

**THE JUDGE ADVOCATE GENERAL'S CORPS**

**UNITED STATES ARMY**



**ANNUAL HISTORICAL SUMMARY**

**THE AMERICAN BAR ASSOCIATION  
AUGUST 2010**

**ANNUAL HISTORICAL SUMMARY OF THE  
JUDGE ADVOCATE GENERAL'S CORPS, UNITED STATES ARMY**

**PRESENTED BY THE JUDGE ADVOCATE GENERAL  
TO THE AMERICAN BAR ASSOCIATION  
AUGUST 2010**

**INTRODUCTION**

The Judge Advocate General's Corps (JAGC) supports the Army mission by providing a full range of legal services in both the deployed and garrison environment, focused on core missions of fostering personal and organizational discipline; advising commanders and other Army leaders; providing soldier services in claims, legal assistance, and criminal defense; protecting Army interests before regulatory boards and in civil courts; and developing tomorrow's leaders. The JAGC is one legal team---competent, confident, caring, and courageous, grounded in values, committed to justice and totally integrated into the Army. On October 1, 2009, Lieutenant General Dana K. Chipman became The Judge Advocate General (TJAG), and is the 38th officer to hold this title. Major General Clyde J. "Butch" Tate II became the Deputy Judge Advocate General (DJAG) on January 8, 2010.

**MANAGEMENT AND OPERATIONS**

**STRENGTH**

There are approximately 1,790 judge advocates (JA) on active duty, 2,595 JAs in the Army Reserve (USAR) and Army National Guard (ARNG), and 560 civilian attorneys subject to the qualifying authority of TJAG. Currently, over 310 of these JAs are deployed abroad to unclassified billets. Together, these attorneys support more than 650 legal offices and deployed task forces in 20 countries, including, but not limited to: Afghanistan, Cuba, Haiti, Korea and Iraq.

Diversity in the JAGC has continued to remain at high levels, with women now accounting for approximately 24.72% of all active duty JAs. Minority officers comprise about 16.56% of the JAGC's active duty strength.

**PLANS**

The JAGC continues to change with the Army---ensuring the transformation of the Judge Advocate Legal Services (JALS) to meet the needs of the expeditionary Army and the Joint Force. The Personnel, Plans and Training Office (PP&TO) ensures that members of JALS are prepared for the war fight through a responsive training program. With JAs starting their profession with the Direct Commission Officer Course (DCC) (a

six week course that is a combination of two previous courses, Direct Commission Officer Course (DCO) and Basic Officer Leaders Course Phase II (BOLC II)), the JAGC remains the model in transforming civilians into commissioned officers equipped with tactical and leadership training to succeed in the demanding operational tempo of the Army. Judge advocates immediately assume leadership roles at DCC, and are always a proven success. The JAGC continues to place emphasis on maintaining a trained, professional force. The Judge Advocate General's Corps sent eighty JAs to the Army JAGC Graduate Course this year, and sent twenty-three JAs to attend the Army's Intermediate Level Education resident course at Fort Leavenworth.

As the Army structure continues to change, the JAGC also changes structurally to meet the needs of our mission and client. The PP&TO continues to provide TJAG flexibility in adapting his force management policies to address any strategic demands. The "consolidated legal office" (CLO) model, recently approved by the senior Army leadership, is now implemented Army-wide. The CLO provides more efficient organizational structures, which allow for improved legal services and legal training across a command while maximizing use of JAGC personnel and resources. Additionally, the Army JAGC worked with our sister services and the Office of the Secretary of Defense (OSD) to develop JAGC manpower models to determine the proper number of legal personnel required to support the OSD Joint Basing Initiative. The Army JAGC has ensured that its commanders, Soldiers, and Family Members serving at our joint bases will continue to receive uninterrupted the professional and prompt legal services that they expect and deserve.

The Army JAGC recognizes the importance of its civilian team of attorneys and paraprofessionals. TJAG officially recognized the Director, Civilian Personnel, and Labor and Employment Law (Director) as part of his leadership team. His team, consisting also of the Deputy Judge Advocate General, Chief Warrant Officer of the Corps, and the Command Sergeant Major of the Corps, is now called the "Foundation of Five." The Director's office includes a civilian attorney manager to ensure that the civilian members of JALS are professionally developed and strategically used in TJAG's vision.

The JAGC continues to provide strategic level support to Wounded Warriors and their Families. Thirty-six civilian legal personnel across the Army provide support at every level of the Army's Disability Evaluation System.

As the Army adapts its policies to allow flexibility in manning the expeditionary force, PP&TO ensures all members of JALS are aware of TJAG's policies and strategic goals. The JAGC is preparing to staff Army-wide its completed revision of the JAGC's capstone personnel policy document, Army Regulation 27-1, *Judge Advocate Legal Services* (September 1996). This initiative ensures that the JAGC's primary regulation accurately reflects the current mission and policies.

Judge advocates have performed exceptionally well in 2010 and display the characteristics of a highly professional force. In an effort to retain the exceptional

military members of our Corps, PP&TO implemented its human capital strategy, the Judge Advocate Office Incentives Program (JAOIP), in 2009. JAOIP provides a combination of student loan repayment up to \$65,000, and bonus incentives of \$60,000 for captains starting at their fourth year and \$60,000 for majors after the successful completion of the Graduate Course. JAOIP is nothing short of a complete success, and has exceeded all of our expectations. As an example, over ninety percent of all majors eligible for JAOIP accepted a four year obligation in exchange for a bonus, and all indications point to JAOIP continued success.

## **RECRUITING AND RETENTION**

The JAGC continues to attract talented lawyers through its aggressive on-campus recruiting program, and recruited successfully at most of the American Bar Association (ABA) accredited law schools during the Fiscal Year (FY) 2009 and FY 2010 on-campus recruiting seasons. In FY09, we welcomed 191 attorneys into the Regular Army and 152 into the USAR and ARNG. As of June 15, 2010, we have accessed 170 attorneys into the Regular Army and 127 into the USAR and ARNG. The current 182nd JA Officer Basic Course (JAOBC) started on July 4, 2010, with 55 Regular Army attorneys and 28 USAR and 30 ARNG attorneys. The FY10 requirements for Regular Army attorneys decreased slightly because the Army JAGC exceeded its FY09 accession goal, and the retention rate for first term JAs increased.

## **DOCTRINE, DEVELOPMENT, EDUCATION AND TRAINING**

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

The Judge Advocate General's Legal Center and School (TJAGLCS) structures, coordinates, and accomplishes the combat doctrine, resource development, reach-back support, and education and training missions of the JAGC. TJAGLCS strives to serve as the Army's preeminent legal educational institution for all officer, civilian, and enlisted legal personnel; regimental home of the JAGC; and a Center of Excellence that provides trained and ready legal personnel in support of the war against terrorism, the Army and the Joint Force.

### **THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER**

The Judge Advocate General's Legal Center serves as a strategic resource for the almost 10,000 lawyers, legal administrators and paralegals that make up the active duty, USAR and ARNG membership of the Army JAGC. The Legal Center's mission is to integrate lessons learned from military operations into the development of legal force structure, doctrine, and training strategies in an effort to optimize legal support to current and future operations.

Established in July 2003, the Legal Center supports our nation's commitment to conforming military operations to the rule of law. Through its four Directorates—the

Center for Law and Military Operations, Combat Developments, Future Concepts, and Training Developments—the Legal Center works with The Judge Advocate General’s School (TJAGSA) to provide relevant and ready legal support to the Army and the Joint force.

The non-negotiable end state is ensuring that now and in the future, across the full spectrum of military operations, the right number of doctrinally-based, superbly trained and equipped legal personnel will be in the right place, at the right time, in the right numbers, and with the right access to legal expertise and support to ensure that commanders and staffs at every level receive expert and proactive legal support.

### **THE CENTER FOR LAW AND MILITARY OPERATIONS (CLAMO)**

The Center for Law and Military Operations (CLAMO) is dedicated to the study and improvement of JA practice in military operations. In so doing, it helps to underwrite TJAGLCS’s commitment to ensuring that US military operations conform to all applicable legal standards. Founded in 1988 at the direction of the Secretary of the Army, CLAMO is a joint, interagency, and multi-national organization. CLAMO examines legal issues arising across the full spectrum of military operations and devises educational, training, and resource strategies for addressing those issues. It fulfills this mission in five ways. First, it is the central repository within the JAGC for data, information, memoranda, and after-action materials pertaining to legal support to operations, foreign and domestic. CLAMO shares this information with all of the military services. Second, it supports JAs by analyzing all data and information, developing lessons learned across all military legal disciplines, and by disseminating these lessons and other operational information to the Army, Marine Corps, and joint communities through publications, instructions, training, and databases accessible to operational forces worldwide. Third, it supports JAs in the field by responding to requests for assistance, by engaging in a continuous exchange of information with the Combat Training Centers (CTCs) and their JA observer-controllers, and by partnering with the professors at TJAGLCS to create operational law training guides. Fourth, it integrates “Lessons Learned” from operations and the Army’s CTCs into emerging doctrine and into the curricula of all relevant courses, workshops, orientations, and seminars conducted at TJAGLCS. Fifth, in conjunction with TJAGLCS, it sponsors conferences and symposia on topics of interest to operational lawyers.

CLAMO’s location at TJAGLCS on the grounds of the University of Virginia (UVA) empowers it with access to the experts on The Judge Advocate General’s School faculty, the excellent military collection of TJAGLCS library, the doctrinal and force development resources of the Legal Center, and the exceptional research facilities of UVA.

### **THE COMBAT DEVELOPMENTS DIRECTORATE**

The Combat Developments Directorate (CDD) is the Legal Center's proponent for the Army's legal force structure. Based on lessons learned in the course of military operations, CDD designs and justifies the current and future legal force structure necessary to support the Army, a task which includes design and integration of legal organizations in the USAR and the ARNG. CDD acts as a principal liaison through which the JAGC participates and assists in broad Army force design initiatives to meet the constant challenges posed by the need for Army organizations to perform effectively across the full spectrum of military operations.

Currently, CDD is managing the effort to redesign and modularize the Army's reserve legal structure. The end result will be a reserve legal organizational structure that provides tailored support for the active component and a more predictable deployment cycle for reserve legal personnel. Additionally, this year CDD updated the Manpower Requirements Criteria (MARC) for the JAGC. The MARC represents the baseline document establishing necessary duty positions throughout Army force structure. Updating the MARC ensures the JAGC is represented in all Army-level force management cyclic reviews and force design updates. Further, CDD completed an extensive survey of the Average Grade Distribution Matrix; the Army's approved grade structure for enlisted personnel. Through this review, CDD is ensuring that military paralegals have the necessary skill-sets to operate at a variety of military commands while also managing the enlisted legal organization to ensure a healthy structure with continued possibility for promotion by paralegals.

In addition to its force structure role, CDD supports TJAG's strategic planning process, to include the JAGC's strategic priorities, objectives, and initiatives. CDD also assists with TJAG's Corps-wide Strategic Communication Program. The products of the Strategic Communication Program include *TJAG Sends*, a one-page message focused on special topics, the quarterly *Quill and Sword*, describing issues and news of common interest across the JAGC, and the Virtual Suggestion Box, an online resource through which members of the Corps can suggest ways to improve how the JAGC provides legal support to the Army.

## **THE FUTURE CONCEPTS DIRECTORATE**

The Future Concepts Directorate (FCD) is the JAGC's bridge to concept and capability development and integration in the Army and Joint Force. The FCD participates in the drafting, review, and implementation of concepts, and determines how such developments are likely to impact the mission, requirements, and capabilities of the JAGC. The FCD accomplishes its mission by developing, writing, and staffing JAGC doctrine describing how judge advocate personnel support the operational Army across the full spectrum of military operations. The FCD serves as the central repository for all doctrinal matters impacting the JAGC and maintains close working relationships throughout the Army, Joint, and Interagency communities to ensure consistency in legal concepts and doctrine across all disciplines. The Army has undergone significant doctrinal changes as a result of lessons learned during recent operations which have literally transformed the Army and the JAGC's force structure. To keep pace with those

changes, the FCD is conducting review and revision of the JAGC's capstone doctrinal publication, Army Field Manual (FM) 1-04, *Legal Support to the Operational Army*. Members of the FCD have also made significant contributions to the Army's preeminent war-game, Unified Quest, which examines the capabilities and capacities that will be required to meet strategic, and tactical challenges anticipated from 2018-2025. Additionally, FCD is on the forefront of the development of Stability Operations and Rule of Law doctrine in support of the Army, Joint, and Interagency communities engaged in this rapidly evolving area.

## **THE TRAINING DEVELOPMENTS DIRECTORATE**

The Training Developments Directorate (TDD) analyzes training needs, designs training strategies, and leverages training and education technologies to support JAGC training. The core mission of TDD is to provide current legal training materials for resident paralegal education for the JAG Corps' enlisted paralegals. These materials provide training resources for new, mid-level, and senior Army paralegals. TDD manages the development of the JAGC Active Army and Reserve Component Distributed Learning curriculum. TDD also provides a foundation for the digital delivery of training and curriculum in the JAGC through the online JAG University, and other leading-edge technologies for content management, course development, and internet collaboration. TDD provides technical assistance and standardized training products for legal training programs across the Army. In this regard, TDD and the School faculty have developed and fielded seventeen Standard Training Packages (STPs) for JA personnel to use to conduct legal training in any environment. The STPs ensure that critical law-related courses taught throughout the Army will be current and correct. The TDD Director serves as a member of the ABA Standing Committee on paralegals. Finally, TDD manages the Army Paralegal Degree Program through which JAGC enlisted personnel can earn an ABA-approved Bachelor or Associate Degree from the University of Great Falls. These programs offer a tremendous opportunity for JAGC enlisted personnel to enhance their professionalism as Army paralegals.

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

TJAGSA, a part of TJAGLCS, educates JAs, civilian attorneys, and legal paraprofessionals from all branches of the military, as well as commanders from across the Army and lawyers and paraprofessionals from many other federal agencies.

The School's curriculum mirrors the substantive legal areas practiced by Department of Defense (DoD) attorneys. In addition to enhancing professional legal skills, the curriculum is designed to develop and refine students' legal research, writing, and communication skills; to instill Army values; to teach and sharpen soldier and officer skills; and to impart a sense of the rich history of the JAGC and the Army. There are six honorary academic chairs at TJAGSA, all named for distinguished members of the legal profession and former members of the Corps.

The School welcomed a new Dean in 2010. Colonel David N. Diner, a former professor of Administrative and Civil Law, replaced Colonel Robert A. Burrell in July. Colonel Burrell is retiring from active duty military service. Colonel Burrell had an exceptional tenure as Dean, highlighted by his shepherding of the School through a successful ABA sabbatical visit to our LL.M. program, among other achievements and improvements. Colonel Diner brings a wealth of experience as a lawyer and leader in the JAGC which, paired with his experience on the faculty, makes him an ideal choice to lead TJAGSA.

The relationship between TJAGSA and the ABA continues to prosper. In addition to very positive interactions with the exceptional team of visitors that reviewed the School's program in November of 2009, the Dean fully participates in the Dean's forums and has attended several ABA conferences and meetings this year to ensure that TJAGSA remains on the cutting edge of legal education. Mr. Maurice Lescault, TJAGSA's Associate Dean, served as a specially designated chair on two site visits for the Approval Commission of the ABA Standing Committee on Paralegals. Other examples of TJAGSA's continuing involvement with the ABA include the Administrative and Civil Law Department's continued and longstanding participation with the ABA Legal Assistance to Military Personnel (LAMP) Committee, teaching classes at their Continuing Legal Education (CLE) programs, inviting Committee members to teach at TJAGSA short courses, and participating fully as liaisons to committee meetings.

The School's relationship with UVA and location next to its exceptional law school continues to present tremendous opportunities and benefits. For example, the International and Operational Law Department co-sponsors several events per year with UVA and the International Committee of the Red Cross (ICRC) for participants ranging from law students to policy makers. The Criminal Law department also capitalizes on this relationship by providing academic credit for graduate course participation in the UVA Mock Trial Team coaching program. Several of the teams went to national level competitions under the tutelage of JAs at TJAGSA, with one team winning a national title this past year. Additionally, the schools continue to exchange students in some of their respective elective offerings.

TJAGSA's resident program continues to educate almost 5,000 students per year and, in combination with non-resident programs, including distributed learning, and on-site training for Army Reserve Component attorneys, TJAGSA educates an exponentially increasing number of lawyers and legal paraprofessionals annually, totaling over 15,000 students in Fiscal Year 2009.

TJAGSA's students include Active and Reserve Component personnel from all uniformed services, as well as civilian attorneys from numerous federal government agencies. JAs receive exceptional preparation for the challenging duties they face in today's Army in the JAIBC. Following 12 ½ weeks of instruction in Charlottesville, Virginia, students attend the 6-week Direct Commissioned Officer Course at Fort Benning, Georgia. This course provides them the Soldier skills they need to perform their legal practice where their clients are – in operational Army units, while also

building military legal knowledge upon the exceptional foundation they received at their ABA-approved law schools.

The institution's crown jewel remains the 10-month long, ABA-recognized Graduate Course that awards a Master of Laws degree in Military Law. The 58th Graduate Course began on August 10, 2009, and graduated on May 20, 2010, with a class of 116, consisting of 112 US officers and four international officers. The US officers represent every military service, including the Coast Guard, and include members of the Active, Reserve, and National Guard Components. The international students represented Egypt, Israel, Tunisia, and, Turkey.

Advocacy training remains one of the Criminal Law Department's top priorities. The Basic Course Criminal Law Curriculum is themed, "The Anatomy of a Court-Martial." The faculty employs a fact scenario based on an actual criminal case to walk the students through the substance and process of a criminal case in the military justice system from the initial report of the offense to trial and conviction or acquittal of the alleged offender. Every student completes a series of twelve clinical events tied to the fact pattern over the course of approximately two and one-half weeks of instruction, including a neutral trial memorandum that addresses numerous potential issues in the case. The fact scenario also incorporates mandatory training in the DoD and Department of the Army (DA) Sexual Assault Prevention and Response Program, which includes several victim-witness program initiatives. Of particular note is the Criminal Law Department's incorporation of sweeping new changes in the sexual assault statute into the curriculum, not only using substantive instruction but comparison/analysis exercises as well. Upon completion of the classroom instruction, the basic course students participate in a week of trial advocacy exercises culminating with each student participating as counsel in at least two mock courts-martial. Outside of the classroom, the students also participate in a series of computer based e-mail exercises which require them to respond to the sort of everyday military justice questions presented by commanders in the field.

The Criminal Law Department strives to enhance the practice of military justice at all levels. This past year saw them conduct the 32nd and 33rd Criminal Law Advocacy Courses, where the skills provided to basic course students are expanded upon for those Judge Advocates entering trial counsel or defense counsel positions. In addition, the Department taught the 53rd Military Judges Course, a required course for all new military judges in every military service to be certified as a judge in courts-martial.

TJAGSA also conducted over 70 functional area courses, varying in length from three days to three weeks. These courses were taught at TJAGSA, various locations throughout the United States, and overseas. These courses provide critical legal education to prepare military and civilian attorneys from all services and throughout the federal government to perform duties in new areas of the law. TJAGSA's courses are accredited or recognized by all mandatory CLE states. An important part of the Army JAGC training effort includes maintaining military and legal proficiency of RC attorneys and paralegals in support of pre-mobilization missions. The geographical dispersion of Reserve units and personnel presents a significant challenge to this effort. To meet this

challenge, TJAGSA, in conjunction with major Reserve commands, supports CLE programs at selected locations throughout the United States. Approximately 1,200 personnel from every component and service participated in such training last year.

While continuing to maintain a strong preference for resident instruction which we view as more effective, the TJAGSA faculty and staff continue to deliver instruction and educational products to judge advocates around the world through the use of Distributed Learning (DL) technology. The Contract and Fiscal Law Department recorded the latest version of its online Comptroller Accreditation and Fiscal Law Course, which is delivered through web-based media. The course is available to legal and non-legal personnel throughout the DoD, and is accessed by nearly 10,000 students each year. The nearly 25-hour course is the Army's sole accredited source of online fiscal law training for comptroller personnel. In a continuing effort to get updated and relevant information to attorneys in the field as effectively and efficiently as possible, the Department also made available online recorded materials from both the Contract Attorneys' Course, and the Advanced Contract Law Course.

The School continued to refine its most important DL effort, with updates to the JA Officer Advanced Course. Phase I of this course consists of 162 hours of online instruction. Professors have worked diligently to improve both the content and presentation of this critical material incorporating a variety of educational means including interactive activities and online video. The result is a much more complete preparation for our RC JAs as they reach the rank of major. The course is capped off by a two-week resident phase to solidify their education in the course and connect them to their Regimental Home at TJAGLCS.

The Contract and Fiscal Law Department continues to foster interagency working relationships with recognized and important sources in the fiscal field. These include teaching exchanges with professors from George Washington University, and a host of interactions with the Government Accountability Office (GAO). The Department participated in the annual GAO Appropriations Law Forum, hosted presentations by GAO attorneys for the Graduate Course's Advanced Fiscal Law elective, and participated in GAO's Principles of Appropriations Law course. The Department also conducted in-person training throughout the country, including a course of over 300 attorneys and comptroller personnel in Washington, DC. In another effort to get timely and accurate information to the field, Department professors painstakingly crafted a new chapter for the Operational Law Handbook, a resource heavily relied upon by operational lawyers in contingency environments. Finally, the Department continued an honored tradition this year of hosting the annual Government Contract and Fiscal Law Symposium, the premier forum for discussion and presentation of policy issues in the contract and fiscal law community to senior attorneys from agencies throughout the federal government.

The Administrative and Civil Law Department has been proactive in its inclusion of recent policy and legislative changes into its diverse areas of instruction and responsibility. Significant changes in tax law, consumer law, law of federal employment, and military personnel law have been incorporated into the current curriculum. The

department recently concluded the first year of a multi-year agreement with the Department of Veterans Affairs (VA), with the VA providing a visiting professor to the department. Mr. Jeff Schueler, Senior Appellate Attorney, VA Office of General Counsel, provided a refreshing interagency perspective to instruction in areas such as health care, veteran's benefits, and oral advocacy.

In addition to their teaching duties within the School, Administrative and Civil Law professors continued to be valued guest speakers elsewhere, participating in professional conferences in Boston, Massachusetts, San Francisco, California, San Antonio, Texas, Washington DC, Europe, and numerous other locations. Outside of classroom teaching, the department also published numerous legal articles. In January 2010, the department prepared a designated administrative and civil law edition of *The Army Lawyer*, providing needed practical information for administrative and civil law practitioners in the areas of government information practices, tax and estate planning, Americans with Disability Act amendments, the Fair Use Doctrine, and restrictions on political activity for Service members.

The faculty of the International and Operational Law Department (ADI) continued to refine the department's courses to reflect emerging trends in international law and military operations that have been at the forefront of international headlines. The prime example is the Rule of Law Course, now in its third year (the course will meet for one week in August of 2010). This course builds upon a foundation of cultural awareness and comparative law with legal theory and practical application to enable JAs to help promote the establishment of the Rule of Law during Stability and Support Operations, such as those ongoing in Iraq and Afghanistan. This material and approach was first developed and refined in a Graduate Course Rule of Law elective which continues to be offered. The Rule of Law Course is attended by students from throughout the DoD, other federal agencies, as well as a number of international students.

The process of integrating lessons from current operations into our curriculum in all departments is informed by the excellent support provided by the CLAMO, which gathers lessons learned from operations throughout the Army and provides them to the entire JAGC through many methods, including a close working relationship with the faculty. One specific example of this synergy is the International and Operational Law Department's active role in CLAMO's annual observer/controller (O/C) conference. During this conference, Department faculty facilitated discussion between O/Cs from the Army's combat training centers on important developments in the field of international and operational law, while O/Cs addressed operational law strengths and weaknesses displayed by Army units preparing for deployment that will help shape the Department's instruction. Additionally, faculty members have accompanied the CLAMO staff to visit returning units and conduct After Action Reports. In addition, this year one ADI faculty member made two trips to Afghanistan to lecture to JAs participating in the Detention Review Boards in Afghanistan.

ADI continued its relationship with the Central Intelligence Agency (CIA), teaching a two-day law of war workshop at CIA headquarters in Langley, Virginia. Also

in 2010, TJAGLCS (through ADI) co-sponsored a separate International Humanitarian Law (IHL) Workshop for law students and an Applying IHL Course for US policy makers with the University of Virginia Human Rights Center and the International Committee of the Red Cross (ICRC). ADI faculty members were heavily involved in teaching blocks of instruction on the framework of the law of war, the Geneva Conventions, and regulation of the means and methods of the war at both events. Each event provided unique opportunities to interact with law students and policy makers interested in the law of armed conflict.

Faculty from ADI also continued their participation in the National Security Law Junior Faculty Workshop, which was sponsored by and held at the University of Texas School of Law. In addition to presentation and discussion of works-in-progress on a range of national security law topics, participants received training in the fundamentals of IHL from instructors provided by the ICRC and ADI. ADI also continues to foster a relationship with the ICRC and Santa Clara University School of Law by providing faculty to lecture in the IHL Workshop, as well as three Graduate Course students who attended the 2010 workshop in January and helped facilitate small group discussions. Law students from across the United States can apply to attend this week-long workshop which is designed to expose 2L and 3L students to current issues in the Law of War to include classes on conflict classification, protected persons, means and methods, and war crimes. ADI also provided a faculty member to lecture at a Teaching IHL Workshop at the University of California Berkeley Boalt Hall School of Law co-sponsored by the Law School and the ICRC. This workshop included law faculty from several prominent institutions including Stanford Law School and Emory Law School. Finally, one ADI faculty member served as a panelist at the Afghanistan and State Building Symposium at the University of LaVerne College of Law.

Each endowed chair at our institution has an associated lecture to promote the development of the law in that area. The Hugh J. Clausen Lecture in Leadership was presented this year by Professor Thomas W. Taylor, former Senior Deputy General Counsel of the Army and now a distinguished professor at the Sanford School of Public Policy, Duke University. The Waldemar A. Solf – Marc L. Warren Chair Lecture in International and Operational Law, presented by Harvard Professor Jack Goldsmith, covered national security process and the role of the national security lawyer. The Criminal Law Department welcomed Chief Judge David B. Sentelle, of the United States Circuit Court for the District of Columbia Circuit to present the Kenneth J. Hodson Lecture in Criminal Law. The Gilbert A. Cuneo Chair Lecture in Government Contract Law, presented by Mr. Richard Beutel, covered recent findings of the Commission on Wartime Contracting. Mr. James J. Graham, in the Frank Creekmore Lecture in Government Contract Law, discussed recent procurement fraud developments. Lieutenant General (Retired) Russell L. Honore presented the Major General Charles L. Decker Lecture in Administrative and Civil Law. Finally, the fourth Major General George S. Prugh Annual Lecture in Military Legal History was presented by Chief Justice Andrew S. Effron of the Court of Appeals for the Armed Forces.

In addition to instruction for attorneys, TJAGSA continues to expand its offering of paraprofessional training courses for military paralegals, law office management courses for military legal administrators, and legal orientation courses for senior military commanders and general officers from non-legal branches.

The School continues to publish two highly respected periodicals. The quarterly *Military Law Review* (MLR) provides a forum for those interested in military law to share the products of their experience, legal research, and legal thinking. The School also publishes a monthly practice-oriented publication called *The Army Lawyer* (TAL). These outstanding publications include articles written by the School's faculty members, expert military practitioners from the field, government and private sector attorneys and scholars, as well as Graduate Course students, who frequently submit scholarly papers written for the School's Professional Writing Program. The School's faculty is integral to this process, providing many of the articles and practice notes, as well as reviewing all articles for accuracy and suitability. According to the Washington & Lee Law Library law journal rankings website, the *Military Law Review* was ranked 21st in 2009 among 397 peer-edited journals. *The Army Lawyer* ranked 13th for the same time period. In 2009, among all journals ranked by the website, the MLR ranked 385 and TAL ranked 299 out of 1634 journals.

TJAGSA continues to maintain the premier military law library in the DoD, boasting over 30,000 volumes. This specialized collection, which includes many rare and one-of-a-kind books and documents, complements the massive one million-volume general law library at the UVA's law school, which is available to all TJAGSA students. TJAGSA faculty and students also have complete access to the UVA Alderman Library collection of over six million volumes and numerous electronic resources. Our library, in conjunction with the Library of Congress, continues to expand its web-based offerings, particularly of the many military-unique documents contained in our holdings.

TJAGSA's faculty structure and its relationship to TJAGLCS, and specifically with the CLAMO, reflects a commitment not just to the Army, but to our entire nation's uniformed services. In addition to its 34 active duty professors, which include representatives from the Air Force, Navy, and Marine Corps, the faculty currently includes two full-time RC faculty members (one USAR; one ARNG) and 22 Reserve adjunct faculty members. The adjunct faculty members are legal experts in their own right, from across the government and private sector. They bring an additional breadth and depth of knowledge to our faculty. TJAGSA is particularly pleased to benefit from the service of an Adjunct Associate Dean to help manage the adjunct faculty and provide additional depth and RC perspective to the administration in the Dean's office.

The combination of recent legal experience by the faculty, coupled with timely access to lessons learned at TJAGLCS, facilitates an unmatched commitment to applied legal scholarship, addressing law in military training, stationing, and operations at home and abroad. As part of TJAGLCS, and in partnership with our sister services and the ABA, TJAGSA is poised to present even greater educational opportunities for JAs and,

through them, to promote the Rule of Law in military operations and provide world class legal support to our military services and our nation.

## **CURRENT PRACTICE AND ISSUES**

### **OFFICE OF THE JUDGE ADVOCATE GENERAL & US ARMY LEGAL SERVICES AGENCY**

While JAs in the field practice law and provide counsel and advice to their respective commanders and staff, current practice and issues at the DA-level is done by military and civilian attorneys at the Office of The Judge Advocate General (OTJAG) or the United States Army Legal Services Agency (USALSA).

At OTJAG, the Administrative Law, Criminal Law, International and Operational Law, Labor and Employment Law, and Legal Assistance Policy Divisions provide direct support to TJAG. At USALSA, which was established as a field operating agency under TJAG on March 15, 1973, more than 480 judge advocates, civilian attorneys, warrant officers, noncommissioned officers and civilian paralegals in more than 20 different offices, divisions, and activities worldwide provide a wide range of services. Missions include representing the Army in civil matters before courts and administrative bodies; directing and managing the Army Trial Judiciary and operating the Army Court of Criminal Appeals; and providing subject matter expertise and advice in Contract, Fiscal, Environmental, Regulatory, and Intellectual Property Law. USALSA also provides administrative, fiscal, and logistical support to the US Army Trial Defense Service (USATDS), Defense Appellate Division (DAD) and the Government Appellate Division (GAD).

### **ADMINISTRATIVE LAW**

The mission of the Administrative Law Division of OTJAG is, for those matters that fall within the scope of the functions assigned to the Division, to assist TJAG in carrying out his responsibilities as the military legal advisor to the Secretary of the Army and to all offices and agencies of Headquarters, DA and performs such other duties as may be prescribed by law.

The Administrative Law Division is composed of an executive section, comprised of a Chief and a Deputy Chief, and four branches. The four branches and a brief description of their principal (but non-exclusive) functions are described below.

#### **GENERAL LAW BRANCH**

The General Law Branch is typically comprised of a Chief (lieutenant colonel), four military action attorneys (majors), one civilian action attorney, and a civilian paralegal. The Branch's functions are to:

Prepare legal opinions and furnish advice on general questions of law and policy pertaining to: the organization, powers, functions, and employment of the Army; the powers and duties of the Secretary of the Army and the delegation thereof; the interpretation and application of laws and regulations relating to the Army and its members generally; pay and allowances; transportation and travel; defense and disaster plans; military aid to civil authority; non-appropriated funds; religion in the Army, use of Government property; fiscal law; military installations and legal aspects of command; leaves and passes; awards and decorations; Base Closure and Realignment (BRAC); and various issues regarding the USAR, the National Guard and the National Guard of the United States as components of the Army (except personnel related actions);

Act as proponent of Army Regulation (AR) 15-6, *Procedure for Investigating Officers and Boards of Officers*, including drafting, revising, and updating it as necessary; and

Review for legal sufficiency drafts of proposed Army regulations and other proposed Army policy publications with legal issues relating to the foregoing matters. The Branch also reviews and prepares comments on or concurrences in proposed regulations and directives of the other military departments and DoD pertaining to areas within the Branch's responsibility.

#### **INVESTIGATIONS BRANCH**

The Investigations Branch is typically comprised of a Chief (lieutenant colonel), two military action attorneys (majors), and one civilian action attorney.

In general, the Branch's functions are to assist the DA Inspector General (DAIG) Investigations Division during all phases of the investigative process involving senior Army officials as provided for in AR 20-1, *Inspector General Activities and Procedures*.

#### **ETHICS, LEGISLATION, AND GOVERNMENT INFORMATION PRACTICES BRANCH**

The Ethics, Legislation, and Government Information Practices Branch is comprised of a civilian chief attorney, three civilian action attorneys, one military action attorney (major), and one civilian paralegal. In general, the Branch's functions are:

**a. Ethics.** Administers the ethics program of Headquarters, DA, which includes providing ethics advice to Army Staff officials, conducting ethics training, providing post-government employment briefings and advice, and overseeing the filing and certification of public and confidential financial disclosure reports (SF 278s and OGE Form 450s).

Provides guidance and technical oversight to Army attorneys worldwide under the purview of TJAG concerning ethics issues.

**b. Legislation.** Prepares draft bills with sectional analysis for Army legislative proposals; develops the Army's position on legislation pending before Congress or proposed by other departments of the government; and prepares drafts of executive orders and proclamations and comments on those prepared by other agencies of the government;

Investigates private relief legislation, prepares reports to Congress establishing the Army's position on private relief, and coordinates the Army's position within DoD and with other Federal agencies and recommends approval or veto by the President;

Prepares or examines for legal sufficiency drafts of proposed Army regulations and other proposed Army publications with legal issues relating to the foregoing matters. Reviews and prepares comments on or concurrences in proposed regulations and directives of the other military departments and DoD in these areas; and

Serves as Congressional Affairs Contact Office for OTJAG.

**c. Government Information Practices.** Prepares legal opinions and furnishes advice on general questions of law and policy pertaining to the Freedom of Information Act, Privacy Act, Health Insurance Portability and Accountability Act, and information management.

Represents TJAG as a voting member on the HQDA Privacy Act Review Board. The Board acts on behalf of the Secretary of the Army to decide appeals of an Army agency's refusal to grant a request by an individual to amend his/her Privacy Act record.

**d. Article 138 Complaints.** Reviews Article 138 complaints and prepares memoranda of review and final action for action by the Assistant Judge Advocate General (Military Law and Operations) (AJAG (ML&O)) on behalf of the Secretary of the Army. Acts as proponent for Chapter 20, Complaints under Article 138, Uniform Code of Military Justice (UCMJ), AR 27-10, *Military Justice*.

## **MILITARY PERSONNEL LAW BRANCH**

The Military Law Branch is typically comprised of a Chief (lieutenant colonel), five active duty military action attorneys (majors), one reserve component Active Guard Reserve attorney (major), one civilian attorney, and one civilian paralegal. In general, the Branch's functions are to:

Prepare legal opinions and furnish advice on questions of law and policy pertaining to: appointment, enlistment, reenlistment, promotion, reduction, separation, retirement and status (including federal recognition); discipline and administration of military personnel in both the regular and reserve components; and US Military Academy and Reserve Officers' Training Corps personnel matters. Related policy areas include HIV/AIDS; drug testing; conscientious objection; Homosexual Conduct Policy; and credentialing of health care providers. Assist TJAG in preparing recommendations on

adverse administrative actions proposed to the Vice Chief of Staff resulting from DAIG investigations of senior Army officials under the provisions of AR 20-1;

Determine legal issues relating to the jurisdiction and procedure of administrative boards and Army quasi-judicial bodies such as the Army Board for Correction of Military Records, the Army Discharge Review Board, the Army Disability Review Board, and the boards in the physical evaluation process; and

Review for legal sufficiency drafts of proposed Army regulations and other proposed Army publications with legal issues relating to the foregoing matters. Review and prepare comments on or concurrences in proposed regulations and directives of the other military departments and DoD in these areas.

## CRIMINAL LAW

### COURT-MARTIAL STATISTICS

During FY09 there were 631 trials by general court-martial and 523 trials by special court-martial. In addition, there were 1,040 trials by summary court-martial. The number of non-judicial punishments completed during the last FY was 35,210.

	FY06	FY07	FY08	FY09	FY10*
General Court-Martial (CM)	750	811	674	631	464
Special CM	583	639	488	523	324
Summary CM	1,160	1,223	1,279	1,040	478
<b>Total CMs</b>	<b>2,493</b>	<b>2,673</b>	<b>2,324</b>	<b>2,194</b>	<b>1,266</b>
CM Rate Per 1000 (Not SCM)	2.64	2.78	2.15	2.11	1.43
Nonjudicial Punishment (NJP)	43,813	45,239	46,063	35,210**	20,464
NJP Rate Per 1,000	86.69	86.44	82.49	64.37	37.04
Army Active Duty Strength*	505,402	522,017	538,128	547,000	552,425

\* Figures are those reported through July 15, 2010.

\*\* Disparity between FY08 and FY09 statistics resulted from implementation of new reporting system; some units were unable to submit accurate data in FY09.

### REVISIONS TO MILITARY CRIMINAL LAW AND PROCEDURE

Through the Joint Service Committee on Military Justice (JSC), the Army joined our sister services in endorsing several proposals for changes to the UCMJ and the Manual for Courts-Martial (MCM), including major revision of sexual misconduct offenses in violation of Article 120, UCMJ; enumeration in Part IV, MCM, of certain child pornography offenses as violations of Article 134, UCMJ; and creation of a Military Rule of Evidence providing a privilege for communications between crime victims and

their victim advocates. These proposals have been endorsed by the DoD and submitted for Congressional action or Presidential approval. No Executive Orders have been signed since the last annual report. There are two pending Executive Orders, containing the aforementioned victim advocate privilege and child pornography offenses, and other amendments to the procedural and evidentiary rules.

## **VICTIM AND WITNESS ASSISTANCE**

During calendar year 2009, Army victim service providers assisted 15,890 victims and 12,049 witnesses. The Army conducted training for 31 Army, 10 Air Force and 5 Marine Victim Witness Liaisons/Victim Advocates on September 1-2, 2009 in Rosslyn, Virginia. The Army continued the aggressive implementation of its Sexual Harassment/Assault Response and Prevention (SHARP) program, and the OTJAG Criminal Law Division also continued to provide extensive legal support to the Army SHARP office. Army Regulation 600-20, Army Command Policy, Chapters 7 and 8 and related appendices establish the guidelines and procedures for the SHARP program, which centers on awareness and prevention, training, education, victim advocacy, response, reporting and follow-up, and reinforces the Army's commitment to eliminate incidents of sexual assault. The Army continues its prevention program, the I. A.M. STRONG program. I [Intervene]. A [Act]. M [Motivate]. STRONG is the Army's campaign to combat sexual assaults by engaging all Soldiers in preventing sexual assaults before they occur. Soldiers are expected to Intervene, Act, and Motivate others to stop sexual assaults and sexually offensive language and gestures that create an environment friendly to this abuse.

## **INITIATIVES TO IMPROVE SEXUAL ASSAULT LITIGATION**

As a complement to the Army SHARP program and to enhance the professionalism and high standards of sexual assault and family violence investigations and trial advocacy across the Army, the JAGC created fifteen positions for experienced Special Victim Prosecutors (SVPs) in large jurisdictions worldwide. At present, SVPs are in place at Fort Campbell (Kentucky), Hawaii, Korea, Fort Carson (Colorado), Germany, Fort Benning (Georgia), Fort Bragg (North Carolina), Fort Drum (New York), Fort Leavenworth (Kansas), Fort Hood (Texas), Fort Bliss (Texas), and the Military District of Washington (DC). By the end of calendar year 2010, SVPs will also be active at Fort Stewart (Georgia) and Fort Lewis (Washington). The primary mission of SVPs is to investigate and prosecute allegations of sexual assault, to train other judge advocates in military justice, and to establish Special Victim Units that combine the resourced effort of CID and medical personnel. Also, positions were created for seven Highly-Qualified Experts (HQEs) to enhance the investigation, prosecution, and defense of sexual assault allegations. HQEs are located at the Legal Center and School (LCS), the OTJAG, the Trial Counsel Assistance Program, and the Defense Counsel Assistance Program (DCAP). At present, five HQE position have been filled, and the remaining slots (one each at the LCS and at DCAP) will be filled by the end of the year.

## **ARMY TRIAL JUDICIARY**

The 1,166 courts-martial tried in calendar year (CY) 2009 is consistent with CY 2008 and reflects a stabilizing trend after years of docket decline. Army trial judges continue to preside over trials in deployed environments, with 59 general and special courts-martial tried in Iraq, Kuwait and Afghanistan--a total of more than 800 since May 2003.

Military judges also presided over several high profile trials, including the capital court-martial of a retired Soldier recalled to active duty and convicted of premeditated murder in the deaths of a mother and her two daughters in 1985, and the retrials of capital courts-martial reversed by the appellate courts, to include *United States v. Kreutzer* and *United States v. Murphy*.

Three Army trial judges continue to preside over military commissions convened in Guantanamo Bay, Cuba.

The Army Trial Judiciary continued adding to its goal of improving public transparency by adding the current military judge course deskbook and other training materials to its homepage as well as providing links to its court calendars so members of the general public can access docket information on all Army courts-martial convened worldwide. ([www.jagcnet.army.mil/usatj](http://www.jagcnet.army.mil/usatj)) After an eight year effort, the Trial Judiciary republished Department of the Army Pamphlet 27-9, *Military Judges' Benchbook*, the primary source for pattern jury instructions used in courts-martial practice worldwide, as well as a more user friendly version of the Electronic Benchbook, both of which can be found on the Trial Judiciary homepage. The 150th Legal Services Organization (Trial Judiciary) welcomed its new Commander and Chief Reserve Trial Judge, Colonel Patrick J. Reinert.

The 53rd Military Judge Course, a comprehensive 3-week training course for all military trial and appellate judges in the Departments of Defense and Homeland Security, convened at TJAGLCS in Charlottesville, Virginia, graduating 41 Army, Navy, Marine Corps, Air Force and Coast Guard students and investing them as new military judges. Major Menachem Lieberman, Israeli Defense Forces, also attended the course as an international student. Lieutenant Colonel Scott Harding, US Air Force, was the course honor graduate.

## **TRIAL DEFENSE SERVICE**

JAs assigned to the USATDS defend soldiers accused of criminal and disciplinary offenses and those facing other adverse actions. Currently, more than 300 Active and RC attorneys serve in TDS worldwide, to include over 20 in US Central Command deployed to Iraq, Afghanistan, and Kuwait and over 30 mobilized in support of defense operations worldwide.

This year, USATDS continued to focus on training military justice practitioners by strengthening the DCAP. As part of DA's broad initiatives to combat sexual assault, DCAP hired a HQE to train and assist counsel to litigate these sensitive cases. DCAP is in the process of hiring a second HQE. These two HQEs will augment a team currently comprised of a Chief (lieutenant colonel), a deputy chief (major), two active duty training officers (captains), and one mobilized reserve training officer (captain to lieutenant colonel).

DCAP is a resource for Regional Defense Counsel and Senior Defense Counsel to utilize to improve the legal skills and knowledge base of their counsel and paralegals. DCAP's main function is training. In addition, DCAP provides timely case-specific advice to defense counsel in the field upon request. DCAP also advises the Chief, USATDS on the development of future Army policies that impact USATDS, and provides substantive policy analysis on issues stemming from doctrine, regulations, executive orders, and legislation. In addition, DCAP serves as the liaison with Defense Appellate Division, for extraordinary writs by defense counsel.

During 2009, USATDS counsel and paralegals provided direct support to over 80,000 Soldiers for actions ranging from general courts-martial to administrative consultation actions. Counsel and paralegals traveled worldwide to locations such as Iraq, Afghanistan, Bahrain, Egypt, and Jordan to provide the highest levels of defense services to clients.

## **CRIMINAL APPELLATE LITIGATION**

### **DEFENSE APPELLATE DIVISION**

The Defense Appellate Division (DAD) continues to zealously represent its Soldier clients on appeal before the Army Court of Criminal Appeals (ACCA), the United States Court of Appeals for the Armed Forces (CAAF), and the Supreme Court. Last year, with management remaining stable, DAD attorneys were able to focus on improving the quality and quantity of the briefs, persuasively raising all meritorious legal issues in a timely fashion and often obtaining outstanding results. DAD continues to maintain the backlog at an historic low with an inventory of about 140 cases as of June 30, 2010. At the same time, DAD attorneys improved their written and oral advocacy skills while filing 606 briefs with ACCA, 409 with CAAF, and arguing 19 cases this term (11 at ACCA and 8 at CAAF). Division attorneys also filed three petitions for *certiorari* with the Supreme Court in *United States v. Miller*, 08-0580/AR; *United States v. Clayton*, No. 08-0644/AR, 68 M.J. 419 (C.A.A.F. 2010); and *United States v. Huntzinger*, No. 09-0589/AR, 69 M.J. 1 (C.A.A.F. 2010); and two *amicus* briefs, *United States v. Blazier*, No. 09-0441/AF, 68 M.J. 439 (C.A.A.F. 2010) before CAAF, and *United States v. Smith*, No. 08-0719/CG, 88 M.J. 445 before the Supreme Court.

Despite the ongoing success of the DAD in the past year, the division faces significant challenges. During the months of June and July, seven of the thirteen action

attorneys are being replaced by new counsel and there will be periods of time in between the departure of appellate counsel and the arrival of new appellate attorneys at the division. Given the train-up necessary for new counsel in the office, the leadership will be actively engaged in managing case loads to ensure the quality representation our division provides remains strong.

## **GOVERNMENT APPELLATE DIVISION**

The Government Appellate Division (GAD) represents the United States before ACCA, CAAF, and the Supreme Court in appeals by Soldiers convicted at courts-martial with an adjudged sentence of either a punitive discharge or confinement for one year or more. GAD also oversees the Trial Counsel Assistance Program (TCAP) and defends the United States on extraordinary writs before military courts and in *habeas corpus* writs before federal courts (with the Department of Justice).

GAD has an inventory of 153 cases as of June 30, 2010. Between July 1, 2009, and June 30, 2010, GAD filed 588 briefs at ACCA and 20 briefs at CAAF. Only one reserve Soldier remains activated at GAD. GAD argued 31 cases before ACCA and 12 cases before CAAF.

TCAP continued its mission of providing training, advice, resources, and assistance to military prosecutors worldwide. TCAP's current team of six active duty officers, three civilian HQEs, and one civilian assistant provided both on-site case assistance and training to trial counsel.

## **CIVIL LITIGATION**

### **OVERVIEW OF CIVIL LITIGATION**

The US Army Litigation Division provides representation to the Army and Army officials in four areas of civil litigation: Military Personnel Law, General Litigation, Civilian Personnel Law, and Tort Litigation. The Army has approximately 865 active civil cases. During the first six months of 2010, Litigation Division received 201 new cases and successfully closed 306 cases. The Division continues to see a large number of cases challenging military personnel decisions, official decisions by government officials via *Bivens* suits, and government information practices. The nature of the practice continues to be highly complex as it faces due process, First Amendment, and equal protection litigation, frequent filings for information under government information practices statutes, challenges to the *Feres* doctrine and the DoD homosexual conduct policy, and complicated jury trials in employment discrimination law.

## MILITARY PERSONNEL LITIGATION

The Military Personnel Litigation Branch defends the Army and its officials in federal and state courts against challenges to critical and often complex military personnel policies and decisions.

**a. Conscientious Objector Cases.** The Military Personnel Litigation Branch defends federal court challenges to decisions by the Department of the Army Conscientious Objector Review Board (DACORB) denying applications for conscientious objector (CO) status. On June 25, 2009, in *Watson v. Secretary of the Army*, the US Court of Appeals for the Second Circuit held that the DACORB did not provide an adequate statement of the reasons for its denial of a conscientious objector application and declined to remand to the agency, finding no grounds in the record to deny the application. An active judge of the Court of Appeals requested a poll on whether to conduct a rehearing en banc. Despite a strongly worded dissent, on October 30, 2009, the US Court of Appeals for the Second Circuit denied en banc review, holding that where the legal standard is correct, the full court should not occupy itself with whether the law has been correctly applied to the facts. The United States is pursuing an appeal at the Fourth Circuit Court of Appeals in *Kanai v. Geren*, a case involving a West Point cadet who submitted an application for CO status weeks before his scheduled graduation and commissioning in May 2008. On November 11, 2009, the US District Court for the District of Maryland granted Kanai's *habeas* challenge to the DACORB decision denying his application for CO.

**b. DoD Homosexual Conduct Policy Case.** The Military Personnel Litigation Branch continues to defend against a federal court challenge to the military's homosexual conduct policy, enacted pursuant to 10 U.S.C. § 654. Trial is set for July 2010 in *Log Cabin Republicans v. United States* in the US District Court for the Central District of California. The Log Cabin Republicans (LCR), a political organization, bring substantive due process and First Amendment challenges to the DoD homosexual conduct policy (HCP) on behalf of its members who have been separated under the policy and who are subject to the policy while serving in the Armed Forces. On May 28, 2010, the court ordered additional briefing on whether LCR's facial challenge to the HCP survives heightened scrutiny as opposed to the rational basis scrutiny employed in prior Ninth Circuit precedent.

## GENERAL LITIGATION

The General Litigation Branch is responsible for handling the Army's commercial litigation matters in federal court, to include contract disputes and bankruptcy claims. The branch is also responsible for Freedom of Information Act (FOIA) and Privacy Act suits and varied cases involving constitutional and property matters. Lastly, the branch coordinates all *Touhy* litigation which refers to third party requests for official Army information within the context of private litigation not involving the United States.

**a. American Civil Liberties Union FOIA Case.** The General Litigation branch successfully concluded its defense of the massive FOIA suit, *American Civil Liberties Union v. Department of Defense*, involving a broad request for documents relating to individuals detained in overseas contingency operations or subject to rendition. Pursuant to a consent order, the Army concluded its release of responsive documents in March 2006, after releasing over 108,000 pages of documents. On August 8, 2009, the Solicitor General petitioned the Supreme Court for a writ of certiorari to review a September 22, 2008 decision by the Second Circuit Court of Appeals ordering the disclosure of 21 photographs. The question presented was whether Exemption 7(F) of the FOIA exempted from mandatory disclosure photographic records concerning allegations of abuse and mistreatment of detainees in US custody when the government has demonstrated that the disclosure of those photographs could reasonably be expected to endanger the lives or physical safety of US military and civilian personnel in Iraq and Afghanistan. In October 2009, prior to the Supreme Court acting on the ACLU's petition for certiorari, Congress passed the "Protected National Security Documents Act of 2009," which amended the FOIA and granted Defense Secretary Robert M. Gates the authority to withhold "protected documents," to include photographs, that, if released, would endanger the lives of US Soldiers or government employees deployed outside of the country. On November 15, 2009, Defense Secretary Robert M. Gates blocked the release of the 21 photographs saying their release would endanger American Soldiers. On November 30, 2009, the Supreme Court denied ACLU's petition for certiorari.

**b. Litigation Against Defense Contractors Supporting Overseas Contingency Operations.** There continues to be a significant number of requests for Army documents and testimony from Army officials from defense contractors who have been sued by their own employees, by Soldiers and their families, and by foreign nationals in connection with their contract activities in support of ongoing military operations. Although the United States is not a party to these cases, government interest remains keen and Litigation Division continues to closely monitor these actions. In this increased wave of war-related claims, contractor-defendants have asserted immunities traditionally available to government actors under exceptions to the Federal Torts Claims Act and the *Feres* doctrine. Contractors are also seeking to extend the government contractor defense beyond the traditional product liability realm and have also asserted, with some success, that these cases present nonjusticiable political questions. Many of the cases involve distinct categories of third party tort litigation suits alleging contractor negligence involving: burn pit operations; convoy operations; contaminated water; electrocutions caused by faulty ground wiring; friendly fire incidents; interpreter/interrogator operations; and helicopter and other air crash cases. The Army is handling approximately 75 of these cases.

## **CIVILIAN PERSONNEL LITIGATION**

The Civilian Personnel Litigation Branch is responsible for defending all employment-related lawsuits filed by present and former civilian employees and applicants against the Army and its leaders. The branch receives approximately 100 new cases a year.

Most of the branch cases allege wrongful employment discrimination under Title VII of the Civil Rights Act, the Rehabilitation Act, and the Age Discrimination in Employment Act, but other asserted bases arise. The branch currently is defending a wide array of allegations, including a challenged demotion of an employee from the Senior Executive Service, a disputed performance appraisal under the soon-to-be-defunct National Security Personnel System, and several disputes over the implementation or interpretation of settlement agreements reached in the administrative process required before seeking judicial review. In addition, one of the branch's significant trial successes from 2009, *McKelvey v. McHugh*, is pending appeal before the US Court of Appeals for the Sixth Circuit. The complex scheme of protections for federal sector employees, coupled with the dynamic nature of employment law, provides for a steady stream of novel issues for the branch.

## **TORT LITIGATION**

The Army's tort caseload remains constant at about 290 active cases. One-quarter of the cases involves claims of medical malpractice and one-third consists of vehicle, aviation, and admiralty actions. The remaining cases include premises liability claims, constitutional tort allegations, and Medical Care Recovery Act suits by the United States.

## **CONTRACT AND FISCAL LAW DIVISION**

The Contract and Fiscal Law Division (KFLD) is TJAG's strategic hub for contract and fiscal law actions. The Division provides a wide range of the contract and fiscal law support. Three contract trial teams litigate contract disputes and bid protests on behalf of the Army before the Armed Services Board of Contract Appeals (ASBCA), the Government Accountability Office (GAO), the Court of Federal Claims, and the Court of Appeals for the Federal Circuit. Additionally, KFLD includes the Army Procurement Fraud Branch, which is responsible for the Army's procurement fraud program that suspends and debars government contractors who commit fraud or corruption against the Army procurement process. Lastly, KFLD has the Contract and Fiscal Actions Branch, which serves as the JAGC's think tank for contract and fiscal law initiatives, provides fiscal law reach-back to deployed JAs from all services, and provides proactive contract and fiscal law support to JAs throughout the Corps. Notably, KFLD is the only legal activity within DoD to combine these diverse contract and fiscal law missions into one organization.

## **CONTRACT LITIGATION (PROTESTS AND APPEALS)**

Bid protests of Army contract actions rose in the past year, with over 254 filed since our last report. GAO decisions of interest included *Major Contracting Services*, B-401472. The protester challenged an Army extension of a contract for four months pursuant to FAR 52.217-8, Option to Extend Services (a clause included in the Request For Proposals and the contract). The GAO sustained the protest, finding that "the option

to extend the contract here under FAR clause 52.217-8 was not evaluated as part of the initial competition, so that the exercise of this option amounts to a contract extension beyond the scope of the contract, and therefore effectively constitutes a new procurement.” This conclusion came as news to many agencies, which heretofore had not viewed a contract extension under this clause as being effectively a sole-source award. Adherence to this decision will add layers of complexity to what was previously regarded as a routine contract administration action.

With regard to contract disputes, KFLD currently has more than 185 active ASBCA appeals with a claim value of approximately \$1.4 billion. Approximately \$800 million of this amount is attributable to one troubled program, the Logistics Modernization Program (LMP). The LMP is intended to replace the Army's entire logistics management infrastructure. In September 2007, Computer Sciences Corporation (CSC), the prime contractor on the program, filed a series of ASBCA appeals challenging Communications-Electronics Command's denial of CSC claims totaling \$858,078,948. CSC's claims involve software development and intellectual property. Also involved in this appeal is an Army counterclaim for \$42.3 million related to shortfalls with CSC's modernization work. The hearing is scheduled for January 2011. The Army has fielded a sizeable litigation team to deal with these appeals. Both parties commenced taking depositions in June 2010 with depositions projected to run through September.

Also during the past year the Army settled the appeals of ICI Americas, Inc. (ICIA). These appeals related to Government Owned Contractor Operated ammunition plants. Between 1972 and 1998, ICIA entered into contracts with the Army for the production of ammunition in the Indiana Army Ammunition Plant and the Volunteer Army Ammunition Plant. During the period of performance, ICIA made contributions to various defined benefit plans which were reimbursed by the Army under the terms of the contracts. The pension plans became overfunded and no further contributions were made. On approximately December 31, 1998, the contracts ceased. On September 21, 2004, the Contracting Officer made a formal claim and demand for payment against ICIA under CAS 413 for a segment closing adjustment for the amount of surplus assets in the pension plans. On April 22, 2005, the Contracting Officer asserted a claim against ICIA for the constructive reversion to ICIA of the surplus assets in the pension plans that occurred when these plans were merged or transferred into other pension plans belonging to ICIA corporate affiliates. The total amount of claims by the Army for the surplus on the pension plans was \$80 million. ICIA also claimed \$7 million in retirement benefit costs (PRB costs) under Pub. L. 85-804. The parties agreed to settle the quantum case for a \$44 million reimbursement to the Army.

## **PROCUREMENT FRAUD ACTIONS**

The Army Procurement Fraud Branch (PFB) has led DoD for three consecutive years in the numbers of suspensions and debarments. In FY09, PFB had over 900 open cases, which fueled action on 363 cases, including 134 suspension actions, 112 proposed debarment actions, and 117 debarment actions. A significant number of the actions

related to Southwest Asia procurements. The number of new cases being investigated by the United States Army Criminal Investigation Division (CID) Major Procurement Fraud Unit continues to increase, as have the numbers of investigators. In addition to this work, PFB sponsored two procurement fraud training classes for DoD fraud fighters. PFB and CID jointly hosted the DoD Procurement Fraud Working Group in March 2010. The three-day seminar provided a comprehensive review and discussion on the issues and initiatives in the area of fraud in government contracting. PFB and the Army's Legal Center and School later hosted the 9th Procurement Fraud Course in May 2010 in Charlottesville, Virginia.

## **CONTRACT AND FISCAL ACTIONS**

The Contract and Fiscal Actions Branch (KFAB) has handled a broad array of contract and fiscal law actions, primarily in support of DA staff elements, with an additional focus on providing counsel and support to JAs worldwide, including those who are deployed. Other actions involved consulting with and advising Army staff members in the development of policy and regulations related to Army operations; full-time advice to the Defense Acquisition Regulation Council; and, as Army Labor Advisor, providing agency-level advice on matters related to the Service Contract Act (services) and Davis Bacon Act (construction).

## **ENVIRONMENTAL LAW AND LITIGATION**

As of June 2010, the Army had 97 open environmental litigation cases. The Army devotes substantial environmental litigation resources to cases involving challenges to current Army ranges and operations. These challenges directly impact the Army's ability to organize, train, equip, and deploy forces in support of combat operations. For example, the Army has been in almost continuous litigation, since 2001, concerning its National Environmental Policy Act (NEPA) analysis in regard to a live-fire range at Makua Military Reservation in Hawaii. The latest rounds of litigation involve implementation of provisions of settlement agreements the Army reached with the Native Hawaiian group known as Malama Makua. In addition to NEPA, the Army is also countering challenges brought pursuant to other natural resources statutes such as the Endangered Species Act at Fort Huachuca, Arizona, and Fort Irwin, California, and cultural resources statutes, such as the National Historic Preservation Act and Religious Freedom Restoration Act at Fort Sill, Oklahoma. The Army is also defending its possession-only depleted uranium license application against several pro se plaintiffs before the Nuclear Regulatory Commission for two locations in Hawaii.

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) cases are the overwhelming majority of Army environmental litigation cases. The Army is party to several cases involving third party contribution or cost recovery claims. Many of these cases involve remediation of contamination that occurred during the World War II and Cold War eras. For example, the Cornell-Dubilier Electronic Corp. site in S. Plainfield, New Jersey, is principally contaminated by polychlorinated biphenals

(PCBs) and trichloroethene (TCE), allegedly as a result of the production of capacitors during World War II. In addition to contaminants, such as PCBs and TCE, other substances such as perchlorate are also the focus of remediation and CERCLA litigation. For example, a remediation site located in Santa Clarita, California, has been the subject of ongoing CERCLA litigation between the Army and other federal agencies and relevant insurance companies including Steadfast Insurance Company and the American International Specialty Lines Insurance Company. Remediation of these sites is often very costly with claims against the Army and other federal agencies for millions of dollars.

In addition to defensive litigation, the Army is required by Congress in PL 105-85 to develop a program to recover and share the costs of environmental restoration at DoD sites. The Army has nearly \$4 billion in environmental cleanup costs at 29 Government-Owned, Contractor-Operated (GOCO) facilities, at which former government contractors bear significant responsibility for the pollution. The Affirmative Cost Recovery branch, formed in 2004, has worked to develop a cost recovery program for the Army. The branch currently has seven active cases with a value of over \$100 million, and during the past year reached a settlement in principle in one case for over \$20 million.

#### **ENDANGERED SPECIES**

The Army protects more than 170 threatened and endangered species on its installations. The Army leverages internal assets, contractors, comments from the public, and consultations with the US Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) to develop solutions which allow the Army to meet both its operational requirements and the conservation and recovery requirements of the Endangered Species Act (ESA). The Army has successfully consulted with these agencies on several recent occasions, to include efforts to conserve the Desert Tortoise in California, the Red Cockaded Woodpecker in Georgia, and the Beluga Whale in Alaska.

#### **COMPLIANCE WITH ENVIRONMENTAL MEDIA STATUTES**

While the Army is genuinely committed to maintaining compliance with applicable federal, state and local environmental requirements, instances of noncompliance do occur. The Army has experienced a consistent rate of enforcement actions involving assessment of fines and penalties of approximately ten per year from FY08 to the present.

#### **ENVIRONMENTAL ENCROACHMENT**

Through the Readiness and Environmental Protection Initiative (REPI) authorized by 10 U.S.C. § 2684a, Congress provides funds to the military to address encroachment issues at military installations. The Army administers REPI through its Army Compatible Use Buffer (ACUB) Program. The program helps to achieve conservation objectives and support Soldier training through partnerships with government and conservation organizations along with willing landowners. These partnerships preserve

habitat and limit incompatible land use in the vicinity of Army installations. The Army's ACUB partnerships currently include numerous local and national conservation groups, state and local governments, and other Federal agencies. The Army is leveraging ACUBs to accomplish multiple conservation goals while also minimizing current and future constraints on training activities. In FY09, the Army protected 35,000 acres and initiated three new ACUBs at Camp Bullis, Texas, and at Fort Irwin and Camp Roberts in California. To date, the Army has approved ACUB proposals at 29 Army installations and has protected over 120,000 acres from development - providing a long-term benefit to conservation efforts and military readiness.

#### **BASE CLOSURE AND REALIGNMENT (BRAC)**

Army attorneys review the National Environmental Policy Act (NEPA) documents, environmental site investigation documents, and numerous ancillary documents impacting the environmental management of closing, gaining, and new BRAC installations. The Army has prepared eight Environmental Impact Statements (EISs) and completed eight associated Records of Decision for installations impacted by the 2005 BRAC round. The Army has most recently issued the Final EIS for the BRAC closure of Fort Monroe, Virginia, and is currently preparing the EIS for the closure of Fort McPherson, Georgia. Army attorneys have also assisted in the preparation and review of numerous Environmental Assessments as well as providing advice on the environmental obligations at closed and closing BRAC installations. This advice includes CERCLA and RCRA cleanup obligations and the various mechanisms and documents necessary to assure that these obligations are met so that Army property is safe to transfer into non-federal ownership.

BRAC 2005 recommendations include the closure of 175 Army Reserve Centers and 211 National Guard closures, and the construction of 125 new Armed Forces Reserve Centers. The Army completed the Environmental Condition of Property reports for all the closing Reserve Centers and is completing the NEPA analyses for those closures. Additionally, the Army is preparing NEPA analyses and CERCLA All Appropriate Inquiries for the acquisition of land for all the new Armed Forces Reserve Centers.

#### **ENVIRONMENTAL RESTORATION**

The Army continues its cleanup efforts throughout the country, as required under federal law. In April 2009, DoD issued its updated policy on management of perchlorate releases at DoD installations, including operational ranges and GOCO facilities, BRAC sites, and Formerly Used Defense Sites (FUDS) in the United States. Army and DoD continue working with the EPA on the EPA's draft munitions response guidelines to oversee munitions cleanups on locations other than operational ranges.

Currently, the Army is negotiating Federal Facility Agreements (FFAs) for Redstone Arsenal, Alabama, and Fort Detrick, Maryland - the two remaining Army sites on the EPA's National Priorities List (NPL) that do not have such an agreement. In February 2009, DoD and the EPA agreed to use the Fort Eustis, Virginia FFA language

as a starting point to draft these FFAs. FFA sites tend to include the most complex and expensive cleanups.

## **INTERNATIONAL AND OPERATIONAL LAW**

Army JAs provide commanders and their staffs with advice, counsel, and expertise on a wide array of issues affecting the Army and the Joint Force. Judge Advocates serving at brigade, division, corps and echelons above corps units are performing their duties in some of the most demanding and stressful conditions imaginable. Our JAs (both Reserve and Active Component) contribute to mission success by administering military justice, adjudicating claims, providing legal assistance, reviewing rules of engagement, providing advice and expertise on targeting decisions and international law issues, conducting contingency contracting, advising intelligence and military police personnel, and supporting the operation of prisoner of war/detainee centers. JAs review operational plans for compliance with international humanitarian law (also referred to as the Law of War), advise commanders on a panoply of issues during operations, monitor reports and investigations of suspected Law of War violations, and prosecute Law of War violations.

Throughout the past year, JAs, both Active and Reserve Component, supported Army operations in Iraq, Afghanistan, Horn of Africa, Kosovo, Germany, Korea and other areas around the world. Specifically, JAs are significantly involved in Iraq with the Advise and Assist Brigades (AABs), the Central Criminal Court of Iraq, and base closures in the drawdown and transition period to the Government of Iraq. In Afghanistan, JAs provide significant support in the Counter Insurgency operations and with the Legal Mentor teams and detainee operations. JAs played a significant role in providing crisis management support for the Army. For example, immediately after the Fort Hood incident, Army JAs handled requests for information under the Freedom of Information Act and matters relating to the UCMJ and casualty/family assistance. On January 12, 2010, after the Haitian earthquake, JAs went on a 24-hour-a-day, 7-day-a-week rotation in the Crisis Action Team, reviewing and assisting in coordinating all requests for personnel, equipment, and humanitarian aid to assist in the relief operations in support of Operation Unified Response. As part of the Southwest Border Mission in the summer of 2010, US Army North JAs provided Army commanders legal advice on civil-military operations, rules for use of force, and law enforcement issues.

Army JAs continue to support Joint Task Force - Guantanamo Bay, Cuba on both detention and interrogation issues. JAs also continue to serve as prosecuting attorneys, defense attorneys and judges in the Military Commissions process. Additionally, US Army South JAs serve as legal advisors to joint humanitarian efforts in the Caribbean and Central America as part of the ongoing New Horizons operations.

Army JAs are also actively involved in helping establish and strengthen the rule of law in Iraq, Afghanistan, and other nations by training and mentoring judges, prosecutors, and law enforcement personnel. The Army JAGC will pursue several new

initiatives in training, doctrine and force structure to further improve JAs rule of law capability in stability operations.

Presently, we have over 600 JA officers and paralegals (including Active Component, Reserve Component, and the National Guard) deployed throughout the world.

## LEGAL ASSISTANCE

### CLIENT SERVICES

The FY 2009 workload reports indicate that Army Legal Assistance services remain in high demand.

**a. Clients.** Almost two-thirds of the legal assistance clients are enlisted Soldiers and their Family members. The numbers below reflect the number of clients and the percentage they represent of the total client population seen in active duty legal assistance offices.

LEGAL ASSISTANCE CLIENTS						
	FY07	%	FY08	%	FY09	%
Enlisted	84,491	65%	83,600	62%	<b>88,848</b>	62%
Officer	18,127	14%	18,435	14%	<b>19,827</b>	14%
Retirees	17,600	13%	18,548	14%	<b>19,385</b>	13%
Other	10,680	8%	13,276	10%	<b>16,320</b>	11%
<b>Total</b>	<b>130,898</b>		<b>133,859</b>		<b>144,380</b>	

In addition, JAs are accompanying our deployed Soldiers around the world. While these attorneys see significant numbers of legal assistance clients, much of their work in the deployed environment is not reflected in these statistics. Tens of thousands of Soldier clients were also seen outside of the office environment as part of the Soldier Readiness Program (SRP). The SRP is a process to determine the Soldier's legal preparedness for deployment and to prepare necessary legal documents. While the number of documents prepared is counted, the number of Soldiers going through an SRP is not included in the client statistics. Further, Reserve Component judge advocates provided SRP services for thousands of reserve component Soldiers. These Soldiers are not included in the client count.

**b. Cases & services.** Around the globe, our legal assistance staff assists clients by preparing wills and powers of attorney, filing income tax returns, notarizing documents, and handling numerous other personal legal matters.

During FY 2009, legal assistance staff opened 188,432 cases (some clients were seen on more than one case). The largest areas of service remain in the area of will consultations (43,345) and divorce/separations (33,977). In assisting our clients, legal

assistance staff prepared a significant number of legal documents. Powers of attorney were the most frequently prepared document (318,328). In addition, legal assistance offices prepared 48,890 wills and 2,799 separation agreements. They also provided 340,844 notarizations and referred 1,513 clients to civilian attorneys.

The numbers reflect the work performed in active duty offices and during active duty SRPs. They do not include the significant volume of work performed by our deployed legal assistance personnel or within the reserve components. Army Reserve and Army National Guard judge advocates perform an invaluable service preparing reserve component Soldiers before they reach the active duty mobilization station. This preparation includes the drafting and execution of thousands of wills and powers of attorney.

**c. Tax Assistance Services.** Army legal assistance personnel, together with unit tax advisors, temporary employees, and volunteers prepared and filed 114,337 Federal and 71,291 state income tax returns during the tax filing season. More than eighty-six percent of the federal income tax returns were filed electronically. The Soldiers, retirees, and Family Members who visited our Tax Assistance Centers saved over \$29 million in tax preparation and filing fees last year. Due to the automatic tax filing extension resulting from the deployments, many Soldiers are filing their returns long after the regular tax season. As a result, many installations now operate year-round Tax Centers.

**d. Value of Services.** Every year legal assistance services collectively save our clients substantial fees they would otherwise incur if purchasing the advice and services. Using average national costs of selected services provided by the ABA Standing Committee of Legal Assistance for Military Personnel, legal assistance offices saved our clients over \$98 million in legal fees (including the above mentioned over \$29 million in tax return preparation fees) in FY09.

## **MEDICAL BOARDS**

Army legal assistance operations continue to focus on enhancing the legal support to Soldiers processing through the Medical Disability Evaluation System (DES). The implementation of our Medical Evaluation Board Outreach Counsel (MEBOC) has been extremely successful. By providing counsel earlier in the DES process, we more clearly identify the medical conditions to be addressed in the process and assist Soldiers in better understanding the system. To assist in the DES process, 23 Reserve Component judge advocates and paralegals were recently mobilized for one year, becoming the fourth legal team mobilized to support this mission. Combined with previously mobilized judge advocates and paralegals who have extended, the Reserve Component provides 25 counsel and 16 paralegals to provide representation and legal support to Soldiers throughout the DES process.

## **AWARDS FOR EXCELLENCE IN LEGAL ASSISTANCE**

The Chief of Staff of the Army annually presents awards to Active and Reserve Component Legal Assistance offices who exemplify excellence in providing legal assistance to Soldiers and their Families. The application for the 2009 award consisted of a local assessment of the legal assistance program and detailed questions concerning the strengths and weaknesses of the legal assistance, preventive law, and tax programs; the use of technology to improve delivery of the programs; the technical capabilities and training of the legal assistance personnel; and the legal assistance initiatives of the past year. The award is made on the basis of the quality of legal assistance provided to eligible clients; innovations to provide better client services; adequacy of legal assistance facilities; quality of preventive law efforts and publications; and the legal experience of attorneys. Of the 86 active duty offices that provided legal assistance during FY09, 21 offices achieved the highest standards meriting recognition. Additionally, five Reserve Component legal offices were recognized with the award. The following offices earned the 2009 Chief of Staff Award for Excellence in Legal Assistance:

Active Component - Small Office (1-5 attorneys): 10th Support Group; The Netherlands Law Center; US Army Communications-Electronics Command and Fort Monmouth.

Active Component - Medium Office (6-16 attorneys): Defense Language Institute Foreign Language Center and Presidio of Monterey; Fort McPherson; Kaiserslautern Law Center; Mannheim Law Center; Stuttgart Law Center; US Army Combined Arms Center and Fort Leavenworth; US Army Combined Arms Support Command and Fort Lee; US Army Japan and I Corps (Forward); US Military Academy and West Point.

Active Component - Large Office (17 or more attorneys): XVIII Airborne Corps and Fort Bragg; 1st Armored Division; 1st Infantry Division and Fort Riley; 2nd Infantry Division; 3rd Infantry Division and Fort Stewart; US Army Air Defense Artillery Center and Fort Bliss; US Army Armor Center and Fort Knox; US Army Fires Center of Excellence and Fort Sill; US Army Infantry Center and Fort Benning.

Reserve Component: 12th Legal Support Organization; 78th Legal Support Organization; 108th Training Command (Initial Entry Training); Camp Atterbury Joint Maneuver Training Center; Florida National Guard.

The Legal Assistance Offices at Fort Benning, Georgia and Fort Stewart, Georgia were two of seven winners of the ABA LAMP Committee's 2009 Distinguished Service Awards. The Fort Benning Legal Assistance Office was recognized in part for their exceptional response to the fire that destroyed the entire SJA Office on a Friday night. Working throughout the weekend, they were able to reopen on Tuesday morning, serving over 75 clients. Thereafter, they spent innumerable hours recreating client files and reestablishing programs, at the same time continuing to provide the full level of comprehensive legal assistance. The Fort Stewart Legal Assistance Office was recognized in part for a number of initiatives developed to support Soldiers and Families during and after deployments. One example is Operation SAFE which encourages

spouses of deployed Soldiers to prepare parental powers of attorney and then provides identification cards which local emergency responders are trained to look for. This program has been responsible for the swift and smooth accommodation of several minors in situations where the parent has been severely injured and unable to care for the minor child.

## **CLAIMS**

The US Army Claims Service (USARCS) and claims offices world-wide continued to vigorously examine and settle meritorious claims against the Army brought under the Federal Tort Claims Act, the Personnel Claims Act, the Foreign Claims Act, and other statutory authority. USARCS, in coordination with field claims offices around the world, also aggressively pursued recoupment actions against negligent transportation carriers that move personal property of military personnel, and third parties that damaged Army property or caused injury to service members resulting in treatment at Army medical facilities. Thorough investigation, diligent research, and expert analysis resulted in negotiated settlements of thousands of claims. These settlements avoided high judgment awards and litigation costs for meritorious claims.

### **OPERATION IRAQI FREEDOM (OIF) & OPERATION ENDURING FREEDOM (OEF) CLAIMS**

The Department of Defense designated the Army as the single service responsible for claims asserted under the Foreign Claims Act in OIF and OEF. USARCS vigorously coordinated with Army, Marine, and Air Force units in Iraq and Afghanistan to establish a comprehensive network of claims officers, termed Foreign Claims Commissions, to accept and consider claims for property damage or loss as well as for death or personal injury that were caused by activities of US armed forces. USARCS has appointed a total of 55 single and three-member Foreign Claims Commissions; 32 are serving in Iraq and 23 are serving in Afghanistan. USARCS created new training all Foreign Claims Commission members must complete before appointment, and sent teams to stateside installations and Iraq and Afghanistan to conduct training during FY09. In FY09, USARCS oversaw payment of over \$39 million in claims to Iraqi civilians under the Foreign Claims Act, a \$9 million increase from the previous year. In FY09, USARCS oversaw the payment of over \$1.3 million in claims to civilians in Afghanistan under the Foreign Claims Act, a significant increase from the previous year when less than half this amount was paid.

### **ENVIRONMENTAL CLAIMS**

In partnership with Installation Management Command-Europe (IMC-E), USARCS funds a preventive claims program, referred to as the CLAIMS program, that assesses actual and potential environmental damage allegedly caused by US forces at closing installations within Germany and Eastern Europe. This program seeks to reduce US environmental claims liability by surveying these bases and training sites to define

the damage caused by US forces. By identifying soil and groundwater contamination on these former US facilities at the time of return to the host nation, the United States reduces its liability for latent damages from 30 years under German law, to 90 days under the NATO-SOFA agreement, for the filing of third-party damage claims. Additionally, USARCS continues to fund a multi-million dollar comprehensive study to validate environmental remediation plans submitted by third-party claimants. Besides ensuring that US dollars are spent effectively and efficiently, this program limits US liability to the contamination as it was found at the time of the study. The CLAIMS program also establishes a baseline of environmental damage in Eastern Europe before US forces operate there to ensure we are not liable for pre-existing damage. All of this saves the Army potentially hundreds of millions of dollars in the long term.

## **PERSONNEL CLAIMS**

During FY09, USARCS continued to integrate the Congressionally-mandated Full Replacement Value (FRV) program and Defense Personnel Property Program (DP3) into the overall personnel claims scheme. Under both programs, military personnel who experience loss or damage to their household goods during a government-sponsored move can file claims directly with the household goods carrier who caused the damage. In return, claimants can be paid the full replacement value of their lost or destroyed items instead of the depreciated value as required by the Personnel Claims Act. These programs have met with mixed results in the field and the Services are looking for a possible replacement. During FY09, USARCS oversaw the payment of more than \$9 million in personnel claims, a significant decrease from previous years. The decrease is due to implementation of the FRV and DP3 programs. Although the number of claims filed with military claims offices has gone down, the amount of work for military claims professionals has remained constant as they assist military personnel in filing claims against carriers.

During FY09, USARCS fielded the Personnel Claims Army Information Management System (PCLAIMS), a computer program that permits military personnel to file claims through the Internet. USARCS personnel hosted seven training sessions on the new program around the world. The program has been favorably received.

## **TORT CLAIMS**

The USARCS and claims offices world-wide continued to vigorously examine and settle meritorious claims against the Army brought under the Federal Tort Claims Act, the Foreign Claims Act, and other statutory authority. These include claims for wrongful death, personal injury, medical malpractice, and property damage. USARCS continues to process and work with the Department of Justice to resolve approximately 500,000 claims filed against the Army Corps of Engineers following Hurricane Katrina. During FY09, USARCS oversaw the payment of over \$18 million in tort claims, not including those paid in Iraq and Afghanistan.

## **AFFIRMATIVE CLAIMS**

During FY09, USARCS continued to monitor a new agreement with the Tricare Insurance Company, the agency that provides medical coverage for military personnel treated at non-military facilities. Under the agreement, between the Army Medical Command, the Office of The Judge Advocate General, and Tricare Management Agency, Tricare reimburses the Army a percentage of Army costs incurred reclaiming monies owed by the insurance companies for negligently inflicted injury and hospitalization of service members. In April 2009, Tricare reimbursed the Army \$1.32 million dollars under the agreement. This money can be used to fund attorneys and other professionals who work on the recovery actions.

During FY09, USARCS oversaw the processing of approximately \$23 million in medical care recoveries. This is a significant increase from previous years due, in part, to the new agreement with Tricare.

## **CIVILIAN PERSONNEL, LABOR AND EMPLOYMENT LAW**

The Director, Civilian Personnel, Labor and Employment Law is a civilian attorney in the Senior Executive Service and is the senior civilian within the Judge Advocate Legal Services (JALS). The Director, Civilian Personnel, advises TJAG on all matters relating to civilian employees of the JALS, including their training and professional development. The Chief, Labor and Employment Law Division advises TJAG and Department of the Army (DA) proponents about DA policies, plans, and programs affecting DA civilian employees. The Division is comprised of a Chief, Deputy Chief, and three branches whose primary functions are described below.

### **CIVILIAN PERSONNEL MANAGEMENT BRANCH (CAREER FIELD 56)**

The Civilian Personnel Management Branch for Career Field 56 is comprised of a civilian attorney Branch Chief and supported by two civilian paralegals. The branch is responsible for developing, implementing, and executing programs for the legal management and professional development of JALS civilian attorneys (of which there are currently 561) and civilian paraprofessionals (of which there are currently 722). The branch provides expert legal, policy, and management advice to TJAG, the Chief, PP&TO, and the Director, Civilian Personnel, Labor and Employment Law on JALS civilian attorney and paraprofessional issues.

### **OPINIONS AND POLICY BRANCH**

The Opinions and Policy Branch is comprised of a civilian attorney Branch Chief, three attorney advisors, one active duty judge advocate, and one civilian paralegal.

The Opinions and Policy Branch provides labor and employment law advice on proposed regulations and other personnel policies, as well as advice for the development

and implementation of DA personnel policies, impacting the Army's more than 330,000 civilian employees, almost half of whom are members of the approximately 550 bargaining units representing employees Army-wide. The Opinions and Policy Branch reviews for legal sufficiency proposed legislation affecting DA civilian employees; DA comments on proposed DoD and external agency regulations and policies, realignments, reorganizations and reductions in force; responses to inquiries to Congress or the President; investigative reports; selection board instructions and results; FOIA Initial Denial Authority determinations relating to civilian personnel records and matters; and Privacy Act Denial Authority's determinations relating to civilian personnel records and matters.

The branch provides advice relating to DA-level adjudicative proceedings. It provides legal review of DA actions before the Federal Labor Relations Authority (FLRA) and exceptions to arbitration awards; drafts advocacy requests to the Office of Personnel Management (OPM) relating to certain arbitrators' and Merit Systems Protection Board (MSPB) decisions; and analyzes all Equal Employment Opportunity Commission (EEOC) administrative judge decisions finding discrimination and provides recommendations for DA follow-on actions based on those decisions.

The Opinions and Policy Branch coordinates with legal staffs at DoD and external agencies on labor and employment law matters that affect DA civilians, and it serves as representative or legal advisor to working groups addressing civilian personnel, EEO, labor relations, and other employment issues. The branch assists the Division Chief in carrying out her functions as the designated Senior Management Official under Department of Defense Directive 5500.19 for cooperation with the Office of Special Counsel; screens for adverse information relating to Senior Executive Service nominees; manages and controls the Army Labor Counselor Program; and provides technical supervision over all Army labor counselors.

Of note during FY10, the Opinions and Policy Branch has provided legal advice for the Army's transition out of the National Security Personnel Security System (NSPS); worked closely with Army leadership to implement Executive Order 13522, December 9, 2009, Creating Labor-Management Forums to Improve Delivery of Government Services; and helped the Army resolve myriad civilian personnel law issues arising from BRAC 2005, which by September 15, 2011, will have directly impacted almost 23,000 DA civilian employees. In addition, DA civilian employees continue to deploy in support of Operations Enduring Freedom and Iraqi Freedom, and attorneys at all command levels address and resolve legal issues relating to deployment of civilians employees in operational environments.

#### **LABOR COUNSELOR AND LITIGATION BRANCH**

The Labor Counselor and Litigation Branch consists of a civilian attorney Branch Chief, three attorney advisors, and one paralegal.

The Labor Counselor and Litigation Branch carries out HQDA Labor Counselor Responsibilities, which include representing the Army in third-party proceedings before the EEOC and the MSPB; arbitrating grievances under Negotiated Grievance Procedures; and representing the Army before the FLRA, State Unemployment Compensation Agencies, and the Federal Service Impasses Panel. It serves as the legal advisor to HQDA Principal and Management Officials, the HQDA EEO Officer, and the HQDA Civilian Personnel Advisory Center (CPAC). The team also serves as agency liaison for Office of the Special Counsel (OSC) investigations involving HQDA activities, represents the Army during investigations, and when approved by the Army General Counsel to do so, represents management officials who are subjects of OSC investigations.

### **STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH AND ATTORNEY PROFESSIONAL RESPONSIBILITY**

The Chief, Professional Responsibility Branch (PRB) manages TJAG's Professional Responsibility Program, which includes the formulation of policy and guidance, oversight of inquiries into allegations of professional misconduct and mismanagement, professional responsibility advice to TJAG, DJAG, and the Assistant Judge Advocates General, and administrative support to the Professional Responsibility Committee.

### **LEGAL TECHNOLOGY**

The Information Technology Division (ITD) leverages existing and emerging technology for the benefit of the JAGC and their customers and clients (the Army, Soldiers and Family Members) from our portal, JAGCNet (<http://www.jagcnet.army.mil>). ITD continues to provide secure, useful, user-friendly, and economical information technology and knowledge management enterprise solutions for the JAGC and its clients at all levels of command across the full spectrum of legal operations and JAGC disciplines, enabling the JAGC to effectively deliver legal services.

ITD continued to capitalize and leverage the ongoing ITD internal reorganization and transformation by fostering a renewed focus and dedication to customer service and satisfaction along with an internal shift in cultural mindset to continue to develop, design, and produce enterprise applications designed to better assist the JAGC in their support of the warfighter. ITD continued to emphasize a systematic process for application development by leveraging the use of a mandatory application requirements document. Additionally, ITD introduced the mandatory use of MS Project to manage projects and monitor project progress. Additionally, ITD increased its contractor manpower, primarily to augment application development specifically for applications relevant to the JAGC assets currently deployed with warfighting elements in theater.

ITD fielded three critical enterprise applications as part of a comprehensive military justice management and action processing system. These three applications are designed to streamline, simplify and standardize the processing of all military justice actions. ITD continues development of Military Justice Online in a three phase approach: Phase I is complete, and focuses on investigations, non-judicial punishment, administrative separations, and memoranda of reprimand. Phase II, which focuses on the court-martial appellate process, has completed the application development stage and moved into the testing phase. Phase III, which focuses on the court-martial process has been in development for many months, and is expected to be completed in 2010.

Key improvements ITD made with regard to legal technology in the last year, however, have gone largely to the improvement of the JAGCNet platform itself. These improvements were made in three primary areas: Analysis and Reporting of Data, Search, and e-Discovery capability. ITD procured three commercial products to better enhance these functions over JAGCNet. Data analysis and reporting, especially for complex reports, will now be handled by a new, integrated business intelligence software, which will enable our Corps to provide the detailed reports required by statute and Congress. Searches over JAGCNet will now be handled by an integrated and federated search capability, capable of handling dynamic, Boolean searches and searching across not only JAGCNet, but multiple platforms. e-Discovery missions and requirements are accomplished with an in-house e-Discovery commercial product.

Recognizing the importance of information security during this time of war, ITD continues to work extensively in ensuring all current and developing applications are in compliance with all Information Assurance (IA) requirements and other governing rules, policies and regulations. To ensure success, the IA Manager created and chairs an Information Security Work Group which oversees all IA and Security issues in OTJAG.

## **US ARMY TRAINING AND DOCTRINE COMMAND**

The primary missions of the United States Army Training and Doctrine Command (TRADOC) are to: develop the Army's Soldier and Civilian leaders and design, develop and integrate capabilities, concepts and doctrine in order to build a campaign-capable expeditionary Army in support of joint warfighting capability through Army Force Generation (ARFORGEN). In every sense, victory on today's battlefields starts in TRADOC as this Army Command is responsible for all initial Army military training, leader development, doctrine and combat development. TRADOC operates 32 schools and centers at 16 Army installations. TRADOC serves as the Executive Agent for executing the Army's transformation, particularly in the areas of leader development, training, and equipping the future force.

The TRADOC Office of the Staff Judge Advocate (OSJA) continued to support the Global War on Terror while conducting all the traditional legal missions required by the Army (military justice, legal assistance, claims, environmental law, labor law, administrative law, force protection, and homeland security) and executing operational

functions. The TRADOC OSJA supported innovative new concepts, such as human terrain teams, and the development of doctrine for asymmetric warfare.

TRADOC attorneys continue to be thoroughly engaged in the BRAC process as the Army proceeds with major realignments directed by the 2005 BRAC process. Fort Monroe will close in FY11 and TRADOC will relocate its headquarters to Fort Eustis.

## **CONTRACT AND FISCAL LAW**

The TRADOC OSJA continued to work closely with the TRADOC G-8 on the implementation of TRADOC Regulation (TR) 5-14, *Acquisition Management and Oversight*. As its title suggests, the purpose of this regulation is to increase oversight and management of all contract actions originating within all of TRADOC. This regulation is the first of its type within the Army, and possibly DoD. As a result of this regulation, the volume of contract actions requiring legal review has increased dramatically, with little-to-no associated increase in resources throughout the command. This office participated in numerous off-site TR 5-14 Assistance Visits to TRADOC commands to instruct and provide guidance and assistance in accomplishing the review of TRADOC contract actions. Among the issues addressed include how to write performance work statements (PWSs), personal services issues, and the topics of inherently governmental, closely associated, and critical functions. Additional work on significant efforts by this office include legal counsel in support of a Smart Phone initiative by the Army Capabilities Integration Center (ARCIC) and related conceptual exploration. Finally, this office provided ongoing support, guidance, and assistance to TRADOC legal offices on an array of contract and fiscal law topics arising within our command.

## **CIVIL LAW**

Fort Rucker handled over 300 environmental law queries and nearly 400 contract and fiscal law queries. Of particular significance for Fort Rucker was the legal work done in acquiring 15 acres near a critical training airfield. The land purchase will protect Army training and air operations from increasing urban encroachment. The Fort Rucker legal office also provided invaluable assistance in acquiring telecommunication leases to install mission essential transmission equipment on privately owned towers. In the contracts arena, the office provided legal advice to the contracting team on the multi-million dollar rotary wing flight training contract, including the acquisition strategy and the evaluation criteria.

## **LABOR LAW**

During this period, the Fort Benning labor counselor successfully litigated three cases before the EEOC, three cases before the Merit Systems Protection Board, and one unemployment compensation hearing before the Georgia Department of Labor. Approximately 18 cases were settled at the informal stage of the EEO complaint process, and five have been formally investigated. One union contract was successfully negotiated. Two union grievances have gone to arbitration; the Agency was successful in

one, and a decision is pending in another. The labor counselor investigated several cases of alleged employee misconduct and assisted managers in administering appropriate discipline.

The Fort Monroe Post Judge Advocate (PJA) Office provided support to the Garrison commander and its employees as they transition out of the National Security Personnel System (NSPS) and back into the GS pay system (effective date 1 August). The Fort Monroe PJA, with the support and assistance of the TRADOC Labor Counselor, researched and provided over twenty labor law opinions to the Garrison Commander, CPAC, or Non-appropriated Funds Human Resource Office regarding DoD civilian employee misconduct, disciplinary actions, and union grievances.

The Fort Sill Labor Counselor provided guidance and representation on a host of civilian personnel and labor relations matters ranging from union contracts, grievance resolutions, third party proceedings, and complex binding arbitration, with successful representation resulting in no adverse findings against the Army.

#### **OPERATIONAL LAW**

The Fort Monroe PJA Office participated in pandemic influenza, hurricane evacuation/response, and active shooter response exercises and provided instruction and advice during the decision making process in areas such as personnel claims, *posse comitatus* act, and emergency response authority. The office also assisted medical personnel with the drafting of an MOA that would allow military or DoD employee liaison officers (LNOs) to accompany wounded Soldiers and civilians evacuated to area hospitals in order to provide timely and accurate reporting and accountability to Fort Monroe Operations Center (lesson learned from Fort Hood incident).

#### **ENVIRONMENTAL LAW**

Fort Huachuca OSJA continues to be deeply involved concerning the scope of responsibility under the Endangered Species Act (ESA). Fort Huachuca is in litigation with the Center for Biological Diversity concerning a biological opinion which provided the Fort the flexibility to accommodate up to 3,000 additional personnel in support of the Global War on Terrorism. For the first time, the biological opinion also applied Section 321 of the 2004 Defense Authorization Act. This section specifically provides Fort Huachuca with a rare exception to the ESA. This law precludes inclusion of cumulative (off post) impacts of water usage in determining whether species are in jeopardy. Fort Huachuca recently filed its response to a motion for summary judgment and requested oral argument in the matter. Fort Huachuca's ongoing environmental support program has reduced water consumption in the area by over 50% and it continues to be the leader in regional water conservation efforts.

## **LEGAL ASSISTANCE**

Fort Benning's Legal Assistance Division (LAD) provided unparalleled Soldier Readiness Processing (SRP) in support of real-world missions and deployments to combat theaters of operation. During the past year, the OSJA provided legal support for 142 SRPs, providing services to more than 28,134 Soldiers and civilians, preparing 2,919 wills and 8,457 powers of attorney, and providing legal counseling to 2,305 clients.

The LAD played a critical role in supporting the legal needs of Soldiers wounded in Iraq and Afghanistan. The LAD provided legal advice and assistance to Warriors in Transition (WT) as well as their Family Members on a priority basis. A dedicated attorney and paralegal support WTs and their Family Members at the Fort Benning Warrior Transition Battalion (WTB).

The Fort Benning Tax Assistance Office prepared 6,508 federal and state tax returns for Soldiers, Family Members, and retirees of the Fort Benning Community. This resulted in the swift and accurate refund of \$6,002,047 to community members and savings of \$610,972 in tax preparation fees.

The Carlisle Barracks Legal Assistance Office is proactive to ensure that personal legal difficulties are avoided entirely or substantially minimized, and participates regularly in community and other outreach programs. During this period, such events included the annual briefings to incoming International Foreign Students and Senior Service College Fellows; presentations at Retiree Day; ethics briefings to tenant organizations; and processing and outreach to local law students.

The Fort Gordon Legal Assistance Division received more than 6,355 office visits and more than 1,068 SRP clients, generating more than 4,353 wills and advanced directives, and nearly 4,000 powers of attorney. The Tax Center produced more than 2,500 federal returns and more than 2,100 state returns, resulting in total refunds of more than \$5,600,000 and savings to the members of the military community of more than \$440,000.

Serving an eligible client base estimated at around 20,000 people, the Fort Huachuca Legal Assistance office is comprised of two lawyers and three paralegals. This team provided quality legal assistance services to active duty military members, retirees, and dependents of active duty military members and retirees in the local area.

The Fort Jackson Legal Assistance Office continues to enjoy a strong and mutually beneficial working relationship with the 12th Legal Support Organization (LSO) that fully integrates the active and reserve components to provide a seamless delivery of legal services to the greater Fort Jackson community. The support from the 12th LSO included monthly Saturday and Sunday legal assistance appointments for eligible clients and providing both JAs and paralegals to support the day-to-day operations of the OSJA during periods of annual training.

The Fort Knox Legal Assistance Office assisted with preparing Soldiers of the 3rd Sustainment Command (Expeditionary), 502nd Engineer Company, 533rd Engineer Detachment, and individually-tasked Soldiers for deployments in support of overseas contingency operations. Services provided included preparation of wills, powers of attorney and advance medical directives, as well as briefings on subjects including the Servicemembers Civil Relief Act, estate planning, and taxes.

The Fort Leonard Wood Legal Assistance Division provided client services on thousands of separate actions. These services were valued over \$2 million. The division continues to support the deployment, redeployment and unit readiness for the installation TRADOC and FORSCOM units. The Legal Assistance division sponsors and teaches preventative law classes to the military population, covering such topics as estate planning, administrative issues, and consumer law. Legal assistance attorneys regularly publish informative articles in the post newspaper. Legal assistance family law and will briefs continue to receive wide support and allow the office to greatly increase the number of personnel assisted. This year's tax program continued a tradition of excellence. Tax Center personnel assisted more than 5,000 clients; prepared 2,574 federal returns, 2,541 state returns, and 1,354 Missouri non-resident declarations—6,469 forms in total, saving the community approximately \$634,639 in tax preparation fees and returning to them more than \$6,187,000 in refunds.

## **MILITARY LAW**

In 2009, Fort Benning was the busiest court-martial jurisdiction in TRADOC with 61 courts-martial. The Army Court of Criminal Appeals also recognized Fort Benning as one of the top post-trial processing jurisdictions in the Army. Fort Benning tried a wide variety of serious cases during 2009, including a premeditated murder case involving a complex mental responsibility defense, a litigious child rape case, several sexual assaults involving multiple co-accuseds, and a larceny case involving the theft of \$101,000 in Basic Allowance for Housing. Fort Benning also led the Army in implementing the automation of military justice actions with the new “Military Justice Online” program, processing literally thousands of documents in the system.

The Military Justice Division at Fort Eustis continued to aggressively pursue justice successfully prosecuting 18 general and special courts-martial. Among the cases of note was the general court-martial of *United States v. Sergeant First Class Maurice Robins*. Robins was found guilty of indecent acts and sentenced to 31 years confinement and a dishonorable discharge. In another high profile case, *United States v. Sergeant Major Leroy James*, the accused was found guilty of maltreatment of subordinates and sentenced to reduction to E-8 and confinement for three months. In a stolen valor case, *United States v. Master Sergeant William T. Capers*, the court-martial found Capers guilty of wrongfully wearing various badges, including the Combat Infantry Badge and Ranger Tab, and of making false official statements. He was reduced in rank to E-6 and confined for five months.

The Fort Gordon Military Justice prosecuted nine general courts-martial, five special courts-martial, and four summary courts-martial from July 2009 to June 2010, which is close to the same amount tried during the same time the previous year. The majority of the convictions were for sexually based assaults, frauds against the United States government, and larceny related crimes.

The Fort Huachuca Criminal Law Division continued to address military justice requirements of a diverse post that includes both deploying combat support units and TRADOC school students. The Criminal Law Division coordinated a conference with the Arizona Attorney General and all major federal and local law enforcement agencies in the area to discuss crime prevention on the post. The division implemented weekly training in criminal law and trial advocacy to train and develop junior trial counsels in the office. The training was able to draw on the experiences of more senior trial counsels as well as court-reporters and paralegals' own observations of successful techniques. The division also took a proactive posture in leading legal classes throughout the installation, taking a "preventative medicine" approach to military justice.

Fort Jackson's Criminal Law Division prosecuted seven general courts-martial and eleven special courts-martial during the year. This was comparable to the previous year. Offenses included fraud, larceny, illegal associations with Soldiers in Training by Drill Sergeants, and aggravated sexual assaults. The Criminal Law Division also processed over 1,500 non-judicial punishment actions and over 1,750 administrative separations post-wide.

The Fort Leavenworth Military Justice Division continued to handle a diverse and complex caseload that included original jurisdiction cases as well as rehearings for Army inmates confined to the United States Disciplinary Barracks. The rehearings included: *United States v. Inlow*, a sentence rehearing on a rape case; *United States v. Wilson*, a sentence rehearing where the Court had dismissed several specifications of rape of a child and returned the case for a sentence rehearing on a false official statement charge; and *United States v. Lubasky*, which was a case that had been returned twice for sentence rehearings, and involved a Chief Warrant Officer Four who stole thousands of dollars from a widow for whom he was performing duties as a Casualty Assistance Officer.

The Fort Lee Criminal Law Division prosecuted 16 general and special courts-martial and over 24 summary courts-martial. BRAC realignment and the relocations of the US Army Ordnance School from Aberdeen Proving Ground, Maryland and the US Army Transportation School from Fort Eustis, Virginia, increased greatly the numbers of service members in the jurisdiction, thereby increasing the Military Justice caseload and necessitating the re-evaluation and re-design of jurisdictional schemes. As a result, the number of convening authorities at Fort Lee will double and the number of service members within the jurisdiction will nearly triple. Also in response to this growth and demand for services, a Command Judge Advocate position, a Trial Counsel position, and a full-time Special Assistant US Attorney (SAUSA) position were created.

Over the past year, the Fort Rucker Office of the Staff Judge Advocate Military Justice (MJ) Division fulfilled its mission of providing expert legal advice to commanders and processing military justice actions in a timely manner. MJ processed 121 non-judicial punishment actions, 84 General Officer Memoranda of Reprimand, 64 officer eliminations, 39 enlisted separations, 3 Officer Show Cause Boards, and 1 Enlisted Separation Board. Furthermore, MJ conducted two general courts-martial, two special courts-martial, and one summary court-martial. In addition, Fort Rucker trial counsel acting as SAUSAs processed and prosecuted 445 traffic tickets, 39 misdemeanors, and 3 felonies in the Middle District of Alabama. Trial counsel also lent their legal expertise to the Fort Rucker schoolhouse and taught thousands of Aviation students of all ranks in the intricacies of military law, the law of war, and legal aspects of urinalysis.

Fort Sill is home to one of two Personnel Control Facilities (PCFs) within the Army. Accordingly, the Criminal Law Division handled a number of unique actions. For example, this Division routinely prepared hundreds of final actions on courts-martial cases from throughout the Army and also facilitated hundreds of Soldiers' requests for Discharge In Lieu of Court-Martial arising from returning, absent without leave (AWOL) Soldiers. Also, hundreds of inmates confined at the US Disciplinary Barracks, Fort Leavenworth, are now assigned to PCF, Fort Sill, resulting in even more final actions produced, rehearings, and transfers of jurisdiction considered. In all, during FY09 this Division handled over 150 non-judicial punishments under Article 15, UCMJ, and over 40 courts-martial.

## **CLAIMS**

Fort Benning Tort Claims personnel processed 74 significant administrative tort claims totaling \$316,145,106: 58 medical malpractice claims totaling \$308,853,938 and 16 non-malpractice cases totaling \$7,291,168. Additionally, Tort Claims Personnel paid 54 small tort claims for a total of \$87,617.22. Torts had 10 cases in litigation: 2 medical malpractice cases totaling \$6 million and 5 non-malpractice cases totaling over \$1.5 million. The Affirmative Claims branch collected \$505,813 for Martin Army Community Hospital and TRICARE on 421 separate incidents. The Personnel Claims Branch paid 146 claims for a total of \$150,739.

The Carlisle Barracks Claims Office is responsible for 62 counties in Pennsylvania and some incidents occurring on the border of Pennsylvania and Maryland. Between July 1, 2009, and June 30, 2010, 50 tort and special claims were processed and paid for a total of over \$97 thousand. Eight carrier recovery claims were processed for a total of \$3,246.98 and 22 personnel property claims were paid for a total of \$18,646.00. Affirmative claims in the amount of over \$11 thousand were collected during the same period.

From July 2009 through June 2010, the Fort Gordon Claims Division processed 138 household goods and tort claims against the government and 26 carrier recovery claims. Collections for the government from household goods carriers totaled \$22,890

during the period. Medical care recovery was \$365,000 during the period, of which \$232,000 was returned to Eisenhower Army Medical Center. A total of \$138,418 was approved and paid in response to household good and tort claims against the government.

The Fort Huachuca Claims Section, comprised of a part-time Claims Judge Advocate, Claims Adjudicator and Claims Examiner, has the responsibility of servicing the State of Arizona in adjudication and settlement of personnel claims, tort claims, carrier claims, medical and property recovery, real estate reimbursement, and intentional tort claims. The quality of services provided continued to excel this year even while operating below full strength for personnel.

The Fort Huachuca Claims Office prides itself in prompt and equitable settlement of claims and endeavors to maximize its collections. Members of the office are highly motivated to provide excellent service as efficiently as possible.

During the past year, the Fort Jackson Personnel Claims Office processed 113 claims, resulting in payments totaling \$157,350 to claimants. In addition, the Claims team counseled and assisted numerous Soldiers, whose claims fell under the new Full Replacement Value (FRV) program, advocating on their behalf to make sure their claims were settled timely and favorably by carriers.

The Fort Leonard Wood Claims Office continued its tradition of excellence by receiving TJAG's Award for Excellence in Claims Support for FY09. The recent implementation of the Army's FRV coverage for personal property claims has drastically changed that area of business for the office. The community outreach and education program met resounding success, and the majority of personal property claims made by our clients are now resolved through the new system. During this period, the Leonard Wood Claims Office investigated and competently settled 77 tort claims for approximately \$43,055.51 and 149 personnel claims totaling \$160,725.00. Medical care recovery actions totaled over \$1,768,576.19 with deposits totaling over \$758,894.95.

The Fort Monroe Personnel Claims Office provided outstanding claims service for over 20 personnel claims, with a payout to Soldiers in excess of \$15,000, and 1 Tort Claim for \$600. The one-person claims officer provided a timely and professional level of support for claims resulting from the Nor'easter damage earlier this year. The Fort Monroe Personnel Claims Office also updated and improved the PJA official website, to include instructions and links to the Army's new online personnel claims filing process.

The Fort Rucker Claims Office's successes included investigating and timely processing 31 personnel claims that resulted in payment of \$29,244 to Army personnel, recovering \$2,251.11 on 9 claims against carriers and storage facilities for damage during government sponsored moves, recovering \$405,054.82 on 276 affirmative claims, and settling 19 tort claims for \$39,018, which protected the government from the costly litigation that arises from disputed cases.

## **US ARMY FORCES COMMAND**

FORSCOM judge advocates, legal administrators, paralegals, civilian attorneys, and civilian support staff continued to support traditional legal missions associated with The Judge Advocate General's Corps' core legal disciplines as well as emerging missions associated with stability operations. Typical issues included Army transformation, support to overseas contingency operations, Reserve Component issues and homeland defense. Issues also involved FORSCOM installation matters such as labor and employment law, environmental law, and contract and fiscal law.

### **ADMINISTRATIVE AND LEGISLATIVE LAW**

The OSJA provided significant support to the Command on a host of administrative law issues across the headquarters. This support consisted of reviewing staff actions to ensure compliance with the applicable law, regulations, and policies. During the year the Military Law Division worked to keep subordinate legal offices informed of updated information. The Division also focused heavily on supporting the Directorate of Personnel on issues related to Family Readiness Groups, "Wounded Warrior" issues, Deployment Cycle Support processing, Suicide Prevention, Army Resiliency efforts, and specific applicability of the Health Insurance Portability and Accountability Act (HIPAA) to these issues. The Division also responded to a number of high level requests for information, to include inquiries regarding implementation of the National Security Personnel System, officer misconduct and "Whistleblower" complaints. In all instances, the Division provided complete, accurate and timely reports. Information Operations and oversight remained as a primary area of concern. The Information Operations attorney continued to ensure that FORSCOM conducted its operations (especially Domestic Operations) well within legal boundaries.

### **ENVIRONMENTAL LAW**

During 2009, FORSCOM installations and units continued implementation of the BRAC 2005 recommendations. The documentation evaluating the environmental and socio-economic impacts associated with these actions, as required by the National Environmental Policy Act, for the most part had been prepared in previous years. Given the magnitude of some of the moves, however, implementation has taken time. Of particular note was the BRAC 2005 recommendation to relocate the Armor School from Fort Knox, Kentucky to Fort Benning, Georgia. The initial environmental impact statement (EIS) for the action was completed in 2007; and in 2009, a second EIS, which addressed the relocation of a number of construction and range projects associated with the School's move, as well as the creation of the Maneuver Center of Excellence at Fort Benning, was finalized. As with most major projects involving Fort Benning, the preparation of the document was considerably complicated by the presence of the Red-Cockaded Woodpecker, a federally-listed endangered species. In addition to their extensive involvement in the preparation of the final EIS and its associated Record of Decision, FORSCOM attorneys worked closely with counsel at the installation and

Department of the Army levels on the preparation of the Biological Assessment, provided to the U.S. Fish and Wildlife Service (USFWS) as part of the consultation process required by the Endangered Species Act. As a result of that consultation process, USFWS issued a Jeopardy Biological Opinion (JBO), which calls for the relocation of a portion of the Armor School's training to be moved to somewhere not on the current Fort Benning reservation. Having received DoD approval to explore the possibility of acquiring more training land, Fort Benning is in the process of developing the Notice of Intent to prepare an EIS for the proposed acquisition of approximately 82,800 acres of additional training land. The land would be used for the Armor School training required to be relocated by the JBO, as well as for other training.

## **CONTRACT AND FISCAL LAW**

The OSJA supported the Command throughout the year in reviewing contract actions submitted for the FORSCOM Deputy Commanding General's (DCG) approval. Attorneys worked closely with Directorate of Resource Management (RM) to ensure contract actions complied with federal law and acquisition policy, and that the correct contracting method and year of funds were identified prior to the DCG's review and approval and the contract award. The OSJA attorneys also worked closely with RM on numerous fiscal law issues ensuring the Command used the appropriate funding source to acquire goods and services. In addition, the attorneys worked with the RM to resolve several potential Anti-Deficiency Act matters facing the Command. Working with the field and HQDA, office attorneys were instrumental in obtaining the correct type and year funds which allowed the Command to resolve these potential violations of federal fiscal law, obviating the requirement to report these matters to Congress.

## **FORSCOM SUBORDINATE ORGANIZATIONS**

The nineteen SJA offices throughout FORSCOM, the largest Army Command, ensured a consistently high quality of legal services and maintained the highest standards of professional responsibility while providing timely, accurate, and effective legal support to commanders, Soldiers, and Family members both in deployed locations throughout the world as well as mobilization and power projection sites within the United States. These subordinate offices include: I Corps, Fort Lewis, Washington; III Corps, Fort Hood, Texas; XVIII Airborne Corps, Fort Bragg, North Carolina; 1st Cavalry Division, Fort Hood, Texas; 1st Infantry Division, Fort Riley, Kansas; 3rd Infantry Division, Fort Stewart, Georgia; 4th Infantry Division, Fort Carson, Colorado; 10th Mountain Division (Light Infantry), Fort Drum, New York; 101st Airborne Division, Fort Campbell, Kentucky; National Training Center, Fort Irwin, California; Joint Readiness Training Center, Fort Polk, Louisiana; Fort Bliss, Texas; 20th Support Command, Chemical, Biological, Radiological, Nuclear, and High Yield Explosives (CBRNE)/Joint Task Force –Elimination (JTF-E); U.S. Army Garrison, Fort McPherson, Georgia; and First US Army, Europe.

## **US ARMY, EUROPE**

The last year for USAREUR attorneys and paralegals has seen continued high operations tempo in support of OEF and OIF, US Forces deployed to the Balkans region, and Army personnel stationed in Germany, Italy, the Benelux, England, and beyond. USAREUR attorneys are simultaneously supporting transformation within Europe and sustained combat operations in OIF and OEF. During the last year, USAREUR units and their judge advocates and paralegals returned from OIF, deployed to OIF and OEF, and have laid the groundwork for a permanent presence in Romania and Bulgaria. In all of these operations, USAREUR attorneys handled a myriad of complex time-sensitive legal issues, spanning the full spectrum of legal operations and operating at every echelon of USAREUR units.

### **MILITARY AND CIVIL LAW**

The Military and Civil Law Division (MCD) continued to assist the USAREUR Judge Advocate in providing advice to the Commanding General, USAREUR, the Director, Installation Management Command-Europe (IMCOM-E), and their respective staffs on a broad range of legal issues. In addition, MCD continued to provide legal advice, guidance and program oversight to judge advocates assigned or attached to subordinate units on administrative law, military justice, legal assistance, and labor employment law issues. MCD's area of responsibility in the USAREUR footprint covers 17 US Army Garrisons, approximately 43,000 Soldiers, and 14,000 civilians. To ensure continuity of good order and discipline in USAREUR throughout this transformation period, MCD worked closely with USAREUR's five major subordinate commands (V Corps, 21st Theater Support Command, 7th Joint Multinational Training Command, 1st Armored Division, and the Southern European Task Force (soon to become US Army Africa (USARAF))). MCD also continued to provide technical support on a multitude of issues, including the major realignment of USAREUR's General Courts-Martial Convening Authority (GCMCA) area jurisdiction scheme and the establishment of USARAF as a fully operational Army Service Component Command.

### **INTERNATIONAL LAW AND OPERATIONS**

The Office of the Judge Advocate (OJA), International Law and Operations Division (ILOD) is subdivided into the Operations Branch and Foreign Law Branch (FLB).

During 2009, Operational Law (OPLAW) attorneys at USAREUR Headquarters, the US Embassy Berlin, and in deployed environments provided legal expertise to USAREUR commanders, staff, and subordinate units within USAREUR lines of operation, supporting Overseas Contingency Operations (OCO), USAREUR restructuring and rebasing efforts, mission transfers to USAFRICOM, and the development of US Army Africa. Within these lines of operation, OPLAW attorneys participated as special staff in planning sessions, exercises and other activities dealing

with missile defense, stability operations, targeting, antiterrorism/force protection, detention operations, intelligence oversight, noncombat evacuation operations, and humanitarian assistance. Operational Law attorneys also provided legal advice concerning international and military-to-military agreements, the Law of Armed Conflict, standing and mission-specific rules of engagement and the use of force, humanitarian law, and public international law.

## **CONTRACTS AND FISCAL LAW**

Over the past year, the Contract and Fiscal Law Division (KFLD) continued to provide support to the USAREUR and IMCOM-Europe Command Groups. The central theme of the past year was fiscal law issues involving the Army's relationship with coalition partners and challenges with increased spending on service contracts. In addition, KFLD faced continued challenges dealing with funding for construction projects.

## **US ARMY CLAIMS SERVICE, EUROPE**

The US Army Claims Service, Europe (USACSEUR) continued to serve as the single-service foreign claims agent for the Department of Defense for NATO and Partnership for Peace countries throughout Europe, while providing extensive support and technical oversight to USAREUR claims offices.

The European Torts Branch oversaw investigation, negotiation, and settlement of non-contractual claims within the EUCOM area of responsibility, where the US Army has single-service responsibility. Between January 1, 2009, and December 31, 2009, USACSEUR reimbursed host nation governments \$5,286,298 on 710 claims. This amount includes \$2,469,971 on 30 environmental claims and represents the US government's 75% share of total liability pursuant to the NATO Status of Forces Agreement (SOFA). USACSEUR paid \$145,367 in ex-gratia claims for negligent and wrongful acts committed by US Soldiers and DA civilians acting outside the scope of official duty. Over the 12-month rating period, Foreign Claims Commissions continued to successfully investigate and adjudicate claims in Kosovo and Bosnia-Herzegovina, paying \$206,017 in foreign claims in the Balkans.

## **US ARMY INTELLIGENCE AND SECURITY COMMAND**

US Army Intelligence and Security Command (INSCOM) conducts multi-disciplined and all-source intelligence operations. Headquartered at Fort Belvoir, Virginia, INSCOM operates globally with approximately 16,000 personnel at the headquarters and fifteen major subordinate commands (MSCs), and many smaller units and teams dispersed in over 180 locations world-wide. As the Army's "one-stop-shop" for intelligence, INSCOM operates across all intelligence disciplines in support of Army and DoD operations, national intelligence agencies, and other members of the intelligence community. INSCOM operations include intelligence collection, analysis,

production, and dissemination; network warfare operations; information operations; knowledge management for the Army intelligence enterprise; and specialized quick reaction capabilities, advanced skills training, and linguist support for deploying forces in support of Army, Joint, Coalition, and Interagency world-wide operations. These disciplines include Counterintelligence/Human Intelligence (CI/HUMINT), Electronics Intelligence (ELINT), Imagery Intelligence (IMINT), Measurements and Signature Intelligence (MASINT), and Signals Intelligence (SIGINT). INSCOM is also host to the 1st Information Operations Command (1st IOC), which performs military operations in cyberspace. INSCOM integrates the capabilities of national intelligence agencies with its own MSCs to deliver timely actionable intelligence products. INSCOM is extremely sensitive to the legal and policy parameters governing the conduct of US intelligence operations around the world. The INSCOM attorneys ensure that all intelligence operations comply with a complex set of laws, policies, and regulation in a practice unlike anywhere else in the Corps.

The primary focuses of the INSCOM legal practice are intelligence operations and intelligence oversight (ensuring compliance with the law, and ensuring that questionable intelligence activities are promptly investigated and reported through the DoD to Congress). INSCOM attorneys review some of the Army's most legally intensive and sensitive operations involving military intelligence, counterintelligence, counterterrorism, insider threats, detainee interrogation procedures, cyber operations, counterdrug operations, and counter-proliferation. Other Army core legal disciplines are regularly practiced at the INSCOM headquarters and at the MSCs, to include administrative law, military justice, ethics, civilian personnel law, and contract and fiscal law. The INSCOM Commanding General is a Head of Contracting Activity, responsible for contracts supporting some of the Army's most sensitive operations and technologies, requiring substantial legal support. INSCOM is also the Executive Agent for the DoD Language Interpretation and Translation Enterprise, a multi-billion dollar program providing contract foreign language support and translation services to deployed DoD forces, and at training centers for actors participating in role-playing exercises.

## **US FORCES KOREA/EIGHTH US ARMY**

The Office of the Judge Advocate, UNC/CFC/USFK/Eighth US Army and its MSC legal offices continue to play a critical role on the Korean Peninsula. The realignment of US Forces in Korea and the associated legal issues remain a large part of our regular practice. The Office remains in close coordination with the ROK government over implementation of the two relocation plans to move all US Forces south of the Han River into the vastly expanded Humphreys Garrison. Overall, UNC/CFC/USFK/EUSA JAs addressed a complex array of international, operational, administrative, and fiscal law issues during the year.

## **USFK AND EIGHTH ARMY**

**USFK and Eighth US Army Operational Law.** This is a joint division with Navy, Marine Corps, and Army attorneys which supports United Nations Command, Combined Forces Command, US Forces Korea and Eighth US Army operations. They prepared for and participated in Ulchi Freedom Guardian 2010 and Key Resolve 2010 (two theater-wide command post exercises), and Rapid Thunder (a headquarters crisis management command post exercise). Training objectives were met, including increased instruction on rules of engagement and law of war violation reporting, improved JA integration into war and civil-military operations planning, and improved working relations with and among subordinate commands.

**International Law Division.** The division continued to support UNC and USFK, ensuring compliance with the US-ROK Status of Forces Agreement (SOFA) and all other applicable international agreements.

In 2009, a US military prisoner serving a Korean court sentence in Korean prison was transferred to a US federal prison for the first time in history under the international prisoner treaty. Also in 2009, another US military prisoner in Korean prison was transferred to a US military prison also for the first time under the US-ROK SOFA without going through the lengthy and costly procedures required under the treaty.

**Client Legal Services Division.** This division consists of the Legal Assistance Branch and the Military Claims Branch. Both branches continue to provide first-rate legal services to the entire US Forces-Korea and Eighth US Army communities. During the past year, Legal Assistance Attorneys provided support and advice to thousands of clients on various legal issues including estate planning, family law, landlord/tenant law, creditor/debtor law, and various other Korea-specific issues. The Military Claims Branch processed 67 personnel claims, paying out \$36,184.00; 31 tort claims, paying out \$26,266.00; 86 affirmative claims, recovering \$181,627.86; and 123 carrier recovery files, recovering \$61,109.95. Personnel from the Military Claims Branch also attended the risk management meetings and provided guidance to the 121st Combat Support Hospital for all medical malpractice and risk management issues. In recognition of its outstanding work, the Military Claims Branch was selected for TJAG's Excellence in Claims Award for 2009.

**Military Justice Division.** The division completed another demanding year in accomplishing its core mission of providing the chain of command with the legal expertise necessary to enforce good order and discipline. Twelve cases were tried at general and special courts-martial, including four contested courts-martial prosecuted before a panel.

## **2D INFANTRY DIVISION (2ID)**

The 2ID Office of the Staff Judge Advocate (OSJA) consists of 15 judge advocates, 1 warrant officer, approximately 40 paralegals, and 6 local national employees. These individuals are located at five geographically separate installations.

The 2ID OSJA is responsible for providing legal services to approximately 15,000 Soldiers, civilians, contractors and Family Members. Soldiers assigned to the Second Infantry (“Warrior”) Division serve closest to the demilitarized zone (DMZ) and North Korea. The division’s primary mission is to act in concert with Republic of Korea (ROK) forces to deter North Korean aggression and, should deterrence fail, to defend the ROK. Because 2ID must be prepared to fight on short notice, its participation in military exercises is critical to ensuring readiness.

**2ID Military Justice Division (MJD).** The MJD was instrumental in enabling commanders to maintain good order and discipline in their units. For the first time in recent history, the MJD sought and obtained the return to Korea of five former 2ID Soldiers in order to prosecute them for misconduct they engaged in while assigned to the division. The MJD processed over 1,000 non-judicial punishment actions and referred 21 cases to courts-martial. Fourteen of the 21 referred cases were tried at either a general court-martial or special court-martial. Approximately 75% of the trial counsels in the MJD are recent law school graduates serving their first tours as judge advocates. Despite their inexperience, the MJD enjoyed an 86% success rate in securing convictions in the cases that went to trial. 2ID OSJA paralegals also assisted in 20 summary courts-martial presided over by commissioned officers who are usually non-lawyers.

#### **19TH SUSTAINMENT COMMAND (EXPEDITIONARY)**

The 19th ESC Office of the Staff Judge Advocate consist of five JAs, twenty paralegals, one civilian attorney and five local national employees working at two different installations (Camp Henry and Camp Carroll).

The mission of the 19th Expeditionary Sustainment Command is to support and maintain the Armistice and deterrence of North Korean aggression against the ROK. Should deterrence fail, the 19th ESC supports Noncombatant Evacuation Operations; transitions to wartime posture; conducts reception and staging and supports onward movement of deploying US forces; and performs Army Support to Other Services (ASOS) in support of operations on the Korean peninsula. On order, conducts redeployment operations.

The 19th ESC OSJA continues to address a myriad of legal issues. The 19th ESC Legal Assistance / Claims JAs assisted over 8,000 Soldiers, Family Members, and other eligible clients via appointments and walk-in services. JAs provided expert advice in family law, tax and claims services. Office personnel assisted clients with hundreds of immigration, passports, and SOFA visa matters. The claims office maintained the lowest claims processing times by adjudicating most large and small claims within three to five days of receipt.

The Military Justice section reduced its non-judicial punishment actions processing time to 1.5 days and Administrative Separations time to 6 days. There was a 38% reduction in misconduct due to the improved efficiency in the processing of military justice actions and the military justice preventive law program.

The 19th ESC Operational Law Attorney and JAs working in other legal disciplines provided 24-hour coverage during the Ulchi Focus Guardian and the Key Resolve / Foal Eagle exercises. The 19th ESC OSJA personnel also provided legal support during Noncombatant Evacuation Operation exercises.

The 19th ESC OSJA served as cultural ambassadors by participating in numerous cultural community events and hosting several interns. The JAs attended a local Daegu Bar Association dinner to discuss different aspects of our respective civil and criminal justice systems. The OSJA Korean-American Friendship Circle participation with local college students was once again a success with a total of more than 10 executed events during off-duty hours.

### **US ARMY SPECIAL OPERATIONS COMMAND**

The United States Army Special Operations Command (USASOC) serves as the Army Service Component Command (ASCC) of the United States Special Operations Command (USSOCOM). USASOC provides Army Special Forces, Rangers, Special Operations Aviation, Psychological Operations, and Civil Affairs forces to USSOCOM for deployment to Geographical Combatant Commands around the world. The USASOC OSJA supports Army SOF soldiers by providing prompt and effective support in the JAGC's core legal disciplines of administrative and civil law, contract and fiscal law, military justice, and international and operational law support.

USASOC JAs and paralegal specialists are assigned to the United States Army Special Forces Command (Airborne), the 75th Ranger Regiment, the 160th Special Operations Aviation Regiment (Airborne), US Army John F. Kennedy Special Warfare Center and School, the 95th Civil Affairs Brigade (Airborne), the 4th Psychological Operations Group (Airborne), and the 528th Sustainment Brigade (Airborne), as well as to Theater Special Operations Commands (TSOCs). Throughout the past year, these Army SOF JAs and paralegal specialists have participated in the Army's unprecedented operations tempo during OEF and OIF, and numerous other worldwide contingency operations.

### **ARMY MATERIEL COMMAND**

The US Army Materiel Command (AMC) is one of three Army Commands (ACOMs). Its mission is to develop, deliver, and sustain materiel to ensure a dominant joint force for the US and our allies. One of the distinguishing features of the Command is the relative paucity of military personnel assets. The Command has over 65,000 Army civilians, but less than 2,000 military in its workforce. This civilian-heavy mix is reflected in AMC's legal offices as well. The command has approximately 350 attorneys, less than 50 of whom are judge advocates. The AMC Command Counsel, a member of the Senior Executive Service (SES), is the senior legal officer for AMC and

the Qualifying Authority for all civilian attorneys assigned to AMC organizations. He is assisted by a civilian Deputy Command Counsel (SES), a military Staff Judge Advocate (colonel), and 27 additional attorneys and paraprofessionals.

AMC is comprised of numerous Major Subordinate Commands which execute its worldwide mission. These commands include the Aviation & Missile Command (AMCOM), the Communications-Electronics Command (CECOM); the Tank-Automotive Command (TACOM); the Research, Development, & Engineering Command (RDECOM); the Army Sustainment Command (ASC); the Army Contracting Command (ACC); and the Surface Deployment and Distribution Command (SDDC). Each of these commands is supported by an AMC legal office staffed with both JAs and civilian attorneys.

### **ARMY CONTRACTING COMMAND**

The United States Army Contracting Command (ACC), a subordinate of AMC, became fully operational on October 1, 2009. ACC is responsible for all contracting oversight and review throughout the Army, and for providing global contracting support to war fighters through the full spectrum of military operations. As a new organization, the ACC legal office has continued to add attorneys to fill its positions while advising the Director, ACC and his staff on the full spectrum of legal issues. ACC is also in the process of moving to Huntsville, Alabama by August 2011 pursuant to a stationing decision by the Department of the Army. This has caused a large amount of turnover within an organization that had just become fully operational. ACC has two newly created subordinate commands: the Expeditionary Contracting Command (ECC) and the Mission & Installation Contracting Command (MICC). Each of these commands has a small legal office comprised of both military and civilian personnel and led by a JA colonel.

### **US ARMY MEDICAL COMMAND**

US Army Medical Command (MEDCOM) is a worldwide organization whose mission is to project and sustain a healthy and medically protected force; train, equip and deploy the medical force; and manage and promote the health of the soldier family and the military family. Distributed throughout MEDCOM's 6 regional commands, 8 medical centers, and numerous hospitals and clinics are over 41 JAs, 60 civilian attorneys, 27 military paralegals, and 56 civilian paralegals providing legal support to MEDCOM. The JAs and civilian attorneys of the Headquarters, US Army MEDCOM, Fort Sam Houston, Texas, provide advice to the Office of the Surgeon General, MEDCOM commanders and staff on a wide range of legal issues with an emphasis on health law issues, and including ethics, privacy, contract and fiscal, administrative, environmental, and labor law. In addition, it publishes a quarterly legal newsletter, "*The Medical Advocate*," on a variety of topics of current interest, and distributes it to the supporting regional commands and field offices.

## **US ARMY PACIFIC**

The mission of US Army, Pacific (USARPAC) is to provide combat ready forces in support of operations, from theater security cooperation to warfighting, promote regional stability, and ensure successful crisis response or decisive victory. However, due to the requirements of Army Transformation, USARPAC's mission is changing substantially. USARPAC will assume operational control of all Army forces in the Pacific theater in its new role as the Army Service Component Command (ASCC) for Commander, Pacific Command. This role is magnified due to the importance of the Pacific theater to the United States' national security. The theater has numerous regional friction points between nations; several key transnational threats including terrorism, piracy, illegal narcotics, illegal immigration and weapons proliferation; and 7 of the 10 largest armies in the world. Finally, the sheer size of the theater shows its importance – 43 countries, 20 territories, 50% of the Earth's surface, and 60% of the world's population. To support USARPAC's vital mission, the Army provides nearly 45,000 military and civilian personnel to the theater.

The JAGC provides over 200 legal personnel – including JAs, civilian attorneys, and military and civilian paralegals and support staff – who provide critical legal services to USARPAC and its subordinate commands.

### **EIGHTH THEATER SUSTAINMENT COMMAND & US ARMY GARRISON, HAWAII**

The Legal Assistance Division performs operations from the Schofield Barracks and the Fort Shafter offices. The Legal Assistance Division provides support to an eligible client base of 80,000 Soldiers, Retirees, and their Family Members. The major mission during this past year was supporting the command with deployment legal readiness services, to include the pre-deployment Soldier Readiness Program (SRP) for the 2nd Brigade, 25th Infantry Division (ID); the 25th Combat Aviation Brigade, 25th ID; and four separate battalion deployments for elements of the 8th Theater Sustainment Command (TSC) and 25th ID.

The Claims Division has area claims responsibility for the State of Hawaii, American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnson Island, Palau, Kingman Reef, Marshall Islands, Midway Atoll, Northern Mariana Islands, Palmyra and Wake Atoll. Its mission consists of two basic practice areas: Personnel Claims and Tort Claims. The Claims Division processed 271 personnel claims, dispatched 463 Notifications of Loss and Damage to the carriers, and recovered over \$214,024 from commercial carriers. The Claims Division also processed over 125 Privately Owned Vehicle deployment storage claims and asserted demands to the contractors to recover \$85,424.

The Administrative Law Division provides primary support to the 8th TSC and US Army Garrison – Hawaii, with responsibility for 27 sub-installations on the Island of Oahu and the Island of Hawaii. Its major missions include advising installation

command and staff regarding administrative investigations and managing the ethics program. Over 1,170 legal opinions were prepared during the reporting period. The Administrative Law staff also participated in several particularly significant actions during the reporting period, to include the US Army Garrison – Hawaii Makani Pahili (Hurricane Response) Exercise.

The Environmental Law Division's focus this reporting period includes litigation support for the Makua Military Reservation (MMR) lawsuit brought against the Army as the result of the MMR Environmental Impact Statement finalization. In that case, the environmental law division assembled over 10,000 pages of documentation in response to Plaintiff's Motion for Discovery. They also provided support to the US Army Garrison – Hawaii as plans to utilize the Pohakuloa Training Area on the Big Island are revitalized and developed.

The Contract and Fiscal Law attorney provided hundreds of reviews of such matters as critical procurement advice in installation and mission contracting issues and the Residential Communities Initiative (RCI) program, worked with the US Army Garrison – Hawaii on privatized lodging and utilities issues, and defended a protest of contract award for Ocean Adventure services, as well as advised on various other activities of the Family, Morale, Welfare Recreation Directorate.

Finally, Operational Law attorneys provided direct support to the G3 Exercises division. Work included representation of the OSJA at both the Main and Forward Command Posts during exercises Keen Edge, Key Resolve, and Terminal Fury, as well as during MSEL planning conferences for Ulchi Focus Guardian.

## **25TH INFANTRY DIVISION, SCHOFIELD BARRACKS, HAWAII**

Though task organization of units in Hawaii places the responsibility of Legal Assistance and Claims functions on the 8th TSC, the 25th ID Office of Staff Judge Advocate and its subordinate brigades provide this service while in a deployed environment. With the current operational tempo for all three brigades and the division headquarters, this results in a large amount of client service work while in a deployed and austere environment. The reality of a transformed Army with non-organic units has elevated the need for multi-state research and knowledge for all practitioners of family law. Family separations, divorces and estate issues constituted about 80% of these attorneys' workload.

The Contract and Fiscal Law Division provided hundreds of reviews of such matters as financial liability investigations, procurement law, contracting law and litigation, complex contract modification issues, and legal advice to the Deputy Chief of Staff for Resource Management (G8) and the command group.

The Criminal Law Division's focus was transferring jurisdiction of cases upon deployment to the 8th TSC, conducting courts-martial actions across the northern provinces of Iraq and assumption of jurisdiction upon redeployment to Hawaii. Upon

redeployment, charges were preferred in 14 courts-martial, including a high profile murder case which occurred while in the Iraqi Theater of Operations. Additionally, the Criminal Law Division assisted with the drafting and execution of several non-judicial punishment actions and reprimands requiring the involvement of the Commanding General, 25th ID.

## **US ARMY ALASKA**

The Office of the Staff Judge Advocate (OSJA), US Army Alaska (USARAK) is organized geographically into three law centers – one each at Forts Richardson (FRA), Greeley (FGA) and Wainwright (FWA) – and functionally into six divisions – Administrative Law, Civil Law, Claims, Military Justice, Operational Law, and Legal Assistance. These offices include 74 Soldiers and civilian employees, including 10 JAs in OSJA, 4 JAs in Brigade Combat Teams, 3 JAs in Trial Defense Service, 10 civilian attorneys, 2 warrant officers (1 is deployed), 30 legal NCOs and Specialists, and 15 civilian support personnel.

## **US ARMY JAPAN**

The OSJA, US Army Japan & I Corps Forward (USARJ & I Corps (F)) continued to play a critical advisory role in the ongoing bilateral relationship for the defense of Japan and the related support to peace and stability throughout the region. USARJ's Operational Law attorneys participated in several major combined and joint exercises related to and supporting the general defense of Japan, including exercises Keen Edge and Yama Sakura. International law remains a critical practice for the USARJ & I Corps (F) OSJA. A cornerstone of this practice is ensuring the command fulfills the United States' obligations under the SOFA when Soldiers commit crimes over which Japan has primary jurisdiction while safeguarding the Soldiers' rights. USARJ & I Corps (F)'s attorneys play crucial roles advising commanders and service members on their rights and obligations under the SOFA. Legal personnel are also vital in assisting the command, Soldiers and Family Members regarding unique aspects of Japanese local laws and customs.

## **US ARMY OKINAWA**

The Okinawa OSJA Claims Division won The Judge Advocate General's Award for Excellence in Claims for FY09. This is the eleventh year in a row that the Claims Division has won this prestigious award. Among the keys to winning this award were a 98% customer satisfaction rate; a newly renovated claims office and client waiting area; an aggressive preventive law program highlighting issues such as typhoon damage prevention and FVR claims processing; and enabling the Army on Okinawa to maintain optimum relations with the Government of Japan and their citizens by promptly investigating host nation citizens' claims and insuring Soldiers and Commanders followed established customs and courtesies toward those victimized by their activities.

The Legal Assistance Office on Torii Station won the Chief of Staff Award for Excellence in Legal Assistance for 2009. The Legal Assistance Office had both a joint tax center on Kadena Air Base and a satellite office on Torii Station.

The Okinawa OSJA also has a robust practice in two other Core Legal Disciplines: Military Justice and International & Operational Law. Okinawa may be small, but because of its distance from US Army Japan headquarters (approximately 1,000 miles) and being located on an island with a history of high-profile crimes, the Commander, US Army Okinawa is a general court-martial convening authority. Two Soldiers were court-martialed in 2009. In addition, 57 Soldiers were disciplined under Article 15, UCMJ; 49 Soldiers were separated from the Army; and 5 were issued reprimands.

## **US ARMY RESERVE COMMAND**

### **ADMINISTRATIVE LAW**

The US Army Reserve Command (USARC) Administrative Law (Adlaw) Division reviews staff actions to ensure compliance with the applicable law, regulations, and policies. The Adlaw Division also provides legal reviews and advice on various types of investigations, including AR 15-6 investigations, Line of Duty investigations, Financial Liability Investigations of Property Loss (FLIPLs), and Credibility Determinations and Preliminary Screening Inquiries under AR 27-1. The higher headquarters' subordinate legal offices seek the Adlaw Division's guidance on issues involving upcoming changes to the "Don't Ask, Don't Tell policy," administrative separations, reprimands, criminal misconduct, sexual assault policies, etc. During this past year, the JAs in the Adlaw Division reviewed over 1,200 actions, and provided legal advice to an Article 32 investigating officer on a murder case.

### **MILITARY LAW DIVISION**

The USARC, Military Law Division (MLD) had another fast-paced year. In addition to reviewing hundreds of disciplinary actions from 33 MSCs, MLD provided sound, consistent policy guidance to 70 Active Guard Reserve (AGR) attorneys and paralegals in 38 subordinate SJA offices. MLD also established the USARC Judge Advocate Task Force (JATF) to clear a backlog of over 7,400 disciplinary actions pending in the Army Reserve.

### **OPERATIONAL LAW DIVISION**

The Operational Law Division maintains a very busy schedule of advice and support for the USARC Command and Staff and the USAR units in the field. The traditional issues for Army Reserve Operational Law continue to be in the areas of mobilization and training. Mobilization of Army Reserve personnel and units for overseas missions is a "growth area" given the transformation of the Army Reserve into a

more active operational force for overseas duty. Training of Army Reserve personnel in general, and Army Reserve JA personnel in particular, continues to create some legal issues and challenges. Since Hurricane Katrina in 2005, the Army Reserve has placed an increased focus upon Defense Support for Civil Authorities (DSCA) operations.

## **US ARMY RESERVE LEGAL COMMAND**

On October 8, 2009, the USARC was activated in a ceremony held at TJAGLCS in Charlottesville, Virginia. The conversion of the Army Reserve into an operational force had created a challenge with regard to the 23 LSOs within the force structure. These LSOs are being converted into LODs (Legal Operating Detachments) and are currently being stationed throughout CONUS. The end result will yield 28 LODs that will function within the ARFORGEN cycle.

The Legal Command is headquartered in the Major General Benjamin L. Hunton US Army Reserve Center in Gaithersburg, Maryland, and is under the command of Brigadier General Gill P. Beck. With the activation of the Legal Command, for the first time in the history of the Army Reserve, all TPU legal personnel not embedded in a Staff Judge Advocate's or Command Judge Advocate's section are in the same chain of command. This structure will greatly enhance TJAG's ability to manage and supervise the provision of legal services by the JAGC in the Army Reserve.

One of the missions of the Legal Command and the LSOs is to provide legal services to USAR units and individual Soldiers. Since the Command stood up in October 2009, the G3 has scheduled over 500 Operational Legal Support Missions and over 280 Legal Assistance Missions. Recent missions have included support for the USAR units and Soldiers deploying as part of the Haiti Relief Operations. Military justice, legal assistance, legal briefings, claims, FLIPLs and AR 15-6 investigations are among the many issues addressed. Military justice includes courts-martial, separation boards, and letters of reprimand. Defense services for individual soldiers continue to be handled by the Trial Defense Service. Examples of legal assistance services include preparing wills and powers of attorney, advising Soldiers regarding domestic matters, and providing legal counsel regarding personal finance issues.

The Legal Command Home and Public Site on AKO can be found at <http://www.us.army.mil/suite/page/136188>. The site includes a welcome message from Brigadier General Beck; a list of the LSO websites; a link to request support for individual legal services; a 24-hour assistance number; and a master planning calendar, which includes LSO Battle Assembly dates, OCONUS training missions, NCO Education System dates, and short courses. As the Legal Command matures and becomes more robust, the website will include much more information.