

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, 2013 to September 30, 2014

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SECTION 1

JOINT ANNUAL REPORT OF THE CODE COMMITTEE

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

October 1, 2013 to September 30, 2014

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 11, 2014, 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 2013 Code Committee meeting, Lieutenant Colonel (LtCol) Michael Lewis, U.S. Air Force, Chair of the Joint Service Committee, joined by Major Daniel Mamber, U.S. Air Force, provided a report on the work of the Committee.

LtCol Lewis began by informing the Code Committee of the formation of the Response Systems Panel (RSP), a nine-member panel established by section 576 of the 2013 National Defense Authorization Act. Under the panel are three subcommittees: the Role of the Commander Subcommittee, the Victim Services Subcommittee, and the Comparative Systems Subcommittee. The RSP was established to conduct an independent review of the investigation, prosecution, and adjudication of sexual assault crimes on adults. Five public hearings and several site visits have been conducted. The Role of the Commander Subcommittee has published an initial assessment, concluding that the commander should remain in the role of convening authority instead of giving this authority to others, as other proposals have set forth. A Judicial Proceedings Panel will follow to conduct an independent review and assessment of judicial proceedings involving sexual assault and related offenses.

LtCol Lewis then briefed the Code Committee on the Military Justice Review Group, established by the Secretary of Defense, and tasked with conducting a comprehensive review of the military justice system. It is composed of a Chair, two senior

advisors, a Department of Justice Advisor, a Victims' Rights Advisor and a Staff Director. The Group oversees four teams: a Punitive Articles Team, a Structure Team, a Rules for Courts-Martial/Military Rules of Evidence Team, and a Sentencing and Special Projects Team. In addition to reviewing the Uniform Code of Military Justice (UCMJ), the group will conduct a cover-to-cover review of the Manual for Courts-Martial (MCM).

Next, LtCol Lewis informed the Code Committee of the work of the Joint Service Committee on Military Justice. Since the last meeting, the President signed Executive Order 13643, containing a complete re-issuance of the Military Rules of Evidence and maximum punishments for new Articles 120, 120b, and 120c of the UCMJ. The Army is leading an effort to publish an addendum to the MCM regarding the Military Rules of Evidence.

Major Mamber next described the forwarding of the August 2012 proposed Executive Order (EO), which was broken out into two parts, a streamlined section covering sexual assault cases, and a residual part with other proposals. In the streamlined section are proposals to delete the character of the accused from the discussion factors considered by the convening authority in determining whether to grant clemency, to authorize the Article 32 officer and government counsel to issue a subpoena duces tecum, to allow the Article 32 officer to evaluate Military Rule of Evidence 412 evidence, to provide a copy of the record of trial to any sexual assault victim who testifies at trial, and to allow any crime victim to submit a written statement for consideration by the convening authority after trial. The August 2012 EO would also:

- Provide that lack of consent is not an element in a sexual assault case, but that consent may be relevant for other purposes, such as an affirmative defense;
- Include changes to cover the repeal of consensual sodomy;
- Provide, as required by the 2014 National Defense Authorization Act, that a dishonorable discharge or dismissal would be mandated for a conviction of rape, sexual assault or forcible sodomy;
- Include a provision for the offense of animal abuse under Article 134, UCMJ;
- Resurrect the offense of public indecent acts instead of the former indecent conduct;
- Change the definition of prostitution to cover "sexual act" instead of "sexual intercourse";
- Require Article 134 charges to expressly allege a terminal element;

- State that a charge is not a lesser-included offense of a charged offense unless the lesser offense is "necessarily included" in the greater offense; and
- Update Rule for Courts-Martial 201 to comport with the expanded contempt power of a military judge.

Major Mamber then stated that three recommendations of the Defense Legal Policy Board have been referred to the Joint Service Committee by the Department of Defense General Counsel:

- To consider an increase in the maximum punishment for dereliction of duty;
- To remove language in the discussion section of the MCM favoring motions to sever cases; and
- To authorize the transfer of jurisdiction after a case has been referred to trial in a deployed area to facilitate the trial of the case in that area.

Lt Col Lewis informed the Code Committee on what would be expected to be covered in the 2014 Executive Order:

- An update to the MCM to catch up with a statutory change to Article 81 on the offense of conspiracy to violate the Law of War, making such an offense punishable by death;
- A change to paragraph 106 of the MCM to add "buying" and "concealing" stolen property as wrongful if without justification or excuse;
- A restriction on the convening authority's power to affect findings and the sentence for qualifying offenses, as required by section 1702 of the 2014 NDAA;
- Incorporation of the Crime Victims Rights Act into the UCMJ as Article 6b, as required by section 1701 of the NDAA, with an enforcement mechanism required by December of 2014, and the requirement that military judges appoint legal guardians for victims who are deceased, minors, or who are incapacitated;
- Changes to the rules for conducting Article 32 hearings by making it a probable cause hearing, requiring the proceedings to be recorded and made available to the victim on request, not requiring the alleged victim to testify, and designating the presiding officer (who should be a judge advocate and senior to both counsel, if practicable) as a hearing officer instead of an investigating officer.

Each of the services submitted a report to the Code Committee. For the Army, Major General Ayres first addressed the work the Army has done in its Special Victims Counsel Program. After establishing a course for special victims counsel at the Army

JAG School, 95 active duty judge advocates, 73 reserve judge advocates, and 81 National Guard judge advocates have attended and completed the course. These officers have assisted 536 victims and appeared or presented matters in 50 courts-martial. Additionally, another 20 reservists have been mobilized to back fill in Legal Assistance Office slots previously held by the Special Victims Counsels. MG Ayres next stated that the number of persons in the Army continued to decrease, but about 200 judge advocates and enlisted paralegals remain in Afghanistan. To supplement the judge advocates serving as Special Victims Prosecutors, 23 paralegals and 23 civilians have been added, and the Army will continue to follow the need in this area in the future. The number of overall courts-martial in the Army has been steady, with 725 general courts-martial in FY-12, and 714 in FY-13. There are about 250 full-time defense counsel in the Army. MG Ayres stated there were no noteworthy trends in cases in the Army.

For the Navy, Rear Admiral Crawford noted a decrease in the number of general courts-martial in the Navy from 137 in FY-12 to 121 in FY-13. There was an increase in the number of special courts-martial and a decrease in the number of non-judicial punishments. He attributed the decrease in general courts-martial to increased education of convening authorities in discerning what types of cases should be tried at various levels. He then mentioned that the Navy and Marine Corps are working on the development of a consolidated case tracking system. This system would integrate the investigatory function as well. Rear Admiral Crawford expressed concern over the increase in cases involving the use of synthetic components. He also described the Navy's capability in the area of Special Victims Counsel to ensure cooperative, timely, and responsive action for victims of sexual assault. Teams have been established with NCIS investigators in the fleet concentration centers for these offenses. Twenty-nine judge advocates and 10 yeomen are now working in this area. As for any trends, he noted that the number of restricted and unrestricted reports of sexual assault increased 46 percent in FY-13. Rear Admiral Crawford noted an increase in the confidence of victims to come forward, and that such persons have talked to others to encourage more reporting. Lastly, training has been scheduled on both the east and west coasts in the area of child sexual assault cases.

The Air Force report was provided by Major General Kenny, who informed the Code Committee that he was appearing for the Air Force in the absence of the Judge Advocate General and

Deputy Judge Advocate General. He began by relating the following statistics for the Air Force's special victims counsel program: 24 full-time special victims counsel; 20 part-time special victims counsel; and 10 full-time paralegals. They have served 737 victims, with 515 cases currently open, and 222 terminated cases. Special victims counsel have attended 136 Article 32 hearings and 112 courts-martial. This fiscal year, 52 percent of persons represented by special victims counsel have converted from restricted to unrestricted reports. In FY-12 and FY-11, only 15 and 13 percent, respectively, converted from restricted to unrestricted reports. As for workload statistics, special victims counsel asserted clients' privacy rights 219 times, and assisted with expedited transfers 85 times. A very important survey disclosed that 90 percent of victims were extremely satisfied with the special victims program; 98 percent would recommend to others to request special victims counsel; 91 percent believed their special victims counsel advocated effectively for them; and 94 percent said their special victims counsel helped them understand the legal process. Regarding judge advocate personnel numbers, there were 1,285 judge advocates on active duty, with 49 percent in company grade ranks, 24 percent majors, 18 percent lieutenant colonels, and 10 percent colonels and brigadier generals.

In the Marine Corps, Major General Ary stated that over the past few years the challenges presented have changed, and an important challenge now is to position the service legal community effectively. One of the former issues involved the post-trial review process, and with the implementation of a case management system, that issue has been eliminated in the Marine Corps. Last year, the Marine Corps tried 135 general courts-martial, and there was an overall decrease in numbers of cases, the service has experienced an increase in sexual assault cases. Specifically there has been an 86 percent increase in sexual assault reporting over the past year, a doubling in sexual assault prosecutions, and a 160 percent increase in contested trials of sexual assault offenses. The Marine Corps has 19 full-time victims legal counsel who have handled 250 cases. Regional offices are staffed by experienced senior counsel. Additional civilian personnel and investigators have been hired.

For the Coast Guard, Rear Admiral Kenney informed the committee that contrary to overall trends in the other services, the Coast Guard is seeing a significant increase in military justice activity, which has strained the ability of the military judges to keep up with the caseload. He stated that his opinion on the reasons for the increase were increased scrutiny on the

military justice system and the appreciation of commanders to use the system more to ensure good order and discipline. The Coast Guard currently has 14 part-time special victims counsel, serving 155 clients. The service will transition to full-time counsel. One other development has been the establishment of a reserve judge advocate program in the Coast Guard. Its initial responsibility will be to work in the area of contingency and disaster response, but the expectation is that the reservists will eventually work in the military justice area as well. He concluded by stating that he would recommend to the Military Justice Review Group to take a close look at the functioning and composition of the Code Committee to make it more vital and useful, and to improve the interaction between the Code Committee and Congress. While he understood the possible conflicts for the members of the court, work should be done to eliminate those concerns so the committee would better serve its purposes.

The Code Committee also received a memorandum from former member Professor Charles J. Dunlap, Jr. It is summarized as follows. The memorandum suggested the following questions for discussion:

- Are there ongoing command-sponsored efforts to enhance the credibility of accusers?
- What is the role of the Judge Advocate General in removing a convening authority from a case because of an unpopular decision?
- Should the Judge Advocate General take an adversarial position to the convening authority in a case?
- Are commands showing sufficient concern when the sexual assault victims are males?
- Should complainants be designated as "victims" before that is established by the facts?
- What steps have been taken to ensure adequate defense representation to oppose sexual assault victim advocates?
- Should Article 37, UCMJ, be amended to include the President?
- Is unlawful command influence a particular problem in view of Secretary Hagel's letter of August 6, 2013?

Professor Dunlap believes the Code Committee should ensure the fairness of the military justice system in sexual assault cases and generally it should tackle current issues. On procedural matters, he objected to not being able to finish his comments at the 2013 Code Committee meeting; he believes the Committee should employ an independent court reporter to take the minutes; and he stated that the Joint Service Committee response to the

issues raised in 2013 was inadequate. He concluded by stating that the Code Committee is in need of reform with the judges of the Court actively participating in the discussions despite any possible conflict with their judicial duties.

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

James E. Baker
Chief Judge

Charles E. "Chip" Erdmann
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 Nanette M. DeRenzi, JAGC, USN
Judge Advocate General of the Navy

Major General Robert G. Kenny, USAF Reserve
Acting Judge Advocate General of the Air Force

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

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

Dean Lisa 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, 2013 to August 31, 2014

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 2013 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 November 1, 2013, Judge Kevin A. Ohlson joined the Court. A special session was subsequently held for his investiture with guest speakers the Honorable Eric H. Holder, Jr., Attorney General of the United States and David Margolis, Esq., Associate Deputy Attorney General.

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, 2013 to August 31, 2014. 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 2013 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 2013 Term of Court.

BAR OF THE COURT

During the September 2013 Term, 315 attorneys were admitted to practice before the Court, bringing the cumulative total of admissions to the Bar of the Court to 36,331.

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 2012 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, with the consent of the parties, at the University of Arkansas School of Law in Fayetteville, Arkansas, and at Florida International University School of Law in Miami, Florida, in conjunction with Southern Command's Military Legal Committee of the Americas (COJUMA) Workshop. Thus, in addition to members of the law school community, this session of court was attended by senior commanders and judge advocates from throughout Latin America and the Caribbean. 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, including Fort Sill and Tinker Air Force Base in Oklahoma, Whiteman Air Force Base in Missouri and Little Rock Air Force Base in Arkansas.

CONTINUING LEGAL EDUCATION AND TRAINING PROGRAM

On May 20 and 21, 2014, 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: Professor William M. Treanor, Executive Vice President and Dean, Georgetown University Law Center; Professor Jane H. Aiken, Associate Dean for Experiential Education, Georgetown University Law Center; the Honorable Elizabeth Holtzman, Herrick, Feinstein LLP, New York, New York; Vice Admiral James W. Houck, Judge Advocate General's Corps, U.S. Navy (Retired) and Interim Dean and Distinguished Scholar in Residence, Pennsylvania State University Dickinson School of Law; Commander Jonathan Odom, Judge Advocate General's Corps, U.S. Navy, Oceans Policy Advisor to the Under Secretary of Defense for Policy; Mr. Steven Chabinsky, Senior Vice President of Legal Affairs and Chief Risk Officer for CrowdStrike, Inc. and former Chief, Federal Bureau of Investigation, Cyber Intelligence Section; Professor Stephanos Bibas, University of Pennsylvania School of Law; and Professor John F. Witt, Yale Law School.

In addition, three panels participated in the program. The first was composed of Professor Robert E. Atkinson, Florida State University School of Law; Rear Admiral Margaret DeLuca Klein, U.S. Navy, Senior Advisor to the Secretary of Defense for Military Professionalism; Thomas Becker, Academic Director of the Air Force Judge Advocate General's School; and Professor Laura Donohue, Georgetown University Law Center. The other two panels were composed of the Honorable Andrew S. Effron, Senior Judge, United States Court of Appeals for the Armed Forces and Director of the Military Justice Review Group; Colonel Michael A. Lewis, U.S. Air Force, Chairman of the Joint Services Committee on Military Justice; Professor Stephen Vladeck, American University Washington College of Law; and Dwight Sullivan, Esq., Associate Deputy General Counsel, Department of Defense.

**MEMORIAL TRIBUTE FOR THE HONORABLE
ROBERT M. DUNCAN**

In volume 72 of the Military Justice Reporter, the Court published a tribute to Chief Judge Robert M. Duncan, who passed away at the age of 85. Chief Judge Duncan joined the Court on November 29, 1971, until he resigned from the Court on July 11, 1974, to accept a position on the federal bench in Ohio. Chief Judge Duncan was the first African-American to serve on the Ohio Supreme Court, the first African-American to be appointed to the Court of Military Appeals, now the Court of Appeals for the Armed Forces, the first African-American appointed to the federal bench in Ohio and the first African-American to serve as a trustee on the Ohio State University Board of Trustees. He was known for his grace, humility, his intellect, and all things Ohio. To his friends and colleagues, he will be remembered as a judge of great dignity. In the military justice system, he is remembered and honored as the judge who first brought an essential element of diversity to the system's highest court.

James E. Baker
Chief Judge

Charles E. "Chip" Erdmann
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 2013 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. Passut, 73 M.J. 27 (C.A.A.F. 2014), holding that false statements made by the accused regarding his Common Access Card to employees of the Army and Air Force Exchange Service were "official" statements as required to sustain a conviction under Article 107, UCMJ.

United States v. Knapp, 73 M.J. 33 (C.A.A.F. 2014), holding it to be plain error for the military judge to have admitted the "human lie detector" testimony of an agent of the Air Force Office of Special Investigations where the agent, using his specialized training to detect nonverbal cues, determined that the accused was deceptive in providing an innocent account of the events in a prosecution for sexual assault.

United States v. Moss, 73 M.J. 64 (C.A.A.F. 2014), holding that the petition for grant of review filed by appellate defense counsel would be dismissed when the accused did not authorize an appeal to the U.S. Court of Appeals for the Armed Forces, but only signed a pretrial rights advisement that advised her she could appeal.

United States v. Wicks, 73 M.J. 93 (C.A.A.F. 2014), holding that evidence discovered in the Government's multiple searches of the accused's cell phone, in excess of another servicemember's initial private search, was properly excluded where the Government's searches were conducted without a search authorization.

United States v. Kearns, 73 M.J. 177 (C.A.A.F. 2014), holding that the intent element of 18 U.S.C. § 2423(a) was met as long as illegal sexual activity is a purpose for transporting a minor across state lines, and not necessarily the dominant or significant purpose.

United States v. Talkington, 73 M.J. 212 (C.A.A.F. 2014), holding that sex offender registration is a collateral consequence of a guilty plea outside the context of a guilty plea inquiry, that the accused was permitted to mention sex offender registration during his unsworn statement, and that the military judge had discretion to instruct the court members in placing sex offender registration in its proper context.

United States v. Janssen, 73 M.J. 221 (C.A.A.F. 2014), holding that the Secretary of Defense, as head of a department, was not vested by law with authority to appoint a civilian as an appellate judge on the Air Force Court of Criminal Appeals, and the de facto officer doctrine to validate the action did not apply where the accused promptly challenged the composition of the panel on direct review.

United States v. Frey, 73 M.J. 245 (C.A.A.F. 2014), holding that trial counsel's sentencing argument was improper in prosecution for engaging in sexual contact with a child, where counsel appealed to the members to use their knowledge of the "ways of the world" to sentence the accused based on a risk of recidivism through serial molestation.

United States v. Flesher, 73 M.J. 303 (C.A.A.F. 2014), holding that the military judge failed to place sufficient evidence on the record to demonstrate that he acted within the bounds of his discretion when he authorized a sexual assault response coordinator to testify as an expert witness in a sexual assault case.

United States v. Elespuru, 73 M.J. 326 (C.A.A.F. 2014), holding that where the Government charged the accused with both abusive sexual contact and wrongful sexual contact in the alternative for contingencies of proof, both convictions may not stand.

United States v. Jones, 73 M.J. 357 (C.A.A.F. 2014), holding that an infantryman who was also serving as a military police augmentee was not required to give the accused a rights warning where the person questioning was not acting in an official capacity.

United States v. McPherson, 73 M.J. 393 (C.A.A.F. 2014), holding that Article 12, UCMJ, which prohibits the placement of any member of the armed forces in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces, applies to military members in state or federal confinement facilities without geographical limitation, however the accused must first exhaust any administrative remedies before challenging the conditions of his confinement under the UCMJ.

United States v. MacDonald, 73 M.J. 426 (C.A.A.F. 2014), holding that the military judge abused his discretion in refusing to issue an involuntary intoxication instruction to the members where the accused, who was charged with murder, had taken a prescription drug for smoking cessation which had been the subject of a "black box" warning from the Food and Drug Administration that the drug could cause hostility, homicidal ideation and suicide.

**USCAAF STATISTICAL REPORT
SEPTEMBER 2013 TERM OF COURT**

CUMULATIVE SUMMARY

CUMULATIVE PENDING SEPTEMBER 1, 2013

Master Docket	28
Petition Docket	131
Miscellaneous Docket.	<u>1</u>
TOTAL	160

CUMULATIVE FILINGS

Master Docket	101
Petition Docket	853
Miscellaneous Docket.	<u>22</u>
TOTAL	976

CUMULATIVE DISPOSITIONS

Master Docket	101
Petition Docket	816
Miscellaneous Docket.	<u>22</u>
TOTAL	939

CUMULATIVE PENDING SEPTEMBER 1, 2014

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

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	32	0	69	101
Petition Docket	0	0	816	816
Miscellaneous Docket	<u>0</u>	<u>0</u>	<u>22</u>	<u>22</u>
TOTAL	32	0	907	939

MEMORANDUM/ORDER SUMMARY

Orders

Denying petitions for grant of review	678
Petitions dismissed	28
Granting withdrawal of petition for grant of Review	5
Granting petitions for grant of review with briefs	37
without briefs	17
Summary Dispositions	67
Deciding previously granted cases (trailer cases)	18
Denying petitions for extraordinary relief and writ-appeal petitions	20
Granting petitions for extraordinary relief and writ-appeal petitions	0
Dismissing petitions for extraordinary relief and writ-appeal petitions	2
Granting motions	513
Denying motions	80
Deciding granted cases	<u>16</u>
Total	1,481

MASTER DOCKET SUMMARY

PENDING AT BEGINNING OF TERM 28

FILINGS

Petitions granted from the Petition Docket . .	89
Certificates filed	12
Mandatory appeals filed.	0
Remanded/Returned cases.	<u>0</u>
TOTAL	101

DISPOSITIONS

Decisions affirmed	51
Reversed in whole or in part	49
Granted petitions vacated	<u>1</u>
TOTAL	101

PENDING AT END OF TERM

Awaiting briefs	5
Awaiting oral argument	13
Awaiting lead case decision (trailer cases).	10
Awaiting final action	<u>0</u>
TOTAL	28

PETITION DOCKET SUMMARY

PENDING AT BEGINNING OF TERM 131

FILINGS

Petitions for grant of review filed	852
Petitions for new trial filed	1
Returned cases	<u>0</u>
TOTAL	853

DISPOSITIONS

Petitions for grant of review denied	678
Petitions for grant of review granted	105
Petitions for grant of review withdrawn	5
Petitions for grant of review dismissed	<u>28</u>
TOTAL	816

PENDING AT END OF TERM

Awaiting pleadings	17
Awaiting Central Legal Staff review	126
Awaiting final action	<u>25</u>
TOTAL	168

MISCELLANEOUS DOCKET SUMMARY

PENDING AT BEGINNING OF TERM 1

FILINGS

Writ appeals sought	20
Writs of habeas corpus sought	1
Writs of error coram nobis sought	0
Other extraordinary relief sought	<u>1</u>
TOTAL	22

DISPOSITIONS

Petitions or appeals denied	20
Petitions or appeals granted	0
Petitions or appeals dismissed	2
Petitions or appeals withdrawn	<u>0</u>
TOTAL	22

PENDING AT END OF TERM

Awaiting briefs	0
Awaiting staff review	1
Awaiting final action	<u>0</u>
TOTAL	1

PETITIONS FOR RECONSIDERATION

ALL CASES

DISPOSITIONS

Begin Pending	1	Denied	15
Filed	<u>15</u>	Granted	1
TOTAL	16	Dismissed	<u>1</u>
		TOTAL	17
End Pending	0		

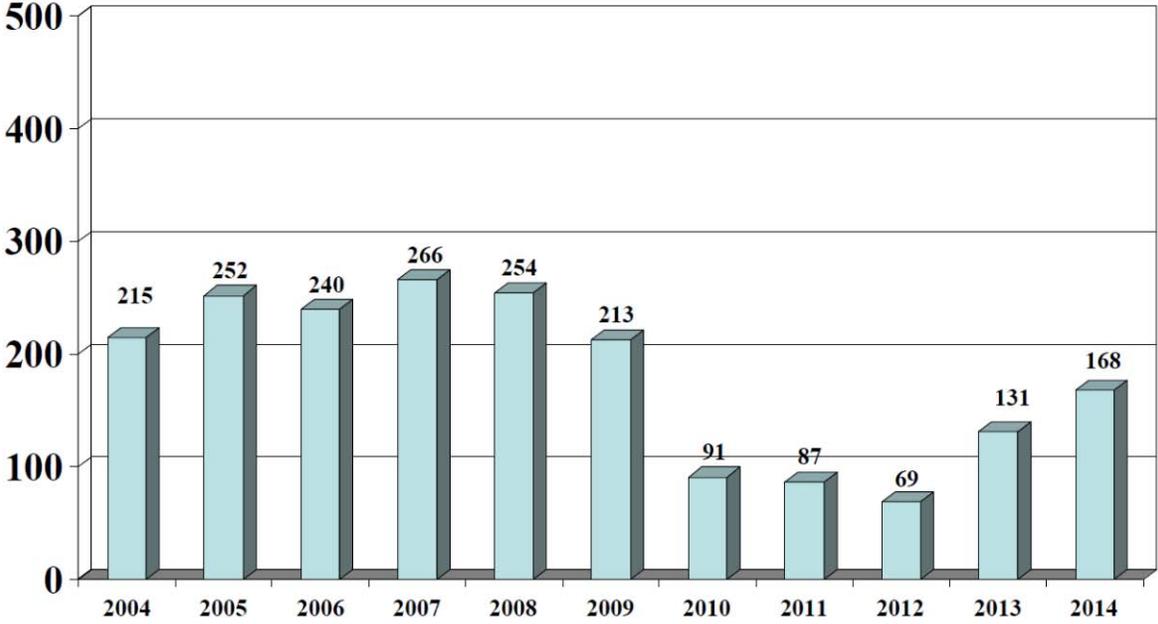
MOTIONS

ALL MOTIONS

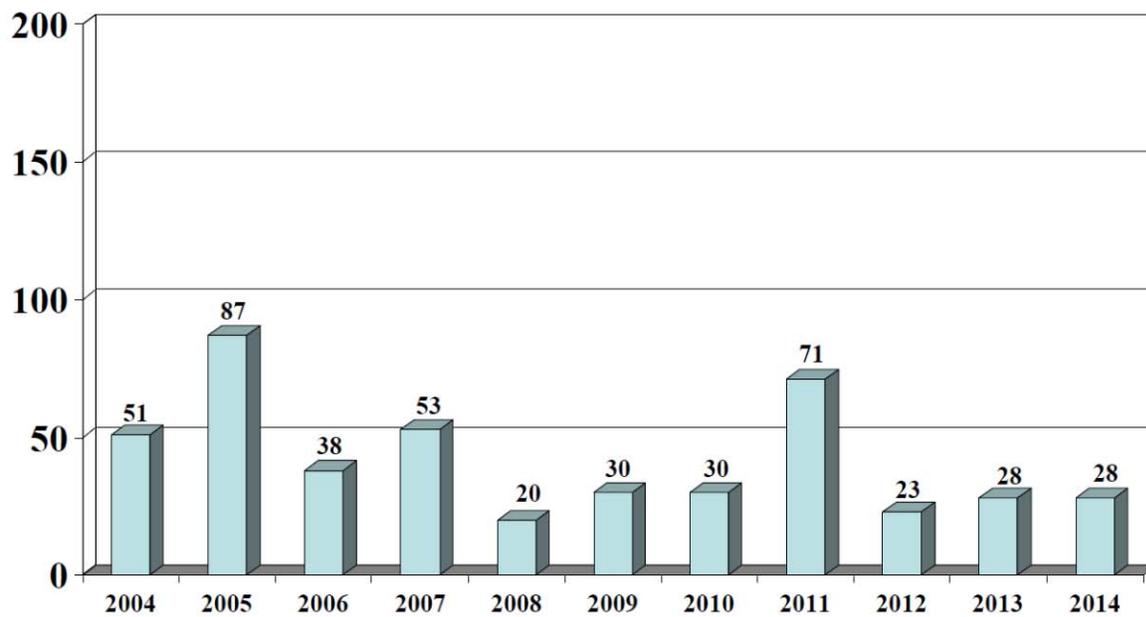
DISPOSITIONS

Begin Pending	19	Granted	513
Filed	<u>584</u>	Denied	80
TOTAL	603	Dismissed	<u>0</u>
		TOTAL	593
End Pending	10		

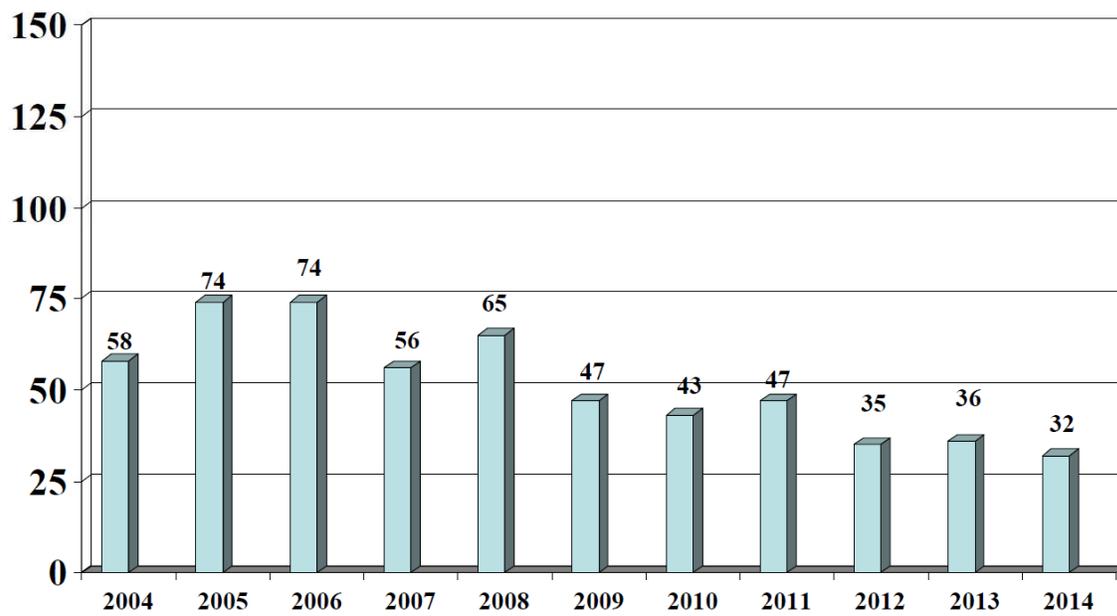
Petition Docket Term End Pending



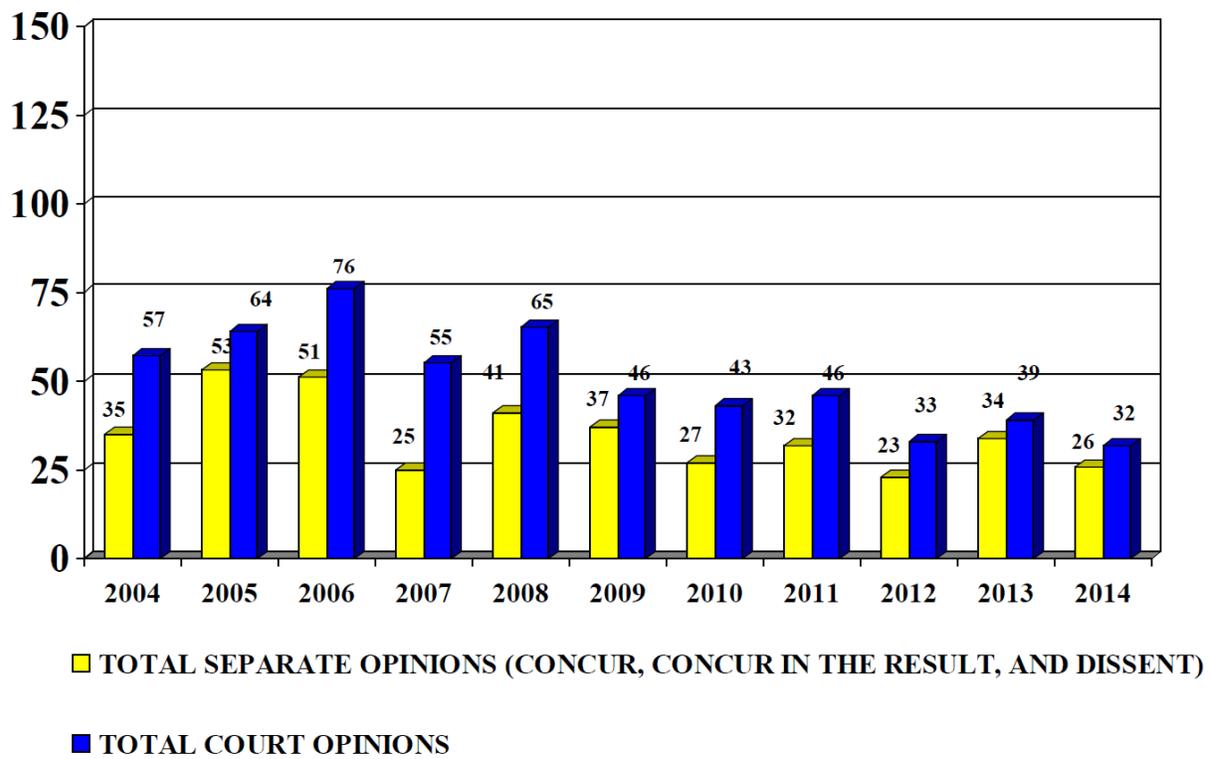
Master Docket Term End Pending



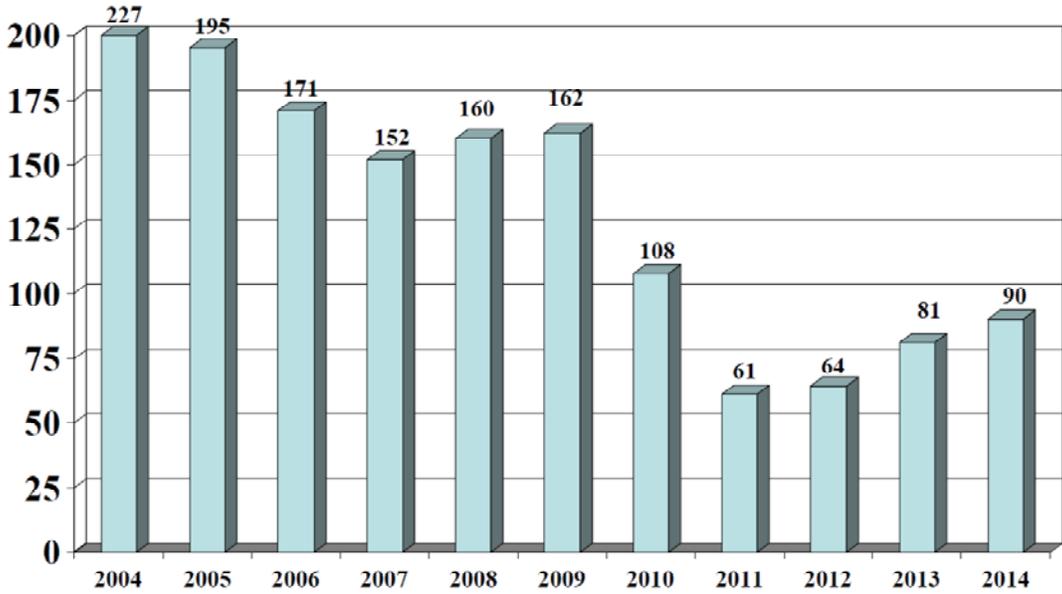
Oral Arguments Per Year



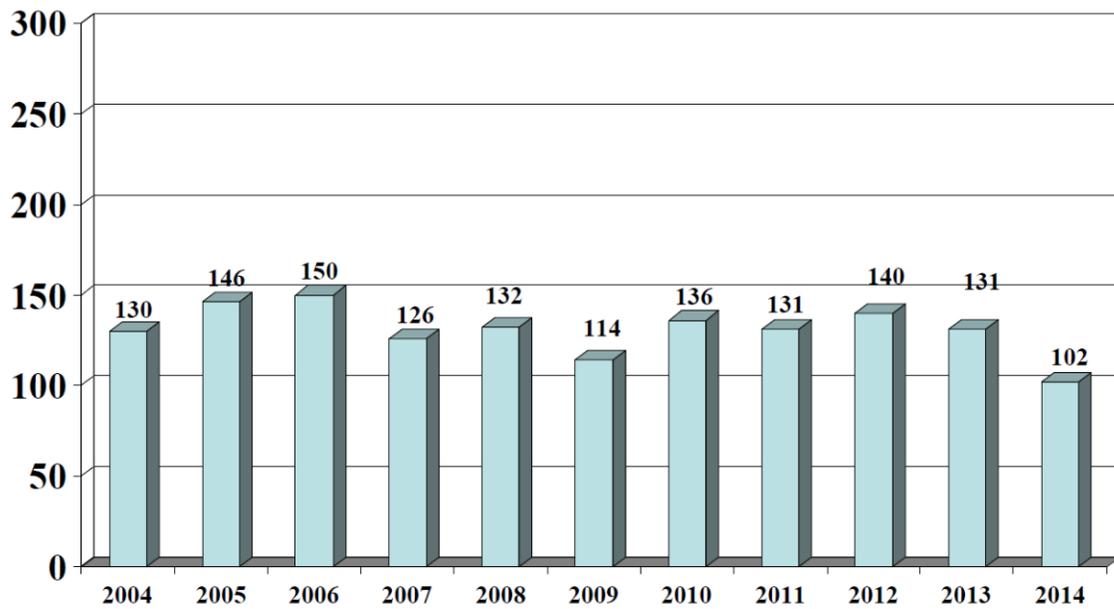
Total Opinions Per Year



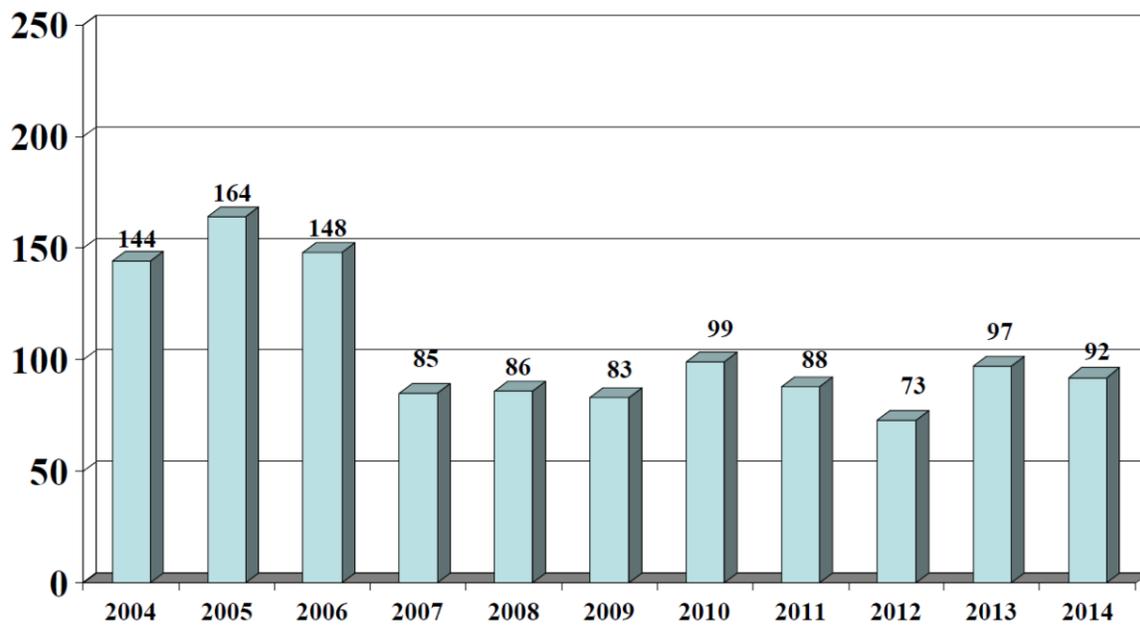
Days from Petition Filing to Grant



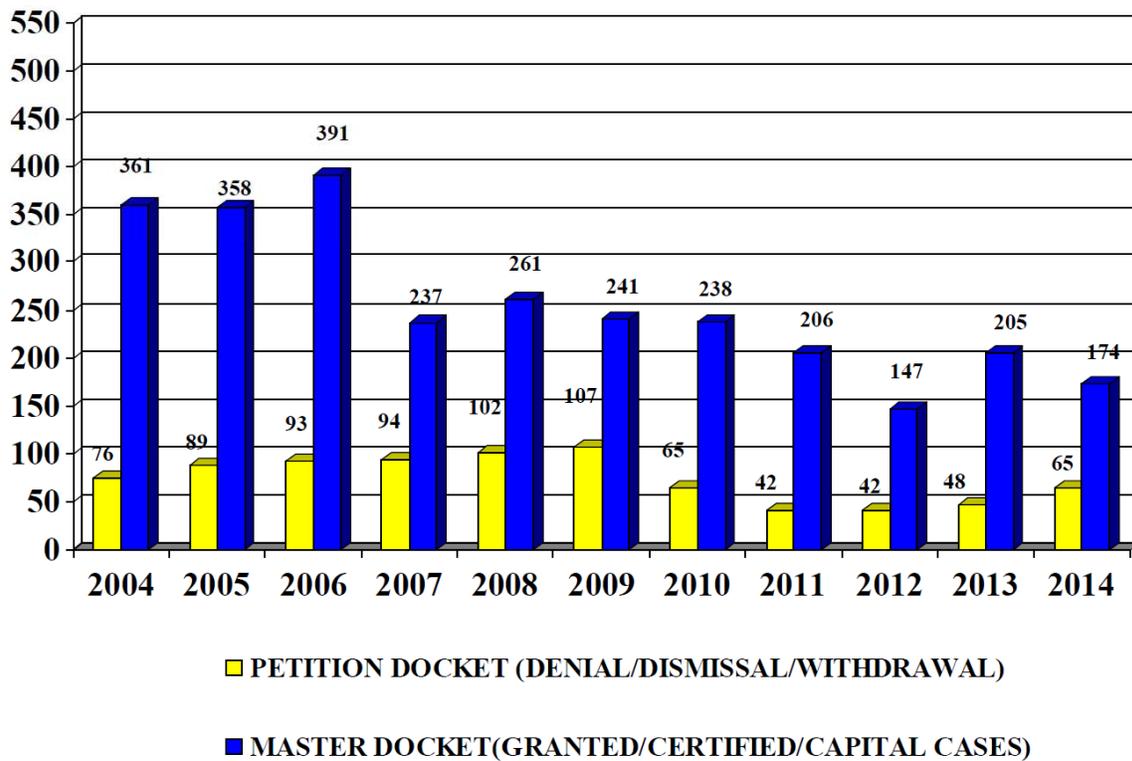
Days from Petition Grant to Oral Argument



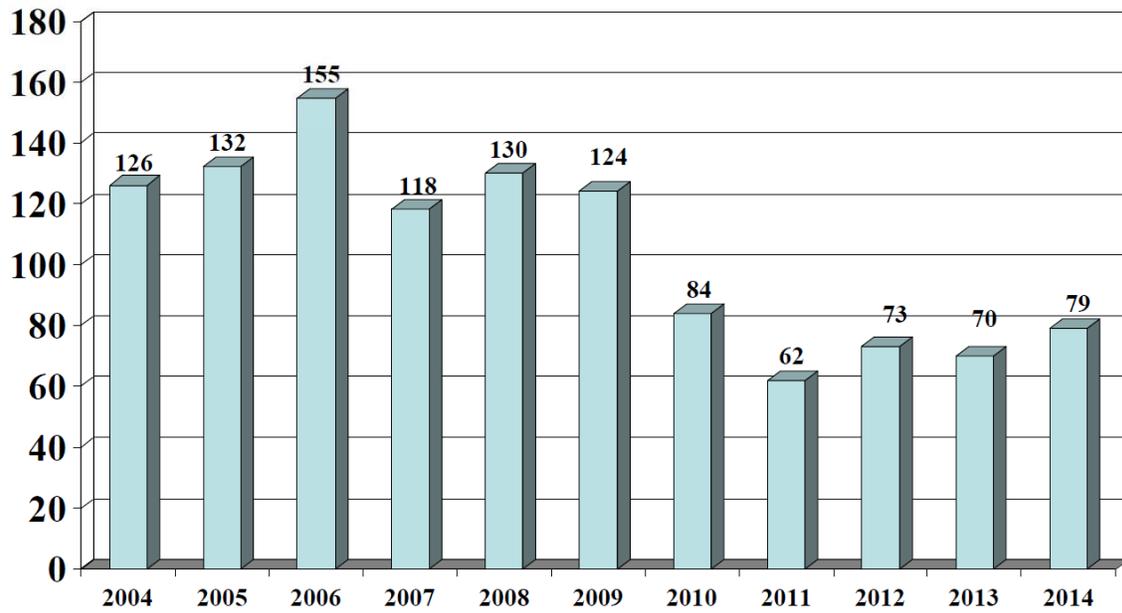
Days from Oral Argument to Final Decision



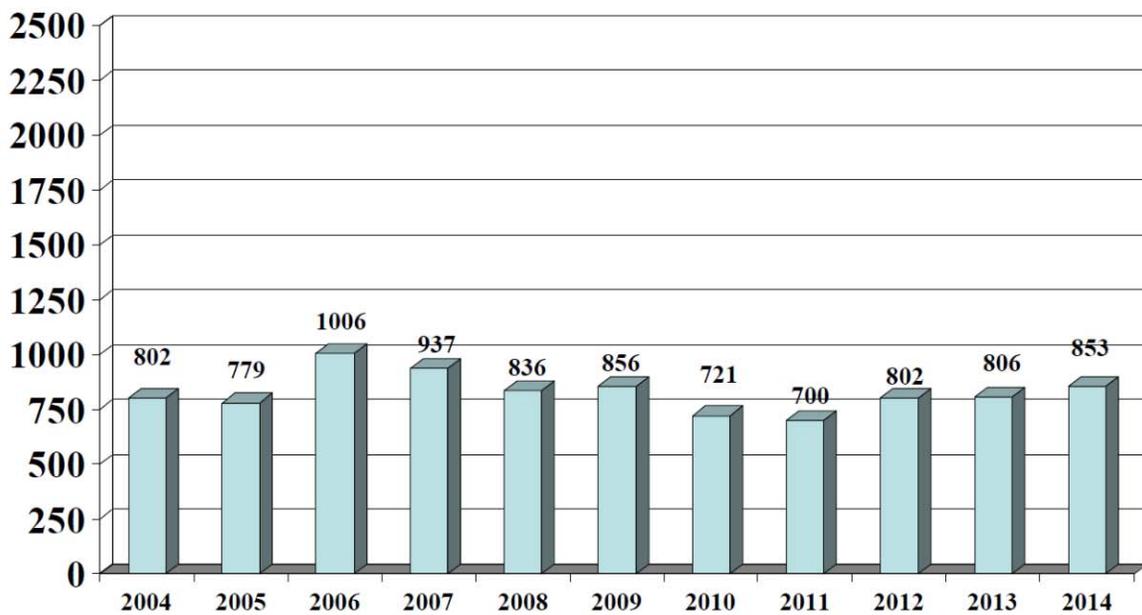
Days from Petition Filing to Final Decision



Days from Filing to Final Decision in All Cases



Total Petitions Filed Per Year



SECTION 3

REPORT OF THE JUDGE ADVOCATE OF THE ARMY

**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY
OCTOBER 1, 2013 TO SEPTEMBER 30, 2014**

In fiscal year 2014 (FY14), 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-two 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 employs a civilian GS-15 attorney who provides expert assistance and program direction for military justice advocacy training and programs throughout the Army. 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>FY12</u>	<u>FY13</u>	<u>FY14</u>
Congressional and other Inquiries	150	195	155
Officer Dismissals	16	27	26
Article 69 and other reviews	40	38	196
Freedom of Information/Privacy Act Requests	11	14	32

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, 1,154 judge advocates have been awarded skill identifiers: 618 basic, 296 senior, 164 expert, and 76 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 Joint Service Committee (JSC) in FY14; with personnel serving as both voting group and working group members. The CLD assisted in the drafting of three comprehensive Executive Orders (EO) that were submitted to the DoD 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 47, 48, 54, and 79; amendments to Rules for Court-Martial (RCM) 201, 305, 306, 307, 404, 404A, 405, 601, 702, 703, 801, 806, 906, 907, 916, 920, 1001, 1003, 1005, 1104, 1103, 1104, 1105, 1106, 1107, 1108, 1301, 1306, 1307 and proposed 1105A; amendments to Military Rules of Evidence (Mil. R. Evid.) 402, 412, 513, 514; and amendments to Appendices 12, 31, 22, and 23, as well as the creation of Appendices 12A, and 29. The EOs implement changes required by the National Defense Authorization Act (NDAA) for FY12, FY13, FY14, and portions of FY15. On June 13, 2014, the President signed EO 13669 approving the first of the three EOs.

On June 16, 2014, the CLD published the Supplement to the Manual for Courts-Martial, Military Rules of Evidence which implements EO 13643. This supplement to the MCM provides the field with a stand-alone Mil. R. Evid. for use in conjunction with the current MCM until a new MCM can be published. 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 FY14 and FY15 NDAA.

The Trial Advocates Tracking System (TATS), a web-based database that tracks the number of active trial and defense counsel, grew to 956 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 SVPs are eligible to receive the TARL. In FY14 149 hard copies and 121 electronic books were distributed.

Judge advocates, civilian attorneys, paralegals, and legal administrators from around the world use the milBook Criminal Law group to ask questions about interpreting case law and strategy, and it allows them to post documents that they feel may be helpful to their fellow judge advocates. MilBook was also used to facilitate three Direct Connect Online (DCO) conversations between TJAG and SJAs across the Army.

On October 18, 2013, the Secretary of Defense directed the General Counsel of the DoD 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 will report its recommendations for changes to the UCMJ to the Secretary of Defense no later than March 25, 2015, and its recommendations for changes to the MCM no later than September 21, 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 first two rounds of proposals from the MJRG and provided 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 Justice in 2012. The JPP began holding monthly public hearing in August 2014 and has sent

the Services and the DoD two sets of Requests for Information. Numerous Army judge advocates and an Army civilian attorney testified during public hearings of the JPP. The JPP's first report is due in February. The Army JAGC provided two judge advocates 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 teaches a variety of courses to multiple student cohorts that include all Services and international students as well. These 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); 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.

The Department was honored to receive the 2014 American Bar Association's Judicial Education Award. The Department earned the award for the quality of the curriculum and instruction for the MJC. The MJC remains the certification course for all military judges in the DoD. As such it remains one of the most

important courses for the Department and one of the highlights of our academic year.

This past year, the Department continued to build upon its newest course, the Special Victims' Counsel (SVC) Course. The Department offered three resident and one distance learning SVC Courses in one year. The 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 to utilize when working with crime victims (specifically, sexual assault victims), the impacts of crime on victims, relations with law enforcement and multi-disciplinary professionals, professional responsibility and scope of representation, and how to best interrelate with other actors in the military justice system. The capstone events for the course now 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 practice professional interactions with a professor acting as a client-victim. The Department also continues to provide recommendations to the evolving policy that is shaping SVC practice.

The Department presented the Forty-Second Kenneth J. Hodson Lecture in Criminal Law and hosted Dr. Kathleen Hawk Sawyer, retired Director of the Federal Bureau of Prisons, as the guest speaker. The Department also continued its robust digital outreach program by maintaining a sexual assault resource site for SJAs, creating and maintaining a learning website for deployed SVCs, providing live remote classes to the field via DCO, and moving forward with migration of the Department's comprehensive deskbook to a more responsive and versatile, universally accessible, and user friendly digital deskbook.

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 FY 2014, 550 records of trial and nearly 2,000 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 225 days. In 101 of those cases, initial action was completed by the convening authority within the 120 days prescribed by *United States v. Moreno*. Four hundred thirty-one of the records were received by ACCA within 30 days of convening authority action.

The Army's superior court rendered an initial decision in 629 cases in FY14, with an average processing time of 339 days from receipt of the record of trial by the clerk of court to decision by ACCA. Of the 629 decisions, 537 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 nearly 300 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 1,026 courts-martial cases during the past year prior to their retirement to the archives.

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 FY14, the office uploaded more than 227 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>FY12</u>	<u>FY13</u>	<u>FY14</u>
Freedom of Information Act	297	430	536
Privacy Act	113	99	217
Certified Copies of Convictions	75	170	72
<u>Requests from Federal Agencies</u>	<u>245</u>	<u>105</u>	<u>**</u>
Total Number of Requests:	730	804	825

** 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 extensive assistance to the Department of Justice in both civil and criminal litigation, including subject matter expertise in the proper redaction of court-martial records of trial.

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 FY14, the office admitted fifty 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 979 courts-martial tried in FY 14 reflect a decrease in total number of cases as compared to FY 13. 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 continued to preside over cases in deployed environments, with 4 courts-martial tried in Kuwait and Afghanistan in this period, resulting in a grand total of over 973 cases tried in a combat theater of operations since May 2003.

The Trial Judiciary continued its ongoing effort to keep current Department of the Army Pamphlet (DA PAM) 27-9, Military Judges' Benchbook (Benchbook), which is used by all Services, approving 13 changes to that publication addressing:

- (1) False official statement after *U.S. v. Passut*, 73 M.J. 27 (C.A.A.F. 2014);
- (2) Consensual sodomy and bestiality; mandatory punitive discharge for certain offenses; and limitation on GCMCA's RCM 1107 authority after passage of the FY14 NDAA; and
- (3) A complete cover-to-cover review and republication of DA PAM 27-9.

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

Military judges continued playing an active role in their military and civilian communities, speaking to grade and high school audiences, local bar associations and civic organizations, law school classes and state bar continuing legal education courses. The 57th MJC graduated 50 Army, Navy, Marine Corps, Air Force and Coast Guard students in May and invested them as new military judges. The course also included a judge from Israel.

U.S. ARMY TRIAL DEFENSE SERVICE

In FY 14, approximately 475 Active and Reserve Component (RC) judge advocates were serving in the U.S. Army Trial Defense Service (TDS) worldwide, including 147 on active duty; 195 assigned to one of three Trial Defense Legal Operations Detachments (LOD) and 133 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 44 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 FY14, 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:	920
Administrative Boards:	1,487
Nonjudicial Punishment:	32,897
Military Justice Consultations:	25,285

The TDS provided defense services to Army personnel deployed to the United States Central Command (CENTCOM) area of responsibility. The TDS CENTCOM Region has two field offices: one at Camp Arifjan, Kuwait and one in Afghanistan at Bagram Airfield. In addition, a Branch Office at Kandahar Airfield, Afghanistan was consolidated with the Bagram Field Office during FY14 and a Branch Office at Camp Phoenix (Kabul) was closed. The Regional Defense Counsel is an active-duty Lieutenant Colonel who serves as the senior supervisory TDS attorney with responsibility for both Europe and CENTCOM. He is located in Kaiserslautern, Germany.

The TDS personnel in the Army Reserve are assigned to three separate units. The 22d Legal Operations Detachment (LOD) (TDS), headquartered in San Antonio, Texas, consists of 66 judge advocates, one warrant officer, and 19 enlisted paralegals. The 22d LOD (TDS) area of responsibility includes the majority of states west of the Mississippi River along with Guam, Hawaii and Alaska. In FY14, the 22d LOD (TDS) mobilized 10 judge advocates and two paralegals for service in the Continental United States (CONUS), Europe, and CENTCOM. In addition, it represented over 1,500 Reserve Component Soldiers facing military justice and adverse administrative actions. This included 441 board advisements and 313 Article 15, UCMJ advisements.

The 154th LOD (TDS) covers the Southeast, Lower Mississippi River Valley, and Puerto Rico. The 154th LOD (TDS), headquartered in Alexandria, Virginia, is currently comprised of 67 judge advocates, 23 enlisted paralegals and two warrant officers. In FY14, the 154th LOD (TDS) mobilized seven judge advocates and two paralegals for service in CONUS, Europe, and CENTCOM. Additionally, the 154th LOD (TDS) represented over 1,100 Reserve Component Soldiers facing military justice and adverse administrative actions, handled approximately 180 administrative board actions, supported five Defense Institute of International Legal Studies (DIILS) missions to various foreign countries, 11 Overseas Training Missions to Germany and Korea, and represented three active component Soldiers facing courts-martial.

The 16th LOD (TDS) covers the Northeast and Midwest. Headquartered at Fort Hamilton, New York, it is comprised of 62 judge advocates, 15 enlisted paralegals, and one warrant officer. In 2014, the 16th LOD (TDS) mobilized nine Soldiers for service in CONUS and CENTCOM. In addition, the 16th LOD (TDS) assisted over 700 Reserve Component Soldiers facing military justice and administrative actions, represented one active component Soldier facing courts-martial, administered 41 Article 15, UCMJ advisements, appeared in 60 administrative separation board hearings, and closed, resolved or had dismissed 318 cases.

The Army National Guard (ARNG) TDS consists of 133 judge advocates, one civilian legal administrator, and 43 enlisted paralegals stationed in 50 states and territories. The ARNG TDS supports all 50 states, three U.S. territories, and the District of Columbia. In FY14 there were eight general courts-martial and five special courts-martial in California, Louisiana, South Carolina, and Arizona supported by ARNG TDS. Additionally, ARNG TDS counsel advised 65 Soldiers facing

summary courts-martial and 1,093 Soldiers facing non-judicial punishment hearings. Trial Defense Service counsel conducted 4,453 consultations for administrative actions to include separations, reductions, withdrawal of federal recognition boards, line of duty investigations, Army Guard Reserve separations and letters of reprimand. Army National Guard TDS attorneys also assisted with 1,205 adverse legal assistance actions.

The ARNG TDS hosted three major training events, including one consolidated regional training event, one Defense Counsel/Paralegal (DCP) 101 course, and the first DCP 201 course, training a total of 154 attendees. The active component DCAP provided outstanding instruction at the DCP 101 event. The ARNG TDS redeployed two TDS paralegal non-commissioned officers from the CENTCOM area of responsibility. Additionally, one ARNG TDS defense counsel was activated to support Fort Leonard Wood for one year and one ARNG TDS paralegal non-commissioned officer was activated to support Fort Stewart for nine months.

In FY14, DCAP was staffed by three judge advocates and two civilian Senior Counsel/Trainers, who continued to provide timely and exceptional training and advice to TDS counsel worldwide. This fiscal year's training events consisted of six 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, DCAP replaced the annual TDS conferences with additional iterations of DC 201. All defense counsel attend one of five DC 201s to receive training on current trends in military justice, with a focus on sexual assault litigation. Beginning in FY15, defense paralegals will receive training alongside defense counsel in all iterations of 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 FY14, 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, 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 4th Edition of DC 101 Deskbook and distributed it to all newly-assigned TDS counsel. The DCAP also published the 1st Edition of a Sexual Assault Deskbook. Counsel were further kept abreast of all major developments through weekly electronic mail updates and a series of updates called "DCAP Sends."

GOVERNMENT APPELLATE DIVISION

The GAD, with 24 active duty and three Individual Mobilization Augmented military attorneys, represents the United States before ACCA, CAAF, and the U.S. Supreme Court in appeals by Soldiers convicted at courts-martial with an adjudged sentence of either a punitive discharge or confinement for one year or more. The GAD also represents the United States before ACCA, CAAF, and the U.S. Supreme Court in government appeals from courts-martial and petitions for extraordinary relief. Additionally, GAD oversees the operations of the TCAP.

In FY14, GAD filed 648 briefs at ACCA and 508 responses to petitions for grant of review and 18 briefs at CAAF. The GAD appellate attorneys argued 21 cases before ACCA and 11 cases before CAAF.

As part of CAAF's Project Outreach, GAD argued one case at the Florida International University College of Law, one case at George Washington University Law School, and one case at North Carolina Central University School of Law. 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.

The TCAP delivered continuing legal education and specialized training to Army trial counsel worldwide, as well as provided direct assistance to Offices of the Staff Judge Advocate (OSJA) prosecuting the Army's most complex cases. The TCAP also

manages the operations of the SVP and Special Victim Noncommissioned Officer (SVN) programs.

Now in its fifth full year, the Special Victim Prosecutor (SVP) program has 23 attorney positions. Special Victim Prosecutors continue to assist in the enhancement of the level of trial advocacy in special victim cases throughout the Army. The Army continues efforts to formalize a Special Victim Capability to further enhance our ability to prosecute sexual assault cases. In 2014, the Army added dedicated paralegal support to each SVP. These uniformed paralegals are hand-selected at the Department of the Army level and are provided with extensive additional training on the unique nature of special victim offenses. In 2014, the Army authorized 23 Special Victim Witness Liaison positions to complete the SVP teams. These 23 civilian GS-11 positions have been advertised and they will be filled with the most qualified individuals in FY15.

The cadre of TCAP trainers, including seven military and three civilian attorneys, as well as a senior paralegal noncommissioned officer, developed and delivered 29 training events to OSJAs worldwide. This year's training events consisted of 12 outreach programs at Army installations, two week-long regional conferences overseas, and 17 specialty courses (e.g. advanced advocacy, child forensic interviewing, and complex litigation). Training was focused on trial advocacy skills and prosecuting sexual assault and domestic violence.

The 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. The course is held at least quarterly to ensure that all new trial counsel attend within their first six months of becoming a trial counsel. Additionally, NPC/ESSAP prepares new counsel for the Intermediate Trial Advocacy Course taught at the 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 course included lectures, break-out sessions, and numerous advocacy exercises, culminating in a full-day trial for each participant at the National Advocacy Center.

In support of its mission to assist prosecutors in the field, TCAP also provided expert military counsel to prosecute several high-profile cases, and provided direct expert assistance and consultation through its civilian Special Victim Litigation Experts (SVLEs). Just as importantly in today's age of rapidly evolving military justice procedure and substantive criminal law amendments, TCAP continued its traditional information-sharing and collaboration activities such as publishing several issues of a "TCAP Express" memorandum to inform and advise the field on breaking law and issues, compiling and distributing a resource disc of useful templates, resources and tools, as well as responding to hundreds of legal questions from the field.

DEFENSE APPELLATE DIVISION

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. Defense Appellate Division attorneys also assist military and civilian Defense Counsel in the preparation and filing of extraordinary writs before the aforementioned courts.

The DAD currently represents Soldiers in approximately 900 cases in various stages of appellate process. Categories include cases recently received at DAD, cases pending action by the ACCA or the CAAF, and cases awaiting final action and discharge from the Army. Approximately 260 cases are pending filing with the ACCA.

Last year, DAD filed 576 briefs with the ACCA. The DAD also filed 501 briefs with the CAAF. Multiple assignments of error were raised in approximately 45% of these cases. Counsel also argued 21 cases the ACCA and 11 at the CAAF. Some of the significant cases from this last year include:

United States v. Hennis, ARMY 20100304. Master Sergeant (MSG) Hennis was tried at a general court-martial and sentenced to death after being tried twice and acquitted once in the State of North Carolina. Appellate defense counsel filed a writ of habeas corpus arguing the Army did not have jurisdiction to try MSG Hennis. In addition, DAD filed a petition for new trial based on substantial exculpatory evidence found after trial. The brief in his case is due to

the ACCA on January 9, 2015. There will likely be fifty assignments of error raised on appeal.

United States v. Akbar, USCA Dkt. No. 13-7001/AR, ARMY 20050514. In one of two Army capital cases currently on direct appeal, the CAAF is currently considering fifty-nine assignments of error raised by Sergeant (SGT) Akbar. On November 18, 2014, the CAAF heard oral argument on five assignments of error, centering primarily on ineffective assistance of counsel claims. An opinion is expected after June 2015.

United States v. Manning, ARMY 20130739. Private First Class (PFC) Manning was charged with twenty-two offenses related to the wrongful release of classified documents. A military judge sitting as a general court-martial found PFC Manning guilty of theft of government property, conduct prejudicial to good order and discipline and of a nature to bring discredit upon the armed forces, violations of the Espionage Act, the Computer Fraud and Abuse Act, and other Army regulations. Private First Class Manning's case is currently under review at DAD, and a brief to the ACCA is expected this summer.

LITIGATION DIVISION

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

Williams v. United States Disciplinary Barracks (D. Kan.) On September 5, 2014, Private (E-1) Larry Williams filed his petition for writ of habeas corpus with the U.S. District Court for the District of Kansas. In April 2012, a general court-martial convicted then-Specialist Williams, pursuant to his guilty pleas, of one specification of rape of a child, one specification of indecent liberties with a child, two specifications of aggravated sexual contact with a child, and one specification of forcible sodomy, in violation of Articles 120 and 125, UCMJ. The general court-martial sentenced him to punishment that included 20 years

confinement, but a pre-trial agreement limited his confinement term to 8 years. In January 2014, the ACCA affirmed the findings of guilty and the sentence. Private Williams' petition for review to CAAF was denied. Private Williams now seeks a writ of habeas corpus and argues that he is entitled to a new court-martial because insufficient evidence supports his convictions; criminal investigators engaged in misconduct; newly discovered evidence exonerates him; and his defense counsel provided ineffective assistance at trial. On October 31, 2014, the court ordered the United States to respond to Private Williams' petition. The United States' response is due January 19, 2015.

Gray v. James W. Gray, Commandant, USDB (D. Kan.). In November 2008, Ronald Gray filed a motion in the U.S. 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 1988, Gray was convicted at a general court-martial of the premeditated murder of two women, the attempted premeditated murder of a third woman, the rape and sodomy of the women, and burglary and larceny of property of another person. Two of the three women were Soldiers. He was sentenced to death. The military appellate courts affirmed the court-martial conviction. In 2001, the U.S. 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 EO directing that Gray be executed. In November 2008, the U.S. District Court for the District of Kansas ordered a stay of execution. In April 2009, Gray filed a petition for writ of habeas corpus. The government filed its answer. The court subsequently granted petitioner's request for appointment of additional counsel and additional time to respond to the government's 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 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 the issue after his habeas proceedings. After filing three consecutive requests for an extension to file his traverse, Gray filed his reply on November 1, 2012, which completed the briefings in the case. The court's decision is pending. In November 2014, a new district court judge was assigned to the case.

OTJAG INTERNATIONAL AND OPERATIONAL LAW DIVISION

In FY14, 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: preventing law of war violations, preparing judge advocates and paralegals to administer military justice in deployed environments, and strengthening partner nation military justice systems to produce highly disciplined, effective coalitions for future military operations.

As part of the Army's implementation of the DoD Law of War Program, IOLD aimed to prevent violations of the law of war by Army personnel by evaluating all new weapons for compliance with international law; reviewing all operation and concept plans and rules of engagement for compliance with domestic and international law; and preparing directives, policies, instructions, and training materials to ensure that Army personnel understand the principles and rules of the law of war. When Army personnel were alleged to have violated the law of war, the IOLD supported the reporting, investigation, and prosecution of the allegations.

To prepare judge advocates and paralegals of all military Services for upcoming operational deployments to Afghanistan and other overseas locations, IOLD conducted one Judge Advocate General's Pre-Deployment Training session (JPT). The curriculum for the week-long JPT included several military justice classes, which provided an overview of general military justice topics, as well as detailed instruction on the unique aspects and logistical challenges of administering military justice in a deployed environment. The JPT instructors included judge advocates and paralegals with recent deployment experience.

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 Afghanistan, Australia, Canada, Chile, China, Israel, Great Britain, Japan,

South Korea, and Peru. Engagement discussions centered on organization for conducting legal support to military operations, along with lessons learned on the most effective practices for the administration of military justice and the manner in which military justice contributes to strengthening the rule of law in society. Senior leaders made several trips abroad in support of Army Service Component Command theater security cooperation programs. Senior JAGC leaders made several trips to participate in discussions related to the application of the Law of Armed Conflict to current and future operations. Among these were engagements at the Inter-American Forum on Military Justice and International Humanitarian Law in Lima, Peru, which brought together senior legal leaders from more than ten nations from Central and South America, and the annual International Symposium on Security and Military Law in Seoul, South Korea, which was attended by senior legal advisors from more than thirty countries.

Partner nation visitors to OTJAG participated in substantive discussions and conducted additional site visits to TJAGLCS, the United States Army Legal Services Agency, the Fort Belvoir OSJA, and ACCA at Fort Belvoir. These programs demonstrated the importance of organizational structure and resourcing to provide commanders with the highest quality legal support. The programs also provided a comprehensive overview of the military justice system throughout all pre-trial, trial, and appellate stages. In a separate program, IOLD judge advocates provided human rights and military justice training for foreign legal officers, sponsored by the Defense Institute of International Legal Studies, in various countries including Botswana, Burma, Colombia, Guatemala, Jordan, Mali, Nigeria, and Poland.

PERSONNEL, PLANS, AND TRAINING

On September 30, 2014, the Army's end-strength was 508,210 Army Soldiers on Active Duty, including AGR and mobilized Soldiers, compared to 532,413 at the end of FY13. The attorney strength of the Active Army (AA) JAGC at the end of 2014 was 1,930 (including general officers). This total does not include 63 officers attending law school while participating in the Funded Legal Education Program (FLEP). The FY14 end-strength of 1,930 compares with an end-strength of 1,970 in FY13. The diverse composition of our FY14 AA attorney population included

131 African-Americans, 52 Hispanics, 101 Asians and Native Americans, and 521 female Soldiers.

The grade distribution of the Corps' AA attorneys for FY14 was 8 general officers authorized (five filling JAGC authorizations, two serving in Military Occupational Specialties (MOS) coded positions (the Legal Counsel to the Chairman of the Joint Chiefs of Staff and the Chief Prosecutor for the Commissions), and an eighth general officer (mobilized reservist) serving in a branch immaterial billet - Commander, Rule of Law Field Force - Afghanistan), 148 colonels, 239 lieutenant colonels, 522 majors, and 1,021 captains. An additional 103 warrant officers, 539 civilian attorneys, and 1,697 enlisted paralegals supported legal operations worldwide.

The attorney strength of the United States Army Reserve (USAR) JAGC at the end of FY14 was 1,803 (which includes officers serving in Troop Program Units, the DIMA Program, the Individual Ready Reserve, and the Active Guard & Reserves) and the attorney strength of the Army National Guard at the end of FY14 was 882. At the end of FY14, over 187 Army JAGC personnel (officer and enlisted, AA and RC) were deployed in operations in Afghanistan, Bosnia, Cuba, Kosovo, Egypt, Honduras, Israel, Iraq, Kuwait, Qatar, Djibouti and elsewhere across Africa.

In FY13, 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 the Legal Center and School, 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 and provide support to victims.

Although my first complete fiscal year as TJAG has been laden with significant changes as we implemented numerous requirements and initiatives, my interactions with senior commanders and JAGC leaders have led me to conclude that the JAGC remains sufficiently resourced to perform its military justice functions in a fair and effective manner. Nonetheless, we will continue to closely monitor both DoD directed manpower reduction initiatives and new emerging requirements, including those imposed by recent amendments to the UCMJ, to ensure that the JAGC retains the resources it needs to provide the gold-

standard military justice system the Army demands and 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	665	592	73	-6.9%
BCD SPECIAL [A]	314	287	27	-15.8%
NON-BCD SPECIAL	0	0	0	-100.0%
SUMMARY	456	[G]	[G]	+20.0%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-2.4%

Report Period: FISCAL YEAR 2014

PART 2 – DISCHARGES APPROVED [B]

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)		121 (+23)	
NUMBER OF BAD-CONDUCT DISCHARGES		261	
SPECIAL COURTS-MARTIAL			
NUMBER OF BAD-CONDUCT DISCHARGES		138	

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	412
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	138
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	291

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

TOTAL ON HAND BEGINNING OF PERIOD		135 [C]
GENERAL COURTS-MARTIAL	[D]	
BCD SPECIAL COURTS-MARTIAL	[D]	
REFERRED FOR REVIEW		636 [C]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL CASES REVIEWED		686 [E]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD		85 [C]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+0.3%

PART 5 – APPELLATE COUNSEL REQUESTS BEFORE

U.S. ARMY COURT OF CRIMINAL APPEALS (CCA)

NUMBER	600
PERCENTAGE	94.34%

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	505 of 686	73.62%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+14.197%
PERCENTAGE OF TOTAL PETITIONS GRANTED	34 of 472	7.20%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-7.57%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA		4.96%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-5.70%

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

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		135	
RECEIVED		74	
DISPOSED OF		196	
GRANTED	0		
DENIED	196		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		61	
PART 8 – ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		521	
SPECIAL COURTS-MARTIAL		282	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		144	
SPECIAL COURTS-MARTIAL		32	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS			
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		510002 [F]	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		31689	
RATE PER 1,000		62.14	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-22.27%	

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, 2013 TO SEPTEMBER 30, 2014
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. 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, JAG and CNLSC regularly inspected U.S. Navy legal offices in the United States, Europe, and the Pacific. These inspections, conducted by subject matter experts, 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 Office of the Judge Advocate General (OJAG) 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). AJAG-MJ/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 Reservist on one-year orders, one Reservist for three months, one Highly Qualified Expert (HQE), three civilian staff members, and an eight-member reserve unit. Additionally, Code 20 was temporarily assisted by two additional active duty judge advocates working exclusively in the preparation of the Sexual Assault Prevention and Response Report to the President of the United States (POTUS Report), and assigned three judge advocates full-time to the joint Military Justice Review Group.

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 review by the U.S. Court of Appeals for the Armed Forces (CAAF); 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 DoJ to approve grants of immunity and orders for civilian witnesses to testify at trial by court-martial. Finally, Code 20 provides a representative to the Naval Clemency and Parole Board; provides legal opinions to the Board for Correction of Naval Records upon request; provides informal advice for Navy and Marine Corps judge advocates practicing 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 Screen 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 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 2014 Annual Review of the MCM was completed in accordance with the President's requirement, and two Executive Orders were drafted and submitted for the President's approval and signature. Significant staffing of a third Executive Order was also completed. 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 Defense Legal Policy Board (DLPB) and the Response Systems to Adult Sexual Assault Crimes Panel (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. The Director of Code 20 also testified before Congress and participated in over 80 engagements and briefings with Members of Congress or their staffs.

The Director of Code 20 served as the Navy's point of contact for all Navy requests for information and testimony before the RSP. The RSP was created by section 576 of the Fiscal Year 2013 (FY13) National Defense Authorization Act (NDAA) to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses under Article 120 of the UCMJ. During this period, the Director of Code 20 testified before the RSP several times on a variety of different subjects. The RSP issued its report and 132 recommendations on June 27, 2014 to improve the effectiveness of such systems. Code 20 continues to play a key role in the evaluation and implementation of those recommendations for military justice provisions, and Departmental and Service recommendations on SAPR.

The Director of Code 20 also serves as the Navy's point of contact for all Navy and Departmental requests for information and testimony before the Judicial Proceedings Panel (JPP), the successor panel to the RSP. Like the RSP, the JPP was created by section 576 of the FY13 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. The Director of Code 20 testified before the JPP and Code 20 personnel remain engaged with JPP staff members, providing substantive guidance to support their mandate.

Code 20 was responsible for the Navy's implementation of multiple policy changes to military justice and SAPR dictated by the FY14 NDAA. The NDAA mandated more than 30 changes to military justice and SAPR policy implemented through Presidential Executive Orders, DoD, Secretarial, or Service policy, instruction, or practice.

Code 20 continued to identify and centralize training requirements for military justice litigation and trial advocacy. In coordination with Naval Justice School (NJS), Code 20 led the Litigation Training Coordination Council (LTCC) to develop new curricula. Code 20's attorneys also provided trial advocacy, military justice, sexual assault, and child sexual abuse litigation training to various audiences throughout the year.

In FY14, Code 20 was instrumental in the development of DoD and Navy Special Victims Capability (SVC), now referred to as 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 OJAG's Technology, Operations and Plans Division (Code 67) to hold the second annual SVIP course with over 260 participants, including First Tour Judge Advocates (FTJAs), Legalmen (LN), paralegals, Sexual Assault and Response Coordinators (SARCs), SAPR Victim Advocates (VAs), and Domestic Violence VAs.

In addition to the SVIP course, Code 20 hosted the inaugural Sexual Assault Policy for the Staff Judge Advocate, 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 Type Commanders (TYCOMs) or 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 reviewed were the FY14 NDAA, the status of its implementation, and the resulting SJA

and commander requirements. The course included instruction and discussion of the impact of the legislation on SA-IDAs, UCMJ Article 18 (GCM 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), and the Victim and Witness Assistance Program (VWAP).

Code 20 personnel assisted in the development of Fleet-wide training initiatives on SAPR, to include DON Sexual Assault Prevention and Response Office's (SAPRO) Pre-commissioning, Pre-command, and InterACT SAPR training, and the Bystander Intervention to the Fleet (BI2F) training. The Pre-commissioning and Pre-command SAPR training provides new officers and those assuming command leadership roles necessary training to help prevent and respond to incidents of sexual assault and sexual harassment. The BI2F training focuses on concepts first taught in enlisted advanced skill training ("A" School). BI3F instills the need for intervention 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 new DON SAPRO Commander's Guide, providing guidance and support to the Navy's leadership on the topic of responding to sexual assault.

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

Code 20 assisted in preparation of the POTUS Report, a comprehensive report directed by the President detailing major improvements in the prevention of sexual assault through initiatives and military justice reforms. In preparation for this report and subsequent Annual Reports to Congress on Sexual Assault, Code 20 collaborated with the Twenty-First Century Sailor Office (N17) to develop the Sexual Assault Disposition Report (SADR), which streamlined the process of obtaining accurate disposition data on Unrestricted Reports of sexual assault in the Navy. Code 20's role in data entry and Navy's program initiatives overview ensured Navy met the deadline for submission of the POTUS Report.

The data input for the POTUS Report was derived from the new Defense Sexual Assault Incident Database (DSAID), a comprehensive database launched in 2013 that tracks and reports sexual assault incidents. In 2014, Code 20 provided five fully-qualified DSAID Legal Officers (LOs), who personally reviewed and entered over 1,000 SADRs and dispositions of sexual assault cases for FY14. In FY14, DSAID was the sole source for disposition data on incidents of adult sexual assault for purposes of the POTUS Report as well as the forthcoming Annual Report to Congress on Sexual Assault. Code 20 continues to participate in the ongoing DSAID Change Control Board whose purpose is to improve and enhance DSAID capabilities.

Code 20, along with Code 67, participated in the ongoing development of the Naval Justice Information System (NJIS). This involved regular participation in the NJIS Board of Governance and various technical working groups. When implemented, this comprehensive system will manage cases at all phases and will be used to integrate law enforcement, investigations, and corrections, as well as command and judicial actions. During the reporting period, a contractor was selected to build NJIS, and configuration is currently underway.

Finally, during the reporting period, Code 20 reviewed 24 records of trial under Article 69(a), UCMJ; 5 records under Article 69(b), UCMJ; and 3 petitions under Article 73, UCMJ.

ADMINISTRATIVE SUPPORT DIVISION (CODE 40)

Organization. During the reporting period, Code 40 was staffed with one officer, two civilians and six 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 FY14, Code 40 reviewed and examined 365 records of trial for

completeness prior to forwarding the records for appellate review pursuant to Articles 66 and 69, UCMJ.

APPELLATE DEFENSE DIVISION (CODE 45)

Organization. Code 45 was staffed with 11 active-duty Navy and Marine Corps judge advocates, 1 civilian attorney, and 4 civilian support personnel. 20 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 CAAF, providing general training, and providing advice on specific cases in litigation. Code 45 also works closely with the Defense Counsel Assistance Program (DCAP) by coordinating training and advice provided to counsel in the field.

NMCCA	FY10	FY11	FY12	FY13	FY14
Briefs Filed	159	161	191	143	161
Other Substantive Pleadings	847	693	632	522	587
Total Cases Filed	744	531	488	374	387
Oral Arguments	15	20	19	15	15
CAAF					
Petitions with Supplemental Briefs Filed	69	81	117	90	79
Briefs Filed	21	20	19	13	7
Oral Arguments	11	7	12	9	2
U.S. Supreme Court Petitions	6	2	3	2	4

In FY14, a total of 373 new cases were docketed at the NMCCA and received in Code 45. Code 45 filed 387 initial pleadings with 15 oral arguments at the NMCCA. The initial pleadings include 161 briefs, 224 merit submissions, and 2 summary

assignments. In addition to this, Code 45 filed 69 reply briefs, 17 responses to government motions, 4 supplemental briefs, 3 responses to court orders, 255 motions (other than motions for enlargement) and 13 petitions for extraordinary relief at the NMCCA.

Code 45 filed 79 supplemental briefs to petitions at the CAAF, resulting in 7 full briefs and 2 oral arguments. Code 45 also filed 2 petitions for extraordinary relief at the CAAF.

Assistance to Trial Defense Counsel. Code 45 provides advice and support to Navy and Marine Corps trial defense counsel around the world. Code 45's experienced appellate attorneys respond to short-fused questions from trial defense counsel and assist in preparing and filing extraordinary writs. Code 45 also provides training on recent appellate developments and important trial issues.

APPELLATE GOVERNMENT DIVISION (CODE 46)

a. Organization. The Division was staffed with 10 active duty judge advocates, 1 civilian attorney, and 2 civilian administrative employees.

b. Reserve Support. Reserve support continues to be critical to mission accomplishment. Code 46 is supported by Navy Reserve NAMARA Government (Minneapolis, Minnesota). Reserve judge advocates contributed an average of two briefs per month.

c. Mission. Under Article 70, UCMJ, the primary mission of Appellate Government Division is to represent the United States before the NMCCA and CAAF. The Division also provides interlocutory appeal and prophylactic appellate support and advice to trial counsel, staff judge advocates, and review officers throughout the Navy and Marine Corps for all types of pretrial, court-martial, and post-trial matters.

i. Appellate Throughput. A summary of FY14 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 NMCCA briefs filed by the Government increased to 159. Issues

and briefing continued to be highly complex, including multiple cases involving various iterations of recurring issues: whether Article 31(b) warnings must be given to off-duty reservists; whether and who re-initiates communications after a request for counsel in light of *United States v. Hutchins*; re-referral after withdrawal, and what constitutes proper and improper withdrawal; what constitutes testimonial evidence in light of *Crawford v. Washington* with regard to chain of custody evidence; interlocutory appeals when the judge both forcibly rests the Government's case and denies a continuance; lesser-included offenses under Article 120; and, when the basis for a search authorization can support a search for other crimes. CAAF briefing was lower this fiscal year; absent certification, Government CAAF litigation depends on granted defense petitions— and a low of 79 defense petitions were filed this year, compared to 90 in FY13, and 117 in FY12. Three Article 62 appeals taken from trial court decisions were filed.

	FY09	FY10	FY11	FY12	FY13	FY14
NMCCA						
Briefs Filed	154	163	188	198	152	159
Other Pleadings	313	373	144	439	439	479
Oral Arguments	14	15	20	19	15	16
CAAF						
Briefs Filed	28	24	22	24	9	12
Other Pleadings	60	102	70	111	98	72
Oral Arguments	23	11	7	12	11	3

ii. Appellate Outreach and Shaping. 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 routine postings on the Code 46 blog site. 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. Robust and continuous coordination between the Trial Counsel Assistance Program (TCAP), trial counsel, and Code 46 positions the United States to achieve better appellate success.

iii. External Training. Code 46 continues to train trial counsel in the field. In coordination with NJS, Code 46 attorneys trained trial counsel during NJS's semiannual Trial Counsel Orientation Course. Training included: handling interlocutory appeals, ex 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 trial counsel training sessions are indispensable in building solid working relationships between trial and appellate litigators. Additionally, the sessions provide opportunities for appellate counsel to share previous lessons learned with trial counsel in an effort to prevent identical or analogous mistakes that adversely affect the United States.

d. Continuing Legal Education. This year, Code 46 counsel 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 annual conference.

e. Training Initiatives. Expanding last year's "Joint Government Appellate Training," Code 46 included appellate defense counsel and included more experienced and distinguished appellate practitioners. In September 2014, at Joint Base Myers-Henderson Hall, Code 46 arranged two days of training for every military appellate litigator and interested trial and defense counsel, featuring a variety of speakers that included some of the nation's top appellate jurists, litigators, and teachers. Speakers included: Chief Judge James Baker; Judge Patricia Millett, United States Court of Appeals for the District of Columbia Circuit ("Appellate Brief Writing"); Professor Orin Kerr of George Washington Law School ("Fourth Amendment in the Digital Age"); former CAAF Judge Andrew Effron ("Military Appellate Practice"); an appellate Federal Public Defender; and, an attorney from the U.S. Solicitor General's office. In coordination with NJS, Code 46 facilitated the approval of up to 11.2 hours of CLE credit, subject to the approval of each attendee's state bar requirements.

f. Community Outreach. Appellate Government Counsel continue to conduct robust outreach to the community. As in previous years, Code 46 appellate counsel, the Director, and Deputy 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 National Asian-Pacific, American Bar Association, American University's Washington College of Law, Thomas Tang International Appellate Moot Court Competition. Several Code 46 attorneys also volunteered their time to teach local students about law, democracy, and human rights.

g. Electronic Records of Trial. During FY14, Code 46 continued the expansion of the Department of the Navy's electronic record of trial program, which at year's end included approximately 95% of the trial records docketed at NAMARA.

h. Leveraging SharePoint. Finally, Code 46 continues to operate on a fully paperless and "virtual" office utilizing a discussion board, a Military Justice Wikipedia, 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 Wikipedia.

**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 CJDON is eligible to retire in the grade of rear admiral (lower half).

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

The United States Navy-Marine Corps Court of Criminal Appeals (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. During FY14, the Court was comprised of eight Navy and Marine Corps appellate judges during the majority of the year. NMCCA was also supported by seven Navy Reserve and three Marine Corps Reserve appellate judges, three Navy and Marine Corps junior officer law clerks, four student summer law clerks, three Fall Semester

part-time student law clerks, and a mid-grade officer senior law clerk.

Legal issues addressed included: the quantum of independent evidence needed to corroborate the essential facts in an admission by an accused so as to raise the required inference of truth in order for the admission to be admissible; whether members of the Individual Ready Reserve are entitled to the protections of Article 31(b), UCMJ; whether a certificate of correction prepared by trial counsel was in substantial compliance with R.C.M. 1103(i)(1)(B); whether a military judge erred in post-trial ordering a new trial based upon a finding that evidence previously known to the accused was newly discovered and unavailable despite due diligence, where she failed to consider the accused's awareness of this evidence and failed to evaluate due diligence with respect to other potential sources of impeachment evidence; whether a military judge abused his discretion by excluding the testimony of a forensic psychologist that the accused has a suggestible personality that made it more likely for him to falsely confess in response to coercive interrogation tactics and thereby denied the appellant his constitutional right to present a defense; whether a military judge's legal conclusion that the CAAF's decision in *United States v. Hutchins* created an expansion of the *Edwards per se* rule and required suppression of the accused's oral and written statements; whether an accused was entitled to day-for-day pretrial confinement credit and additional administrative credit for the period during which he was confined to a military hospital for psychiatric evaluation and treatment; whether remedial action taken by military judges in cases in which there was apparent unlawful command influence was adequate; whether a military judge erred when he used a state statute to determine the maximum punishment for a violation of Clause 2 of Article 134; whether a military judge abused her discretion by denying the Government an overnight recess and resting the Government's case; whether a requirement in Chief of Naval Operations Instruction (OPNAVINST) 3120.32C, that Sailors must self-report to their commanding officer any civilian arrest or criminal charge, is superseded by superior regulatory authority and violates the individual's right against self-incrimination; whether a superior commander may adopt a panel convened by a subordinate commander even though the latter may possess the same authority to convene a court-martial; whether comments made by a military judge during an out-of-court training session reflected actual or implied bias on his part in cases he presided over both before and after he made the comments; and whether an accused's rights under the Fourth Amendment were

violated when federal agents participated in the execution of a search warrant issued by a county judge to local law enforcement.

The Court hosted its fourth annual NMCCA Judicial Training course in FY14. Like the first two years of this top-rated training session, the Court brought two distinguished legal practitioners to the Court for three days to train active-duty, Reserve, and civilian Court personnel. Topics included recent developments in search and seizure case law, the role of victim's legal counsel at trial and during the appellate process, statutory construction, collegiality, judicial ethics, the exclusionary rule, and Article 120, UCMJ.

NMCCA continues to maintain a website at <http://www.jag.navy.mil/nmcca.htm>. 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. Finally, application for admission to the NMCCA bar and rules of the court are maintained on the site.

NAVY-MARINE CORPS TRIAL JUDICIARY (CODE 52)

The Navy-Marine Corps Trial Judiciary (NMCTJ) has the core mission of detailing certified and trained military judges to all Navy and Marine Corps general and special courts-martial. The trial judiciary 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 OCONUS and CONUS 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.

In 2014, the trial judiciary confronted novel issues arising from the creation of the Victims' Legal Counsel (VLC) program and from other provisions of the FY14 NDAA. In courtrooms across our enterprise, trial judges are helping define the evolving role of the VLC and the parameters of their representation. 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, changes in Article 32 hearing procedures).

The caseload at the trial level continues to decline, but the percentage of contested cases continues to rise, as highlighted by a comparison of the past two years. FY13 closed with the NMCTJ presiding over 1170 arraignments (291 GCMs and 879 SPCMs), of which 450 (38%) fell out prior to trial as alternative dispositions, withdrawals, or dismissals. Of the 720 cases that went to trial in FY13, approximately 37% (266) of the 720 cases were contested trials, and 91 cases resulted in acquittals (34%). By comparison, FY14 closed with the NMCTJ presiding over 993 initial arraignments (301 GCMs and 692 SPCMs). Approximately 300 (30%) cases did not go to trial as a result of alternative dispositions, withdrawals, or dismissals. Of the 692 cases that went to trial, approximately 41% (286) were contested cases. Those contested cases resulted in 128 acquittals (44%).

In addition to the primary mission, our trial judges continued to take on several collateral assignments. Due to turnover in the USCG trial judiciary, the NMCTJ provided judges for four U.S. Coast Guard courts-martial in FY14. Additionally, trial judges occasionally presided as Investigating Officers at Article 32 hearings, typically in cases where the charges were either unusually grave or complex. Finally, the trial judiciary continues to support the mission of the Office of Military Commissions Trial Judiciary (OMC-TJ). In April, CAPT Kirk Waits (Circuit Judge for Europe, Africa and Southwest Asia (EURAFSWA)) was detailed to the OMC case of *United States v. al Iraqi* and shortly thereafter began a series of trips to Guantanamo Bay to conduct the arraignment and initial pretrial sessions.

Our trial judges attended the 2014 Joint Military Judges Annual Training (JMJAT) held at the Air Force JAG School in February, where they received timely training on the new Article 120 statute, forensic psychiatric issues in child sexual assault cases, and judicial ethics. In February 2015, the NMCTJ will host JMJAT in San Diego.

NAVAL LEGAL SERVICE COMMAND (NLSC)

CNLSC also serves as the Deputy Judge Advocate General of the Navy.

At the conclusion of FY14, NLSC was comprised of 426 judge advocates, 1 Civil Engineer Corps officer, 1 Limited Duty (Law) officer, 176 LNs, and 223 civilians. NLSC provided 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 FY14, NLSC completed the second year of its major realignment. In 2012, NLSC disestablished all eight Naval Legal Service Offices and the legal assistance function was realigned to the nine Region Legal Service Offices (RLSOs). At the same time, four new Defense Service Offices (DSOs) were established to provide defense and personal representation services to service members, including representation at courts-martial and administrative boards. Defense counsel also provide other representational services, including advice on non-judicial punishment and adverse administrative personnel actions. In FY14, Navy Victims' Legal Counsel Program (VLCP) became fully operational; additional details are provided below.

In FY14, NLSC provided legal advice, services, and training to the Fleet through 13 commands, and their associated branch offices and detachments: four 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.

In October 2013, NLSC transitioned to the new military justice Case Management System (CMS) to comply with a Congressional mandate that DON implement a single court-martial tracking system by July 1, 2013. All RLSOs received training prior to the October 1st transition and over the past year were provided additional refresher training. CMS is used to track all special victims' cases, as required by DOD Directive Type Memorandum (DTM) 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 also is 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.

NLSC held 137 general courts-martial, 175 special courts-martial, 602 administrative boards and 194 Boards of Inquiry that were completed in FY14. NLSC personnel also provided 17,312 command services, 11,533 personal representation services, and saw 37,458 legal assistance clients. NLSC

continued to be the primary source for personnel to meet the JAG Corps' Individual Augmentation (IA) requirements and provided two-thirds of its personnel requirements in support of Overseas Contingency Operations. During FY14, nine judge advocates from NLSC deployed to Afghanistan, Bahrain, and Guantanamo Bay, Cuba, in direct support of operations.

DEFENSE COUNSEL ASSISTANCE PROGRAM (DCAP)

DCAP is aligned under NLSC and reports to the Chief of Staff, Defense Service Offices (COS-DSO). DCAP consists of a Director, who is qualified as a "Specialist II" in the Military Justice Litigation Career Track (MJLCT), a Deputy Director who is qualified as a "Specialist I", and a civilian Highly Qualified Expert (HQE) who assists in training curriculum development and advises defense counsel on complex litigation and sexual assault cases. The HQE is a retired Marine Corps lieutenant colonel with more than 30 years of experience as a prosecutor, military judge, assistant federal public defender and civilian military criminal defense attorney. In order to ensure maximum availability for counsel situated throughout the world, DCAP personnel are stationed in three offices: San Diego, Norfolk and the District of Columbia. DCAP primarily supports the Navy trial defense bar. Although normally utilized as a reach-back resource for defense counsel, DCAP personnel may be assigned cases. For instance, DCAP's HQE was assigned to assist a trial team in a case involving allegations of pre-meditated murder that was ultimately referred as a non-capital case.

During this reporting period, DCAP personnel 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 personnel were 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 planned and spearheaded the Defending Sexual Assault Cases 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.

Further, DCAP conducted thirteen field assist visits around the world, providing training to DSOs and their detachment offices, developed video-based training on trial advocacy and defense specific areas, developed topical resources and provided written advisories and, maintained an online site for the dissemination and exchange of information between members of the Navy defense bar. Finally, DCAP continued to collect and consolidate helpful resources, ensuring materials developed by counterpart offices in our fellow Services, Code 20, and the NJS were available to the Navy defense bar.

TRIAL COUNSEL ASSISTANCE PROGRAM (TCAP)

TCAP is aligned under NLSC and reports to the Chief of Staff, Region Legal Service Offices (COS-RLSO). TCAP is directed by a Navy O-5, an MJLCT-designated "Expert" who previously served as a military judge, Naval Legal Service Office (NLSO) Commanding Officer, an Executive Officer and Senior Defense Counsel during the Trial Defense Command pilot program, a Senior Trial Counsel and an Assistant Senior Defense 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, improve VWAP, and was 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 completed tours as a defense counsel, prosecutor, carrier SJA, and NJS instructor, and received an LL.M. in Litigation from the George Washington University Law School. TCAP's Highly Qualified Expert (HQE) is a former civilian prosecutor who has 17 years of experience, most notably as a prosecutor specializing in crimes against children and as an instructor and course coordinator for the National District Attorneys Association.

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

When requested, TCAP provides more in-depth case assistance. For example, TCAP counsel have been detailed as trial counsel and assistant trial counsel when an advanced level of proficiency is demanded. In the past year, the TCAP Director served as trial counsel on a high-profile homicide case; the Assistant Director served as trial counsel in a high-profile sexual assault case and as a 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 TCAP 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 resources 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. TCAP has expanded its expert witness database to ensure the ability of trial counsel to secure experts in all disciplines for the government and defense. The TCAP website also has a trial counsel discussion board that enables real-time response to demands from the field and leverages enterprise knowledge for remote offices. TCAP monitors questions and

responds to postings on the site and ensures that trial counsel are aware of all available resources. 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 on a variety of courses at the NJS schoolhouse, online, and in-person at offices worldwide. TCAP coordinated the planning and execution of Prosecuting Alcohol Facilitated Sexual Assault (PAFSA) course, an advanced trial advocacy course. TCAP provided targeted on-site mobile training teams to all nine RLSOs which focused on trial advocacy and prosecution of special victims offenses, as well as on-site case consultation and assistance. TCAP also provided a series of online training sessions that focused on the prosecution of special victims offenses and other evidentiary topics.

VICTIMS' LEGAL COUNSEL (VLC) PROGRAM

In August 2013, the Navy established the Navy VLC Program, designed 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 processes, advocate for the victim's 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 the SAPR, the Family Advocacy Program (FAP), VWAP, and services offered by Victim Advocates, Chaplains, and healthcare providers.

Victims' Legal Counsel operate outside the chain of command of the victim and the accused and independent of both trial and defense counsel. The program consists of 29 specially trained and certified Navy judge advocates, 11 of which are reservists, 10 administrative personnel, and is led by a senior O-6 Chief of Staff and an O-5 Deputy Chief of Staff. VLC are assigned at 23 naval installations around the world, including Annapolis, MD; Washington, D.C.; Oceana, VA; Norfolk, VA; Groton, CT; Mayport, FL; Jacksonville, FL; Pensacola, FL; San Antonio, TX; Great Lakes, IL; Coronado, CA; San Diego, CA; Lemoore, CA; Ventura, CA; Bremerton, WA; Everett, WA; Pearl Harbor, HI; Guam; Bahrain; Naples, Italy; Rota, Spain; Gulfport, MS; and Yokosuka, Japan.

In accordance with federal law, to be eligible for VLC services, one must be a victim of sexual assault 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. 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 (120a), Rape and Sexual Assault of a Child (120b), Other Sexual Misconduct (120c) 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 does not preclude a victim from requesting VLC services at a later time. VLC support is available in-person and via remote means if necessary, including by telephone, email, 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 continually 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, developing 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.

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.

As of 30 September 2014, Navy VLC have aided 731 sexual assault victims, participated on the victim's behalf at 351 military justice proceedings, and conducted 830 outreach briefs on VLC services to 24,581 personnel.

NAVAL JUSTICE SCHOOL (NJS)

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.

Mission. 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 FY14, NJS provided instruction to more than 14,500 students worldwide, including more than 3,551 in in-resident courses ranging in length from 1 day to 13 weeks.

In addition to teaching NJS courses, NJS instructors provided out-of-house 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.

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

1. Basic Lawyer Course (BLC). 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. FY14 graduates: 136.

2. Legalman Accession Course. This 11-week course, offered twice in FY14, 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. FY14 graduates: 58 active duty and 9 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. FY14 graduates: 96.

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. FY14 graduates: 21.

5. Senior Officer Course in Military Justice and Civil Law (SOC). This 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 FY14, NJS provided 39 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. FY14 graduates: 1165.

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 judge advocate. In FY14, NJS provided 16 offerings of the LOC in San Diego and Norfolk. FY14 graduates: 506.

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 FY14, NJS provided 17 offerings of the LCC in San Diego and Norfolk. FY14 graduates: 387.

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 FY14, NJS provided 12 offerings of the SELC in San Diego and Norfolk. FY14 graduates: 334.

Continuing Legal Education. In addition to the "core" courses, NJS provided 16 in-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 FY14, these resident courses reached more than 424 legal professionals.

The semi-annual Trial Counsel and Defense Counsel Orientation courses teach Navy and Marine Corps 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 and prosecution. 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.

NJS also offers specialized instruction focused on sexual assault litigation. Prosecuting Alcohol-Facilitated Sexual

Assaults (PAFSA) is a week-long course that has been taught in conjunction with AEquitas, the Prosecutor's Resource on Violence Against Women. It focuses on substantive aspects of prosecuting alcohol-facilitated sexual assaults and includes small-group practical exercises to hone skills such as conducting direct and cross examinations of sexual assault nurse examiners, toxicologists, victims, and the accused. Defending Sexual Assault Cases (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 Staff Judge Advocate (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.

Legalman Paralegal Education Program (LPEP). Begun in 2010, LPEP is a government-funded education program leading to an Associates of Science degree in Paralegal Studies. The program is mandatory for all LNs in order to meet minimum occupational standards for the LN rating. Following completion of the LN Accession course, students normally complete a semester of in-resident courses with RWU before checking into their first permanent duty station as an LN. Upon checking in, they normally participate in distance learning with RWU until completing the degree requirements. In FY14, 79 students attended LPEP as in-resident students, and an additional 298 students were enrolled in the distance learning option.

Online Legal Education. In FY13, NJS entered into a partnership with TJAGLCS to expand the scope and reach of legal education for the Sea Services. Since that time the Online Legal Education department at NJS has been offering a variety of training and education courses utilizing the Blackboard learning management system. These systems are accessible 24/7 and offer on-demand training and education coupled with points of contact for feedback and instructor interaction.

In addition, NJS partnered with TJAGLCS to start offering full courses online via Blackboard. "NJS Online" gives military practitioners worldwide access to specialty courses. These courses range from on-demand short courses covering specific topics to multi-week courses 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, live interactive sessions using DCO, 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 trial counsel.

Publications. NJS publishes an annual Naval Law Review. NJS also publishes a course catalog, the USN/USMC Commander's Quick Reference Handbook for Legal Issues (Quickman), as well as various study guides in support of its academic programs.

Coordination. Through the Interservice Legal Education Review Committee (ISLERC), 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 Department of Defense. Due to fiscal constraints, two meetings were held via video tele-conference (VTC) in FY14.

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 FY14, there were 69 Navy MJLCT officers, of which 41 were filling the 53 MJLCT-designated billets. Additional officers are serving in billets at the Office of Military Commissions, on board aircraft carriers, at NJS, in VLC positions, and 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 rate better than the overall in-zone selection rate. The FY15 O-6, O-5 and O-4 promotion selection boards selected six of the six MJLCT officers in-zone for promotion, a 100% selection rate.

MJLQ recognizes 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 quantitative and qualitative 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 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.

Military justice litigation proficiency warranting qualification includes significant quantitative and qualitative criminal courtroom litigation experience and demonstrated proficiency in military justice procedure. 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 detailing to non-litigation billets even after MJLQ. 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 Initiatives

In FY14, 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 sexual assault prevention and response initiatives, including reviewing numerous SAPR training products.

On August 14, 2013, the Secretary of Defense implemented seven initiatives to strengthen the Department of Defense's overall sexual assault prevention and response programs, and he directed implementation of several measures designed to gain greater consistency of effort and enhance oversight, investigative quality, pretrial investigations, and victim support. One such measure required that judge advocates serve as Investigating Officers for all Article 32 hearings on sexual assault offense charges. Although it had been the practice in the Navy for over 20 years, the Navy formally adopted this requirement on December 4, 2013, and expanded it to all UCMJ offenses except in exceptional circumstances when in the interests of justice a line officer may be appointed.

Navy was integral in working with other Services on the implementation of several other new statutes, rules, regulations, instructions and policies with respect to sexual

assault, many of which significantly improved victim rights and military justice practice.

Navy prosecutors continue to attend and TCAP personnel provide training at a more robust NCIS Advanced Adult Sexual Assault Investigations Training Program (AASAITP), a course focused on improving multi-disciplinary coordination of sexual assault investigations. Regional Senior Trial Counsel meet with NCIS regularly (at least monthly) to coordinate case investigation and prosecution and foster early engagement by the response team.

3. Synthetic Drugs

To help detect and prevent the alarming trend of synthetic compound abuse by service members, testing for synthetic cannabinoids continued through FY14 at the Navy Drug Screening Laboratories (NDSL). This testing at NDSLs only tests those compounds designated as controlled substances under the Controlled Substances Act. Because usage is not limited to these compounds, prevalence testing, command directed and probable cause testing, and investigative testing requested by Military Criminal Investigative Organizations continued to be conducted at the Armed Forces Medical Examiners System (AFMES).

4. Additional Information

a. Compliance With Processing Time Goals

In FY14, no Navy case was dismissed on speedy trial grounds. 7 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. No Navy cases exceeded 30 days from date of CA's action to docketing at NMCCA (*Moreno 2* guideline). Neither NMCCA nor CAAF granted relief in any Navy or Marine Corps case for unreasonable post-trial delay. Furthermore, no NMCCA cases exceeded the *Moreno 3* guideline of 18 months from docketing to decision.

b. Circumstances Surrounding Cases In Which Court-Martial Convictions Were Reversed As A Result Of Unlawful Command Influence (UCI), Or Denial Of The Right To A Speedy Review, Or Otherwise Due To Loss Of Records Of Trial Or Other Administrative Deficiencies

There was one DON appellate case in which a conviction was reversed based on UCI, *United States v. Howell*, No. 201200264, 2014 CCA LEXIS 321 (N-M. Ct. Crim. App. May 22, 2014)). No other cases were reversed due to UCI, denial of the right to a speedy review, or loss of records of trial or other administrative deficiencies.

In *United States v. Howell*, NMCCA reversed the conviction of SSgt Howell, USMC, who was convicted of rape and associated forcible sex offenses. SSgt Howell moved for dismissal, alleging UCI based on the Commandant of the Marine Corps' Heritage Brief. The second of three military judges on the case concluded that there was an appearance of UCI. He concluded that the voir dire process, the passage of time, and the availability of defense witnesses removed any taint, but suggested that the judge who ultimately presided over the case should publish the Commandant's White Letter 3-12 (which disclaimed any intent to influence courts-martial and encouraged Members to act independently) and ask additional voir dire questions to cleanse any residual appearance of UCI. However, the final military judge did not utilize any of the recommended remedial measures. The NMCCA decided that without those remedial measures, the taint of apparent UCI had not been cured.

c. Cases In Which A Provision Of The UCMJ Was Held Unconstitutional

There were no DON appellate cases in which a provision of the UCMJ was held to be unconstitutional.

d. 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

Diversity of Skills

Our MJLCT career litigation attorneys rotate between prosecution, defense, and judicial assignments. Many MJLQ officers also 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 staff judge advocate

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 one of our Assistant Judge Advocates 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 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, and 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 bench - currently has 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

Additionally, 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 (NIJ), a Department of Justice (DOJ) agency established to help foster science-based criminal justice practice; AEquitas, the Prosecutor's Resource on Violence Against Women, a Department of Justice (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 or trial advocacy. Of the 69 career litigators in the MJLCT at the end of FY14, over half have earned an LL.M. in trial advocacy.

OJAG's National Security Litigation Division (Code 30) provides blocks of instruction on National Security cases in periodic NJS courses as needed, and has received approval to hold a National Security Litigation Course in 2015, the only course in DoD focused entirely on investigating and litigating cases involving classified information. Code 30 is working closely with Naval Special Warfare Command (NSW) to minimize leaks of classified information in the NSW community and hold appropriately accountable those who improperly publish information. Code 30 personnel also served as panelists for the National Security Case panel at Navy Office of General Counsel (OGC) Conference. Code 30 advised on over 30 individual cases involving national security information, provided advice and assistance to the DoJ Counter Espionage Section on two ongoing potential espionage cases, and supported NCIS in moving forward on a cold espionage case. Code 30 personnel also continued to provide ad hoc training, advice, and assistance to staff judge advocates, trial counsel, and defense counsel working through cases that involve classified information. Code 30 continues to publish and update the only National Security Case primer in DoD, and maintains close contacts with the intelligence community, DoJ National Security Division, and the Federal Bureau of Investigation's National Security Law Branch to facilitate cooperation between the Departments in all cases.

Trial Counsel

Senior Trial Counsel (typically 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. They are 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 including: litigating complex cases, prosecuting alcohol-facilitated sexual assaults, TCAP targeted mobile training, and monthly online special victims offense 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 cases as necessary and were so detailed to high-profile or complex cases in FY14.

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) who has completed at least one full 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) and have access to 24/7 support from TCAP.

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

Defense Counsel

In addition to basic judge advocate training received by trial counsel as well, 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. The JAG Corps also funds several defense counsel to attend Defending Sexual Assault Cases, a weeklong course held once a year, with the intent for all defense counsel to attend early in their tour. Defending Sexual Assault Cases is a course designed to deal with the legal issues and complexities involved in a sexual assault case and includes practical exercises along with lectures. Among the faculty are renowned evidence professors, experienced civilian defense attorneys, and expert witnesses. The course allows for fulsome discussion of issues that pervade the average sexual assault case and includes

practical exercises focusing on the facts of an actual trial. Students are given extensive access to experienced practitioners and expert witnesses and frequently use this time to consult with other attorneys on themes and issues with their current cases. Defense counsel will attend this course within their first year of reporting. Defense counsel also may attend training in intermediate trial advocacy and litigating complex cases.

Additionally, DCAP sends Defense Mobile Training Teams (DMTTs) to each DSO at least twice yearly to work closely with the command and individual counsel, with a focus on practical issues in defense work and trial advocacy based on current or recent case scenarios.

Finally, resources permitting, Navy defense counsel have access to relevant legal seminars aimed at the criminal defense attorney. Capital Litigation training is provided by the National Legal Aid and Defender Association, which provides week long seminars on litigation and mitigation. The Navy periodically sends defense counsel to this course to maintain capital litigation capability in case it is needed.

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, that have 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 in part 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 once 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 the 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.

In prior years, all trial judges attended the Joint Military Judges' Annual Training (JMJAT). The 2013 course was postponed indefinitely due to the impact of sequestration and the continuing resolution. The 2014 course will be hosted by the Navy; on odd years the training is held at the Air Force JAG School, on even years it is hosted by the NMCTJ in conjunction with the National Judicial College at Reno, Nevada. JMJAT is the venue for continuing baseline education and training for all trial judges, and it is 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.

The NMCCA instituted a two-day, in-house annual training course four years ago 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 FY14 course included search and seizure law, statutory construction, the exclusionary rule, digital evidence, and again, specific instruction on the development of Article 120. Appellate judges also attend the annual Fulton Appellate Judges conference, which is an inter-service, one-day event (the host rotates from service to service). The content focuses on both appellate judicial topics, and more broad 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 hosted by Southern Methodist University School of Law, are also available for NMCCA judges when funding permits, but it is not required for appellate judges.

The required continuing legal education (CLE) for trial judges progresses each year with two courses per year, for the next three years. The NMCTJ judges use and attend the National Judicial College (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 perspective from around the country which permit 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. This training has and will continue to decrease the judge-induced error rate across the NMCTJ. 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. This CLE requirement is not imposed on the appellate judiciary, because members of the appellate court include judges who previously served as trial judges subject to this requirement, and because appellate review generally is bound by what has been presented in a record of trial rather than based in the independent training that is intended to assist trial judges in creating the records of trial that will later be reviewed on appeal. Additionally, the in-house training conducted by NMCCA, in partnership with judicial educators from around the country, serves as an effective substitute for outside CLE.

Military judges receive specialized training in capital litigation, national security cases, sexual assault cases, and military commissions, some "just in time," and others as part of a CLE program. Legal education in areas encountered while litigating sexual assault cases is part of the initial pipeline training for every judge, and is picked up in various CLE programs after the initial training, both at the trial and the appellate level. Capital litigation courses for judges are available via the National Judicial College, 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.

e. The Independent Views Of The Judge Advocates General And The Staff Judge Advocate To The Commandant Of The Marine Corps On The Sufficiency Of Resources Available Within Their Respective Armed Forces, 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 adequately resourced. However, budget reductions continue to cause challenges in funding training, and sequestration could further impact operational readiness. In particular, a 30% reduction in the Navy's Centrally Managed Training Funding budget over the last few years has diminished training opportunities. Additionally, emerging requirements may affect this assessment. 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 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 continues to place significant demands on judge advocate resources. As an example, collection and verification of data and preparation of the POTUS Report required 2,549 man-hours of OJAG personnel, mostly judge advocates. JAG will continue to work with Navy to ensure that the JAG Corps is adequately resourced to meet these challenges as they emerge.

CONCLUSION

Military justice remained a principal focus of effort for the Navy in FY14. 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. We are committed to ensuring that our military justice system remains fair, effective, and efficient. With significant developments on the horizon – including reducing sexual assault in our ranks, focusing more specifically on destructive behaviors, to include sexual harassment and gender discrimination, implementation of over 100 recommendations of the RSP, and developing case management and tracking systems – continued careful self-reflection and close monitoring of the military justice system will remain priorities in FY15.

MARINE CORPS ACTIVITIES

U.S. MARINE CORPS ANNUAL MILITARY JUSTICE REPORT FOR FISCAL YEAR 2014

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I. INTRODUCTION

The Marine Corps legal community's leadership transitioned in Fiscal Year 2014 (FY14). On 30 June 2014, Major General Vaughn Ary retired from the Marine Corps after a career culminating with five years as the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC). Major General Ary led the Marine Corps legal community during a period marked by significant changes to the military justice system and challenges magnified by unprecedented Congressional and public scrutiny. Among his many noteworthy achievements were the enhancement of the statutory and regulatory authority of the SJA to CMC and the reorganization of the Marine Corps legal community to successfully meet the military justice challenges confronting all the Services. On 2 July 2014, Major General John Ewers was appointed as the SJA to CMC in the midst of continued external scrutiny and as the pace of systemic changes increased.

A significant challenge for the Marine Corps legal community in FY14 resulted from the twenty-one changes impacting the military justice system within the FY14 National Defense Authorization Act, which coincided with the continued upward trend in complex litigation. In FY14, the Marine Corps continued to leverage the success of the 2012 reorganization of the legal community to meet these challenges. As a result, senior judge advocates were positioned to implement legislative changes in an informed manner, while also actively supervising military justice practice to ensure high quality litigation.

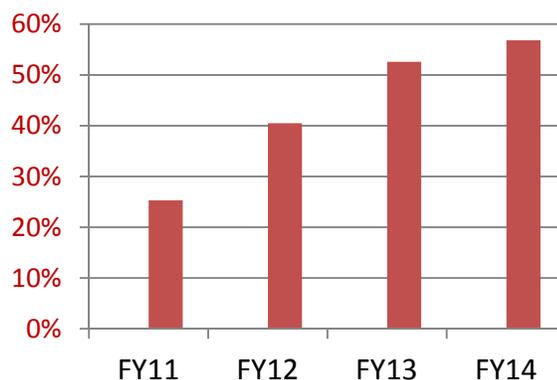
The establishment of the Victims' Legal Counsel Organization (VLCO) was a key development during the fiscal year. Created as an expansion of the Secretary of Defense's Special Victims Counsel initiative, later codified in the FY14 NDAA, the Marine Corps VLCO offers advice and representation to victims of crime and has proved

instrumental in the Marine Corps response to sexual assault and other crimes. The accomplishments of the Marine Corps VLCO have been widely recognized and the VLCO continues to lead the way in providing services to victims of crime.

Our successes during the fiscal year validated the proposition that the post-2012 Marine Corps legal community is better positioned to ensure that the right counsel is detailed to the right case, and that the right advice is being provided to commanders. In turn, the Marine Corps is better situated to establish the “gold standard” for legal support in the Department of Defense. Moving into 2015, the Marine Corps legal community is poised and committed to continue improving upon our recent gains in the level of practice and ensure a fair and efficient system of justice.

II. MILITARY JUSTICE BY THE NUMBERS – TRENDS & ANALYSIS

Although the total number of Marine Corps courts-martial decreased in FY14, the number of complex and contested cases rose again during this fiscal year.¹ In FY14, the Marine Corps litigated to completion 132 general courts-martial and 248 special courts-martial. While the total number of general courts-martial has remained stable from FY11 to FY14, the annual percentage of contested general courts-martial has increased from 25 percent to over 56 percent (see Figure A). 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



**Figure A. Percentage GCMs Contested
FY11 - FY14**

¹ For the purposes of this report, a FY14 “case” is an adjudicated general or special court-martial where the findings, in cases with an acquittal, or the original sentencing date, in cases with a conviction, occurred within FY14.

magnified the need for experienced litigators.

The growth in sexual assault prosecutions, often among the most complex cases we try, provides a clear illustration of the trend toward more complex cases. Between FY12 and FY14, the number of contested sexual assault prosecutions increased by over 200 percent (see Figure B).

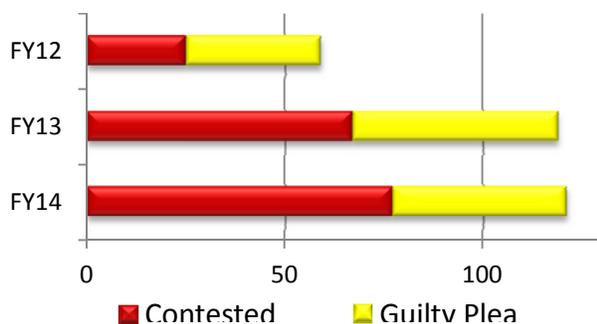


Figure B. Contested Sexual Assault Prosecutions FY12 - FY14

The overall reduction in courts-martial generally is, of course, tied to the continuing decline in special courts-martial. Despite the decrease in number, over 40 percent of special courts-martial were contested in FY14.

Given that even special courts-martial can have strategic implications, our contested special courts-martial practice further increases the need for experienced military justice supervisors. Additionally, the number of administrative discharge boards, which are essentially courts of equity and contested to some degree, remained at relatively high levels. Our administrative practice reveals that disposition of offenses through means other than special or general courts-martial requires casework by military justice personnel, client representation by defense personnel, and military justice expertise and advice by staff judge advocates.

III. POST-TRIAL REVIEW AND APPELLATE DECISIONS

During FY14, the mandatory Corps-wide use of the Case Management System (CMS) and the diligence of our judge advocates and legal services specialists ensured that the Marine Corps complied with post-trial processing goals. The Marine Corps maintained its exceptional processing record, having no convictions reversed as a result of a denial of the right to speedy post-trial review or

otherwise remitted due to loss of records of trial or other administrative deficiencies. However, as discussed below, one conviction was reversed as a result of apparent unlawful command influence (UCI).

A. Processing Time Goals

In FY14, the Marine Corps had over 800 general, special, and summary courts-martial that warranted some form of post-trial review. For those cases warranting appellate review, the Marine Corps averaged 97 days from the date of trial to convening authority's action (CAA) and 18 days from CAA to docketing of the case with the Navy-Marine Corps Court of Criminal Appeals (see Figure C). It is apparent from a review of our last five years that the increased complexity of courts-martial has resulted in a lengthier post-trial review process by staff judge advocates (SJAs) under Article 60(d) of the UCMJ.

One area of significant improvement in post-trial processing times during FY14 occurred in court-reporter transcription. In May 2014, the Marine Corps updated all of its equipment, hardware, and software to more effectively produce accurate verbatim or summarized transcripts, and set forth minimum equipment requirements for each court report section. Additionally, the Marine Corps improved training to focus on initial, real-time captured, record of trial accuracy in order to reduce the transcription time required to produce a verbatim record. As our court

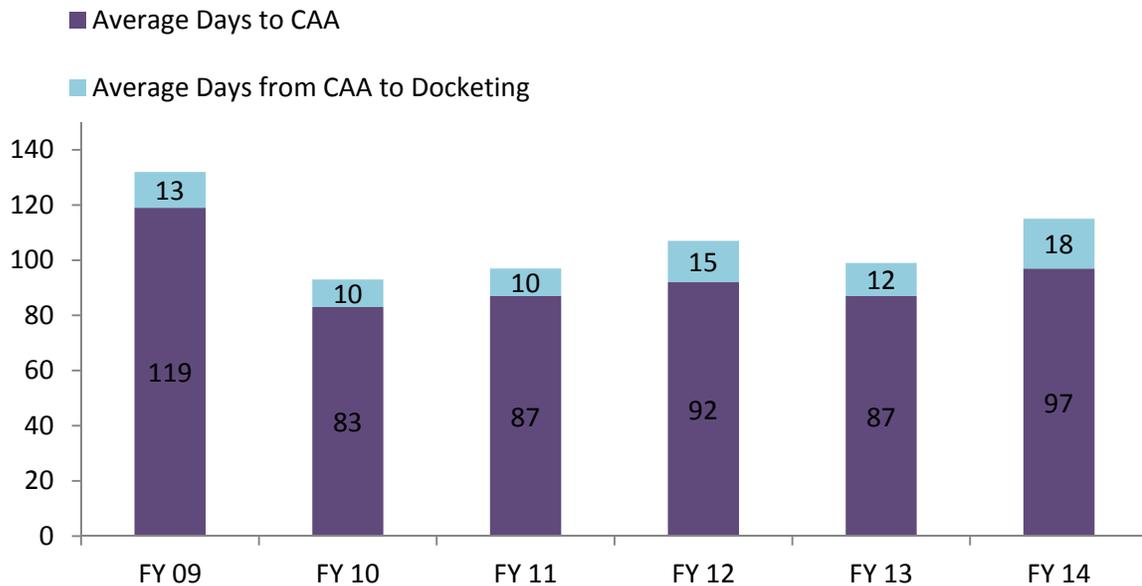


Figure C. Post-Trial Processing Times FY09 - FY14

reporters continue to train to the new standards with the new equipment, Marine Corps court reporter processing times should continue to improve.

B. Reversal of Convictions for Denial of Speedy Post-Trial Review, UCI, or other Administrative Deficiencies

In FY14, the Marine Corps had no cases in which a provision of the Uniform Code of Military Justice (UCMJ) was held unconstitutional, and no convictions were reversed for violation of the right to speedy post-trial review or for administrative deficiencies. The Marine Corps had one conviction reversed as a result of apparent UCI. The Navy-Marine Corps Court of Criminal Appeals (NMCCA) set aside the findings and sentence without prejudice in *United States v. Howell*, NMCCA 201200264 (N.M.C.C.A., May 22, 2014), a general court-martial, due to apparent UCI based on the "Heritage Brief" delivered by then-Commandant of the Marine Corps General James Amos. The NMCCA found that the military judge, who presided over the actual trial, failed to give corrective

instructions or otherwise take affirmative steps to remove the taint of UCI. The NMCCA set aside the findings and sentence without prejudice. As of the time of this report, the accused was awaiting re-trial.

IV. MEASURES IMPLEMENTED TO IMPROVE PRACTICE OF MILITARY LAW

A. Standing Up the VLCO

The Marine Corps VLCO was established on 1 November 2013 and became fully operational on 1 January 2014. The VLCO consists of fifteen active duty judge advocates, one senior paralegal, eight enlisted legal services specialists, and two auxiliary victims' legal counsel (VLC) available to assist when needed. The VLCO provides legal advice and counseling to eligible victims of all crimes under the UCMJ throughout the length of the investigation and court-martial process. The Marine Corps is unique among the Services in extending eligibility for VLC assistance beyond victims of sexual assault to include victims of all crimes under the UCMJ, including both adult and minor dependents.

The Marine Corps VLCO exceeded expectations in its first year in operation. In FY14, the VLCO assisted almost 700 crime victims, receiving overwhelmingly positive feedback from the fleet. The VLCO also helped commanders across the Marine Corps to understand victims' views with regard to disposition decisions, expedited transfers, and collateral misconduct.

B. Detailing Counsel

In FY14, the Marine Corps continued to strengthen the qualification standards for all judge advocates, including Article 32 investigating officers (now called "preliminary hearing officers"),

handling special victim cases.² The regional trial counsel (RTC) personally detail trial counsel and other trial support assets to all special victim cases. Before being detailed by the RTC to a special victim case, the trial counsel must be "special victim qualified." This qualification requires the trial counsel to have experience, training, prior qualification as a general court-martial trial counsel, and previous experience as an assistant trial counsel on a contested special victim case.

Similarly, defense counsel and victims' legal counsel are detailed after consideration of the counsel's caseload and experience, any applicable conflict-of-interest analysis, case complexity, collateral duties, and the defense counsel's training and education requirements, amongst other things. Additionally, as of 10 February 2014, all Article 32 preliminary hearing officers must be field grade judge advocates or have previously served as a trial or defense counsel. For special victim cases, the Article 32 preliminary hearing officer must be a field grade judge advocate or have previously served as a trial or defense counsel in a contested special victim case.

C. Training and Advice

The Marine Corps continues to provide counsel with formal training and trial preparation advice, in addition to the mentorship and on-the-job training offered by the RTC and other experienced judge advocates within the LSSS. Leading this training and advice effort are our Highly Qualified Experts (HQEs). During FY14, the Marine Corps employed four HQEs, regionally located, to assist in both prosecution and defense of all complex cases, including sexual assaults. The Marine Corps HQEs are seasoned civilian prosecutors

² A special victim case is any case in which a violation of Article 118, 119, 119a, 120, 120b, 125 (with child or forcible) 128 (domestic violence involving aggravated assault or child abuse), 134 (child pornography or assault with intent to commit a previously listed offense), or 80 (attempt to commit a previously listed offense) of the UCMJ is alleged.

with significant experience in complex criminal litigation, to include successful trial-level work in sexual assault cases. Their primary job is to train counsel to prosecute and defend sexual assault cases by providing perspective, sharing best practices, and assisting with case preparation and strategy. The HQEs are proactive in developing relationships with trial and defense counsel and work closely with each counsel on a variety of issues. Additionally, trial counsel are required to consult with their regional HQE within ten days of being detailed to any sexual assault case.

Due to the success of the program in FY14, and burgeoning military justice requirements, the Marine Corps plans to hire additional HQEs in FY15. The Marine Corps will also institute a requirement for SJAs to receive a Prosecutorial Merit Memo (PMM) before advising a Sexual Assault Initial Disposition Authority (SA-IDA) on alleged violations of Articles 120, 120b, 125 and attempts to commit those offenses under Article 80 of the UCMJ. The PMM must be written by special victim qualified trial counsel, it must discuss the relative strengths and weaknesses of the case, and it must provide a recommended disposition of the case. The use of PMMs is intended to ensure that the skills and knowledge of the RTC and HQE are early and fully employed in every qualifying case.

1. Trial Counsel Assistance Program

In FY14, the Trial Counsel Assistance Program (TCAP) remained the cornerstone of our prosecution capability. TCAP courses included two, week-long courses focused on the prosecution of sexual assault cases, which 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 experts, including senior judge advocates, district

attorneys, and expert witnesses who frequently testify in sexual assault cases provided the instruction. 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.

In addition to the TCAP courses, in FY14 trial counsel had over twenty courses available through NJS, 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 agents from NCIS in investigating and prosecuting special victim cases.

2. Defense Services Organization

The Marine Corps Defense Services Organization (DSO) oversees the Defense Counsel Assistance Program (DCAP) and has for years set the Marine Corps standard for improving litigation capabilities through collaboration and teamwork. 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 NJS and the Army and Air Force JAG schools 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. More specific training is provided internally through consultation with the Marine Corps criminal defense HQEs.

3. VLCO

All counsel and legal services specialists assigned to the VLCO attend specialized initial training at the Air Force and Army Judge Advocate General's Schools or the Naval Justice School (NJS). These courses include instruction in substantive military law, victim behavior, victim services, counseling techniques, and participation in practical scenario-driven exercises. The first annual Marine Corps-wide VLCO training event took place in August 2014. This event featured several periods of instruction by prominent victims' legal rights experts and provided an opportunity to share lessons learned and develop best practices. VLC also attend additional specialized training offered by organizations outside the military. Some of the courses attended by VLC in FY14 include Preventing, Assessing, and Treating Child, Adolescent, and Adult Trauma offered by the Institute on Violence, Abuse and Trauma; Equal Justice for Children sponsored by the National District Attorneys Association; and the 2014 Crime Victim Law Conference sponsored by the National Crime Victim Law Institute.

4. Training Standards and Resources

Separate from the nationally recognized training provided to Marine Corps trial, defense, and victims' legal counsel detailed above, the Marine Corps implemented more demanding training standards for the training provided by regional and senior trial and defense counsel. Under the new standards, each regional supervisory counsel is required to provide two days of training for all counsel within the region every quarter, and each senior supervisory trial or defense counsel must provide two one-day training sessions each quarter. These sessions focus on how to leverage the non-legal special victim capabilities at each region and installation such as family advocacy specialists, health care providers, child protective

services, law enforcement officers, sexual assault response coordinators, victim advocates, and local forensic testing facilities. As shown in Figure D below, 492 trial counsel, defense counsel, and VLC were trained for special victim capabilities, and \$698,153.17 in Marine Corps funding was committed to train those counsel in FY14.

In addition to the above training and mentorship available to all counsel, trial or defense counsel assigned to complex cases can receive other training. For example, the Department of the Navy has a National Security Litigation Division (OJAG Code 30), which provides individualized training and advice to all trial counsel prosecuting national security cases.

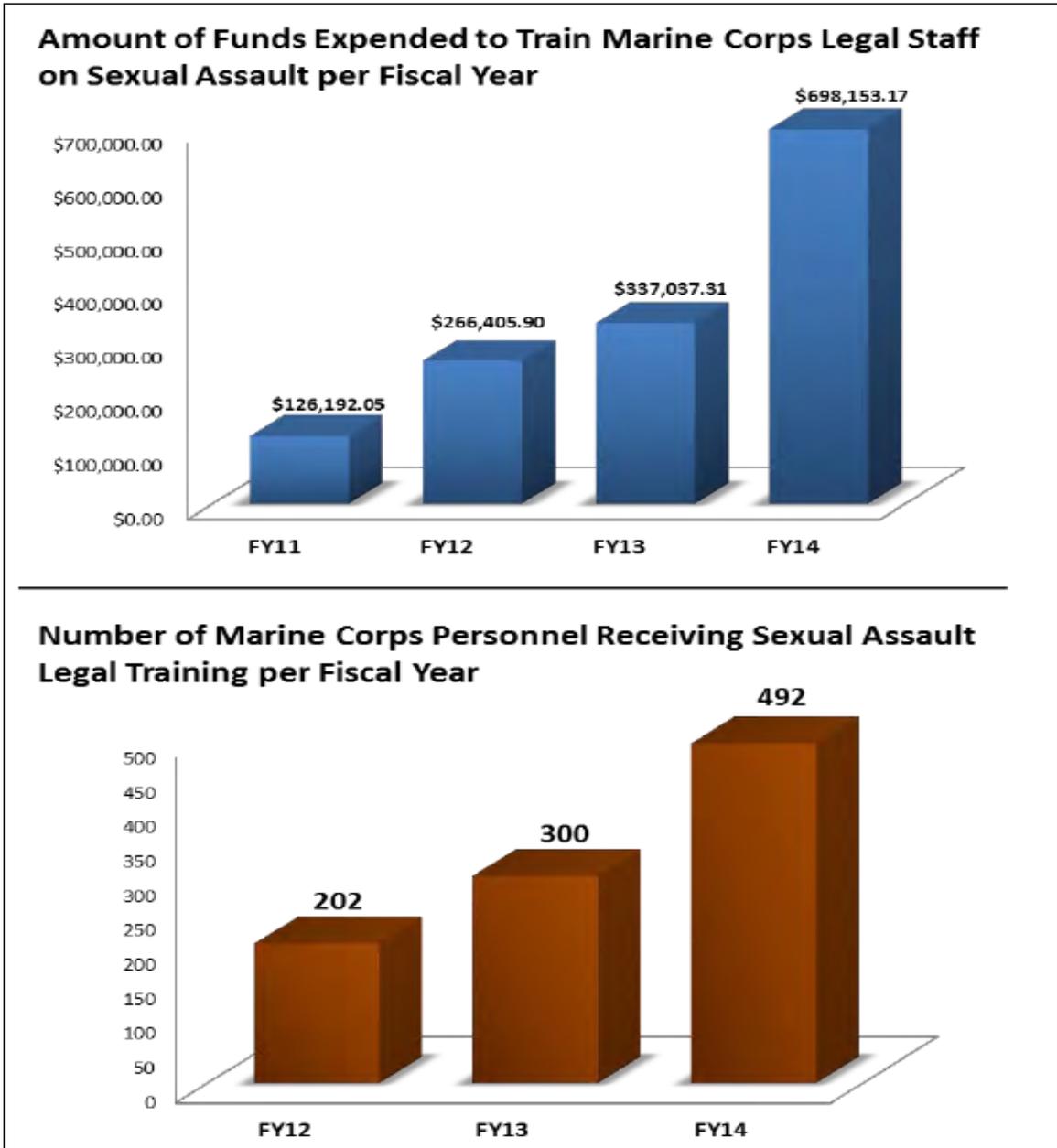


Figure D. Sexual Assault Training Expenditures and Attendance for Legal Personnel

V. VIEWS ON THE SUFFICIENCY OF RESOURCES

The growth in the complexity and contested nature of Marine Corps courts-martial, largely as a result of new legislative and regulatory changes, has led to a demand for more support from the Marine legal community. At the same time, operational requirements

have continued to grow, resulting in an increased demand for judge advocates. Since the last Military Justice Report, the Marine Corps has taken some measures to alleviate shortages in judge advocate majors and has addressed some items of concern. Judge advocate eligibility for the voluntary separation pay program (VSP) has been removed. Additionally, the Marine Corps, recognizing the need to retain our best judge advocates, continued to fund the Law School Education Debt Subsidy (LSEDS) program, but for the first time utilized a competitive board process to award this special pay. The Marine Corps has also provided funding and support to establish the VLCO, to improve legal community training and to hire a highly qualified expert for TCAP.

The systemic changes to military justice, the increased operational demands to support Special Purpose Marine Air Ground Task Forces, and other statutory or policy priorities will continue to demand an increased level of support from the Marine legal community, particularly from the rank of major. These field grade judge advocates, with the experience necessary to ensure the best legal services and advice are provided to commanders, Marines, and Sailors, are at a premium. Continuing to fund LSEDS is critical to meeting the growing demands for field grade judge advocates. Moreover, in order to address the long-term need for experienced military justice practitioners, judge advocate structure should match the judge advocate community's primary statutory and historically critical practice areas, as well as practice areas mandated by recent legislation.

VI. CONCLUSION

In FY14, the Marine Corps legal community continued to improve upon its already substantial gains in the quality of our military justice practice in the face of tremendous changes to the military justice system. Moving forward we will continue to train to and meet

the high standards we have set to ensure accountability and the continued outstanding legal support provided to commanders, Marines, Sailors, and their families.

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

Report Period: FY 2014

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	137	132	101	100	36	32	+5%
BCD SPECIAL	175	248	164	199	11	49	-9%
NON-BCD SPECIAL	0	0	0	0	0	0	0
SUMMARY	44	504	43	501	1	3	-2%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT							-3%

PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES	92
NUMBER OF BAD-CONDUCT DISCHARGES	74
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	196

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	150
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	185
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	39

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

TOTAL ON HAND BEGINNING OF PERIOD	187
GENERAL COURTS-MARTIAL	102
BCD SPECIAL COURTS-MARTIAL	85
REFERRED FOR REVIEW	373
GENERAL COURTS-MARTIAL	178
BCD SPECIAL COURTS-MARTIAL	195
TOTAL CASES REVIEWED	402
GENERAL COURTS-MARTIAL	145
BCD SPECIAL COURTS-MARTIAL	257
TOTAL PENDING AT CLOSE OF PERIOD	158
GENERAL COURTS-MARTIAL	99
BCD SPECIAL COURTS-MARTIAL	59
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-7%

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

NUMBER	373
PERCENTAGE	100%

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (84)	+23%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+4.5%
PERCENTAGE OF TOTAL PETITIONS GRANTED (57)	+68%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+20.5%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA	+14%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+5%

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

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ		
TOTAL PENDING BEGINNING OF PERIOD		30
RECEIVED		39
DISPOSED OF		37
GRANTED	0	
DENIED	37	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		32
PART 8 – ORGANIZATION OF COURTS		
TRIALS BY MILITARY JUDGE ALONE		225
GENERAL COURTS-MARTIAL		77
SPECIAL COURTS-MARTIAL		148
TRIALS BY MILITARY JUDGE WITH MEMBERS		81
GENERAL COURTS-MARTIAL		60
SPECIAL COURTS-MARTIAL		21
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ		
NUMBER OF COMPLAINTS		55
PART 10 – STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH		511,847
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		13,307
RATE PER 1,000		26
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+6%

SECTION 5

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

REPORT OF
THE JUDGE ADVOCATE GENERAL
OF THE UNITED STATES AIR FORCE

OCTOBER 1, 2013 TO SEPTEMBER 30, 2014

THE AIR FORCE COURT OF CRIMINAL APPEALS

The Air Force Court of Criminal Appeals reviewed and issued opinions in 296 cases in fiscal year 2014. At the end of Fiscal Year 2013, nine active duty judges were assigned to the court. At the end of Fiscal Year 2014, the court had just five active duty judges assigned to it, plus one Reservist on extended active duty orders, following the retirement of four active duty judges. The court also saw a change in leadership with the investiture of a new Chief Judge. Despite the decrease in manning, the court was able to issue decisions in a timely fashion. At the end of Fiscal Year 2013, the court's docket had 92 cases ready for the court's review. Twenty-three of these cases had been awaiting a decision by the court for more than 180 days, 8 of which had violated the 18-month standard for docketing to opinion set forth in *United States v. Moreno*. By the end of Fiscal Year 2014, the court's ready-docket had been reduced to just 70 cases, at which time only 3 cases were pending the court's decision for more than 180 days, with 0 cases violating the *Moreno* standard.

The court issued a large number of significant decisions during this fiscal year, including an *en banc* opinion upon reconsideration in the case of *United States v. Witt*, the first death penalty case in over 15 years. The significance of the Air Force Court's decisions is reflected in the fact that of the 32 decisions issued by CAAF in the 2013-2014 term, 15 of these were Air Force cases. The court issued 19 published opinions during this fiscal year and issued decisions in six government interlocutory appeals. The court held oral argument for 18 cases, to include hearing oral argument at Georgetown University Law Center and The Air Force Judge Advocate General's School pursuant to its "Project Outreach" program.

The court also conducted a top-to-bottom review of its rules of practice and procedure. A team of court personnel and counsel from both appellate divisions re-wrote the court's rules with an eye toward reducing unnecessary guidance while addressing several areas that had not been thoroughly answered in previous editions.

The revised rules, published in August, are 20 percent shorter while addressing more than 10 areas that required new or additional guidance.

In addition to reviewing Air Force courts-martial, 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.

TRIAL JUDICIARY

The Air Force Trial Judiciary Directorate (JAT) is responsible for trying and docketing all Air Force general and special courts-martial and presiding over an array of federal hearings. The Directorate is staffed by 21 active-duty trial judges, four reserve trial judges, one noncommissioned officer, and one civilian employee. The office of the Chief Trial Judge is co-located with the Central Docketing Office at Joint Base Andrews, Maryland. Air Force trial judges serve within five regions and are dispersed at twelve geographically advantageous locations around the globe.

In Fiscal Year 2014, Air Force judges presided over more than 500 general and special courts-martial. Judges also served as investigating officers in over 100 Article 32 investigations involving sexual assault allegations. Additionally, judges served as legal advisors for officer discharge boards, and in post-trial DuBay hearings, contingency confinement hearings, and competency hearings.

The Chief Regional Military Judge in Europe continued to cover courts-martial at deployed locations within the United States Central Command area of responsibility. This year five cases were tried at Bagram Air Base. Currently, three Air Force trial judges are appointed for the military commissions in Guantanamo Bay, Cuba. The Chief Trial Judge is currently presiding over the USS Cole bombing case. In Fiscal Year 2014, Air Force trial judges heard two commissions cases.

Air Force trial judges taught military justice in classrooms and courtrooms around the world. The Deputy Chief Trial Judge spent a week in Palestine training Palestinian Security Forces and their judiciary on U.S. military courts-martial procedures. This training included a full mock trial that highlighted procedural and evidentiary issues later used by Department of Justice and U.S.

terrorism experts to instruct the class on the fundamentals of criminal procedure.

The Chief Trial Judge and Deputy Chief Trial Judge also 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 AFB, 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 also partnered with the Air Force JAG School to create video-clip training on several areas of trial practice, to include sentencing, closing, and discovery.

Members of the Trial Judiciary continued to share their specialized knowledge and expertise in a wide variety of legal environments. Judges assigned to the Trial Judiciary conducted Environmental Impact Statement hearings involved in the stationing of aircraft in Florida. The Trial Judiciary also worked closely with the Special Victims Counsel community and trial participants to adapt courtroom procedures to accommodate the new program.

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, eight active duty judge advocates, eight reserve judge advocates, and one civilian attorney vigorously represented the government in Article 66 and Article 67 appeals of 215 Air Force courts-martial convictions. The Division also sought and obtained certification from TJAG in nine cases for United States Court of Appeals for the Armed Forces (USCAAF) review, and filed government appeals in eight 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*, mentioned above.

Appellate government counsel zealously represented the government in 215 written briefs and 32 oral arguments before USCAAF and AFCCA. Appellate government counsel contributed to Project Outreach, sponsored by USCAAF and AFCCA, by conducting oral arguments in cases before audiences at various law schools and military installations across the United States. These arguments helped educate attendees on the fairness and professionalism of the military justice system and provided excellent recruiting opportunities.

While always committed to protecting government interests and preserving command prerogatives, appellate government counsel advocacy resulted in notable appellate rulings during the year. After AFCCA set aside the service's first death penalty sentence in over 20 years in 2013, appellate government counsel filed a persuasive motion for reconsideration, presented a second oral argument, and convinced AFCCA to reconsider and reverse the original decision setting aside the death penalty in *United States v. Witt*, __ M.J. __ (A.F. Ct. Crim. App. 30 June 2014). Amn Witt is now the only Airman with an approved death sentence from an appellate court in decades, and his case will now receive mandatory review at CAAF. Another notable appellate decision for the government is the murder case of *United States v. Cron*, __ M.J. __ (A.F. Ct. Crim. App. 27 June 2014), which represents the first case in service history where an accused received confinement for life without parole that was adjudged at trial and approved by the appellate courts. CAAF recently denied discretionary review of the case, so that appeal and sentence is final.

Counsel provided intense advocacy training and field support. Division counsel educated judge advocates and paralegals at Air Force training events such as Trial Advocacy Courses, the Military Justice Administration Course, The Judge Advocate General's Continuing Legal Education Course, and the Trial and Defense Advocacy Course, as well as other litigation and criminal investigation courses. The Division created and posted comprehensive trial and appellate materials on the JAJG Sharepoint online resource. Appellate counsel also published an electronic newsletter containing appellate updates along with timely and relevant articles for military justice practitioners at all levels.

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

The Division receives crucial appellate counsel support from eight 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. In addition to preparing written briefs, one reserve counsel presented oral arguments during the fiscal year.

A summary of Air Force Appellate Government practice follows:

AFCCA	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>
Briefs Filed	123	144	233	188	175
Cases Argued	9	14	14	14	18
USCAAF	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>
Briefs Filed	28	29	36	30	40
Cases Argued	12	15	9	9	14

SUPREME COURT	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>
Petition/Waiver Filed	3	1	1	1	0
Briefs Filed	0	0	0	0	0

SENIOR TRIAL COUNSEL

STCs are detailed to prosecute cases by the Division headquarters at Joint Base Andrews, MD and 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 a higher percentage of the Air Force sexual-assault cases. They are also available for special courts-martial, discharge boards and other proceedings, as resources allow.

Personnel authorizations for the fiscal year included 19 Senior Trial Counsel (STC) at eight locations worldwide: six counsel at Joint Base Andrews, MD; two counsel each at Ramstein AB, GE; Joint Base Lewis-McChord, WA; Joint Base San Antonio-Randolph, TX; Nellis AFB, NV; Peterson AFB, CO; and Maxwell AFB, AL; and a single counsel at Kadena AB, Japan.

In 2014, the STC program continued to leverage the experience and skill of its seven 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; an STC liaison with the Defense Computer Forensics Laboratory, who is the Air Force's legal expert on issues related to digital evidence; and a deep bench of experienced and motivated appellate attorneys who provide tremendous 24/7 reach-back capability for litigation issues that arise in the field.

In 2014, STCs spent in excess of 3,000 days, approximately 180 days per counsel, 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 the Advanced Sexual Assault Litigation Course (ASALC) along with members of the Division's leadership who attended as faculty. The STCs also once again attended the STC-SVU Training Course, which replaces the

annual STC Conference typically held at Joint Base Andrews, MD. At this revamped Training Course, the STCs received training specially tailored for 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 in our appellate office, which broadened their trial and appellate perspective and enhanced their litigation skills.

APPELLATE DEFENSE DIVISION

The Appellate Defense Division (JAJA) ended Fiscal Year 2014 with 11 active duty judge advocates, nine reserve judge advocates, one civilian attorney and three paralegals. The Division moved its docket despite rotating its three most senior military attorneys during the summer PCS cycle and deploying one attorney for six months. As in past years, reserve component Judge Advocates continued to provide significant support.

Promoting timely appellate review remained a priority in CY 2014 for JAJA. The Division considerably reduced the number of cases pending initial briefing to the AFCCA. On 1 June 2014, appellate counsel had 170 cases pending initial briefing to AFCCA—the highest total since 1 Dec 2011. By the end of the fiscal year, that number had been reduced to 143—the lowest number since 1 Oct 2013.

JAJA advocacy contributed to several notable rulings from the appellate courts which helped clarify the rights of accused and impacted the practice of military justice at the trial level. In *United States v. Knapp*, 73 M.J. 470 (C.A.A.F. 2014), CAAF held that "human lie detector" testimony was inadmissible and prejudicial, setting aside the findings and sentence. In *United States v. Wicks*, 73 M.J. 93 (C.A.A.F. 2014), CAAF overruled AFCCA and reinstated a trial judge's exclusion of evidence illegally seized from the appellant's smart phone, ultimately resulting in the dismissal of the case. In *United States v. McPherson*, 73 M.J. 393 (C.A.A.F. 2014), CAAF affirmed AFCCA's holding that "there is no geographic limitation" to Article 12 UCMJ's prohibition against the co-mingling of US servicemembers and foreign nationals in confinement. In *United States v. Janssen*, 73 M.J. 221 (C.A.A.F. 2014), CAAF held that SECDEF's appointment of a civilian judge to AFCCA violated the Appointments Clause of the US Constitution, resulting in the remand of over 30 cases back to AFCCA for review by a properly constituted panel. In *United States v. Seton*, (unpublished opinion), AFCCA upheld a trial judge's decision to dismiss a sexual assault case with prejudice due to the Air Force Office of Investigation's failure to

preserve potentially exculpatory video evidence. In *United States v. Soto*, (unpublished *en banc* opinion), AFCCA overturned the rape conviction of a military training instructor, finding it to be factually insufficient. As a result, his sentence was set aside and he was released from confinement.

The Appellate Defense Division continued to support trial defense counsel in the field through consultation, including during time-critical situations. In addition, Appellate defense counsel kept counsel in the field updated on new developments in military criminal law via a quarterly newsletter and appellate updates throughout the year. These appellate updates included briefing the Defense Orientation Courses held at TJAGS at Maxwell AFB.

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

AFCCA

	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY 13</u>	<u>FY 14</u>
Briefs Filed	285	290	299	295	221	205
Cases Argued	16	4	9	12	10	19

USCAAF

	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY 13</u>	<u>FY 14</u>
Supplements to Petitions	336	204	160	220	257	222
Grant Briefs	12	18	11	12	5	17
Cases Argued	13	17	17	9	10	15

SUPREME COURT

	<u>FY09</u>	<u>FY10</u>	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY 14</u>
Petitions	3	2	1	1	1	1
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 by conducting oral arguments before external audiences with ties to the military and legal professions. The Project serves a dual-purpose as a recruiting tool while highlighting the fairness and professionalism of the military justice system. During the year, Outreach arguments were presented at the Air Force Judge Advocate Generals' School and the Georgetown University Law Center by conducting oral arguments before brand new JAGs and law students respectively.

TRIAL DEFENSE DIVISION

The Trial Defense Division (JAJD) is responsible for providing all defense services within 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 2014, the Division was staffed with 85 ADCs. The ADCs teamed with 74 base-level DPs stationed at 69 bases worldwide. The Division also had 19 SDCs and 3 CSDCs. Each CSDC supervised 6-7 SDCs, and a DPM was assigned to each of the 3 CSDCs. The SDCs were stationed at Joint Base Andrews, MD; Joint Base Langley-Eustis, VA; Joint Base Charleston, SC; Hurlburt Field, FL; Maxwell AFB, AL; Barksdale AFB, LA; Joint Base San Antonio-Randolph, TX; Sheppard AFB, TX; Tinker AFB, OK; Peterson AFB, CO; Offutt AFB, NE; Joint Base Lewis-McChord, WA; Travis AFB, CA; Nellis AFB, NV; Davis-Monthan AFB, AZ; Yokota AB, JP; Kadena AB, JP; RAF Lakenheath, UK; and Ramstein AB, GE. Each SDC was co-located with the ADC office at their respective locations. Together, these 187 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, in turn, mentored the SDCs in their charge. Newly appointed ADCs and DPs received formal training at the combined Defense Orientation Course held at AFJAGS. SDCs attended a Division-run Leadership Course at Joint Base Andrews, MD. Defense personnel also attended Trial Advocacy Courses conducted at The Air Force Judge Advocate General's School (AFJAGS). Furthermore, the Division continues to send ADCs and SDCs to the

Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course at AFJAGS as appropriate, as well as various civilian sponsored training courses.

Fiscal year 2014 saw JAJD's continued engagement with the various congressionally mandated panels charged with revisions to the UCMJ. No fewer than 5 JAJD attorneys met to educate these panels on the role of Air Force Defense Counsel and explain, from a defense perspective, the impact of various proposed changes on the Uniform Code of Military Justice.

MILITARY JUSTICE DIVISION

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

During the past fiscal year, JAJM provided 138 formal opinions concerning AFBCMR applications; received 57 inquires in specific cases requiring formal written replies to senior officials, including the President and Members of Congress; and reviewed 34 records of trial for review under Article 69a, UCMJ, and three records under Article 69b, UCMJ.

The Division twice presented the annual Military Justice Administration Workshop at The Air Force Judge Advocate General's School (AFJAGS), a "back to basics" two-week workshop 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 at Maxwell AFB, Alabama, Group Commanders' Course, the Sexual Assault Response Coordinator Course, and Special Victims' Counsel Course. Members of the Special Victims' Counsel Program and JAJM provided presentations at the American Bar Association Mid-Year and Annual Conferences and the National Sexual Assault Conference, and provided the opening address at the 2014 National Crime Victims' Law Conference.

Division personnel also taught the JAG Corps, through numerous webcasts, on new law and policy regarding the prosecution of military justice cases, particularly sexual assault cases. Highlights included instruction on the overhaul of the Article 32 process—now a Preliminary Hearing vice Investigation—the rights of victims during the court-martial process, sexual assault reporting requirements, interaction and requests for information with and for Special Victims' Counsel, etc.

In Sep 14, the Air Force implemented a Victim Witness Assistance Program (VWAP) Distance Education Course. It is an-depth online course, presented over 5 weeks focusing on teaching VWAP coordinators and victim liaisons how to discuss the military justice process with victims, enhance their understanding of the neurobiology of trauma and counterintuitive behavior, understand their role in Special Victim Capability, and help ensure every VWAP coordinator and victim liaison is familiar with Air Force and civilian resources available to victims of crime. The course is run by AFJAGS and the student population consists of civilian and military paralegals and attorneys. The course is recommended for VWAP coordinators, victim liaisons, or those who will be performing supervisory duties over VWAP coordinators and victim liaisons.

JAJM supported the war effort in Fiscal Year 2014 by deploying our Law Office Superintendent to Afghanistan. Additionally, the Division hosted two summer interns, law students who had completed a year of law school and expressed an interest in service as judge advocates.

JAJM 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. Division personnel were once again instrumental in drafting proposed changes to the Military Rules of Evidence and Rules for Courts-Martial for pending executive orders.

Division personnel served as the Air Force's action officers for all requests for information, documents, witnesses, and support to the Response Systems to Adult Sexual Assault Crimes Panel (RSP), the Judicial Proceedings Panel (JPP), and the Military Justice Review Group (MJRG). The RSP was established by the Secretary of Defense, as required by Section 576(a)(1) of the National Defense Authorization Act for Fiscal Year 2013, and conducted an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related

offenses. The RSP completed its report in June 2014 which contained 132 recommendations in the area of victim services, victim rights, the role of the commander in the military justice process; and the investigation, prosecution, and adjudication of sexual assault. The JPP, established by the Secretary of Defense as required by Section 576(a) of the NDAA for Fiscal Year 2013, continues 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 section 541 of the National Defense Authorization Act for Fiscal Year 2012; and the MJRG was established when 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 MJRG. The MJRG's review is focused on the structure and operation of the UCMJ and the MCM.

CLEMENCY, CORRECTIONS AND OFFICER REVIEW DIVISION

At the end of fiscal year 2014, 344 Air Force personnel were in confinement. Of those, 87 inmates were in long-term confinement at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and 51 were serving their sentence in the Federal Bureau of Prisons system. The number of Air Force members and former members on parole or Mandatory Supervised Release at the end of fiscal year 2014 was 58.

During the reporting period, the division reviewed nine Article 71, UCMJ, officer dismissal cases. As was recommended, the Secretary approved the dismissals in all cases. The division also reviewed eight enlisted cases for Secretarial clemency under Article 74, UCMJ. None of them contained circumstances so compelling that warranted forwarding to the Secretary with a recommendation of clemency.

THE JUDGE ADVOCATE GENERAL'S SCHOOL

The Air Force Judge Advocate General's School is the educational arm of the JAG Corps. Located at Maxwell AFB, Alabama, the JAG School provided education and training in all aspects of military legal practice to attorneys and paralegals from all military services, other federal agencies, and 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 Fiscal Year 2014, JAG School

faculty members instructed more than 16,000 students at these military institutions.

Additionally, the JAG School published articles concerning military justice and other criminal justice issues in *The Reporter*, *The Air Force Law Review*, and *The Military Commander and the Law*. JAG School webcasts allow subject-matter experts to teach current military justice topics to personnel who work in all base legal offices, area defense counsel offices, and special victims' counsel offices. In FY14, there were several live webcasts on military justice topics including significant changes following the passage of the 2014 National Defense Authorization Act. These webcasts were seen live by over 900 JAGs and are 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.

Over 2,600 students attended in-residence and distance education courses in Fiscal Year 2014. With nearly 60 AFJAGS course offerings, the following 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's Course
- Law Office Manager Course
- Military Justice Administration Course
- Paralegal Apprentice Course
- Paralegal Craftsman 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, the JAG School continued its administration of 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 FY2014, TRIALS programs were conducted at Las Angeles AFB, CA; Maxwell AFB, AL; Keesler AFB, MS, Patrick AFB, FL; Ramstein AB, Germany; Schriever AFB, CO; Lackland AFB, TX; Nellis AFB, NV; McChord AFB, WA; Andrews AFB, MD; Wright Patterson AFB, OH; and Osan AB, South Korea.

Finally, the JAG School will host the inaugural Senior Officer Legal Orientation Course held in conjunction with the Air Force Commander's Course. This new course, as approved by the Chief of Staff, will provide dedicated legal training, which will prepare Group and Wing Commanders to exercise their authorities assigned under the Uniform Code of Military Justice. This two-day course will be offered five times a year and focus on military justice, civil and international law topics.

LEGAL INFORMATION SERVICES

The Legal Information Services Directorate (AFLOA/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.

As noted in last year's review, AFJAGC has identified requirements to fix deficiencies with the Automated Military Justice Analysis and Management System (AMJAMS) and to enhance commanders' abilities to maintain good order and discipline. In the review process of Program Objective Memorandum documentation prepared by AFLOA/JAS in collaboration with AFLOA/JAJM and AF/JAZ, the SAF/US(M) office identified a similar case management system need of the Air Force Review Board Agency (AFRBA). Comparing functional requirements for a case management system, AFJAGC and AFRBA found significant overlap in requirements and SAF/US(M) concurred that it made sense for the two organizations to partner in the acquisition efforts of a common case management system platform configurable to each organization's specific case management processes. Leveraging consulting contractors utilized by AFRBA, AFLOA/JAS and AFJAGC, military justice subject matter experts worked with SAF/US(M) to map disciplinary case processes and workflows and validate requirements as part of the Air Force's Service Development and Delivery Process (SDDP), a required step for funding certification and acquisition of significant IT projects.

On a related note, AFLOA/JAS is also pursuing the development of a Special Victims Counsel case management solution. As discussed in last year's review, with the stand-up of the Air Force's SVC program in January 2013 there was an immediate need to track SVC cases. Because there was insufficient time to develop a stand-alone program

or incorporate a new requirement within AMJAMS, AFLOA/JAS established a SharePoint site for the SVC office to track representation and assistance provided. The site serves the SVC program's basic needs but a more robust IT solution is necessary as the SVC program continues to expand in scope. With development funding received in April 2014, AFLOA/JAS will utilize the SVC case management requirement in the SDDP's course of action analysis step to evaluate an IT solution for the SVC case management need as well as the broader disciplinary case management requirements associated with fixing the deficiencies in AMJAMS.

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. What began as a pilot program in January 2013, the Special Victims' Counsel (SVC) Program was codified as an enduring form of legal assistance to eligible sexual assault victims by 10 U.S.C. §1044(e). The statutorily authorized program expanded in eligibility (to child victims of sexual assault defined under Article 120b and Reservists in any status) and in types of offenses for which victims could receive representation (Article 120c offenses).

As noted above, on 24 June 2014, the AF SVC Program began representing child victims of sexual assault. The SVC Program drafted updated Rules of Practice and Procedure to incorporate this expanded client eligibility. Additionally, in partnership with the Judge Advocate General's School, the SVC Program developed and then provided specialized training to 117 judge advocates, paralegals and civilians from the Air Force, Army, Navy, Marines and Coast Guard, to assist SVCs in representing children. In the first six months of this expanded program, Air Force SVCs have represented 25 minor children clients. SVCs have represented child clients in law enforcement and government and defense attorney interviews, assisted in a humanitarian move request, and protected privacy interests and military crime victim rights in pretrial, trial and post-trial proceedings.

In July 2014, the Division included a headquarters staff with a Colonel (O-6) division chief, a General Schedule-14 associate chief, and 24 Special Victims' Counsel and 10 Special Victims' Paralegals who served in regional and satellite offices at 22 locations worldwide. As of September 2014, the Division grew to included 28 Special Victims' Counsel and 10 Special Victims' Paralegals at 19

locations worldwide. The number of SVCs will continue to expand throughout FY15. In January 2015, the total number of SVCs will reach 33, and by the summer of 2015 will expand to 40. As the number of SVCs grew, the need for mid-level Senior Special Victim Counsel (SSVC) to handle complex cases, assist in Program administration and provide mid-level supervision became clear. Consequently, in January 2015, three Major (O-4) SSVCs will join the Program (to be included in the 33 total), located at Joint Base San Antonio-Randolph, TX; Joint Base Andrews, MD; and Nellis AFB, NV.

As of August 2014, the JAG Corps more formalized its screening process for nominating the "best qualified" judge advocates for SVCs/SSVCs. This screening process was employed in the Fall of 2014 to nominate the SVCs/SSVCs projected for January 2015 and July 2015 assignments. The process began with a call from the Director of Professional Development (AF/JAX) for nominations to every MAJCOM Staff Judge Advocate (SJA) and Director to solicit input for "best qualified" personnel. Criteria included not only trial experience and work ethic but a maturity demonstrated by successful, positive interaction with victims. Nominations were then vetted through the Chief, SVC Division who made recommendations to assist The Judge Advocate General in his selections.

The SVC Program received recognition from both the civilian and military legal communities in 2014. The Department of Justice awarded the Air Force Special Victims' Counsel Program the Federal Service Award for providing victims with free legal representation and guiding them through the military justice process. In a press release announcing the award, Attorney General Eric Holder stated, "[t]hrough their courage and critical contributions to assist and empower victims, these individuals and organizations have given hope to countless Americans victimized by crime—even under the most difficult circumstances." Additionally, the Special Victims' Counsel Program received the only "Superior Team" award during the Air Force Legal Operations Agency Unit Effectiveness Inspection (UEI). The former Special Victims' Counsel Division Chief was also the first Air Force recipient in the 15-year history of the national Burton Award for Public Service, which is presented to individuals in the legal profession demonstrating the highest degree of professionalism and integrity employed in the executive branch of government.

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 and paved the way for the development of similar Federal and state crime victims' policy. SVC Program Chiefs have testified at the Congressionally-mandated Response Systems Panel, the Military Justice

Review Group, and the Judicial Proceedings Panel. They have shared their expertise through presentations in professional organization forums. Members of the Special Victims' Counsel Program and Military Justice Division (AFLOA/JAJM) provided presentations at the American Bar Association Mid-Year and Annual Conferences and the National Sexual Assault Conference. Additionally, they provided the opening address at the 2014 National Crime Victims' Law Conference.

At the end of FY14, 1123 victims of sexual assault received SVC representation. SVCs have attended 171 courts-martial, 208 Article 32 hearings, and 1660 interviews. SVCs have asserted victims' privacy rights, increased their voice in the military justice process by informing convening authorities of their preferences for prosecution or non-prosecution and submitting post-trial victim impact statements, addressed safety concerns, advocated for expedited transfers or alternate duty locations/working hours, assisted with collateral misconduct, addressed workplace/unit concerns and facilitated recovery of critically needed financial support during times of crisis.

The feedback from victims represented by an SVC has been overwhelmingly positive. An impressive 91% of victims surveyed indicated they were "extremely satisfied" with their SVC's representation and 8% were "satisfied," resulting in an overall 99% satisfaction rate. Additionally, 99% of those surveyed would recommend other victims request an SVC. Finally, 39% of restricted report victims represented by an SVC have converted their restricted report to an unrestricted report.

PERSONNEL

As of 30 September 2014, the Air Force Judge Advocate General's Corps had 1,246 judge advocates on active duty. Company grade officers (lieutenants and captains) made up approximately 50% of that number (627). Approximately 23% were majors (288) and approximately 18% were lieutenant colonels (222). Colonels (106) and above, including one lieutenant general, one major general, and one brigadier general, comprised approximately 9% of the Corps. As of 30 September 2014, there were 842 paralegals on active duty. Senior airmen and below made up approximately 23% of that number (192). Staff sergeants made up approximately 30% (249), while 26% were technical sergeants (216) and master sergeants made up approximately 16% (134). Senior master and chief master sergeants made up 4% (35) and 2% (16) respectively. In addition, there were 848 civilians, of which 451 were attorneys (53%), 245 were paralegals/legal assistants (28%) and 152 were non-legal personnel (19%). Grade breakdowns includes 332 GS-11s and below, 76 GS-12s, 134 GS-13s, 193 GS-14s and

113 GS-15s. The Air Reserve Component (ARC) of The Judge Advocate General's Corps included 906 Air Force Reserve Individual Mobilization Augmentees (IMA), Air Force Traditional Reserve unit-assigned, and Air National Guard judge advocates, of which 22% (203) were company grade officers and 66% (596) were field grade officers (majors and lieutenant colonels). The remaining 12% consisted of 102 colonels, four brigadier generals, and one major general. The ARC also includes 398 paralegals, of which 1% (3) were Airmen or Airmen First Class, 11%(43) were Senior Airmen, 22% (86) were Staff Sergeants, 33% (131) were Technical Sergeants, 25% (98) were Master Sergeants, 5% (18) were Senior Master Sergeants, and 3% (12) were Chief Master Sergeants.

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

Period: Fiscal Year 2014

PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE(+)/ DECREASE (-) OVER LAST REPORT
GENERAL	217	164	53	-16.54%
BCD SPECIAL	283	88	26	-21.17%
NON-BCD SPECIAL [A]		169		
SUMMARY	96	92	4	-14.76%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				

PART 2 - DISCHARGE APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)			
NUMBER OF DISHONORABLE DISCHARGES [B]		51	
NUMBER OF BAD CONDUCT DISCHARGES		72	
SPECIAL COURT-MARTIAL (CA LEVEL)			
NUMBER OF BAD CONDUCT DISCHARGES		86	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	145	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	90	
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		456	
GENERAL COURTS-MARTIAL	299		
BCD SPECIAL COURTS-MARTIAL	157		
REFERRED FOR REVIEW		227	
GENERAL COURTS-MARTIAL	141		
BCD SPECIAL COURTS-MARTIAL	86		
TOTAL CASES REVIEWED		246	
GENERAL COURTS-MARTIAL	187		
BCD SPECIAL COURTS-MARTIAL	89		
TOTAL PENDING AT CLOSE OF PERIOD		225	
GENERAL COURTS-MARTIAL	145		
BCD SPECIAL COURTS-MARTIAL	90		

REVIEWED DURING LAST REPORTING PERIOD (276/463)		-8.85
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		-9.94%
PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69		
PENDING AT BEGINNING OF PERIOD		0
RECEIVED		34
DISPOSED OF		1
GRANTED	0	
DENIED	33	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		1
PART 8 - ORGANIZATION OF COURT		
TRIALS BY MILITARY JUDGE ALONE		246
GENERAL COURTS-MARTIAL	94	
SPECIAL COURTS-MARTIAL	152	
TRIALS BY MILITARY JUDGE WITH MEMBERS		254
GENERAL COURTS-MARTIAL	123	
SPECIAL COURTS-MARTIAL	131	
PART 9 - COMPLAINTS UNDER ARTICLE 138		
NUMBER OF COMPLAINTS	37	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	323,894	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	5,256	

RATE PER 1,000	16.23	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-14.76%	

EXPLANATORY NOTES

[A] Of the 283 SPCMs tried, there were 88 convictions with a BCD adjudged, 169 convictions without a BCD adjudged, and 26 acquittals.

[B] Includes 16 officer dismissals.

SECTION IJ

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE COAST GUARD

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

October 1, 2013 to September 30, 2014

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 NORTHCOM, the Staff Judge Advocate to Joint Interagency Task Force South, 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 a judge advocate detailed to a one year fellowship in the Office of Legal Counsel to the Chairman of the Joint Chiefs of Staff in assignment year 2014. In addition, the Coast Guard has several active duty judge advocates detailed to the Department of Justice, Department of State, and Department of Homeland Security. The Coast Guard also has a senior judge advocate assigned to the Department of Defense Military Justice Review Group.

Coast Guard judge advocates are line officers. The Coast Guard does not have a judge advocate general corps. Over fifty judge advocates are currently assigned in non-legal "out-of-specialty" billets. They include the Coast Guard Deputy Commandant for Operations (O-9), and the Director, Exercises and Training, U.S. Cyber Command (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.

The Coast Guard sent attorneys to forty different courses of instruction during fiscal year 2014, 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. One judge advocate is attending the Graduate Course at the United States Army Judge Advocate General's Legal Center and School and another is a fellow in the Center for Law and Military Operations at TJAGLCS.

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.

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 2014 were:

Chief Judge Lane I. McClelland
Judge Patrick J. McGuire
Judge John F. Havranek
Judge Kathleen A. Duignan
Judge Andrew Norris
Judge Sean P. Gill
Judge John S. Luce
Judge Peter J. Clemens
Judge Amy E. Kovac

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 and defense counsel to general and special courts-martial rests with the Chief, Office of Legal and Defense Services, a staff office reporting to the Deputy Judge Advocate General charged with providing defense and personal legal services to Coast Guard members. Pursuant to an inter-service memorandum of understanding, the U.S. Navy provides trial defense counsel for all Coast Guard courts-martial. In return, four 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 or Regional Legal Service Offices.

The Coast Guard had one general court-martial judge and ten collateral-duty special court-martial judges at the end of fiscal year 2014. The Chief Trial Judge details all military judges to Coast Guard courts-martial. The service received approval to recall an additional general court-martial judge from retirement for up to two years to handle the increased case load, beginning in fiscal year 2015.

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. In fiscal year 2014, the Coast Guard hired a GS-15 attorney to serve as that officer's deputy and provide subject matter expertise and assistance for the prosecution of alleged sexual assault offenses, training for trial counsel, and continuity for complex and lengthy sexual assault prosecutions and appeals. Three judge advocates are assigned primary duty as appellate government counsel.

Additionally, the Office of Special Victims' Counsel (SVC) provides legal counsel to victims of sexual-related offenses. The SVC program also provides additional resources to ensure victims of sexual assault understand their rights in the legal process and that those rights are observed. The Coast Guard received funding to hire a GS-15 to lead the SVC program, beginning in fiscal year 2015, which will further enhance its capabilities and continuity. The GS-15 will report directly to the Chief, Officer of Member Advocacy and Legal Assistance. Twenty judge advocates were assigned to serve as SVC in fiscal year 2014; one CDR (O-5), eight LCDRs (O-4), and 11 LTs (O-3). Three judge advocates were assigned full-time duties as SVC; the remaining attorneys served as SVC on a collateral basis. Additional full-time attorneys will be added in fiscal year 2015.

MILITARY JUSTICE STATISTICS

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

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains the Coast Guard, fiscal year 2014 military justice statistics.

APPELLATE REVIEW PROCESS

The service's goal is to ensure 100% compliance with post-trial processing timelines, as established in *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006). In fiscal year 2014, nineteen of twenty-two cases complied with the *Moreno* post-trial processing timelines. In *United States v. Molina*, the convening authority took action 124 days

after sentence. In *United States v. Ortega*, the convening authority took action 144 days after sentence. Lastly, in *United States v. Butler*, the case was docketed with the Coast Guard Court of Criminal Appeals forty two days after the convening authority took action in the case. All three cases are still pending review by the service appellate court.

The Coast Guard Court of Criminal Appeals met its goal of eighteen months or less between the time a case is docketed to the issuance of an opinion in twelve of fourteen cases decided in fiscal year 2014. In *United States v. Thoms*, the court issued its decision twenty months after the case was referred to it. In *United States v. Sullivan*, the court issued its decision twenty four months after referral.

The court did not grant relief for post-trial delay in any case decided this fiscal year.

In fiscal year 2014, 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 COMPETENCE IN MILITARY JUSTICE PRACTICE

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

The Coast Guard has a longstanding Memorandum of Understanding with the Navy whereby the Navy provides defense counsel for Coast Guard courts-martial and in return the Coast Guard provides four judge advocates at locations around the country to work for the Navy handling courts-martial of Coast Guard members, as well as members of the Navy and Marine Corps. These officers typically serve two year tours as defense counsel and leave those assignments with significant trial experience. Other Coast Guard judge advocates are offered military justice advocacy opportunities in conjunction with a Judge Advocate General policy requiring judge advocates to be detailed to represent a service member in a formal or informal proceeding.

The Coast Guard Legal Service Command (LSC), the only command in the service dedicated to the delivery of legal services, was created in 2009. The LSC is the only command that has judge advocates serving full time as trial counsel (a total of five). In addition to their principal support to the mission support commands served by LSC, they also support other staff judge advocates. Accordingly, those trial counsel are currently involved, in one capacity or another, in approximately eighty percent of the Coast Guard's courts-martial.

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 addition of the GS-15 billet, which was filled by an experienced retired judge advocate with extensive court-martial experience, will allow the office to expand its support to field units and provide greater continuity to the office.

In fiscal year 2014, the Judge Advocate General chartered a working group to study the Coast Guard's military justice system and to propose ways to increase the proficiency of its practice. The working group, led by two senior O-6 judge advocates and comprised of judge advocates serving in a variety of roles, has submitted its recommendations for program-level analysis.

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 that develop judge advocate trial and advocacy skills. Coast Guard SAUSAs generally prosecute felony cases arising out of Coast Guard operations. Four full-time SAUSAs in the Southern and Middle Districts of Florida, 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, and 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. For example, in fiscal year 2014, eighteen judge advocates attended the U.S. Army's Special Victim Unit Investigator Course. 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 that significantly add to the depth of knowledge and expertise available to Coast Guard trial counsel.

As noted above, except for the four judge advocates assigned to the Navy at any given time pursuant to our MOU, the Navy provides defense counsel for Coast Guard members being tried by court-martial.

The Coast Guard had one full time general court-martial judge, along with six collateral duty judges who hear only special courts-martial, this fiscal year. The service will add an additional general court-martial judge in fiscal year 2015. 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.

Sexual Assault cases occur in the Coast Guard and are a focus of training and experience efforts; most of the training and experience efforts outlined above are specifically designed to improve trial counsel knowledge and experience in sexual assault cases. With some exceptions, sexual assaults are the most significant crimes handled in the Coast Guard military justice system and the Coast Guard is dedicated to handling these cases well. Also, recent Sexual Assault Prevention and Response efforts have made more training funds available, not only to train judge advocates, but to allow them to work with other professionals to train all members of the Coast Guard in sexual assault prevention and appropriate response when it does happen.

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 has sufficient judge advocates with sufficient experience to competently perform its military justice responsibilities. The increased number and complexity of courts-martial is placing some strain on the existing Coast Guard military justice structure. The Judge Advocate General therefore chartered a working group to study the Coast Guard's military justice system and to propose ways to increase the proficiency of its practice. The service consistently provides adequate resources to perform military justice functions. Attorneys are supported by civilians and enlisted personnel in the yeoman rating sufficient in number to support the mission. The service is currently studying whether there are a sufficient number of enlisted billets to support a separate legalman rate, as well as other ways to improve administrative legal support throughout the Coast Guard.

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, 2013 to September 30, 2014 (FY 2014)

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

Report Period: 1 OCTOBER 2013- 30 SEPTEMBER 2014

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	23	22	01	+155.6%
BCD SPECIAL	22	18	04	+57.1%
NON-BCD SPECIAL*	00	00	00	0%
SUMMARY	30	30	00	+50%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+74.4%

PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL NUMBER OF DISHONORABLE DISCHARGES	06	
NUMBER OF BAD-CONDUCT DISCHARGES	08	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	09	

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	12
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	09
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	02

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

TOTAL ON HAND BEGINNING OF PERIOD	8
GENERAL COURTS-MARTIAL	05
BCD SPECIAL COURTS-MARTIAL	03
REFERRED FOR REVIEW	23
GENERAL COURTS-MARTIAL	12
BCD SPECIAL COURTS-MARTIAL	11
TOTAL CASES REVIEWED	09
GENERAL COURTS-MARTIAL	06
BCD SPECIAL COURTS-MARTIAL	03
TOTAL PENDING AT CLOSE OF PERIOD	22
GENERAL COURTS-MARTIAL	11
BCD SPECIAL COURTS-MARTIAL	11
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	0%

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

NUMBER	23
PERCENTAGE	100%

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	3/9	33.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+85%
PERCENTAGE OF TOTAL PETITIONS GRANTED	1/3	33.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA	1/9	11.1%

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

RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+76.1%
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U.S. COAST GUARD MILITARY JUSTICE STATISTICS - CONT'D

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		12	
RECEIVED		32	
DISPOSED OF		11	
GRANTED	1		
DENIED	10		
NO JURISDICTION	00		
WITHDRAWN	00		
TOTAL PENDING AT END OF PERIOD		33	
PART 8 – ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE		28	
GENERAL COURTS-MARTIAL		12	
SPECIAL COURTS-MARTIAL		16	
TRIALS BY MILITARY JUDGE WITH MEMBERS		17	
GENERAL COURTS-MARTIAL		11	
SPECIAL COURTS-MARTIAL		06	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		02	
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		40179	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		699	
RATE PER 1,000		17.4%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-26.7%	

