAL YEAR 2001

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	770	739	31	+5.33%
BCD SPECIAL [A]	354	331	23	-8.29%
NON-BCD SPECIAL	3	2	1	-57.14%
SUMMARY	672	645	27	+0.9%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				0.50%

PART 2 - DISCHARGES APPROVED [B]

GENERAL COURTS-MARTIAL (CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES (67) + dismissals (11)			67 + 11	
NUMBER OF BAD-CONDUCT DISCHARGES			285	
SPECIAL COURTS-MARTIAL (TR LEVEL)				
NUMBER OF BAD-CONDUCT DISCHARGES			169	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	569
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	152
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	172

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

TOTAL ON HAND BEGINNING OF PERIOD		105 [C]
GENERAL COURTS-MARTIAL	[D]	
BCD SPECIAL COURTS-MARTIAL	[D]	
REFERRED FOR REVIEW		786 [C]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED		775 [E]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD		117 [C]
GENERAL COURTS-MARTIAL	[D]	
BCD SPECIAL COURTS-MARTIAL	[D]	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		14.8%

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

NUMBER	736
PERCENTAGE	96.71%

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	326 of 775	42.1%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		0.0%
PERCENTAGE OF TOTAL PETITIONS GRANTED	52 of 326	15.95%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-20.64%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA		6.7%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD]		+36.40%

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

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		3	
RECEIVED		11	
DISPOSED OF		8	
GRANTED	0		
DENIED	7		
NO JURISDICTION	1		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		6	
PART 8 – ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		588	
SPECIAL COURTS-MARTIAL		295	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		182	
SPECIAL COURTS-MARTIAL		62	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		16	
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		480783	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		45082	
RATE PER 1,000		93.76	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+9.19%	

EXPLANATORY NOTES

- [A] Acquittals include cases withdrawn or dismissed after arraignment.
- [B] Based on records of trial received during FY 2001 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, 2000 TO SEPTEMBER 30, 2001

**SUPERVISION OF THE ADMINISTRATION OF
MILITARY JUSTICE**

In compliance with the requirement of Article 6(a), Uniform Code of Military Justice, the Judge Advocate General and the Deputy Judge Advocate General made frequent inspections of legal offices in the United States, Europe, and the Far East in order to supervise the administration of military justice.

ARTICLE 69(a), UCMJ, EXAMINATIONS

Twenty-three general courts-martial records of trial not statutorily eligible for automatic review by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) were forwarded for examination to the Office of the Judge Advocate General in fiscal year 2001. Fifteen were pending at the end of fiscal year 2000. Out of the 29 cases completed, none required corrective action by the Judge Advocate General. Nine cases are pending review at the close of fiscal year 2001.

ARTICLE 69(b), UCMJ, APPLICATIONS

In fiscal year 2001, 20 applications under Article 69(b), UCMJ, were received for review. Eight such applications remained pending from fiscal year 2000. Of these 28 applications, 14 were denied on the merits. Fourteen cases are currently pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 2001, the Office of the Judge Advocate General received one petition for a new trial. Two petitions were denied and one petition is pending review at the close of fiscal year 2001.

APPELLATE DEFENSE DIVISION

Appellate Defense Practice. Appellate Defense filed a total of 1708 cases during fiscal year 2001 but received 2056 new records of trial. A total of 19% of the cases reviewed were fully briefed to the Navy-Marine Corps Court of Criminal Appeals, and another 9% were summarily assigned. In addition, 112 cases were petitioned to the Court of Appeals for the Armed Forces, and three to the Supreme Court of the United States. Division counsel engaged in oral argument in 19 cases before the Court of Appeals for the Armed Forces and 12 cases before the Navy-Marine Corps Court of Criminal Appeals.

The Division experienced a significant amount of personnel turnover during the year and was never staffed at more than 15 active duty judge advocates. The support of 36 Reserve Navy and Marine Corps judge advocates assigned to Appellate Defense proved invaluable in maintaining some progress against the case backlog. Captain Carol J. Cooper, JAGC, USN returned as the Division Director in September 2001, relieving Commander Richard Bagley, JAGC, USN, and has set the goal of reducing the backlog as a top priority for the Division.

Reserve Support. As noted above, the reserve component continues to provide outstanding support to the Appellate Defense Division. The reserve units are:

NR NAVJAG 109, Columbus, Ohio, commanded by Captain John Fabian, JAGC, USNR.

NR NAMARA (Defense) 111, Oklahoma City, Oklahoma, commanded by Captain Donald Davidson, JAGC, USNR.

NAVJAG 519, Los Angeles, California, commanded by Captain Donald Nelson, JAGC, USNR.

NAVJAG 211, Fort Worth, Texas, commanded by Captain Robert White, JAGC, USNR.

In addition, the Division received volunteer support from two dedicated Naval Reserve judge advocates from NR VTU [Voluntary Training Unit] 614. The Marine Corps Reserve contingent consisted of 11 independently assigned Reserve judge advocates.

In addition to maintaining an active caseload, several Reserve attorneys provided specialized assistance to Division counsel in the three capital cases currently under review in the Division. The Appellate Defense Division provides a tremendous example of Reserve and active duty commands working as a team to accomplish a mission that neither could possibly do alone.

Capital Litigation. In fiscal year 2001, the Appellate Defense Division continued to be involved in the appeals of three capital cases. In the case of U.S. v. Parker, the government answer was filed in May 2001 and the defense reply is pending. In the companion case of U.S. v. Walker, the defense brief is pending completion. Various motions were filed in the third case, U.S. v. Quintanilla, regarding the appellate procedures to be utilized. All were denied and the brief on the merits is still pending.

The Navy-Marine Corps Capital Litigation Resource Center (CLRC) remained vacant during this year since Captain Lazzaro's release from active duty. Captain Cooper, the new Director of Appellate Defense, will, in addition to her duties as the Director, provide assistance to the field in any cases where the death penalty is being seriously considered or sought.

Trial Defense Assistance. The Appellate Defense Division provides advice and support to Navy and Marine Corps trial defense counsel on a continuing basis. The Division maintains a rotating Field Call watch comprised of experienced appellate attorneys who reply to short-fused questions from the trial defense counsel in the field and assist them in filing extraordinary writs if the case warrants. In addition, appellate defense attorneys gave presentations at the world-wide Navy Judge Advocate General's Conference and at training sessions for trial defense counsel at Camp Lejeune, North Carolina, and Naval Air Station, Jacksonville, Florida. These presentations focused on "hot topics" in appellate litigation and how to best preserve issues for appeal at the trial level. Individual counsel made trips to the Pacific Northwest and Great Lakes, Illinois to facilitate defense counsel training at the regional Naval Legal Service Offices.

APPELLATE GOVERNMENT DIVISION

Active-Duty Personnel. The Navy-Marine Corps Appellate Review Activity, Appellate Government Division had ten (10) active duty officers and three (3) civilian employees on hand at the end of fiscal year 2001.

The Division Director, Colonel Marc W. Fisher, USMC, transferred during July 2001; he was replaced by Colonel Rose Marie Favors, USMC. Due to unforeseen circumstances stemming from the national tragedy that occurred on September 11, 2001, the Division Deputy, Commander Peter Dutton, USN, transferred to another command at the end of fiscal year 2001; he was replaced by the next senior member of the Division, Major Robert M. Fuhrer, USMC.

During fiscal year 2001, six (6) other officers joined the Division but, eight (8) senior, experienced officers either transferred or were released from active duty. Except for the Director, only three (3) officers on hand at the end of fiscal year 2001 had more than one year's experience in the Division.

Reserve Personnel. During fiscal year 2001, two Naval Reserve Detachments and eight Marine Corps Reserve judge advocates supported the Division's mission for a total of sixteen (16) officers and four (4) enlisted members. However, in the aftermath of September 11, 2001, one of the Marine judge advocates accepted orders for Active Duty Special Work and transferred to another command.

Appellate Representation. During fiscal year 2001, the Appellate Government Division (Code 46), Navy-Marine Corps Appellate Review Activity, filed a total of 894 pleadings (excluding requests for enlargement of time). Of these, 772 were filed with the Navy-Marine Corps Court of Appeals, and 122 were filed with the United States Court of Appeals for the Armed Forces. Members of the Division participated in 31 oral arguments before the two courts.

Field Assistance. The Division's Trial Counsel Assistance Program (TCAP) responded to hundreds of telephone calls or electronic messages from trial counsel and staff judge advocates. Inquiries concerned the full spectrum of military justice matters and covered all phases of court-martial proceedings.

NAVY-MARINE CORPS TRIAL JUDICIARY

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

The Navy-Marine Corps Trial Judiciary (NMCTJ) consists of 31 active duty judges and 29 reservists serving in 12 circuits and five branch offices. During fiscal year 2001, NMCTJ provided judicial services in 481 general courts-martial and 2264 special courts-martial. These numbers represent an increase in general courts-martial (53) and a decrease in special courts-martial (117) compared to fiscal year 2000.

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

NMCTJ also provided training at various levels, including the Navy-Marine Corps Senior Officer Course 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 the Deputy Judge Advocate General of the Navy and includes 290 Judge Advocates, 16 Limited Duty (Legal) Officers, 203 Legalmen, and 219 civilians. NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore

commands, active duty naval personnel, family members, and retirees from 57 offices world-wide: eight Naval Legal Service Offices (NLSOs), five Trial Service Offices (TSOs), the Naval Justice School, and 44 detachments and branch offices. Last year NAVLEGSVCCOM opened a Branch Trial Service Office in Ventura County, California to support Naval Commands in that region. 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 2001, NAVLEGSVCCOM provided counsel for 263 general courts-martial, 739 special courts-martial, 306 Article 32s, 1022 Administrative Boards, processed over 31,000 claims, provided over 219,966 legal assistance services, and provided over 45,131 command assistance services.

NAVLEGSVCCOM completed the implementation of a Legal Assistance module for the Time Matters Case Management System and is in the process of developing a military justice module. When fully implemented, this system will allow us to more closely track military justice cases.

NAVAL JUSTICE SCHOOL

Organization. Naval Justice School (NJS) reports to Commander, Naval Legal Service Command, for administrative and operational control. 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).

Mission Statement. NJS shall:

1. Oversee training of judge advocates, Limited Duty Officers (law), and Legalmen to ensure their career-long professional development and readiness.
2. 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 legal services.
3. Train sea service commanders and senior officers in the practical aspects of military law to enable them to perform their command and staff duties, and train other sea service personnel to assist in the sound administration of military Justice.

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

Academic Programs. NJS has five "core" courses, each containing substantial blocks of instruction relating to military justice and operation of the UCMJ. These courses are:

1. Accession Judge Advocate Course. This nine-week course, offered four times per fiscal year, is the accession level course in military justice for all judge advocates of the Navy, Marine Corps, and Coast Guard. The majority of the course is dedicated to military justice and court-martial advocacy training (other topical areas include legal assistance and administrative law). Upon graduation from NJS, judge advocates are certified in accordance with Article 27(b), UCMJ. Fiscal year 2001 graduates:

Navy	113
Marine Corps	65
Coast Guard	15

2. Accession Legalman Course. This nine-week course, offered four times per fiscal year, trains enlisted personnel selected for conversion to the Legalman rating. In fiscal year 2001, the course consisted of two phases: (a) Paralegal, dedicated to training Navy Legalmen in military justice practice (six weeks), and (b) Court Reporters (three weeks). Fiscal year 2001 graduates: 91

3. Senior Officer Course (SOC) in Military Justice and Civil Law. This four-day course is taught in Newport, Rhode Island, and other areas of Fleet and Fleet Marine Force concentration. In fiscal year 2001, the course was offered 21 times at 7 different locations. The course prepares senior officers in the execution of their legal responsibilities of command. The majority of the course focuses on such areas as nonjudicial punishment and court-martial procedures. Fiscal year 2001 participants in SOC:

Navy	475
Marine Corps	157
Coast Guard	1
Civilian	3
Air Force	2

4. Legal Officer Course. In the sea services, non-lawyer "legal officers" perform a host of military justice functions in many commands that are not large enough to warrant assignment of a judge advocate. This four-week course, prepares these collateral duty legal officers (typically

paygrades 0-1 to 0-3) to assume legal duties in their respective commands. This course is offered 16 times per fiscal year, at Newport, Rhode Island, San Diego, California, and Norfolk, Virginia. Fiscal year 2001 legal officers trained:

Navy	408
Marine Corps	91
Coast Guard	7
Civilian	4

5. Legal Clerk Course. Legal Clerks are typically assigned to assist non-lawyer legal officers within a command. This is usually a collateral duty for a command yeoman, or personnelman, or a Marine Corps legal services specialist. This two-week course provides training in the preparation of legal forms and reports, service record entries, post-mast and post court-martial procedures. In fiscal year 2001, the course was offered 19 times at Newport, Rhode Island, San Diego, California, and Norfolk, Virginia. Fiscal year 2001 participants:

Navy	290
Marine Corps	5
Civilian	2

In addition to the above "core" courses, NJS offered numerous continuing legal education programs throughout the fiscal year that contained detailed instructions relating to the operation of the UCMJ. These included:

<u>Officer Courses</u>	<u>Length</u>
Reserve Judge Advocate Course	Two weeks
Staff Judge Advocate Course	Two weeks
Capital Litigation Course (Separate offerings for Prosecution and Defense)	Three days
Intermediate Trial Advocacy Course	One week
Advanced Trial Advocacy Course	One week
Coast Guard Law Specialist Course	One week
Reserve JAGC Military Law Update Workshops	2 ½ days
Computer Crimes	Two days
National College of District Attorneys Course	One week
Advanced Staff Judge Advocate Course	One week
Law of Military Operations	Two weeks
Staff Judge Advocate Environmental Law	Three days
Legal Assistance Manager's Workshop	Two days
Computer Crimes	Two days

Estate Planning	Three days
SOAC Course	Four days
Continuing Legal Education	Two days

<u>Enlisted Courses</u>	<u>Length</u>
Reserve Legalman Course	Two weeks
Legalman Research and Drafting Course	One week
Legalman Legal Writing	One week
Military Justice Course for the Staff Judge Advocate/Command Judge Advocate/Shipboard LN	Two weeks
NLSO/TSO Legalman Course	Three days
Coast Guard Legal Clerk Course	Two weeks
Senior Legalman Course	Three days
Advanced Legal Specialist	Two weeks
Senior Enlisted Leadership	Three days

International Programs. In fiscal year 1998, NJS introduced the Legal Considerations for Peacekeeping and Military Operations Course. In fiscal year 2001, 61 students from 23 countries attended the Fall and Spring offerings of this five-week resident course held in Newport, Rhode Island. The course covers topics including International Law, UN Organizations, UN Charter, Regional Organizations, Humanitarian Relief Organizations, Non-Governmental Organizations, Law of Armed Conflict, Rules of Engagement, Status of Forces Agreements, National Policy for Peace Operations, Legal Issues Regarding Demining and Preventive Diplomacy. The students hear from notable guest speakers, engage in interactive group problems and take field trips to Washington, D.C. and UN Headquarters in New York City. In the past three years, 264 students have completed the course.

Publications. NJS is responsible for the publication of the Naval Law Review, all materials in support of academic programs, and any additional materials directed by higher authorities. NJS will be publishing Volume 48 of the Naval Law Review which will contain several articles related to Military Justice, Operational and Environmental Law, and Legal Assistance.

MARINE CORPS ACTIVITIES

There are approximately 399 active-duty judge advocates and 450 reserve judge advocates. Additionally, there are 18 warrant officers and 396 enlisted members working in the legal offices. These offices support the Fleet Marine Forces in the continental United States, overseas and on deployment throughout the world. Our drilling reserve judge advocate community provides substantial support to each of our offices. This support is coordinated at two annual meetings, the Reserve JA conference and the IMA all-hands drill. 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 criminal cases of all descriptions. Legal assistance attorneys 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 lawyers also advise commanders during military operations, reviewing military operations plans and providing advice on the Law of War, rules of engagement, and domestic law relating to the employment of force and support of our allies. Other areas of practice include environmental law, civil law, contract law, international law, claims and tort law, and labor law. In addition, because Marine Corps judge advocates are unrestricted line officers, many serve in non-legal billets. For example, this year alone has seen Marine judge advocates serving as; Commanding Officer, Marine Corps Security Forces Company, Kings Bay, Georgia; Commanding Officer, H&S Battalion, Marine Corps Recruit Depot, San Diego, California; Commanding Officer, H&S Battalion, Marine Corps Base, Kaneohe Bay, Hawaii; and Commanding Officer, Military Entrance Processing Station, Des Moines, Iowa.

We access 45 judge advocates a year from civilian law schools and private practice, in addition to the 10 judge advocates that are lateral transfers from other Marine Corps occupational fields via the Law Education Program. We continue to have more applicants than openings and are able to use a board process to screen all applicants to ensure the highest quality. Applicants come from diverse backgrounds but can generally be described as coming from top-tier 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 three-fold. First, eligible applicants must attend Officer Candidate School in Quantico, VA. 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. Unlike our sister services, Marine Corps officers are unrestricted line officers - you may have heard the phrase "every Marine a rifleman." The Basic School is a rigorous, 6 month program that provides each lieutenant the foundation to be an infantry platoon commander. Finally, each judge advocate must complete the Basic Lawyer Course at the Naval Justice School in Newport, RI. Successful completion of the Basic Lawyer Course culminates in designation as a judge advocate. Upon reporting to their commands, various continuing legal education training opportunities are available to include command and HQMC 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 twelve judge advocates each year are selected for advanced (LL.M.) training at civilian law schools and The Judge Advocate General's School of the U.S. Army. Additionally, each year five to six judge advocates attend a military specific training course such as Amphibious Warfare School, Command and Staff College, or War College. Our warrant officer and enlisted members also undergo a significant training regime. Currently, 8 Marines are enrolled in a paralegal program with Coastline Community College and each year 30 Marines attend the Legal Services Specialist Mid-Career Course at Naval Justice School.

At the direction of the Commandant, the Judge Advocate Division has been working with the Manpower and Plans & Resources Divisions on an implementation plan for Judge Advocate Continuation Pay (renamed Law School Debt Subsidy, or LSDS). The Manpower Division has proposed payments to judge advocates that have reached career status and finished their initial service obligation. Many details of the implementation plan have yet to be worked out. Current issues include the amount of payments, timing of payments and which officers are eligible. The Judge Advocate Division continues to work with Manpower to finalize the LSDS program.

In July 2001, the President of the United States nominated Colonel Kevin Sandkuhler, as the next Staff Judge Advocate to the Commandant. Colonel Sandkuhler replaced Brigadier General Joseph Composto who recently took over as Commanding General of Marine Corps Base Quantico. After his confirmation by the Senate, Colonel Sandkuhler was promoted to the rank of Brigadier General on 5 October 2001.

DONALD J. GUTER
Rear Admiral, U.S. Navy
The Judge Advocate General of the Navy

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

Report Period: FY 2001

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	481	454	27	+12%
BCD SPECIAL	2264	2222	42	-5%
NON-BCD SPECIAL	0	0	0	0%
SUMMARY	2103	2074	29	+11%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+3%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES		114
NUMBER OF BAD-CONDUCT DISCHARGES		196
SPECIAL COURTS-MARTIAL (SA LEVEL)		
NUMBER OF BAD-CONDUCT DISCHARGES		1627

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	317
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	1605
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	22

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

TOTAL ON HAND BEGINNING OF PERIOD		1881
GENERAL COURTS-MARTIAL	466	
BCD SPECIAL COURTS-MARTIAL	1415	
REFERRED FOR REVIEW		1928
GENERAL COURTS-MARTIAL	333	
BCD SPECIAL COURTS-MARTIAL	1595	
TOTAL CASES REVIEWED		1726
GENERAL COURTS-MARTIAL	246	
BCD SPECIAL COURTS-MARTIAL	1480	
TOTAL PENDING AT CLOSE OF PERIOD		2083
GENERAL COURTS-MARTIAL	555	
BCD SPECIAL COURTS-MARTIAL	1528	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+11%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE

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

NUMBER	1944
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	136	8%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-8%
PERCENTAGE OF TOTAL PETITIONS GRANTED	14	10%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-13%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA		.8%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-30%

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		8	
RECEIVED		20	
DISPOSED OF		14	
GRANTED	0		
DENIED	14		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		14	

PART 8 – ORGANIZATION OF COURTS

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		397	
SPECIAL COURTS-MARTIAL		2147	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		84	
SPECIAL COURTS-MARTIAL		117	

PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ

NUMBER OF COMPLAINTS		96	
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PART 10 – STRENGTH

AVERAGE ACTIVE DUTY STRENGTH		553,430	
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PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		35021	
RATE PER 1,000		63.3	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+18.3%	

SECTION 5

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

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
OCTOBER 1, 2000 TO SEPTEMBER 30, 2001

THE AIR FORCE COURT OF CRIMINAL APPEALS

During fiscal year 2001, the Court rendered over 560 decisions. This represents an increase of over 43% from fiscal year 2000.

For over 50 years, since before the adoption of the Uniform Code of Military Justice, the service courts of criminal appeals (then boards of review) have applied a beyond a reasonable doubt standard in reviewing the factual sufficiency of an appellant's conviction. The Court of Military Appeals agreed that this was the appropriate standard. "For factual sufficiency, the test is whether, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, the members of the [courts of criminal appeals] are themselves convinced of the accused's guilt beyond a reasonable doubt." United States v. Turner, 25 MJ 324, 325 (CMA 1987). In United States v. Washington, 54 MJ 936, 940-41 (A.F. Ct. Crim. App. 2001), we noted that this standard of review conflicted with the expressed intent of Congress. Congress intended the courts of criminal appeals to affirm the factual sufficiency of an accused's conviction if it "conforms to the weight of the evidence." Id. at 940 (citing S. Rep. No. 81-486, at 28 (1949); H.R. Rep. No. 81-491, at 31-32 (1949)). Washington is currently on appeal at the United States Court of Appeals for the Armed Forces.

The Court continued its "Project Outreach" program, hearing oral arguments at the United States Air Force Academy, Colorado, Maxwell AFB, Alabama, Andrews AFB, Maryland, and the Howard University School of Law, Washington, District of Columbia.

USAF JUDICIARY ORGANIZATION

The USAF Judiciary Directorate is responsible for overseeing the administration of military justice, from nonjudicial punishment proceedings to the appellate review of courts-martial, throughout the United States Air Force. Additionally, the Directorate has the staff responsibility of the Air Force Legal Services Agency in all military justice matters which arise in connection with programs, special projects, studies and inquiries generated by the Department of Defense, Headquarters USAF, members of Congress and various agencies. The Judiciary Directorate consists of the Trial Judiciary Division, Government Trial and Appellate Counsel Division, Appellate Defense Division, Trial Defense Division, Military Justice Division, and the Clemency, Corrections and Officer Review Division.

This year marked the end of commemorations celebrating the 50th anniversary of the Uniform Code of Military Justice (UCMJ). The commemorative events included a very successful symposium, featuring retrospectives from several former Judge Advocate Generals of the Air Force who helped guide the development and implementation of the UCMJ. The symposium was hosted and sponsored by the Air Force Judge Advocate General School and videotapes of the symposium are available from that institution. In addition, the Air Force produced a videotape celebrating the UCMJ's anniversary. The videotape traces the history of the American military justice system, explains the military justice process and compares it with the criminal justice system in today's U.S. district courts. The video debuted at the June 2001 meeting of the UCMJ Code Committee and has been distributed to the other services and throughout the Air Force.

TRIAL JUDICIARY

The Air Force Trial Judiciary had an average of 21 active duty trial judges, seven reserve trial judges, 10 noncommissioned officers and a civilian employee court reporter assigned throughout five judiciary circuits worldwide. In September 2001, the court reporter was reassigned to 11 WG/JA, Bolling AFB, D.C. The Chief Trial Judge, his military judge assistant and one noncommissioned officer are assigned to the Trial Judiciary headquarters. The military judges' duties include: presiding over all general and special courts-martial tried in the United States Air Force; serving as investigating officers under Article 32, UCMJ; legal advisors for officer discharge boards and other administrative boards; hearing officers in parole violation hearings; and presiding at public hearings held to consider draft environmental impact statements. During this fiscal year, military judges averaged approximately 107 days on temporary duty to perform these functions at locations other than their bases of assignment.

The Chief Trial Judge made supervisory visits to all three CONUS circuits and both of the overseas circuits to review workload and facilities. The Trial Judiciary has a Website on the Internet that is currently being improved for trial judges.

The Twenty-Seventh Interservice Military Judges' Seminar was conducted by the Trial Judiciary at The Air Force Judge Advocate General School, Maxwell AFB, Alabama, from 23-27 April 2001. This seminar was attended by 109 military judges from the trial judiciaries of the Army, Navy, Marine Corps, Coast Guard, and the Air Force. The Chief Military Judge of the Canadian Armed Forces also attended. Guest speakers included The Honorable Andre Davis, U.S. District Judge, U.S. District Court for the District of Maryland, Professor Lee Schinasi, Honorable Shelby Highsmith, U.S. District Judge, U.S. District Court for the Southern District of

Florida, Major General William A. Moorman, The Judge Advocate General of the Air Force, Mr. Francis A. Gilligan, Senior Legal Advisor, U.S. Court of Appeals for the Armed Forces, Mr. Karl E. Schneider, Deputy Assistant Secretary, Army Review Boards and Col James Young, Chief Judge, Air Force Court of Criminal Appeals.

The Chief Trial Judge attended the last week of the Military Judge's Course conducted by The Army Judge Advocate General School in Charlottesville, Virginia, from 7-25 May 2001. In June, the Chief Trial Judge gave a presentation to new Staff Judge Advocates at the Staff Judge Advocate Course, Maxwell AFB, AL, and served as a seminar leader for a week. In July 2001, three active duty judges attended the Criminal Evidence Course put on by the National Judicial College (NJC) at its Reno, Nevada campus. In August, the Chief Trial Judge and one active duty judge attended the Computer Course for Judges conducted by the NJC in Reno, Nevada, while another military judge attended the Constitution Law Course at the NJC.

Judge Murnane, the Chief Military Judge for the European Circuit attended the annual meeting of the American Bar Association in Chicago, IL, from 2-6 August 2001. She serves as the Chair of the Military Courts Committee, National Conference of Special Court Judges, Judicial Division, American Bar Association. The interactions with civilian judicial peers were extremely valuable. The liaison for the National Judicial College approached her and suggested that a military faculty member would be a welcome addition to the National Judicial College faculty. This would increase civilian exposure to the military justice section and improve judicial understanding of the UCMJ and its function.

GOVERNMENT TRIAL & APPELLATE COUNSEL DIVISION

In 2001, the Chief, Trial and Appellate Government Counsel Division and eight appellate counsel attended the Criminal Law New Developments Course at the Army Judge Advocate General School. This course covered the latest military cases in all significant areas of criminal law. In addition to providing new appellate counsel an update in the most recent criminal law developments, it was an opportunity for both appellate counsel and trial counsel to spend several hours together and discuss ways to better serve the base legal offices. Also, in June 2001, seven appellate counsel attended the Military Appellate Advocacy Symposium, sponsored by the Judge Advocate's Association at the Catholic University School of Law. The symposium provided current information on appellate issues and guidance on appellate practice.

During the year, three appellate government counsel provided in-depth training at the Military Justice Administration Workshop (MJAW) conducted at the Air Force Judge Advocate General School (AFJAGS), Maxwell AFB, Alabama.

Appellate government counsel also prepared and provided an appellate update on USCAAF and AFCCA decisions and trends in case law for five trial counsel workshops at each of the circuits. Additionally, appellate government counsel provided instruction on a myriad of military justice topics at the Trial and Defense Advocacy Course in April and the Advanced Trial and Defense Advocacy Course in May 2001.

Appellate government counsel have contributed to "Project Outreach," sponsored by the Court of Appeals for the Armed Forces and the Air Force Court of Criminal Appeals, by conducting oral arguments before audiences at the United States Air Force Academy, the Air Force Judge Advocate General School, St. Mary's School of Law, San Antonio, Texas, and at the Texas Supreme Court, Austin, Texas, educating personnel about the fairness and professionalism of the military justice system.

Appellate counsel supplemented the Division's web site with the quarterly additions of the Appellate Update, Advocacy Continuing Education (ACE) newsletters, and the 2001 Trial Counsel Deskbook. Easy access to these materials enhances the briefings provided by appellate government counsel at the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course.

Currently, there are ten reserve judge advocates assigned as appellate government counsel. They continue to provide superb support, greatly assisting the Trial and Appellate Government Counsel Division in carrying out its mission. In addition to preparing written briefs, six of the reserve counsel presented oral argument before the Air Force Court of Criminal Appeals or the Court of Appeals for the Armed Forces during the fiscal year.

A summary of Air Force appellate practice follows:

AFCCA	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>
Briefs Filed	434	320	230	151	203
Cases Argued	22	10	11	19	20
USCAAF	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>
Briefs Filed	85	48	29	23	46
Cases Argued	58	59	27	28	32

SUPREME COURT	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>
Petition Waivers					
Filed	15	17	2	1	1
Briefs Filed	0	0	0	0	0

CIRCUIT TRIAL COUNSEL

The manning authorizations for the fiscal year included 17 Circuit Trial Counsel (CTC) at three circuit offices in CONUS, while four CTCs cover the Pacific and European theaters, two per theater. During fiscal year 2001, Circuit Trial Counsel tried 279 general courts-martial or 58% of all general courts-martial. In addition, Circuit Trial Counsel tried 50 special courts-martial. Several CTCs attended the Criminal Law New Developments Course at the Army JAG School in Charlottesville, Virginia. The CTCs in all five judicial circuits conducted workshops for base-level prosecutors. Circuit Trial Counsel also utilize their talents by teaching as adjunct instructors at the Trial and Defense Advocacy Course and the Advanced Trial and Defense Advocacy Course at the Air Force Judge Advocate General School.

APPELLATE DEFENSE DIVISION

Training of our appellate defense counsel remains one of the division's highest priorities. This training includes attending civilian appellate advocacy seminars sponsored by the National Legal Aid and Defender Association, the Judge Advocate's Association, and Law Prose.

Appellate defense counsel served as adjunct faculty members in the Advanced Trial Advocacy Course and the Trial and Defense Advocacy Course at the Air Force Judge Advocate General School at Maxwell AFB, AL.

Appellate defense counsel continued to support trial defense counsel in the field by actively participating in circuit defense counsel workshops. Counsel also briefed the field defense practitioners on new appellate developments in military criminal law.

The Law Office Manager spoke at the Eastern, Western, and European Circuit Defense Paralegal Workshops. The briefings highlighted the differing roles of trial defense and appellate defense paralegals.

Appellate defense counsel contributed to "Project Outreach" sponsored by the AFCCA and CAAF by participating in oral arguments before audiences at the Texas Supreme Court in Austin, TX; Saint Mary's University in San Antonio, TX; and the Air Force Judge Advocate General School at Maxwell AFB, AL. "Project Outreach" helps educate personnel involved in civilian legal practice about the fairness and professionalism of the military justice system.

The following figures reflect the division's workload over fiscal year 2001:

AFCCA	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>
Briefs Filed	505	603	507	399	481
Cases Argued	22	10	9	15	14
USCAAF	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>
Supplements to Petitions	527	424	416	330	457
Grants Briefs	85	40	26	28	31
Oral Arguments	58	59	23	25	31
SUPREME COURT	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>	<u>FY 00</u>	<u>FY 01</u>
Petition	13	17	0	1	6
Briefs in Opposition	2	1	0	0	0
Briefs on the Merits	1	0	0	0	0

TRIAL DEFENSE DIVISION

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

The Division is manned with 81 ADCs stationed at 71 bases worldwide. They are assisted by 72 DPs. The Division has 21 CDCs and 5 CCDCs. The CCDCs, along with all but four of the CDCs, are stationed at the circuit offices located at Bolling AFB, DC; Randolph AFB, TX; Travis AFB, CA; Ramstein AB, Germany; and Yokota AB, Japan. A single defense paralegal superintendent is assigned to each of the three CONUS circuits and the European Circuit.

The continuing success of the Air Force's Area Defense Counsel Program is largely attributable to its independence and its energized personnel. To ensure the best representation for Air Force clients, training remains the division's top priority. The Chief, Trial Defense Division and all five CCDCs attended the Criminal Law New Developments Course at the Army Judge Advocate School. On a continuing basis, each CCDC and CDC provides on-the-job training and mentoring to ADCs. Newly

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

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. They also assemble 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 provided representatives to all interservice activities involving military justice and support for the Code Committee.

During the course of the year, the Military Justice Division serves as the action agency for the review of military justice issues on applications submitted to the Air Force Board for Correction of Military Records. The division provided 102 formal opinions concerning such applications. They also received 175 inquires in specific cases requiring either formal written replies or telephonic replies to senior officials, including the President and members of Congress. The Military Justice Division also reviewed 66 records of trial for review under Article 69a, UCMJ, seven records under Article 69b, UCMJ, and one record under Article 73, UCMJ.

The Division presented the fifth annual Military Justice Administration Workshop at the Air Force Judge Advocate General School. Over 100 judge advocates and paralegals attended the "back to basics" one-week workshop. Additionally, during the past year, the Division chief was the team chief for two military justice seminars conducted by the Defense Institute of International Legal Studies, one in South Africa and one in Mali.

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 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 2001, 474 Air Force personnel were in confinement. Of those, 90 inmates were in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and 106 were serving time in the Federal Bureau of Prisons (BOP) system. A total of nine inmates were enrolled in the Air Force Return-to-Duty Rehabilitation (RTDR) Program during this period, with two graduating and being returned to duty. The number of Air Force inmates on parole at the end of fiscal year 2001 was 130, an 8 percent increase from last fiscal year.

AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

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

AFJAG School Courses

The AFJAG School conducted 43 classes (some courses are held more than once a year) in Fiscal Year 2001 for more than 4,000 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
- Claims and Tort Litigation
- Deployed Air Reserve Components Operations and Law
- Deployed Fiscal Law and Contingency Contracting

Environmental Law
Environmental Law Update
Federal Employee Labor Law
Federal Income Tax Law
Information Operations Law
International Law
Judge Advocate Staff Officer
Law Office Manager
Legal Aspects of Information Operations
Military Judges
Military Justice Administration
Negotiation and Appropriate Dispute Resolution
Operations Law
Paralegal Apprentice
Paralegal Craftsman
Reserve Forces Judge Advocate
Reserve Forces Paralegal
Staff Judge Advocate
Trial and Defense Advocacy

Off-Site Courses

The AFJAG School conducted four "Surveys of the Law" for judge advocates and paralegals in the Air Force Reserve and Air National Guard. The surveys were conducted at a civilian conference facility in Denver, Colorado. The surveys provide concise legal updates and extensive reviews of recent developments in military justice. During Fiscal Year 2001, over 460 Air Force Reserve and Air National Guard judge advocates and paralegals attended a Survey of the Law.

Distance Learning (DL) Courses

The AFJAG School presents two courses, the Air Force Systems and Logistics Contracting Course and the Fiscal Law Course, by live satellite broadcast (one-way video and two-way audio) to more than 50 Air Force and Army sites throughout the United States. More than 1,550 personnel participated in DL courses in Fiscal Year 2001.

Outside Teaching

In addition to teaching in AFJAG School courses, the AFJAG School faculty provides over 1,240 hours of instruction each year 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 Chaplain Orientation Course. Additionally, the faculty expends approximately 1,400 hours annually teaching in a variety of other schools, courses, and conferences throughout the world. In Fiscal Year 2001 this included: Inter-American Air Force Academy; Air National Guard-United Nations Peace Operations Symposium; USAF Special Operations School; U.S. Army Judge Advocate General School; Air Force Special Operations Command Reserve Conference; Canadian Defense Forces Law of Armed Conflict Conference; PACAF Operations Law Conference; Air Force Reserve Command Staff Judge Advocate Conference; and EUCOM Joint Contact Team Program (Republic of Georgia).

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 two E-IMET missions in Fiscal Year 2001, one for Jordan and one for Ecuador. The faculty also participates in the Subject Matter Expert Exchange (SMEE) program. This is an Air Force program for a smaller, more focused audience than the E-IMET program. Air Force judge advocates meet and consult with their counterparts from Latin American countries to discuss military legal topics and practices. In Fiscal Year 2001, an AFJAG School faculty member participated in a SMEE in 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 AFJAG Department's quarterly legal publication containing articles of general interest, were distributed. The AFJAG School continues to distribute large quantities of its most popular publication, The Military Commander and the Law, a 620+ page compendium of concise legal papers addressing issues confronting today's military commanders. The printed version was updated in 2000 and more than 25,000 copies were distributed worldwide. An electronic version is available on-line at <http://milcom.jag.af.mil> and is updated every six months.

The AFJAG School prepared and released two legal education CD-ROMs in Fiscal Year 2001. The first is entitled A Primer on Club Drugs and includes a presentation on the proliferation of "club drugs" by Special Agent Keith M. Givens from the Air Force Office of Special Investigations along with his lecture slides, a research paper written by Special Agent Givens, and links to on-line resources on the topic. Staff Judge Advocates attending the 2001 SJA Course and commanders attending Group Commanders' Courses and Wing Commanders' Seminars received copies of the CD. Additionally, dozens of base legal offices requested and received copies as well. The second CD is entitled JASOC Electives. New judge advocates attending the Judge Advocate Staff Officer Course (JASOC) attend a one-day elective in one of four areas: military justice administration, contracts and fiscal law, environmental law, or labor law. By attending one elective a student misses the other three. All four of the electives, plus an additional presentation and materials on claims and tort litigation, were recorded and placed on CDs. Each student receives a CD giving him or her access to all the information presented on elective day.

LEGAL INFORMATION SERVICES

During fiscal year 2001, JAS continued to exploit the force-multiplying power of information technology by launching three new software initiatives while continuing to upgrade and refine several of its existing platforms and services.

Most notable among the new initiatives, JAS developed dynamic web-based Roster programs for the active duty, reserve, and guard troops. These programs provide our leadership with unprecedented real-time information about subordinates and further, allow these same leaders the freedom to create and run instantaneous queries when special need assignments arise.

A second initiative, the Judge Advocate Management Information System (JAMIS), provides a macro view of the various legal offices. In one screen, JAMIS sets forth each major command, its subordinate legal offices, and provides easy to use links to each office's roster, website, and DocuShare collection.

Additionally, JAS acted as the JAG Department liaison in developing the new AF Portal website. The Portal is designed to be a one-stop shop for all USAF services such as finance, personnel, legal, etc. In this role, JAS developed the Air Force Law Center, which will provide all ".mil" users with access to limited legal information such as office location, hours, services, newsletters, and commonly used forms.

In the area of upgrades and refinements, the Armed Forces Claims Information Management System (AFCIMS) was the primary focus. Some of the many improvements include: enhanced Web Host AFCIMS Reports and Claims Management Summary Reports, which now show more data in a more easily understood format; a new SJA/LOM Executive Summary Report that reviews claim statistics and numbers on a 90-day trend and on a comparison with the MAJCOM and Air Force level; and a new TJAG Art VI report which provides detailed information for each base.

Further, JAS has begun the process of migrating AFCIMS to an entirely web-based design. This improvement will negate the current requirement to install and configure software on individual computers at each claims office, avoid concerns about the security of using file transfer protocol (ftp) to send updates, and increase the ease and reliability of uploading data in the future.

Finally, as if anticipating future needs, JAS spent considerable time and money upgrading its operational resources. Fifteen new deployment kits were purchased and prepared for deployment, the JAGFLAG Deployment CD-ROMs were supplemented with a third CD containing international agreements, and over 6000 new international agreements were added to the unclassified and SIPRNET International Agreements Database System (INADS).

PERSONNEL

As of 30 September 2001, there were 1328 judge advocates on duty. Company grade officers (lieutenants and captains) made up approximately half of that number (658). Nearly 25% were majors (325) and 16% were lieutenant colonels (217). Nine percent of the Department were colonels (123) and above, including two major generals and three brigadier generals.

WILLIAM A. MOORMAN
Major General, USAF
The Judge Advocate General

APPENDIX - U. S. AIR FORCE MILITARY JUSTICE STATISTICS

Report Period: FISCAL YEAR 2001

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	490	463	27	+10.61%
BCD SPECIAL	340	161		+5.890%
NON-BCD SPECIAL [A]		157	22	
SUMMARY	126	125	1	-9.35%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+6.17%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)				
NUMBER OF DISHONORABLE DISCHARGES			43	
NUMBER OF BAD-CONDUCT DISCHARGES			289	
SPECIAL COURTS-MARTIAL (CA LEVEL)				
NUMBER OF BAD-CONDUCT DISCHARGES			154	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL		358	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL		150	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL		73	

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

TOTAL ON HAND BEGINNING OF PERIOD		418	
GENERAL COURTS-MARTIAL	[B]		
BCD SPECIAL COURTS-MARTIAL	[B]		
REFERRED FOR REVIEW		508	
GENERAL COURTS-MARTIAL	[B]		
BCD SPECIAL COURTS-MARTIAL	[B]		
TOTAL CASES REVIEWED		563	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
TOTAL PENDING AT CLOSE OF PERIOD		361	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (389:563)			+44.73%

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

NUMBER	500	
PERCENTAGE	98.43%	

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

PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF (423/563)	75.13%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-10.99%
PERCENTAGE OF TOTAL PETITIONS GRANTED (42/423)	10.00%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-1.04%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (42/563)	7.46%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (335:423)	+26.27%

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

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		0	
RECEIVED		6	
DISPOSED OF		0	
GRANTED	0		
DENIED	6		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	
PART 8 – ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE		431	
GENERAL COURTS-MARTIAL		277	
SPECIAL COURTS-MARTIAL		154	
TRIALS BY MILITARY JUDGE WITH MEMBERS		399	
GENERAL COURTS-MARTIAL		213	
SPECIAL COURTS-MARTIAL		186	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		28	
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		348,921	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		8607	
RATE PER 1,000		24.49	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+0.18%	

EXPLANATORY NOTES

- [A] The Air Force does not convene non-BCD SPCMs. Of the 340 BCD SPCMs tried, there were 161 convictions with a BCD adjudged, 157 convictions without a BCD adjudged and 22 acquittals.
- [B] GCM and SPCM were not tracked separately.

SECTION 6

REPORT OF THE CHIEF COUNSEL OF THE COAST GUARD

REPORT OF THE CHIEF COUNSEL OF THE U. S. COAST GUARD

October 1, 2000 to September 30, 2001

NOTE: All statistics are based on the number of court-martial records received and filed at Coast Guard Headquarters during fiscal year 2001 and, where indicated, records received during each of the four preceding fiscal years. The number of court-martial cases varies widely from year to year, in part, based on the small size of the Coast Guard.

Fiscal Year	01	00	99	98	97
General Courts-Martial	15	10	6	18	6
Special Courts-Martial	17	23	17	21	9
Summary Courts-Martial	18	11	3	8	10
Total	50	44	26	47	25

COURTS-MARTIAL

Attorney counsel and military judges were detailed to all special courts-martial. For most cases, the presiding judge was the Chief Trial Judge, a full-time general courts-martial judge. When the Chief Trial Judge was unavailable, military judges with other primary duties were used for special courts-martial. Control of the detail of judges is centrally exercised by the Chief Trial Judge and all requests were timely met.

GENERAL COURTS-MARTIAL

Ten of the fifteen accused tried by general courts-martial this fiscal year were tried by military judge alone. Four elected to be tried by general courts-martial that included enlisted members, and one elected officer members. All fifteen general courts-martial resulted in convictions and of the accused whose charges were referred to general courts-martial one was nonrated (pay grades E-1 through E-3), ten were petty officers (pay grades E-4 through E-6), four were chief petty officers (pay grades E-7 through E-9), and none were commissioned officers (W-1 through O-9). Two of the accused tried by general courts-martial pled guilty to all charges and specifications.

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

Sentence	Cases Imposed
dishonorable discharge - - - - -	1
bad conduct discharge - - - - -	6
confinement - - - - -	10
hard labor without confinement - - - - -	0
reduction in pay-grade - - - - -	9
fined (total \$900.00) - - - - -	0

restriction - - - - - 0
 forfeiture of all pay and allowances - - - - - 2
 partial forfeiture of pay and allowances - - - - - 0

The following table summarizes the sentences adjudged in general courts-martial tried by members (five convictions).

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

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

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Pay-Grade	Punitive Discharge/Dismissal
01	15	4 (27%)	14 (93%)	13 (87%)	10 (67%)
00	9	5 (56%)	7 (78%)	6 (67%)	6 (67%)
99	6	0 (0%)	6 (100%)	6 (100%)	5 (83%)
98	17	5 (29%)	12 (71%)	16 (94%)	11 (65%)
97	6	2 (33%)	4 (67%)	5 (83%)	4 (67%)

The following table shows the distribution of the 277 specifications referred to general courts-martial in fiscal year 2001.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts) - - - - -	3
86 (unauthorized absence) - - - - -	7
91 (insubordinate conduct) - - - - -	2
92 (failure to obey order or regulation) - - - - -	30
93 (cruelty and maltreatment) - - - - -	7
107 (false official statement) - - - - -	16
120 (rape or carnal knowledge) - - - - -	5
121 (larceny or wrongful appropriation) - - - - -	52
123 (forgery) - - - - -	26
124 (maiming) - - - - -	1
125 (sodomy) - - - - -	10
128 (assault) - - - - -	11
129 (burglary) - - - - -	2
134 (general) - - - - -	105
	<u>277</u>

Fifteen general courts-martial represent a 50% increase in general courts-martial records received and filed at Coast Guard Headquarters in FY 2001 over the previous fiscal year. The Coast Guard has averaged 11 general courts-martial per year over the last 5 years with six to eighteen cases a year. While a 50% increase in general courts-martial in one year is significant, the total number of general courts-martial is within the limits of six to eighteen general courts-martial a year experienced in the last five years.

SPECIAL COURTS-MARTIAL

All seventeen accused tried by special courts-martial this fiscal year were tried by military judge alone. All of the special courts-martial resulted in convictions and nine accused received a BCD. One accused tried by special court-martial pled guilty to all charges and specifications. Ten of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), six were petty officers (pay grades E-4 through E-6), one accused was a chief petty officer (pay grades E-7 through E-9), and none were commissioned officers (W-1 through O-9).

The following table summarizes the sentences adjudged in the seventeen special courts-martial all of which were tried by military judge alone.

Sentence	Cases Imposed
bad-conduct discharge - - - - -	9
confinement - - - - -	16
hard labor without confinement - - - - -	0
reduction in pay-grade - - - - -	12
fined (total \$5,000.00) - - - - -	1
restriction - - - - -	0
partial forfeiture of pay and allowances- - - - -	9
reprimand - - - - -	1

The following table compares the four sentences imposed most by special courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in		
				Pay-Grade	BCD	
01	17	9 (53%)	17 (100%)	12 (71%)	9 (53%)	
00	23	8 (35%)	20 (87%)	19 (83%)	10 (43%)	
99	17	8 (47%)	15 (88%)	16 (94%)	9 (53%)	
98	20	9 (45%)	9 (45%)	17 (85%)	4 (20%)	
97	9	4 (44%)	6 (67%)	8 (89%)	5 (56%)	

The following table shows the distribution of the 167 specifications referred to special courts-martial in fiscal year 2001.

Violation of the UCMJ, Article	No. of Specs.
78 (accessory after the fact)	1
86 (unauthorized absence)	3
87 (missing movement)	2
90 (assaulting or willfully disobeying a superior commissioned officer)	1
91 (insubordinate conduct)	5
92 (failure to obey order or regulation)	42
93 (cruelty and maltreatment)	9
95 (resistance, breach of arrest, and escape)	1
107 (false official statement)	4
109 (property other than military property of United States waste, spoilage, or destruction)	1
111 (drunken or reckless driving)	2
112a (wrongful use, possession, etc. of controlled substance)	49
117 (provoking speeches or gestures)	2
121 (larceny or wrongful appropriation)	2
128 (aggravated assault)	26
134 (general)	17
	<u>167</u>

There was a 26% decrease in special courts-martial received and filed at Coast Guard Headquarters this fiscal year over last fiscal year. Over the past five years the Coast Guard has averaged seventeen special courts-martial per year with nine to twenty-three special courts-martial a year. This decrease in special courts-martial in FY-2001 is offset by the increase in general courts-martial.

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required reviews of courts-martial conducted as a result of petitions filed under Article 66, UCMJ, a review was conducted under Article 69(a) and (b) of all courts-martial not requiring Article 66 appellate review.

PERSONNEL, ORGANIZATION, AND TRAINING

The Coast Guard has 179 officers designated as law specialists (judge advocates) serving on active duty of which 138 are serving in legal billets and 41 are serving in general duty billets. Twenty-one Coast Guard officers are currently undergoing postgraduate studies in law including one obtaining an LLM in Environmental Law and twenty will be certified as law specialists at the successful completion of their studies. Seven students

will graduate in 2002 including the one with an LLM in Environmental Law, seven will graduate in 2003, and seven will graduate in 2004. Sixteen Coast Guard officers (including five funded postgraduate program studies and eight direct-commissioned lawyers) completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of becoming certified under article 27(b), UCMJ.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

The following judges sat on the U.S. Coast Guard Court of Criminal Appeals during fiscal year 2001:

<u>Position</u>	<u>Name</u>	<u>Sworn-In</u>	<u>Departed</u>
Chief Judge	Joseph H. Baum	1 Apr 1985	
Judge	Ronald R. Weston	5 Sep 1996	1 Jul 2001 (Retired)
Judge	David J. Kantor	1 Jul 1997	
Judge	Lane I. McClelland	1 Jul 1997	18 Jan 2001
Judge	William A. Cassels	6 Sep 2000	
Judge	Robert W. Bruce	6 Sep 2000	
Judge	Gary A. Palmer	19 Apr 2001	
Judge	Ronald E. Kilroy	25 July 2001	

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

In the spring of 2001, Judge Weston participated on a panel with judges from the other service courts of criminal appeals as part of the two-day Military Appellate Advocacy Symposium at the Catholic University of America Columbus School of Law.

In May, 2001, Judge Bruce participated in a panel of appellate military judges at the Military Judge's Course at the Army Judge Advocate General School in Charlottesville, VA. The panel provided an opportunity for the new trial judges to discuss items of interest with sitting appellate judges.

On 13 and 14 June 2001, the judges of the Court attended the Judicial Conference of the United States Court of Appeals for the Armed Forces at Catholic University of America's Columbus School of Law in Washington, D.C.

On 19 and 20 September 2001, the judges participated in the William S. Fulton, Jr. Appellate Military Judges Conference and Training Seminar at the Federal Judicial Center in Washington, D.C. The conference was hosted by the U.S. Army Court of Criminal Appeals and featured an opening address

by Chief Judge Susan J. Crawford. The conference included presentations on standards of review by Mr. LeRoy F. Foreman, Commissioner to CAAF Judge H.F. Gierke; ethics by Henry J. Schuelke, III, Esq.; the Art of Appellate Judging by Judge John J. Farley, III, of the Court of Appeals for Veterans Claims; the report of the Commission on the 50th Anniversary of the UCMJ by Elizabeth L. Hillman, Esq., Reporter of the Commission; lessons on judicial writing by Mr. Stephen V. Armstrong; and overview of recent Supreme Court opinions by Maj. Gen. William K. Suter, Clerk of the Court; a discussion of recent military justice opinions by two professors from the Army's Judge Advocate General School; and panel discussions on possible bases for recusal of appellate judges, pro se representation at the appellate level, and appellate relief for significant post-trial processing delays where no prejudice has been shown. Chief Judge Baum, Judge Cassels, and Judge Bruce participated as members of these panels.

Chief Judge Baum served another year as a member of the Rules Advisory Committee of the U.S. Court of Appeals for the Armed Forces, working on proposed rule changes for that court.

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains the formal Coast Guard military justice statistics and report for the reporting period and reflects the increase/decrease of the workload in various categories.

R. F. DUNCAN
Rear Admiral, U. S. Coast Guard
Chief Counsel

APPENDIX - U.S. COAST GUARD MILITARY JUSTICE STATISTICS

Report Period: 1 OCTOBER 2000 - 30 SEPTEMBER 2001

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	15	15	0	+50%
BCD SPECIAL	17	17		-26%
NON-BCD SPECIAL	0	0	0	UNCHANGED
SUMMARY	18	18	0	+64%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+14%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL				
NUMBER OF DISHONORABLE DISCHARGES			3	
NUMBER OF BAD-CONDUCT DISCHARGES			7	
SPECIAL COURTS-MARTIAL				
NUMBER OF BAD-CONDUCT DISCHARGES			9	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	9
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	9
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	6

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

TOTAL ON HAND BEGINNING OF PERIOD		18
GENERAL COURTS-MARTIAL	12	
BCD SPECIAL COURTS-MARTIAL	6	
REFERRED FOR REVIEW		25
GENERAL COURTS-MARTIAL	16	
BCD SPECIAL COURTS-MARTIAL	9	
TOTAL CASES REVIEWED		24
GENERAL COURTS-MARTIAL	14	
BCD SPECIAL COURTS-MARTIAL	10	
TOTAL PENDING AT CLOSE OF PERIOD		19
GENERAL COURTS-MARTIAL	14	
BCD SPECIAL COURTS-MARTIAL	5	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+4%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE

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

NUMBER	25
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	5/24	21%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-20%
PERCENTAGE OF TOTAL PETITIONS GRANTED	3/5	60%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+131%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA	3/24	13%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+30%

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		10	
SPECIAL COURTS-MARTIAL		17	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		5	
SPECIAL COURTS-MARTIAL		0	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		2	
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		35,647	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		1397	
RATE PER 1,000		39.19	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+5.49%	

