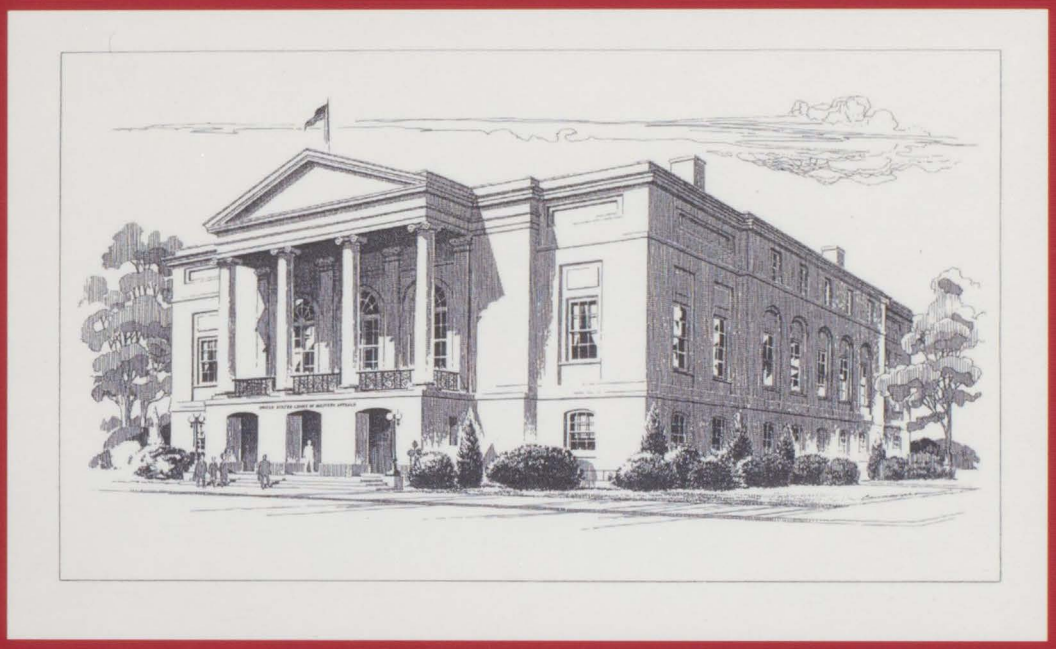
ANNUAL REPORT

OF THE

CODE COMMITTEE ON MILITARY JUSTICE



INCLUDING SEPARATE REPORTS OF THE

U.S. COURT OF APPEALS FOR THE ARMED FORCES,

THE JUDGE ADVOCATES GENERAL OF THE U.S. ARMED FORCES

For the period
October 1, 2010 to September 30, 2011

ANNUAL REPORT

SUBMITTED TO THE

COMMITTEES ON ARMED SERVICES

of the

United States Senate

and the

United States House of Representatives

and to the

SECRETARY OF DEFENSE,

SECRETARY OF HOMELAND SECURITY,

and the

SECRETARIES OF THE

ARMY, NAVY, AND AIR FORCE

PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE
for the Period
October 1, 2010 to September 30, 2011

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SECTION 1

JOINT ANNUAL REPORT OF THE CODE COMMITTEE

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

October 1, 2010 to September 30, 2011

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

The Code Committee met on March 1, 2011, to consider matters pertaining to the administration of military justice. The meeting was open to the public and was previously announced by notices in the Federal Register and on the Court's website.

After approving the minutes of the 2010 Code Committee meeting, Chief Judge Effron called upon Colonel Charles Pede, U.S. Army, Executive Secretary of the Joint Service Committee on Military Justice (JSC), to provide a report on the work of the Committee. Colonel Pede briefed the Code Committee of the following matters that had been addressed by the Joint Service Committee over the past year: (1) an amendment to Article 48, UCMJ, was signed into law which increased the maximum punishment for contempt and expanded contempt authority to include willful disobedience of the lawful writ, process, order, rule, decree or command of a military court; (2) the signing of Executive Order 13552, establishing provisions for fines, contents of post-trial recommendations, and a definition of military property; (3) discussion of the Military Rules of Evidence to include a request for a new Executive Order that would establish a victim-advocate privilege; (4) discussion of a proposal establishing enumerated Article 134 offenses for animal cruelty and child pornography; (5) a proposal to amend Article 47, UCMJ, to provide subpoena authority prior to referral to a court-martial;

(6) discussion of changes to Article 120, UCMJ, to separate cases involving child victims from other offenses, to make offenses gender and orientation neutral, to include the offense of forcible sodomy and repeal Article 125, UCMJ, and to specify that rape and sexual assault could include penetration with objects or body parts.

Colonel Pede also stated that the JSC is considering a change to the offense of adultery under Article 134 that would cover same gender marriages.

In response to a question concerning a recent article regarding the effectiveness of trials by court-martial in a combat environment, Colonel Pede replied that the JSC is discussing the matter, but that further research is needed.

Replying to another question on whether the JSC tracked trends in the conduct of armed forces personnel, Colonel Pede said this was done by the services and the information was only anecdotal.

The issue of whether the Judges of the United States Court of Appeals for the Armed Forces should continue as members of the Code Committee was raised. Chief Judge Effron said the matter had been discussed, and he would refer it to Judge Baker as the next Chief Judge for consideration.

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

James E. Baker
Chief Judge

Charles E. "Chip" Erdmann
Associate Judge

Scott W. Stucky
Associate Judge

Margaret A. Ryan
Associate Judge

Lieutenant General Dana K. Chipman, USA
Judge Advocate General of the Army

Vice Admiral James W. Houck, JAGC, USN
The Judge Advocate General of the Navy

Lieutenant General Richard C. Harding, USAF
The Judge Advocate General of the Air Force

Rear Admiral Frederick J. Kenney, USCG
The Judge Advocate General of the Coast Guard

Major General Vaughn Ary, USMC
Staff Judge Advocate to the Commandant of the Marine Corps

Professor Charles J. Dunlap, Jr.
Public Member

Professor Keith M. Harrison
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

September 1, 2010 to August 31, 2011

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 September 2010 Term of Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, Title 10, United States Code, § 946.

THE BUSINESS OF THE COURT

The filing and disposition of cases are set forth in the attached statistical report and graphs for the period from September 1, 2010 to August 31, 2011. Additional information pertaining to specific opinions is available from the Court's published opinions and Daily Journal. Other dispositions may be found in the Court's official reports, the Military Justice Reporter, and on the Court's web site. The Court's web site also contains a consolidated digest of past opinions of the Court, information on the Court's history and jurisdiction, the Rules of Practice and Procedure, previous Annual Reports, a schedule of upcoming hearings, audio recordings of past hearings, and information on clerkship opportunities, bar admission, electronic filing and the Court's library.

During the September 2010 Term of Court, the Court again met its goal of issuing opinions in all cases heard during the Term prior to the end of the Term. A summary of selected decisions prepared by the Court's staff is set forth in Appendix A.

RULES OF PRACTICE AND PROCEDURE

Following the recommendations of the Rules Advisory Committee, the Court amended Rules 9(e) and 41(b) of the Court's Rules of Practice and Procedure to more accurately describe court security personnel and to specifically incorporate a recent amendment to Article 48, UCMJ, concerning contempt. Prior to adoption and amendment, the

proposed changes were published for public comment in the Federal Register in Volume 76, No. 43 at page 12082. On May 19, 2011, the Court also adopted another recommendation of the Rules Advisory Committee and issued an order concerning the redaction of information from pleadings filed with the Court. The information to be redacted covers social security numbers, names of minor children, dates of birth, financial account numbers, home addresses, and names of complainants and victims in sexual offense cases. 70 M.J. 135-36.

BAR OF THE COURT

During the September 2010 Term, the Court admitted 387 attorneys to practice before its Bar, bringing the cumulative total of admissions before the Bar of the Court to 35,483.

JUDICIAL OUTREACH

In furtherance of a practice established in 1987, the Court scheduled special sessions and heard oral arguments outside its permanent courthouse in Washington, D.C., during the September 2010 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, with the consent of the parties, at the Brooklyn Law School, Brooklyn, New York, Hofstra University School of Law, Hempstead, New York, the University of the Pacific McGeorge School of Law, Sacramento, California, and Stanford University School of Law, Stanford, California. In addition, the Judges of the Court participated in a variety of professional training, speaking and educational endeavors on military installations, at law schools and before professional groups.

CONTINUING LEGAL EDUCATION CONFERENCE

On March 9 and 10, 2011, the Court held its annual Continuing Legal Education Conference at the Columbus School of Law, Catholic University of America, Washington, D.C. The program for this Continuing Legal Education Conference was certified for credit to meet the continuing legal education requirements of State Bars throughout the United States. The conference opened with welcoming

remarks from the Honorable Andrew S. Effron, Chief Judge, United States Court of Appeals for the Armed Forces. He was followed by speakers for this year's conference, including Andrew J. Pincus, Esq., private practitioner; Professor Bernard J. Hibbitts, University of Pittsburgh School of Law; Major General F. Andrew Turley, Air National Guard Assistant to the Judge Advocate General of the Air Force; Professor Douglas A. Berman, The Ohio State University Moritz College of Law; Dr. Robert Heinssen, Acting Director, Division of Services and Intervention Research of the National Institute of Mental Health; General Peter W. Chiarelli, Vice Chief of Staff, U.S. Army; Lieutenant Colonel Jack Ohlweiler, U.S. Army, Chair of the Administrative and Civil Law Department of the Army Judge Advocate General's Legal Center and School; Brigadier General Blaise Cathcart, Judge Advocate General of the Canadian Forces; Mr. Peter Grande, Chief of Staff of the U.S. Disciplinary Barracks; and Professor Stephen Gillers, New York University School of Law.

COMMEMORATION OF THE 100TH ANNIVERSARY OF THE COURTHOUSE

The Court met in special session on October 1, 2010, to commemorate the centennial of its historic courthouse. In attendance were the Honorable John Roberts, Chief Justice of the United States, and the Honorable David Sentelle, Chief Judge of the United States Court of Appeals for the District of Columbia Circuit. Speakers included Chief Judge Sentelle, Judge Scott Stucky, and Professor Steven Goldblatt of the Georgetown University Law Center. The proceedings are published in the Military Justice Reporter at 69 M.J. LXXV-LXXXVI.

James E. Baker
Chief Judge

Charles E. "Chip" Erdmann
Associate Judge

Scott W. Stucky
Associate Judge

Margaret A. Ryan
Associate Judge

APPENDIX A - SELECTED DECISIONS

This appendix contains a summary of selected decisions prepared by the Court's staff.

Lesser Included Offenses

United States v. Alston, 69 M.J. 214 (C.A.A.F. 2010), holding that aggravated sexual assault is a lesser included offense of rape by force.

United States v. Bonner, 70 M.J. 1 (C.A.A.F. 2011), holding that assault consummated by a battery is a lesser included offense of wrongful sexual contact.

United States v. Girouard, 70 M.J. 5 (C.A.A.F. 2011), holding that negligent homicide is not a lesser included offense of premeditated murder.

United States v. McMurrin, 70 M.J. 15 (C.A.A.F. 2011), holding that negligent homicide is not a lesser included offense of involuntary manslaughter.

United States v. Arriaga, 70 M.J. 51 (C.A.A.F. 2011), holding that housebreaking is a lesser included offense of burglary.

Sufficiency of Charges

United States v. Fosler, 70 M.J. 225 (C.A.A.F. 2011), holding that in a prosecution for adultery in violation of Article 134, UCMJ, the terminal element of prejudice to good order and discipline or service discrediting conduct was not necessarily implied in the specification and would not survive a motion to dismiss; in addition, an allegation that accused "wrongfully" engaged in adulterous conduct did not imply the terminal element.

Self-Incrimination

United States v. Clark, 69 M.J. 438 (C.A.A.F. 2011), holding that the prosecutor's use of demeanor evidence that the accused's lowered his head and slumped his shoulders during interrogation violated the accused's Fifth Amendment right to silence.

Confrontation

United States v. Blazier, 69 M.J. 218 (C.A.A.F. 2010), holding that in a prosecution for wrongful drug use, (1) admission of testimonial statements in drug testing reports signed by analysts at the testing laboratory that included the tests conducted, what substances were detected, and the nanogram levels of each substance violated the Confrontation Clause; (2) the cross-examination of the drug testing laboratory official regarding the results of test reports containing the hearsay statements of two laboratory analysts was not sufficient to satisfy the accused's right to confront the analysts; and (3) machine-generated printouts of raw data and calibration charts in the laboratory report were not hearsay for Confrontation Clause purposes and could form the basis of the laboratory official's expert testimony explaining and analyzing those documents.

United States v. Lusk, 70 M.J. 278 (C.A.A.F. 2011), holding that a limiting instruction was required when the laboratory drug testing report contained inadmissible hearsay and the report was to be used to establish a basis for expert testimony regarding the reliability of another admissible test.

United States v. Sweeney, 70 M.J. 296 (C.A.A.F. 2011), holding that the admission into evidence of a drug laboratory report for the accused's urinalysis violated the Confrontation Clause, was testimonial and constituted plain error where the laboratory made the memorandum after the accused had been charged and addressed it to the Region Legal Service Office, and the document had no purpose but to function as an affidavit and the declarant was not subject to cross-examination.

Speedy Trial

United States v. Schuber, 70 M.J. 181 (C.A.A.F. 2011), holding that the accused's pretrial restriction did not amount to "arrest" under Article 10, UCMJ, and that his speedy trial right was not violated.

Child Pornography

United States v. Beaty, 70 M.J. 39 (C.A.A.F. 2011), holding that the maximum punishment in a prosecution for possession

of "what appears to be" child pornography under Article 134, UCMJ, is confinement for four months as a general disorder and not the maximum of ten years confinement reflected in 18 U.S.C. § 2252A.

United States v. Phillips, 70 M.J. 161 (C.A.A.F. 2011), holding that in a prosecution for possession of child pornography under Article 134, UCMJ, clause 2 alleging that the conduct was of a nature to bring discredit upon the armed forces, it was not necessary to prove that the public was actually aware of the conduct for a conviction.

Eyewitness Identification

United States v. Baker, 70 M.J. 283 (C.A.A.F. 2011), holding that a pretrial identification was unnecessarily suggestive where the victim was shown a single digital photograph of the accused following the police officer's comment that they had found someone the victim "should take a look at."

Guilty Pleas

United States v. Soto, 69 M.J. 304 (C.A.A.F. 2011), holding that the parties' failure to disclose the provision of a pretrial agreement requiring the accused to request a bad-conduct discharge before the military judge accepted the accused's guilty plea rendered the plea improvidently entered.

United States v. Hartman, 69 M.J. 467 (C.A.A.F. 2011), holding that an accused's guilty plea to consensual sodomy in the presence of a third party was improvident where the military judge did not explain to the accused the difference between conduct constitutionally protected under *Lawrence v. Texas,* 539 U.S. 558 (2003), and conduct that may be prosecuted criminally under Article 125, Uniform Code of Military Justice.

Burden of Proof in Sexual Assault Prosecution

United States v. Prather, 69 M.J. 338 (C.A.A.F. 2011), holding that Article 120, UCMJ, which places the burden on the accused to prove consent when raising it as a defense to a sexual assault prosecution, shifted the burden to the defense to disprove an implied element of the offense in violation of due process, and by initially assigning the

burden of proving an affirmative defense on the accused, then shifting the burden to the prosecution to disprove the affirmative defense beyond a reasonable doubt, created a legal impossibility.

United States v. Medina, 69 M.J. 462 (C.A.A.F. 2011), holding that the instructions to the members that consent was a defense to the charge of aggravated sexual assault and that the prosecution had the burden of proving beyond a reasonable doubt that consent did not exist was harmless error where the members were not instructed of the statutory scheme that required an accused to prove by a preponderance of the evidence that the victim consented, and that the instructions were clear and correctly conveyed the prosecution's burden. The Court stated it was not within its province to rewrite the statute to conform to the Constitution, as that would invade the legislative domain.

Military Rule of Evidence 412

United States v. Gaddis, 70 M.J. 248 (C.A.A.F. 2011), holding that the balancing test of Rule 412 is not facially unconstitutional, but its current iteration which purports to balance the "alleged victim's privacy" against the probative value of the evidence is needlessly confusing and could lead a military judge to exclude evidence that is constitutionally required.

United States v. Ellerbrock, 70 M.J. 314 (C.A.A.F. 2011), holding that the erroneous exclusion of constitutionally required evidence of alleged victim's prior extramarital affair, which was relevant to whether the victim had a motive to lie about the consensual nature of her sexual encounter with the accused, was not harmless.

Judicial Conduct

United States v. Martinez, 70 M.J. 154 (C.A.A.F. 2011), holding that the conduct of the supervising judge in conferring privately with the prosecutor and then accompanying the presiding military judge into chambers during recess and deliberations created an appearance that neither was impartial, but such conduct did not amount to plain error in this case.

USCAAF STATISTICAL REPORT
SEPTEMBER 2010 TERM OF COURT

CUMULATIVE SUMMARY

CUMULATIVE PENDING SEPTEMBER 1, 2010

Master Docket	30
Petition Docket	91
Miscellaneous Docket	4
TOTAL	125

CUMULATIVE FILINGS

Master Docket	123
Petition Docket	700
Miscellaneous Docket	39
TOTAL	862

CUMULATIVE DISPOSITIONS

Master Docket	82
Petition Docket	704
Miscellaneous Docket	43
TOTAL	829

CUMULATIVE PENDING SEPTEMBER 1, 2011

Master Docket	71
Petition Docket	87
Miscellaneous Docket	0
TOTAL	158

OPINION SUMMARY

CATEGORY	SIGNED	PER CURIAM	MEM/ORDER	TOTAL
Master Docket	41	5	36	82
Petition Docket	0	0	704	704
Miscellaneous Docket	0	0	43	43
TOTAL	41	5	783	829

MEMORANDUM/ORDER SUMMARY

Orders

Denying petitions for grant of review	584
Granting withdrawal of petition for grant of Review	1
Granting petitions for grant of review	
with briefs	36
without briefs	57
Granting petitions for grant of review and affirming the decision of the lower court	10
Granting petitions for grant of review and affirming in part and reversing in part	8
Granting petitions for grant of review and remanding	8
Deciding previously granted cases (trailer cases)	36
Denying petitions for extraordinary relief and writ-appeal petitions	36
Granting petitions for extraordinary relief and writ-appeal petitions	1
Granting withdrawal of petitions for extraordinary relief and writ-appeal petitions	2
Dismissing petitions for extraordinary relief and writ-appeal petitions	4
Total	783

MASTER DOCKET SUMMARY

FILINGS

Petitions granted from the Petition Docket	119
Certificates filed	4
Mandatory appeals filed	0
Remanded/Returned cases	0
Reconsideration granted	0
TOTAL	123

DISPOSITIONS

Decisions affirmed	46
Reversed in whole or in part	36
Granted petitions vacated	0
Certificate Withdrawn	0
TOTAL	82

PENDING

Awaiting briefs	6
Awaiting oral argument	11
Awaiting lead case decision (trailer cases)	54
Awaiting final action	0
TOTAL	71

PETITION DOCKET SUMMARY

FILINGS

Petitions for grant of review filed	699
Petitions for new trial filed	1
Petitions for reconsideration granted	0
Returned cases	0
TOTAL	700

DISPOSITIONS

Petitions for grant of review denied	584
Petitions for grant of review granted	119
Petitions for grant of review withdrawn	1
Petitions for grant of review dismissed	0
TOTAL	704

PENDING

Awaiting pleadings	18
Awaiting Central Legal Staff review	30
Awaiting final action	39
TOTAL	87

MISCELLANEOUS DOCKET SUMMARY

FILINGS

Writ appeals sought	22
Writs of habeas corpus sought	6
Writs of error coram nobis sought	2
Other extraordinary relief sought	9
TOTAL	39

DISPOSITIONS

Petitions or appeals denied	36
Petitions or appeals granted	1
Petitions or appeals dismissed	4
Petitions or appeals withdrawn	2
Petitions or appeals remanded	0
TOTAL	43

PENDING

Awaiting briefs	0
Awaiting staff review	0
Awaiting final action	0
TOTAL	0

PETITIONS FOR RECONSIDERATION

ALL CASES

Begin Pending	0
Filed	12
TOTAL	12
End Pending	0

DISPOSITIONS

Denied	11
Granted	0
Dismissed	1
TOTAL	12

MOTIONS

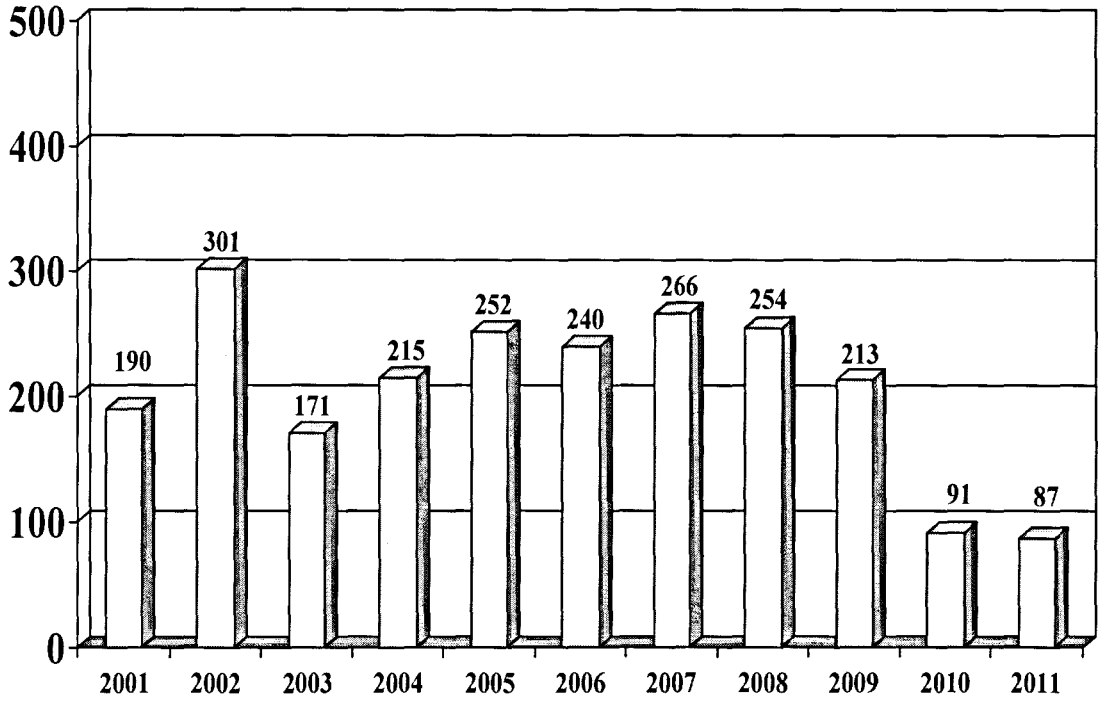
ALL MOTIONS

Begin Pending	10
Filed	263
TOTAL	273
End Pending	4

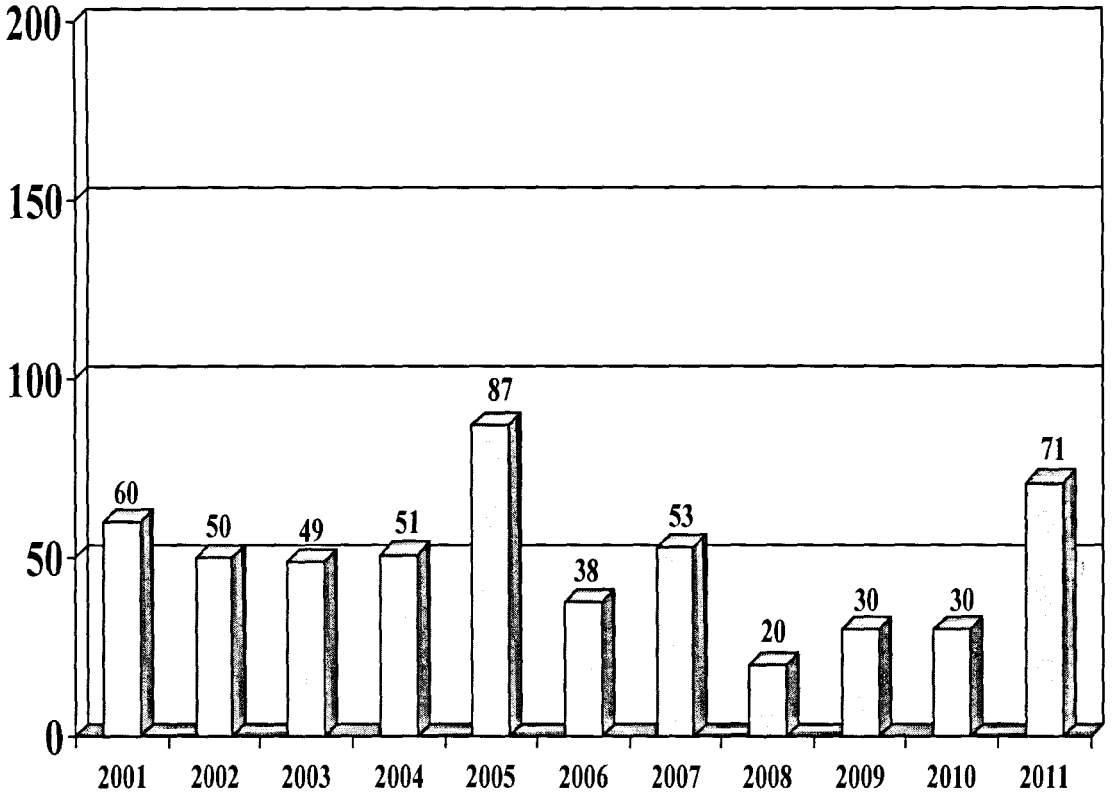
DISPOSITIONS

Granted	211
Denied	58
TOTAL	269

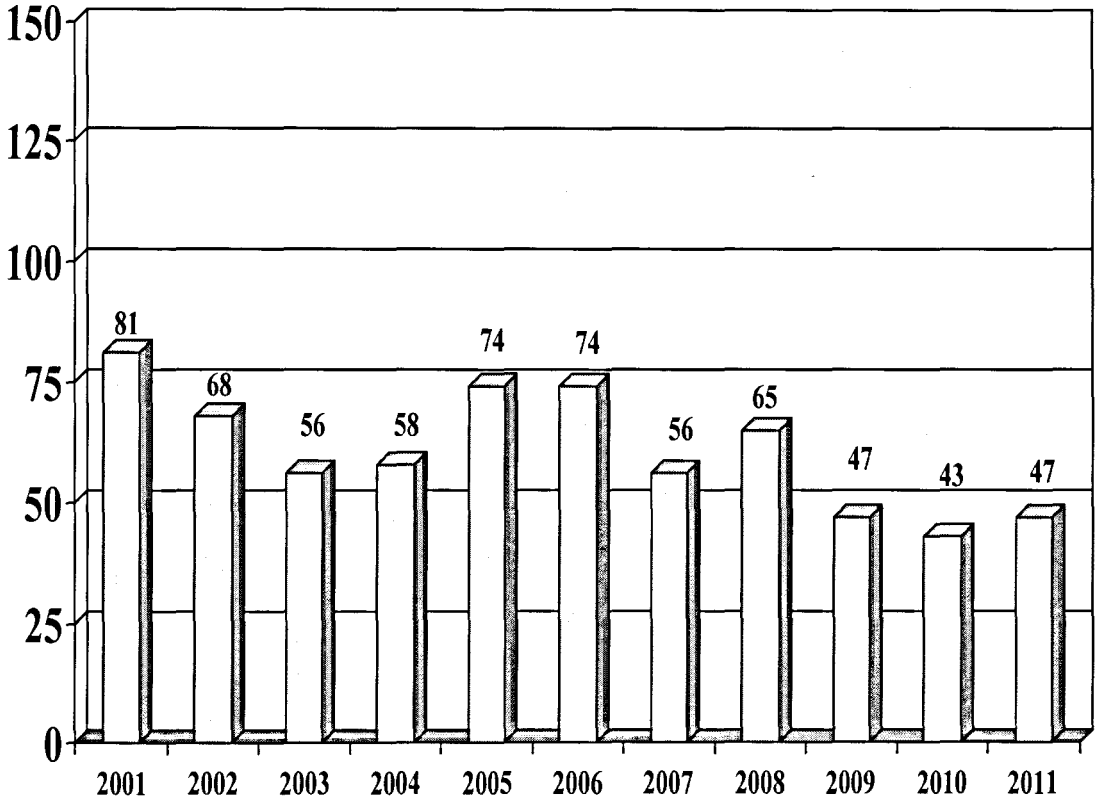
Petition Docket Term End Pending



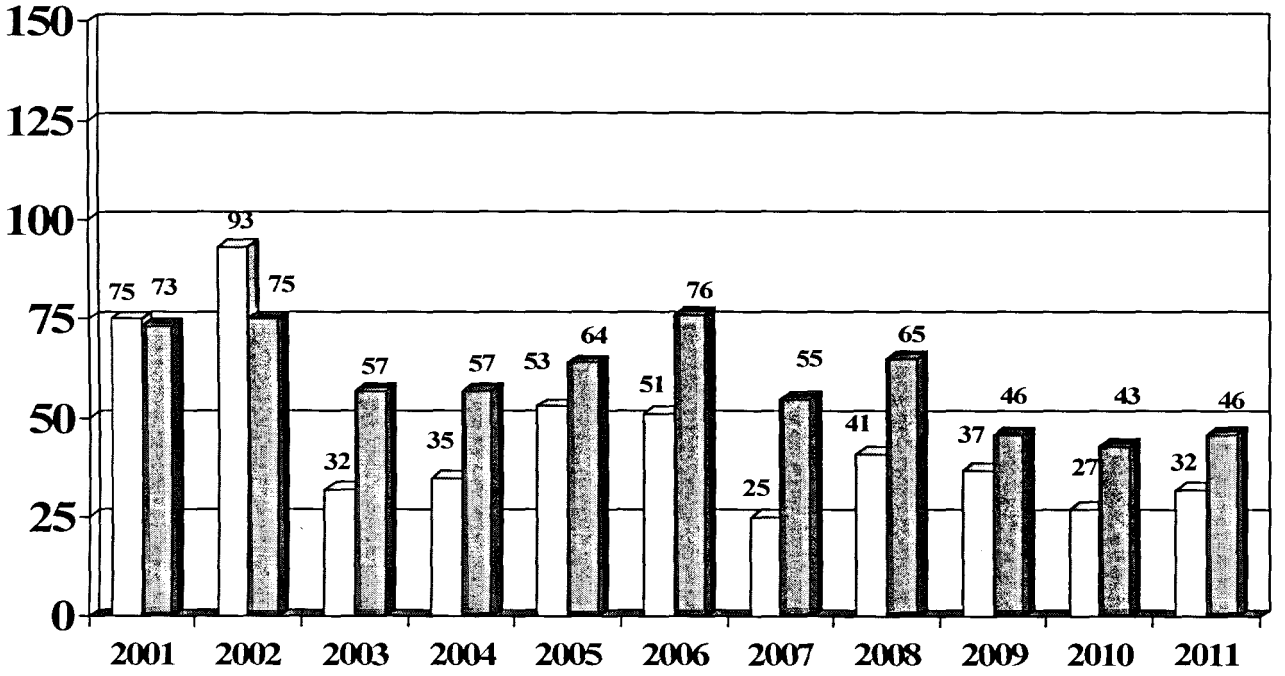
Master Docket Term End Pending



Oral Arguments Per Year



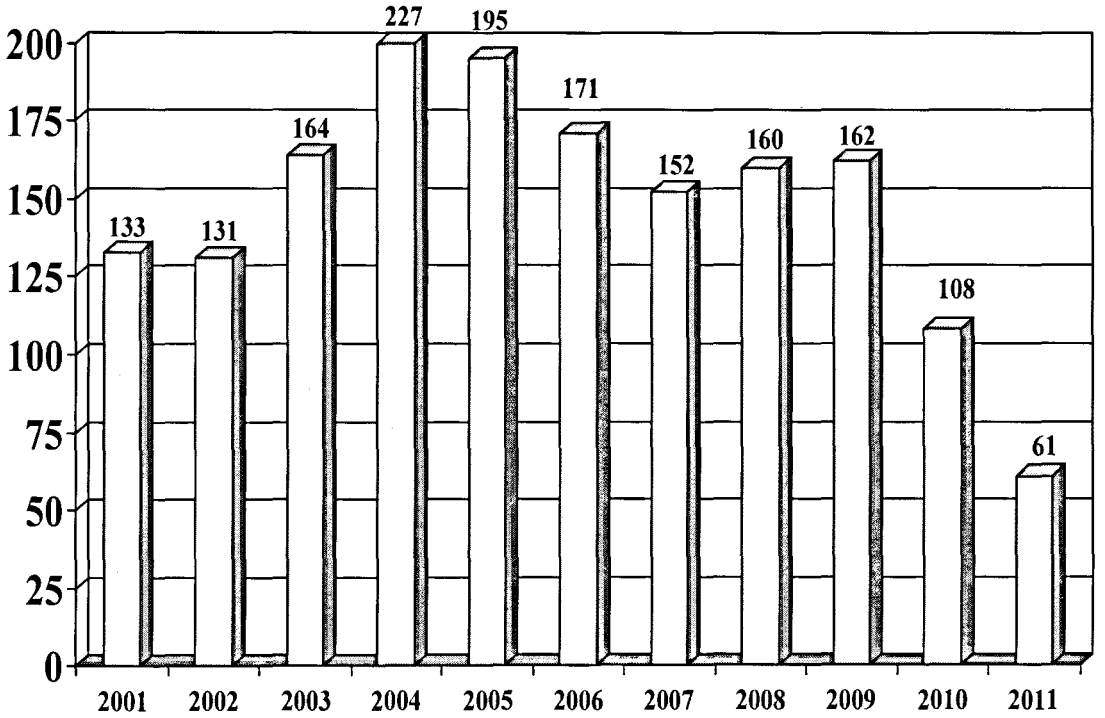
Total Opinions Per Year



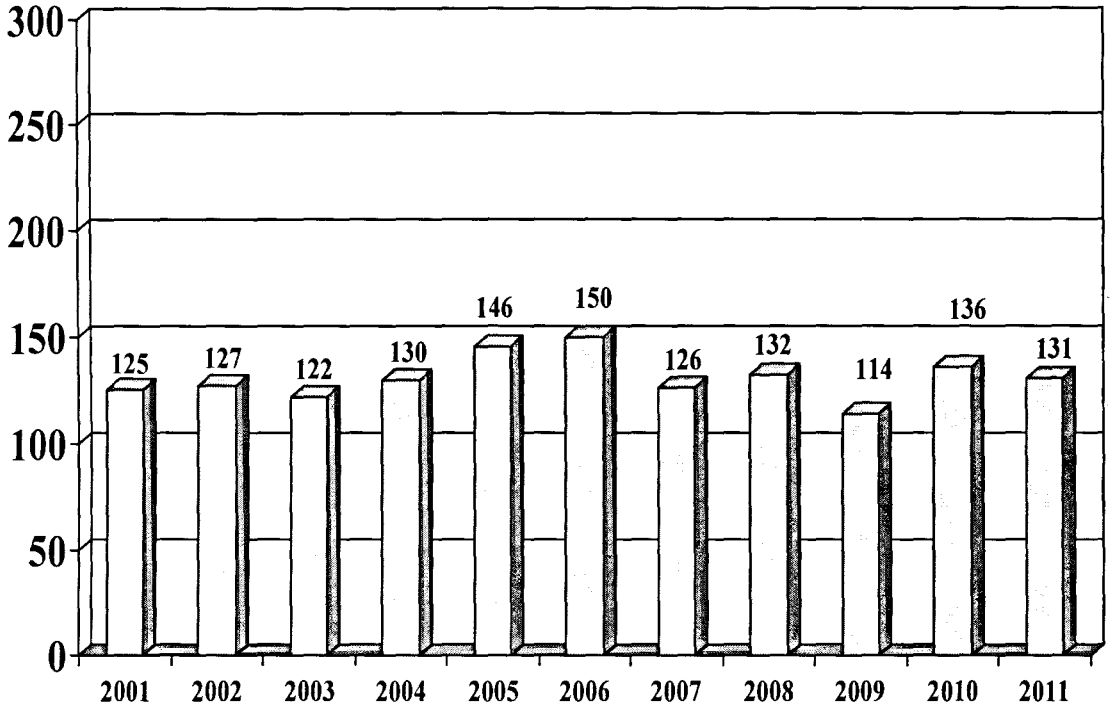
□ TOTAL SEPARATE OPINIONS (CONCUR, CONCUR IN THE RESULT, AND DISSENT)

■ TOTAL COURT OPINIONS

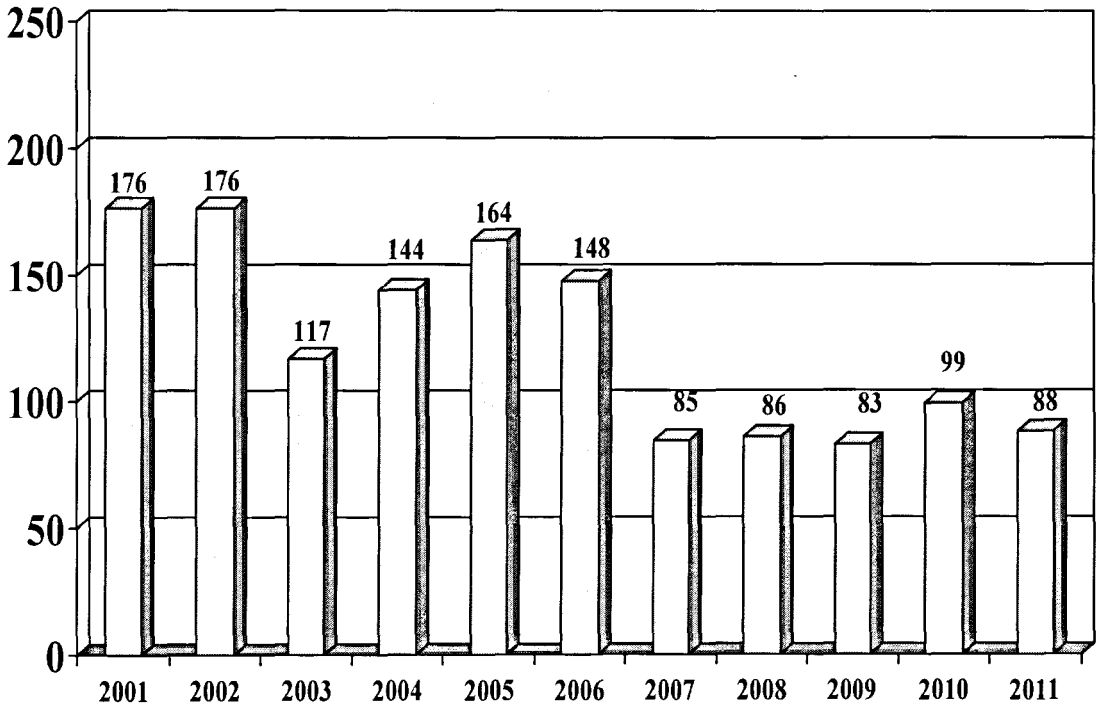
Days from Petition Filing to Grant



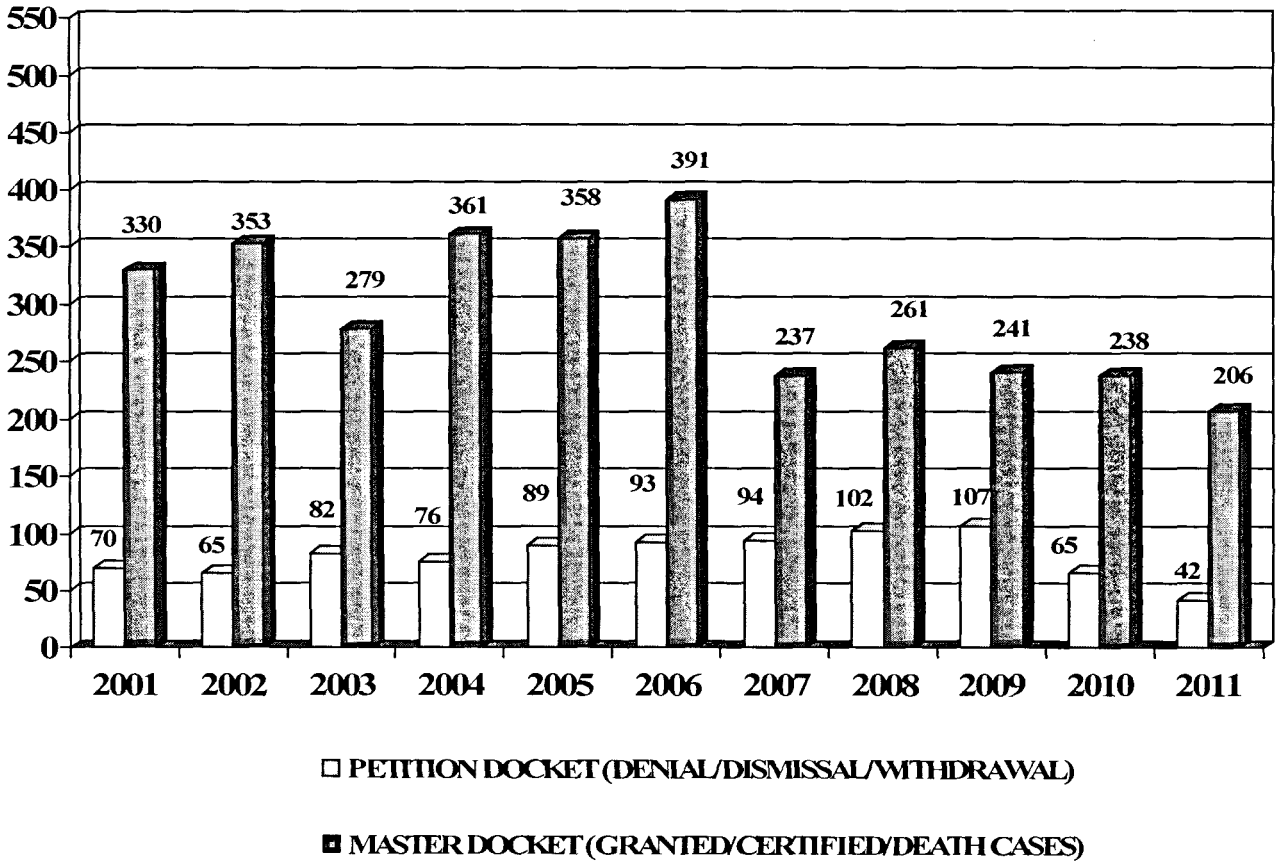
Days from Petition Grant to Oral Argument



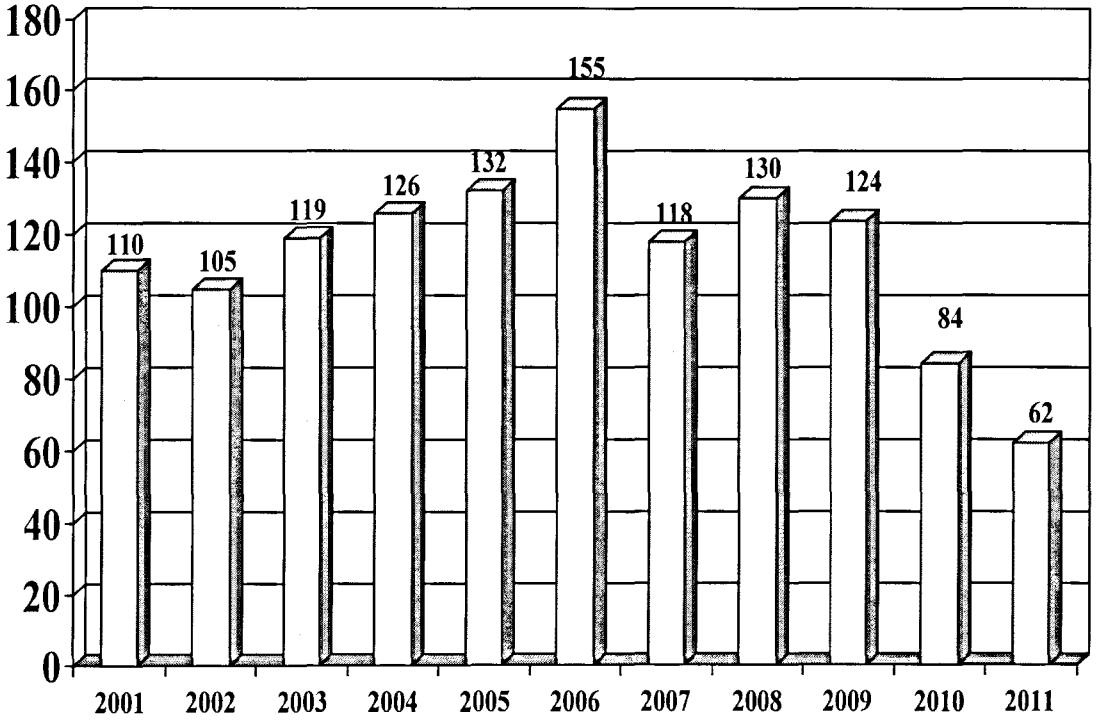
Days from Oral Argument to Final Decision



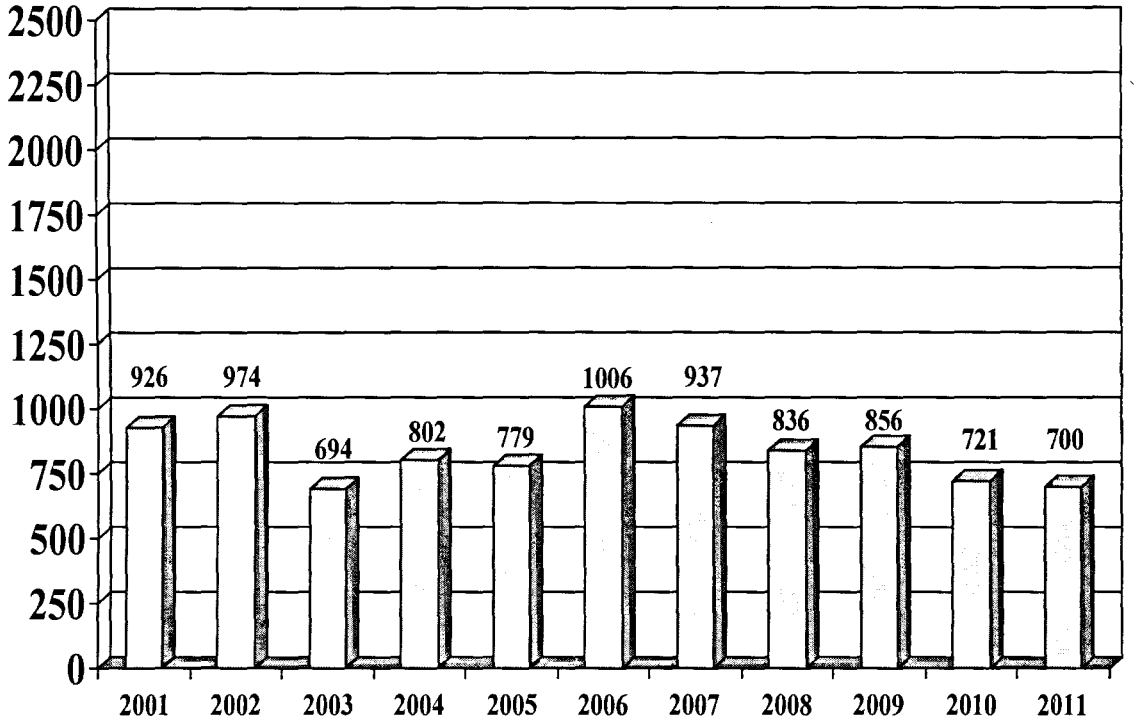
Days from Petition Filing to Final Decision



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, 2010 TO SEPTEMBER 30, 2011

During fiscal year 2011, The Judge Advocate General (TJAG) and senior members of his staff advised Army leadership on significant issues pertaining to military justice, to include high visibility cases and investigations. The Office of The Judge Advocate General (OTJAG) continued to implement programs improving both the administration of military justice and advocacy skills of military justice practitioners. In furtherance of TJAG's duties under Article 6(a), Uniform Code of Military Justice (UCMJ), TJAG and senior leaders in the Corps visited more than 26 installations and commands in the United States and overseas, to include forward areas, discussing military justice issues with commanders and their respective Staff Judge Advocates. The JAG Corps remains committed to sustaining excellence in the practice of military justice through a variety of initiatives and programs.

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

The cornerstone mission of the Criminal Law Department of The Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia is to develop, improve, and sustain excellence in the practice of military criminal law. The need to hone these skills in the context of a joint, expeditionary force at war is paramount and occupies center stage in all curriculum review. Instruction touches a wide range of subjects from substantive criminal law to technical litigation skills, while at the same time providing critical reach-back capability for military justice practitioners of all services.

The Department teaches a variety of student cohorts: initial-entry judge advocates in the Basic Course; newly-assigned trial advocates in the Criminal Law Advocacy Course; mid-level judge advocates in the Graduate Course; newly-assigned military judges in the Military Judge Course; and senior officers in the Senior Officer Legal Orientation Course. All of these courses are taught using a sexual assault fact pattern. In addition, the Department teaches newly-assigned military justice managers in the

Military Justice Managers Course and general criminal law practitioners in the New Developments Course.

The Department recently restructured the Basic Course to focus on active-learning rather than passive-learning techniques. The students take a sexual-assault fact pattern from the report of the sexual assault through the announcement of sentence, focusing on the prosecution and defense of sexual assault cases as well as the proper administration of the Sexual Harassment/Assault Response and Prevention (SHARP) and Victim/Witness Liaison (VWL) programs. Students now participate in fourteen trial advocacy workshops, which include a mock pretrial confinement review, Article 32 investigation, motion hearings, trial on the merits, and presentencing. Throughout these workshops, Basic Course students learn substantive and procedural military justice issues, ethical obligations, and trial advocacy skills.

The Department also restructured the Graduate Course to focus on skills they will need to succeed as mid-level leaders in the military justice system by using a mock sexual assault case. The Department hosted panels of senior judge advocates and experts to: discuss expectations of mid-level military justice leaders and military justice philosophies; provide advice on briefing convening authorities; and educate students regarding toxicology and victim/offender behaviors in sexual assault cases. The students then supervise the process of the mock sexual assault case and brief a general court-martial convening authority (played by senior judge advocates, including general officers). Their military justice training culminates with the post-trial processing of the mock case.

The Department revised the instruction provided to newly-assigned brigade and battalion commanders at the Senior Officer Legal Orientation Course. In addition to receiving instruction on unlawful command influence and convening authority duties within the military justice system, the senior officers receive instruction on SHARP and victim/offender behavior tendencies in sexual assault cases.

The senior officers are then provided a sexual assault fact pattern, make a transmittal decision on the case, and discuss their SHARP obligations to the victim.

The Department continued to incorporate social media into its learning platform, to include revising the Department blog; creating a Twitter feed and Facebook page; and increasing the amount of streaming video offered on the Department's webpage.

OTJAG CRIMINAL LAW DIVISION

The Criminal Law Division (CLD), OTJAG has two primary missions. First, the CLD advises TJAG on military justice policy, legislation, opinions, and related criminal law actions. Specific responsibilities include promulgating military justice regulations, reviewing other Army Regulations for legal sufficiency, providing legal opinions to the Army Staff related to military justice matters, producing and updating military justice publications to include the Manual for Courts-Martial (Manual), conducting statistical analysis and evaluation of trends that affect military justice within the Army, providing advice on military corrections issues, the Army drug testing program, sexual assault and victim assistance policies and federal prosecutions, Army representation on the Joint Service Committee (JSC) on Military Justice, responding to congressional inquiries and requests under the Freedom of Information Act, and conducting reviews of court-martial cases under Article 69 of the UCMJ for legal sufficiency and sentence appropriateness and to identify issues that may require corrective action by TJAG.

Second, the CLD provides comprehensive policy guidance and resources to military justice practitioners in the field, which includes a special emphasis on training (including training related to sexual assault litigation) and programs designed to guarantee long term military justice proficiency across all grades. CLD facilitates the active integration and synchronization of training by coordinating quarterly training and budget meetings with the Corps' key training arms: Trial and Defense Counsel Assistance Programs (TCAP and DCAP) and TJAGLCS.

The CLD also facilitates active information flow to and from the field using web-based media.

Traditionally-reported CLD actions for the last three fiscal years are:

	2009	2010	2011
Congressional and other inquiries	159	132	139
Officer Dismissals	28	24	21
Article 69 and other reviews	99	136	130
Freedom of Information/Privacy Act	18	31	45

The Special Victim Prosecutor (SVP) policy was revised to authorize eight additional SVP positions for a total of twenty-three. One additional SVP is now positioned in Afghanistan, and the additional seven will assume duties in the summer of 2012 at installations that are currently underserved by the existing SVPs. The current sixteen SVPs each work very closely with the sexual assault litigation experts from the Trial Counsel Assistance Program (TCAP), and have developed habitual geographical relationships to enhance their effectiveness. To increase SVP effectiveness in practice and as mentors to other Trial Counsel, CLD provided each SVP six specially selected, criminal practice books that are fundamental to the prosecution of sexual assault cases.

In July 2010, CLD began to better synchronize and integrate military justice training across our Corps. This effort culminated with the creation of the Consolidated Criminal Law Training Calendar and Criminal Law Synchronization Meeting.

The quarterly meeting includes key criminal law stakeholders such as TJAGLCS, TCAP, DCAP, Defense Appellate Division, Government Appellate Division, and the U.S. Army Trial Judiciary. These synchronization meetings, which occurred three times during 2011, were invaluable in bringing the JAG Corps' (JAGC) criminal law leaders together - not only to coordinate criminal law training across the JAGC, but to discuss new criminal law initiatives that could improve and sustain the practice of military justice in the Army.

The calendar provides situational awareness on all criminal law training across multiple venues - civilian and military - allowing trial

advocates to more easily plan for their attendance at military justice training events.

In June 2011, TJAG reviewed and revised the Military Justice Skill Identifier program. The purpose of the program is to help identify and sustain expertise and to assist in the selection of personnel for key military justice positions. By the end of 2011, 603 Judge Advocates had received skill identifiers, an 18% increase from the 2010 total of 495. Currently there are 337 basic, 90 advanced, 107 expert, and 69 master skill-identified judge advocates.

In January 2011, the Army assumed the reins as the Chair of the Joint Services Committee (JSC). After several months' effort, Executive Order (EO) 13593 was approved by the President on 13 December 2011, bringing new changes to the Manual for Courts-Martial. The changes include a new Article 134 offense prohibiting the possession, receipt, viewing, distribution, or production of child pornography and a new Military Rule of Evidence creating a privilege for communications between a victim advocate and a victim of a sexual assault or violent offense. Also, the 2012 National Defense Authorization Act (NDAA) was approved by the President on 31 December 2011. After two years' effort, Congress approved the JSC recommended changes to Article 120. Effective 28 June 2012, rape, sexual assault, and other sexual crimes will be separated into three distinct statutes: Article 120 for adult victims, Article 120b for child victims, and Article 120c for other sexual offenses.

The NDAA also extended subpoena power to the preferral stage in general courts-martial. Article 54 was also amended to require a record of trial be provided to victims in sexual assault courts-martial who testified during the proceedings. The JSC will work diligently to prepare a proposed 2012 EO to incorporate these amendments into a new Manual for Courts-Martial (Manual).

The Manual is scheduled to be reprinted in 2012, which will include changes implemented by EO 13468, EO 13552, and EO 13593, as well as 2009 NDAA and 2012 NDAA statutory amendments. In addition to these voluminous changes, the JSC is completing its in-depth review and revision of the Military Rules of Evidence (MRE). In step with the December 2011 revision of the Federal Rules of Evidence, the MRE have been restyled and revised in like fashion. The revised MRE are scheduled to be included in a separate EO to be submitted to the President. The JSC is planning to reprint the Manual again in early 2013 to capture the revised MRE; new Articles 120, 120b, and 120c; and all related conforming changes.

The JAGC Information Technology Division (ITD) continued to improve military justice web-based programs this year. Military Justice Online (MJO), an application that has been online for three years, allows end-users to generate military justice actions for nonjudicial punishment, administrative separations and reprimands. In 2011, MJO capabilities were significantly expanded by the development, testing, and implementation of the MJO Courts-Martial Module allowing users to create nearly all documents required for court-martial practice. This new module will improve document uniformity and consistency and create detailed military justice reports to accurately track court-martial cases across the Army. ITD and CLD engaged in a sustained effort to increase MJO use through on-site training and integration into officer and enlisted training doctrine. ITD representatives also trained 390 personnel at ten locations and worked closely with TJAGCLS, NCOA, and TRADOC personnel to ensure MJO training is fully integrated.

The Trial Advocates Tracking System (TATS), a web-based database that tracks the number of active trial and defense counsel, grew to include 653 Judge Advocates in 75 organizations. TATS provides key data on the experience and training of trial advocates and helps in assessing military justice assignments, personnel management, and required training. Using TATS as a database, CLD fully implemented the Trial Advocate Resource Library (TARL), which includes basic criminal practice and military justice reference books that are key to the development and growth of young advocates.

First-time trial and defense counsel are eligible to receive the TARL.

An additional officer was attached to CLD this year from the new Knowledge Management (KM) Division, which consists of a Chief Knowledge Officer (O6), Deputy Knowledge Officer (CW5), and six KM attorney positions (O3) assigned to the core competency divisions. The KM attorney acts as a liaison between CLD, the field, and the KM Division, whose mission it is to promote an integrated JAG Corps approach to identifying, retrieving, evaluating, and sharing the Corps' tacit and explicit knowledge assets to meet mission objectives.

U.S. ARMY JUDICIARY

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

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

The Office of the Clerk of Court receives records of trial for review by the U.S. Army Court of Criminal Appeals (ACCA) under Article 66, Uniform Code of Military Justice (UCMJ), appeals under Article 62, UCMJ, and Petitions for Extraordinary Relief. More than 775 records of trial and over 1,250 motions and briefs were referred to one of the three judicial panels of ACCA for appellate review. The Office of the Clerk of Court served ACCA decisions upon all personnel not in confinement and closed over 820 courts-martial cases during the past year.

ACCA maintains a website at https://www.jagcnet.army.mil/acca. ACCA's published opinions and unpublished memorandum opinions and summary dispositions can be downloaded from the website. Applications for admission to the bar of ACCA, Rules of the Court, notices, and forms are available on the website, as is information concerning how to request records under the Freedom of Information and Privacy Acts.

The Clerk of Court is the custodian of the Army's permanent courts-martial records (general courts-martial and those special courts-martial resulting in an approved bad-conduct discharge) dating from 1977. In June 2011, as the office prepared for the Court's BRAC move from Arlington Virginia, to Fort Belvoir, Virginia, the Clerk transferred permanent custody of court-martial records from 1939-76 to the National Archives and Records Administration (NARA). NARA relocated these files from the Washington National Records Center in Suitland, Maryland, to a storage facility in St. Louis, Missouri. Requests for courts-martial records before 1977 must now be directed to NARA.

The Office of the Clerk of Court receives inquiries about courts-martial convictions from federal and state investigative agencies, law enforcement offices, military historians, media, veterans, and convicted soldiers. Because the Brady Bill requires the processing of handgun applications within three workdays, the office also receives many expedited requests from the Federal Bureau of Investigation's National Instant Check System. State sexual offender registries and the U.S. Marshals' Service submit many requests.

U.S. Army Clerk of Court requests for information for the last three fiscal years are as follows:

	2009	**2010**	**2011**
Freedom of Information Act	83	559	725
Privacy Act	121	100	122
Certified Copies of Convictions	570	185	91
Requests from Federal Agencies	0	0	112
Total Number of Requests	774	884	1050

In previous fiscal years, requests from other federal agencies were counted as FOIA requests. The Office of the Clerk of Court is now tracking such requests separately, because they are outside of the purview of FOIA.

The Office of the Clerk of Court also provides assistance to overseas court-martial jurisdictions in processing requests for non-DOD civilians to travel overseas to testify at trials.

This includes making travel arrangements, assisting with requests for expedited passport processing, and issuing invitational travel orders. In 2011, the paralegal responsible for the Overseas Witness Travel Program provided assistance to thirty witnesses. In addition, the paralegal serving as the Appellate Victim Liaison in the Office of the Clerk of Court provided support and assistance to more than 100 victims of crime, keeping them informed of the status of their cases in the appellate review process.

The Management and Program Analyst continued to provide vital support to the Office of the Clerk of Court and other users of the Army Court-Martial Information System (ACMIS) in 2011. He designed, developed, and implemented over 300 timely and accurate ad hoc reports in response to requesters in addition to producing and maintaining ten monthly and quarterly reports. He also designed and implemented new sections on the ACCA website and uploaded more than 120 ACCA decisions to the website, simplifying the records requests process and making Court decisions available to the public and military justice practitioners almost immediately.

The Office of the Clerk of Court is responsible for accepting applications for membership in the bar of ACCA and arranges for the admission of military and civilian attorneys. In 2011, the Clerk's Office admitted more than sixty new counsel to the bar of the Court and maintained accurate records of attorney disciplinary actions.

The Office of the Clerk of Court also provided instruction to legal NCOs, court reporters and those individuals attending the JAG Corps' Graduate Course and military justice courses at TJAGLCS.

Staff members provided support to military justice offices in the field concerning post-trial courts-martial practice and assisted with revisions to the Post-Trial Handbook and implementation of the new AR 27-10 relating to self-executing punitive discharges.

Trial Judiciary

The 1082 courts-martial tried during this fiscal year reflect a slight increase over the 1070 courts-martial tried in 2010. Army trial judges - both active and reserve component - continued to preside over cases in deployed environments, with 70 general and special courts-martial tried in Iraq, Kuwait and Afghanistan during this period, resulting in a grand total of over 920 since May 2003. The Trial Judiciary continued its ongoing effort to keep current DA Pamphlet 27-9, Military Judges' Benchbook (Benchbook), approving eleven changes to that publication addressing:

1. The statutory burden shifting for Article 120 affirmative defenses, following *United States v. Medina,* 69 M.J. 462 (C.A.A.F. 2011);

2. Lesser-included offenses, following *United States v. Jones,* 68 M.J. 465 (C.A.A.F. 2010);

3. Immigration status in guilty pleas, following *Padilla v. Kentucky,* 130 S.Ct. 1473 (2010);

4. Guilty pleas to non-forcible sodomy, following *United States v. Hartman,* 69 M.J. 467 (C.A.A.F. 2011).

A constantly updated version of the Benchbook, along with links to the electronic version of that updated Benchbook, court dockets, other judiciary related documents and resource materials, can be found on the Trial Judiciary homepage at www.jagcnet.army.mil/usatj.

Military Judges continued playing an active role in their military and civilian communities, speaking to grade and high school audiences, local bar associations and civic organizations, law school classes and state bar continuing legal education courses. Other notable achievements by individual members of the Trial Judiciary included:

*The 54th Military Judge Course graduated 38 Army, Navy, Marine Corps, Air Force and Coast Guard students in May and invested them as new military judges.

*COL Frank Whitney, a United States District Court judge in the Western District of North Carolina, mobilized and deployed to Kuwait for a six-month tour of duty presiding as a military judge over courts-martial convened throughout Iraq, Afghanistan and Kuwait. COL Whitney was the first sitting Article III judge to do so.

*COL Reynold "Pete" Masterton also deployed to Kuwait for a year-long tour of duty as the Chief Circuit Judge, 5th Judicial Circuit. In that capacity, COL Masterton both tried and supervised other military judges trying courts-martial both in the CENTCOM Area of Responsibility and the EUCOM AOR.

*COL Tara Osborn was appointed as Chair of the Military Courts Committee of the American Bar Association's National Conference of Specialized Court Judges.

*COL Denise Lind was appointed to the George Washington Law School Faculty as a Professorial Lecturer in Law.

*In recognition of his outstanding judicial qualifications, Colonel James Pohl received a Certificate in General Jurisdiction Trial Court Skills from the National Judicial College.

U.S. ARMY TRIAL DEFENSE SERVICE

This year more than 500 active and RC attorneys were serving in the U.S. Army Trial Defense Service (USATDS) worldwide, including 100 Army National Guard. USATDS provides high quality, professional defense services to Soldiers throughout the Army. USATDS counsel are stationed at 57 active duty installations worldwide and 51 reserve locations.

USATDS detailed one or more counsel to every Army special and general court-martial referred in 2011, defending Soldiers facing the entire range of allegations under the Uniform Code of Military Justice. In addition, USATDS counsel assisted Soldiers facing other military justice related adverse administrative actions.

The caseloads were as follows this year:
General and Special Courts-Martial: 1,074
Administrative Boards: 1,823
Nonjudicial Punishment: 41,300
Military Justice Consultations: 20,836

The USATDS provided defense services to approximately 158,000 Soldiers deployed throughout the CENTCOM AOR, primarily in Iraq, Kuwait and Afghanistan. As of the end of 2011, the USATDS CENTCOM Region had eight field offices in CENTCOM after closing one of the Iraq field offices. Of the remaining field offices, one each remained at Balad, Iraq, Camp Victory, Iraq, Camp Speicher, Iraq, and Camp Arifjan, Kuwait. Meanwhile, TDS support in Afghanistan expanded to accommodate the evolving mission in CENTCOM, growing from two to four field offices. The four offices are located at Bagram Air Base, Kandahar Air Base, Sharana and Camp Phoenix, in Kabul. The Regional Defense Counsel is an active duty Lieutenant Colonel who serves as the senior supervisory TDS attorney in CENTCOM. His headquarters moved from Camp Victory in Iraq to Bagram Air Base in Afghanistan. He maintains sixteen trial defense attorneys and nine paralegals working under him in support of the TDS mission in CENTCOM.

In 2011, DCAP lost one of its two Highly Qualified Experts (HQEs) to retirement. In a continuing era of declining resources and limited travel, DCAP nevertheless excelled at providing training through creativity, flexibility, seeking opportunities for joint training with government counsel, and good stewardship. DCAP organized and debuted a new joint training opportunity, the Joint Advocacy Symposium. DCAP brought in several renowned trial advocacy practitioners to immerse counsel in an intensive trial skills improvement workshop utilizing their real-world cases. DCAP also updated the Sexual Assault Trial Advocacy Course (SATAC), a two-week joint advanced advocacy training course which debuted successfully in 2010. The Expert Witness Symposium once again provided a group of trial and defense counsel exposure to ten expert witnesses who regularly testify in courts-martial. DCAP developed and published the DC 101 Deskbook to be used by counsel attending the DC 101 training and then to keep as a permanent resource.

DCAP continued to support the field in traditional manners by timely and effectively answering questions submitted from counsel. DCAP proactively ensured that practitioners in the field kept abreast of all major developments by means of publishing a series of updates called "DCAP Alerts" and "DCAP Sends." Updates and expansions to the Sharepoint website continued to provide instant and comprehensive, around the clock support to counsel in the field. DCAP's other ongoing initiatives include uploading training materials, including a motions bank and an expert witness database, and beginning several ongoing chat rooms to maintain discussion among counsel on such critical issues as post-trial processing and new developments.

The 22nd TDS Legal Support Organization (LSO) consists of 90 commissioned officers, 1 warrant officer, and 29 enlisted paralegals. The 22nd LSO encompasses East Asia and the United States west of the Mississippi River. In 2011, the 22nd LSO mobilized eight attorneys and four paralegals for service in CONUS, Europe, and CENTCOM. In addition, the TDS LSO represented over 2,300 reserve component Soldiers facing military justice and adverse administrative actions. The 154th TDS LSO consists of 146 commissioned officers, two warrant officers, and thirty-four enlisted paralegals. The 154th LSO encompasses Europe, Puerto Rico, and the United States east of the Mississippi River as well as Louisiana, Arkansas, and Missouri. In 2011, the 154th LSO mobilized fifteen attorneys and twelve paralegals for service in CONUS, Europe and CENTCOM. Additionally, the 154th LSO also represented over 2,000 reserve component Soldiers facing military justice and adverse administrative actions.

The Army National Guard (ARNG) TDS consists of 100 commissioned officers, one civilian legal administrator, and eighteen enlisted paralegals stationed in 46 states and territories. The AOR for ARNG TDS encompasses all 54 of the states, territories, and the District of Columbia.

In 2011, four ARNG TDS regions conducted the first ever National Guard specific TDS training conferences. Moreover, the presence of an independent trial defense service afforded three states the ability to pursue general courts-martial under their respective state codes of military justice resulting in one acquittal, one guilty plea, and one case dismissed for lack of jurisdiction. In other matters, ARNG TDS counsel represented more than 1,500 ARNG Soldiers.

GOVERNMENT APPELLATE DIVISION

The U.S. Army Government Appellate Division (GAD), with twenty-three active duty and four Individual Mobilization Augmentee military attorneys, represents the United States before the Army Court of Criminal Appeals (ACCA), the Court of Appeals for the Armed Forces (CAAF), and the U.S. Supreme Court in appeals by Soldiers convicted at courts-martial with an adjudged sentence of either a punitive discharge or confinement for one year or more. GAD also represents the United States before ACCA, CAAF, and the Supreme Court in government appeals from courts-martial and petitions for extraordinary relief. Additionally, GAD oversees the operations of TCAP.

During 2011, GAD filed 502 briefs at ACCA and 434 responses to petitions for grant of review and 11 briefs at CAAF. GAD appellate attorneys argued twenty-seven cases before ACCA and fifteen cases before CAAF.

As part of ACCA's Project Outreach, GAD argued two cases in the civilian community -one at Howard University School of Law in Washington, D.C., and the other at South Texas College of Law in Houston, Texas. These outreach arguments are important in displaying military justice to largely civilian audiences. Both arguments were tremendously successful.

TCAP continued its mission to assist prosecutors in the field. In 2011, this encompassed TCAP's traditional activities such as publishing a quarterly newsletter, answering questions from the field, and conducting training events.

Last year's training events consisted of fourteen outreach programs at Army installations world-wide, four regional conferences, and eleven specialty courses (e.g. advanced advocacy, child crimes, and forensics). As in 2010, training was focused on prosecuting sexual assault and domestic violence. Several of the courses were co-hosted with DCAP.

TCAP introduced the New Prosecutor Course (NPC), a six-day course focused equally on the fundamentals of military justice and prosecution of sexual assaults. The NPC will be held once a quarter to ensure that all new trial counsel attend within three to four months of becoming a trial counsel. The first half of the NPC focuses on ensuring that new trial counsel have a rudimentary grasp of how (technically and tactically) they should move cases through the military justice process. The second three-day block focuses on investigations, charging decisions, and interaction with victims in sexual assault cases.

There was a significant rise in requests from the field for direct TCAP assistance, including the prosecution of over 30 cases in 2011. The support varied from providing a HQE to assist with trial (from behind the bar) to assigning a TCAP judge advocate as lead counsel. Finally, TCAP continued to supervise the growth of the Special Victim Prosecutor (SVP) program. The first SVP was assigned to Afghanistan this year, which also saw the first sexual assault case tried by a SVP in theater.

DEFENSE APPELLATE DIVISION

The Defense Appellate Division (DAD) provides appellate representation to eligible Soldiers and other individuals before the Army Court of Criminal Appeals (ACCA), the Court of Appeals for the Armed Forces (CAAF), and the Supreme Court of the United States. Eligible Soldiers include those convicted at courts-martial where the approved sentence consists of a punitive discharge or confinement for one year or more. DAD attorneys also assist military and civilian Trial Defense Counsel in the preparation and filing of extraordinary writs before the aforementioned courts.

The staff consists of nineteen active component Judge Advocates, four civilian paralegals, and one Noncommissioned officer serving in two branches and including a training officer. As in past years, reserve component Judge Advocates continued to provide critical support. DAD was fortunate to have seven Drilling Individual Mobilization Augmentee Judge Advocates.

There were 565 new cases received this year and 558 cases filed with ACCA. Of those ACCA filings, 183 raised substantive assignments of error. DAD attorneys also filed 517 cases with CAAF, 102 of which raised substantive assignments of error. Oral arguments were made in more than twenty cases. This year DAD attorneys filed four Article 62 appeals; two writ petitions; and one petition for certiorari before the Supreme Court. DAD attorneys also filed an extensive brief addressing six substantive issues in *United States v. Akbar*, a capital case, and a substantial supplemental brief raising three additional issues not previously raised in this case.

As the move toward a strict elements test for lesser included offenses continues, DAD attorneys argued *United States v. Alston*, 69 M.J. 214 (C.A.A.F. 2010) (whether aggravated sexual assault is a lesser included offense to rape) and *United States v. Girouard*, 70 M.J. 5 (C.A.A.F. 2011) (whether negligent homicide is a lesser included offense to murder). DAD attorneys also briefed a case of first impression in *United States v. Ali*, 70 M.J. 514 (Army Ct. Crim. App. 2011) regarding the use of Article 2(a)(10), UCMJ to prosecute a civilian accompanying the force. In *United States v. Watson*, 69 M.J. 415 (C.A.A.F. 2011), the court decided a novel issue regarding the interplay between administrative and punitive discharges in light of Army regulations. Finally, DAD attorneys argued cases to ensure a constitutional application of Military Rule of Evidence 412 in *United States v. Gaddis*, 70 M.J. 248 (C.A.A.F. 2011) (holding a constitutional use of M.R.E. 412) and *United States v. Ellerbrock*, 70 M.J. 314 (C.A.A.F. 2011) (holding an unconstitutional use of M.R.E. 412).

DAD attorneys represented clients at outreach arguments hosted by ACCA and thereby contributed to the public understanding of and support for the Military Justice System.

In one notable case argued at the South Texas College of Law, a DAD attorney successfully advocated for the complete dismissal of a serious charge using changes in the law regarding lesser included offenses.

LITIGATION DIVISION

Civil lawsuits involving military justice matters are relatively few but remain an important part of the Litigation Division's practice. Most suits are brought by former Soldiers seeking collateral review of military court-martial proceedings pursuant to a petition for writ of habeas corpus in federal district court. The following cases highlight the types of issues handled by the Army's Litigation Division.

In *Gray v. Gray* [Private Ronald Gray v. Colonel Gray, the Commandant of the United States Disciplinary Barracks], litigation continues concerning the habeas petition of a military prisoner on death row. In November 2008, the U.S. District Court for the District of Kansas granted Private Ronald Gray's motion to stay his execution and appointed counsel to assist him in pursuing habeas relief. In 1988, Gray was convicted at court-martial of, among other charges, three specifications of premeditated murder, one specification of attempted murder, three specifications of rape and two specifications of forcible sodomy. He was sentenced to death, a dishonorable discharge, total forfeiture of all pay and allowances, and reduction to Private E-1.

In 2001, at the conclusion of the military appellate process, the U.S. Supreme Court denied Gray's petition for writ of certiorari. In 2008, the President approved the death sentence and the Secretary of the Army signed the Execution Order directing that Gray be executed. In April 2009, Gray filed a petition for writ of habeas corpus. In September 2010, the court ruled that Gray could amend his petition to present additional claims. After the government filed its response to petitioner's claims, in February 2011, petitioner filed a Petition for Extraordinary Relief in the Nature of a Writ of Coram Nobis with the Army Court of Criminal Appeals (ACCA) and requested the district court to stay the case until after ACCA acts on the petition.

In October 2011, petitioner notified the court that briefing was complete, but ACCA had yet to act on the petition. On 26 January 2012, ACCA denied the petition, finding that Gray cannot meet the threshold criteria for coram nobis review.

In Hennis v. Helmick, et al., the government continues to defend a challenge by a retiree recalled to active duty to face capital murder charges.

On 28 December 2009, after ACCA and CAAF denied his extraordinary writs challenging the military's jurisdiction to prosecute him, MSG (Ret.) Timothy Hennis filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of North Carolina seeking an emergency stay of his pending court-martial. After the U.S. Court of Appeals for the Fourth Circuit denied MSG (Ret.) Hennis' request for a preliminary injunction to stop the court-martial proceedings, a court-martial convicted MSG (Ret.) Hennis of three murder specifications and sentenced him to death. MSG Hennis appealed the denial of his habeas petition to the Fourth Circuit. Oral argument was held on 26 October 2011. On 17 January 2012, the United States Court of Appeals for the Fourth Circuit, in Hennis v. Hemlick, et al., affirmed the decision of the District Court for the Eastern District of North Carolina which dismissed, without prejudice, the habeas petition of a Soldier who had yet to exhaust his opportunities within the military justice system to raise his jurisdictional challenge. Petitioner unsuccessfully argued that the district court should immediately intervene based on his status as a retiree recalled to active duty and sentenced to death for murder charges of which he was acquitted twenty years earlier in state court and his contention that the military lacked jurisdiction to prosecute him for crimes that occurred prior to his reenlistment. The Court of Appeals held that it was proper for the district court to defer to the expertise of the military courts "to initially consider and resolve the mixed questions of fact and law comprising Hennis's jurisdictional challenge." Only after petitioner exhausts all available military remedies may he collaterally attack the court-martial in federal district court.

Cioca, et al. v. Rumsfeld, et al. and *Smith v. United States, et al.* were brought by individuals claiming the policies of former Secretaries of Defense Rumsfeld and Gates fostered an environment in which sexual assaults occurred and remained largely unpunished. All plaintiffs in the *Cioca* case are current or former military members while the plaintiff in the *Smith* case was a military dependent.

Plaintiffs brought these cases under a *Bivens* theory of individual liability, contending the defendants, through acts of omission and commission, violated the plaintiffs' First, Fifth, and Fourteenth Amendment rights. The defendants countered that *Bivens* should not be expanded to cover plaintiffs' allegations. The court agreed. Citing the "special factors" language of the *Bivens* decision, the court found plaintiffs' allegations directly implicated the military's disciplinary system and were the province of the elected branches of government, not the judiciary. An additional claim under the Federal Tort Claims Act (FTCA) remained in *Smith*. Ms. Smith claimed that the United States negligently inflicted emotional distress on her during the investigation and prosecution of her alleged attacker. The court found the FTCA barred her claim under a theory of prosecutorial immunity codified in 28 U.S.C. § 2674. The court dismissed both cases on 9 December 2011. Plaintiffs filed a notice of appeal on 5 January 2012.

PERSONNEL, PLANS, AND POLICIES

On 30 September 2011, the Army's end-strength was 706,506 Army Soldiers on active duty, including Active Guard and Reserve (AGR) and mobilized Soldiers, compared to 661,360 at the end of fiscal year 2010 (FY10). The attorney strength of the Active Army (AA) Judge Advocate General's Corps at the end of 2011 was 1,897 (including general officers). This total does not include 69 officers attending law school while participating in the Funded Legal Education Program. The FY11 end-strength of 1,897 compares with an end-strength of 1,858 in FY10, 1,730 in FY09, 1,647 in FY08, 1,643 in FY07, 1,638 in FY06, 1,603 in FY05, 1,547 in FY04, 1,506 in FY03, 1,474 in FY02, and 1,462 in FY01. The diverse composition of our FY11 AA attorney population included 132 African-Americans, 58 Hispanics, 96 Asians and Native Americans, and 473 women.

The grade distribution of the Corps' AA attorneys for FY11 was 6 general officers authorized (five filling JAGC authorizations and a sixth general officer serving in a branch immaterial billet), 136 colonels, 245 lieutenant colonels, 449 majors, and 1,062 captains.

An additional 98 warrant officers, 561 civilian attorneys, and 1,942 enlisted paralegals supported legal operations worldwide. The attorney strength of the RC Judge Advocate General's Corps at the end of FY11 was 1,849 (which includes officers serving in Troop Program Units, the Drilling Individual Mobilization Augmentation Program, the Individual Ready Reserve, and the Active Guard & Reserves) and the attorney strength of the Army National Guard at the end of FY10 was 822. At the end of FY11, over 612 Army JAGC personnel (officer and enlisted, AA and RC) were deployed in operations in Afghanistan, Africa, Bosnia, Cuba, Kosovo, Egypt, Honduras, Iraq, Kuwait, and Qatar.

DANA K. CHIPMAN
Lieutenant General, USA
The Judge Advocate General

APPENDIX - U.S. ARMY MILITARY JUSTICE STATISTICS
Report Period: FISCAL YEAR 2011

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	617	580	36	+1.1%
BCD SPECIAL [A]	464	442	21	+4.0%
NON-BCD SPECIAL	0	0	0	-100.0%
SUMMARY	632	619	13	-22.83%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-9.9%

PART 2 - DISCHARGES APPROVED [B]

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ DISMISSALS)	73 (+26)	
NUMBER OF BAD-CONDUCT DISCHARGES	240	
SPECIAL COURTS-MARTIAL -- NUMBER OF BCD'S	196	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GCM	351	
FOR REVIEW UNDER ARTICLE 66 - BCD SPCM	196	
FOR EXAMINATION UNDER ARTICLE 69 - GCM	213	

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

TOTAL ON HAND BEGINNING OF		115 [C]	
GENERAL COURTS-MARTIAL	[D]		
BCD SPECIAL COURTS-MARTIAL	[D]		
REFERRED FOR REVIEW		555 [C]	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
TOTAL CASES REVIEWED		573 [E]	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
TOTAL PENDING AT CLOSE OF PERIOD		97 [C]	
GENERAL COURTS-MARTIAL			
BCD SPECIAL COURTS-MARTIAL			
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-8.6%	

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE ACCA

NUMBER	506	
PERCENTAGE	91.17%	

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	73.12%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS	+2.57%
PERCENTAGE OF TOTAL PETITIONS GRANTED	11.65%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS	+94.17%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES	9.25%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+99.78%

PART 7 - APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		0	
RECEIVED		13	
DISPOSED OF		11	
GRANTED	0		
DENIED	11		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	
PART 8 - ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		476	
SPECIAL COURTS-MARTIAL		406	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		158	
SPECIAL COURTS-MARTIAL		56	
PART 9 - COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		14	
PART 10 - STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		569139 [F]	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NONJUDICIAL PUNISHMENT IMPOSED		36942	
RATE PER 1,000		64.91	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+0.32%	

EXPLANATORY NOTES

[A] Cases convened by GCM convening authority.
[B] Based on records of trial received during FY for appellate review.
[C] Includes only cases briefed and at issue.
[D] No reason for distinguishing; GCM and BCD SPCM are not tracked separately.
[E] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.
[F] This number includes only Active Component Soldiers and does not include USAR, National Guard or AGR personnel.

SECTION 4

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

OCTOBER 1, 2010 TO SEPTEMBER 30, 2011

SUPERVISION OF THE ADMINISTRATION OF MILITARY JUSTICE

JUDGE ADVOCATE GENERAL

The Judge Advocate General (JAG) chairs, monthly, the Military Justice Oversight Council. This council also consists of the Commander, Naval Legal Service Command (COMNAVLEGSVCCOM), the Staff Judge Advocate to the Commandant of the Marine Corps, and the Assistant Judge Advocates General.

The JAG and the COMNAVLEGSVCCOM made frequent inspections of U.S. Navy legal offices in the United States, Europe, and the Far East in order to supervise the administration of military justice in accordance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ). These inspections, conducted by subject matter experts, examined the full range of military justice processes.

Fiscal Year 2011 saw continued expansion in Military Justice Litigation Career Track (MJLCT). There are currently 64 officers in the career track and 52 MJLCT designated billets. This excess includes 10 percent programmed to serve "outside" the track in officer development billets such as post-graduate school, Individual Augmentees or carrier CJAs. The promotion rate for MJLCT officers continues to be monitored and the in-zone officers designated for that community were promoted on the FY12 boards at a rate consistent with or better than a "best and fully qualified" rate as compared to the overall selection rate.

ASSISTANT JUDGE ADVOCATE GENERAL, MILITARY JUSTICE(CODE 02)

AJAG-MJ advises the JAG in the performance of his statutory duties relating to military justice matters. Additionally, he serves as a member of the Office of the Judge Advocate General's Ethics Committee, the Judicial Screening Board, and the Military Justice Oversight Council, and oversees OJAG's Military Justice Division (Code 20), and the National Security Litigation Division (Code 30). The AJAG-MJ is dual-hatted as the Officer in Charge of Navy-Marine Corps Appellate Review Activity (Code 04). In this capacity, he oversees the Administrative Support Division (Code 40), Appellate Defense Division (Code 45), and Appellate Government Division (Code 46). AJAG-MJ has the ultimate responsibility for disposition of all records of trial received for review or other dispositions pursuant to statute, regulation, or appropriate appellate court rules of practice and procedure.

CRIMINAL LAW DIVISION (CODE 20)

Organization. The Criminal Law Division was staffed with eight active duty judge advocates, four civilian support personnel, and two reserve units. Reserve unit NAVJAG 113 conducted Article 69(a) and 69(b), UCMJ, reviews and unit NAVJAG 108 provided research and Action Officer support.

Mission. Coordinates military justice policy within DON. Drafts legal and policy advice for the JAG on a wide variety of military justice matters; reviews all legislative and regulatory proposals affecting military justice. The Division staffs all amendments to Chapter 1 of the JAG Manual and all other Secretarial and JAG regulations implementing or affecting the UCMJ. It monitors all decisions of military appellate courts; tracks the status of ongoing, important, and high-profile military justice cases; provides an opinion and staffs JAG certification of cases for review by NMCCA or CAAF; and facilitates DOJ processing of executive pardon requests relating to military convictions.

The Division staffs requests for Secretarial designation as general, special and summary court-martial convening authority; coordinates court orders and warrants of attachment and coordinates with DOJ to approve grants of immunity/orders to testify for civilian witnesses at trial by court-martial.

Finally, the Division provides a JAG representative to the SECNAV Clemency and Parole Board; upon request, provides legal opinions to the Board for Correction of Naval Records; provides informal advice for all Navy and Marine Corps judge advocates engaged in military justice matters; processes all Article 69, 73, and 74(b) UCMJ reviews and requests; and acts as the initial denial authority on all FOIA/Privacy Act requests for information pertaining to courts-martial.

The Code 20 Division Director serves as Special Assistant for Military Justice, NAVLEGSVCCOM, and advises COMNAVLEGSVCCOM regarding policies, plans, resources and procedures affecting the military justice mission of NAVLEGSVCCOM. In that capacity, the Division Director assists COMNAVLEGSVCCOM, in Article 6, UCMJ, inspections of NAVLEGSVCCOM commands and detachments.

The Code 20 Division Director continued to serve as the Navy Representative to the Joint Service Committee for Military Justice (JSC), and functions as the Navy's voting group member at regular meetings of the JSC, which is the principal vehicle for staffing amendments to the UCMJ and MCM, and provides a Navy representative for meetings of the joint-service working group supporting the JSC. The 2011 Annual Review was completed in accordance with the President's requirement that the MCM be reviewed annually.

During the past year, the Military Justice Division completed review of 45 records of trial under Article 69(a), UCMJ and 14 records under Article 69(b), UCMJ. No petitions were reviewed under Article 73, UCMJ.

ADMINISTRATIVE SUPPORT DIVISION (CODE 40)

Organization. The Administrative Support Division was staffed with one officer, two civilians and ten enlisted Marine Corps staff members.

Mission. Provides administrative and logistical support services to personnel assigned to NAMARA and NMCCA. Reviews for completeness all records of trial forwarded to the NMCCA for appellate review pursuant to Article 66, UCMJ; promulgates decisions of the NMCCA in accordance with the JAG Manual and the Manual for Courts-Martial; manages the OJAG court-martial central filing system, including original records of trial maintained at NAMARA; manages and retrieves archived records of trial stored at the Federal Records Center in Suitland, Maryland; and administers all NMCCA and CAAF mandate/judgments on remand back to field commands for corrective action. During FY11, NAMARA Code 40 reviewed and examined over 718 records of trial for completeness prior to forwarding those records to the appropriate level for appellate review pursuant to Articles 66 and 69(a) UCMJ.

The Administrative Support Division continued implementation of its "digital records of trial" program, expanding the program to include two major Navy commands: Region Legal Service Office, Mid-Atlantic and Region Legal Service Office, Southeast and three Marine Corps commands: Camp Lejeune, Camp Pendleton, and Marine Corps Air Ground Combat Center 29 Palms. Additionally, the program was expanded from including only guilty pleas to a number of contested cases. This program allows the forwarding of only one paper copy of the record of trial to Washington DC, with the required copies for the Court of Criminal Appeals, defense, and Government, fulfilled by a bookmarked PDF record of trial.

APPELLATE DEFENSE DIVISION (CODE 45)

Organization. The Appellate Defense Division was staffed with nine active duty Navy and Marine Corps judge advocates and four civilian support personnel. Twenty-four Navy and Marine Corps Reserve judge advocates supported the Appellate Defense Division. The two units are Navy Reserve unit, NAMARA 110, and the Marine Corps Reserve contingent which consisted of four independently assigned Marine judge advocates.

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

As depicted below, in fiscal year 2011, a total of 598 new cases were docketed at NMCCA and received in the Appellate Defense Division. The Appellate Defense Division filed 531 initial pleadings, which include 161 briefs, 351 merit submissions, and 19 summary assignments. A total of 81 supplemental briefs to petitions were filed at CAAF, resulting in 20 full briefs.

	FY 07	**FY 08**	**FY 09**	**FY 10**	**FY 11**
NMCCA					
Briefs Filed	415	230	173	159	161
Total Cases Filed	750	778	831	744	531
Oral Arguments`	8	6	14	15	19
CAAF					
Petitions with Supplemental Briefs Filed	29	27	31	21	20
Briefs Filed	206	151	96	69	81
Oral Arguments	21	32	23	11	7
U.S. Supreme Court Petitions	6	6	5	6	2

Capital Litigation. The sole remaining death penalty case has been returned from remand and is at NMCCA.

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

APPELLATE GOVERNMENT DIVISION (CODE 46)

Organization. The Appellate Government Division was staffed with nine active duty judge advocates, one civilian attorney, and two civilian administrative employees. The Appellate Government Division is supported by NAVJAG 116, a reserve detachment based out of Minneapolis, Minnesota. Reserve support continues to be critical to the accomplishment of our mission and the Appellate Government Division was augmented by 16 reserve judge advocates. Reserve judge advocates contributed an average of four briefs per month.

Mission. Per Article 70, Uniform Code of Military Justice (UCMJ), the primary mission of the Appellate Government Division is to represent the United States before the Navy-Marine Corps Court of Criminal Appeals (NMCCA) and CAAF. Additionally, in coordination with the Navy and Marine Corps Trial Counsel Assistance Programs, Code 46 continues to provide outreach and support to staff judge advocates, review officers, and trial counsel throughout the Navy and Marine Corps on issues related to pretrial, court-martial, and post-trial matters.

Briefs and Arguments. A summary of this year's appellate activity is set forth in the below chart. "Briefs Filed" include Government briefs, answers to supplements, and supplemental briefs. "Other Pleadings" include responses to extraordinary writs, motion responses, responses to Court Orders, and Petitions for Reconsideration. The number of oral arguments before NMCCA has increased over the past couple of years while the number of oral arguments before CAAF has decreased. Article 62 appeals by the United States of trial court decisions have steadily declined over the past few years: 8 in FY 07; 11 in FY 08; 9 in FY 09; 3 in FY 10; and 2 in FY 11.

	FY 07	FY 08	FY 09	FY 10	FY 11
NMCCA					
Briefs Filed	486	232	154	163	188
Other Pleadings	528	340	313	373	144
Oral Arguments	8	6	14	15	19
CAAF					
Briefs Filed	45	37	28	24	22
Other Pleadings	158	146	60	102	70
Oral Arguments	21	32	23	11	7

b. The Division's practice at CAAF included certification of significant matters of military justice in *Hayes, Nash,* and *McMurrin*.

c. The Division continued its representation of the United States in one capital case: *United States v. Parker*.

d. During FY 11, the Division's judge advocates participated in one oral argument as part of United States Court of Appeals for the Armed Forces' outreach program.

ASSISTANT JUDGE ADVOCATE GENERAL, CHIEF JUDGE, DEPARTMENT OF THE NAVY (CODE 05)

The Chief Judge of the Department of the Navy (CJDON) is the senior supervisory jurist in the Department of the Navy, overseeing both the trial and appellate judiciaries. CJDON serves as Rules Counsel for the judiciary and as the community sponsor for the Navy JAG Corps' Military Justice Litigation Career Track. During FY11, the CJDON also served as the acting Chief Judge of the United States Court of Military Commissions Review (USCMCR).

U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (NMCCA) (CODE 51)

The United States Navy-Marine Corps Court of Criminal Appeals (NMCCA) disposed of 571 cases in FY 2011. Despite a lower case load, the Court issued more opinions than in the preceding two years. In addition, the court granted 19 oral arguments, including one for "Project Outreach" heard at the United States Naval Academy. At the end of the fiscal year, no case had exceeded 18 months from docketing to decision, no case was in panel longer than 12 months, and only one case was in panel longer than six months.

The size of the Court decreased from nine to eight active-duty military appellate judges, including four Navy and four Marine Corps judges. Two of the active-duty appellate military judges simultaneously served on the USCMCR. The active-duty judiciary is supported by seven Navy reserve and two Marine Corps reserve appellate judges.

During FY11, the court also supported the Navy JAG Corps 2010 National Moot Court Competition at the Naval Air Station Jacksonville, Florida, and routinely provided former trial judges to preside over the Naval Justice School's Basic Lawyer Course moot courts. The court hosted its first annual NMCCA Judicial Symposium in FY11. This focused appellate training brought distinguished jurists and law professors to the Court for three days to train active-duty, reserve and civilian Court personnel.

NMCCA continues to maintain a website at http://www.jag.navy.mil/nmcca.htm. NMCCA's published and unpublished opinions are posted to this website. In addition, the Court maintains a docket for upcoming oral arguments and audio files of completed oral arguments. Finally, applications for admission to the NMCCA bar and rules of the court are maintained on the website.

The Court was supported by six junior judge advocates serving as law clerks and a field-grade officer as senior law clerk. The law clerks provided essential legal and administrative support to the appellate judiciary while gaining valuable experience in legal analysis and opinion writing that will inform their later appellate and trial practice. Law clerks serve from nine to 12 months and then typically rotate to one of two appellate counsel divisions, government or defense.

NAVY-MARINE CORPS TRIAL JUDICIARY (CODE 52)

The Navy-Marine Corps Trial Judiciary (NMCTJ) is a unified trial judiciary with the core mission of providing certified military judges for all Navy and Marine Corps general and special courts martial. The NMCTJ is organized into seven judicial circuits world-wide and is supported by Naval Reserve and Marine Corps Reserve Individual Mobilization Augmentees. During FY11, the NMCTJ consisted of 25 active-duty and 17 reserve judges.

During FY11, the NMCTJ provided comprehensive and timely judicial services to Fleet and Shore activities and to Marine Forces in the United States and around the world. The NMCTJ presided over 1,136 cases, including 311 general courts-martial and 815 special courts-martial. Cases were tried in both forward-deployed combat zones of Iraq and Afghanistan. In addition to presiding over regularly referred courts-martial, NMCTJ judges were appointed as Article 32 investigating officers in high visibility cases and presided over numerous high-profile cases, including one military commission at Guantanamo Bay, Cuba. Two trial judges remain available for any forthcoming military commission cases. NMCTJ judges also performed duties as Environmental Impact Statement Public Hearing Officers for proceedings conducted throughout the United States pursuant to the National Environmental Policy Act.

During FY11, a military judge was reassigned to Naples, Italy, to preside over courts-martial and administer judicial services within an area of responsibility including Europe, Africa, and Southwest Asia.

NMCTJ judges attended various National Judicial College (NJC) courses throughout the year at various off-site locations. The NJC provides judge-specific training for military judges. Several NMCTJ judges were awarded the professional Certificate in Judicial Development, General Jurisdiction Trial Skills from the NJC. Most members of the trial judiciary also participated in the annual Inter-Service Military Judges Training Symposium for all Services military trial judges, this year hosted by the U.S. Air Force at the Air Force JAG School in Montgomery, Alabama.

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

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) is commanded by Commander, Naval Legal Service Command (CNLSC). NAVLEGSVCCOM consists of eight Naval Legal Service Offices (NLSOs), nine Region Legal Service Offices (RLSOs), and the Naval Justice School. NAVLEGSVCCOM provides counsel for courts-martial, administrative boards, physical evaluation boards, legal assistance, and local commanders. NAVLEGSVCCOM also provides training for Navy, Marine Corps and Coast Guard judge advocates, legalmen, and other DoD personnel. During Fiscal Year 2011, NAVLEGSVCCOM provided counsel for 125 General Courts-Martial, 163 Special Courts-Martial, 999 Administrative Boards, provided 111,951 attorney legal assistance services, and 67,046 customer services.

NAVLEGSVCCOM includes 415 Judge Advocates, one Civil Engineer Corps Officer, five Limited Duty (Legal) Officers, 224 Legalmen, and 270 civilians. NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore commands, active duty naval personnel, family members, retirees, and eligible beneficiaries from the other services at 99 offices world-wide and is the primary source of personnel to meet the Navy Judge Advocate Corps annual Individual Augmentation (IA) requirements in support of Overseas Contingency Operations. Twelve percent of NAVLEGSCCOM judge advocates deployed during FY11 as IAs in direct support OCOs in Iraq, Afghanistan, Djibouti and Guantanamo Bay, Cuba.

Significant improvements were made in the area of post-trial processing. On 25 March 2011, regulations establishing minimum standards for post-trial processing were promulgated. These regulations included updated checklists to use during the court-martial review process, ensuring expeditious and efficient handling from sentencing date through final action. In case tracking and management, the continued updating and increased accessibility of content and standardized reports in the Navy's Case Management Tracking and Information System (CMTIS) contributed to progress in post-trial processing times. The overall average processing times from Preferral to Convening Authority's Action (CAA) within NAVLEGSVCCOM has declined over the past two fiscal years by 24 percent.

On October 1, 2010, CNLSC established separate Chiefs of Staff (COS) for the RLSOs and NLSOs. Both billets are occupied by post-command officers and provide senior supervisory counsel for the prosecution and defense functions, ensuring greater oversight and accountability. The COS are assisted by the Directors of the Trial Counsel and Defense Counsel Assistance Programs, who have been working over the past year to provide greater standardization in the prosecution and defense functions and to provide for greater reach-back and support to trial and defense counsel in the field. In addition to case support, TCAP and DCAP have provided additional training opportunities for counsel.

NAVAL JUSTICE SCHOOL

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

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

In fiscal year (FY) 2011, NJS provided instruction to more than 28,011 students worldwide (including 3,267 in resident courses ranging in length from three days to eleven weeks).

In addition to teaching at NJS courses, NJS instructors provide out-of-house teaching in military justice, administrative law, and operational law to other commands, including the Naval War College, Command Leadership School, Officer Development School, Senior Enlisted Academy, Surface Warfare Officers School Command, Officer Candidate School, Naval Academy Preparatory School, Limited Duty/Chief Warrant Officer Indoctrination School, Supply Officers School Command, and to submariner officers at the Submariners Officer Advanced Course.

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

1. Basic Lawyer Course (BLC). This 10-week course, offered three times in FY 2011, provides accession training for all Judge Advocates in the Navy, Marine Corps, and Coast Guard. The course includes extensive training in military justice and court-martial advocacy, as well as training in legal assistance, administrative law, standards of conduct, and operational law. Teaching methods include lecture, seminar, and practical exercises in both legal assistance skills and trial advocacy skills. Upon graduation, judge advocates are certified per Article 27(b), UCMJ. FY 2011 graduates: 168.

2. Legalman Accession Course. This 11-week course, offered once annually, trains Navy enlisted personnel selected for conversion to the Legalman rating. The course provides 10 ABA-certified credits towards a paralegal degree or certificate in partnership with Roger Williams University. In addition to military specific training in military justice, court reporting, administrative investigations, and administrative separations, the course includes four college-level courses taught by NJS officer instructors: Ethics, Legal Research and Writing I, Introduction to Law, and Emerging Legal Technologies. FY 2011 graduates: 42.

3. Basic Legal Services Specialist Course. This nine and a half-week course, offered three times annually, provides accession level training to junior enlisted Marines seeking the Military Occupational Specialty of Marine Corps Legal Services Specialist. Curriculum consists of training in military justice, post trial review, and legal administration. FY 2011 graduates: 57.

4. Legal Services Court Reporter Course. This 11- week course, offered twice annually, provides court reporter training to Legal Services Specialists, grades E-3 to E-7, seeking the necessary Military Occupational Specialty of Marine Corps Legal Services Court Reporter. The curriculum consists of court reporter training in closed-mask capture of legal proceedings at 225 wpm, court reporting grammar and punctuation, speech recognition technology, digital recording software, and the production of verbatim and summarized courts-martial proceedings. FY 2011 graduates: 41.

5. Senior Officer Course in Military Justice and Civil Law. This one-week course trains senior officers in the execution of the legal responsibilities of command with instruction in nonjudicial punishment, court-martial procedures, and administrative law. FY 2011 graduates: 780.

6. Legal Officer Course. This three-week course prepares non-lawyer Legal Officers to perform a host of military law functions in commands not large enough to warrant assignment of a judge advocate. FY 2011 graduates: 515.

7. Legal Clerk Course. Legal Clerks are typically assigned to assist non-lawyer Legal Officers within a command as a collateral duty. This two-week course provides training in the preparation of legal forms and reports, service record entries, nonjudicial punishment, and court-martial procedures. FY 2011 graduates: 378.

8. Senior Enlisted Leadership Course (SELC) in Military Justice and Civil Law. This three-day course provides senior enlisted leaders of all services training in a wide range of military law with primary focus on military justice matters. In Newport, portions of the SELC are incorporated into the core curriculum at the Navy's Senior Enlisted Academy. FY 2011 graduates: 397.

Continuing Legal Education. In addition to the "core" courses, NJS provided 20 continuing legal education (CLE) courses, many of which are pre-approved for CLE credit from state bar associations.

Most of these courses focus upon military justice (e.g., intermediate and advanced trial advocacy skills; computer crimes; national security cases; prosecuting and defending complex cases; reserve updates; and a number of paralegal courses). Training was provided to active duty and reserve judge advocates and enlisted legal professionals from the Sea Services, Army, Air Force, and foreign countries in military justice, operational law, administrative law, legal assistance, and estate planning. In FY 2011, these resident courses reached 761 active duty and 82 reserve legal professionals.

Legalman Paralegal Education Program (LPEP). Begun in 2010, LPEP is a government-funded full-time education program leading to an Associates of Arts degree in Paralegal Studies. The program is mandatory for all Legalmen in order to meet minimum occupational standards for the LN-paralegal rating. Following LN Accession, students participate in either the resident option, during which they study in-residence with Roger Williams University (RWU) for one semester, or the distance learning option, during which they study either online or with ABA-accredited schools local to their permanent duty stations. Fleet Legalmen are eligible to return to Newport for the in-resident semester with RWU, and also to participate in the distance learning option. In FY 2011, 69 students were registered in the resident option, and an additional 128 students were registered in the distance learning option.

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

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

Deployments. In FY 2011, four NJS instructors deployed to Iraq or Afghanistan in support of Task Force 134, Multi-National Force-Iraq, Multi-National Corps-Iraq, Joint Task Force 435, and the Afghan National Army Justice School.

MARINE CORPS ACTIVITIES

In FY 11, the Marine Corps litigated 174 general courts-martial and 452 special courts-martial to completion, representing 70 percent of all courts-martial in the Department of the Navy. At any given time the Marine Corps averages approximately 600 cases being handled at Law Centers and LSSSs Marine Corps-wide. As of 30 September 2011, the Marine Corps had 60 judge advocates assigned to defense counsel billets and 63 judge advocates assigned to trial counsel billets. Comparing this ratio of trial counsel and defense counsel to the number of Requests for Legal Services (RLSs) received during FY 11 indicates that the average trial counsel handled 44 cases and defense counsel handled 46 cases during FY 11. Although not an exact science, finding the right caseload per counsel requires a balance. Counsel must carry enough cases to gain a level of proficiency and establish an experience base, but not so many as to deteriorate their ability to provide competent representation in each individual case. Anecdotally, the number of Marine judge advocates currently assigned to military justice billets appears to be achieving this balance.

Analysis of Departmental trends indicates that while the number of general courts-martial has remained relatively constant, the overall number of adjudicated special courts-martial continues to decrease.

Although adjudicated special courts-martial have declined, there appears to be no corresponding reduction in the demand for military justice resources and expertise.

Marine Corps Law Centers and Legal Services Support Sections (LSSS) received 2770 Requests for Legal Services (RLSs) in FY 11 on military justice cases from commands within the Department of the Navy. Of those 2770 RLSs, 22 percent resulted in adjudicated general or special courts-martial. The other 78 percent were adjudicated using alternate forums or disposition methods. This data indicates that for borderline cases, Commanders continue to seek the advice and expertise of judge advocates at Law Centers and LSSSs, which results in a significant workload for these judge advocates (trial counsel and defense counsel) that is not captured in the raw numbers of adjudicated general or special courts-martial.

INITIATIVES

The strategic goals established in the Marine Corps Legal Services Strategic Action Plan 2010-2015 (SAP) continued to anchor Marine Corps Legal Services initiatives undertaken in FY 11.

1. Case Management System (CMS). The SJA to CMC's February 2010 mandate that all Law Centers and LSSSs throughout the Marine Corps use CMS as the single common court-martial tracking system continued to pay dividends in FY 11.

Through a series of initiatives and improvements to CMS, in FY 11 the Marine Corps has achieved total real-time visibility of all special and general courts-martial from receipt of RLS until completion of appellate review at the Navy-Marine Corps Appellate Review Activity (NAMARA). During FY 11 the Marine Corps also expanded CMS's capabilities to track courts-martial beyond the completion of appellate review to the ultimate termination point of certain cases: execution of the punitive discharge following appellate review. In FY 11 the Marine Corps also brought the Navy and Marine Corps Appellate Leave Activity (NAMALA) in as a CMS user, providing tracking and oversight functions for punitive discharge cases through issuance of the DD-214.

The Marine Corps also improved the functional capability of CMS in three additional ways: by expanding capability for report generation; by capturing all summary courts-martial processed and reviewed throughout the Marine Corps; and by requiring supervisor certification and validation to ensure compliance with Marine Corps responsibilities under the Victim-Witness Assistance Program.

2. Community Development, Strategy & Plans. Headquarters Marine Corps Judge Advocate Division (JAD) added a new Directorate for Community Development, Strategy and Plans (CDSP). The CDSP Directorate subsumed three branches and part of another branch under its purview: Information, Plans and Programs (JAI), Judge Advocate Support (JAS), the Reserve Support Section (JAS-R) and the Trial Counsel Assistance Program (TCAP), which had been part of the Military Justice Branch (JAM). This reorganization was tailored to facilitate implementation of the recently amended SECNAVINST 5430.27D, which expanded the role of the SJA to CMC to include regulatory responsibility for the military justice and legal assistance functions within the Marine Corps. Working in conjunction with Judge Advocate Division's Military Justice (JAM) and Legal Assistance (JAL) branches, and the Chief Defense Counsel (CDC) of the Marine Corps, the CDSP Directorate enables the Marine Corps legal community to provide those services. In addition, the SJA to CMC serves as the occupational field sponsor for, and oversees the professional development, training, and education of, all Marine judge advocates, legal administrative officers, and legal service specialists. The CDSP Directorate, through JAS, serves as a liaison for manpower and assignments issues, and provides input to HQMC on manpower and assignment-related questions for the Judge Advocate Division. Finally the CDSP Directorate serves as a capability enabler within Judge Advocate Division, and is ultimately responsible for implementation of various SAP goals and strategic long-term development and planning for the Marine Corps legal community.

3. Victim Witness Assistance Program (VWAP). The second annual VWAP training conference was held at Quantico, Virginia in March of 2011.

The conference provided baseline training to VWAP personnel by nationally recognized civilian experts, including specialized training on handling victims of sexual assault, and developed a series of objectives for each VWAP office to meet within certain set timelines. The students left with the ability to train unit level (Battalion and Squadron) Victim Witness Assistance Coordinators at their home stations. CDSP continued its coordination with the Department of Justice to ensure funding was available for at least three future training conferences.

4. Building Communities of Practice. The collaboration and mentorship that come from a true community of practice ensure that Marine judge advocates are best positioned to succeed in delivering quality legal services. To that end, the Marine Corps has re-committed to establishing communities of practice, in both the prosecution and defense bars.

A. Marine Corps Trial Counsel Assistance Program (TCAP). In FY 11, TCAP moved under the CSDP Directorate and became its own branch. It continued to invest in training Marine trial counsel and providing guidance in the prosecution of individual courts-martial. In FY 11, TCAP provided in-person training to approximately 118 Marine trial counsel during six different training courses. Three of these training courses were in collaboration with the Navy's Trial Counsel Assistance Program. During FY 11, TCAP implemented an electronic discussion board in an effort to build a community of practice among trial counsel. This permits quick dissemination of lessons learned and uses technology to leverage experience in the trial counsel community. TCAP also provided guidance in the prosecution of more than 300 cases. TCAP continues to pursue coordination among local military justice offices and to foster relationships among individual counsel in an effort to build a solid community of practice.

B. The Marine Defense Service Organization. Since 1985, the Marine Corps has maintained an independent defense organization headed by the Chief Defense Counsel of the Marine Corps (CDC).

Although this model has proven effective at providing defense counsel with mentorship, supervision and resources to represent accused service members professionally and competently, the SJA to CMC, in conjunction with the CDC and a working group of senior judge advocates, recently completed an eighteen-month evaluation of Marine Corps trial defense services to address potentially outdated or outmoded policies and procedures. On 29 September 2011, the SJA to CMC published a complete revision to the Marine Corps service regulations for the provision of defense counsel services that also reorganized the Marine Corps defense counsel community into the Marine Corps Defense Services Organization (DSO) and clarified the duties, responsibilities, and authorities of supervisory defense counsel. In addition, this revision ensures compliance with appellate court decisions concerning the assignment of defense counsel and otherwise helps improve the provision of defense services overall.

5. Manpower Initiatives Affecting Military Justice. The final report of the Independent Review Panel to Study the Judge Advocate Requirements of the Department of the Navy (506 Panel), published in February 2011, presented a thorough review of the manpower requirements associated with the Marine Corps's military justice and other legal missions and concluded that there was a requirement for approximately 550 active-duty Marine judge advocates. The Marine Corps began to address the judge advocate shortage well in advance of receiving the final report of the 506 Panel. Specifically, at the beginning of FY 11, there were 473 judge advocates across the Marine Corps. By the end of FY 11, there were 530. The Marine Corps anticipates reaching the 550 judge advocate inventory recommended by the 506 Panel in FY 12.

To retain experience in the company grade ranks, the Marine Corps has continued to offer all judge advocates an opportunity to remain on active duty. By maintaining high career designation rates and reducing the cost to company grade judge advocates of staying on active duty through the continuation of the Law School Education Debt Subsidy (LSEDS) program, the Marine Corps has avoided sacrificing experience while increasing its manpower numbers.

6. Reserve Legal Services Support Section (JRS). The JRS enhances the ability of the SJA to CMC to coordinate the employment of over 310 Marine reserve judge advocates, including those whose focus is military justice. Three of the six JRS branches - the Defense Services Branch, the Trial Services Branch, and the Trial Judiciary Branch - perform functions specifically related to military justice. They are staffed by seasoned attorneys capable of responding to the requirements of the trial and defense communities as well as to serve as judges to support the judiciary. TCAP and the DSO have increased utilization of the JRS to capitalize on the litigation expertise of Marine reserve judge advocates. Reservists have assisted in case preparation and training in both prosecution and defense, and conducted Article 32 investigations in complex cases.

POST-TRIAL CASE PROCESSING

In FY 11, 1,919 general, special, and summary courts-martial entered the post-trial process. For those special and general courts-martial required to be forwarded to NAMARA, post-trial processing times increased slightly; the average time it took to process a case from date of final adjudication to convening authority's action increased by 4 days in FY 11. *United States v. Moreno* sets forth time limits of 120 days from date of trial (sentencing) to Convening Authority's Action (CAA) and 30 days from CAA to docketing of the case with the Court of Criminal Appeals, for a total of 150 days. The average time post-trial processing time for Marine Corps courts-martial remains well within the standards required by *Moreno*.

On 24 February 2010, one week after the effective date of implementation of CMS, 41 of the 121 total cases in the post-trial process exceeded 120 days from the date of trial (sentencing) to CAA. As of 28 September 2010, after seven months of mandatory CMS use, only three of 138 total cases fell in this category. By the end of FY 11, no cases fell into this category.

The decrease in post-trial cases over the 120 or 150 day time limits is primarily due to increased vigilance by military justice supervisors at all levels, along with additional oversight by Judge Advocate Division through the use of CMS.

Cases that appear over 90 days are flagged yellow on CMS via an automatic alert system and reported to the SJA to CMC. Cases that exceed 120 days are flagged red and also reported to the SJA to CMC. Because CMS is a real-time case tracker, JAD is able to identify issues as they occur and to offer assistance as the need arises. The institutionalization of active monitoring at all supervisory levels through a single database real-time tracking system continues to ensure that every law center, LSSS, and SJA office consistently meets post-trial processing requirements. At the end of FY 11, every Law Center or LSSS in the Marine Corps met the requirements of *Moreno* for post-trial processing of a case from date of adjudication to completion of CAA and receipt at NAMARA.

CONCLUSION

The Marine Corps continued to try the majority of the court-martial caseload for the Department of the Navy in FY 11. While the number of special court-martial cases declined, there has not been a concurrent reduction in the demand for military justice resources and expertise. The number of general court-martial cases remained relatively constant, contested court-martial numbers are high, and alternate disposition numbers (e.g., administrative separations and summary courts-martial) remained high. Commanders' decisions to dispose of offenses at lower forums still require advice and case-work on the trial counsel side, client representation on the defense side, and military justice expertise and advice from the cognizant Staff Judge Advocate.

As discussed by the 506 Panel, the Marine Corps has been successful in its efforts to right-size the legal community in order to meet these constant demands for military justice services and resources. Ending FY 11 with 530 active duty judge advocates, the Marine Corps judge advocate community is well-positioned to achieve the 506 Panel goal of 550 active duty judge advocates by mid-FY 12. More importantly, Judge Advocate Division continues to look at ways to organize efficiently and effectively. Through training and development initiatives, the Marine Corps legal community continues to improve its level of expertise and sophistication at all ranks to ensure that Commanders are provided with maximum competence and flexibility in the provision of legal services.

Through a number of leadership and training initiatives, Judge Advocate Division is focused on developing communities of practice to ensure that our judge advocates are operating at their maximum potential. Thus far, the complete revision of the defense services regulations has been regarded as a great success. Meanwhile TCAP, completing its first full year as a separate branch, is providing a similar positive impact for prosecutors. The post-trial review process has notably improved in efficiency and effectiveness through total visibility of cases, while structural changes in the court reporter community have affected productivity, which has been addressed through revolutionized training programs. In FY 12, Judge Advocate Division will better be able to assess the impact of TCAP and the DSO on quality of the trial and defense bar within the Marine Corps legal community, and the effect of improvements in court-reporter training programs.

As with other areas of practice, the Marine Corps legal community constantly strives to improve the delivery of military justice services. In FY 11, the Marine Corps legal community was able to capitalize on some major changes to regulation and policy in FY 10. The impact of many of the initiatives highlighted in this Report will be truly realized in FY 12 and onward. Trends in military justice, including increasing use of alternate disposition and a high load of contested courts-martial, will continue to require sophistication and expertise. Through a philosophy of introspectiveness, and with the Strategic Action Plan as its guide, the Marine Corps legal community promises to meet its mission in FY 12 and beyond, while it continues to aggressively experiment with new initiatives to elevate the practice of law in the Marine Corps.

FY	USMC End Strength	GCM	SPCM	SCM	Total Courts	NJP
FY 11	201,157	174	452	1,289	1,915	9,798
FY 10	202,729	197	649	1,695	2,485	11,774
FY 09	202,000	140	675	1,670	2,485	11,772
FY 08	198,505	163	692	1,373	2,228	10,425
FY 07	180,169	149	800	1,262	2,211	15,012

The chart above reflects cases tried in the Marine Corps over the last five fiscal years.

JAMES W. HOUCK
Vice Admiral, JAGC, U.S. Navy
Judge Advocate General of the Navy

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

Report Period: FY 2011

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED		CONVICTED		ACQUITTALS		RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
	USN	USMC	USN	USMC	USN	USMC	
GENERAL	120	174	105	154	15	20	-8.4%
BCD SPECIAL	152	452	133	413	19	39	-24.8%
NON-BCD SPECIAL	0	0	0	0	0	0	0
SUMMARY	133	1289	130	1261	3	28	-23%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT							-22%

PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES	108
NUMBER OF BAD-CONDUCT DISCHARGES	116
SPECIAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF BAD-CONDUCT DISCHARGES	333

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	211
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	312
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	43

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

TOTAL ON HAND BEGINNING OF PERIOD		191
GENERAL COURTS-MARTIAL	100	
BCD SPECIAL COURTS-MARTIAL	91	
REFERRED FOR REVIEW		578
GENERAL COURTS-MARTIAL	247	
BCD SPECIAL COURTS-MARTIAL	331	
TOTAL CASES REVIEWED		529
GENERAL COURTS-MARTIAL	234	
BCD SPECIAL COURTS-MARTIAL	295	
TOTAL PENDING AT CLOSE OF PERIOD		226
GENERAL COURTS-MARTIAL	104	
BCD SPECIAL COURTS-MARTIAL	122	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-23%

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

NUMBER	578
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 (81)	14%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+3%
PERCENTAGE OF TOTAL PETITIONS GRANTED (36)	44%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	10%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA	6%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+3%

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		6	
RECEIVED		15	
DISPOSED OF		14	
GRANTED	1		
DENIED	12		
NO JURISDICTION	1		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		7	

PART 8 – ORGANIZATION OF COURTS

TRIALS BY MILITARY JUDGE ALONE	678	
GENERAL COURTS-MARTIAL	193	
SPECIAL COURTS-MARTIAL	485	
TRIALS BY MILITARY JUDGE WITH MEMBERS	221	
GENERAL COURTS-MARTIAL	101	
SPECIAL COURTS-MARTIAL	119	

PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ

NUMBER OF COMPLAINTS	47	

PART 10 – STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	530,800	

PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	18,426	
RATE PER 1,000	35	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-14.6%	

SECTION 5

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

REPORT OF

THE JUDGE ADVOCATE GENERAL

OF THE UNITED STATES AIR FORCE

OCTOBER 1, 2010 TO SEPTEMBER 30, 2011

THE AIR FORCE COURT OF CRIMINAL APPEALS

The Air Force Court of Criminal Appeals (AFCCA) reviewed 214 cases in Fiscal Year 2011, along with three cases brought under Article 62, UCMJ, and a host of cases remanded to the Court due to two significant changes in legal precedent. In addition, the Court heard four oral arguments at civilian law schools and in the courtroom of the Supreme Court of the State of Nevada in Las Vegas, through its "Project Outreach" program, to include: Loyola University New Orleans College of Law, Seattle University School of Law, University of California at Los Angeles School of Law, and a Trial Advocacy Course at Nellis Air Force Base, Nevada.

In the spring of 2011, the Court moved from Joint Base Anacostia-Bolling, District of Columbia, to a brand new, state-of-the-art facility at Joint Base Andrews Naval Air Facility Washington, Maryland (Joint Base Andrews). As the first of its kind in the military, the new system enables counsel to project images from electronic or hardcopy media onto a multipart screen that can broadcast such demonstrative aids to the entire audience, as well as an off-site audience through video teleconferencing when travel to the Court is impractical. Additionally, the new courtroom is equipped with interactive media that enables appellate counsel to demonstrate a point by electronically drawing upon a projected diagram or image while it is posted on the screen. The Court has seen a significant increase in the frequency of oral arguments since the move to the new courtroom.

The size of the Court remained at five active-duty judges, but experienced substantial personnel turnover.

Such transitions resulted in a new Chief Judge, three new Associate Judges, a new Chief Commissioner, three new Honors Law Clerks, and a new Deputy Clerk of the Court, after the departure of personnel previously assigned in those positions.

In addition to performing their statutory responsibilities, members of the Court used their judicial experience to assist the Air Force and Department of Defense in other areas. In September of 2011, the Court hosted the William S. Fulton, Jr., Military Appellate Judges' Conference, targeted at educating military appellate judges across all service branches on the issues that arise in appellate practice. Additionally, three of the appellate judges served on the United States Court of Military Commission Review (USCMCR), and, in accordance with the Military Commissions Act of 2009, heard oral arguments and participated in rendering the historic opinions of *United States v. Hamdan*, CMCR 09-002, 2011 WL 2923945 (U.S.C.M.C.R. 24 June 2011), and *United States v. Al Bahlul*, CMCR 09-001, 2011 WL 4916373 (U.S.C.M.C.R. 9 September 2011). One judge provided back-up support to the trial judiciary by serving as the trial judge at Joint Base Andrews. Finally, a Senior Appellate Judge presided over several Environmental Impact hearings, held in accordance with the National Environmental Policy Act. The hearings allowed for federal receipt of public comment on any potential change in base mission which could impact the environment.

In sum, the Court continues to participate in a number of training and Outreach programs for judge advocates and civilians, draws upon the strengths of the judges to fill additional judicial roles, and builds upon the use of technology to make its operations more accessible to the public.

TRIAL JUDICIARY

The Air Force Trial Judiciary Directorate (JAT) is responsible for trying and docketing all Air Force general and special courts-martial and presiding over an array of federal hearings.

The Directorate is staffed by nineteen active-duty trial judges, four reserve trial judges, one noncommissioned officer, and one civilian employee. The office of the Chief Trial Judge is co-located with the Central Docketing Office at Joint Base Andrews and includes the Deputy Chief Trial Judge, one noncommissioned officer, and a civilian Clerk of Trial Courts. The remaining JAT personnel, all trial judges, are postured in a variety of geographically advantageous locations around the globe, including Kadena AB, Japan; Travis AFB, California; Joint Base Lewis-McChord, Washington; Nellis AFB, Nevada; the United States Air Force Academy in Colorado Springs, Colorado; Offutt AFB, Nebraska; Randolph AFB, Texas; Sheppard AFB, Texas; Eglin AFB, Florida; Charleston AFB, South Carolina; Ramstein AB, Germany; and RAF Lakenheath, United Kingdom.

In Fiscal Year 2011, Air Force judges presided over 661 general and special courts-martial. Judges have also served as investigating officers in numerous complex and high-profile Article 32 investigations, as legal advisors for officer discharge and other administrative boards, as hearing officers in parole violation hearings, and have presided at Environmental Impact hearings.

The Chief Regional Military Judge in Europe presided over four courts-martial at deployed locations within the United States Central Command area of responsibility. Two of those trials took place at Bagram AB, Afghanistan. Currently, five Air Force trial judges have been detailed to the military commissions in Guantanamo Bay, Cuba.

Air Force judges served as ambassadors for military justice in classrooms. Directorate personnel instructed new military judges at The Army Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Directorate personnel also lectured at a number of Judge Advocate Staff Officer Courses at the Air Force Judge Advocate General's School (JAG School), Maxwell AFB, Alabama. Air Force judges also instructed at various trial advocacy courses, law school moot courts, and undergraduate mock trial competitions to enhance current and future practitioners' litigation skills.

Two significant publications by trial judges debuted in Fiscal Year 2011. An Atlantic Region judge's book titled, "*Law in War, Law as War: Brigadier General Joseph Holt and the Judge Advocate General's Department in the Civil War and Early Reconstruction*" was published by the Carolina Academic Press. The book details a history of the JAG Corps during the Civil War and all of the military tribunals. The book was also reviewed in the Journal of Military History. The Chief Regional Military Judge in the Central United States had his article "*The Corroboration Quandary: A Historical Overview of the Interpretation of MRE 304(g)*" published in the Air Force Law Review.

Air Force trial judges offered invaluable input on the future of Article 120 and the proposed revision of the Military Rules of Evidence. The outgoing Deputy Chief Trial Judge testified before the House Armed Services Committee to provide a former judge's perspective on the current Article 120 to help members of Congress understand why the joint military justice community requested changes to Article 120.

The Air Force hosted a total of over 120 judges from all the services at the 37th Annual Interservice Military Judges' Seminar. The Seminar was held at the Air Force JAG School. The weeklong seminar consisted of continuing legal education lectures, seminars on emerging issues, and a variety of collegium opportunities.

The Trial Judiciary began an Air Force JAG Corps-wide training initiative, *A View from the Bench*, in which military judges provide practical litigation and advocacy tips to counsel on a quarterly basis. The guidance is distributed electronically via The Judge Advocate General's on-line news service. Where possible, the author participates in a live Webcast hosted by the JAG School shortly after the guidance is published.

Finally, one of our Western Region military judges donated his bone marrow for transplant to a leukemia patient. The patient is recovering nicely after this life-saving procedure.

AIR FORCE JUDICIARY

The Air Force Judiciary Directorate (JAJ) is responsible for the administration of military justice across the Air Force. JAJ advises The Judge Advocate General (TJAG), the Chief of Staff of the Air Force and the Secretary of the Air Force on military justice matters, works with the other uniformed services to propose legislation and modifications to executive orders pertaining to military justice, assists convening authorities and staff judge advocates in the field, and provides the highest quality defense services to Airmen worldwide. Through its Enlisted Court Reporter program, the directorate provides expeditionary court reporter support for all deployed courts, mishap and other investigations. The directorate also supervises the delivery of court reporter services worldwide for all in-garrison events and, through its file sharing program, optimizes the use of available civilian court reporter assets to transcribe past events.

The Directorate performs its mission through five divisions: the Government Trial and Appellate Counsel Division; the Appellate Defense Division; the Trial Defense Division; the Military Justice Division; and the Clemency, Corrections and Officer Review Division.

GOVERNMENT TRIAL AND APPELLATE COUNSEL DIVISION

The Government Trial and Appellate Counsel Division (JAJG) is comprised of two sub-divisions: Appellate Government Counsel and Senior Trial Counsel.

APPELLATE GOVERNMENT COUNSEL

During this past year, appellate counsel vigorously represented the government in Article 66 and Article 67 appeals of Air Force courts-martial convictions. The division also sought and obtained certification from TJAG in two cases for United States Court of Appeals for the Armed Forces (USCAAF) review, and filed government appeals in five cases under Article 62, UCMJ.

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

Counsel provided intense advocacy training and field support. Division counsel educated judge advocates and paralegals at Air Force training events such as Trial Advocacy Courses, the Military Justice Administration Course, the Trial and Defense Advocacy Course, Numbered Air Force conferences, and the KEYSTONE Leadership Summit. The division also created and posted comprehensive trial and appellate materials on the JAJG Learning Center hosted on the JAG School's CAPSIL online resource. Appellate counsel also published an electronic newsletter containing appellate updates along with timely and relevant articles for military justice practitioners at all levels.

The division continued to fulfill its obligation to support war-fighting commanders through the deployment of personnel. One of our experienced appellate government counsel completed a six-month deployment to the Combined Joint Interagency Task Force 435, bringing legal stability and progress to Afghanistan.

Throughout the year, division personnel continued to engage in a variety of activities designed to further the professionalism of military justice practice, particularly at the appellate level. The division's counsel participated in events hosted by USCAAF, including the Court's annual Appellate Advocacy Symposium, hosted in conjunction with the Judge Advocates Association. Appellate government counsel have actively built relationships with sister service counterparts through participation in quarterly meetings and regular consultation on matters of common interest to all the services. The division also hosted one summer intern, a law student who had completed her second year of law school and expressed an interest in service as a judge advocate.

This bright young professional significantly supported the division mission by conducting legal research and writing appellate briefs and motions, and was positively influenced by her experience in the internship program. JAJG's intern recently applied for accession as a new Air Force judge advocate upon completion of law school and her bar examination, continuing a long-standing tradition of JAJG interns advancing to service as Air Force judge advocates.

The division receives crucial appellate counsel support from eleven assigned reserve judge advocates. They continue to provide superb support, greatly assisting the division in carrying out its mission. In addition to preparing written briefs, two reserve counsel presented oral arguments before USCAAF during the fiscal year.

A summary of Air Force Appellate Government practice follows:

AFCCA		**FY07**	**FY08**	**FY09**	**FY10**	**FY11**
	Briefs Filed	267	188	156	123	144
	Cases Argued	20	19	16	9	14

USCAAF		**FY07**	**FY08**	**FY09**	**FY10**	**FY11**
	Briefs Filed	41	41	23	28	29
	Cases Argued	24	15	13	12	15

SUPREME COURT		**FY07**	**FY08**	**FY09**	**FY10**	**FY11**
	Petition/Waivers Filed	10	4	3	3	0
	Briefs Filed	0	0	0	0	0

SENIOR TRIAL COUNSEL

Personnel authorizations for the fiscal year included seventeen Senior Trial Counsel (STC) at eleven locations worldwide: three counsel at Joint Base Andrews, Maryland; two counsel each at Ramstein AB, Germany; Joint Base Lewis-McChord, Washington; Peterson AFB, Colorado; and Randolph AFB, Texas; and one counsel each at Travis AFB, California; Nellis AFB, Nevada; Offutt AFB, Nebraska; Scott AFB, Illinois; and Kadena AB, Japan. A new position was created where an individual serves as both an STC at Joint Base Andrews and as liaison to the Defense Computer Forensics Laboratory in Linthicum, Maryland. STCs are detailed to prosecute cases by the division headquarters at Joint Base Andrews, and their primary responsibility is to represent the government in the most complex, litigated general courts-martial. STCs routinely prosecute between 70 and 80 percent of all Air Force general courts-martial. They are also available for special courts-martial, discharge boards and other proceedings, as resources allow.

In 2011, the STC program underwent minor structural changes to increase efficiencies. Some single STC sites were realigned to bases where existing STCs are currently assigned. Three STC positions were designated to be filled with O-4s with significant litigation experience to provide enhanced litigation capabilities, as well as a focal and mentor point for other STCs in those areas.

In the past year, STCs spent more than 2,145 days on temporary duty away from their home station, and represented the government in 267 courts-martial and ninety-two other proceedings. While STCs have primary areas of responsibility, they cross all geographical boundaries to try cases, regardless of their home station.

The past year saw a continued emphasis on providing our STCs with the training and tools required for them to thrive, with an emphasis on prosecuting sexual assaults. In August, the fifth annual Senior Trial Counsel Conference was held at Joint Base Andrews, bringing together the assigned STCs as well as those projected to join the program during the summer assignment season.

The attorneys met for a week of training and networking with trial and appellate counsel. STCs also attended training courses across the country including the Prosecuting Complex Cases Course at the Naval Justice School, the Computer Crimes Course at the Naval Justice School, and the Sexual Assault Investigation and Prosecution Course put on by the Navy. STCs also continued the tradition of spending a week performing appellate work in our appellate office, which broadened their trial and appellate perspective.

APPELLATE DEFENSE DIVISION

Promoting timely appellate review is a top priority for the Appellate Defense Division (JAJD), with an emphasis on seeking to obtain relief for clients when such relief (such as reduced confinement) would still be meaningful. The Appellate Defense Division began Fiscal Year 2011 with approximately 198 cases pending initial briefing to AFCCA and ended Fiscal Year 2011 with 195.

Significant JAJD victories during the fiscal year included *United States v. Blazier*, 69 M.J. 218 (C.A.A.F. 2010), in which the Court of Appeals for the Armed Forces provided additional guidance regarding the Confrontation Clause's requirements for the admission of drug testing evidence; *United States v. Prather*, 69 M.J. 338 (C.A.A.F. 2010), in which the Court held that a portion of Article 120 constitutes "an unconstitutional burden shift"; *United States v. Beaty*, 70 M.J. 39 (C.A.A.F. 2011), in which the Court held that the maximum sentence for possessing an image that "appears to be a minor engaging in sexually explicit conduct" is four months' confinement and forfeiture of two-thirds pay per month for two months; and *United States v. Shook*, __ M.J. __, No. ACM 37593 (A.F. Ct. Crim. App. July 14, 2011), in which the Air Force Court held that a hearing to establish misconduct to justify withdrawal from a pretrial agreement must be personally conducted by the Special Court-Martial Convening Authority.

The Air Force Appellate Defense Division also provided an amicus curiae brief to the Navy-Marine Corps Court of Criminal Appeals and participated in the oral argument in *United States v. Lee*, 70 M.J. 535 (N-M. Ct. Crim. App. 2011), concerning conflicts of interest between a trial defense counsel and an accused.

The Appellate Defense Division continued to support trial defense counsel in the field through consultation, including in time-critical situations. Appellate defense counsel also kept counsel in the field updated on new developments in military criminal law via appellate updates throughout the year. These appellate updates included briefings at five different Trial Advocacy Courses.

Appellate defense counsel have contributed to Project Outreach, sponsored by USCAAF and AFCCA, by conducting oral arguments before audiences at Stanford University School of Law, Stanford, California; the Nevada Supreme Court, Las Vegas, Nevada; UCLA School of Law, Los Angeles, California; Loyola University, New Orleans, Louisiana; and Hofstra University School of Law, Long Island, New York. These arguments helped educate attendees on the fairness and professionalism of the military justice system.

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

AFCCA		**FY 07**	**FY08**	**FY09**	**FY10**	**FY11**
	Briefs Filed	541	352	285	290	299
	Cases Argued	20	14	16	4	9

USCAAF		**FY07**	**FY08**	**FY09**	**FY10**	**FY11**
	Supplements to Petitions	261	293	336	204	160
	Grant Briefs	24	15	12	18	11
	Cases Argued	24	15	13	17	17

SUPREME COURT	FY07	FY08	FY09	FY10	FY11
Petitions	9	4	3	2	1
Briefs in Opposition	0	0	0	0	0
Briefs on the Merits	0	0	0	0	0

TRIAL DEFENSE DIVISION

The Trial Defense Division (JAJD) is responsible for providing all trial defense services within the Air Force through Area Defense Counsel (ADC), Defense Paralegals (DP), Senior Defense Counsel (SDC), Chief Senior Defense Counsel (CSDC), and Defense Paralegal Managers (DPM). These personnel report to the Chief, JAJD, who reports to the Director, United States Air Force Judiciary (JAJ). The Chief, JAJD, is assisted by the Deputy Chief, Policy and Training, and an Office Superintendent. In March 2011, AFLOA/JAJD relocated to Joint Base Andrews.

The Division is staffed with eighty-three ADCs stationed at sixty-eight bases worldwide. They are assisted by seventy-two DPs. The Division has nineteen SDCs and three CSDCs. Each CSDC supervises six or seven SDCs. A DPM is assigned to each of the three CSDCs. The SDCs are stationed at Joint Base Andrews, Maryland; Joint Base Langley-Eustis, Virginia; Joint Base Charleston, South Carolina; Hurlburt Field, Florida; Maxwell AFB, Alabama; Barksdale AFB, Louisiana; Randolph AFB, Texas; Sheppard AFB, Texas; Tinker AFB, Oklahoma; Peterson AFB, Colorado; Offutt AFB, Nebraska; Joint Base Lewis-McChord, Washington; Travis AFB, California; Nellis AFB, Nevada; Davis-Monthan AFB, Arizona; Yokota AB, Japan; Kadena AB, Japan; RAF Lakenheath, United Kingdom; and Ramstein AB, Germany. The Division gained one additional SDC position from our numbers in Fiscal Year 2010 due to the discontinuation of the Instructor Litigator program which became final during the summer rotation. Each SDC was co-located with the ADC office at their respective location.

In addition to traditional defense services, the Division also acquired oversight responsibility for the Office of Airman's Counsel (OAC) at Lackland AFB, TX. The OAC provides legal assistance and counsel for Airmen going through the physical evaluation board process. The OAC office was manned by three attorneys, one paralegal overhire and one educational intern when it became part of JAJD on 1 April 2011. Between October and December 2011, three temporary attorneys and two temporary paralegals - Reservist and Air National Guard personnel - joined the staff. A plan to plus-up the size and capabilities of this office calls for adding eighteen active duty personnel - nine judge advocates and nine paralegals - by 31 July 2012, which will bring the total office manning to twenty-three personnel. As the current OAC office space will not support the planned manning increase, facility options are being aggressively pursued.

The continuing success of the Air Force's ADC Program is largely attributable to its independence and its energized personnel. To ensure the best representation for Air Force clients, training remains a top priority for the division. On a continuing basis, each SDC provided on-the-job training and mentoring to the ADCs in their charge. Each CSDC, in turn, mentored the SDCs in their charge. Newly appointed ADCs and DPs received formal training at the combined ADC/DP Orientation course held at the JAG School. SDCs attended a JAJD-run Leadership Conference at Joint Base Andrews. Defense personnel also attended an annual Trial Advocacy Course (TAC) conducted by JAG School. In addition, the Division continues to send ADCs and SDCs to the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course as appropriate.

Upgrading of ADC facilities is also a continuing JAJD priority. The offices at Cannon AFB, McChord AFB, RAF Lakenheath, Seymour Johnson AFB, and Travis AFB offices into new or renovated facilities while the Kadena AB office made improvements to their existing facility. Additionally, a new ADC facility at Al Udeid is in its final stages of construction and the Randolph facility is in the early stages of finding a new location or planning renovations.

MILITARY JUSTICE DIVISION

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

During the past fiscal year, JAJM provided 116 formal opinions concerning AFBCMR applications; received fifty-two inquires in specific cases requiring formal written replies to senior officials, including the President and Members of Congress; and reviewed twenty-seven records of trial for review under Article 69a, UCMJ, and seven records under Article 69b, UCMJ. The Division presented the 14th annual Military Justice Administration Workshop at the JAG School, a "back to basics" one-week workshop attended by both judge advocates and paralegals. Division personnel also taught at the Staff Judge Advocate Course and GATEWAY, an intermediate judge advocate course for majors at Maxwell AFB, Alabama. Division personnel briefed Air Force JAG Corps leaders on the status of their military justice programs and new initiatives in the military justice arena and the importance of swift post-trial processing during the annual KEYSTONE Leadership Summit.

In Fiscal Year 2011, the JAG Corps implemented new processing time standards putting an even greater emphasis on the commander's sight picture - the view from discovery to disposition of the offense. The new standards provide enhanced visibility into the entire process leading to increased accountability and shorter total timelines. These new standards depend upon an integrated teaming approach among commanders, investigators and JAGs to rapidly investigate and act upon reports of misconduct, ensuring swift and fair justice.

Following implementation of these case processing standards in Fiscal Year 2011, division personnel rewrote the two major military justice instructions.

JAJM continued its direct involvement in the development and implementation of DoD and Air Force sexual assault prevention and response policies and procedures. The division secured funding from DoD and the Department of Justice (DoJ) to train 32 Air Force personnel in the Victim and Witness Assistance Program at the National Center for the Victims of Crimes (NCVC) 2011 National Conference. JAJM co-sponsored, with the U.S. Army, the Military Institute on the Prosecution of Sexual Violence. This interactive course, with both civilian and military facilitators, is designed to shape how military prosecutors view and analyze crimes of sexual violence, providing them with useful tools and varied approaches to the prosecution of these difficult cases. In addition, a division representative served as a principal trainer for judge advocates, sexual assault response coordinators, and victim advocates for both DoD and the Air Force.

JAJM supported the war effort during Fiscal Year 2011 by deploying two judge advocates to Afghanistan and providing one paralegal to serve as the deployment manager for the Air Force Legal Operations Agency.

JAJM continued to coordinate military justice actions with high-level agencies, such as working closely with the DoJ on testimonial immunity requests for non-military witnesses and with the Office of the Secretary of the Air Force on officer requests to resign rather than face trial by court-martial. Division representatives played a key role in establishing a new victim-victim advocate privilege and drafting legislative changes contained in the National Defense Authorization Act for Fiscal Year 2012, including a revised Article 120, UCMJ, to fix unconstitutional provisions related to sexual assault offenses, and Article 47, to provide document subpoena authority for Article 32 investigations. Finally, division representatives authored changes to the Military Rules of Evidence for a pending Executive Order.

CLEMENCY, CORRECTIONS AND OFFICER REVIEW DIVISION (JAJR)

At the end of Fiscal Year 2011, 432 Air Force personnel were in confinement. Of those, eighty-five inmates were in long-term confinement at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and sixty were serving their sentence in the Federal Bureau of Prisons system. Seven inmates were enrolled in the Air Force Return-to-Duty Rehabilitation Program during Fiscal Year 2011; five successfully completed the program and were returned to duty. The number of Air Force members and former members on parole or Mandatory Supervised Release at the end of Fiscal Year 2011 was seventy-nine.

During the reporting period, the Division completed five Article 71, UCMJ, reviews of officer dismissal cases. As was recommended, the Secretary approved the dismissals in all cases. The Division also prepared one case for Secretarial clemency under Article 74, UCMJ.

THE JUDGE ADVOCATE GENERAL'S SCHOOL

The JAG School is the educational arm of the JAG Corps. Located at Maxwell AFB, Alabama, the JAG School provided education and training in all aspects of military legal practice to attorneys and paralegals from all military services, other federal agencies, and many foreign countries. Military justice instruction included advocacy, administration, the rules of evidence, and the rules of procedure. JAG School faculty members also provided instruction on military justice for several schools and colleges throughout Air University, the Air Force's center for education. During Fiscal Year 2011, the JAG School instructed just under 20,000 students at these military institutions.

Additionally, the JAG School published articles concerning military justice and other criminal justice issues in *The Reporter, The Air Force Law Review,* and *The Military Commander and the Law.* JAG School webcasts allow subject-matter experts to brief timely military justice topics to all base legal offices and defense offices.

Recorded webcasts are available on CAPSIL, a web-based collaborative learning and management system administered by the JAG School and accessible to all members of the JAG Corps. The JAG School has thirty-nine web-based training modules on military justice topics.

Nearly 2,900 students attended in-residence courses in Fiscal Year 2011. Of the fifty-three courses conducted, the following devoted substantial resources to military justice-related topics:

Advanced Trial Advocacy Course
Annual Survey of the Law (Reserve and Air National Guard)
Article 32 Investigations Course
Defense Orientation Course (for new ADCs and DPs)
Interservice Military Judge's Seminar
Judge Advocate Staff Officer's Course
Law Office Manager Course
Military Justice Administration Course
Paralegal Apprentice Course
Paralegal Craftsman Course
Staff Judge Advocate Course
Trial and Defense Advocacy Course

In addition to the above courses, the JAG School hosted trial advocacy courses at Joint Base Andrews, Maryland; Lackland AFB, Texas; Nellis AFB, Nevada; Yokota AB, Japan; and Kapaun AS, Germany. The courses for Fiscal Year 2011 focused on foundational advocacy.

LEGAL INFORMATION SERVICES

During Fiscal Year 2011, the Legal Information Services Directorate (JAS) continued to develop new legal information technology (IT) tools and improve existing ones to better support military justice business processes throughout the Air Force.

JAS, in conjunction with JAJM, is leading JAG Corps efforts to redesign the Automated Military Justice Analysis and Management System (AMJAMS). Users at all levels have requested major additional capabilities to AMJAMS.

For a number of reasons, only a complete, ground-up redesign of AMJAMS can provide the requested enhancements. Chief among them are the significant technological advances in databases and delivery technologies that have occurred since AMJAMS' initial release in 1972, the need for more logical data entry, and the lack of adaptability to changing needs inherent in the architecture of the current system. In short, AMJAMS is antiquated in technological terms. The deliverable is to create a new system that fully integrates the following four user group modules: installation-level, trial courts, appellate courts, and statistical data and reports analysis. The modules would have the following interactive capabilities: case management, case analysis and statistics record keeping, court calendar docket scheduling (replacing the Judiciary Docketing System), electronic record of trial production, electronic filing, court-member management, task management merging form capability, document management, and victim witness assistance management. JAS anticipates completing the IT design requirements in early 2012.

PERSONNEL

As of 30 September 2011, the Air Force Judge Advocate General's Corps had 1,241 judge advocates on active duty. Company grade officers (lieutenants and captains) made up just over 50 percent of that number (628). Approximately 24 percent were majors (298) and just over 16 percent were lieutenant colonels (201). Colonels (114) and above, including one lieutenant general, one major general, and four brigadier generals, comprised approximately 9 percent of the Corps. The Air Force Judge Advocate General's Corps Reserve included 873 Air Force Reserve IMA, Air Force Reserve unit-assigned, and Air National Guard judge advocates, of which 16 percent (138) were company grade officers and 71 percent (625) were field grade officers (majors and lieutenant colonels). The remaining 13 percent consisted of 105 colonels, four brigadier generals, and one major general.

RICHARD C. HARDING
Lieutenant General, USAF
The Judge Advocate General

Period: Fiscal Year 2011

PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT
GENERAL	262	233	29	-8.28%
BCD SPECIAL	402	121	47	-6.8%
NON-BCD SPECIAL [A]		234		
SUMMARY	144	143	1	-2.0%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				

PART 2 - DISCHARGE APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES [B]	65	
NUMBER OF BAD CONDUCT DISCHARGES	124	
SPECIAL COURT-MARTIAL (CA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES	120	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	183	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	118	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	42	

PART 4 - WORK LOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		258	
GENERAL COURTS-MARTIAL	246		
BCD SPECIAL COURTS-MARTIAL	104		
REFERRED FOR REVIEW		301	
GENERAL COURTS-MARTIAL	183		
BCD SPECIAL COURTS-MARTIAL	118		
TOTAL CASES REVIEWED		214	
GENERAL COURTS-MARTIAL	98		
BCD SPECIAL COURTS-MARTIAL	116		
TOTAL PENDING AT CLOSE OF PERIOD		345	
GENERAL COURTS-MARTIAL	226		
BCD SPECIAL COURTS-MARTIAL	104		

RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (214/301)	-1.08%

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE AIR FORCE COURT OF CRIMINAL APPEALS

NUMBER	279/301
PERCENTAGE	92.69%

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

PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF 162/214 [C]	75.70%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-1.11%
PERCENTAGE OF TOTAL PETITIONS GRANTED 19/162	8.52%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-09%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY AFCCA 19/301	8.87%
RATE OF INCREASE (+) / DECREASE (-)OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	.94%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69

PENDING AT BEGINNING OF PERIOD		0
RECEIVED		8
DISPOSED OF		5
GRANTED	0	
DENIED	5	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		3

PART 8 - ORGANIZATION OF COURT

TRIALS BY MILITARY JUDGE ALONE		323
GENERAL COURTS-MARTIAL	130	
SPECIAL COURTS-MARTIAL	193	
TRIALS BY MILITARY JUDGE WITH MEMBERS		341
GENERAL COURTS-MARTIAL	132	
SPECIAL COURTS-MARTIAL	209	

PART 9 - COMPLAINTS UNDER ARTICLE 138

NUMBER OF COMPLAINTS	22	

PART 10 - STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	333,321	

PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	6,911	
RATE PER 1,000	20.86%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	2.20%	

EXPLANATORY NOTES

[A] The Air Force does not convene non-BCD SPCMs. Of the 402 SPCMs tried, there were 121 convictions with a BCD adjudged, 234 convictions without a BCD adjudged, and 47 acquittals.

[B] Includes 16 officer dismissals.

SECTION 6

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE COAST GUARD

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE U. S. COAST GUARD

October 1, 2010 to September 30, 2011

PERSONNEL AND TRAINING

The Coast Guard has 195 officers designated as judge advocates serving on active duty, of whom 152 are serving in legal billets and 43 are serving in "out-of-specialty" billets. Those Coast Guard lawyers currently practicing law include officers assigned to NORTHCOM, AFRICOM, SOUTHCOM, JIATF South, and ISAF. Among the 43 military attorneys serving in "out-of-specialty" billets are the Seventh District Commander, the Director, Joint Interagency Task Force South, and other commanding and executive officers of Coast Guard cutters, sectors, training centers, and support commands. The Coast Guard also employs 95 civilian attorneys ranging from GS-13 to SES.

The Coast Guard sent attorneys to 33 different courses of instruction during this fiscal year, primarily at the various service JAG schools. Twenty-one Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as judge advocates at the successful completion of their studies. Additionally, two judge advocates are serving military fellowships at the Council on Foreign Relations and the Center for a New American Security respectively. One judge advocate is attending the Graduate Course at the United States Army Judge Advocate General's Legal Center and School and another is a fellow in the Center for Law and Military Operations. Twenty-five Coast Guard officers completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified under Article 27(b), UCMJ.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

The judges on the U.S. Coast Guard Court of Criminal Appeals during fiscal year 2011 were:

Chief Judge Lane I. McClelland
Judge Michael J. Lodge (Departed 15 August 2011)
Judge Sandra K. Selman (Departed 18 April 2011)
Judge Michael E. Tousley (Departed 14 January 2011)
Judge Frederick J. Kenney (Departed 6 October 2010)
Judge Patrick J. McGuire
Judge Brian T. McTague
Judge John F. Havranek (Sworn in 17 June 2011)
Judge Charlie M. Johnson (Sworn in 17 June 2011)
Judge Kathleen A. Duignan (Sworn in 15 July 2011)

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

MILITARY JUSTICE ORGANIZATION

Fifteen staff judge advocates advise 17 officers exercising general court-martial jurisdiction and approximately 350 officers exercising special court-martial jurisdiction. Responsibility for detailing trial and defense counsel to general and special courts-martial rests with the Chief, Office of Legal and Defense Services, a staff office reporting to the Deputy Judge Advocate General charged with providing defense and personal legal services to Coast Guard members. Pursuant to an inter-service memorandum of understanding, the U.S. Navy provides trial defense counsel for all Coast Guard courts-martial. In return, at least four Coast Guard attorneys are assigned to full time duty at one or more Navy Legal Service Offices or Regional Legal Service Offices.

The Coast Guard has one general courts-martial judge and eight collateral-duty special courts-martial judges. The Chief Trial Judge details all military judges to Coast Guard courts-martial. In one instance this fiscal year, a judge was detailed from the Navy to a Coast Guard general court-martial because the Chief Trial Judge recused himself.

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

TRAINING OPPORTUNITIES WITH OTHER SERVICES

To improve the trial advocacy skills and experience levels of Coast Guard Judge Advocates, the Judge Advocate General assigns Trial Counsel for limited periods of time (usually three months) to certain installations which have a robust military justice practice. Coast Guard Judge Advocates have been assigned to Marine Corps Base Quantico, Marine Corps Base Camp Pendleton, the Army's Trial Counsel Assistance Program in Arlington, Virginia, and the Staff Judge Advocate for the Military District of Washington. This is in addition to the existing Memorandum of Understanding with the Navy that provides for four Coast Guard Judge Advocates to be assigned full-time as trial counsel or defense counsel at Navy installations.

MILITARY JUSTICE STATISTICS

NOTE: All statistics are based on the number of courts-martial records received and filed at Coast Guard Headquarters during fiscal year 2011 and, where indicated, records received during each of the four preceding fiscal years. The number of courts-martial varies widely from year to year; consequently, this is not a reliable indicator of the administration of military justice given the relatively small number of courts-martial overall.

Fiscal Year	11	10	09	08	07
General Courts-Martial	06	12	12	13	16
Special Courts-Martial	32	20	19	19	24
Summary Courts-Martial	19	09	14	28	31
Total	57	41	45	60	71

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains the Coast Guard, Fiscal Year 2011 military justice statistics.

F. J. KENNEY
Rear Admiral, U. S. Coast Guard
Judge Advocate General of the Coast Guard

Appendix A: U. S. Coast Guard Courts-Martial/NJP
Statistics for
October 1, 2010 to September 30, 2011 (FY 2011)

APPENDIX: U.S. COAST GUARD MILITARY JUSTICE STATISTICS

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	06	06	00	-50%
BCD SPECIAL	12	12	00	+33%
NON-BCD SPECIAL	20	20	00	-40%
SUMMARY	19	19	00	+52%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+28%

Report Period: 1 OCTOBER 2010- 30 SEPTEMBER 2011

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL NUMBER OF DISHONORABLE DISCHARGES	*02
NUMBER OF BAD-CONDUCT DISCHARGES	00
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	12

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

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

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

TOTAL ON HAND BEGINNING OF PERIOD		14
GENERAL COURTS-MARTIAL	07	
BCD SPECIAL COURTS-MARTIAL	07	
REFERRED FOR REVIEW		18
GENERAL COURTS-MARTIAL	05	
BCD SPECIAL COURTS-MARTIAL	**13	
TOTAL CASES REVIEWED		14
GENERAL COURTS-MARTIAL	7	

BCD SPECIAL COURTS-MARTIAL	7	
TOTAL PENDING AT CLOSE OF PERIOD		18
GENERAL COURTS-MARTIAL	5	
BCD SPECIAL COURTS-MARTIAL	13	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASESREVIEWED DURING LAST REPORTING PERIOD		-6%

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

NUMBER	14
PERCENTAGE	100%

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF 4/14	35%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+10%
PERCENTAGE OF TOTAL PETITIONS GRANTED 1/4	25%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	100%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA 1/14	1.4%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	100%

*Includes1 Dismissal (Hayes)
**Includes 2 Remands(Medina, Bernard)

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

PART 7 - APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD		00	
RECEIVED		01	
DISPOSED OF		00	
GRANTED	00		
DENIED	00		
NO JURISDICTION	00		
WITHDRAWN	00		
TOTAL PENDING AT END OF PERIOD		01	

PART 8 - ORGANIZATION OF COURTS

TRIALS BY MILITARY JUDGE ALONE	30	
GENERAL COURTS-MARTIAL	03	

SPECIAL COURTS-MARTIAL	27	
TRIALS BY MILITARY JUDGE WITH MEMBERS	08	
GENERAL COURTS-MARTIAL	03	
SPECIAL COURTS-MARTIAL	05	
PART 9 - COMPLAINTS UNDER ARTICLE 138, UCMJ		
NUMBER OF COMPLAINTS	02	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	43,139	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	1239	
RATE PER 1,000	28.72	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-1%	