

**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, 2014 to September 30, 2015**

## Contents

- Section 1: Joint Annual Report of the Code Committee**
- Section 2: Report of the United States Court of Appeals for the Armed Forces**
- Section 3: Report of the Judge Advocate General of the Army**
- Section 4: Report of the Judge Advocate General of the Navy and the Annual Military Justice Report of the Marine Corps**
- Section 5: Report of the Judge Advocate General of the Air Force**
- Section 6: Report of the Judge Advocate General of the Coast Guard**

**Section 1**  
**Joint Annual Report of the Code Committee**

## **Section 1**

### **Joint Annual Report of the Code Committee Pursuant to the Uniform Code of Military Justice**

**October 1, 2014 to September 30, 2015**

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 Dean Lisa Schenck and Mr. James E. McPherson, 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 3, 2015, 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 2014 Code Committee meeting, Colonel (Col) John G. Baker, U.S. Marine Corps, Chair of the Joint Service Committee (JSC), briefed the Code Committee on the work of the JSC.

Col Baker noted that the JSC has implemented changes required by the National Defense Authorization Act (NDAA), Executive Order 13669, and the recommendations from the Response Systems Panel (RSP), the Judicial Proceedings Panel (JPP) and the Defense Legal Policy Board (DLPB). The JSC also published a Military Rules of War supplement and a supplement to the Military Rules of Evidence (MRE). He stated there were 456 changes to the Manual for Courts-Martial (MCM) since 2012. The JSC also sent a proposed Executive Order to the Department of Defense General Counsel containing 121 additional changes to the MCM. These proposals:

- Implement changes to Part IV of Article 120, UCMJ
- Repeal consensual sodomy as an offense
- Establish steps required of defense counsel prior to interviewing alleged victims
- Change the requirements of proof for the offense of indecent acts with another, and

- Implement changes required by *United States v. Fosler*.

Following review and public comment, the MCM was changed to establish a victim's right to be heard during the sentencing hearing. This right need not be exercised in the form of sworn testimony. Other implemented changes were:

- Article 6(b), UCMJ, rights
- New Article 32, UCMJ, procedures
- New deposition procedures
- Changes to the rights of crime victims
- Changes to MRE 513 and MRE 514 which require a hearing prior to the ordering of in camera review of matters.

Chief Judge Baker next asked each of the service representatives to provide the Code Committee with comments regarding the functioning of the military justice system in their respective services.

For the Army, Major General Ayres stated that the Army has staffed responses to the various working groups and is focused on the training of all judge advocates. The Army has 1,910 active duty judge advocates, 574 civilian attorneys, 1,800 reserve judge advocates, and 882 judge advocates in the National Guard. The Army's special victims counsel program consists of 84 full-time special victims counsel on active duty, 4 reservists, and 47 National Guardsmen. They have assisted 1,761 clients in over 8,000 client consultations and 360 courts-martial. The number of general courts-martial in the Army has declined from 714 in FY-13 to 665 in FY-14. With the inclusion of special and summary courts-martial, the total also declined from 1,470 in FY-13 to 1,435 in FY-14. Nonjudicial punishments also declined from 42,707 in FY-13 to 31,698 in FY-14. Finally, he noted that a trend that the Army is focusing on is the issue of retaliation toward crime victims.

For the Air Force, Major General Kenny first addressed the work the Air Force has done in the area of assisting special victims. The Air Force has three senior majors and 30 full-time special victims counsel in 25 locations to assist alleged crime victims. This will soon be expanded to 37 locations by the summer. These counsel have represented 1,450 clients, including 31 children. There have been 200 courts-martial in such cases. Client satisfaction has been reported at 90 percent extremely satisfied and 9 percent satisfied. He stated that retaliations against victims is not tolerated. Reductions in staffing resulted in the loss of 80

captains in the Judge Advocate General's Corps, with a current total of 1,154 active duty judge advocates and 896 air reserve component judge advocates.

In the Navy, Rear Admiral Donovan stated that there are currently 843 active duty judge advocates, 415 reserve judge advocates, 455 active duty legalmen and 140 reserve legalmen. In FY-14, the Navy saw a return to its FY-12 numbers with 137 general courts-martial and a slight increase in special courts-martial to 175. Nonjudicial punishments rose from 13 per 1,000 in FY-13 to 15 per 1,000 in FY-14. The Navy is working on a transition to a new case management system. The Navy has trained 29 judge advocates as special victims counsel who have assisted 731 clients and taken part in 351 military justice proceedings. The special victims counsel have actively worked to conduct outreach briefings to the fleet, reaching 24,000 personnel. Lastly, the Navy has instituted a requirement that reports of unrestricted sexual assault be reported to the first flag officer in command, with such reports reviewed at the 3-star and 4-star levels.

For the Coast Guard, Rear Admiral Poulin informed the Code Committee the Coast Guard has 194 active duty judge advocates and 90 civilian attorneys. The challenges facing the Coast Guard include keeping pace with the changes in the military justice system and requests for information and documents, growth in case load, with general courts-martial increasing from 15 in FY-13 to 32 in FY-14 and special courts-martial from 18 in FY-13 to 55 in FY-14, and the growth of Article 120 cases. Key areas of focus are the creation of a full-time trial judiciary and consolidation of trial counsel functions. The Coast Guard currently has 5 full-time special victims counsel.

Colonel Baker stated the Marine Corps has seen a steady number of general courts-martial and fewer special courts-martial with an increase in administrative separation boards. He stated that the complexity of cases has increased, with 56 percent of general courts-martial being contested and 40 percent of special courts-martial being contested. The special victims counsel program has been very successful, having represented about 700 clients. Funding for training special victims counsel has quadrupled.

Separate reports of the United States Court of Appeals for the Armed Forces and the individual services 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.

Charles E. “Chip” Erdmann  
Chief Judge

Scott W. Stucky  
Judge

Margaret A. Ryan  
Judge

Kevin A. Ohlson  
Judge

Lieutenant General Flora D. Darpino, USA  
Judge Advocate General of the Army

Vice Admiral James W. Crawford, III, JAGC, USN  
Judge Advocate General of the Navy

Lieutenant General Christopher F. Burne, USAF  
Judge Advocate General of the Air Force

Rear Admiral Steven D. Poulin, USCG  
Judge Advocate General of the Coast Guard

Major General John R. Ewers, Jr., USMC  
Staff Judge Advocate to the Commandant of the Marine Corps

Dean Lisa M. Schenck  
Public Member

Mr. James E. McPherson  
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, 2014 to August 31, 2015**

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 2014 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.

On July 31, 2015, Chief Judge James E. Baker completed his 15-year term as a judge of the Court. On August 1, 2015, Charles E. “Chip” Erdmann became Chief Judge by operation of Article 143(a), UCMJ, Title 10, United States Code § 943(a).

## **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, 2014 to August 31, 2015. 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 2014 Term of Court, the Court met its goal of issuing opinions in all cases heard during the Term prior to the end of the Term. An informal summary of selected decisions prepared by the Court’s staff is set forth in Appendix A.

## **RULES OF PRACTICE AND PROCEDURE**

No changes to the Court's Rules of Practice and Procedure were made during the September 2014 Term of Court.

### **BAR OF THE COURT**

During the September 2013 Term, 305 attorneys were admitted to practice before the Court, bringing the cumulative total of admissions to the Bar of the Court to 36,636.

### **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 2014 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 Marine Corps Base, Camp Lejeune, North Carolina; Marquette University Law School, Milwaukee, Wisconsin; and the University of Wisconsin Law School, Madison, Wisconsin. 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 AND TRAINING PROGRAM**

On May 19 and 20, 2015, the Court held its Continuing Legal Education and Training Program at the Georgetown University Law Center, Washington, D.C. The program opened with welcoming remarks from the Honorable James E. Baker, Chief Judge, United States Court of Appeals for the Armed Forces. He was followed by the following speakers: Colonel Robin F. Holman, Deputy Judge Advocate General of the Canadian Armed Forces,; Professor Geoffrey S. Corn, South Texas College of Law, Houston Texas; Colonel Susan K. Arnold, U.S. Army, Staff Judge Advocate, 101st Airborne Division, Fort Campbell, Kentucky; General John F. Kelly, U.S. Marine Corps, Commander, U.S. Southern Command; Brigadier General Richard Gross, U.S. Army, Legal Counsel to the Chairman of the Joint Chiefs of Staff; Colonel Gregory Maggs, U.S. Army Reserve/ Professor

of Law, George Washington University School of Law; Major David Moses, U.S. Army, Professor Rosa Brooks, Georgetown University Law Center; Professor John Q. Barrett, St. John's University School of Law; Professor David J. Luban, Georgetown University; and Beth A. Wilkinson, Esq., Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP, Washington, D.C.

Charles E. "Chip" Erdmann  
Chief Judge

Scott W. Stucky  
Judge

Margaret A. Ryan  
Judge

Kevin A. Ohlson  
Judge

## APPENDIX A – SELECTED DECISIONS

This appendix contains an informal staff summary of selected decisions of the September 2014 Term of Court. A full list and summary of the cases decided by the Court during the Term, including any related concurrences and dissents, can be found on the Court’s website.

*United States v. Vargas*, 74 M.J. 1 (C.A.A.F. 2014), holding that the military judge’s denial of the Government’s continuance request to accommodate the availability of witnesses and the military judge’s subsequent resting of the Government’s case when it was unable to proceed were not rulings excluding evidence as required by Article 62, UCMJ, and were therefore not appealable by the Government.

*United States v. Gilbreath*, 74 M.J. 11 (C.A.A.F. 2014), holding that the requirement of Article 31(b), UCMJ, to inform a person suspected of an offense of the right not to make a statement and that any statement made can be used against him at trial applies to the questioning of members of the Individual Ready Reserve.

*United States v. Piren*, 74 M.J. 24 (C.A.A.F. 2015), holding 1) that the accused placed his credibility at issue in a prosecution for abusive sexual contact by testifying about events prior to his sexual assault examination, permitting the Government to test his credibility on cross examination by asking him about his later statements to the sexual assault nurse examiner, and 2) the accused’s consent to a sexual assault examination at a health clinic was voluntary where he was told several times that his decision to consent to the examination was voluntary and that he could refuse, and the consent form that he reviewed and signed clearly reiterated those rights.

*United States v. Gutierrez*, 74 M.J. 61 (C.A.A.F. 2015), holding that the evidence against the accused who was infected with human immunodeficiency virus (HIV) had unprotected oral sex with several partners without disclosing his HIV-positive status was insufficient to establish that his conduct was “likely” to cause death or grievous bodily harm within the meaning of the aggravated assault article, in view of the expert testimony that the risk of HIV transmission was “almost zero.”

*United States v. Newton*, 74 M.J. 69 (C.A.A.F. 2015), holding 1) the retroactive application provision of the 2008 Sentencing, Monitoring, Apprehending, Registering and Tracking Guidelines was a substantive rule with

legislative force, and 2) that the Guidelines were enacted in accordance with the procedural requirements of the Administrative Procedures Act, thereby requiring the accused to register as a sex offender under the Sex Offender Registration and Notification Act.

*United States v. McFadden*, 74 M.J. 87 (C.A.A.F. 2015), holding that the military judge did not have a duty to declare a mistrial or excuse a court member who asked the accused whether she had heard of the concept of lying by omission after the accused testified that she had exercised her right to remain silent.

*United States v. Jones*, 74 M.J. 95 (C.A.A.F. 2015), holding that the *de facto* officer doctrine did not apply to confer validity upon a retired judge advocate's participation in the judgment of the Court of Criminal Appeals (CCA), although the accused was aware of the officer's participation but failed to challenge it before the CCA, and where the officer's appointment as a CCA judge was invalid under the Appointments Clause of the U.S. Constitution.

*United States v. Buford*, 74 M.J. 98 (C.A.A.F. 2015), holding that a member of the Security Forces was not acting as a government agent when he viewed the accused's e-mails and social network account on the laptop computer belonging to the accused's wife, and there was no Fourth Amendment violation where the member was off duty, was not a criminal investigator, served only as a gate guard, and the Government had no prior knowledge of his actions.

*United States v. Piolunek*, 74 M.J. 107 (C.A.A.F. 2015), holding that 1) the finding by the Court of Criminal Appeals that three of the 22 images possessed by the accused did not constitute visual depictions of a minor engaging in sexually explicit conduct was a factual determination that the Court of Appeals for the Armed Forces could not review, and 2) the finding of the Court of Criminal Appeals that the evidence on the other 19 images was sufficient to convict would be upheld, abrogating *United States v. Barberi*, 71 M.J. 127 (C.A.A.F. 2012).

*United States v. Adams*, 74 M.J. 137 (C.A.A.F. 2015), holding that the military judge abused his discretion in admitting uncorroborated essential facts from the accused's confession regarding opportunity or motive, access or intent, accomplices, the subject of the larceny, the time of the crime, or the act of waving a handgun while an accomplice grabbed the cocaine, resulting in the setting aside of the findings and the sentence.

*United States v. Norman*, 74 M.J. 144 (C.A.A.F. 2015), holding that 1) a military police officer's lay opinion testimony that the accused's conduct in exposing his infant son to scalding water during a bath was of a nature to bring discredit upon the armed forces was not admissible to establish the terminal element of the offense, 2) the erroneous admission of the testimony was harmless, and 3) the evidence was sufficient to establish the accused's conduct was service discrediting.

*United States v. Torres*, 74 M.J. 154 (C.A.A.F. 2015), holding that the military judge erred in instructing the court members on the affirmative defense of lack of mental responsibility based on the accused's alleged epileptic seizures, that the error was harmless, and in cases where the issue of automatism has been reasonably raised, the military judge should instruct the members that automatism may serve to negate the actus reus.

*United States v. Castillo*, 74 M.J. 160 (C.A.A.F. 2015), holding that a military regulation requiring service members to self-report civilian arrests did not facially violate the Fifth Amendment privilege against self-incrimination where the reporting requirement prohibited commanders from imposing disciplinary action on the basis of the underlying offense arrest unless such disciplinary action was based solely on evidence derived independently of the self-report, and where the regulation limited the use of the self-report for a regulatory or administrative purpose.

*United States v. Muwwakkil*, 74 M.J. 187 (C.A.A.F. 2015), holding that recorded preliminary hearing testimony constitutes a "statement" under both the Jencks Act and Rule for Courts-Martial 914, and that the Government was required to disclose the recording of the alleged victim's testimony although it no longer was in possession of the recording because it had failed to preserve the recording due to its own negligence; that the good faith loss doctrine did not excuse the failure to disclose the recording; and that the military judge was not required to engage in a prejudice analysis in determining whether to exclude the alleged victim's testimony as a sanction.

*United States v. Simmermacher*, 74 M.J. 196 (C.A.A.F. 2015), holding 1) that military judges do not have discretion to fashion a remedy for a violation of the Rules for Court-Martial for lost or destroyed evidence, 2) that in a prosecution for use of cocaine, the destroyed urine sample was of such central importance to the defense that it was essential to a fair trial, 3) that there was no adequate

substitute, and 4) that where the destruction was not the fault of the accused, the charge of use of cocaine would be dismissed.

*United States v. Carter*, 74 M.J. 204 (C.A.A.F. 2015), holding that evidence of unlawful pretrial punishment was admissible in seeking credit against the sentence and as evidence in mitigation, but that the military judge did not abuse her discretion in preventing the accused from presenting such evidence for mitigation purposes.

*United States v. Keefauver*, 74 M.J. 230 (C.A.A.F. 2015), holding that while law enforcement agents entering a home lawfully in non-arrest situations may be entitled to make a protective sweep to ensure their safety, such a protective sweep requires specific, articulated facts and rational inferences that the area harbors one or more individuals and that the individual or individuals pose a danger to the agents; however a protective sweep for drugs would not be objectively reasonable where the searching officer knew the accused's son was the only one at home, that the home had been under surveillance, and that the son was handcuffed and removed from the home.

*United States v. Woods*, 74 M.J. 238 (C.A.A.F. 2015), holding that a court-martial member who stated on *voir dire* that a "guilty until proven innocent" standard is essential to the military's mission demonstrated implied bias requiring a challenge for cause to be granted.

*United States v. Katso*, 74 M.J. 273 (C.A.A.F. 2015), holding that a reviewing lab technician's testimony regarding DNA evidence did not violate the accused's Sixth Amendment rights under the Confrontation Clause, notwithstanding that the reviewing technician relied in part on the final report of another technician who conducted the original analysis, where the reviewing technician generated an independent opinion subject to cross-examination and described the testing procedures and the means for detecting protocol lapses.

*United States v. Plant*, 74 M.J. 297 (C.A.A.F. 2015), holding that a criminal conviction for child endangerment requires more than a showing of irresponsible behavior coupled with speculation by the prosecution about what possibly could have happened to a child as a result of the accused's conduct; rather, it requires proof that the accused's conduct resulted in a reasonable probability that the child would be harmed.

*United States v. Murphy*, 74 M.J. 302 (C.A.A.F. 2015), holding that ammunition falls within the definition of “explosive” and the military judge’s failure to inform the accused of the definition of “explosive” in the statutes governing penalties for possessing explosives was not reversible error.

*United States v. Schloff*, 74 M.J. 312 (C.A.A.F. 2015), holding that term “sexual contact” as used in the UCMJ provision prohibiting touching with intent to abuse, humiliate, or degrade any person included object-to-body contact as well as body-to-body contact.

*United States v. Quick*, 74 M.J. 332 (C.A.A.F. 2015), holding that under the doctrine of stare decisis, the Court of Criminal Appeals had the authority to order a sentence-only rehearing of the accused after setting aside the guilty finding to one of the offenses for which he had been convicted.

*United States v. Akbar*, 74 M.J. 364 (C.A.A.F. 2015), holding that the sentence of death would be affirmed where the record did not establish that the Appellant had been deprived of the effective assistance of counsel.

*United States v. Arness*, 74 M.J. 441 (C.A.A.F. 2015), holding that the Court of Criminal Appeals lacked jurisdiction to consider a petition for a writ of error coram nobis where the general court-martial sentence did not meet the threshold requirements for review under Article 66, UCMJ, the Judge Advocate General had not referred the case to the Court of Criminal Appeals under Article 69, UCMJ, and the conviction and sentence were final under Article 76, UCMJ.

*United States v. Sullivan*, 74 M.J. 448 (C.A.A.F. 2015), holding that the exclusion of flag officers from the member pool was harmless and that the decision of the military judge not to disqualify himself was not an abuse of discretion in spite of his personal relationships with the trial participants, the accused, several witnesses and the staff judge advocate.

*United States v. Stellato*, 74 M.J. 473 (C.A.A.F. 2015), holding that the ruling of the military judge to dismiss the charges with prejudice for trial counsel’s significant discovery violations was not an abuse of discretion.

**USCAAF STATISTICAL REPORT  
SEPTEMBER 2014 TERM OF COURT**

**CUMULATIVE SUMMARY**

CUMULATIVE PENDING SEPTEMBER 1, 2014

Master Docket . . . . .	28
Petition Docket . . . . .	168
Miscellaneous Docket. . . . .	<u>1</u>
TOTAL . . . . .	197

CUMULATIVE FILINGS

Master Docket . . . . .	72
Petition Docket . . . . .	789
Miscellaneous Docket. . . . .	<u>19</u>
TOTAL . . . . .	880

CUMULATIVE DISPOSITIONS

Master Docket . . . . .	83
Petition Docket . . . . .	877
Miscellaneous Docket. . . . .	<u>20</u>
TOTAL . . . . .	980

CUMULATIVE PENDING SEPTEMBER 1, 2015

Master Docket . . . . .	17
Petition Docket . . . . .	80
Miscellaneous Docket. . . . .	<u>0</u>
TOTAL . . . . .	97

**OPINION SUMMARY**

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket . . . .	36	0	47	83
Petition Docket . . .	0	0	877	877
Miscellaneous Docket	<u>1</u>	<u>0</u>	<u>19</u>	<u>20</u>
TOTAL	37	0	943	980

**MASTER DOCKET SUMMARY**

PENDING AT BEGINNING OF TERM . . . . . 28

FILINGS

Petitions granted from the Petition Docket . .	63
Certificates filed . . . . .	8
Mandatory appeals filed. . . . .	1
Remanded/Returned cases. . . . .	<u>0</u>
TOTAL . . . . .	72

DISPOSITIONS

Decisions affirmed . . . . .	46
Reversed in whole or in part . . . . .	37
Granted petitions vacated . . . . .	<u>0</u>
TOTAL . . . . .	83

PENDING AT END OF TERM

Awaiting briefs . . . . .	5
Awaiting oral argument . . . . .	10
Awaiting lead case decision (trailer cases). .	2
Awaiting final action . . . . .	<u>0</u>
TOTAL . . . . .	17

**PETITION DOCKET SUMMARY**

PENDING AT BEGINNING OF TERM . . . . . 168

FILINGS

Petitions for grant of review filed . . . . .	788
Petitions for new trial filed . . . . .	1
Returned cases . . . . .	<u>0</u>
TOTAL . . . . .	789

DISPOSITIONS

Petitions for grant of review denied . . . . .	802
Petitions for grant of review granted . . . . .	66
Petitions for grant of review withdrawn . . . . .	3
Petitions for grant of review dismissed . . . . .	<u>6</u>
TOTAL . . . . .	877

PENDING AT END OF TERM

Awaiting pleadings . . . . .	5
Awaiting Central Legal Staff review . . . . .	51
Awaiting final action . . . . .	<u>24</u>
TOTAL . . . . .	80

**MISCELLANEOUS DOCKET SUMMARY**

PENDING AT BEGINNING OF TERM . . . . . 1

FILINGS

Writ appeals sought . . . . .	13
Writs of habeas corpus sought . . . . .	4
Writs of error coram nobis sought . . . . .	0
Other extraordinary relief sought . . . . .	<u>2</u>
TOTAL . . . . .	19

DISPOSITIONS

Petitions or appeals denied . . . . .	17
Petitions or appeals granted . . . . .	0
Petitions or appeals dismissed . . . . .	3
Petitions or appeals withdrawn . . . . .	<u>0</u>
TOTAL . . . . .	20

PENDING AT END OF TERM

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

**PETITIONS FOR RECONSIDERATION**

ALL CASES

DISPOSITIONS

Begin Pending	0	Denied	16
Filed	<u>17</u>	Granted	0
TOTAL	17	Dismissed	<u>1</u>
		TOTAL	17

End Pending 0

**MOTIONS**

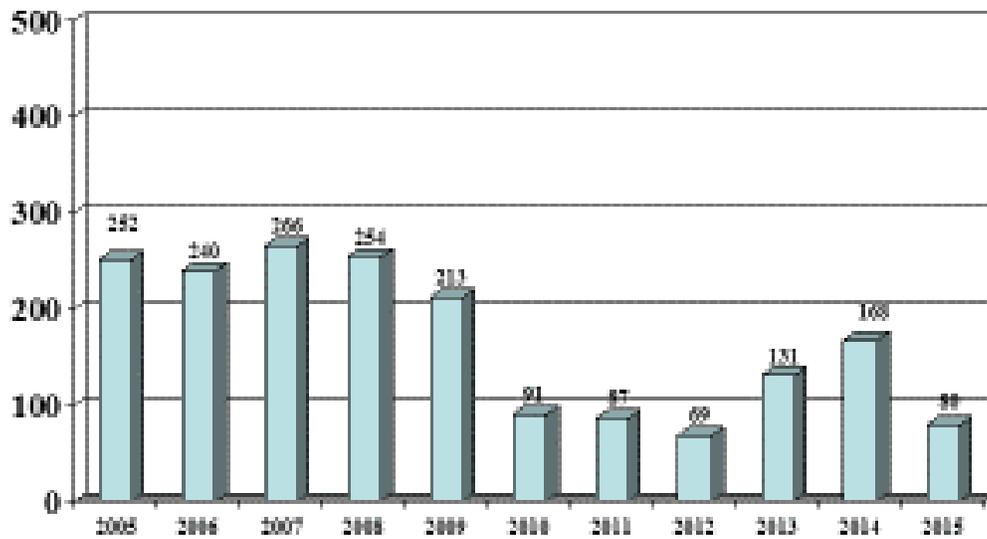
ALL MOTIONS

DISPOSITIONS

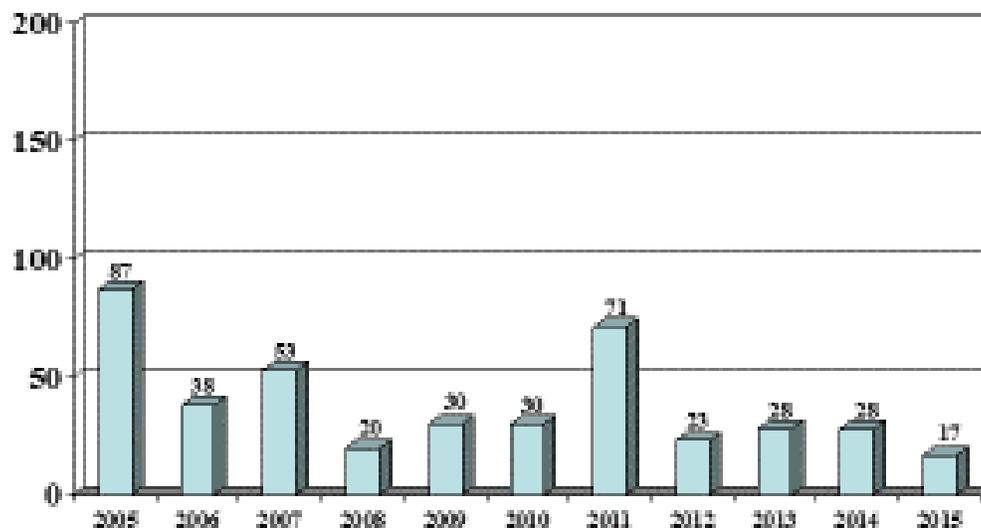
Begin Pending	10	Granted	289
Filed	<u>338</u>	Denied	53
TOTAL	348	Dismissed	<u>0</u>
		TOTAL	342

End Pending 6

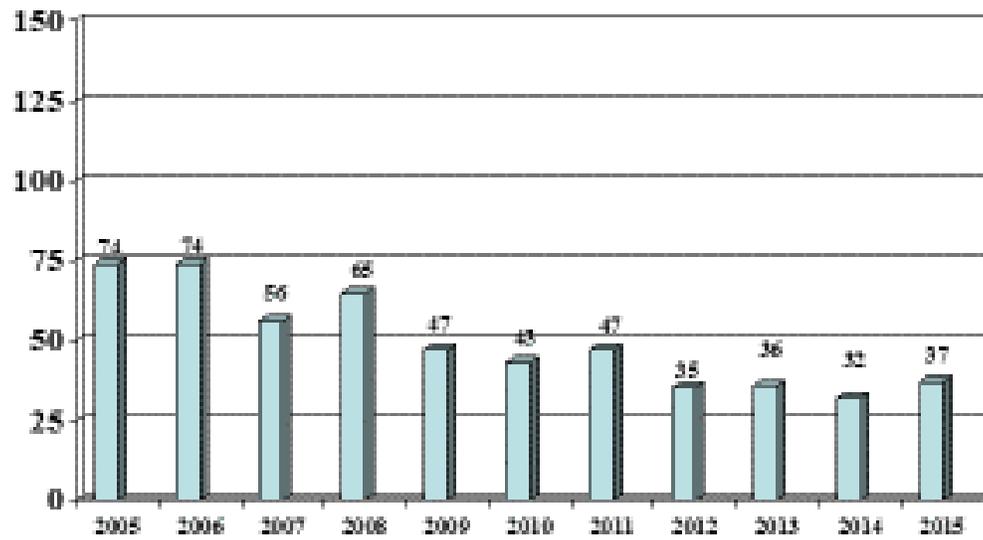
## Petition Docket Term End Pending



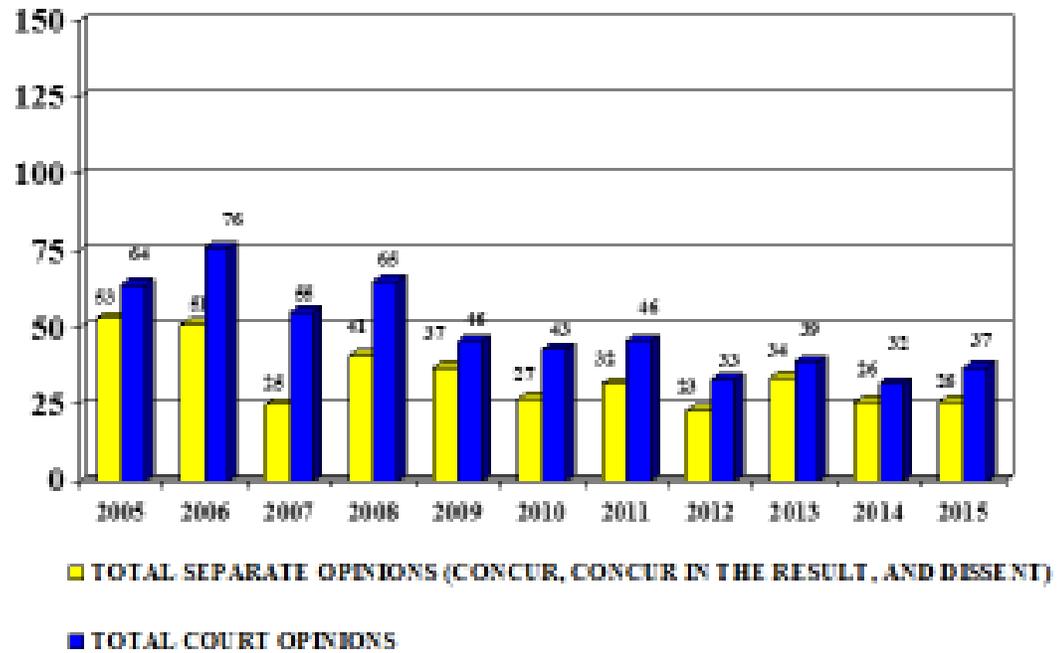
## Master Docket Term End Pending



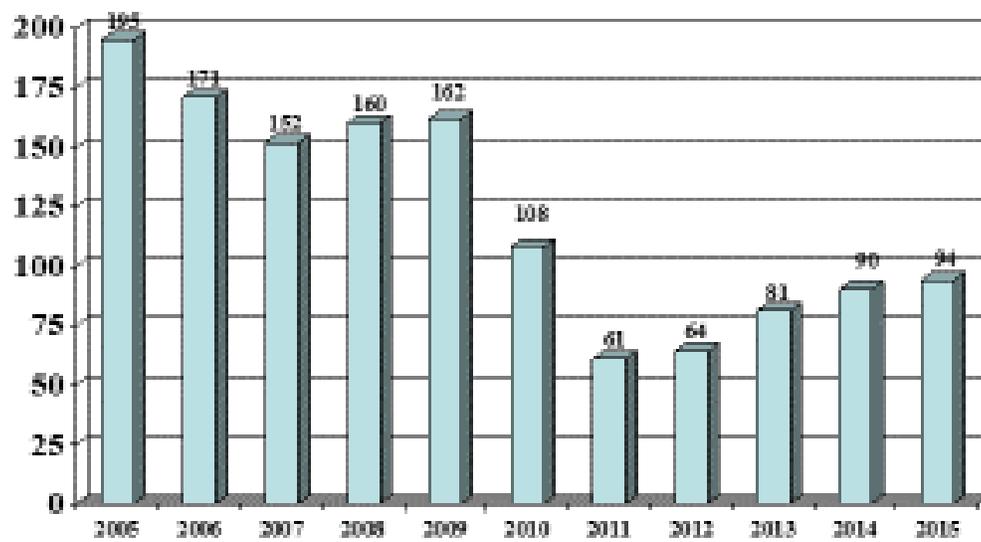
## Oral Arguments Per Year



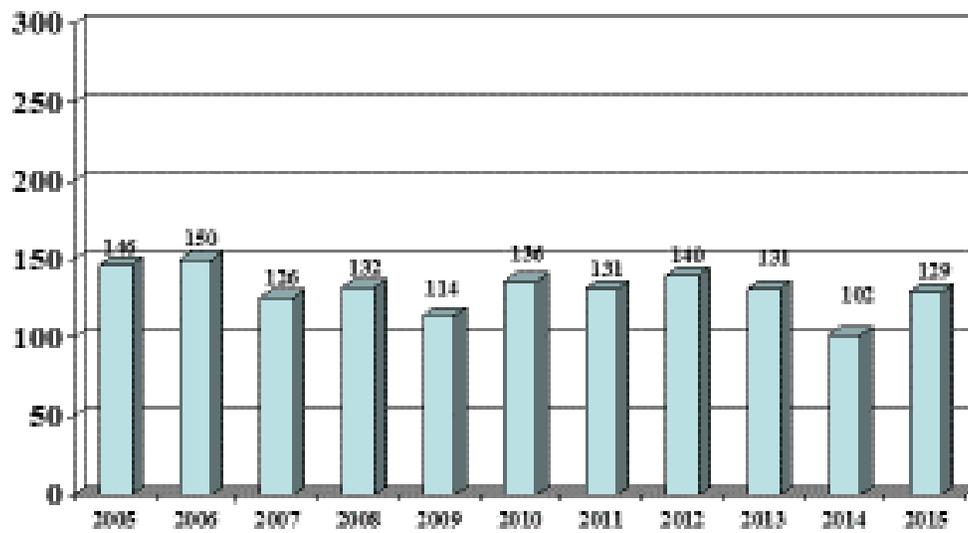
## Total Opinions Per Year



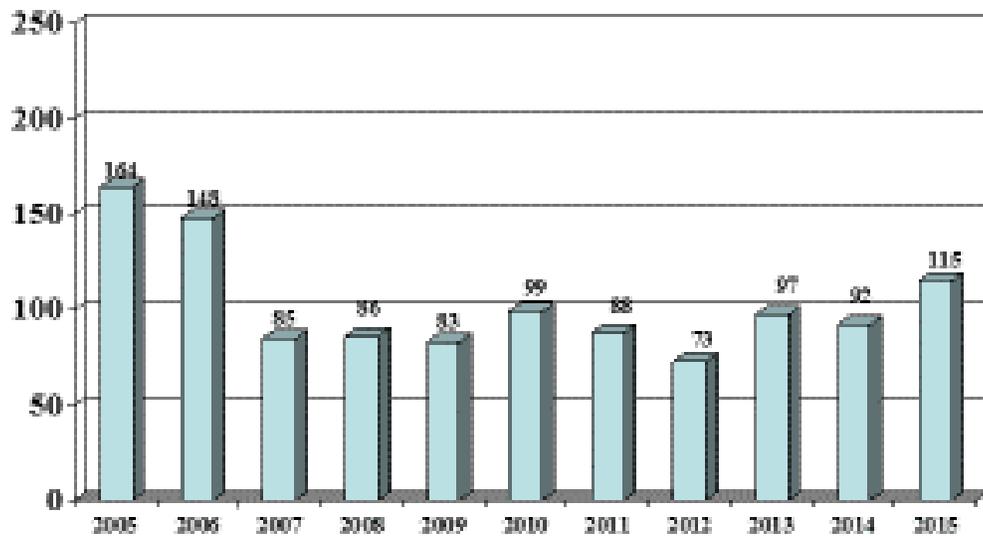
## Days from Petition Filing to Grant



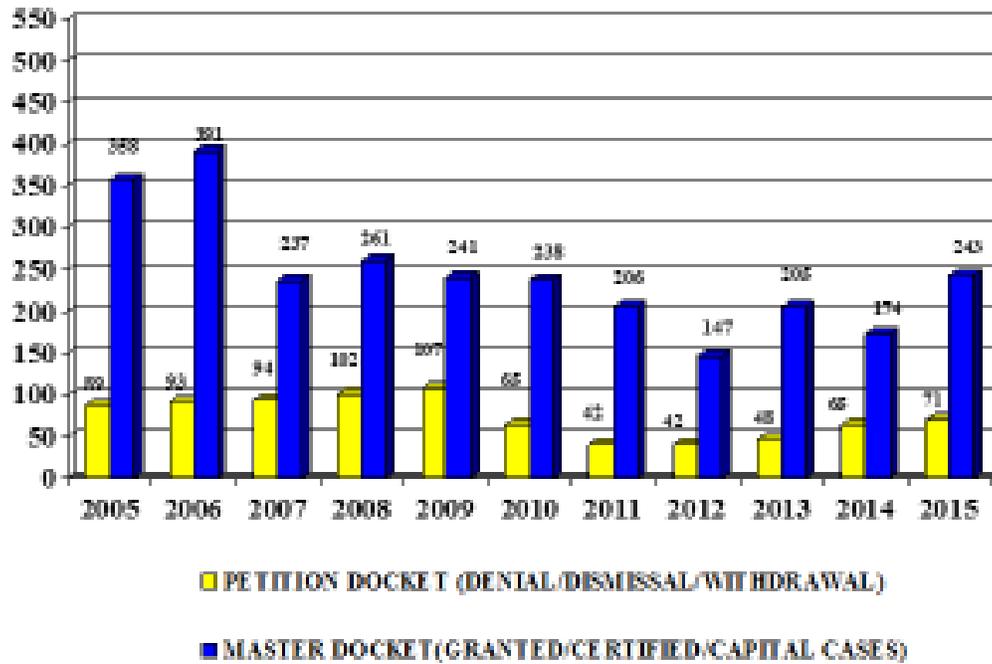
## Days from Petition Grant to Oral Argument



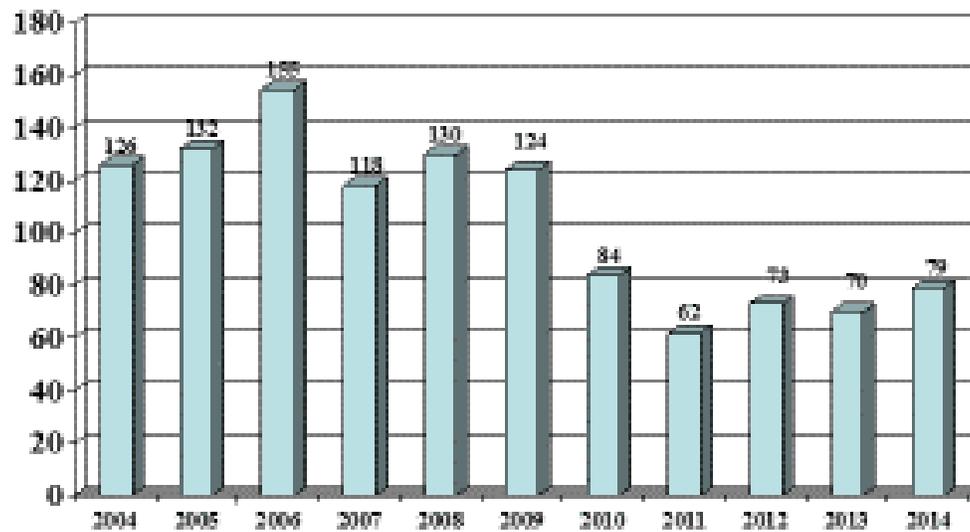
## Days from Oral Argument to Final Decision



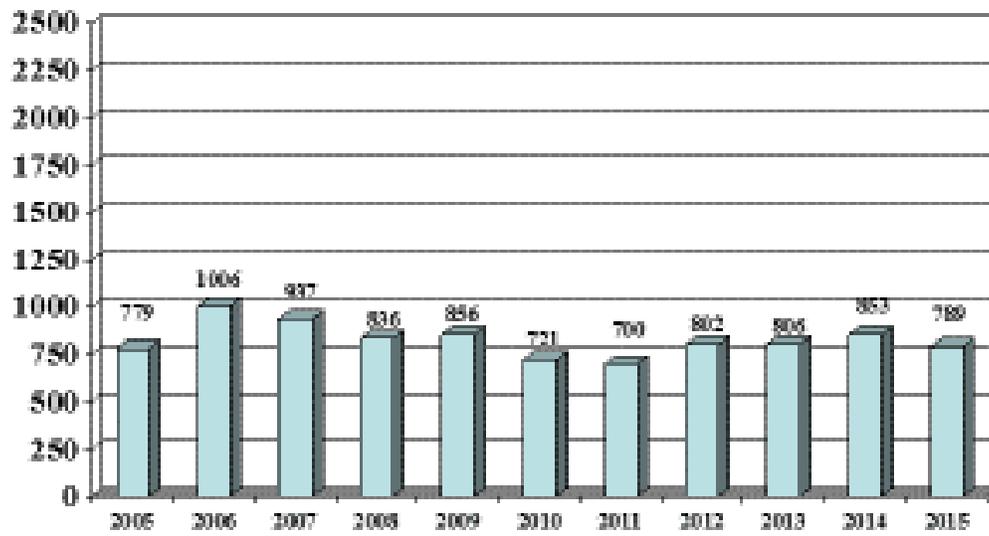
## Days from Petition Filing to Final Decision



## Days from Filing to Final Decision in All Cases



## Total Petitions Filed Per Year



SECTION 3

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY  
OCTOBER 1, 2014 TO SEPTEMBER 30, 2015**

In fiscal year 2015 (FY15), The Judge Advocate General (TJAG) 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 Judge Advocate General's Corps (JAGC) conducted twenty-six visits to installations and commands in the United States and overseas to discuss military justice issues with commanders and their respective Staff Judge Advocates (SJAs). The JAGC remains committed to sustaining excellence in the practice of military justice through a variety of initiatives and programs.

**OTJAG CRIMINAL LAW DIVISION**

The OTJAG, Criminal Law Division (CLD) has two primary missions. First, the CLD advises TJAG on military justice policy, legislation, legal 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 (MCM); conducting statistical analysis and evaluation of trends that affect military justice within the Army; providing legal advice on military corrections issues, the Army drug testing program, sexual assault and victim assistance policies, and federal prosecutions; representing the Army on the Joint Service Committee (JSC) on Military Justice; responding to congressional inquiries from the President, Congress, Department of Defense (DoD) and the Army Staff; responding to congressional inquiries under the Freedom of Information Act (FOIA); and conducting reviews of court-martial cases under Article 69 of the UCMJ to ascertain 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 worldwide across all grades. The 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 The Judge Advocate General Legal Center and School (TJAGLCS). The CLD manages software initiatives for JAGC-wide application and facilitates active information flow to and from the field using web-based media.

Traditionally-reported CLD actions for the last three fiscal years are listed below.

	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>
Congressional and other inquiries	195	155	120
Officer Dismissals	27	26	18
Article 69 and other reviews	38	196	68
Freedom of Information/Privacy Act Requests	14	32	16

The CLD conducts a bi-annual Criminal Law Synchronization Meeting with key criminal law stakeholders such as TJAGLCS, TCAP, DCAP, Defense Appellate Division (DAD), Government Appellate Division (GAD), and the U.S. Army Trial Judiciary. These synchronization meetings were invaluable in bringing the JAGC criminal law leaders together, not only to coordinate criminal law training across the JAGC, but also to discuss new criminal law initiatives that could improve and sustain the practice of military justice in the Army. Synchronization provides unity of effort and 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.

The Military Justice Additional Skill Identifier program continues to grow. 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. To date, 1,286 judge advocates have been awarded skill identifiers: 668 basic, 353 senior, 182 expert, and 83 master military justice practitioners.

The CLD participates in inspections three times per year of the Forensic Drug Testing Laboratories at Fort Meade, MD and Tripler Army Medical Center, HI. These inspections are intended to ensure that the laboratory results are forensically acceptable and that the laboratories are following Department of Defense and Army policy guidance. The CLD attorney participation is intended to assist in ensuring not only that the laboratory results are forensically acceptable (which protects both the government and the Soldier), but also to ensure that the results may be used in administrative and judicial proceedings if required.

The CLD continued to support the mission of the JSC in FY15; with personnel serving as both voting group and working group members. The CLD assisted in the drafting of two comprehensive Executive Orders (EOs) that were submitted to the Department of Defense for approval by the President. The draft EOs contained elements, explanations, lesser included offenses, and sample specifications for Articles 120, 120b and 120c; amendments to Articles 125 and 134; amendments to Rules for Court-Martial (RCM) 103, 104, 201, 305, 306, 307, 401, 405, 604, 701, 703, 705, 806, 906, 907, 910, 916, 1002, 1004, 110, 1104, 1105, 1107, 1108, and 1109; amendments to Military Rules of Evidence (Mil. R. Evid.) 304, 311, 414, 504, 801, and 803; and amendments to Appendices 12, 22, and 23, as well as the creation of Appendix 12A. The EOs implement changes required by the National Defense Authorization Act (NDAA) for FY12, FY13, FY14, FY15 and FY16. On June 13, 2015, the President signed EO 13696. Copies of pending EOs and approved EOs are located on the JSC webpage at <https://jsc.defense.gov>.

The JSC is planning to reprint the MCM in early 2016 to capture: the revised Mil. R. Evid.; new Articles 120, 120b, and 120c; and all related conforming changes as well as mandated changes in the FY12, FY13, FY14, FY15, and FY16 NDAA's.

The Trial Advocates Tracking System (TATS), a web-based database that tracks the number of active trial and defense counsel, grew to 1453 judge advocates. The 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 continued to implement 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 counsel, defense counsel, and Special Victim Prosecutors (SVPs) are eligible to receive the TARL. In FY15, 84 hard copies and 90 electronic books were distributed.

On October 18, 2013, the Secretary of Defense directed the General Counsel of the Department of Defense to conduct a comprehensive review of the military justice system. To carry out the review, the General Counsel established the Military Justice Review Group (MJRG). The MJRG's review has focused on the structure and operation of the UCMJ and the MCM. The MJRG reported its recommendations for changes to the UCMJ to the Secretary of Defense on March 25, 2015, and its recommendations for changes to the MCM on October 5, 2015. Numerous Army personnel have participated in the MJRG process, either providing input to the group based upon their unique experience and training, or serving as staff attorneys to the MJRG. The Judge Advocate General has reviewed the proposals from the MJRG and continues to provide input to the Chair of the MJRG.

In 2014, the Secretary of Defense, as required by Section 576(a)(1) of the FY13 NDAA established the Judicial Proceedings Panel (JPP). The JPP's mandate is to conduct an independent review and assessment of judicial proceedings conducted under the UCMJ involving adult sexual assault and related offenses since the amendments made to the UCMJ in 2012. The JPP began holding monthly public hearings in August 2014 and has sent the Services and the Department of Defense five sets of Requests for Information. Numerous Army judge advocates and an Army civilian attorney testified during public hearings of the JPP. The JPP released its initial report on February 4, 2015 and a subcommittee report on Article 120 of the UCMJ on December 11, 2015. The Army JAGC provided two judge advocates and a civilian attorney to support the JPP process, served as the Army representative to the JPP, and was primarily responsible for gathering information and witnesses in response to the JPP's requests.

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

The cornerstone mission of the Criminal Law Department of 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 and is fully integrated into the overall JAGC-wide developmental cycle for military justice practice. At the same time, our professors provide critical reach-back capability for military justice practitioners of all Services.

The Department facilitates and/or teaches a variety of courses to multiple student cohorts that include all Sister Services as well as international students. Courses include initial-entry judge advocates in the Basic Course; newly-assigned trial advocates in the Intermediate Trial Advocacy Course (ITAC); mid-level Judge Advocates in the Graduate Course, the Military Justice Managers Course (MJMC), the Judge Advocate Officer Advanced Course (JAOAC), and Advanced Trial Communication Course; senior Judge Advocates in the Military Judge Course (MJC) and the Staff Judge Advocate Course; and of course commanders and senior non-commissioned officers in the Command Sergeant Major Legal Orientation (CSMLO), the Senior Officer Legal Orientation Course (SOLO), and the General Officer Legal Orientation Course (GOLO). Except for the GOLO course, which is provided individually to General Officers, all courses are taught using a sexual assault fact pattern and are synchronized with other JAG Corps training agencies.

In FY15, the Department continued to build upon its newest course, the Special Victim Counsel (SVC) Course. The Department offered four resident SVC Courses in the last year, two of which were a new, specialized Child SVC Course. The adult SVC Course remains a one-week course designed to educate counsel in preparation to serve as certified SVC. The course provides focus and updates on the law and policies most relevant to SVC practice. Students learn best practices for working with crime victims (specifically, sexual assault victims); the impacts of crime on victims; how to work with law enforcement and multi-disciplinary professional; how to manage professional responsibility and scope of representation issues; and how to most effectively advocate for victims' rights while working with other actors in the military justice system as well as commanders. The two capstone events include: a client-victim roundtable, where sexual assault victims voluntarily discuss their experiences and the assistance they received from their SVC; and a practical exercise where students interact with a client-victim role-player. The adult course is a prerequisite for the Child SVC Course, and the child instruction centers on how to communicate with children; how children process and discuss traumatic events; which experts are best suited to assist child victims; and services available for child victims. As victim rights and policy continue to develop, the Department also continues to assist in the implementation and education of those policies in the Corps. The Department also provides recommendations to the SVC Program Manager in OTJAG.

The Department presented the Forty-Third Kenneth J. Hodson Lecture in Criminal Law and hosted Honorable Bernice B. Donald, United States Court of Appeals for the Sixth Circuit, as the guest speaker. The Department also continued its digital outreach by maintaining a sexual assault resource site for all Judge Advocates, maintaining a learning website for deployed SVCs, providing live remote classes to the field via JAG University, and online education for Reserve Component officers, video standard training packages for Judge Advocates who are about to deploy, and videos for practitioners to use to develop customized training throughout the world.

## **U.S. ARMY 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, UCMJ, appeals under Article 62, UCMJ, and

Petitions for Extraordinary Relief. In FY15, 629 records of trial and nearly 1,600 motions and briefs were referred to one of the three judicial panels comprising the ACCA for judicial review. The average processing times for those courts-martial from sentencing to convening authority action was 203 days. In 176 of those cases, initial action was completed by the convening authority within the 120 days prescribed by *United States v. Moreno*. Five hundred fifty-nine of the records were received by ACCA within 30 days of convening authority action.

The Army’s superior court rendered an initial decision in 537 cases in FY15, with an average processing time of 298 days from receipt of the record of trial by the clerk of court to decision by ACCA. Of the 537 decisions, 474 were rendered within the 18-month period prescribed by *United States v. Moreno*. There were no court-martial convictions reversed due to command influence, denial of the right to a speedy review, lost records, or other administrative deficiencies. No provision of the UCMJ or MCM was held unconstitutional by ACCA.

Working with the CLD, the Office of the Clerk of Court also processed 280 additional cases for examination under Article 69, UCMJ. The Office of the Clerk of Court served the ACCA decisions upon all personnel not in confinement and coordinated with military confinement facilities for service of confined Soldiers. The office closed 984 courts-martial cases during the past year and the cases were subsequently transferred to the National Archives in St. Louis, Missouri.

The court maintains a website at <https://www.jagcnet.army.mil/acca>. The court’s published and unpublished memorandum opinions are publicly available on the website. In FY15, the office uploaded more than 177 opinions and decisions to the website. Additional publicly available information includes application materials for admission to the bar at ACCA; Rules of Court; oral argument schedules; and the procedures for making a FOIA or Privacy Act (PA) request from ACCA. The website also includes a “FOIA Reading Room” containing frequently requested documents from some of the Army’s higher-profile court-martial cases.

The Clerk of Court is the custodian of the Army’s permanent court-martial records (general courts-martial and those special courts-martial resulting in an approved punitive discharge) dating from 1977. Inquiries about current and previous courts-martial are received from federal and state investigative agencies; local law enforcement offices; sex offender registration databases; media and news organizations; military historians; veterans; and Soldiers previously convicted at court-martial. Additionally, because the Brady Bill requires the processing of handgun permit applications within three working days, many expedited requests arrive from the Federal Bureau of Investigation’s National Instant Background Check System.

Summary of information requests to ACCA for the last three fiscal years:

	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>
Freedom of Information Act	430	536	661
Privacy Act	99	217	210
Certified Copies of Convictions	170	72	75
<u>Requests from Federal Agencies</u>	<u>105</u>	<u>**</u>	<u>**</u>
Total Number of Requests:	804	825	946

\*\*Beginning in FY14, requests from Federal agencies are no longer a separate category and are included in the numbers reported above.

During this time, the office's FOIA team provided assistance to the Department of Justice, through the Army Litigation Division, in both civil and criminal litigation.

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.

The office's Management and Program Analyst continued to provide vital support to the Office of the Clerk of Court, OTJAG, and other organizations and individuals. Using the Army Court-Martial Information System (ACMIS), the office designed, developed, and released nearly 400 timely and accurate reports in response to requestors both inside and outside the DoD.

The office's two full-time civilian attorneys, in addition to supervising the office staff, provide daily guidance on post-trial processing matters to Army installations worldwide. This includes telephonic and email consultation on the contents of promulgating orders and convening authority actions following courts-martial.

The Office of the Clerk of Court is also responsible for processing applications for admission to the ACCA bar both for military and civilian counsel. In FY15, the office admitted eighty-six new counsel. The office also maintains accurate records of attorney disciplinary actions.

Finally, the Office of the Clerk of Court provided instruction to legal NCOs, warrant officers, and those individuals attending military justice courses at TJAGLCS, as well as training for newly assigned SJAs.

## **Trial Judiciary**

The 862 courts-martial tried in FY15 reflect a slight decrease in total number of cases as compared to FY14. However, as indicated in last year's report, raw numbers tell only part of the story, as the percentage of contested cases, the percentage of panel cases, the length of time in trial and the length of time in motions all continue to increase.

Army trial judges from Germany continue to provide judicial support in deployed environments. A grand total of over 973 cases have been tried in combat theaters of operations (Iraq, Kuwait, and Afghanistan) since May 2003.

The Trial Judiciary continued its ongoing effort to keep current Department of the Army Pamphlet 27-9, Military Judges' Benchbook (Benchbook), which is used by all Services, approving five changes to that publication addressing: (1) aggravated assault and reckless endangerment in light of *U.S. v. Gutierrez*, 74 M.J. 61 (C.A.A.F. 2015); (2) abusive sexual contact; (3) advice to accused on consequences of voluntary absence after arraignment; and (4) expert and lay witness opinion testimony regarding credibility or guilt.

A constantly updated version of the Benchbook, along with links to the electronic version of that updated Benchbook, court dockets, and other judiciary related documents and resource materials, can be found on the Trial Judiciary homepage at [www.jagcnet.army.mil/USATJ#](http://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. Members of the Trial Judiciary also served as guest lecturers at The Judge Advocate General's Legal Center and School and the Defense Institute of International Legal Studies. Other notable achievements by the Trial Judiciary included:

\*Publication of the "Annual Review of Developments in Instructions" article in The Army Lawyer.

\*The 58th Military Judge Course graduated 48 Army, Navy, Marine Corps, Air Force and Coast Guard students on May 1, 2015, and invested them as new military judges. The 58th Military Judge Course also included a judge from Israel.

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

In FY15, approximately 459 Active and Reserve Component (RC) judge advocates were serving in the U.S. Army Trial Defense Service (TDS) worldwide, including 138 on active duty; 172 assigned to one of three Trial Defense Legal Operations Detachments (LOD) and 149 in the Army National Guard. The TDS provides high quality, professional defense services to Soldiers across the Army. Counsel assigned to the TDS are stationed at 40 active duty installations worldwide and approximately 100 reserve locations.

The TDS detailed one or more counsel to every Army special and general courts-martial referred in FY15, defending Soldiers facing the entire range of allegations under the UCMJ. In addition, TDS counsel assisted Soldiers facing other military justice related adverse administrative actions. The active duty caseloads were as follows this year:

General and Special Courts-Martial:	862
Administrative Boards:	1542
Nonjudicial Punishment:	26,699
Military Justice Consultations:	29,077

The TDS provided defense services to Army personnel deployed to the United States Central Command (CENTCOM) area of responsibility. The TDS CENTCOM Region has a field office at Camp Arifjan, Kuwait and tried two courts-martial there in 2015. In November 2015 TDS closed its field office at Bagram Airfield in Afghanistan due to the loss of a manning billet for a TDS counsel in country, so will instead provide defense services to Afghanistan remotely or through short visits into country.

The TDS personnel in the Army Reserve are divided into three separate units. The 22d Legal Operations Detachment (LOD) (TDS), headquartered in San Antonio, Texas, with an area of responsibility that includes the majority of states west of the Mississippi River along with Guam, Hawaii and Alaska. The 154th LOD (TDS), headquartered in Alexandria, Virginia, covers the U.S. Southeast, Lower Mississippi River Valley, and Puerto Rico. The 16th LOD (TDS), headquartered in Fort Hamilton, New York, covers the U.S. Northeast and Midwest.

The Army National Guard (ARNG) TDS, headquartered in Arlington, Virginia, consists of 149 judge advocates, one civilian legal administrator, and 47 enlisted paralegals stationed in 50 states, the District of Columbia, and three territories.

In FY15, the DCAP was staffed by four judge advocates and one civilian Senior Counsel/Trainer, who continued to provide training and advice to TDS counsel worldwide. This fiscal year's training events consisted of five iterations of Defense Counsel (DC) 101, a three-day course that provides critical instruction to newly-assigned defense counsel on all aspects of client representation with an emphasis on professional responsibility and complex issues arising in sexual assault cases. Furthermore, all defense counsel attended one of five DC 201 courses to receive training on current trends in military justice, with a focus on sexual assault litigation. In FY15, defense paralegals began to receive training alongside defense counsel in all iterations of DC 101 and DC 201. Regional defense counsel and senior defense counsel from the Active, Reserve, and Guard also gather together annually to receive instruction on their duties as leaders in TDS. In addition, through the use of joint training with TCAP, DCAP organized and taught four Advanced Trial Communications Courses, the Sexual Assault Trial Advocacy Course, and the Expert Symposium.

In FY15, the DCAP received over a thousand inquiries from defense counsel in the form of emails, phone calls, and in-person inquiries during training events. The DCAP provided assistance to defense counsel in the field that included researching case law, answering specific questions, and providing sample motions, expert requests, and other trial documents that might be helpful in the defense of the case. Moreover, the DCAP's website and the Knowledge Management milBook website allowed free flowing discussions and collaboration among counsel on critical issues. Finally, the DCAP also worked with the DAD to assist TDS counsel in the preparation and filing of extraordinary writs before the ACCA and CAAF.

In addition to providing training and advice, the DCAP published the 5th Edition of DC 101 Deskbook and distributed it to all newly-assigned TDS counsel. The DCAP also published the 2nd Edition of DC 201 Deskbook. Counsel were further kept abreast of all major developments through electronic mail updates and a series of updates called "DCAP Sends."

### **GOVERNMENT APPELLATE DIVISION (GAD)**

The GAD, with 16 active duty and ten reserve component military appellate attorneys, represents the United States before the Army Court of Criminal Appeals (ACCA), the Court of Appeals for the Armed Forces (CAAF), and the United States Supreme Court in appeals by Soldiers convicted at courts-martial with an adjudged sentence of either a punitive discharge or confinement for one year or more. The GAD also represents the United States before those

fora in government appeals from courts-martial and petitions for extraordinary relief. Additionally, GAD oversees the operations of the Trial Counsel Assistance Program (TCAP).

In FY15, GAD filed 579 briefs at ACCA, including 269 assignment of error responses, five specified issue briefs, three government appeals, four extraordinary writ petitions, and one *amicus curiae* brief. It filed 475 responses to petitions for grant of review and 17 briefs at CAAF, including four government appeals, five extraordinary writs, and five petitions for reconsideration. The GAD appellate attorneys argued 21 cases before ACCA and 15 cases before CAAF.

Through ACCA's outreach program, GAD argued cases at three locations: Baylor Law School; Fort Hood, Texas; and Fordham University School of Law. As part of CAAF's Project Outreach, GAD argued one case at the University of Wisconsin Law School. Outreach arguments are important in displaying our military justice system to largely civilian audiences. Each oral argument was well received and attended by a large audience.

In FY15, the TCAP continued to perform its three primary missions. First, TCAP delivered continuing legal education and specialized training to Army trial counsel and government paralegals worldwide. Second, TCAP provided direct prosecutorial assistance to Offices of the Staff Judge Advocate on many of the Army's most complex and/or high-profile cases. Finally, TCAP also managed the operations of the Special Victim Prosecution (SVP), Special Victim Noncommissioned Officer (SVN), and Special Victim Witness Liaison (SVWL) programs.

The cadre of TCAP trainers, including seven military attorneys, three civilian attorneys, and a senior paralegal noncommissioned officer, developed and delivered 40 training events for trial counsel and government paralegals worldwide. This year's training events consisted of 24 specialty courses, including: the New Prosecutors Course; Effective Strategies for Sexual Assault Prosecution; Effective Strategies for Members Cases; Crime Lab Forensic Training; Child Forensic Interviewing; Prosecuting the Online Exploitation of Children; Expert Symposium; Sexual Assault Trial Advocacy Course; Special Victim Prosecutor Course; and, Advanced Paralegal Course. The TCAP also travelled to 14 Army installations to conduct two to three day outreach training events, as well as two, week-long, regional training events overseas.

Many of this year's training events focused on trial advocacy skills and prosecuting sexual assault and domestic violence cases. Specifically, TCAP presented five iterations of the New Prosecutor Course/Effective Strategies for Sexual Assault Prosecution (NPC/ESSAP), a five-day course focused equally on the fundamentals of military justice and prosecution of sexual assaults. Additionally, NPC/ESSAP prepares new counsel for the ITAC taught at The Judge Advocate General's Legal Center and School. Following attendance at ITAC, counsel with 18 months or more of court-martial practice are qualified to attend TCAP's capstone training event - the Sexual Assault Trial Advocacy Course (SATAC). The SATAC is a two-week trial advocacy course focusing on the fundamentals of trial advocacy in the context of litigating special victim cases. This year's SATAC included lectures, break-out sessions, and numerous advocacy exercises.

In support of its mission to assist prosecutors in the field, TCAP also provided expert military counsel to prosecute many of the Army's most complex and/or high-profile cases, and provided

direct expert assistance and consultation through its three civilian Special Victim Litigation Experts (SVLEs). The TCAP also continued its traditional information-sharing and collaboration activities such as publishing regular issues of its “TCAP Express” newsletter to inform and advise the field on new legal developments and issues, compiling and distributing a resource disk of useful templates, resources and tools, as well as responding to hundreds of emailed and telephonic legal questions from prosecutors and paralegals worldwide.

Finally, TCAP continued to manage the Army’s 24 SVPs, 23 SVNs, and 23 SVWLs located at the Army’s 21 largest installations. Their primary mission is to ensure that every instance of sexual assault, child abuse, and intimate-partner violence within their geographic area of responsibility is properly investigated, charged, and prosecuted. The SVPs, SVNs, and SVWLs also work with CID’s Sexual Assault Investigators and with the local Special Victim Counsel to ensure that survivors are treated respectfully, notified of all available support services, and kept abreast on the status of the investigation and prosecution. All SVPs are also charged with creating local training programs for trial counsel and government paralegals in order to ensure that our personnel received relevant military justice and advocacy training on regular basis.

### **DEFENSE APPELLATE DIVISION (DAD)**

The DAD provides appellate representation to eligible Soldiers and other individuals before the ACCA, the CAAF, and the U.S. Supreme Court. 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 defense counsel in preparing and filing extraordinary writs before the aforementioned courts.

The DAD appellate counsel currently represent Soldiers in approximately 800 cases in various stages of the appellate process. Categories include cases recently received at DAD, cases pending action by ACCA or CAAF, and cases awaiting final action and discharge from the Army. Approximately 220 cases are pending filing with ACCA.

Last year, DAD filed 618 briefs with ACCA. The DAD also filed 478 briefs with CAAF. Assignments of error were raised in approximately 50% of these cases. Counsel also argued 21 cases at ACCA and 15 at CAAF.

### **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, as opposed to habeas actions challenging Army decisions, such as a denial of conscience objector status. Currently, the Military Personnel Litigation Branch has eleven habeas corpus petitions in active litigation mounting collateral attacks on their court-martial convictions or seeking federal court intervention related to other confinement issues such as confinement conditions, illegal detention, and transfer out of military confinement facilities. Additionally, the General Litigation Branch periodically handles civil lawsuits involving Constitutional challenges to the military justice system, such as allegations involving alleged

violations of equal protection, due process, and the First Amendment. The following cases highlight the types of issues handled by the Army's Litigation Division.

*White v. Michael Sepanek, Warden* (E.D. Ky.). On November 19, 2014, Petitioner, Jeffery J. White filed his petition for writ of *habeas corpus* with the U.S. District Court for the Western District of Kentucky. On December 14, 2006, a general court-martial composed of enlisted and officer members convicted then-Specialist White, of one charge and one specification of premeditated murder, in violation of Article 118, UCMJ for the murder of Specialist (SPC) Felicia LaDuke, petitioner's ex-girlfriend. The general court-martial sentenced petitioner to life without the possibility of parole, total forfeiture of all pay and allowances, to be reprimanded, to be reduced to the grade of E-1, and a dishonorable discharge. On August 11, 2010, the ACCA affirmed the findings of guilty and the sentence of the court-martial. On March 2, 2011, the CAAF denied White's petition for grant of review and on September 8, 2011, Petitioner's Dishonorable Discharge was executed. Petitioner White now seeks a writ of *habeas corpus* and argues that he is entitled to a new court-martial because the court-martial lacked personal, territorial, and subject matter jurisdiction to try him because he was initially arraigned in local Hawaii courts for these crimes. As such, Petitioner asserts that he should have been tried by Hawaiian civilian courts and that it was improper for the military to try him for his offenses. Of note, at trial and in his numerous appeals Petitioner failed to raise any prior jurisdictional issues. On July 27, 2015 the Government filed a Motion to Dismiss Petitioner's case. On October 9, 2015, Petitioner filed a response to the Motion to Dismiss. The Court's ruling is pending. [Military Personnel Litigation Branch]

*Gray v. James W. Gray, Commandant, USDB* (D. Kan.). In 1988, a general court-martial convicted Petitioner Ronald Gray of the premeditated murder of two women, the attempted premeditated murder of a third woman, the rape and sodomy of the women, burglary, and larceny. Two of the three women were Soldiers. The court-martial sentenced Gray to death. The military appellate courts affirmed the court-martial conviction. In 2001, the United States Supreme Court denied Gray's petition for writ of certiorari, and his request for rehearing. In July 2008, the President approved the death sentence. In August 2008, the Secretary of the Army signed the execution order directing Gray's execution. In November 2008, Ronald Gray filed a motion in the United States District Court for the District of Kansas requesting an order staying his execution, originally scheduled for December 10, 2008, pending final resolution of federal *habeas corpus* proceedings. In November 2008, the District Court granted the stay of execution. In April 2009, Gray filed a petition for writ of *habeas corpus*. The government filed its answer. In December 2009, Gray filed a response which raised three additional claims concerning denial of access to materials the Army provided to the President, mental competence at trial and on appeal, and lack of military jurisdiction over a peacetime murder in the United States. In September 2010, the court ruled that Gray may present the additional claims. In February 2011, Gray filed a Petition for Extraordinary Relief in the Nature of a Writ of *Coram Nobis* with the ACCA. The ACCA denied relief noting that it lacked jurisdiction. The CAAF denied Gray's writ appeal, without prejudice, leaving the door open for Gray to again raise his issues after his *habeas* proceedings. Gray filed his reply on November 1, 2012, which completed the briefings in the case.

In November 2014, a new district court judge was assigned to the case. On April 2, 2015, the Chief Judge for the District of Kansas heard oral argument regarding Gray's 21 asserted assignments of error raised in his *habeas* petition. On September 29, 2015, the District Court issued its memorandum and opinion addressing all counts of Gray's *habeas* petition. The Court denied 14 counts, finding that the military courts had provided Gray full and fair consideration on those issues. Additionally, the Court denied Gray's Eighth Amendment challenge to the method of his execution and Gray's jurisdictional challenge. Lastly, the Court dismissed Petitioner's five remaining arguments without prejudice. On September 27, 2015, Petitioner filed a Motion to Alter or Amend Judgement pursuant to Federal Rule of Civil Procedure 59. The Government filed its response on November 6, 2015. Assuming denial of Petitioner's motion, Plaintiff can now either appeal to the Tenth Circuit Court of Appeals, or seek relief for the five issues dismissed without prejudice in the military appellate system. [Military Personnel Litigation Branch]

CMB, et al. v. Department of Defense (E.D. Va.) On 31 March 2015, Plaintiffs 1LT CB (USA), JS, AR, and CS filed a complaint alleging that their "substantive and procedural due process, equal protection and First Amendment rights have been violated by the Department's practice of permitting persons known to be involved in creating sexually hostile environments to be appointed as 'convening authorities' in rape and sexual assault cases." Plaintiffs seek an injunction sufficient to halt the Department's ongoing wrongdoing. Further, in their second count, "plaintiffs seek to exercise their rights under all federal statutes and regulations, including but not limited to the Administrative Procedure Act, Title VII, Title X and implementing regulations, that penalize the creation of a sexually hostile environment, require a full and impartial investigation of such environments, and prevent vesting adjudicatory 'convening authority' power in the hands of participating." Plaintiff CMB graduated from West Point and is currently deployed to Kuwait. Plaintiff CMB alleges that during her tenure at West Point, she was raped, sexually assaulted and subjected to a sexist and hostile environment. Plaintiff CS served in the Air Force for 18 years and reached the level of TSgt. During her 18 year tenure with the Air Force, she alleges that she was sexually assaulted and subjected to a sexually hostile environment and that she suffers from PTSD resulting from combat, the sexual assaults, and the sexually hostile environment. Plaintiff AR was in the Air Force and alleges that she was raped and that General Franklin refused to prosecute her rapist. She further alleges that as a result of the ongoing and lengthy military justice process, she became disabled from PTSD. Finally, Plaintiff CS alleges that while she was deployed as an Army Sergeant in Afghanistan, an NCO raped her in her barracks. She further alleges that her rapist was set free with no consequences to his military career and that she became disabled from PTSD and was separated after 15 years of service. A summons was issued as to the Department of Defense on 30 October 2015, but service has not yet been completed. [General Litigation Branch]

## **OTJAG INTERNATIONAL AND OPERATIONAL LAW DIVISION (IOLD)**

In FY15, the mission and programs of the OTJAG International and Operational Law Division (IOLD) continued to support the military justice system across three lines of effort: prevention of law of war violations, support to judge advocates and paralegals administering military justice in deployed environments and overseeing the application of foreign criminal jurisdiction, and strengthening partner nation military justice systems to produce highly disciplined, effective coalitions for on-going and future military operations.

Led by the Special Assistant to TJAG on Law of War Matters, IOLD continued its evaluation of all new weapons, and new applications for existing weapons, for compliance with domestic and international law. The Operational Law Division similarly reviewed all operations and concept plans, training materials, directives, policies, and instructions, and the rules of engagement for compliance with the law of armed conflict. The IOLD further supported the reporting, investigation, and prosecution whenever Army personnel were alleged to have violated the law of war. Most notably, IOLD provided review and input for the long-awaited Department of Defense Law of War Manual, and subsequently revised in preparation for publication the Army's Field Manual 6-27 to complement and expand upon the Department of Defense guidance with practical applications for judge advocates in the field.

The IOLD provided reach-back support for operational law issues and for guidance on the exercise of either US military jurisdiction or foreign criminal jurisdiction, depending on relevant SOFA provisions. The IOLD shared Operational Law updates and other key items with legal advisors in the field. As part of this effort, IOLD developed plans for the JAG Corps to support the Army's successful implementation of the Regionally Aligned Force (RAF) initiative, to include helping to launch the JAG Corps' RAF Repository. The Repository will serve as a vital legal research tool for individuals assigned to a RAF Mission. The IOLD provided instruction and preliminary legal briefings to personnel deploying in support of United Nations Military Observers missions, including personnel from each of the Service branches.

In order to build strong, disciplined coalitions for future military operations, TJAG and other JAGC senior leaders participated in numerous legal engagements with their counterparts from partner nations, including Australia, China, Democratic Republic of Congo, France, Israel, Japan, the United Arab Emirates and the United Kingdom. Through a focus on stability operations and strategic engagements, individual IOLD officers also provided instruction on military justice issues with their counterparts from Burundi, Bulgaria, Mongolia, and Niger. The topics of discussion focused on the most effective practices for the administration of military justice and the manner in which military justice contributes to the overall strength of the rule of law within a given society. Partner nation visitors to OTJAG participated in substantive talks and conducted additional site visits to TJAGLCS and USALSA. These programs demonstrated the importance of organizational structure and resourcing to provide commanders with the highest quality legal support. The programs also provided comprehensive overview of the military justice system throughout all pre-trial, trial, and appellate stages.

Senior Judge Advocates advised and assisted the Palestinian Authority leaders in the development of their security justice system and supported Army Service Component Command

theater security cooperation programs by visiting partners around the world. Senior JAGC leaders participated in dialogues on the application of the Law of Armed Conflict in current and future operations, and IOLD personnel attended multinational events including the Five Eyes Conference in the United Kingdom, the Sanremo LOAC Basic Course, and the AFRICOM Accountability Colloquium.

## **PERSONNEL, PLANS, AND TRAINING**

On September 30, 2015, the Army's end-strength was 491,365 Army Soldiers on Active Duty, including AGR and mobilized Soldiers, compared to 508,210 at the end of FY14. The attorney strength of the Active Component (AC) Judge Advocate General's Corps (JAGC) at the end of fiscal year 2015 was 1,819 (including general officers). This total does not include 69 officers attending law school while participating in the Army's Funded Legal Education Program (FLEP). The FY15 end-strength of 1,819 compares with an end-strength of 1,930 in FY14. The diverse composition of the FY15 AA attorney population included 114 African-Americans, 57 Hispanics, 109 Asians and Native Americans, and 492 female Soldiers.

The grade distribution of the JAGC AC attorneys for FY15 was seven general officers authorized (five filling JAGC authorizations, one serving in a Military Occupational Specialty (MOS) coded position (Chief Prosecutor for the Commissions), and a seventh general officer (mobilized reservist) serving in a branch immaterial billet - Commander, Rule of Law Field Force - Afghanistan); 113 colonels; 245 lieutenant colonels; 535 majors; and 919 captains. An additional 92 warrant officers, 638 Civilian attorneys, 758 Civilian paraprofessionals and 1,623 enlisted paralegals supported legal operations worldwide.

The attorney strength of the United States Army Reserve Component of the JAGC at the end of FY15 was 1,782 (which includes officers serving in Troop Program Units, the Drilling Individual Mobilization Augmentee (DIMA) Program, the Individual Ready Reserve, and the Active Guard & Reserves), and the attorney strength of the Army National Guard at the end of FY15 was 906. At the end of FY15, over 219 Army JAGC personnel (officer and enlisted, AC and Reserve Component) were deployed in operations in Afghanistan, Guantanamo Bay, Kosovo, Egypt, Jordan, Honduras, Israel, Iraq, Kuwait, Qatar, Djibouti and other locations around the world.

In FY15, the JAGC continued its efforts to improve the quality of practice in complex cases, to include capital cases, national security cases, sexual assault cases, and military commissions proceedings. As discussed above, many of these efforts involved TCAP and DCAP, which provided personnel and expert advice to assist with numerous high profile trials. Along with TJAGLCS, TCAP and DCAP were instrumental in capturing and disseminating lessons learned from these cases throughout the Corps. In addition, the SVP program continued to build the Army's capability to prosecute sexual assault offenses our SVC program continues to grow and provides a holistic approach to victim care.

In a year filled with significant change, the JAGC continued to provide superior legal advice to senior commanders and leaders. The JAGC continued to perform its military justice functions in a just and effective manner. The JAGC also continues to monitor newly emerging military

justice requirements, including all proposed legislation which affects both the UCMJ and the MCM, to help to ensure a gold-standard military justice system that the Army demands and that its Soldiers deserve.

FLORA D. DARPINO  
Lieutenant General, US Army  
The Judge Advocate General

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

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	636	566	70	-4.4%
BCD SPECIAL [A]	225	202	23	-39.6%
NON-BCD SPECIAL	1	1	0	N/A
SUMMARY	148	[G]	[G]	-67.5%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-29.6%

Report Period: FISCAL YEAR 2015

**PART 2 – DISCHARGES APPROVED [B]**

GENERAL COURTS-MARTIAL ( CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)		141 (+32)	
NUMBER OF BAD-CONDUCT DISCHARGES		318	
SPECIAL COURTS-MARTIAL			
NUMBER OF BAD-CONDUCT DISCHARGES		135	

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	496
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	134
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	279

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

TOTAL ON HAND BEGINNING OF PERIOD		85 [C]
GENERAL COURTS-MARTIAL	[D]	
BCD SPECIAL COURTS-MARTIAL	[D]	
REFERRED FOR REVIEW		599 [C]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED		587 [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		-14.4%

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

NUMBER	555
PERCENTAGE	92.65%

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	438 of 587	74.62%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+1.36%
PERCENTAGE OF TOTAL PETITIONS GRANTED	27 of 545	4.95%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-31.25%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA		4.60%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING		

LAST REPORTING PERIOD	-7.26%
-----------------------	--------

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

**PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ**

TOTAL PENDING BEGINNING OF PERIOD		6	
RECEIVED		6	
DISPOSED OF			
GRANTED	1		
DENIED	10		
NO JURISDICTION	1		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	

**PART 8 – ORGANIZATION OF COURTS**

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		500	
SPECIAL COURTS-MARTIAL		200	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		136	
SPECIAL COURTS-MARTIAL		26	

**PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ**

NUMBER OF COMPLAINTS		
----------------------	--	--

**PART 10 – STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH	491365 [F]	
------------------------------	------------	--

**PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	33708	
RATE PER 1,000	68.60	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+10.40%	

**EXPLANATORY NOTES**

- [A] Cases convened by GCM convening authority.
- [B] Based on records of trial received in 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.
- [G] SCM convictions and acquittals are not tracked.

SECTION 4  
REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

**ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY**

**OCTOBER 1, 2014 TO SEPTEMBER 30, 2015  
SUPERVISION OF THE ADMINISTRATION OF  
MILITARY JUSTICE**

**JUDGE ADVOCATE GENERAL**

The Judge Advocate General (JAG) co-chairs the Military Justice Oversight Council (MJOC) with the Staff Judge Advocate to the Commandant of the Marine Corps pursuant to SECNAVINST 5430.27D. MJOC meets quarterly and includes the following additional members: Commander, Naval Legal Service Command (CNLSC); Deputy Judge Advocate General for Reserve Affairs and Operations; Deputy Staff Judge Advocate to the Commandant of the Marine Corps; Chief Judge of the Department of the Navy; Assistant Judge Advocate General for Military Justice (AJAG-MJ); Assistant Judge Advocate General for Operations and Management; and, Deputy Director, Judge Advocate Division, Military Justice and Community Development.

During the reporting period, and in accordance with their duties to supervise the administration of military justice under Article 6(a), Uniform Code of Military Justice (UCMJ), JAG and CNLSC regularly inspected U.S. Navy legal offices in the United States, Europe, and the Pacific. These inspections were conducted under the supervision of the Office of Judge Advocate General (OJAG) Inspector General by subject matter experts and examined the full range of military justice processes.

**ASSISTANT JUDGE ADVOCATE GENERAL, MILITARY JUSTICE**

AJAG-MJ advises JAG in the performance of statutory military justice duties; serves as a member of the OJAG Professional Ethics Committee, the Judicial Screening Board, and MJOC; and oversees OJAG's Military Justice Division (Code 20) and National Security Litigation Division (Code 30). AJAG-MJ is dual-hatted as the Officer-in-Charge of the Navy-Marine Corps Appellate Review Activity (OIC, NAMARA - Code 04) overseeing the Administrative Support Division (Code 40), Appellate Defense Division (Code 45), and Appellate Government Division (Code 46). OIC, NAMARA is responsible for disposition of all records of trial in accordance with statutory and regulatory requirements, as well as applicable appellate court rules of practice and procedure.

## CRIMINAL LAW DIVISION (CODE 20)

Organization. During the reporting period, Code 20 was staffed by eight active duty judge advocates, one civilian staff member, and an eight-member reserve unit. Additionally, Code 20 assigned one judge advocate full-time to the joint Military Justice Review Group (MJRG).

Mission. Code 20 coordinates, reviews, and drafts military justice and sexual assault policy, including all legislative and regulatory proposals affecting military justice and sexual assault prevention and response (SAPR) within the Department of the Navy (DON). Code 20 directly engages with members of Congress and their staffs on proposed amendments to the UCMJ, Manual for Courts-Martial (MCM), Manual of the Judge Advocate General (JAG Manual), and other statutory and regulatory proposals affecting the UCMJ. Code 20 monitors all decisions of military appellate courts; tracks the status of military justice cases; provides legal and policy opinions; staffs requests for JAG certification of cases for U.S. Court of Appeals for the Armed Forces (CAAF) review; and facilitates Department of Justice (DoJ) processing of executive pardon requests involving military convictions. Code 20 staffs requests for Secretarial designation of general, special, and summary court-martial convening authorities; coordinates court orders and warrants of attachment; and coordinates with the DoJ regarding approval for grants of immunity and orders for civilian witnesses to testify at trial by court-martial. Further, Code 20 provides a representative to the Naval Clemency and Parole Board; provides legal opinions to the Board for Correction of Naval Records; provides informal advice for Navy and Marine Corps judge advocates regarding military justice; processes all Article 69, 73, and 74(b) UCMJ reviews and requests; and acts as the release and initial denial authority on all Freedom of Information Act (FOIA)/Privacy Act (PA) requests for information pertaining to courts-martial.

The Code 20 Division Director sits as a member of the Judicial Screening Board and serves as CNLSC's Special Assistant for Military Justice, advising CNLSC on policies, plans, resources, and procedures affecting NLSC's military justice mission.

The Code 20 Division Director also serves as Navy's representative to the Joint Service Committee (JSC) for Military Justice and functions as Navy's voting group member at regular meetings of the JSC. The JSC is the principal vehicle for

staffing amendments to the UCMJ and MCM. The JSC's 2015 Annual Review of the MCM was completed in accordance with the President's requirement. The JSC drafted an Executive Order containing significant changes to the MCM, most notably concerning the new Article 32 preliminary hearing, Victim's right to be heard, and Victim's right to make an unsworn statement at sentencing. This Executive Order was signed by the President in June 2015. An additional Executive Order containing over twenty changes to the MCM implementing Response Systems to Adult Sexual Assault Crimes Panel (RSP) recommendations and FY16 NDAA provisions, as well as other changes, was drafted and sent for public comment. The JSC was tasked by the General Counsel of the Department of Defense with responding to various legislative proposals, committee initiatives, and other reviews, including review of several recommendations from the RSP.

Code 20 responded to numerous Congressional requests for information, provided technical assistance in drafting legislation, and drafted and reviewed senior leadership testimony before the Senate Armed Services Committee and Personnel Subcommittee.

In FY15, the MJRG submitted its proposed changes to the UCMJ to the General Counsel of the Department of Defense. Code 20 supported the MJRG review process with staffing assistance. The MJRG report analyzed all 146 UCMJ articles and proposed substantive additions to the UCMJ including 13 new articles, statutory amendments to 53 articles, and proposed legislation incorporating those changes. The MJRG, in its holistic review of the UCMJ, took into account the report and recommendations of the RSP. Code 20 was instrumental in reviewing the MJRG proposal, coordinating a DON response in conjunction with the Marine Corps. In FY16, the Military Justice Act of 2016 consisting of the MJRG's recommended changes to the UCMJ was forwarded to Congress for consideration. Code 20 continues to support the entirety of the MJRG process ensuring proper preparations are made for the possible changes to the UCMJ implemented by Congress.

The Director of Code 20 serves as the Navy's point of contact for all Navy and Departmental requests for information and testimony before the congressionally-mandated Judicial Proceedings Panel (JPP), the successor panel to the RSP. Like the RSP, the JPP was created by section 576 of the FY13 National Defense Authorization Act (NDAA). The JPP's mandate is to conduct an independent review and assessment of judicial

proceedings conducted under the UCMJ involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the FY12 NDAA for the purpose of developing recommendations for improvements to such proceedings. Code 20 personnel testified before a JPP subcommittee and engaged with JPP staff members providing substantive guidance to support their mandate.

In FY15, Code 20 continued to be instrumental in the implementation of Navy's Special Victims Investigation and Prosecution (SVIP) Capability, as required by section 573 of the FY13 NDAA. To ensure continued and updated training of key SVIP stakeholders, Code 20 worked with the Naval Justice School (NJS) and OJAG's Technology, Operations and Plans Division (Code 67) to hold the third annual SVIP course. In 2013, 161 personnel attended the course, while 239 attended in 2014 and 75 attended in 2015. Attendees included Navy judge advocates, Legalmen, civilian paralegals, Sexual Assault Response Coordinators (SARCs), SAPR Victim Advocates (VAs), Domestic Abuse Victim Advocates, and several Marine Corps participants serving in similar capacities.

In addition to the SVIP course, in coordination with NJS, Code 20 hosted the second annual Sexual Assault Policy for the Staff Judge Advocate course, a two-day course for staff judge advocates (SJAs) currently providing advice to General Court-Martial Convening Authorities (GCMCAs), Sexual Assault-Initial Disposition Authorities (SA-IDAs), those serving as Region Legal Service Office (RLSO) Command Services Department Heads, and SJAs for other commands that frequently convene courts-martial. The course provided instruction on and encouraged discussion of current legal issues involving sexual assault policy and dispositions that SJAs encounter while advising GCMCAs and SA-IDAs. Among the key topics covered were the FY15 NDAA, the status of its implementation, newly released Department of Defense (DoD) and Chief of Naval Operations (OPNAV) instructions, and recent policy and legislative requirements placed on SJAs and commanders. The course also included instruction and discussion of UCMJ Article 18 (General Court-Martial jurisdiction), Article 32 preliminary hearings, Article 34 advice, Article 56 (maximum punishments), Article 60 (post-trial action), Rules for Court-Martial (R.C.M.) 306 (character of accused during initial disposition of an offense), the Victim and Witness Assistance Program (VWAP), and the Family Advocacy Program (FAP).

Code 20 continues to maintain a strong relationship with DON SAPRO, N17, and the Naval Education and Training Command (NETC) to provide legal review on all SAPR training products before they are released to the fleet. This review process ensures that these training products are accurate and balanced. Code 20 personnel assisted in the development of fleet-wide training initiatives on SAPR, to include DON SAPRO's creation of a SAPR video library, Pure Praxis Bystander Intervention training (training through the use of actors), Senior Enlisted Academy and Recruit Training Command SAPRO training videos, and its forthcoming graphic novel. Code 20 also assisted NETC with their creation of "Chart the Course" training which will replace Bystander Intervention to the Fleet training in FY16. Chart the Course is a two-hour training course that blends scenario-based videos with facilitator-led discussions. This format allows for a consistent message and encourages direct personal involvement by all Sailors. Chart the Course emphasizes the need for intervention in, and prevention of, destructive behavior by utilizing video vignettes and facilitated discussions to engage all service members in educational, face-to-face conversations about many topics, such as alcohol, drugs, fraternization, hazing, sexual harassment, and sexual assault. Code 20 was also involved in the creation of the SJA Sexual Assault Reporting Toolkit, which provides guidance and support to the Navy's leadership regarding the requirements for reporting all sexual assault cases.

Further, as part of the SAPR Cross Functional Team, Code 20 met monthly with Navy's major stakeholders to discuss SAPR-related policy, training, military justice, and victim services developments across the Fleet.

In order to compile the data for the Annual Report to Congress on Sexual Assault in the Military, Code 20 Legal Officers once again utilized the Defense Sexual Assault Incident Database (DSAID), a comprehensive database launched in 2013 that tracks and reports sexual assault incidents. In 2015, Code 20 provided three fully-qualified DSAID Legal Officers (LOs) who personally reviewed and entered over 1,000 Sexual Assault Disposition Reports and dispositions of Unrestricted Reports of sexual assaults for FY15. In FY15, DSAID was the sole source for disposition data on incidents of adult sexual assault for purposes of the forthcoming Annual Report to Congress on Sexual Assault. Code 20 continues to participate in monthly DSAID Change Control Board meetings whose purpose is to improve and enhance DSAID capabilities.

Finally, during the reporting period, Code 20 reviewed four records of trial under Article 69(a), UCMJ; one record under Article 69(b), UCMJ; and no petitions under Article 73, UCMJ.

#### **NATIONAL SECURITY LITIGATION DIVISION (CODE 30)**

Organization. During most of the reporting period, Code 30 was staffed with two officers. At various points in the reporting period there was only one officer assigned in Code 30, including at a time when a potentially high-visibility national security case was developing.

Mission. Code 30 serves as the JAG's central point of contact for matters involving classified information and national security cases. The Division works closely with other agencies in the intelligence community, other Services, and the DOJ to refine the Navy's classified litigation practice, facilitate the use of Navy classified information, and coordinate the litigation of high-visibility cases while protecting Navy information. The Division also reviews proposed legislation and regulations pertaining to national security matters and interacts with other agencies in the intelligence community.

The Division provided extensive investigation and litigation support to commanders, SJAs, trial counsel, and defense counsel. Attorneys from all Services sought guidance from Code 30 on classified litigation and national security matters. Litigation support included processing security clearance requests for courts-martial personnel, coordinating requests for classification reviews of evidence, and coordinating the assertion of the classified information privilege under Military Rule of Evidence 505, Classified Information Procedures Act (CIPA), and State Secrets Protection Act (SSPA). Additionally, Code 30 assisted the DoJ National Security Division on numerous cases involving Navy classified information, often facilitating the use of materials vital to trial and coordinating contact between the intelligence community, the federal law enforcement community, and DON.

During the reporting period, Code 30 worked on twenty complex espionage and mishandling cases, including the long-term, high-profile investigation of a Naval Officer for espionage, as well as the investigation, trial and conviction of a defense contractor for attempted espionage. The Division supported methodical work to identify Original Classification Authorities and review an expansive trove of evidence in support

of espionage charges for the officer case. Code 30 continued to be involved in national-level cases such as the charges being referred against Sergeant Bowe Bergdahl, the ongoing support to DoD, DoJ and Naval Special Warfare equities in the inquiry against a former SEAL for leaking classified information about the Bin Laden operation in his book "No Easy Day," and the parole appeal of Jonathan Pollard.

Code 30 refined its specialized training on classified information litigation and national security crimes, presenting the latest iteration of its Classified Information Litigation Course in July 2015. Code 30 continued to expand its reach, strengthening ties with Federal Bureau of Investigation, DoJ National Security Division and Naval Criminal Investigative Service (NCIS), as well as teaching numerous blocks of instruction to counter intelligence officers at the Joint Counter Intelligence Training Academy. Code 30 continues to foster relationships within the intelligence community, the other Services, NCIS, and the DOJ. This outreach paid significant dividends during the reporting period, bringing awareness of Code 30's mission and capabilities to potential clients who have in turn sought Code 30's advice and assistance. This continues to improve the Navy's overall handling of matters involving classified information.

The Division maintains an extensive library of resources and templates. The library includes a hard-copy library of significant Navy classified information cases as well as a greatly-enhanced electronic database that significantly enhances research capabilities.

Finally, Code 30 continues to publish and update the only National Security Litigation primer in the DoD. Significant revisions to the primer are currently under review by stakeholders and the updated version is expected to be released early in 2016. The primer serves as a starting point for attorneys across all services litigating cases involving classified information.

#### **ADMINISTRATIVE SUPPORT DIVISION (CODE 40)**

Organization. During the reporting period, Code 40 was staffed with one officer, two civilians, and nine enlisted Marine Corps staff members.

Mission. Code 40 provides administrative and logistical support services to NAMARA and the Navy-Marine Corps Court of

Criminal Appeals (NMCCA). Code 40 personnel review for completeness all records of trial forwarded to NAMARA for appellate review pursuant to Articles 66 and 69, UCMJ; promulgate decisions of the NMCCA in accordance with the JAG Manual and the MCM; manage the OJAG court-martial central filing system, including original records of trial maintained at NAMARA; manage and retrieve archived records of trial stored at the Washington National Records Center in Suitland, Maryland; and administer all NMCCA and CAAF mandates and judgments on remand back to commands worldwide for corrective action. During FY15, Code 40 examined 390 records of trial for completeness prior to forwarding the records for appellate review pursuant to Articles 66 and 69, UCMJ. Also during FY15, Code 40 coordinated the delivery of over 80,000 Records of Trial dated 1976 and earlier to the custody of the National Archives and Records Administration for future storage.

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

Organization. Code 45 was staffed with twelve active-duty Navy and Marine Corps judge advocates, one civilian attorney, and three civilian support personnel. Twenty-two Navy and Marine Corps Reserve judge advocates supported Code 45.

Mission. Code 45 represents Navy and Marine Corps appellants before the NMCCA, CAAF, and the U.S. Supreme Court. Code 45 provides assistance to trial defense counsel in the field by helping to file extraordinary writs before the NMCCA and the CAAF, providing advice on specific cases in litigation, and providing instructors at formal training sessions on topics such as recent appellate developments and how to preserve issues for appeal. Code 45 also works closely with the Defense Counsel Assistance Programs (DCAP) for both services through ongoing collaboration.

As reflected in the chart below, a total of 348 new cases were docketed at the NMCCA in FY15. Code 45 filed 354 initial pleadings at the NMCCA, consisting of 118 briefs, 192 merit submissions, and 1 summary assignment of error pleading. Reservists filed sixty percent of the initial pleadings. In addition to this, Code 45 filed 326 substantive pleadings, including 32 reply briefs, 28 responses to government motions, 4 supplemental briefs, 15 responses to court orders, 244 motions (other than motions for enlargement) and 3 petitions for extraordinary relief at the NMCCA. Counsel presented oral argument in 14 cases before the NMCCA.

Code 45 filed 96 supplemental briefs to petitions at the CAAF and the Navy's Judge Advocate General certified 2 cases to the CAAF (*United States v. Quick*, 74 M.J. 332 (C.A.A.F. 2015) and *United States v. Arnold*, No. 15-0462/MC, 2015 CAAF LEXIS 826 (C.A.A.F. Sept. 25, 2015) (summary disposition)), resulting in 12 full briefs and 7 oral arguments. Code 45 also filed 1 extraordinary writ appeal petition at the CAAF.

<b>NMCCA</b>	<b>FY10</b>	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>
Cases Docketed	678	598	514	437	373	348
Briefs Filed	159	161	191	143	161	118
Other Substantive Pleadings	847	693	632	522	587	326
Total Cases Filed	744	531	488	374	387	354
Oral Arguments	15	20	19	15	15	14
<b>CAAF</b>						
Petitions with Supplemental Briefs Filed	69	81	117	90	79	96
Briefs Filed	21	20	19	13	7	12
Oral Arguments	11	7	12	9	2	7
<b>U.S. Supreme Court Petitions</b>	6	2	3	2	4	0

While there has been a steady decline in the number of cases docketed at the NMCCA in recent years, the average case size has increased significantly. Since 2008, the average case size has increased from a low of 340 pages in 2009 to a high of 574 pages in 2014, a 41% increase; the average case size in 2015 dipped to 482 pages, which is a 29% increase from 2009. Since FY08, the percentage of cases in which appellate issues were raised as an overall percentage of appellate caseload was at a low of 22% in FY09 to a high of 42% in FY14. These changes correlate with an overall increase in appellate complexity.

Significant cases this term include:

- *United States v. Woods*, 74 M.J. 238 (C.A.A.F. 2015) (finding implied bias where the senior member initially believed the "guilty until proven innocent" standard is "essential" to military justice);
- *United States v. Simmermacher*, 74 M.J. 196 (C.A.A.F. 2015) (applying R.C.M. 703(f)(2) in holding appellant's urine sample in this urinalysis case was of such central importance that it was essential to a fair trial and there was no adequate substitute after the Government destroyed it);
- *United States v. Castillo*, 74 M.J. 160 (C.A.A.F. 2015) (upholding Navy's self-reporting requirement for arrests and initiation of criminal charges that was re-written in response to *United States v. Serianne*, 69 M.J. 8 (C.A.A.F. 2010));
- *United States v. Bass*, 74 M.J. 806 (N-M. Ct. Crim. App. 2015) (finding non-forcible sodomy was not a lesser included offense of forcible sodomy as charged because the charged offense did not allege a *Marcum* factor);
- *United States v. Pease*, 74 M.J. 763 (N-M. Ct. Crim. App. 2015) (interpreting the meaning of "incapable of consenting" in Art. 120(b)(3)(A), UCMJ, in finding the convictions factually insufficient);
- *United States v. Quick*, 74 M.J. 517 (N-M. Ct. Crim. App. 2015) *aff'd* by 74 M.J. 332 (finding Art. 120c, UCMJ, prohibited indecent viewing of the alleged victim's actual private area rather than a visual recording of the alleged victim's private area as charged);
- *United States v. Spurling*, No. 201400124, 2015 CCA LEXIS 311 (N-M. Ct. Crim. App. July 31, 2015) (finding ineffective assistance of counsel where counsel failed to file a motion to suppress appellant's statement based on a potential Art. 31(b), UCMJ, violation);

- *United States v. Montalvo*, No. 201400241, 2015 CCA LEXIS 218 (N-M. Ct. Crim. App. May 27, 2015) (setting aside convictions where military judge failed to grant continuance for defense to investigate records that the government inadvertently failed to disclose until shortly before trial that indicated the complainant may have destroyed evidence in a sexual assault case);
- *United States v. Edmond*, No. 201200168, 2015 CCA LEXIS 162 (N-M. Ct. Crim. App. Apr. 30, 2015) (finding ineffective assistance of counsel where the defense team failed to effectively cross-examine the alleged victim, introduced a theory but forgot to follow-up on it through questioning a witness, failed an attempt to bolster appellant's credibility, and failed to fully consider or advise appellant on the ramifications of testifying);
- *United States v. Hinojos*, No. 201300305, 2015 CCA LEXIS 20 (N-M. Ct. Crim. App. Jan 27, 2015) (setting aside convictions where, over defense objection, the government failed to establish the source and authenticity of the buccal swab before testifying that it contained DNA matching appellant's DNA); and
- *United States v. Arnold*, No. 201200382, 2014 CCA LEXIS 902 (N-M. Ct. Crim. App. Dec. 23, 2014) (setting aside convictions where military judge's post-trial actions established apparent bias toward accused).

**APPELLATE GOVERNMENT DIVISION (CODE 46)**

Organization. The Division was staffed with eleven active duty judge advocates (including two activated reservists), one civilian attorney, and two civilian administrative employees. Reserve support continues to be critical to mission accomplishment. In FY15, Code 46 was supported by ten reserve judge advocates in addition to the two activated reservists mentioned above.

Mission. Under Article 70, UCMJ, the primary mission of Appellate Government Division is to represent the United States before the NMCCA and the CAAF. The Division also provides interlocutory appeal and prophylactic appellate support and advice to trial counsel, SJAs, and post-trial review officers

throughout the Navy and Marine Corps for all types of pretrial, court-martial, and post-trial matters.

A summary of FY15 appellate activity is provided in the following chart. These calculations are based on input from the Court-Martial Tracking and Information System (CMTIS) database. The calculations in CMTIS for "Briefs Filed" include Government briefs, answers to supplements, and supplemental briefs. "Other Pleadings" include responses to extraordinary writs, motion responses, responses to Court Orders, and Petitions for Reconsideration. The number of CAAF briefs submitted by the Government nearly doubled as compared to FY14, and oral arguments by the Government more than doubled. NMCCA briefing was slightly lower this fiscal year. Three Article 62 appeals from trial court decisions were filed in the cases of *United States v. Rios*, *United States v. Smith*, and *United States v. Burris*.

	<b>FY10</b>	<b>FY11</b>	<b>FY12</b>	<b>FY13</b>	<b>FY14</b>	<b>FY15</b>
<b>NMCCA</b>						
Briefs Filed	163	188	198	152	159	140
Other Pleadings	373	144	439	439	479	435
Oral Arguments	15	20	19	15	16	11
<b>CAAF</b>						
Briefs Filed	24	22	24	9	12	23
Other Pleadings	102	70	111	98	72	97
Oral Arguments	11	7	12	11	3	7

Issues and briefing continued to be highly complex, including the following (case name in parenthesis):

- Whether probable cause to search for child pornography is provided by evidence of child enticement (Hoffman);
- Whether Individual Ready Reservists are entitled to Article 31(b) warnings (Gilbreath);
- Whether a duty to self-report violated the Fifth Amendment (Castillo);

- Whether and how Religious Freedom Restoration Act defenses should be raised in courts-martial (Sterling);
- What remedies are available to accused when the government inadvertently destroys evidence (Simmermacher);
- Whether sentence-only rehearings are authorized under Article 66(d), UCMJ (Quick); and
- Whether a convening authority's member selection process under Article 25 resulted in systematic exclusion of panel members (Ward).

Code 46 provides direct legal services to Marine Corps and Navy judge advocates around the world, responding to hundreds of questions from the field on trial and appeal matters. To better protect convictions on appeal, Code 46 advocates the need for unity of legal positions taken by the United States before trial and appellate courts. Code 46 augments delivery of legal advice on appellate issues affecting ongoing trials through postings on the Code 46 blog site and sending e-mails to the field. Appellate and trial prosecution working together helps ensure that legal precedent favorable to the United States is developed, positions are not waived prior to appellate litigation, and inconsistent positions are not taken by trial or appellate counsel. More formalized coordination between the Trial Counsel Assistance Program (TCAP), trial counsel, and Code 46 will position the United States to better achieve appellate success. Additionally, closer coordination with policymakers to address issues as they arise in appellate litigation will prevent recurrence and assist in solving systemic issues.

Code 46 continues to train trial counsel in the field. In coordination with the Marine Corps TCAP, Code 46 attorneys conducted several courses of trial counsel training. Code 46 attorneys also instructed at the "Sexual Assault Policy for the Staff Judge Advocate" course in coordination with Code 20. Code 46 training routinely covers: handling interlocutory appeals, extraordinary writs, *DuBay* hearings and remands; protecting the record to withstand appellate scrutiny; and explaining the fundamental areas of intersection between trial and post-trial processing and appellate review. These training sessions are indispensable in building solid working relationships between trial and appellate litigators and SJAs. Additionally, the sessions provide opportunities for appellate counsel to share previous lessons learned in an effort to prevent identical or analogous mistakes that adversely affect the United States.

Code 46 organized the highly successful Third Annual Joint Government Appellate Training, held at Joint Base Myer-Henderson Hall from September 22-24, 2015. It was attended by nearly a hundred judge advocates from across the globe and from every military branch. Speakers included: Chief Judge "Chip" Erdmann of the Court of Appeals for the Armed Forces; Judge Patricia Millett, United States Court of Appeals for the District of Columbia Circuit; Michael Doyle, Legal Affairs Correspondent for McClatchy Newspapers; Elisabeth Trosman, Chief of the Appellate Division for the U.S. Attorney's Office for the District of Columbia; former CAAF Chief Judge Andrew Effron, Chair, Military Justice Review Group; A.J. Kramer, Federal Public Defender for the District of Columbia; a panel of notable Supreme Court litigators who taught appellate writing skills; a panel of military and state victims counsel to discuss the Victims' Legal Counsel (VLC) program; a panel of CCA judges from all the services; and a panel of notable amicus organizations including the Cato Institute, the Liberty Institute, the Solicitor General of Virginia, the National Association of Criminal Defense Lawyers, and the Center for Constitutional Rights. Code 46 counsel also attended appellate advocacy training at the D.C. Bar Association's Appellate Advocacy Seminar, advanced appellate training at the annual American Bar Association's (ABA) Appellate Judges' Education Institute, and CAAF's Continuing Legal Education and Training Program.

Appellate Government Counsel continue to conduct robust outreach to the community. As in previous years, Code 46 appellate counsel served as appellate moot court judges at the ABA's National Appellate Advocacy Competition. This year, the Director and Code 46 counsel served as moot court judges for student competitors at the George Mason Law School Upper Class Appellate Competition as well as at the American Bar Association Appellate Moot Court Competition.

During FY15, Code 46 continued the DON's electronic record of trial program, which at year's end included approximately 95% of the trial records docketed at NAMARA. Code 46 continues to operate on a fully paperless and "virtual" office utilizing a discussion board, a Military Justice Wiki, and a routinely updated Military Justice Blog. Trial counsel and appellate government counsel from other Services are also able to participate and contribute to the blog, the discussion board, and the Military Justice Wiki.

**ASSISTANT JUDGE ADVOCATE GENERAL,  
CHIEF JUDGE, DEPARTMENT OF THE NAVY**

The Assistant Judge Advocate General, Chief Judge, Department of the Navy (CJDON) (AJAG 05) is the senior supervisory jurist in the DON, overseeing the trial and appellate judiciaries. The CJDON serves as the Rules Counsel for the judiciaries and the community sponsor for the Navy JAG Corps' Military Justice Litigation Career Track (MJLCT). The CJDON is selected by a competitive flag selection board and serves for three years, with appointment as the Assistant Judge Advocate General of the Navy in the third year of service.

**THE NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (CODE 51)**

Organization. During FY15, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) included both active duty Navy and Marine Corps appellate judges. The number of judges varied between a high of nine and a low of six over the course of the year. NMCCA was also supported by seven Navy Reserve and three Marine Corps Reserve appellate judges, four Navy and Marine Corps junior officer law clerks, three part-time spring semester student law clerks, two part-time fall semester part-time student law clerks, and a mid-grade officer senior law clerk.

Mission. The NMCCA is responsible for all cases referred under Articles 62(b), 66(b), 69(d), and 73, UCMJ. The Court may also entertain petitions for extraordinary relief.

Legal issues addressed in FY15 included (case names in parenthesis):

- Whether trial defense counsel were ineffective for failing to object to admission of the accused's statements and whether the military judge committed plain error by failing to suppress that accused's statements obtained in violation of Article 31(b), UCMJ, and the Fifth Amendment (Spurling);
- Whether the Government's failure to provide evidence of the victim's learning disability and requested medical records denied him his right to discovery and his 5th Amendment right to due process (Owens);
- Whether the element under Article 120(b) of "incapable of consenting to the sexual act due to impairment by alcohol" is unconstitutionally vague (Corcoran);

- Whether an accused was entitled to credit for pretrial confinement served in a civilian facility (Atkinson);
- The admissibility of a witness's testimony regarding memories recovered through a psychotherapeutic approach known as Eye Movement Desensitization and Reprocessing (D.W.B.);
- Whether a military judge erred in instructing members that consensual sodomy is a lesser included offense of forcible sodomy (Bass);
- Whether the Government may argue that an accused has a general propensity to commit sexual crimes based only on the charges before the court-martial (Bass);
- Whether a service member is entitled to be released from confinement or to the equivalent of an R.C.M. 305 hearing prior to the JAG having had the opportunity to send the case to the CAAF (Clark);
- Whether the numerous errors committed by defense counsel during trial deprived the accused of the effective assistance of counsel as guaranteed by the Sixth Amendment (Edmond);
- Whether a military judge erred by denying an accused's request to continue his trial for four days based upon newly discovered evidence (Montalvo);
- Whether the findings from the accused's original trial were ambiguous and unreviewable and thus subjected the accused to double jeopardy at his rehearing (Oakley);
- Whether an accused's co-conspirator wife could be compelled to testify under the exception found in MIL. R. EVID. 504(c)(2)(D) (Rios); and
- Whether an order to remove religious quotes from the accused's workspace violated the accused's right to freely exercise her religion (Sterling).

The Court hosted its fifth annual NMCCA Judicial Training course in FY15. As in other years of this top-rated training session, the Court brought in an author and lecturer on judicial

appellate writing. The lecturer had previously provided training to state and federal appellate judges. The Court also sponsored the 2015 William S. Fulton, Jr. Military Appellate Judges' Training Conference. The Conference was highlighted by two panel discussions: the first was on the future of the UCMJ; and second was on the intersection of the Fourth Amendment, the Internet, and electronic devices. The attendees also received insightful comments from the two keynote speakers: former Solicitor General of the United States Paul Clement and a sitting federal appellate court judge.

NMCCA continues to maintain a website at <http://www.jag.navy.mil>. All of NMCCA's opinions are available for download at the website. In addition, the Court maintains audio files from oral arguments heard before it as well as a docket for upcoming oral arguments. Application for admission to the NMCCA bar and rules of the court are also maintained on the website.

#### **NAVY-MARINE CORPS TRIAL JUDICIARY (CODE 52)**

Organization. The Navy-Marine Corps Trial Judiciary (NMCTJ) is organized into eight geographic judicial circuits, with thirteen active duty Marine Corps judges and ten active duty Navy judges. Trial judges are stationed throughout the world (typically in Fleet and Marine force concentration areas) and travel to other locations as required to conduct trials. The active duty judiciary is supported by Reserve units from both Services, with a total of eighteen Reserve trial judges.

Mission. The core mission of the NMCTJ is to preside over all Navy and Marine Corps general and special courts-martial. In 2015, the trial judiciary continued to confront novel issues arising from the creation of the VLC program and from other provisions of the FY12-FY15 NDAA's. In courtrooms across our enterprise, trial judges are helping define the evolving role of the VLC and the parameters of their representation, particularly in the area of production and discovery of victims' mental health records under M.R.E. 513. Additionally, trial judges are at the forefront of implementing many of the changes mandated by the NDAA and addressing their impact on courts-martial (e.g., guardianship of victims, victim participation in sentencing hearings, and changes in Article 32 hearing procedures).

The caseload at the trial level continues to decline, but the percentage of contested cases remains constant at around 40% of the total number of cases that proceed to trial.

FY13 closed with the NMCTJ presiding over 1170 arraignments. Of the 720 cases that went to trial in FY13, 266 (37%) were contested trials with 91 of those cases ending in acquittals (34%).

FY14 closed with the NMCTJ presiding over 993 arraignments (301 GCMs and 692 SPCMs), of which 300 (30%) fell out prior to trial as alternative dispositions, withdrawals or dismissals. Of the 692 cases that went to trial, approximately 286 (41%) were contested cases, and 128 cases resulted in acquittals (45%).

By comparison, FY15 closed with the NMCTJ presiding over 852 initial arraignments (284 GCMs and 568 SPCMs). Approximately 180 (21%) cases did not go to trial as a result of alternative dispositions, withdrawals, or dismissals. Of the 672 cases that went to trial, 265 (39%) were contested. Those contested cases resulted in 90 acquittals (34%).

In addition to the primary mission, our trial judges continue to take on significant collateral assignments. The trial judiciary has three military judges assigned for additional duty to support the mission of the Office of Military Commissions Trial Judiciary (OMC-TJ). Of those judges, the Circuit Judge for Europe, Africa and Southwest Asia (EURAFSWA) remains detailed as military judge to the OMC case of *United States v. al Iraqi* and travels to Guantanamo Bay to conduct hearings. Additionally, NMCTJ continues to support the training of new judge advocates by providing evaluators for the mock trial program at the Naval Justice School. Our Reserve trial judges are a vital part of that program as well.

In 2015, the NMCTJ hosted the Joint Military Judges Annual Training (JMJAT) in San Diego, attended by trial judges from all Services. This training included instruction from the National Judicial College (NJC) as well as presentations focused on issues emerging from the 2012-2015 NDAA legislation.

In September of 2015, the NMCTJ held a Special Victims' Training symposium for all Navy and Marine Corps trial judges at Bolling Air Force Base. Funded by DoD SAPRO, the symposium focused on complex issues that frequently arise in contested sexual assault cases. Training topics included MIL. R. EVID. 513 (the threshold for ordering production of victims' psychotherapy records and the process for reviewing and protecting those records); the use of experts in sexual assault

cases; the role of VLC in the court-martial process; and compliance with the NDAA provisions, including recent changes to Article 32 and Article 60, extension of the Crime Victim's Rights Act, and regulations implementing guardianship requirements.

In March 2015, the NMCTJ published a significant revision to its Uniform Rules. Among notable changes was the addition of rules establishing the parameters of courtroom practice for VLC. In September 2015, the NMCTJ transitioned from its historic and traditional court-martial script, adopting a modern version compatible with the Army Benchbook and conducive to rapid and timely updates as case law and Congressional action mandate.

### **NAVAL LEGAL SERVICE COMMAND (NLSC)**

Organization. The Deputy Judge Advocate General of the Navy also serves as Commander, Naval Legal Service Command (CNLSC). At the conclusion of FY15, NLSC was comprised of 432 judge advocates, one Civil Engineer Corps officer, one Limited Duty (Law) officer, 204 Legalmen, one Yeoman, 205 civilians, and 34 foreign nationals.

Mission. Naval Legal Service Command 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 worldwide. In FY15, NLSC provided legal advice, services, and training to the Fleet through 13 commands and their associated branch offices and detachments: four Defense Service Offices (DSOs) provided defense and personal representation and nine RLSOs provided prosecution, command services, and legal assistance. Through these 13 commands, NLSC provided counsel for court-martial prosecution and defense, administrative boards, physical evaluation boards, legal advice to local commanders and their staffs, and legal assistance to active duty members, retirees, and their family members.

NLSC continues to track all military justice cases using the Case Management System (CMS) to comply with a Congressional mandate that DON implement a single court-martial tracking system by July 1, 2013. Tracked cases include all special victims' cases, as required by DOD Directive-Type Memorandum 14-003; all cases where an accused is placed in pretrial restraint, restriction, or confinement; and when the RLSO has substantial involvement in a case in anticipation of a possible court-martial. CMS is also used to track each officer Board of

Inquiry. RLSO commands have found CMS to be highly effective in tracking all cases and providing accurate information to local convening authorities and NLSC headquarters.

Over the past year, NLSC has been heavily involved in the development of the DON Naval Justice Information System (NJIS). NJIS will be a DON cradle-to-grave law enforcement and investigations web-based case management information system using workflow processes to provide visibility throughout the lifecycle of Navy and Marine Corps unclassified criminal/military justice incidents. It merges business processes across communities and DON as opposed to simply automating what already existed. Our vision for NJIS is an information system in which users work rather than simply populating a database. This is DON's attempt to achieve end-to-end Defense Incident-Based Reporting System (DIBRS) compliance. NJIS, when deployed, will replace CMS as the NLSC case tracking system.

In FY15, NLSC completed 118 general courts-martial, 157 special courts-martial, 144 Article 32 investigations, and 305 administrative boards. While the number of courts-martial has declined in recent years, the proportion of contested trials, the complexity of litigation, and the scope of out-of-court responsibilities shouldered by trial and defense counsel have all increased substantially. Further, the addition of VLC into the trial process and the expansion of the rights they are charged with protecting add a new layer of complexity and volume to trial and appellate practice. Therefore, notwithstanding the reduction in number of trials, demand on judge advocates involved in the administration of military justice is increasing.

NLSC personnel also provided services to 35,687 legal assistance clients.

NLSC continued to be the primary source for personnel to meet the JAG Corps' Individual Augmentation (IA) requirements in support of Overseas Contingency Operations. During FY15, 10 judge advocates from NLSC deployed to Afghanistan, Bahrain, Djibouti, and Guantanamo Bay, Cuba, in direct support of military operations outside of the continental United States.

#### **DEFENSE COUNSEL ASSISTANCE PROGRAM (DCAP)**

Organization. DCAP is aligned under NLSC and reports to the Chief of Staff, Defense Service Offices (COS-DSO). DCAP's

current Director is qualified as a "Specialist II" in the Military Justice Litigation Career Track (MJLCT) and received his LL.M. from Harvard University. The current Deputy Director is also qualified as a "Specialist II" and received his LL.M. in Litigation from the George Washington University School of Law. DCAP is currently interviewing candidates to fill a vacant Highly Qualified Expert (HQE) position and expects to have this position filled by Spring 2016. In order to ensure maximum availability for counsel throughout the world, DCAP personnel are currently stationed in the two fleet concentrations areas of San Diego and Norfolk. Although normally utilized as a reach-back resource for defense counsel, DCAP personnel may be assigned cases. For instance, DCAP's Deputy Director served as assistant defense counsel to guide a junior defense counsel through a large conspiracy case.

Mission. DCAP's primary mission is to support the Navy trial defense bar. During FY15, DCAP assisted detailed defense counsel across the spectrum of trial practice including trial strategy, motions practice, argument development, investigations, discovery, requests for witnesses and expert assistants, voir dire strategies and questions, complex legal research, preparing clients and witnesses for testimony, and trial preparation. DCAP was available for on-site visits during trial preparation and were often in courtrooms to assist "behind the bar" during trial. DCAP also provided advice on post-trial matters and frequently consulted with defense counsel concerning professional responsibility and ethics issues.

DCAP planned, organized, and executed a wide array of training for defense counsel. DCAP spearheaded the Defending Sexual Assault Cases (DSAC) course sponsored by the Center for American and International Law in Plano, Texas. This course brought together military and civilian experts to provide comprehensive training on defending service members accused of sexual assault. Additionally, in conjunction with NJS and the Marine Corps defense bar, DCAP organized the Defense Counsel Orientation course which was offered twice over the past year. This course brought together military and civilian defense counsel from all experience levels and was designed to prepare new defense counsel to represent court-martial clients. DCAP personnel served as instructors at both courses. Also, the Director served as an instructor at the Basic Trial Advocacy Course and the Deputy Director served as a guest instructor at the Naval Justice School's Litigating Complex Cases Course.

DCAP conducted ten individual week-long mobile training visits around the world, providing training to DSOs and their detachment offices. DCAP also developed salient resources and provided written advisories on recent case law and changes to the UCMJ. In addition, DCAP provided standardized training and assisted in establishing uniform policy and protocols for the newly created Defense Litigation Support Specialist positions.

DCAP continues to promote and maximize the use of a centralized defense database on its Microsoft SharePoint site which allows for the real-time exchange and dissemination of information and for a central repository of documents and resources. Lastly, DCAP continued to collect and consolidate helpful resources, ensuring materials developed by counterpart offices in our fellow Services, Code 20, and NJS were available to the Navy defense bar.

#### **TRIAL COUNSEL ASSISTANCE PROGRAM (TCAP)**

Organization. TCAP is aligned under NLSC and reports to the Chief of Staff, Region Legal Service Offices (COS-RLSO). TCAP is led by a Navy O-5, an MJLCT-designated "Expert." The current Director received his LL.M. in Litigation from George Washington University School of Law. He previously served as Military Judge, RLSO Executive Officer, Senior Defense Counsel, and Senior Trial Counsel. The Deputy Director is a GS-15 civilian who specializes in sexual assault prosecution and victims' rights. A former state prosecutor with extensive experience, she served as the Director of the National Center for the Prosecution of Violence Against Women and is a noted author in the field. She led efforts to enhance SAPR policies and training and to improve the VWAP. She was also engaged in numerous initiatives involving sexual assault litigation training and evaluation. The Assistant Director is a senior O-4 MJLCT-designated "Specialist II" who has previously served as a Senior Defense Counsel, prosecutor, aircraft carrier SJA, and NJS instructor. He received his LL.M. in Litigation from the George Washington University School of Law. TCAP's Highly Qualified Expert (HQE) is a former civilian prosecutor with 17 years of experience, most notably as a prosecutor specializing in crimes against children and as a senior attorney, instructor, and course coordinator for the National District Attorneys Association.

Mission. TCAP's mission is to provide advice, assistance, support, resources, and training for Navy trial counsel worldwide. The program supports and enhances the proficiency of

the Navy prosecution bar through experienced reach-back and technical expertise. TCAP serves as a resource for trial counsel in the field through every phase of trial, including pretrial investigation, charging decisions, court-martial litigation, and post-trial processing. TCAP regularly assists and advises trial counsel on all aspects of prosecution, including drafting charges, trial preparation and motions practice, discovery, securing and preparing expert witnesses, devising trial strategy, and professional responsibility issues. TCAP collaboratively engages trial counsel in the field via regular case review conferences. TCAP also coordinates with Code 46 to ensure court-martial prosecutions are postured to withstand appellate review.

When requested, TCAP provides more in-depth case assistance. For example, a TCAP counsel is detailed as trial counsel or assistant trial counsel when an advanced level of proficiency is demanded. The preceding TCAP Director served as trial counsel on a high-profile homicide case; the current Director is detailed as the trial counsel on a sexual assault case and a national security case; the Assistant Director served as trial counsel in a premeditated murder case; and the civilian Deputy Director and the HQE have provided on-scene expert assistance in several complex sexual assault and child exploitation cases.

TCAP is also responsible for monitoring all high-visibility cases. The Director monitors the relative experience levels of trial counsel through on-site, periodic observations of Navy judge advocates in the performance of their prosecution functions and provides recommendations for improvement, as well as resource recommendations to COS-RLSO as necessary.

In addition to case assistance and advice, TCAP provides subject matter expertise to assist trial counsel. TCAP maintains an online repository of useful resources such as sample motions and responses, foundation questions, articles and manuals on prosecution, case disposition tracking, and an expert witness database. The TCAP site also has a trial counsel discussion board that enables real-time responses to inquiries from the field and leverages enterprise knowledge for the benefit of the more remote offices. The discussion board also facilitates a closer prosecution bar by enabling discussions between trial counsel worldwide.

Finally, TCAP plays a significant role in trial counsel training. TCAP partners with NJS and Code 20 in the development

of litigation training for trial counsel. TCAP personnel routinely serve as instructors at a variety of courses at the NJS schoolhouse, online, and in-person at offices worldwide. TCAP coordinated the planning and execution of Prosecuting Special Victims' Crimes (PSVC) course, an advanced domestic violence/child abuse prosecution course. TCAP also conducted targeted on-site mobile training to all nine RLSOs which focused on trial advocacy and prosecution of special victim offenses. This training also afforded counsel the opportunity to receive on-site case consultation and assistance. TCAP also provided online training sessions that further focused on prosecuting special victim offenses and other evidentiary topics.

### **VICTIMS' LEGAL COUNSEL (VLC) PROGRAM**

Organization. Victims' Legal Counsel operate outside the chain of command of the victim and the accused. They are independent of both trial and defense counsel. The program consists of 29 (increasing to 31 during FY16) specially trained and certified Navy judge advocates, eight of whom are reservists, and 10 administrative personnel. The VLC program is led by a senior O-6 Chief of Staff and a civilian (GS-14) Deputy Chief of Staff. VLC are assigned to 24 naval installations around the world, including Annapolis, MD; Washington, D.C.; Oceana, VA; Little Creek, VA; Norfolk, VA; Groton, CT; Mayport, FL; Jacksonville, FL; Pensacola, FL; Gulfport, MS; Great Lakes, IL; San Antonio, TX; Coronado, CA; San Diego, CA; Lemoore, CA; Ventura, CA; Bremerton, WA; Everett, WA; Pearl Harbor, HI; Guam; Bahrain; Naples, Italy; Rota, Spain; and Yokosuka, Japan.

Mission. In August 2013, the Navy established the Navy VLC Program to provide independent legal counsel to eligible sexual assault victims. The VLC Program is aligned under NLSC. VLC assist victims in understanding and exercising their reporting options. VLC work with victims through the investigation and military justice process, advocate for victims' rights and interests, and help victims obtain access to other support resources. VLC complement the care and support victims receive through other resources such as SAPR, FAP, VWAP, and services offered by VAs, Chaplains, and healthcare providers.

In accordance with federal law, to be eligible for VLC services one must be a victim of a sexual offense and otherwise eligible for legal assistance services from a military attorney. Generally this includes Navy active-duty and Reserve personnel, other service personnel and retirees when assaulted by an active-duty Navy member, adult and minor dependents of active-

duty Navy members when assaulted by an active-duty member, and some overseas DON civilians. Pursuant to the FY16 NDAA, a waiver of the eligibility requirements can be made on a case-by-case basis for victims who are DOD civilian employees and not otherwise eligible for legal assistance services from a military attorney. VLC services are available to victims filing Restricted Reports, Unrestricted Reports, or declining to file an official report of sexual assault.

Offenses covered within the VLC Program include Rape, Sodomy, Sexual Assault, Wrongful Sexual Contact, Stalking, Rape and Sexual Assault of a Child, Other Sexual Misconduct, and attempts of any of the above. All communications between VLC and their clients are confidential and privileged. Victims are not required to contact or consult with a VLC - the choice remains with the victim. Declining VLC services at the outset of a case does not preclude a victim from obtaining VLC services at a later time. VLC support is available in-person and via remote means if necessary, including by telephone, email, text, and video-teleconferencing.

VLC began providing services to minor dependents assaulted by active duty perpetrators on June 24, 2014 as directed by the FY14 NDAA. VLC, as far as reasonably possible, maintain a normal attorney-client relationship with a minor client. This means that VLC assess each client's capacity separately and continuously to determine if a particular client has the considered judgment and capacity to direct VLC services. In order to educate VLC on the nuances involved in representing minors and clients with diminished capacity, VLC leadership worked with the ABA's Center on Children and the Law to develop specialized web-based training on child representation. Areas of instruction included determining whether a minor or diminished capacity victim has considered judgment and the capacity to direct their representation; developmentally appropriate communication methods; child development stages; and general child capacity/communication skills at different stages.

All VLC are required to attend the Special Victims' Counsel (SVC) Course offered by either the Army or the Air Force in order to be certified by the Judge Advocate General to practice as VLC. VLC also attend specialized courses including Prosecuting Special Victims Cases (NJS), Representing Child Victims (Army), and the National Crime Victims Law Institute. In addition to outside training, VLC participate in internal monthly VLC trainings conducted via DCO which include topics such as Vicarious Trauma, Motions Practice, and Child Clients.

In FY15, VLC provided training at SVC/VLC certification courses, served on panels at the Fulton Conference SARC training, and provided regular training to VAs. VLC also provided training at the Federal Law Enforcement Training Center and at Sexual Assault Medical Forensic Examiner trainings conducted around the country and worldwide. Several VLC appeared before the Judicial Proceedings Panel Federal Advisory Committee to offer their insight on victim-specific issues related to the VLC Program.

VLC provide personal representation advice to victims involved in collateral misconduct connected with a report of sexual assault. Collateral misconduct resulting in administrative processing or court-martial necessitates assignment of a separate military defense counsel. VLC also provide basic legal assistance services directly connected to a report of sexual assault, including notarizations and powers of attorney. Assistance with more substantive matters are referred to the nearest military legal assistance office.

During FY15, Navy VLC aided a total of 1,377 sexual offense victims (851 of whom were new clients for VLC during FY15), participated on behalf of victims at 441 military justice proceedings, and conducted 760 outreach briefs on VLC services to 32,065 personnel.

### **NAVAL JUSTICE SCHOOL**

Organization. Naval Justice School (NJS) reports to CNLSC for administrative and operational control. The main NJS facility is located in Newport, Rhode Island. Teaching detachments are based in San Diego, California, and Norfolk, Virginia. A two-person branch office is located at the U.S. Army's Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia. In FY15, the Naval Justice School and its detachments were staffed by 29 active-duty officers, 14 enlisted personnel, and 13 civilians. 15 reserve personnel supported NJS.

Mission. The mission of NJS is to oversee formal training of Sea Service judge advocates and paralegals to ensure their career-long professional development and readiness, to provide comprehensive formal training to all Sea Service judge advocates and other legal personnel in order to promote justice and ensure the delivery of quality legal advice and other services to the commander, to train commanders and senior officers in the

practical aspects of military law to enable them to perform their command and staff duties, and to train other personnel to assist in the sound administration of military justice.

In FY15, NJS provided instruction to more than 15,450 students worldwide, including more than 3,450 in in-resident courses ranging in length from one day to 13 weeks.

In addition to teaching NJS courses, NJS instructors provided off-site teaching in military justice, administrative law, and operational law to other commands on board Naval Station Newport, including the Naval War College, Naval Leadership and Ethics Center, Officer Development School, Senior Enlisted Academy, Surface Warfare Officers School, Officer Candidate School, and Limited Duty/Chief Warrant Officer Indoctrination School.

Additionally, in FY15, Naval Justice School advertised a GS-15 Educational Program Specialist to serve as the program advisor to NJS leadership and a mentor to the instructors and other staff members, providing expert advice on the science of education and assisting in the formulation of the school's broad educational and training. This position will establish guidelines for curriculum planning, reviewing plans and instructional programs to assure fulfillment of the school's mission and goals and to assess and ensure NJS is meeting the fleet's training requirements. This Specialist was hired in the first quarter of FY16.

NJS has eight "core" courses that include training in military justice:

1. Basic Lawyer Course. This ten-week course, offered three times annually, provides accession training for all judge advocates in the Navy, Marine Corps, and Coast Guard. The course includes extensive training in military justice and court-martial advocacy, as well as training in legal assistance, administrative law, standards of conduct, and operational law. Teaching methods include lecture, seminar, and practical exercises. Upon graduation, judge advocates are certified per Article 27(b), UCMJ. FY15 graduates: 126.

2. Legalman Accession Course. This 11-week course, offered twice in FY15, trains Navy enlisted personnel selected for conversion to the Legalman rating. The course provides ten ABA-approved credits towards a paralegal degree or certificate in partnership with Roger Williams University (RWU). In addition to military-specific training in military justice,

court reporting, administrative investigations, and administrative separations, the course includes four RWU courses taught by NJS officer instructors: Ethics, Legal Research and Writing I, Introduction to Law, and Emerging Legal Technologies. Five weeks of military-specific training within the course also constitutes the Reserve Legalman Accession Course. FY15 graduates: 64 active duty and 21 Reservists.

3. Basic Legal Services Specialist Course. This 11-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. FY15 graduates: 130.

4. Legal Services Court Reporter Course. This 13-week course, offered twice annually, provides court reporter training to Legal Services Specialists, grades E-3 to E-7, seeking the 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 words per minute, court-reporting grammar and punctuation, speech-recognition technology, digital recording software, and the production of verbatim and summarized courts-martial records of proceedings. FY15 graduates: 40.

5. Senior Officer Course in Military Justice and Civil Law (SOC). This scenario-based three-day course is designed for commanding officers, executive officers, and officers-in-charge and is open to other officers in grades O-4 and above with NJS approval. The SOC trains officers in the execution of the legal responsibilities of command with instruction in military justice (including sexual assault case disposition), administrative law, and civil law. In FY15, NJS provided 37 offerings of the SOC in Newport, San Diego, Norfolk, Camp Pendleton, Camp Lejeune, Parris Island, Quantico, Pensacola, and Hawaii. Per NAVADMIN 302/12, this course is mandatory for O-6s en route to command. FY15 graduates: 1024

6. Legal Officer Course (LOC). 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 dedicated judge advocate. In FY15, NJS provided 16 offerings of the LOC in San Diego and Norfolk. FY15 graduates: 521.

7. Legal Clerk Course (LCC). 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. In FY15, NJS provided 17 offerings of the LCC in San Diego and Norfolk. FY15 graduates: 392.

8. Senior Enlisted Leadership Course in Military Justice and Civil Law (SELC). 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 In FY15, NJS provided 14 offerings of the SELC in San Diego and Norfolk. FY15 graduates: 514.

In addition to the "core" courses, NJS provided 16 resident specialty courses, many of which are pre-approved for continuing legal education (CLE) credit from state bar associations. Many of these courses focus on military justice. In FY15, these resident courses reached more than 560 legal professionals.

The semi-annual Defense Counsel Orientation course teaches Navy and Marine Corps defense counsel how to effectively prepare, manage, and try cases from the investigation stage through sentencing with a particular focus on the practical aspects of defense. The Basic Trial Advocacy Course is designed to develop important trial advocacy skills in judge advocates in their first trial billets and in judge advocates transitioning to trial billets from non-trial billets.

In coordination with TCAP and DCAP, NJS also offers specialized instruction focused on special victim litigation. Prosecuting Special Victim's Cases (PSVC) is a week-long course that is taught in conjunction Navy and Marine Corps TCAP. It focuses on substantive aspects of prosecuting special victim's cases and includes small-group practical exercises to hone skills such as conducting direct and cross examinations of child abuse and domestic violence experts, as well as the accused. DSAC is a week-long course that provides training on sexual assault litigation for defense counsel. DSAC is taught in conjunction with the Center for American and International Law in Plano, Texas.

NJS also continues to provide Basic and Advanced SJA Courses. The SJA courses incorporate military justice training relevant to SJAs including search and seizure, investigations,

charging, preferral, convening courts, referral, VWAP, SA-IDA, and post-trial processing.

The Legalman Paralegal Education Program (LPEP) is a government-funded education program leading to an Associates of Science degree in Paralegal Studies. This program, which was established in 2010, is mandatory for all Legalmen to meet minimum occupational standards for the Legalman rating. Following completion of the Legalman Accession course, students normally complete a semester of in-resident courses with Roger Williams University (RWU) before checking into their first permanent duty station as a Legalman. Upon checking in, they normally participate in distance learning with RWU until completing the degree requirements. In FY15, 29 students attended LPEP as in-resident students, and an additional 364 students were enrolled in the distance learning option.

The Online Legal Education department at NJS offers a wide variety of training and education courses utilizing the Blackboard learning management system and the Naval Justice School SharePoint portal. These systems are accessible 24/7 and offer on-demand training and education coupled with points of contact for feedback and instructor interaction. The Online courses cover specific topics on large practice areas such as post-trial processing, ethics, and law of the sea. Instructors deliver training using a variety of online teaching tools, including assigned readings, recorded videos, discussion boards, practical assignments, and knowledge checks. Each fiscal year, NJS Online provides more than 10,000 hours of instruction to more than 2,000 students worldwide.

NJS Online now offers a first-of-its-kind foundation-level course. The Trial Counsel Online course provides entry-level training for practitioners assuming a trial counsel billet for the first time. This course is now a prerequisite for all USMC and USN trial counsel.

In addition to publishing the annual Naval Law Review, NJS publishes a course catalog, the USN/USMC Commander's Quick Reference Handbook for Legal Issues, and various study guides in support of its academic programs.

Through the Interservice Legal Education Review Committee, Commanding Officer, NJS, the Dean of Students for TJAGLCS, and the Commandant, Air Force Judge Advocate General's School normally meet semi-annually to discuss new initiatives and

opportunities for cross-training and to increase cooperation and efficiency in the training of legal personnel within the DoD.

## **NAVY ACTIVITIES**

### **1. Military Justice Litigation Career Track (MJLCT)**

In 2007, to improve the overall quality of Navy court-martial litigation, the JAG Corps established the MJLCT. The MJLCT is a career track for judge advocates with demonstrated military justice knowledge and advocacy skills. The track combines continued courtroom experience, training and education, with oversight by and access to senior, seasoned litigation mentors to help judge advocates develop the skills needed to become preeminent trial lawyers. Military Justice Litigation Qualified (MJLQ) officers are detailed to lead trial and defense departments at each of our nine RLSOs and four DSOs, which provide Navy prosecutors and defense counsel, respectively. These officers provide proven experience in the courtroom, personally conducting, adjudicating, or overseeing litigation in sexual assault and other complex cases.

At the close of FY15, there were 77 Navy MJLCT officers, of whom 66 were filling MJLCT-track designated billets. Additional officers are serving in billets at the Office of Military Commissions, on board aircraft carriers, at NJS, and in VLC positions. A handful of MJLCT officers are currently attending post-graduate school to obtain LL.M. degrees in Trial Advocacy. The "billet-fill rate" has held relatively stable for the last two years.

The promotion rate for MJLCT officers continues to be monitored, and the in-zone MJLCT officers were selected for promotion by the FY15 promotion selection boards at a similar rate to the overall in-zone selection rate. The FY16 O-6 promotion selection board selected the one MJLCT officer in-zone, the O-5 selection board selected six out of ten MJLCT officers in zone, and the O-4 selection board selected three out of six MJLCT officers in-zone for promotion, as well as one officer above zone.

Entry into the MJLCT is through a competitive board, which selects judge advocates with demonstrated abilities in the areas of military justice knowledge and advocacy skills.

SPECIALIST I MJLQ is the entry point for the MJLCT. A judge advocate may be qualified as SPECIALIST I after

demonstrating military justice litigation proficiency and MJLCT potential. Candidates will normally be eligible for SPECIALIST I after their fourth year of active duty.

Following SPECIALIST I qualification, a judge advocate may qualify as SPECIALIST II after obtaining sufficient additional qualitative and quantitative military justice litigation experience as well as professional development as a naval officer. Candidates will normally be eligible for SPECIALIST II after their tenth year of active duty.

Following SPECIALIST II qualification, a judge advocate may qualify as EXPERT after obtaining significant additional military justice litigation experience as well as demonstrated leadership of junior judge advocates. For this reason, EXPERT is ordinarily reserved for those judge advocates who have reached the senior-most MJLCT positions. Candidates will normally be eligible for EXPERT after their sixteenth year of active duty.

SPECIALIST II and EXPERT MJLQ are community management tools to guide the detailing, training, and professional development needs of MJLQ judge advocates and to ensure the community maintains its ability to execute this core function across the community billet structure. Senior MJLQ judge advocates, in coordination with the AJAG 05, who serves as the MJLCT community sponsor, seek to provide all MJLQ judge advocates with training and duty assignment opportunities that facilitate their professional development within the MJLCT, the JAG Corps, and the Navy.

As judge advocates seek MJLCT advancement, they will be required to demonstrate increased courtroom experience, continued growth in litigation leadership, and familiarity with the broader mission of the Navy. MJLQ judge advocates are encouraged to explore the wide variety of naval experiences that contribute to the development of a broad understanding of the duties of judge advocates and to seek out non-litigation billets even after MJLQ designation. Accordingly, applicants for EXPERT MJLQ should generally have served at least two years in a non-litigation billet prior to their application for qualification.

## 2. Sexual Assault Prevention and Response Initiatives

In FY15, the Navy continued to execute a multifaceted approach to address sexual assault awareness and training, prevention, victim response, and investigation and

accountability. Navy judge advocates were integral in all levels of ongoing SAPR initiatives, including reviewing numerous SAPR training products. Code 20 personnel worked hand-in-hand with the 21<sup>st</sup> Century Sailor Office (OPNAV N17) to draft Chief of Naval Operations Instruction (OPNAVINST) 1752.1C, "Sexual Assault Prevention and Response Program" (13AUG15), issuing Navy policies and standards regarding sexual assault case management and its prevention and response programs.

NJS provides SAPR education in each of its JAG officer accessions courses. This training consists of in-depth instruction on Article 120 of the Uniform Code of Military Justice, as well as detailed exploration of the roles and responsibilities of SAPR stakeholders, the meaning of current statistics, the mechanics of sexual assault reporting systems, and the role and responsibilities of the SA-IDA. In addition, NJS instructs Sea Service legal professionals (e.g., judge advocates, USN Legalman, USMC Legal Specialists, and US Coast Guard Legal Technicians) on all aspects of sexual assault disciplinary proceedings, including the role of VLC and the Navy's commitment to facilitating victim participation in the criminal justice system.

Navy VLC regularly support command training events and base programs focusing on sexual assault issues to ensure Sailors are aware of legal resources available to explain and defend the rights and interests of Navy sexual assault victims. In addition, VLC routinely provide information regarding victims' rights and program services through base and Armed Forces newspaper articles and radio programs, as well as through briefings to first responders such as healthcare personnel, SAPR VAs, SARCs, and law enforcement personnel.

DON releases courts-martial results monthly to increase transparency of legal proceedings and punishments, as well as to serve as a deterrent to other potential offenders. In August 2015, reporting expanded to include adjudged sentences and the effects, if any, of pretrial agreements on the adjudged sentences.

TCAP personnel continue to provide robust training as part of the NCIS Advanced Adult Sexual Assault Investigations Training Program, a course for investigators and prosecutors that is focused on improving multi-disciplinary coordination of sexual assault investigations. In pursuit of the same goal, Regional Senior Trial Counsel meet with NCIS regularly to coordinate case investigation and prosecution and foster early engagement by the response team.

In December 2014, the Navy updated its Military Whistleblower Protection instruction to ensure that all forms of retaliation and reprisal are prohibited, including peer-to-peer ostracism and maltreatment. The Navy continues to provide training to the fleet regarding the prevention and reporting of retaliation against victims and witnesses participating in the military justice process.

### 3. Additional Information

#### a. Compliance With Processing Time Goals

In FY15, no Navy case was dismissed on speedy trial grounds. Ten Navy cases exceeded 120 days from sentencing to convening authority's (CA) action (*Moreno* 1 guideline). Delay in these cases was primarily due to voluminous records of trial as well as defense requests for extensions in submitting matters in clemency. Three Navy cases exceeded 30 days from date of CA's action to docketing at NMCCA (*Moreno* 2 guideline). A one-day delay in one case was due to operational constraints. A thirteen-day delay in two companion cases was due to the discovery of missing signatures from defense counsel who were out of country on leave or TAD at the time. Such delay was further exacerbated by overseas-holiday-mailing delay. Remedial efforts were taken to improve the efficiency of post-trial processing in future cases. Two NMCCA cases exceeded the *Moreno* 3 guideline of 18 months from docketing to decision; however, both cases involved complex procedural histories and assignments of error and one required an extensive DuBay hearing. Neither NMCCA nor CAAF granted relief in any Navy case for unreasonable post-trial delay in FY15.

#### b. Measures Implemented by Each Armed Force to Ensure the Ability of Judge Advocates to Competently Participate as Trial and Defense Counsel in, and Preside as Military Judges Over, Capital Cases, National Security Cases, Sexual Assault Cases, and Proceedings of Military Commissions

##### Litigation Expertise

Our MJLCT attorneys rotate among prosecution, defense, and judicial assignments. Many MJLQ officers serve as military and appellate judges, giving them a unique perspective on how to formulate and articulate well-reasoned arguments when advising junior litigators. Likewise, having served as both trial and defense attorneys, our career litigators have a better

understanding of the strengths and weaknesses of their cases. They are also detailed to other assignments, such as operational and SJA billets, to round out their experience in the fleet. As a result, our litigators understand the importance of each role in our military justice system - insight which serves our community well as these attorneys move into senior litigation positions and provide training and mentorship to junior officers.

MJLCT officers have reached the highest levels of leadership within the JAG Corps, to include positions as commanding officers, division directors, and Assistant Judge Advocate General. MJLCT officers are heavily involved in the daily prosecution, defense, and judgment of cases throughout the Service, and are serving at the Office of Military Commissions and as VLC as well. These officers continue to be detailed into repeated tours of litigation-intensive billets that will improve the effectiveness and efficiency of the court-martial process. Several of our MJLCT officers have tried more than 100 contested members cases. Several more have tried more than 50 contested trials, and half of the community has tried at least 20 contested cases. The experience is drawn from work as prosecutors, defense counsel, and trial judges. Some MJLCT officers have extensive contested case experience in all three areas of practice - prosecution, defense, and the judiciary. Some also have extensive appellate experience.

Almost a quarter of the MJLCT community has experience in areas of capital litigation, national security/classified information cases, and military commissions, and nearly every MJLCT officer has experience in litigating sexual assault cases. Each area of practice (prosecution, defense, and judiciary) currently includes MJLCT members who have extensive experience in sexual assault, capital, classified, and commissions cases, and every practice area has ready access to these experts for support if the need arises.

#### Training and Education

NJS provides judge advocates with tiered military justice training taught by active component judge advocates and supplemented by reserve judge advocates employed as local, state, and federal prosecutors. Training is centrally-managed under the oversight of a Litigation Training Coordination Council comprised of two Assistant Judge Advocates General, military justice experts from the prosecution and defense, policy advisors, instructors, and senior judges. Course

requirements are established by a board of advisors from the Navy, Marine Corps, and Coast Guard who have extensive experience in litigation and training.

In addition to basic and intermediate level trial advocacy courses, NJS, Code 20, TCAP, and DCAP coordinate specialized training for Navy trial and defense counsel on litigating complex sexual assault crimes using resources such as the National District Attorneys Association (NDAA); the National Institute of Justice (a DoJ agency established to help foster science-based criminal justice practice); Aequitas: The Prosecutor's Resource on Violence Against Women (a DoJ funded resource created to provide prosecutors with support, training, mentorship, and resources to improve the quality of justice in sexual violence cases); the Center for American and International Law; and the National Criminal Defense College.

Every year the JAG Corps sends mid-level career litigators to civilian post-graduate schools to earn a Master of Laws (LL.M.) in litigation. Of the 77 career litigators in the MJLCT at the end of FY15, approximately one-third have earned an LL.M. in litigation.

#### Trial Counsel

Senior Trial Counsel (O-4 or above) are the nucleus of the Navy's SVIP capability and are prepared to prosecute other complex cases including capital and national security cases. Each is hand-selected by the JAG to fill one of nine Senior Trial Counsel billets. All Senior Trial Counsel are MJLQ officers. Upon reporting, all Senior Trial Counsel complete a two-week special victims investigation course and participate in additional specialized training such as litigating complex cases, TCAP targeted mobile training, and monthly online special victims offenses or litigation training. All Senior Trial Counsel regularly provide information to TCAP on all pending felony-level investigations and prosecutions. Additionally, uniformed members of TCAP may also be detailed to high-profile and complex cases as necessary.

Sexual assault cases are typically detailed to "core attorneys" assigned to each RLSO. A RLSO core attorney is a judge advocate (O-3 or above), certified to practice by the JAG in accordance with Article 27b, UCMJ, and a member in good standing with a State bar, who has completed a two-year tour as a First Tour Judge Advocate (FTJA) prior to assuming the duties of a prosecutor. All trial counsel are supervised by a Senior

Trial Counsel, an Executive Officer (O-5 judge advocate), and a Commanding Officer (O-6 judge advocate). Detailing of counsel is within the discretion of the RLSO Commanding Officer (O-6 judge advocate), who takes into consideration such matters as competence, experience, and training, existing caseload and availability of counsel, as well as case specifics and opportunities for training of counsel. A Commanding Officer may detail a second, more experienced counsel to a particular case to provide the opportunity for practical mentoring. Additionally, uniformed members of TCAP may also be detailed to cases. All trial counsel have access to 24/7 support from TCAP.

Trial counsel receive military commission training from the Office of the Military Commissions when assigned to that office.

### Defense Counsel

In addition to the basic judge advocate training received by trial counsel, Navy defense counsel receive basic trial advocacy training and attend Defense Counsel Orientation prior to or shortly after arriving at a DSO to serve as a core defense counsel. Early in their tour, defense counsel also attend DSAC, a week-long course designed to provide judge advocates specific training on how to handle the legal issues and complexities involved in a sexual assault case. The course includes both practical exercises and lectures. Among the faculty are renowned evidence professors, experienced civilian defense attorneys, and expert witnesses. The course allows for extensive discussion of issues that commonly emerge in sexual assault cases and includes practical exercises based on the facts of an actual trial. Students are given full access to experienced practitioners and expert witnesses and frequently use this time to consult with other attorneys on themes and issues in their current cases. Defense counsel attend this course within their first year of reporting. Defense counsel also may attend training in intermediate trial advocacy and litigating complex cases.

DCAP sends Defense Mobile Training Teams to each DSO at least twice each year. During these visits, DCAP works closely with the command and individual counsel with a focus on practical issues in defense work, including trial advocacy training based on current or recent case scenarios.

Resources permitting, Navy defense counsel have access to relevant legal seminars aimed at the criminal defense attorney. The Navy sends defense counsel to the National Child Abuse

Defense and Resource Center's International Conference to ensure that trained counsel are available for child abuse cases. Navy Defense counsel also attend the National Association of Criminal Defense Lawyers' Zealous Advocacy in Sexual Assault and Child Victim Cases Course.

Sexual assault cases are typically detailed to "core attorneys" assigned to a DSO. A DSO core attorney is a judge advocate (O-3 or above), certified to practice by the JAG in accordance with Article 27b, UCMJ, and a member in good standing with a state bar, who has completed at least one full tour prior to assuming the duties of a defense counsel. Detailing of counsel is within the discretion of the DSO Commanding Officer (O-6 judge advocate), who takes into consideration such matters as competence, experience, and training, existing caseload and availability of counsel, as well as case specifics and opportunities for training of counsel. A Commanding Officer may detail a second, more experienced counsel to a particular case to provide the opportunity for practical mentoring. Additionally, uniformed members of DCAP may also be detailed to cases.

Defense counsel receive military commission training from the Office of the Military Commissions when assigned to that office.

### Military Judges

The required courses for a trial judge's judicial education begin with the three-week Military Judge Course, provided by TJAGLCS. This course provides the foundation and requirements for being certified as a military trial judge by JAG and also the foundation that will enable a judge to begin duty on the bench. The course covers court-martial process, evidence, procedure, constitutional rights, judicial problem solving, and judicial methodology. It includes demonstrations and practical exercises. Appellate judges attend the same school for certification as a trial military judge.

All trial-level military judges, active and reserve, attend the JMJAT. JMJAT is the venue for continuing baseline education and training for all trial judges, and is a vehicle for discussing current topics of judicial training interest, such as the new Article 120, presiding over cases involving third party representatives such as VLC, advanced evidence, sentencing methodology, and judicial ethics.

Responsibility for hosting JMJAT alternates between the NMCTJ and the Air Force Trial Judiciary. In February 2015, NMCTJ hosted JMJAT onboard Naval Station San Diego. Instructors from the NJC provided two days of training on evidentiary topics, and the remainder of the agenda was devoted to topics specific to military justice as presented by DoD speakers.

The required CLE for trial judges progresses each year with two courses per year, for the next three years. The NMCTJ judges use and attend the NJC because the NJC is the only fully-accredited University that presents an average of 30 to 40 judicially-oriented courses annually. These courses serve to broaden judicial experiences by exposing judges to judicial perspectives from around the country, which enables trial judges to explore the varying and complex dynamics of our justice system. This education is designed to enable judges to practice at a higher level than that provided by the basic judge education provided by the U.S. Army and JMJAT. The NJC's courses cover a multitude of current judicial topics, ranging from judicial writing and advanced evidence, to handling capital cases and general jurisdiction.

Capital litigation courses for judges are available via the NJC, and specialized training in classified information cases is available to judges just as it is for litigants. The judiciary currently holds a handful of practitioners who have tried classified information and national security cases, as well as officers with extensive experience in military commissions.

Lastly, as discussed previously under the Trial Judiciary section, a recent training opportunity for trial judges arose from DoD SAPRO funding. In FY15, all Navy and Marine Corps trial judges gathered for three days of training related to special victims. Training topics included Military Rules of Evidence (MIL. R. EVID.) 412, 413, 414 (policy, cases, methods, and foundational requirements); MIL. R. EVID. 513 (the threshold for ordering production of victims' psychotherapy records and the process for reviewing and protecting those records); the use of experts in sexual assault cases; the role of VLC in the court-martial process; and compliance with the NDAA provisions, including recent changes to Article 32 and Article 60, extension of the Crime Victim's Rights Act, and regulations implementing the new guardianship requirements.

Appellate judges also receive extensive and ongoing training. Five years ago, the NMCCA instituted a two-day, in-house annual training course to provide a venue for continuing

education for active and reserve appellate judges. The course serves as training for newly assigned judges and a refresher for experienced judges. The course focuses on court processes, opinion writing, ethics, appellate burdens of proof and persuasion, and advanced evidence. The FY15 course focused on appellate writing and advanced research training in Lexis. Appellate judges also attend the annual Fulton Appellate Judges conference, which is an inter-service, one-day event with the host rotating among the services. In 2015, NMCCA hosted the conference. The content focused on both appellate judicial topics and broader issues of current interest in law and policy. Additional training through the New Appellate Judges Seminar hosted by New York University School of Law and the Appellate Judges Education Institute are also available for NMCCA judges when funding permits, but neither training is required for appellate judges.

c. The Independent Views of The Judge Advocates General on the Sufficiency of Resources Available, Including Total Workforce, Funding, Training, and Officer and Enlisted Grade Structure, to Capably Perform Military Justice Functions

As of the date this report was submitted, the Navy Judge Advocate, enlisted, and civilian communities were not adequately resourced to meet the increasing demands of complex litigation. The Navy has provided additional billets to meet current obligations, but it will take time for the number of personnel to grow to fill the expanded billets. Moreover, new training requirements, changes to the UCMJ, and the addition of VLC have combined to require greater supervision and expertise at the trial level. Budget reductions and constraints continue to cause challenges in funding training and could further impact operational readiness. The Navy provided additional billets to meet VLC requirements and, while Reserve support was critical to initial program implementation, the need for experienced counsel to fill VLC program billets and supervisory trial and defense litigation billets nevertheless taxed the JAG Corps manpower. The adequacy of resources over the mid and long-term is largely dependent on new legislation and directive policies, most of which continue to place significant demands on judge advocate resources. JAG will continue to work with the Navy to ensure that the JAG Corps is adequately resourced to meet these challenges as they emerge, including maintaining a sufficient manning inventory to fill the force structure needed to satisfy mission objectives.

## CONCLUSION

Military justice remained a principal focus of effort for the Navy in FY15. While the number of courts-martial have declined over the past decade, the complexity and seriousness of the cases have increased dramatically. The aforementioned initiatives, particularly the establishment of the VLC program and continued enhancement of SVIP capability, the emphasis on training, the implementation of several new military justice provisions, and the development of common case-tracking systems, will optimize the Navy's military justice capabilities.

Over one hundred changes and improvements to military justice provisions have been conceived and implemented since FY12, with many more on the horizon. The Navy has been focused on implementing these changes and closely monitoring their impact on military justice to ensure the system remains fair, effective, and efficient. With significant service-wide developments underway—including reducing sexual assault in our ranks, focusing more specifically on all forms of retaliation, and developing more extensive case management and tracking systems—close examination and monitoring of the military justice system as it evolves to continuing change will remain a priority for the Navy JAG Corps.

**MARINE CORPS ACTIVITIES U.S. MARINE CORPS ANNUAL MILITARY JUSTICE REPORT  
FOR FISCAL YEAR 2015**

**TABLE OF CONTENTS**

<b>I.</b>	<b>INTRODUCTION.....</b>	<b>1</b>
<b>II.</b>	<b>MILITARY JUSTICE BY THE NUMBERS.....</b>	<b>3</b>
<b>III.</b>	<b>POST-TRIAL REVIEW AND APPELLATE DECISIONS.....</b>	<b>4</b>
	<i>A. <u>Processing Time Goals</u></i>	<b>4</b>
	<i>B. <u>Reversal of Convictions for Denial of Speedy Post-Trial Review, UCI, or other Administrative Deficiencies</u></i>	<b>5</b>
<b>IV.</b>	<b>MILITARY JUSTICE PRACTITIONERS, TRAINING AND RESOURCES.....</b>	<b>5</b>
	<i>A. <u>Trial Counsel</u></i>	<b>5</b>
	<i>B. <u>Defense Services Organization</u></i>	<b>6</b>
	<i>C. <u>Victim’s Legal Counsel Organization</u></i>	<b>7</b>
	<i>D. <u>Training Standards and Resources</u></i>	<b>8</b>
	<i>E. <u>Naval Justice Information System</u></i>	<b>9</b>
<b>V.</b>	<b>VIEWS ON THE SUFFICIENCY OF RESOURCES.....</b>	<b>10</b>
<b>VI.</b>	<b>CONCLUSION.....</b>	<b>10</b>

## **I. INTRODUCTION**

In fiscal year 2015 (FY15) the Marine Corps military justice community—trial counsel, defense counsel, Victims’ Legal Counsel (VLC), and command advice judge advocates—continued to leverage the experience of its senior leaders and highly qualified experts combined with the strength of its organization and training programs to accomplish the military justice mission. With a focus on special victim and other complex military justice cases, we placed a premium on ensuring that in each military justice case, we detailed the right judge advocates with the right supervision and training to litigate each case on every side of the aisle and to provide advice to commanders. Our Legal Service Support Sections (LSSS) in the East, National Capital, West and Pacific regions continued to represent the main effort, becoming Regional Centers of Excellence where senior uniform counsel, highly qualified civilian experts, and support staff combined with junior counsel to create effective litigation and advocacy teams.

As has become a trend in recent years, this year brought numerous statutory changes requiring implementation. The FY15 National Defense Authorization Act (NDAA) significantly amended the authority of commanders when acting as convening authorities, expanded VLC access to reserve Marines, and modified court-martial procedures concerning the admissibility of certain evidence. In addition, Executive Order 13696, signed by the President on 17 June 2015, and the Supplementary Materials announced on 8 July 2015, promulgated approximately 147 changes to the Manual for Courts-Martial. Practice Advisories issued by the Military Justice Branch, posts from the Trial Counsel Assistance Program (TCAP), community-wide notices from the Marine Corps Judge Advocate Division, and training by each LSSS informed military justice practitioners of these and other changes to practice.

Continued study and efforts to reform the military justice system also marked FY15. The Marine Corps implemented reforms recommended by the Response Systems to Adult Sexual Assault Crimes Panel (RSP); worked closely with the Judicial Proceedings Panel (JPP) to respond to their requests for information concerning reforms to Article 120, victim privacy, restitution, and retaliation; and provided and prepared numerous judge advocates to testify at JPP hearings. Throughout FY15, judge advocates at Headquarters Marine Corps reviewed, analyzed,

and commented on the Military Justice Review Group's (MJRG) comprehensive proposals to amend the Uniform Code of Military Justice (UCMJ) that has become a Department of Defense legislative proposal. In FY16, we look forward to working with Congress and other military justice-focused groups as these historic amendments are debated and implemented.

As in recent FYs, the continued role expansion and definition of the VLC both in and out of the courtroom has been a significant development in our practice. The FY15 NDAA provided victims the greater right to be heard on pretrial motions through their VLC. The legislation also empowered victims to appeal rulings deemed adverse to certain privacy rights and interests and mandated that VLCs receive notice of court-martial proceedings. To that end, the Navy and Marine Corps Trial Judiciary modified the Uniform Rules of Practice to include VLC in docketing decisions, appearances on the record, motions practice, and objecting on the record.

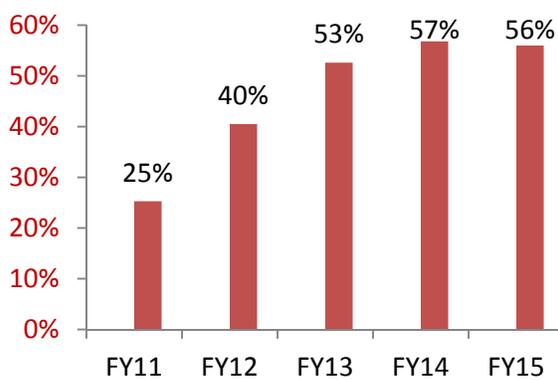
The SJA to CMC's Legal Support Inspection program operated to ensure the timely implementation of these new initiatives and requirements. Consistent with Article 6, UCMJ, senior members of the SJA to CMC's staff inspected each of the four LSSSs and thirty-five staff judge advocate offices. In conjunction with these inspections, the SJA to CMC visited each LSSS and most operational and supporting establishment commands in FY15. At these meetings, the SJA to CMC conducted town hall meetings with the Marines while also taking the opportunity to meet with commanders and staff judge advocates and other senior leaders as part of his Article 6-mandated "frequent inspection in the field in supervision of the administration of military justice" within the Marine Corps. The SJA to CMC has refined the annual inspection process in order to assess and improve the practices within those legal offices and to ensure the operational and material readiness, effectiveness, and efficiency of the Marine Corps legal community. The inspection process principally serves to identify "best practices" and emphasizes continuous improvement as a philosophy and standard of practice within the legal community.

Through a continuous feedback loop—a process of inspection, evaluation, adaptation and standardization—the Marine Corps legal community met its mission of successfully providing

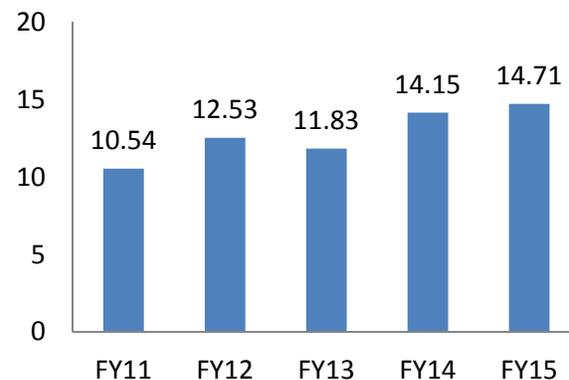
competent and capable military justice services to address the most complex and demanding court-martial cases and elevating the practice of military justice within the Marine Corps.

## II. MILITARY JUSTICE BY THE NUMBERS – TRENDS & ANALYSIS

In FY15, the Marine Corps litigated 131 general courts-martial and 211 special courts-martial to findings. At any given time during the year, the Marine Corps had approximately 130 courts-martial and 20 Article 32 preliminary hearings pending; of the 130 pending courts-martial about 90 are special courts-martial and 40 are general courts-martial.



**Figure A. Percentage GCMs Contested FY11 - FY15**



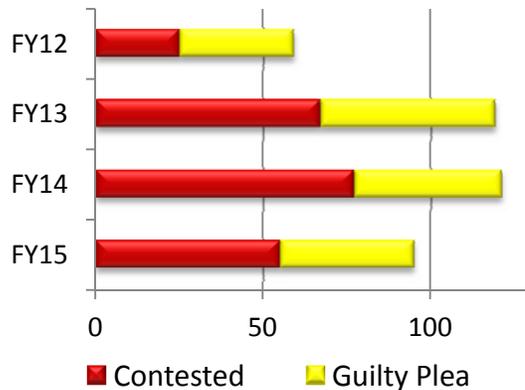
**Figure B. GCM Average Hours on the Record FY11 - FY15**

The total number of general courts-martial as an annual percentage of contested general courts-martial has remained relatively stable from FY13 (see Figure A). Along with the relatively higher number of general courts-martial and greater complexity, the amount of time spent on the record in each case continues to increase (see Figure B). This consistent growth in the complex, contested nature of our courts-martial practice has resulted in a significant increase in the workload associated with each case and has magnified the need for experienced litigators and qualified support staff.

The growth in sexual assault prosecutions, often among the most difficult cases we try, illustrates a trend toward cases that are more complex, or at least more intensely litigated. Between FY12 and FY14, the number of contested sexual assault prosecutions more than tripled

(see Figure C). Although below FY13 and FY14 levels, the number of contested sexual assault cases in FY15 remains more than twice that of FY12.

The continued decline of special courts-martial litigation is largely responsible for the decline in total of courts-martial. In FY15, contested special courts-martial accounted for 35 percent of all special courts-martial litigated to completion.



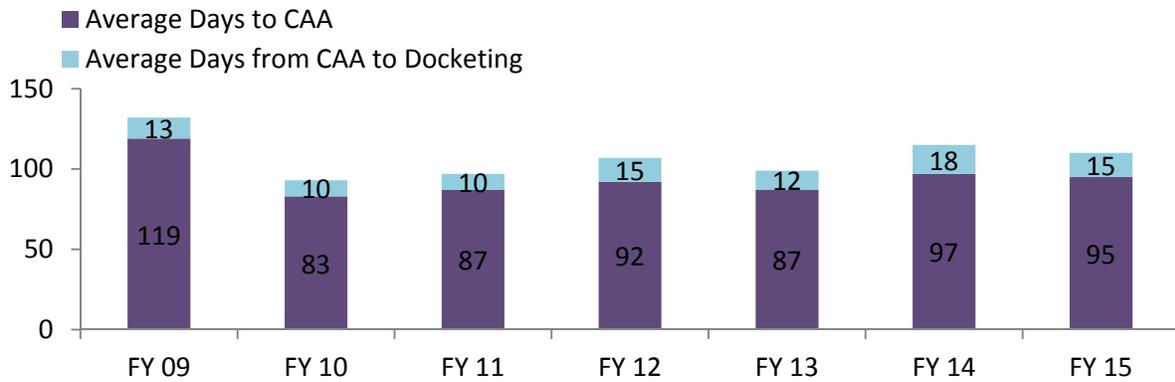
**Figure C. Contested Sexual Assault Prosecutions FY12 - FY15**

### III. POST-TRIAL REVIEW AND APPELLATE DECISIONS

As a result of the mandatory Marine Corps-wide use of the Case Management System (CMS) and other case tracking mechanisms used by judge advocates and legal services specialists, including the JAG-SJA to CMC chaired Military Justice Oversight Committee, the Marine Corps complied with post-trial processing goals. The Marine Corps maintained an unblemished processing record, with no convictions reversed because of a denial of the right to speedy post-trial review or otherwise remitted due to loss of records of trial.

#### A. Processing Time Goals

In FY15 the Marine Corps had 627 general, special, and summary courts-martial that warranted post-trial review. For cases warranting appellate review, the Marine Corps averaged ninety-five days from the date of trial to convening authority's action (CAA), which represents a two-day improvement on FY14's average. The Marine Corps averaged fifteen days from CAA to docketing of the case with the Navy-Marine Corps Court of Criminal Appeals (see Figure D), which represents a three-day improvement from FY14's average.



**Figure D. Post-Trial Processing Times FY09 - FY15**

*B. Reversal of Convictions for Denial of Speedy Post-Trial Review, UCI, or Other Administrative Deficiencies and Cases in Which Provisions Were Held Unconstitutional*

In FY15, the Marine Corps had no cases in which a provision of the UCMJ was held unconstitutional, and no convictions were reversed for violation of the right to speedy trial, speedy post-trial review, unlawful command influence or other administrative deficiencies.

**IV. MILITARY JUSTICE PRACTITIONERS**

*A. Trial Counsel*

The Marine Corps has implemented career progression, training, experience requirements, and detailing criteria to ensure well-qualified judge advocates prosecute sexual assault cases. Our detailing criteria ensures that only those attorneys who have experience trying contested cases, who have demonstrated an aptitude for the courtroom, and who have received recommendations from supervisors may try Special Victim Investigation Prosecution (SVIP) cases. SVIP cases include those cases involving sexual assault or domestic violence. SVIP prosecutors also require additional sexual assault training that they normally receive by attending a Trial Counsel Assistance Program (TCAP) one-week annual training seminar. The Marine Corps maintains approximately 80 prosecutors throughout our LSSSs. Of these, approximately 53 are SVIP prosecutors.

The Marine Corps continues to provide its trial counsel with formal training and trial preparation advice in addition to the mentorship and on-the-job training offered by the Regional Trial Counsel and other experienced judge advocates within the LSSS. Each regional LSSS has a civilian Highly Qualified Expert (HQE) hired based on their experience and expertise with complex special victim cases. These HQEs consult with counsel on every SVIP case. Our HQEs collectively possess more than 80 years of litigation experience. HQEs participate in all areas of trial preparation, including collaboration on prosecutorial merits memos, preparing charging documents, interviewing witnesses, preparing affirmative and responsive government motions, identifying expert witnesses, and organizing evidence to improve case presentation to the members. HQEs provide consistent guidance to trial counsel and assure continuity throughout the Marine Corps in the disposition of sexual assault cases.

In FY15, TCAP continued to support trial counsel throughout the Marine Corps through training, sharing of resources, and creation of offense-specific “playbooks.” TCAP organized a SVIP course for trial counsel and support Marines from across the Marine Corps. The week-long course focused on the prosecution of sexual assault cases and included training in building case theory, charging under Article 120, UCMJ, general trial advocacy skills, use of expert witnesses, victim support, and prosecutorial ethics. A mix of experienced practitioners, including senior judge advocates, district attorneys, and expert witnesses who testify in sexual assault cases provided the instruction. To enhance community development, TCAP publishes a blog that provides a forum to discuss recent case law and legislative developments, results of and lessons-learned from recent courts-martial, and suggested forms and sample motions. In FY15 TCAP began drafting “playbooks” for commonly charged offenses. The playbooks dissect a UCMJ offense from investigation to findings to combine resources a trial counsel will need to prosecute successfully a case from charging, discovery issues, defenses, and draft motions.

### *B. Defense Services Organization*

The Marine Corps Defense Services Organization (DSO) is dedicated to providing criminal defense services to Marines worldwide. The DSO is a global organization of more than 70 attorneys geographically assigned within the four Regional Legal Services Support Sections.

A Colonel (O-6) heads the organization as Chief Defense Counsel of the Marine Corps and Officer in Charge of the DSO. That officer reports directly to the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC), and exercises functional supervision over all DSO personnel on the SJA to CMC's behalf. The DSO also includes a Defense Counsel Assistance Program (DCAP). This year DCAP witnessed an expansion in size from one to two active duty officers. In 2014, DCAP expanded from one to two civilian HQEs (one located in the eastern region and one located in the western region), who together represent more than 60 years of combined litigation experience. Not only does DCAP respond to queries from counsel in the field, but since 2011, DCAP has aggressively sought out and sent defense counsel to training courses designed to ensure DSO attorneys maintain the knowledge and experience necessary to provide high quality representation in the most complex cases, including sexual assault cases.

The DSO utilizes training at the Naval Justice School as well as civilian training events sponsored by organizations such as the National Association for Criminal Defense Lawyers, Federal Public Defenders Association, Bronx Defenders Academy, and the National Criminal Defense College. Training that is more specific is provided internally through consultation with the Marine Corps criminal defense HQEs. In FY15, the DSO provided zealous detailed representation to 1,600 Marines and Sailors.

### *C. Victims' Legal Counsel Organization*

During FY15, the Marine Corps continued to build upon the VLCO while further integrating the role of the VLC into the military justice system. Marine Corps VLCO, recently established during the previous FY, grew from 15 to 17 counsel in response to the perceived value gained by having additional VLC serving victims. The Marine Corps also continued to integrate VLCs into the military justice system. First, the FY15 NDAA expressly authorized VLC to represent victims during courtroom proceedings. Second, the Navy-Marine Corps Trial Judiciary promulgated revisions to the Uniform Rules of Practice, which required military judges to include VLC in R.C.M. 802 conferences in which the victim has an identifiable interest, and in the Trial Guide, which gave VLC their first formal speaking part in the script of a court-martial.

Judicial circuits followed by reviewing and updating their circuit rules to reflect the evolving role of VLC in advocating for the protection of victims' rights.

All counsel, legal service specialists, and civilian paralegals assigned to VLCO attend specialized certification training at either the Air Force or Army Judge Advocate General's Schools. These courses include instruction in substantive military law, victim behavior, victim services, counseling techniques, and participation in practical scenario-driven exercises. VLC also attended additional specialized training offered by organizations outside the military such as the "2015 Crime Victim Law Conference" hosted by the National Crime Victim Law Institute (NCVLI) at the Lewis and Clark Law School in Portland, Oregon and the "Legal Assistance for Victims of Sexual Offenses and Other Crimes Training Symposium" hosted by the legal assistance branches of the Navy's Office of the Judge Advocate General and the SJA to CMC. In FY15, the VLCO assisted approximately 650 crime victims—approximately 60% were sexual assault victims, 27% were victims of domestic violence, and 13% were victims of other crimes.

#### *D. Training Standards and Resources*

In addition to the training offered by Regional Trial/Defense/Victims' Legal Counsel and Senior Trial/Defense Counsel at the local level, Marine Corps trial, defense, and victims' legal counsel all had nationally recognized training available to them in FY15. Specifically, in FY15, 633 Marines were able to attend the following courses: Intermediate Trial Advocacy, Post-Trial Processing, Court Reporter Course; Trial/Defense Counsel Ethics, Basic Trial Advocacy, Intermediate Trial Advocacy; Military Judges Course, Litigating Complex Cases, Advanced Trial Advocacy Course; Special Victims' Counsel Course, Legal Service Specialists - Military Justice Course, Intermediate Sexual Assault Litigation Course; Prosecuting 112a, Defense Counsel Orientation, Intermediate Sexual Assault Litigation Course; Cross Examination, Law Office Manager Course; Opens, Closes and Directs; Trial and Defense Counsel Ethics, Classified Info Litigation, Defending Sexual Assault Cases; Paralegal Litigation Support, Prosecuting Special Victims Cases, Defense Counsel Orientation; Evidence, and a Child Advocacy Course. In addition to the FY15 TCAP courses, trial counsel attended 20 courses available through the Naval Justice School, the National District Attorney's Association, the Department of Justice,

National Advocacy Center, the Federal Law Enforcement Training Center, and the Army and Air Force JAG schools. In these courses, the focus of training included working with victims, trial advocacy, digital exploitation of children, child abuse, gathering and analyzing evidence, and partnering with victim advocates and NCIS agents in investigating and prosecuting special victim cases. The Marine Corps also continued its partnership with the United States Department of Justice's Office for Victims of Crime (OVC). The OVC provided valuable financial support and information on current victims' rights laws and trends.

Resources for counsel engaged in other complex litigation were also available both inside and outside the classroom. For example, the Navy National Security Litigation Division (OJAG Code 30) provides individualized training and advice to all trial counsel prosecuting national security cases.

#### *E. Naval Justice Information System*

In an effort to streamline the administrative burden of administering military justice, the Marine Corps, along with the Navy, continued their longstanding efforts to develop the Naval Justice Information System (NJIS). Expected to launch in FY16, NJIS will provide a common reference system for the data required for enterprise case management that will integrate information from law enforcement, criminal investigations, command actions, judicial actions, and corrections. NJIS is a web-based system that will provide access to 50,000 Navy and Marine Corps users worldwide and can support 5,000 concurrent users. The system will also provide data management from an enterprise perspective. Departmental policy will address governance issues and appropriate data/information will be visible to authorized users (i.e. Role Based Access Controls). NJIS will establish data standards to ensure interoperability with all of the required agencies for both information intake and reporting output. Once NJIS is launched, the system will provide the Department of the Navy (DON) a capability that improves incident reporting, modernizes the DON's criminal justice processes, increases information sharing across the NJIS communities, and provides leadership access to data for trend analysis to better inform decision-making.

## V. VIEWS ON THE SUFFICIENCY OF RESOURCES

In addition to the exponential growth of the significance of legal issues across the operational landscape, the potential for any tactical military justice issue to quickly become a strategic issue has been the norm for the Marine Corps, indeed for every service, for nearly a decade, and arguably longer. Within the Marine Corps legal community this reality results in two imperatives: (1) retaining our most qualified judge advocates and legal service specialists; and (2) ensuring the right Marine 4400 is in the right billet.

In an effort to retain our best judge advocates, Judge Advocate Division is working with Marine Corps Manpower and Reserve Affairs to resume the Law School Education Debt Subsidy (LSEDS) program. LSEDS operates to offset significant law school debt that officers in other Military Occupational Specialties do not share. More than providing a financial incentive, it helps first tour judge advocates afford to remain on active duty. The LSEDS program was last implemented in FY14. The program utilized a board selection process to limit payment to the ten best and most fully qualified judge advocates on active duty. Continued funding of LSEDS should be considered not only in the context of the overall goal of good talent management, recruiting and retaining our best and brightest, but against the backdrop of the ever-increasing challenges of military law.

Systemic changes to military justice, increased operational demands, and other statutory or policy priorities will continue to create a demand for increased levels of support from the Marine legal community. We will continue to provide this legal support, consistent with the Marine Corps ethos, using Marine judge advocates, who are both MAGTF officers and lawyers. In order to ensure the best advice and legal services are provided to commanders, Marines, and Sailors measures intended to retain our best are essential.

## **VI. CONCLUSION**

In FY15, the Marine Corps legal community accomplished its military justice mission in the face of tremendous challenges posed by scrutiny of and changes to our military justice practice. We will we maintain our systematic efforts to improve the practice of law within the Marine Corps: continuous evaluation, adaptation, capture of best practices and standardization. As FY 2016 dawns, our efforts will include the establishment of the Marine Corps Judge Advocate Board, essentially creating a counsel of colonels to serve as a bridge to the fleet—connecting each LSSS and staff judge advocate office with HQMC, the Judge Advocate Division. By a continuous process of proposal, debate, and decision, we will advance more aggressively, responsively and responsibly the collective quality of the Marine Corps’ legal practice, including its military justice practice.

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

Report Period: FY 2015[A]

### 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	118	131	93	115	25	16	-7%
BCD SPECIAL	157	211	140	178	17	33	-13%
NON-BCD SPECIAL	0	0	0	0	0	0	0
SUMMARY	32	334	29	334	3	0	-33%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT							-21%

### PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES	81	
NUMBER OF BAD-CONDUCT DISCHARGES	64	
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	150	

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	195	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	160	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	36 [B]	

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

TOTAL ON HAND BEGINNING OF PERIOD		158	
GENERAL COURTS-MARTIAL	99		
BCD SPECIAL COURTS-MARTIAL	59		
REFERRED FOR REVIEW		355	
GENERAL COURTS-MARTIAL	195		
BCD SPECIAL COURTS-MARTIAL	160		
TOTAL CASES REVIEWED		359	
GENERAL COURTS-MARTIAL	198		
BCD SPECIAL COURTS-MARTIAL	161		
TOTAL PENDING AT CLOSE OF PERIOD		154	
GENERAL COURTS-MARTIAL	104		
BCD SPECIAL COURTS-MARTIAL	50		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-10.7%	

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

NUMBER	355	
PERCENTAGE	100%	

**PART 6 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES**

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (96)	27%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+14%
PERCENTAGE OF TOTAL PETITIONS GRANTED (17)	18%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+148% [C]
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA	5%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+217%

**PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ**

TOTAL PENDING BEGINNING OF PERIOD		6 [D]	
RECEIVED		0	
DISPOSED OF		1	
GRANTED	0		
DENIED	1		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		5	

**PART 8 – ORGANIZATION OF COURTS**

TRIALS BY MILITARY JUDGE ALONE		437	
GENERAL COURTS-MARTIAL		149	
SPECIAL COURTS-MARTIAL		288	
TRIALS BY MILITARY JUDGE WITH MEMBERS		180	
GENERAL COURTS-MARTIAL		100	
SPECIAL COURTS-MARTIAL		80	

**PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ**

NUMBER OF COMPLAINTS		42	
----------------------	--	----	--

**PART 10 – STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH		511,664	
------------------------------	--	---------	--

**PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		13,042 [E]	
RATE PER 1,000		25	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-2%	

**Explanatory Notes**

[A] Report Period. Case statistics were derived from the Navy and Marine Corps Case Management System.

[B] Part 3, Article 69. This figure represents only cases reviewed under Article 69(a)

[C] Part 6. The Fiscal Year 2014 report erroneously reported that 57 Navy/Marine Corps petitions for review were granted. The correct number of petitions granted was 6.

[D] Part 7. This figure represents only cases reviewed under Article 69(b).

[E] Part 11. This figure was derived from Navy's Quarterly Criminal Activity Report whereby Navy commanders report all known instances of criminal activity pursuant to JAGINST 5800.9C.

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, 2014 TO SEPTEMBER 30, 2015**

**INTRODUCTION**

The United States Air Force Judge Advocate General's Corps (JAG Corps) executed significant initiatives in Fiscal Year 2015 to enhance the effectiveness of the military justice system. The JAG Corps successfully advocated for an increase in manpower authorizations to establish the right level of resources to prosecute criminal actions, vigorously defend Airmen, and provide legal representation to victims of sexual assault. Additionally, The Judge Advocate General (TJAG) reorganized and centralized key trial participants in the court-martial process--military judges, senior prosecutors, senior defense counsel, and senior victims' counsel--into geographic judicial circuits in five locations.

In March 2015, the Secretary of the Air Force approved 73 new manpower authorizations to be added to the Air Force Judge Advocate General's Corps to address the increased workload in the prosecution and defense of sexual assault crimes, the rising caseload in the provision of legal counsel to victims of sexual assault, and the expansion of the Special Victims' Counsel (SVC) program to include more classes of victims. This action expanded the capability and capacity of the SVC program by providing funded manpower authorizations for six Senior Special Victims' Counsel (SSVC) positions, one officer deputy division chief position, five additional SVCs, and fifteen enlisted Special Victims' Paralegals (SVPs). This action also reallocated thirty-seven captain officer positions back to wing legal offices in an effort to return manpower authorizations that were initially taken from wing legal offices at the inception of the SVC program standup. This increase in manpower served as a permanent investment by the Air Force in the SVC program to promote long-term sustainment and enhance effectiveness. Finally, this action expanded the Air Force's prosecutorial capacity by providing six additional senior trial counsel positions, expanded its criminal defense capacity by providing two additional senior defense counsel positions, and expanded its judicial capacity by providing one additional military judge.

In an effort to ensure the Air Force Judiciary continues to be agile, innovative, effective, and efficient, a major organizational change was implemented in Fiscal Year 2015 within the Air Force Judiciary, impacting the delivery of trial services across the United States Air Force. In Fiscal Year 2015, TJAG directed an organizational realignment and geographic consolidation of key trial participants, including military judges, senior trial counsel, senior defense counsel, and senior special victims' counsel, into judicial circuits, so our key trial practitioners are in the best position to vigorously represent the legal needs of the Air Force and Airmen, enhance collaboration within the

trial system network, and advance the professional and leadership development of military justice personnel. The JAG Corps maintained its Central Docketing Office and the oversight and management it brings to the trial judiciary, and preserved the thriving defense community structure that evolved over the past eight years, but reestablished the circuit structure to provide a better opportunity for our most senior and seasoned military justice practitioners to mentor and improve through constant interaction and collaboration outside the courtroom setting. This realignment consolidated military judges from ten geographic locations, senior trial counsel from ten geographic locations, and senior defense counsel from nineteen geographic locations into five centralized circuit offices, while also maintaining headquarters offices for these organizations at Joint Base Andrews, MD. Additionally, five senior special victims' counsel were also added to the five circuit locations. The five circuit offices are dispersed at five geographically advantageous locations worldwide at Ramstein Air Base, Germany; Joint Base Langley-Eustis, Virginia; Joint Base San Antonio-Randolph, Texas; Travis Air Force Base, California; and Kadena Air Base, Japan.

### **THE AIR FORCE COURT OF CRIMINAL APPEALS**

The Air Force Court of Criminal Appeals issued opinions in 211 cases in fiscal year 2015. At the end of Fiscal Year 2014, the court had five active duty judges assigned, plus one reservist judge on extended active duty orders, following the retirement of four active duty judges. In addition, there were four law clerks, and one chief commissioner assigned to the court. During Fiscal Year 2015, the court has seven active duty judges, two law clerks, and one chief commissioner. At the end of Fiscal Year 2014, the court's docket had 70 cases ready for review and 246 cases docketed. Only three cases were pending the court's decision for more than 180 days, with zero cases violating the Moreno standard. At the end of Fiscal Year 2015, the court had 76 cases ready for review and 224 cases docketed. There were nine cases pending the court's decision for more than 180 days, with one case violating the Moreno standard.

The court issued eight published opinions during this fiscal year and held oral argument in nine cases, to include hearing oral argument at George Washington University Law School pursuant to its "Project Outreach" program.

Three of the court's appellate judges served on the United States Court of Military Commission Review (USCMCR). The USCMCR hears appeals of cases convened under the Military Commissions Act of 2009. The USCMCR not only hears cases with a finding of guilty from military tribunals at Guantanamo Bay, but also hears appeals on issues taken prior to and during trial.

Two of the court's appellate judges served as hearing officer for eight Air Force Environmental Impact Statement (EIS) hearings. An EIS hearing is conducted for actions that have the potential for significant environmental impact with a goal of providing the public and the decision makers with adequate information about the potential impact of military actions on the environment.

## TRIAL JUDICIARY

The Air Force Trial Judiciary Directorate (JAT) is responsible for docketing and presiding over all Air Force general and special courts-martial, as well as an array of federal hearings. The Directorate is staffed by 21 active-duty trial judges, five reserve trial judges, two noncommissioned officers, and one civilian employee. The office of the Chief Trial Judge is co-located with the Central Docketing Office at Joint Base Andrews, Maryland.

In September, the Directorate moved to five geographical judicial circuits, each led by a Chief Circuit Military Judge. The judges are headquartered at Ramstein Air Base, Germany, Langley Air Force Base, Virginia, Randolph Air Force Base, Texas, Travis Air Force Base, California, and Kadena Air Base, Japan and serve the European, Eastern, Central, Western, and Pacific Circuits, respectively.

Also in September, the Directorate published new Uniform Rules of Practice before Air Force Courts-Martial. This marked the first update to the Rules in five years. The revised Rules incorporated over 300 comments from Air Force practitioners, restructured docketing procedures to maintain Circuit integrity, and integrated special victims' counsel where appropriate.

In Fiscal Year 2015, Air Force judges presided over more than 380 general and special courts-martial. Judges also served as preliminary hearing officers in over 170 Article 32 hearings involving sexual offenses or complex allegations. Additionally, judges served as legal advisors for officer discharge boards and in post-trial DuBay hearings, contingency confinement hearings, competency hearings, and Environmental Impact Statement public hearings.

The Directorate hosted its first-ever, service-specific training at Joint Base Andrews. All Air Force trial judges attended the 3-day event, which included instruction on new statutes and rules related to sexual offenses, sentencing considerations, digital evidence, and victim's rights.

Air Force trial judges taught military justice in classrooms and courtrooms worldwide. The Chief Trial Judge and Deputy Chief Trial Judge instructed new military judges at The Army Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Air Force trial judges trained new judge advocates, trial and defense counsel, special victims' counsel, and staff judge advocates at the Air Force Judge Advocate General's School, on Maxwell Air Force Base, Alabama. Air Force trial judges also provided practical instruction at more than a dozen trial advocacy courses held throughout the world to enhance current and future practitioners' litigation skills. Judges continued their partnership with the Air Force JAG School to create several web-based training series on impeachment and evidentiary foundations.

Currently there are three active duty judges detailed to support the military commissions. The Chief Judge continues to preside over the commission proceeding for the alleged USS Cole bombing, as well as a capital trial at Robins AFB, Georgia.

## **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, 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. 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.

Through its enlisted court reporter program, the Directorate provides expeditionary court reporter support for all deployed courts, mishaps, and other investigations.

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 & APPELLATE COUNSEL DIVISION**

### **APPELLATE GOVERNMENT COUNSEL**

During this past year, seven active duty judge advocates, nine reserve judge advocates, and one civilian attorney 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 four cases for review by the United States Court of Appeals for the Armed Forces (CAAF), and filed government appeals in three cases under Article 62, UCMJ, at the Air Force Court of Criminal Appeals (AFCCA). When appropriate, the Division also responded to petitions for extraordinary relief under the All Writs Act. The Division continued to vigorously defend the death sentence adjudged and approved in *United States v. Witt*, the Air Force's first death penalty case in nearly two decades.

Appellate government counsel zealously represented the government in 211 written briefs and 23 oral arguments before CAAF and AFCCA. Appellate government counsel advocacy resulted in notable appellate rulings during the year. In *United States v. Buford*, 74 M.J. 98 (C.A.A.F. 2015), JAJG filed a government appeal under Article 62, UCMJ, challenging a military judge's trial ruling suppressing evidence of child

pornography based upon a broad interpretation of the government agent doctrine. CAAF agreed with the United States' position on suppression of the evidence because the witness, an off-duty security forces gate sentry, was not acting as a government agent. The Court ruled the evidence was admissible and permitted the case to be returned to trial. The United States Supreme Court denied Buford's petition for certiorari. In United States v. Piolunek, 74 M.J. 107 (C.A.A.F. 2015), CAAF overruled United States v. Barberi, 71 M.J. 127 (C.A.A.F. 2012), reaffirming the long-standing and important general verdict rule in child pornography cases. In so doing, the Court strengthened the government's ability to effectively prosecute child pornographers. In United States v. Katso, 74 M.J. 273 (C.A.A.F. 2015), CAAF found no Confrontation Clause violation in the admission of expert testimony by a DNA expert who, although he did not personally conduct initial scientific testing in the case, did independently review the evidence to arrive at his own, independent expert opinion. Buford, Piolunek, and Katso were all certified for review at CAAF by The Judge Advocate General of the Air Force as provided in Article 67(a)(2), UCMJ.

Appellate Government Counsel provided trial litigation support and training to the field throughout the year. Division counsel educated judge advocates and paralegals at Air Force training events such as the Military Justice Administration Course, The Judge Advocate General's Continuing Legal Education Course, the Trial and Defense Advocacy Course and the Annual Survey of the Law course. In addition, counsel participated in training special agents of the Air Force Office of Special Investigations at the Federal Law Enforcement Training Center at Glynco, Georgia, and provided instruction to Drug Enforcement Agency analysts on providing effective courtroom testimony. The Division overhauled and updated the Air Force Trial Counsel Deskbook, a comprehensive compendium of current military case law and a key litigation tool for Air Force prosecutors, worldwide. Appellate counsel were also assigned to serve as lead trial counsel in several complex cases sent back by appellate courts for rehearing.

The Division receives crucial appellate counsel support from nine assigned reserve judge advocates, especially during manning shortages and caseload surges. They continue to provide superb support, greatly assisting the Division in carrying out its mission.

A summary of Air Force Appellate Government practice follows:

<b>AFCCA</b>	<b><u>FY11</u></b>	<b><u>FY12</u></b>	<b><u>FY13</u></b>	<b><u>FY14</u></b>	<b><u>FY15</u></b>
Briefs Filed	144	233	188	175	193
Cases Argued	14	14	14	18	10

<b>CAAF</b>	<b><u>FY11</u></b>	<b><u>FY12</u></b>	<b><u>FY13</u></b>	<b><u>FY14</u></b>	<b><u>FY15</u></b>
Briefs Filed	29	36	30	40	18
Cases Argued	15	9	9	14	13

<b>SUPREME COURT</b>	<b><u>FY11</u></b>	<b><u>FY12</u></b>	<b><u>FY13</u></b>	<b><u>FY14</u></b>	<b><u>FY15</u></b>
Petition/Waivers Filed	1	1	1	0	0
Briefs Filed	0	0	0	0	0

### SENIOR TRIAL COUNSEL

Senior Trial Counsel (STCs) are detailed to prosecute cases by the Division headquarters at Joint Base Andrews, Maryland. Their primary responsibility is to represent the government in the most complex general courts-martial. STCs prosecute approximately 80 percent of all Air Force general courts-martial and were detailed to approximately 90 percent of the Air Force's sexual-assault cases. Additionally, in FY15, STCs prosecuted over 65 special courts-martial. During the fiscal year, STCs also worked on discharge boards and other proceedings, as resources allowed.

Personnel authorizations for Fiscal Year 2015 grew from 18 STC positions to 24 positions. This expansion resulted from the addition manpower authorizations directed by the Secretary of the Air Force to address the increased workload in the prosecution and defense of sexual assault crimes, the rising caseload in the provision of legal counsel to victims of sexual assault, and the expansion of the Special Victims' Counsel Program to include more classes of victims. This increase in manpower provided for the creation of 5 new Chief Senior Trial Counsel (CSTC) positions to serve as field grade leadership over the circuit counsel. As part of the Air Force Judiciary realignment, eighteen existing STC positions in ten geographic locations were consolidated into the five judicial circuits discussed above.

In FY15, the STC program continued to leverage the experience and skill of its nine Special Victims Unit (SVU) prosecutors. The SVU prosecutors handle the most serious, most complicated, and highest-visibility sexual-assault cases in the Air Force. The SVU prosecutors, along with the rest of the STCs, are supported by the SVU's Chief of Policy & Coordination, who is the Division's focal point for issues related to sexual assault. One STC also acts as liaison to the Defense Computer Forensics Laboratory and is the Air Force's legal expert on issues related to digital evidence.

In FY15, STCs spent in excess of 3,000 days on temporary duty away from their home stations, and represented the government in more than 400 courts-martial and related proceedings. Again this year, the STCs took part in both the Intermediate and

Advanced Sexual Assault Litigation Courses along with members of the Division's leadership who attended as faculty. The STCs also attended an intensive week-long course at Joint Base Andrews, Maryland, where they received training specially tailored to the high-profile cases they prosecute and enhanced peer-to-peer education in a variety of subject areas. STCs also attended various training courses across the country, both military and civilian, and continued the valuable tradition of spending a week performing appellate work with our appellate counsel, broadening their trial and appellate perspective and enhancing their litigation skills.

## **APPELLATE DEFENSE DIVISION**

The Appellate Defense Division (JAJA) ended Fiscal Year 2015 with 9 active duty judge advocates, 11 reserve judge advocates, one civilian attorney and two paralegals. The Division moved its docket, despite vacancies in two active duty attorney and its lone SNCO paralegal billets. Operations were also impacted by the yearlong deployment of its GS-15 civilian attorney, who is a Navy reservist assigned to the Military Commissions. As in past years, reserve component judge advocates continued to provide significant support.

Despite the aforementioned manning challenges, promoting timely appellate review remained a priority in FY 2015 for JAJA. The Division considerably reduced the number of enlarged cases pending initial briefing to the AFCCA. On 1 Oct 14, appellate counsel had 60 enlarged cases pending initial briefing to AFCCA...the highest total since 1 Dec 2011. By 1 Oct 15, that number had been reduced to 41.

JAJA advocacy contributed to several notable rulings from the appellate courts, clarifying the rights of accused and impacting the practice of military justice at the trial level. In United States v. Bowser, 73 M.J. 889 (A.F.C.C.A. 2014); 74 M.J. 326 (C.A.A.F. 2014), division counsel successfully defended the trial judge's dismissal with prejudice of charges against a chief master sergeant (E-9) for failure to obey his order to provide attorney notes for in camera review. In United States v. Gutierrez, 74 M.J. 61 (C.A.A.F. 2105), the Court overturned eight counts of aggravated assault for an Airman with HIV, shifting the analytical focus to the likelihood of transmission of the virus. In United States v. Jones, 74 M.J.95 (C.A.A.F 2015), CAAF ruled that the de facto officer doctrine did not apply to TJAG's appointment of a civilian judge on the AFCCA, and accordingly, Appellant's case had not been reviewed by a properly constituted panel. In United States v. Wilkinson, ACM S32218 (A.F.C.C.A. 2015), the Court set aside a sex assault conviction, finding that the government had failed to prove an essential element. In United States v. Bondo, ACM 38438 (A.F.C.C.A. 2015), the Court ruled that an Airman's rights were violated when he was forced to provide a phone password after requesting legal counsel. In United States v. Nettles, 74 M.J. 289 (C.A.A.F. 2015), the Court held that the Air Force had lost jurisdiction of a reserve officer, and as a result, his conviction and sentence were set aside. In United States v. Solis, ACM S32160 (A.F.C.C.A. 2015) the Court was convinced to apply the Confrontation Clause of the US Constitution to the rule requiring corroboration of a confession, with the results being a suppressed confession and four specifications being set aside.

The Appellate Defense Division continued to support trial defense counsel in the field through consultation, including time-critical situations. In addition to the timely updates on developments, division counsel provided an Appellate Update briefing to new area defense counsel at the Defense Orientation Courses held at The Judge Advocate General's School at Maxwell AFB.

The following figures reflect the Division's workload over the past six fiscal years:

**AFCCA**

	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY 13</u>	<u>FY 14</u>	<u>FY 15</u>
Briefs Filed	290	299	295	221	205	195
Cases Argued	4	9	12	10	8	10 <sup>1</sup>

**USCAAF**

	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY 13</u>	<u>FY 14</u>	<u>FY 15</u>
Supplements to Petitions	204	160	220	257	222	171
Grant Briefs	18	11	12	5	17	6
Cases Argued	17	17	9	10	13	13 <sup>2</sup>

**SUPREME COURT**

	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY 14</u>	<u>FY 15</u>
Petitions	2	1	1	1	1	2
Briefs in Opposition	0	0	0	0	0	0
Briefs on the Merits	0	0	0	0	0	0

Appellate defense counsel participated in AFCCA-sponsored Project Outreach oral arguments, which serve a dual-purpose as a recruiting tool while highlighting the fairness and professionalism of the military justice system. During the year, Outreach argument was presented at the George Washington University School of Law, in Washington, D.C. Additionally, division counsel support CAAF's Project Outreach by attending oral argument presented by civilian co-counsel at the Marquette University Law School, Milwaukee, Wisconsin.

<sup>1</sup> Includes three cases argued by civilian co-counsel.

<sup>2</sup> Includes three cases argued by civilian co-counsel.

## **TRIAL DEFENSE DIVISION**

The Trial Defense Division (JAJD) is responsible for providing all defense services throughout the Air Force through its worldwide team of Area Defense Counsel (ADCs), Defense Paralegals (DPs), Senior Defense Counsel (SDCs), Chief Senior Defense Counsel (CSDCs), and Defense Paralegal Managers (DPMs). The Chief, JAJD, is assisted by a Deputy Chief, Policy and Training, and an Office Superintendent at Joint Base Andrews, MD.

During Fiscal Year 2015, the Division was staffed with 84 ADCs and 74 DPs. These ADC-DP teams were stationed at 69 operating locations worldwide. They were, in turn, supervised by the Division's 20 SDCs and 3 CSDCs. Each SDC supervised 4 to 5 ADC-DP teams and each CSDC in turn supervised 6 to 7 SDCs. Each of the 3 CSDCs was assisted by a DPM to help manage enlisted issues.

Personnel authorizations for Fiscal Year 2015 grew from 19 SDC positions to 21 positions. This expansion resulted from the addition of manpower authorizations directed by the Secretary of the Air Force to address the increased workload in the prosecution and defense of sexual assault crimes, the rising caseload in the provision of legal counsel to victims of sexual assault, and the expansion of the SVC Program to include more classes of victims. During FY15, the SDCs were consolidated from 19 operating sites down to the five circuit locations described above. Together, these 186 professionals provided defense services to more than 300,000 Airmen around the world.

The continuing success of the Air Force's ADC program is largely attributable to its independence and the effective and zealous advocacy of its personnel. To ensure the best representation for Air Force clients, training remains JAJD's top priority. Each SDC provided on-the-job training and mentoring to the ADCs in their charge on a continuing basis. Each CSDC likewise mentored the SDCs in their areas of responsibility. Newly appointed ADCs and DPs attend formal training at the Defense Orientation Course held at The Air Force Judge Advocate General's School (AFJAGS). All SDCs—new and old alike--attended a Division-run Leadership Course at Joint Base Andrews, MD. Defense personnel also attended Trial Advocacy Courses conducted at both AFJAGS and various civilian sponsored courses.

## **MILITARY JUSTICE DIVISION**

The Military Justice Division (JAJM) prepares opinions and policy positions for SecAF, CSAF, and TJAG. The Division also assembles reports on military justice issues requested by the White House, Congress, DoD, and the Air Staff. JAJM represents the Air Force on the DoD Joint Services Committee on Military Justice. The Division provides representatives to all interservice activities involving military justice. JAJM responded to numerous requests for information and provided testimony in frequent support of these entities. JAJM also 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). The Division promulgates and updates regulations establishing Air Force policies and procedures for the conduct of courts-martial and other proceedings. JAJM facilitates designation for the exercise of military justice, preparing SecAF documents and Department of the Air Force Special Orders designating convening authorities. The Division makes recommendations to the Judiciary and TJAG for changes in military justice policy, prepares offices and TJAG for visits under Article 6 of the UCMJ, and completes other staff taskings as requested.

During the past fiscal year, JAJM provided 138 formal opinions concerning AFBCMR applications; received 57 inquires in specific cases requiring formal written replies to senior officials, including to the President and Members of Congress; and reviewed 34 records of trial for review under Article 69a, UCMJ, and five records under Article 69b, UCMJ. Additionally, JAJM reviewed and provided over 13,000 pages of court records in response to over 350 requests by members of Congress, the media, law enforcement entities, or individuals under the Freedom of Information Act.

The Division oversees the Victim Witness Assistance Program (VWAP). All military and civilian victims are eligible for a VWAP liaison if the criminal conduct adversely affects them or if they provide information regarding criminal activity so long as any portion of the investigation is conducted primarily by the Air Force. The VWAP was designed to ensure that all victims and witnesses of a crime who suffer physical, financial or emotional trauma receive the assistance and protection to which they are entitled. The VWAP liaison makes every effort to afford all available services, upon request and availability, to any person who has suffered direct physical or emotional harm or any other damage as a result of an offense investigated or prosecuted by Air Force authorities. If a victim is not entitled to receive military services the VWAP liaison helps them locate various agencies in their local community to include, mental health treatment and counseling services.

JAJM twice presented the annual Military Justice Administration Course at AFJAGS; a “back to basics” weeklong course attended by both judge advocates and paralegals. Division personnel taught at an additional number of military justice related courses, to include: Gateway – an intermediate judge advocate course for majors; the senior officer legal orientation course; the sex crimes investigation and training course; the AF trial judges annual training; web based training on discovery for all bases throughout Europe; and post-trial issues training for 9th AF, 18th AF, and Air Force District of Washington.

Division personnel also taught the JAG Corps, through numerous webcasts, on the new law and policies concerning the administration of military justice cases, particularly sexual assault cases. Highlights included instruction on the overhaul of the Article 32 process, the rights of victims during the court-martial process, sexual assault reporting requirements, interaction and requests for information with and for SVC.

JAJM recognized a number of career personnel milestones that include Col (s) Julie J.R. Huygen being appointed the first female director of the Division and Maj Wesley Braun completing his master in law with a specialty in Military Justice, the first Air Force JAG to have been selected and funded for such a program in 20 years. The Division also supported the war effort in Fiscal Year 2015 by deploying our noncommissioned officer in charge of central witness funding to Al Udeid Air Base, Qatar, for six months. Additionally, JAJM hosted summer interns, law students who completed at least a year of law school and expressed an interest in service as judge advocates. One intern applied for and was accepted into the JAG Corps.

The Division continued to coordinate military justice actions with high-level agencies, such as working closely with the Department of Justice 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. JAJM personnel were once again instrumental in drafting proposed changes to the Military Rules of Evidence and Rules for Courts-Martial for pending executive orders.

Throughout 2015, JAJM supported two panels in their respective studies of the military justice system: the Judicial Proceedings Panel (JPP) and the Military Justice Review Group (MJRG). JAJM's support consisted of organizing the presentation and testimony of requested witnesses before the panels and providing responses to requests for information from the respective panels. The JPP was established by the SECDEF as required by Section 576(a)(1) of the NDAA for FY13 and in accordance with the Federal Advisory Committee Act of 1972 and 41 C.F.R. Section 102-2.50(a). The JPP is conducting an independent review and assessment of judicial proceedings under the UCMJ involving adult sexual assault and related offenses for the purpose of developing recommendations for improvements to such proceedings. As part of the study, JAJM assisted in identifying, prepping, and facilitating the testimony of over 20 individual witnesses for the JPP ranging from the rank of Staff Sergeant to Brigadier General. In addition, JAJM assisted in providing over 150,000 pages of documents from over 300 courts-martial to the JPP to assist in its analysis of the military justice system. In February 2015, the JPP released the first of its annual reports and JAJM spearheaded Air Force coordination and response to the report. JAJM also produced various documents and briefings for Air Force leadership and the JAGC on the contents of the report. Finally, JAJM developed an implementation plan for those aspects of the report which required implementation within the Air Force. The MJRG was established when the SECDEF directed the General Counsel of the DoD to conduct a comprehensive review of the military justice system. The MJRG's review is focused on the structure and operation of the UCMJ and the MCM. In 2015, the MJRG concluded its review of the UCMJ and provided DoD with a 1,300 page report recommending 66 substantive legislative changes to the UCMJ. JAJM provided SecAF coordination on the recommended legislative changes to the UCMJ as well as leadership briefings on the changes and their potential impact.

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

At the end of fiscal year 2015, 220 Air Force personnel were in confinement. Of those, 78 inmates were in long-term confinement at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and 43 were serving their sentence in the Federal Bureau of Prisons system. The number of Air Force members and former members on parole or Mandatory Supervised Release at the end of fiscal year 2015 was 53.

During the reporting period, the division reviewed 20 Article 71, UCMJ, officer dismissal cases. The Secretary approved the dismissals in 19 of the cases, and granted clemency by way of substituting an administrative discharge for the adjudged and approved dismissal in one case involving post-traumatic stress disorder and drug use. The division also reviewed seven enlisted cases for Secretarial clemency under Article 74, UCMJ. Two of the cases contained compelling circumstances for which the Secretary granted clemency. One involved a basic training instructor who had a relationship with a technical training student at another base, and the other involved a young airman who suffered from post-traumatic stress disorder based on sexual abuse, who later used drugs.

## **THE JUDGE ADVOCATE GENERAL'S SCHOOL**

The Air Force Judge Advocate General's School (AFJAGS) 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 several foreign countries. Military justice instruction topics included advocacy, administration, the rules of evidence, the rules of procedure, and sexual assault policy and response. JAG School faculty members also provided instruction on military justice for several schools and colleges throughout Air University, the Air Force's center for professional military education. During FY 2015, JAG School faculty members instructed more than 16,000 students at these military institutions.

Additionally, the JAG School published 10 articles concerning military justice and other criminal justice issues in *The Reporter* and *The Air Force Law Review*. *The Military Commander and the Law*, the School's flagship publication, is going through a significant rewrite and will be available to the Corps, and commanders, and first sergeants in July 2016. In addition, AFJAGS produces webcasts where subject-matter experts teach current military justice topics to personnel assigned to all base legal offices, area defense counsel offices, and special victims' counsel offices. In FY 2015, there were several live webcasts on military justice topics including significant changes following the passage of the 2015 National Defense Authorization Act and the Manual for Courts-Martial Update. These webcasts were seen live by over 700 JAGs and paralegals. These webcasts are now available "on demand" on CAPSIL. CAPSIL is a web-based collaborative learning and management system administered by the JAG School and accessible to all members of the JAG Corps.

More than 2,400 students attended in-residence and distance education courses in FY 2015. With nearly 60 JAG School course offerings, the following courses devoted substantial resources to military justice-related topics:

- Advanced Sexual Assault Litigation Course
- Advanced Trial Advocacy Course
- Annual Survey of the Law
- Article 32 Pretrial Hearing Officer Course (Distance Education)
- Defense Orientation Course (for new Area Defense Counsel and Defense Paralegals)
- Gateway (the JAG Corps' advanced leadership course for field grade officers)
- Intermediate Sexual Assault Litigation Course (held regionally in the United States and overseas)
- Joint Military Judges' Annual Training
- Judge Advocate Staff Officer Course
- Law Office Manager Course
- Military Justice Administration Course
- Paralegal Apprentice Course
- Paralegal Craftsman Course
- Senior Enlisted Legal Orientation Course
- Senior Officer Legal Orientation Course
- Special Victims' Counsel Course
- Staff Judge Advocate Course
- Trial and Defense Advocacy Course
- Victim/Witness Assistance Program Course (Distance Education)

In addition to the above courses, AFJAGS continued to lead the way in the development of a "full spectrum" military justice curriculum, expanding the Special Victims' Counsel Course from 5 to 8 duty days, as well as creating 6 new blocks of instruction for Special Victims' Counsel attending the Intermediate Sexual Assault Litigation Course. To further enhance military justice advocacy training, AFJAGS continued administering the TRIALS program – "Training by Reservists in Advocacy and Litigation Skills" – where teams of JAG School faculty, augmented by Reserve judge advocates, conduct regional courses in foundational advocacy skills. In FY 2015, TRIALS programs were conducted at Joint Base McGuire-Dix-Lakehurst, NJ; Davis-Monthan AFB, AZ; Maxwell AFB, AL; Charleston AFB, SC; Tinker AFB, OK; Ramstein AB, Germany; Lackland AFB, TX; Nellis AFB, NV; and Joint Base Elmendorf-Richardson, AK.

Finally, AFJAGS developed and executed the inaugural Senior Enlisted Legal Orientation Course (SELO). This new course is a joint initiative between the Chief Master Sergeant of the Air Force and the JAG School. The course provides dedicated legal training to newly-assigned command chiefs. This two-day course is offered five times each year with a focus on military justice, civil law, and airman welfare/force readiness topics.

## **LEGAL INFORMATION SERVICES**

The Legal Information Services Directorate (JAS) acquires and develops new legal information technology (IT) tools and improves existing ones to better support military justice business processes throughout the Air Force.

The JAG Corps continued development planning and requirements validation efforts in pursuit of capabilities for a Disciplinary Case Management System (DCMS) that will replace the Automated Military Justice Analysis and Management System (AMJAMS) as well as the Web-based Airman Separation Program (WASP), Judicial Docketing System (JDS), and other disciplinary-related applications hosted by JAS. Working with the Air Force's Deputy Chief Management Officer and its consulting contractors, JAS and the JAG Corps military justice subject matter experts compiled a contextual model and data reference model, in addition to performing course of action analysis, which are Step 3 deliverables pursuant to the Air Force's Service Development and Delivery Process (SDDP). Completion of SDDP Step 3 requirements is targeted for March 2016; a major milestone, shifting planning focus from requirements verification to funding certification and acquisition.

As reported last year, when the Air Force initiated the SVC Program in January 2013, JAS deployed a SharePoint site for use by SVCs to track cases; the SharePoint site was designed as a temporary solution until a more robust case manager could be acquired and developed. Learning of a commercial case management software (Open Text Cordys) hosted by the Defense Logistics Agency (DLA), in September 2015, JAS contracted through DLA for the development of an SVC Case Manager System. The design phase was completed in late December 2015 with initial operating capability (IOC) scheduled for April 2016. While addressing the SVCs' need for a case manager system, the project also serves as a pilot program for assessing whether the Open Text Cordys software is scalable for the JAG Corps' larger Disciplinary Case Management System requirements.

While planning to replace AMJAMS, AFLOA/JAS continued to coordinate with JAJM on needed upgrades to AMJAMS to maintain its usefulness pending funding and acquisition of a replacement DCMS. Two upgrade releases to AMJAMS in early 2015 implemented security upgrades. Two additional releases in December 2015 and January 2016 included the ability to generate the new Report of Results of Trial Memorandum and validation by NAF/MAJCOM legal offices verifying the accuracy of adjudged findings and sentences in courts-martial. With further modifications currently under development regarding these recent changes, it will be possible to electronically push court-martial results from AMJAMS to the JAG Corps "Public Docket" webpage thus increasing transparency of military justice processes.

## **SPECIAL VICTIMS' COUNSEL DIVISION**

The Special Victims' Counsel (SVC) Division advances the Air Force mission by promoting justice, strengthening confidence in the military justice system, and offering

legal assistance services through independent legal counsel to victims of sex related offenses during the investigation and prosecution process. SVCs and Special Victims' Paralegals (SVPs) provide world-class representation and advocacy for armed forces members and dependents at military installations worldwide, protecting the rights afforded to crime victims.

In Fiscal Year 2015, the Secretary of the Air Force directed new manpower authorizations to be added to the Air Force Judge Advocate General's Corps to address the increased workload in the prosecution and defense of sexual assault crimes, the rising caseload in the provision of legal counsel to victims of sexual assault, and the expansion of the SVC program to include more classes of victims. This action expanded the capability and capacity of the SVC program by providing funded manpower authorizations for six Senior Special Victims' Counsel positions (SSVC), one officer deputy division chief position, five additional SVCs, and fifteen enlisted Special Victims' Paralegals (SVP). This action also reallocated thirty-seven captain officer positions back to wing legal offices in an effort to return manpower authorizations that were initially taken from wing legal offices at the inception of the SVC program standup. This increase in manpower served as a permanent investment by the Air Force in the SVC program to promote long-term sustainment and enhance its effectiveness.

During FY15, the SVC Program increased from 28 SVCs in 19 locations to 33 SVCs in 31 locations. Five of the SSVCs are located at the circuit locations mentioned above. They provide intermediate SVC/SVP supervision, maintain small caseloads, and assist SVC headquarters in responding to taskings. The headquarters staff added an O-5 Deputy Chief to provide supervision of the SSVCs, detail cases, and manage the operational aspects of the program. At end of the fiscal year, 4 of 6 SSVCs billets were filled; 33 of 51 SVCs billets were filled and 12 of 26 SVPs billets were filled.

SVCs played a pivotal role in the advancement of representation of sexual assault victims. In response to a call for comments to the 2015 Executive Order, several SVCs proposed a rule change to R.C.M. 1001 which would allow a victim to provide an unsworn victim impact statement to the court during sentencing. The SVC submission was accepted and resulted in the Executive Order adding R.C.M. 1001A which granted the victim the ability to make an unsworn statement utilizing the AF SVC proposed process. In the post-trial setting, CLSV filed Amicus Curiae briefs in the Service Courts of Criminal Appeals and at CAAF asserting that the same protections of privileged psychotherapist-patient records afforded to victims at trial should apply at the appellate level.

AF SVC Program leaders, possessing some of the most current, broadest and successful experience in representing sexual assault victims, have informed military policy at the highest levels. The Division Chief was interviewed on Federal News Radio when the SVC Program was highlighted as the Federal Agency of the Month. The SVC Program educated members of several Congressionally-mandated panels on the services provided to sexual assault victims by the SVC Program. SVCs testified at the MJRG and the JPP. CLSV leadership worked closely with the DoD Sexual Assault

Prevention and Response Office on landmark projects such as the To Catch a Predator Program, known as the "CATCH" Program, and the Retaliation Working Group. Finally, CLSV provided significant input to the final Joint Services Committee's Report on Extending SVC Representation to DoD, and unaffiliated, civilians.

SVCs conducted outreach to civilian and military attorneys and allied professionals who work in the field of victim services and representation. SVCs provided briefings at the American Bar Association Annual Conference, the Texas Association Against Sexual Assault, the National Crime Victims' Legal Institute's Annual Conference, and the Virginia State Bar Association's Annual Continuing Legal Education program. Internally, the Division Chief briefed Air Force leaders at the newly created Senior Officer Legal Orientation Course at the Air Force JAG School. SVCs also educated key first responders at the Family Advocacy Annual Training Course and several Air Force Office of Special Investigations regional senior leader conferences. Finally, SVCs educated other JAG Corps members in venues such as the Dougherty-Nelson Continuing Legal Education Program, webcasts and local outreach.

At the end of FY15, SVCs had represented 2006 victims over the life of the program, of which 51 were children. At the end of FY15, the current SVC program caseload was 989 active clients, of which 51 are children. In FY15, SVCs appeared in 158 courts-martial and 202 Preliminary Hearings, filing 126 motions and arguing 122 motions on behalf of their clients. In CY15, SVCs represented clients in 495 interviews with investigators, defense counsel, and trial counsel. SVCs have also provided a wide-range of legal assistance services, including assisting clients who have faced retaliation after making a complaint of sexual assaults with expedited transfers, reassignments and cross-training in new career fields.

The feedback from victims represented by an SVC remained overwhelmingly positive. An impressive 86% of victims surveyed indicated they were "extremely satisfied" with their SVC's representation and 13% were "satisfied," resulting in an overall 99% satisfaction rate. Another data point has remained at the same level from FY14 through FY15 -- 99% of those surveyed would recommend other victims request an SVC.

## **PERSONNEL**

As of 30 September 2015, the Air Force Judge Advocate General's Corps had 1,186 judge advocates on active duty. Company grade officers (lieutenants and captains) made up approximately 47% of that number (552). Approximately 25% were majors (296) and approximately 19% were lieutenant colonels (226). Colonels and above (115), including one lieutenant general and two major generals, comprised approximately 10% of the Corps. As of 30 September 2015, there were 840 paralegals on active duty. Senior airmen and below made up approximately 25% (208) of that number. Staff sergeants made up approximately 28% (233), while 26% (216) were technical sergeants, and master sergeants made up approximately 15% (128). Senior master and chief master sergeants made up 5% (40) and 2% (15) respectively. In

addition, there were 856 DAF full-time civilians, of which 63% (538) were attorneys and 37% (318) were paralegals and legal assistants. Grade breakdown includes 278 GS-11s and below, 49 GS-12s, 142 GS-13s, 205 GS-14s and 172 GS-15s. The Air Reserve Component (ARC) of The Judge Advocate General's Corps included 996 Air Force Reserve Individual Mobilization Augmentee (IMA), Air Force Traditional Reserve unit-assigned, and Air National Guard judge advocates, of which 29% (292) were company grade officers and 59% (588) were field grade officers (majors and lieutenant colonels). The remaining 12% consisted of 111 colonels, three brigadier generals, and two major generals. The ARC also includes 426 paralegals, of which 4% (18) were airmen or airmen first class, 11%(47) were senior airmen, 23% (98) were staff sergeants, 30% (129) were technical sergeants, 25% (104) were master sergeants, 3% (14) were senior master sergeants, and 4% (16) were chief master sergeants.

CHRISTOPHER F. BURNE  
Lieutenant General, USAF  
The Judge Advocate General

Period: Fiscal Year 2015

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE(+)/ DECREASE (-) OVER LAST REPORT
GENERAL	201	144	55	-7.37%
BCD SPECIAL	226	85	29	-20.14%
NON-BCD SPECIAL [A]		114		
SUMMARY	97	95	2	+1.03%
OVERALL RATE OF INCREASE ( + ) / DECREASE ( - ) OVER LAST REPORT				

**PART 2 - DISCHARGE APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES [B]		57
NUMBER OF BAD CONDUCT DISCHARGES		51
SPECIAL COURT-MARTIAL (CA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		92

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

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	108
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	86
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	34

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

TOTAL ON HAND BEGINNING OF PERIOD		235
GENERAL COURTS-MARTIAL	145	
BCD SPECIAL COURTS-MARTIAL	90	
REFERRED FOR REVIEW		194
GENERAL COURTS-MARTIAL	108	
BCD SPECIAL COURTS-MARTIAL	86	
TOTAL CASES REVIEWED		199
GENERAL COURTS-MARTIAL	120	
BCD SPECIAL COURTS-MARTIAL	79	
TOTAL PENDING AT CLOSE OF PERIOD		230
GENERAL COURTS-MARTIAL	139	
BCD SPECIAL COURTS-MARTIAL	91	
REVIEWED DURING LAST REPORTING PERIOD (199/246)		1.236

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

NUMBER	235/235	
PERCENTAGE	100.00%	

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

PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF 225/276 [C]	81.52%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+21.29%
PERCENTAGE OF TOTAL PETITIONS GRANTED 33/225	14.67%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+10.47%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY AFCCA 33/276	11.96%
RATE OF INCREASE ( + ) / DECREASE ( - ) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-8.84%

**PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69**

PENDING AT BEGINNING OF PERIOD		1	
RECEIVED		4	
DISPOSED OF		5	
GRANTED	0		
DENIED	5		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	

**PART 8 - ORGANIZATION OF COURT**

TRIALS BY MILITARY JUDGE ALONE		263	
GENERAL COURTS-MARTIAL	127		
SPECIAL COURTS-MARTIAL	136		
TRIALS BY MILITARY JUDGE WITH MEMBERS		164	
GENERAL COURTS-MARTIAL	74		
SPECIAL COURTS-MARTIAL	90		

**PART 9 - COMPLAINTS UNDER ARTICLE 138**

NUMBER OF COMPLAINTS	50	
----------------------	----	--

**PART 10 - STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH	307,361	
------------------------------	---------	--

**PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	4,516	
RATE PER 1,000	14.69%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-9.49%	

**EXPLANATORY NOTES**

[A] Of the 226 SPCMs tried, there were 85 convictions with a BCD adjudged, 112 convictions without a BCD adjudged, and 29 acquittals.

[B] Includes 29 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, 2014 to September 30, 2015**

**PERSONNEL AND TRAINING**

The Coast Guard has 194 officers designated as judge advocates serving on active duty. Coast Guard lawyers currently serving in legal billets outside the Coast Guard include the Staff Judge Advocate to Joint Interagency Task Force South and DHS Joint Task Force East, as well as senior staff attorneys (O-4 and O-5) assigned to NORTHCOM, AFRICOM, SOUTHCOM, PACOM, Naval War College, the Defense Institute of International Legal Studies, and the Naval Justice School. The Coast Guard also has several active duty judge advocates detailed to the Department of Justice, Department of State, and Department of Homeland Security.

Thirty-seven judge advocates are currently assigned in non-legal "out-of-specialty" billets. They include the Vice Commandant of the Coast Guard(O-9), and the Director, Exercises and Training, U.S. Cyber Command (O-7), and the Assistant Commandant for Coast Guard Intelligence and Criminal Investigations (O-7). Other judge advocates in out-of-specialty assignments include command cadre of Coast Guard cutters, sectors, training centers, and support commands. The Coast Guard employs ninety two civilian attorneys ranging from GS-13 to SES.

In fiscal year 2015, fifteen 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. In addition, the Coast Guard sent attorneys to forty different courses of instruction during fiscal year 2015, primarily at the various service JAG schools. Twenty-three Coast Guard officers are currently undergoing postgraduate studies to complete a JD degree and will be certified as judge advocates at the successful completion of their studies. Two judge advocates are attending the Graduate Course at the United States Army Judge Advocate General's Legal Center and School and another is a fellow at the Center for Law and Military Operations at TJAGLCS. In addition, Coast Guard judge advocates serve on the staffs of the Naval Justice School, and the Defense Institute for International Legal Studies.

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

The judges on the U.S. Coast Guard Court of Criminal Appeals at the end of fiscal year 2015 were:

Chief Judge Lane I. McClelland  
Judge Patrick J. McGuire  
Judge John F. Havranek  
Judge Kathleen A. Duignan  
Judge Andrew J. Norris  
Judge John S. Luce  
Judge Peter J. Clemens  
Judge Sean P. Gill  
Judge Amy E. Kovac  
Judge Benes Z. Aldana  
Judge Robert W. Bruce  
Judge Laurina M. Spolidoro

## **MILITARY JUSTICE ORGANIZATION**

Fourteen Staff Judge Advocates advise eighteen officers exercising general court-martial jurisdiction. Those fourteen SJAs as well as three additional independent duty SJAs at training centers advise approximately 350 officers exercising special court-martial jurisdiction. Responsibility for detailing trial 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, seven Coast Guard attorneys are assigned to full time duty, typically for one-year or two-year assignments, at one or more Navy Defense Service Offices.

The Coast Guard had two general court-martial trial judges and eight collateral-duty special court-martial trial judges at the end of fiscal year 2015. The chief trial judge details all military judges to Coast Guard courts-martial.

The Office of Military Justice at Coast Guard Headquarters is responsible for representing the United States in all court-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 on Military Justice. A CAPT (O-6) serves as the Chief of Military Justice. A GS-15 Highly Qualified Expert is also assigned to this office and also serves as Chief Prosecutor. Three judge advocates are assigned primary duty as appellate government counsel.

Additionally, the Coast Guard's Special Victims' Counsel (SVC) Program reached final operational capability in fiscal year 2015 with the hiring of a GS-15 to manage the SVC program and through assignment of judge advocates to all full-time SVC billets. Three full-time SVCs are stationed in Washington, DC, while the remaining three full-time SVCs, including the Program Deputy, are stationed in Alameda, California, to correspond with the West Coast Headquarters of the Legal Service Command. Twelve additional Coast Guard judge advocates serve as collateral duty SVCs. This composition and assignment of SVCs helps to ensure all sexual assault victims receive timely and effective representation and advice. Prior to representing their first client, all Coast Guard SVCs attend specialized certification training and serve in an assistant/apprentice role.

#### **MILITARY JUSTICE STATISTICS**

Fiscal Year	15	14	13	12	11	10
General Courts-Martial	16	23	09	14	06	12
Special Courts-Martial	16	22	14	14	32	20
Summary Courts-Martial	23	30	20	17	19	09
Total	55	75	43	45	57	41

#### **ADDITIONAL MILITARY JUSTICE STATISTICS**

Appendix A contains the Coast Guard, fiscal year 2015 military justice statistics.

#### **APPELLATE REVIEW PROCESS**

In fiscal year 2015, 15 out of 22 cases complied with the *Moreno* post-trial processing timelines. In *United States v. Baker*, the convening authority took action 146 days after sentence. In *United States v. Roy*, the convening authority took action 160 days after sentence. In *United States v. Boerlage*, the convening authority took action 127 days after sentence. In

*United States v. Tamayo*, the convening authority took action 121 days after sentence. In *United States v. Bailey*, the convening authority took action 188 days after sentence. In *United States v. Hamilton*, the convening authority took action 145 days after sentence. In *United States v. Rankin*, the case was docketed with the Coast Guard Court of Criminal Appeals 39 days after the convening authority took action in the case. All seven cases are still pending review by the service appellate court.

The Coast Guard Court of Criminal Appeals met its goal of issuing an opinion within eighteen months or less of the date the case was referred in 13 of the 16 cases decided in fiscal year 2015. In *United States v. Sparks*, the court issued its decision twenty months after referral. In *United States v. Demello*, the court issued its decision nineteen months after referral. In *United States v. Thomas*, the court issued its decision nineteen months after referral.

The court granted relief for post-trial delay in two cases. In fiscal year 2015, there were no court-martial convictions that were reversed as a result of command influence or denial of the right to a speedy review. There were no cases this fiscal year in which the Coast Guard Court of Criminal Appeals found a provision of the UCMJ unconstitutional.

#### **MEASURES TO ENSURE COMPETENCY OF MILITARY JUSTICE PRACTICE**

The biggest challenge faced by the Coast Guard in ensuring the competency of the military justice practice is the relatively small number of trials conducted service-wide in a given year. The Coast Guard has taken several steps to provide additional exposure to trial work for our judge advocates.

First, the Coast Guard added trial and trial defense counsel billets. In accordance with a long-standing Memorandum of Understanding with the Navy, the Navy provides defense counsel for Coast Guard courts-martial, and the Coast Guard provides the Navy full-time judge advocates to perform trial defense work. The number of Coast Guard judge advocates working with the Navy under this agreement has increased to seven. These officers typically serve two year tours as defense counsel and leave those assignments with significant trial experience. The Coast Guard has also started augmenting trial capabilities at the Legal Service Command (LSC). The LSC is the only legal office that has judge advocates serving full-time as trial counsel (a total of five). These trial counsel are currently

involved, in one capacity or another, in approximately eighty percent of the Coast Guard's courts-martial.

Also, the Office of Military Justice provides technical support to staff judge advocates and trial counsel and has periodically participated in cases at the trial level. The GS-15, an experienced retired judge advocate, has served alongside judge advocates as trial counsel in highly complex courts-martial. Additionally, the office has launched an initiative to disseminate practice guides and resources on a Coast-Guard wide information sharing website.

In addition to military justice experience, many field legal offices maintain active Special Assistant U.S. Attorney (SAUSA) relationships with one or more U.S. Attorney offices. These assignments also develop judge advocates' trial and advocacy skills. Coast Guard SAUSAs generally prosecute felony cases arising out of Coast Guard operations. Five full-time SAUSAs in the Southern and Middle Districts of Florida, District of Puerto Rico, and the Central and Southern Districts of California focus on prosecution of drug smuggling cases, where the amounts seized in the drug cases are frequently measured in tons. These attorneys also prosecute migrant smuggling cases. There are also many collateral duty SAUSA relationships around the country with Coast Guard judge advocates assisting in prosecution of not only drug and migrant smuggling cases, but other issues ranging from environmental crimes to seaman's manslaughter.

Training also forms an important part of the development and maintenance of trial expertise. Coast Guard judge advocates are trained initially with the Navy and Marine Corps at the Naval Justice School, and regularly participate in trial advocacy courses offered by the Army, Navy, and Air Force, to include specialized courses, most particularly those dealing with sexual assault. The Coast Guard has also sent judge advocates to courses sponsored by the Department of Justice National Advocacy Center and those offered by the National District Attorneys Association. The other armed forces permit the Coast Guard to make use of their Trial Counsel Assistance Program and Highly Qualified Experts, which significantly add to the depth of knowledge and expertise available to Coast Guard trial counsel.

The Coast Guard had two full time general court-martial judges, along with eight collateral duty judges who hear only special courts-martial, this fiscal year. Coast Guard judges are

selected based on trial and staff judge advocate experience and attend initial training with all of the other services at the Military Judge Course at the Army's Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Coast Guard judges also attend the annual Joint Military Judges training session. Several Coast Guard judges have also pursued individual courses as well as successful completion of certificates from the National Judicial College in Reno, Nevada.

To date the Coast Guard has not tried a national security case or case referred as capital. Were such a case to arise, the Coast Guard would request assistance from the other armed forces to do so.

The Coast Guard also provides training for civilian and enlisted legal support personnel to assist them in meeting legal technician and paralegal performance qualification standards prescribed by the Judge Advocate General.

#### **VIEWS OF THE JUDGE ADVOCATE GENERAL ON RESOURCES**

The Coast Guard consistently provides adequate resources to its legal program to perform its military justice functions. Its experienced Judge Advocates are proficient in their performance of military justice responsibilities. Nonetheless, the number of Coast Guard courts-martial continue to increase along with their complexities and this continues to strain the existing Coast Guard military justice structure. The Judge Advocate General chartered a working group that studied the Coast Guard's military justice system and proposed ways to increase the proficiency of its practice. Those recommendations are being implemented in phases so as to ensure continuity of service. The service Attorneys are supported by civilians and enlisted personnel in the yeoman rating sufficient in number to support the mission. The Coast Guard is currently considering the feasibility of creating a separate enlisted legalman rate to provide both increased support and professional development of the enlisted workforce.

S. D. POULIN  
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, 2014 to September 30, 2015 (FY 2015)

**APPENDIX A: U.S. COAST GUARD MILITARY JUSTICE STATISTICS**

Report Period: 1 OCTOBER 2014 - 30 SEPTEMBER 2015

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

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	16	15	01	-30.4%
BCD SPECIAL	16	16	00	-27.3%
NON-BCD SPECIAL*	0	0	00	0%
SUMMARY	23	23	00	-23.3%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-26.6%

**PART 2 – DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL NUMBER OF DISHONORABLE DISCHARGES	08	
NUMBER OF BAD-CONDUCT DISCHARGES	04	
NUMBER OF DISMISSALS	01	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	11	

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

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	14	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	10	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	05	

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

TOTAL ON HAND BEGINNING OF PERIOD		26	
GENERAL COURTS-MARTIAL	14		
BCD SPECIAL COURTS-MARTIAL	12		
REFERRED FOR REVIEW		26	
GENERAL COURTS-MARTIAL	14		
BCD SPECIAL COURTS-MARTIAL	12		
TOTAL CASES REVIEWED		16	
GENERAL COURTS-MARTIAL	06		
BCD SPECIAL COURTS-MARTIAL	09		
TOTAL PENDING AT CLOSE OF PERIOD		36	
GENERAL COURTS-MARTIAL	20		
BCD SPECIAL COURTS-MARTIAL	16		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+44%	

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

NUMBER	26	
PERCENTAGE	100%	

\* As a matter of practice, the Coast Guard does not try non-BCD special courts-martial.

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	5/16	33.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+85%
PERCENTAGE OF TOTAL PETITIONS GRANTED	3/5	60%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA	3/16	18.8%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+66.6%

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

**PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ**

TOTAL PENDING BEGINNING OF PERIOD*		71	
RECEIVED		42	
DISPOSED OF		8	
GRANTED	0		
DENIED	8		
NO JURISDICTION	00		
WITHDRAWN	00		
TOTAL PENDING AT END OF PERIOD		105	

**PART 8 – ORGANIZATION OF COURTS**

TRIALS BY MILITARY JUDGE ALONE		24	
GENERAL COURTS-MARTIAL		10	
SPECIAL COURTS-MARTIAL		14	
TRIALS BY MILITARY JUDGE WITH MEMBERS		8	
GENERAL COURTS-MARTIAL		6	
SPECIAL COURTS-MARTIAL		02	

**PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ**

NUMBER OF COMPLAINTS		04	
----------------------	--	----	--

**PART 10 – STRENGTH**

AVERAGE ACTIVE DUTY STRENGTH		39649	
------------------------------	--	-------	--

**PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		526	
RATE PER 1,000		13.3%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-24.7%	

\* After review of the REPORT OF THE JUDGE ADVOCATE GENERAL OF THE U. S. COAST GUARD October 1, 2013 to September 30, 2014, the total pending applications for relief under Article 69, UCMJ should have been reported as seventy one vice thirty three as reflected in the total pending beginning of period above.