



Marine Corps  
Military Justice Report  
Fiscal Year 2015

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

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## I. INTRODUCTION

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

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

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



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

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

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

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

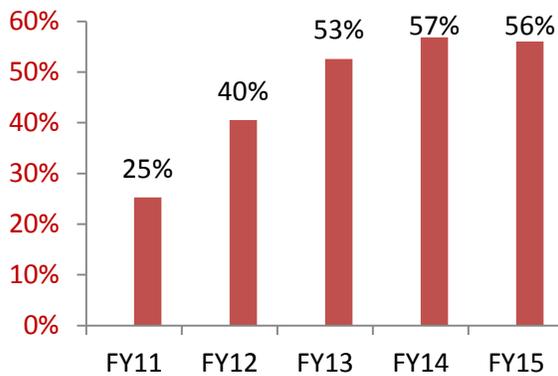


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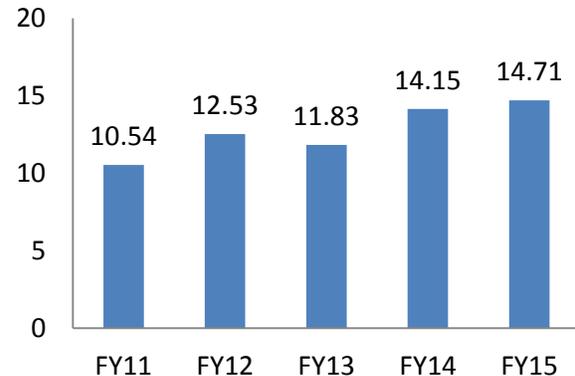
competent and capable military justice services to address the most complex and demanding court-martial cases and elevating the practice of military justice within the Marine Corps.

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

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



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



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

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

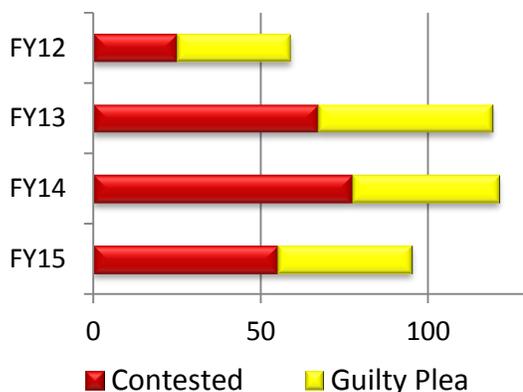
The growth in sexual assault prosecutions, often among the most difficult cases we try, illustrates a trend toward cases that are more complex, or at least more intensely litigated. Between FY12 and FY14, the number of contested sexual assault prosecutions more than tripled



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

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



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

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

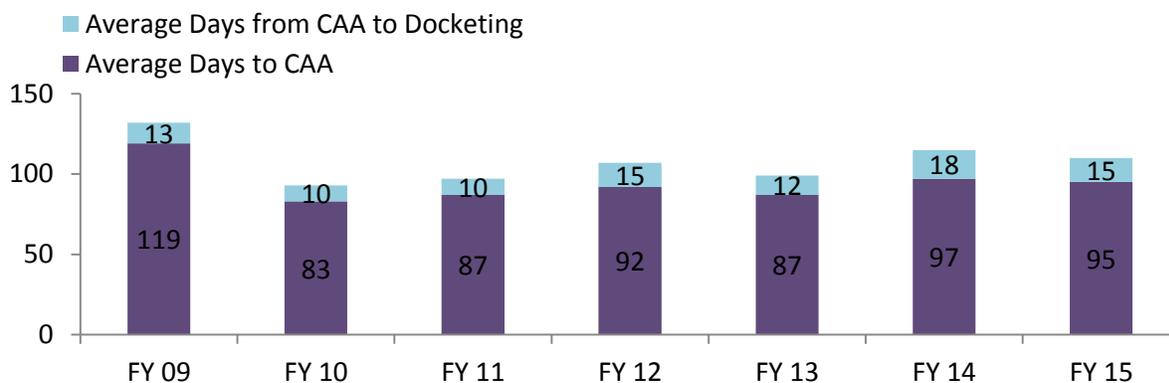
As a result of the mandatory Marine Corps-wide use of the Case Management System (CMS) and other case tracking mechanisms used by judge advocates and legal services specialists, including the JAG-SJA to CMC chaired Military Justice Oversight Committee, the Marine Corps complied with post-trial processing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

#### A. Processing Time Goals

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



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

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

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

## IV. MILITARY JUSTICE PRACTITIONERS

### *A. Trial Counsel*

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



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

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

### *B. Defense Services Organization*

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



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

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

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

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



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

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

### *D. Training Standards and Resources*

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



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

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

### *E. Naval Justice Information System*

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



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### V. VIEWS ON THE SUFFICIENCY OF RESOURCES

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

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

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

### VI. CONCLUSION

In FY15, the Marine Corps legal community accomplished its military justice mission in the face of tremendous challenges posed by scrutiny of and changes to our military justice



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

