



BRIEF TO THE INDEPENDENT REVIEW PANEL TO STUDY THE JUDGE ADVOCATE REQUIREMENTS OF THE DEPARTMENT OF THE NAVY

Staff Judge Advocate to the
Commandant of the Marine Corps

Major General Vaughn A. Ary
September 1, 2010



Balancing Legal Functions and Missions

- **Historical Organizational Deficiencies**
 - USMC with complete decentralization of legal services and SJA to CMC with no responsibility or authority for delivery of legal services
 - Departmental OJAG with a U.S. Navy Focus
- **Balance in USMC Legal** - Strength of decentralized execution with quality assurance of Service level supervision

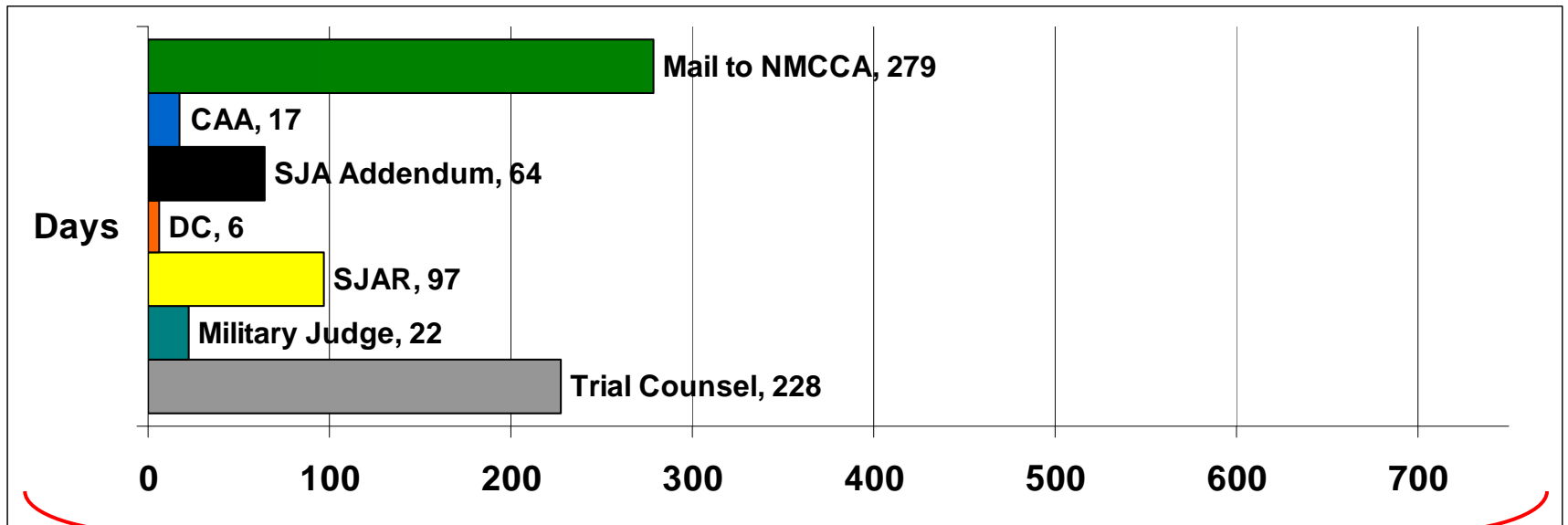


U.S. v. Foster

1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
<i>FOSTER</i> Post Trial Process		Docketed at NMCCA	Defense and Government Motions			Time spent with each Senior Judge until completion				

USMC Service-level process – 713 days

JAG Department-level process - 2,651 days



**USMC Service-level process - -
713 days**

The Marine Corps litigated 1802 cases in FY 00 – the year Foster was adjudicated.



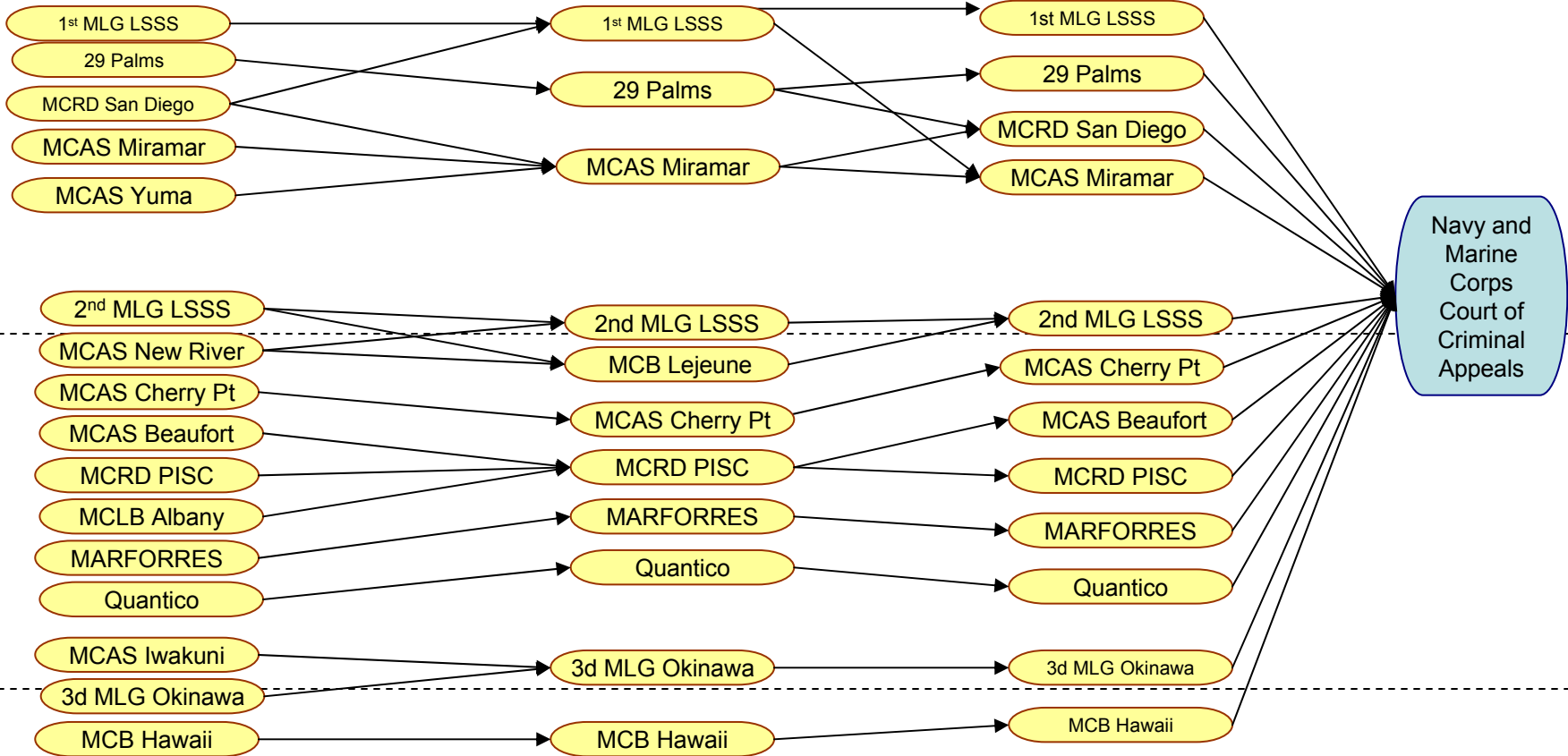
Post-trial Processing Challenges

Pre-2010 - 38 offices, limited visibility, ad-hoc decentralized execution

Trial Shops (16)

Court Reporters (11)

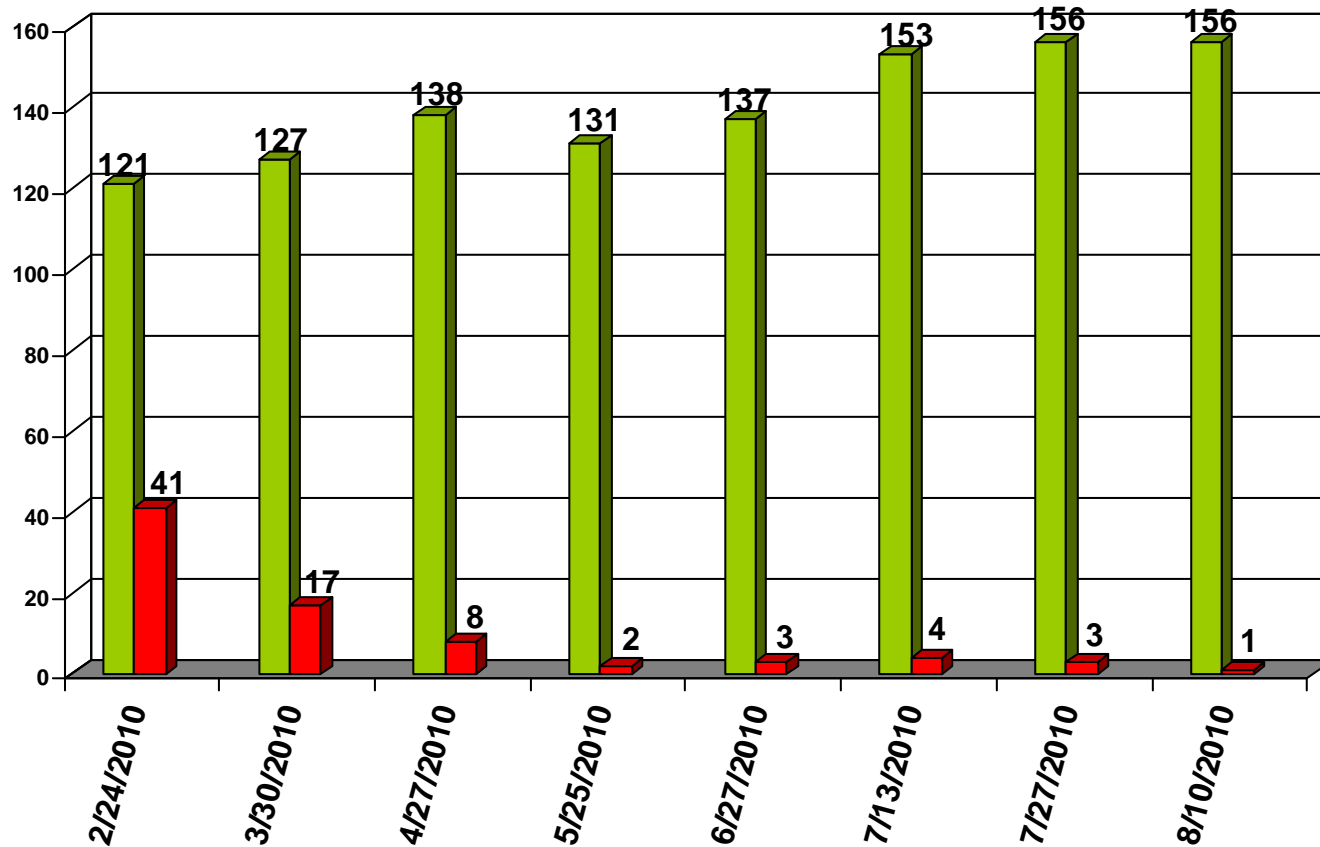
Review (12)





Post-Trial Cases after CMS Launch

One mandatory database – CMS, Complete SJA to CMC visibility



This graph represents the total number of cases CMS reported pending post-trial review compared to the number of cases reported (over 120 days) on the post-trial delay report on the dates JAM conducted its weekly reviews. 5



Meeting Service Responsibilities

Strategic Goals and Current Initiatives:

- A. Standardize Functional Areas, Procedures, and Technology to Foster a Common Operating Scheme Throughout the Community of Practice**
 - Case Management System
- B. Develop and Maintain Critical Capabilities Necessary to Execute Core Competencies and Improve the Professional Training, Education, and Performance of our Legal Services Community**
 - Training and Readiness Manual
- C. Create and Implement a Formalized and Commander-Based Inspection Program to Facilitate Transparent Oversight of the Readiness of All Marine Legal Offices:**
 - Commanding General's Inspection Program
- D. Evaluate and, as Appropriate, Adapt Organizational Structure to Right-size the Legal Community and Achieve Maximum Efficiency with Limited Resources**
 - Structure Adjustment Requests, Increased Accessions, Return to Active Duty Boards, Transfer of Reserve Legal Service Support Section
- E. Capture, Memorialize, and Promulgate Legal Services Doctrine to Exploit Lessons Learned and Improve the delivery of Legal Services**
 - Marine Corps Warfighting Publication 4-12.2, Provision of Legal Services within the Marine Corps



UNIQUE SERVICE CULTURES

“Moreover, while judge advocates have common legal skills, they serve first as officers of their particular Services, subject to the same performance standards, regulations, policies, and procedures as all other officers of their Service. Their practice of law is predicated upon, and intertwined with, the unique force structure, operational context, and policy decisions of their service.”

CJCS Report on the Roles, Missions, and Functions of the Armed Forces, 1993



The U.S. Marine Corps

“...American history... has fully demonstrated the vital need for the ***existence of a strong force-in-readiness***. Such a force, ***versatile, fast moving, and hard-hitting***,... must be ***the most ready when the nation is least ready....***”

82nd Congress (1952)

With a Service culture based on readiness and versatility, the Marine Corps requires a strong, credible, and effective legal capability specifically tailored to its unique mission.



Requirements: Personnel and Leadership

Personnel

- Provision of legal services by uniformed Marine MAGTF officers continues to be the most effective and efficient model for Marine legal services.
- A responsive manpower *process* is in place to make adjustments to meet future personnel requirements.

Leadership

- An effective legal organization requires more than personnel numbers. Enforced Service-specific performance standards and procedures are essential.
- Departmental legal requirements are best met when the Services have clear lines of responsibility and authority giving each an effective legal voice.



Legal Manpower Requirements:

What type of Judge Advocate?

- **Marine Air Ground Task Force (MAGTF) Officers serving as Judge Advocates (Marines supporting Marines)**
 - Unique missions and **career patterns** as unrestricted officers require Service-specific management of assignments
 - 11 months of pre-certification training (OCS, TBS, NJS)
 - Marine JAs can expect to spend approximately 20 months supporting Marine Corps missions outside of JA assignments in a 20 year career
 - Compete successfully with all Marine Officers for promotion and command
 - Provide a credible legal voice within USMC
- **Result:** Marine JAs share common service culture with their clients.
- **Net Effect:** Mutual trust and confidence between Marine Judge Advocates and the Commanders and individual Marines they support.

“In execution of the responsibilities of leadership, Marine Commanders will be better able to accomplish this function so vital to the Marine Corps by advice from Marine lawyers who think, are trained, and have experienced field hardships throughout their careers, the same as their Commanders.” -- 1969 Marine Corps Legal Services Study



Legal Manpower Requirements: *How Many Marine Judge Advocates?*

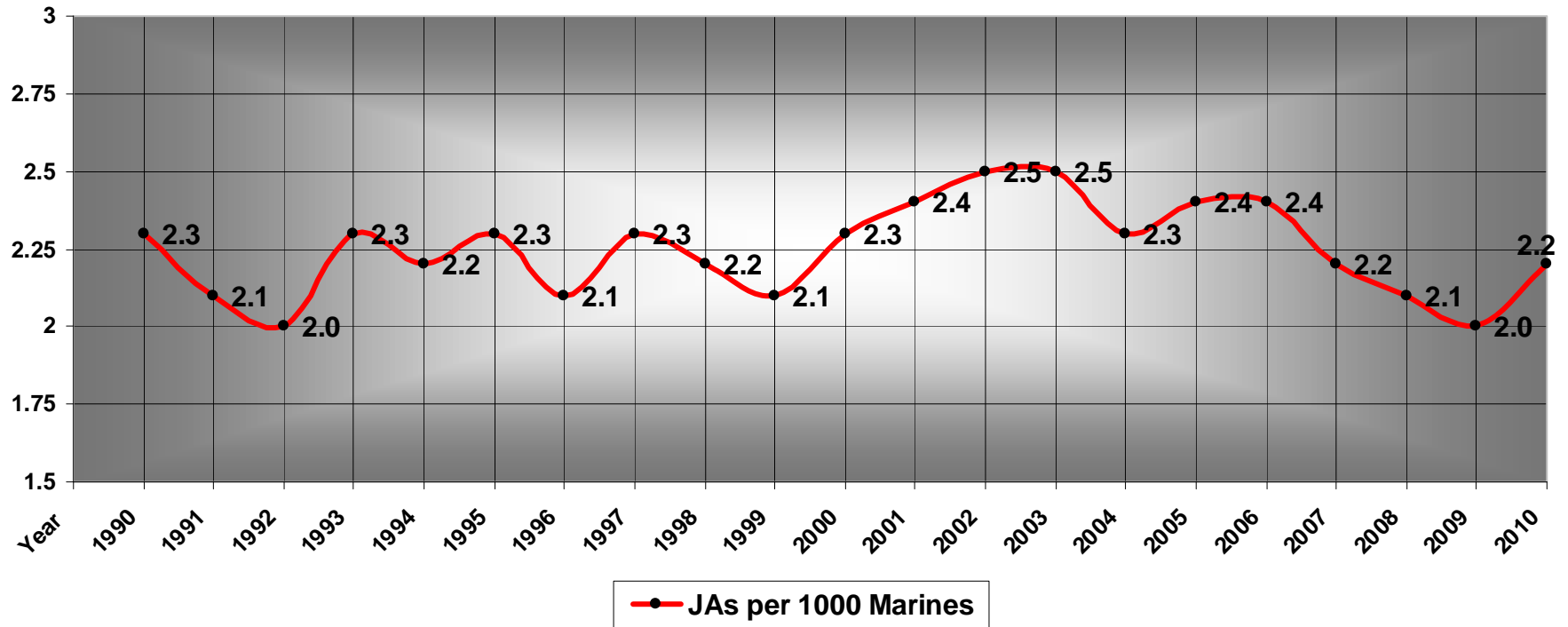
- **Target Inventory: 520 Judge Advocates**
 - Based on **GAR** (Planning Tool Used by Manpower to Determine and Build Optimal Inventory Requirement)
 - **366** JA Structured Billets (T/O) **plus 32 CAR Additions**
 - **29** JA Projected Training/Transition, etc. (P2T2)
 - **93** Fair Share (MAGTF) and Unstructured 4402
- **Current Active-Duty Inventory: 435** (shortfall = 85, partially filled by 36 Activated Reservists)
- **Projected Jan 2011 Inventory: 487** (shortfall = 33)
- **JA Requirement is not a fixed number** -- requires continuous reassessment of:
 - Military Justice Caseload
 - USMC End Strength
 - Operational requirements
 - Emerging Missions
- **Target inventory Based on Historical Data** -- Baselines, Reviews, and Adjustments

Solution: Work with Manpower to aggressively build active duty inventory to reduce strain on Total Force while continuing to assess structure requirements.



Relative JA End-Strength

Judge Advocates per 1000 Marines



- Target number of 520 JAs w/ end strength of 202,000 yields 2.57 JAs/1000 Marines
- Projected Inventory of 487 JAs w/ end strength of 202,000 yields 2.41 JAs/1000 Marines by 1 Jan 11



Legal Structure Studies and Reports

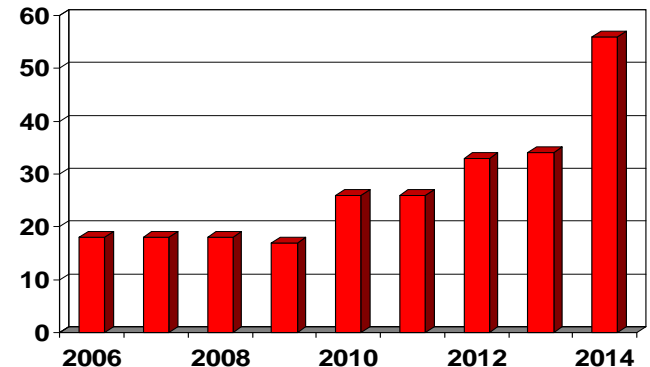
- **2005 JA Strategic Planning Panel**
 - **Recommendations:** realignment of structure from Supporting Establishment to Operating Forces, modest additions to address requirements, recoding of billets.
- **2006 Marine Corps Officer Manpower System (CNA) Study**
 - Reviewed all Military Occupational Specialties (MOS)
 - Identified shortages in 4402 MOS, but characterized as “not critical.”
- **2007 JAD T/O Structure Review**
 - SJA to CMC surveyed all Marine Corps SJAs and OICs
 - **Recommendations:**
 - Increase 4402 structure to **389**
 - Adding MEU SJA billets to structure
 - Other proposals to add or realign structure.



Structure

Organizing Capabilities Based on Mission Requirements

- **Recent SJA to CMC Structure Requests**
 - 2008: URB: 34 billets validated, not funded due to prioritization
 - 2009: URB: 32 billets validated, not funded due to prioritization
 - 2010: CAR: 32 billets approved (now Pending Force Structure Review)
 - 2010: Move Reserve LSSS to JAD; approved and executed
- **Coded Billets for LL.M. Specialties: Staffed at 100%**
 - International Law (4405) – **5** billets in 2010
 - Environmental Law (4406) – **10** billets in 2010
 - Labor Law (4407) – **6** billets in 2010
 - Procurement Law (4408) – **3** billets in 2010
 - General (4410) – **2** billets in 2010
 - **22** billets approved for conversion to 4409 (mil jus)*
 - **Total Conversions by 2014 = 56**



Projected Coded Billets/year

Source: TFSMS, 28 July 2010

Does not include 22 add'l 4409 billets

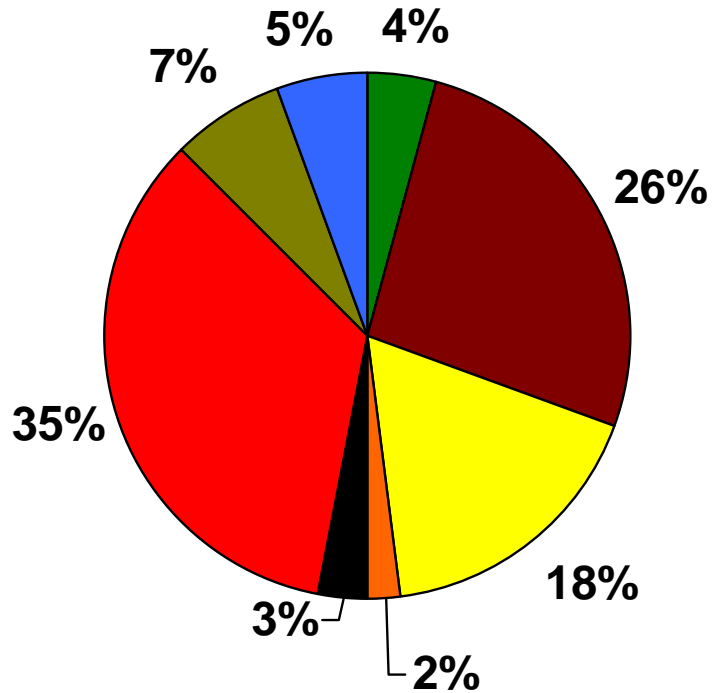
*Request approved 13 July 2010



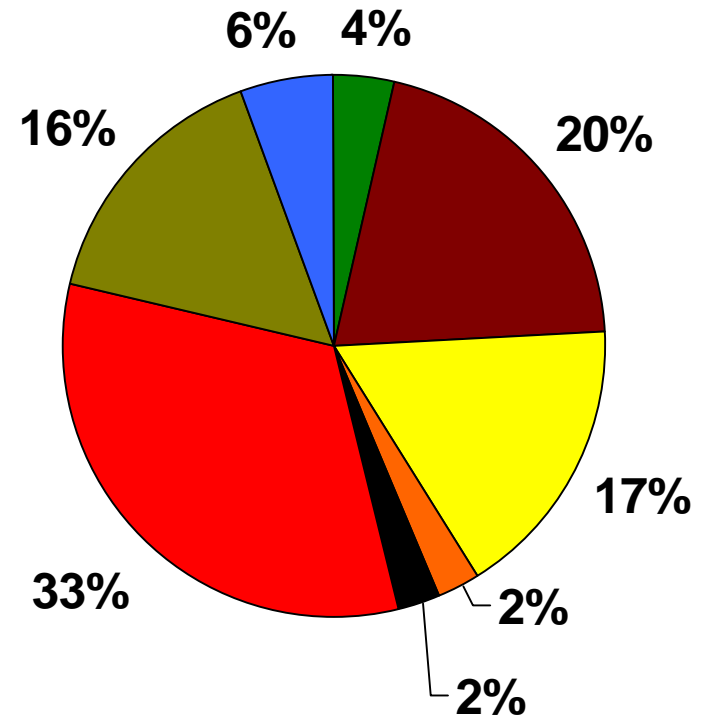
Structure and Inventory

Task-Organizing to Meet Mission

Current Structure = 366



Current Inventory = 435



As of August 2010



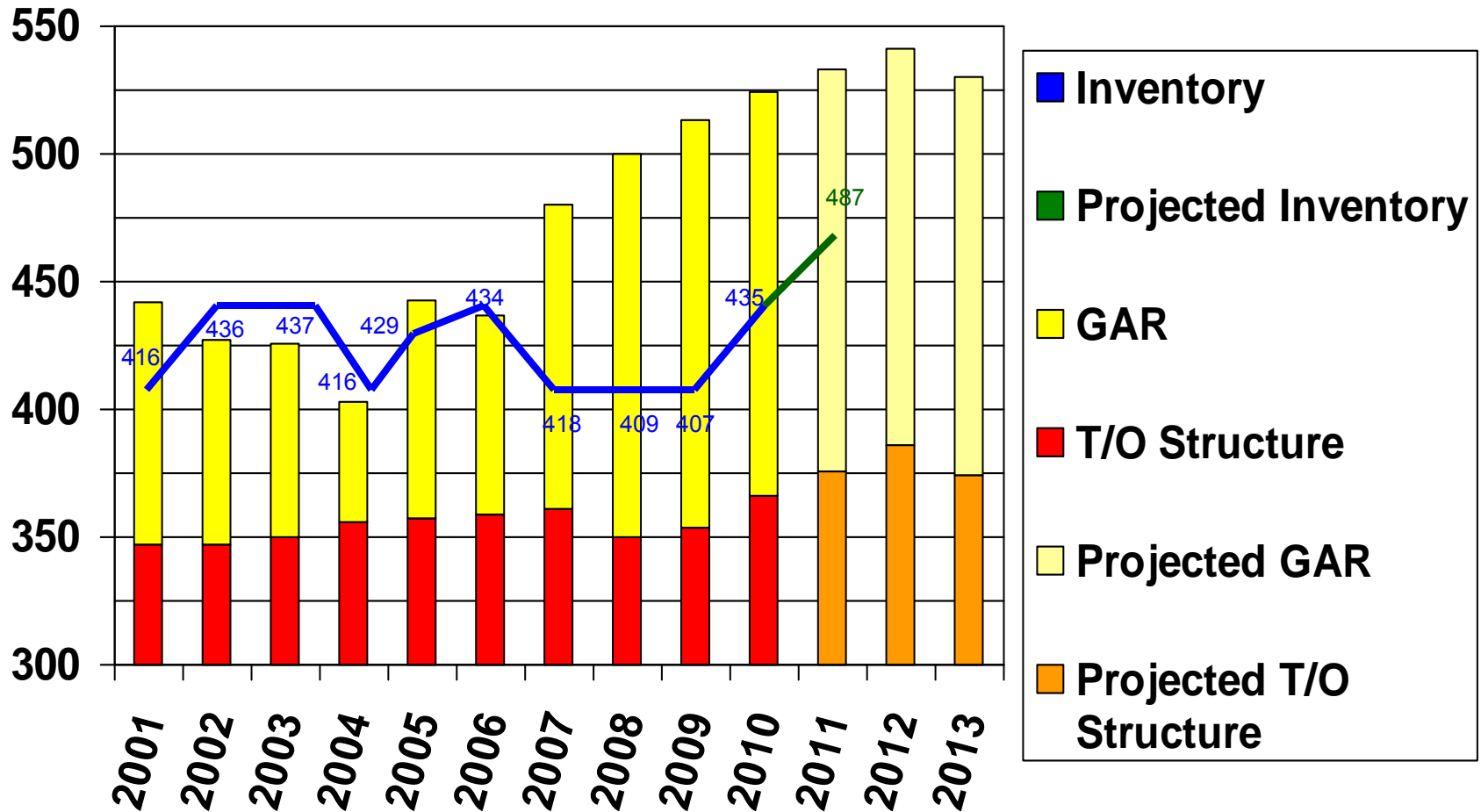
Judge Advocate Inventory

Right Sizing the Force

Tools	Solutions
Recruiting	Increased Accessions from 35/year in FY08 to 45/yr in FY 09, to 60/year in FY10
Career Designation	100% of JAs offered Career Designation
Return to Active Duty Board (RAD)	Return to Active Duty Board (RAD) held in Feb 2010 (MARADMIN 005/10). Second board held in August 2010 (MARADMIN 296/10). 4402's are the only MOS to qualify. Precept mentions litigation skills as a factor to consider. (Results pending)
Specialized Billets	Purchased at 100% on the ASR Increasing from 26 in 2010 to 56 in 2014
Promotion Precepts	Shortage of O6 4402s identified in the Colonel promotion precept
Financial Incentive	Law School Education Debt Subsidy (LSEDS) \$30,000/3 years. Still below \$60K paid by other services in Judge Advocate Continuation Pay.



Active JA Structure, Inventory & GAR



2001-09 numbers are as of the end of the CY.

The drop in projected structure in 2013 reflects the end of temporary increase in T/O for OMC requirements.



JA Promotion Rates

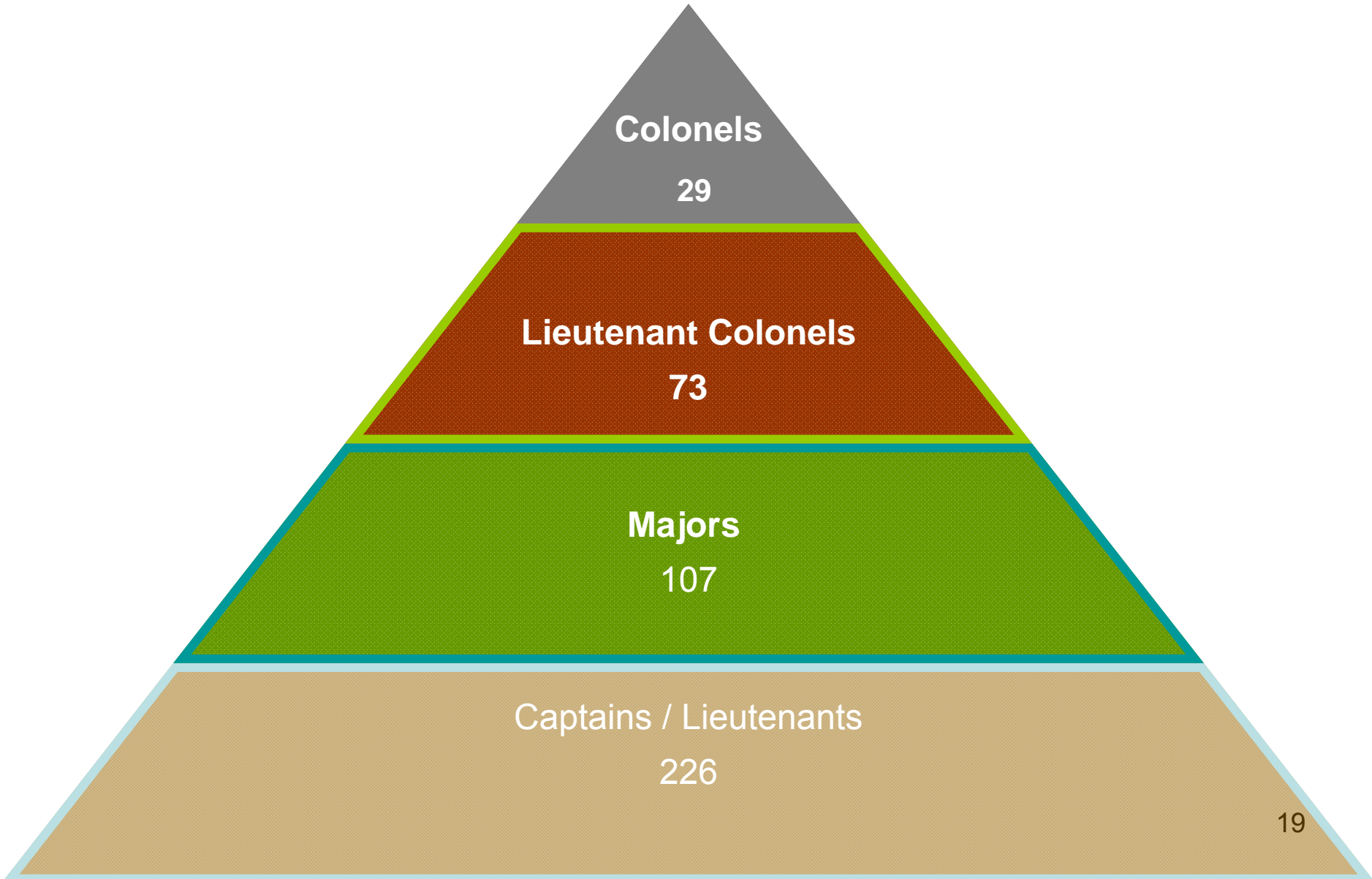
versus Overall Promotion Rates

	Maj 4402	Maj All OCC Fields	LtCol 4402	LtCol All OCC Fields	Col 4402	Col All OCC Fields
FY 11	87.1% 27/30	82.8%	81.8% 15/22	65.6%	50.0% 2/4	53.6%
FY10	90.6% 29/32	87.6%	88.9% 16/18	71.8%	64.3% 9/14	53.4%
FY 09	78.4% 29/37	87.0%	90.9% 10/11	70.6%	33.3% 4/12	50.5%
FY 08	90.0% 18/20	87.4%	82.4% 14/17	65.0%	12.5% 1/8	51.0%
FY 07	90.0% 27/30	86.5%	75.0% 9/12	62.4%	23.5% 4/17	48.4%
FY 06	92.9% 26/28	86.7%	78.9% 15/19	67.2%	80.0% 4/5	50.8%



4402 Grade Shaping

Officers Serving in Grade

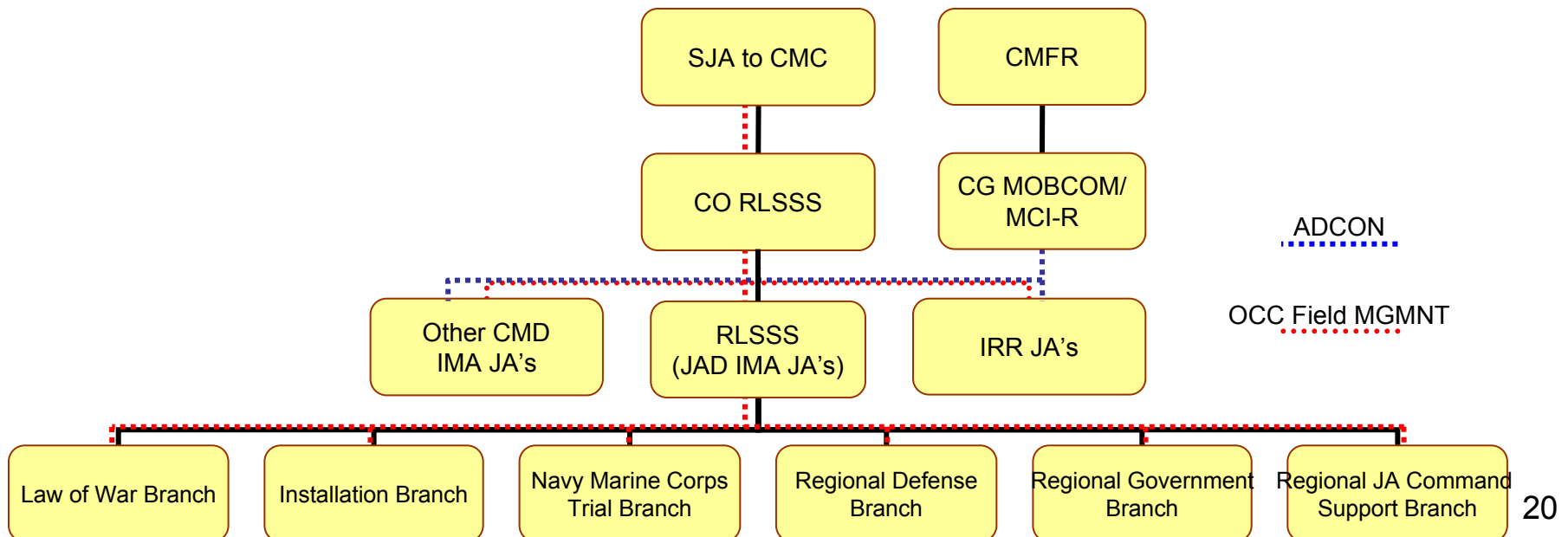




Inventory: Reserve Legal Services

Key Component of Total Force

- **Reserve LSSS Created 2003**
 - Identifies Reserve Component legal capabilities enabling effective task organization
 - Provides centrally managed administration and delivery of reserve legal services to the Total Force
 - RLSSS is comprised of 148 IMA billets (staffed at **102**), tasked organized into six branches
- **RLSSS transferred to Judge Advocate Division (JAD) - 2010**
 - Increases the professional oversight of reserve JAs
 - Allows more timely, efficient, and effective integration of reserve functional capability into active force to meet operational demands and offset active duty shortfalls





Assignments

Placing the Right JA in the Right Billet

- **SJA to CMC – Occupational Field Manager**
- **Manpower Management Division, Officer Assignments (MMOA) accepted 100% of JAD recommendations in 2010 (including overstaff of existing structure)**
- **JAs assigned by direction of the Commandant, to local commanders for further detailing and tasking.**
 - Provides flexibility to meet current requirements
 - Faster, more responsive than inventory or structure adjustments
 - Local commanders assign based on mission requirements
 - Promotes mutual trust and responsiveness between JA and local clients: Commander, Marines, and families

USMC cultural preference for de-centralized execution has been key to success in recent operations. Uniform performance standards and procedures will optimize success of the legal mission.



Mission Sets

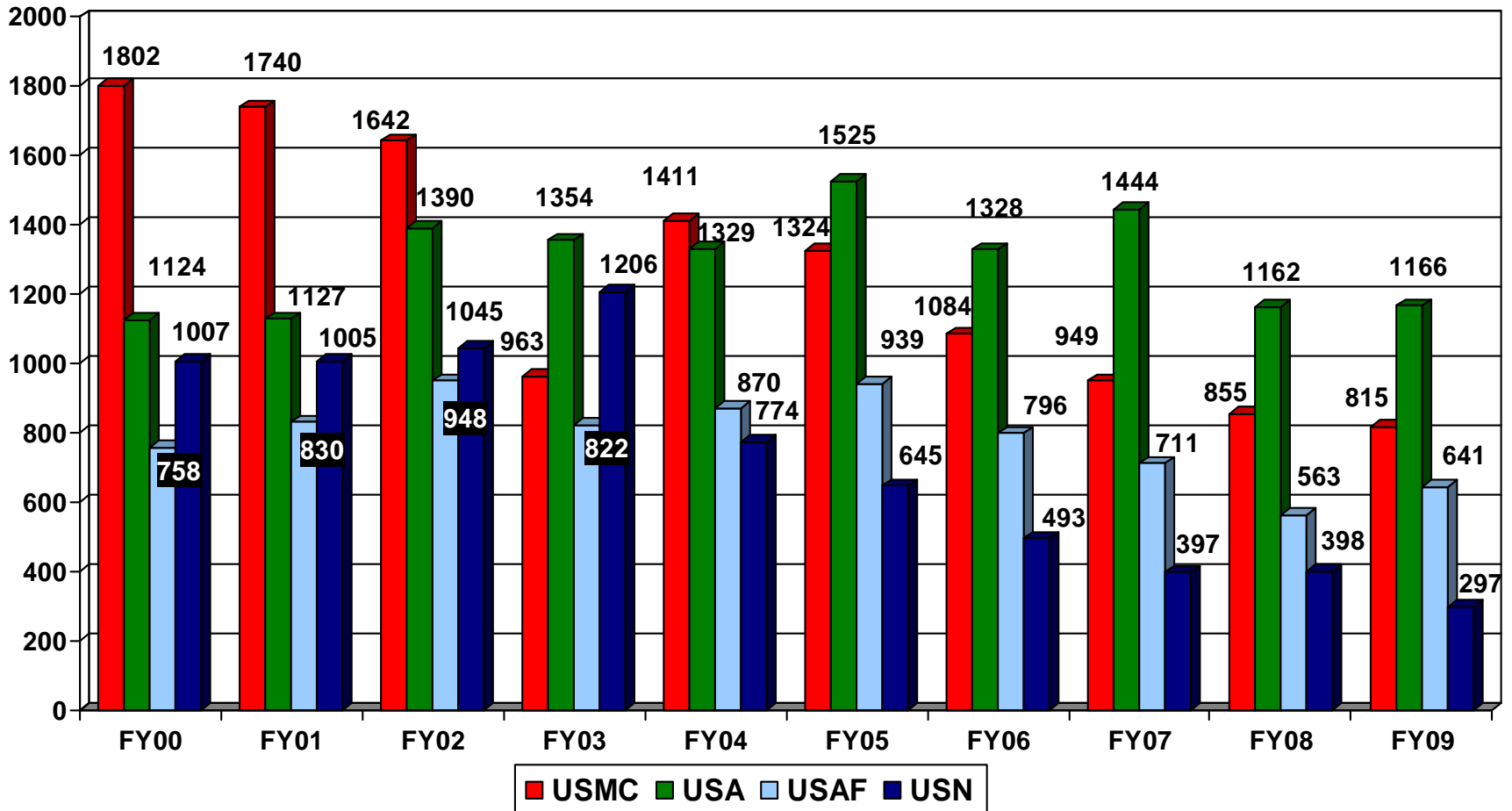
Marine Corps Legal Service Community

- 1. Military Justice**
- 2. Operational Law**
- 3. OMC and DES**
- 4. Other missions**



Military Justice Requirements

Total Caseload Trend (SPCM/GCM)

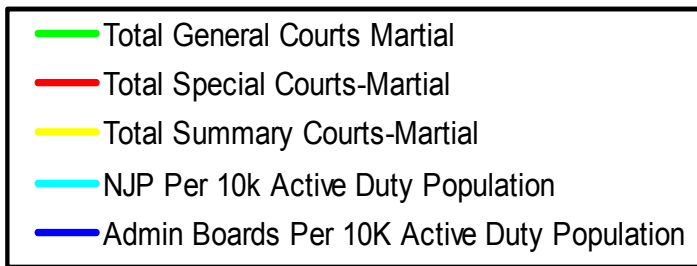
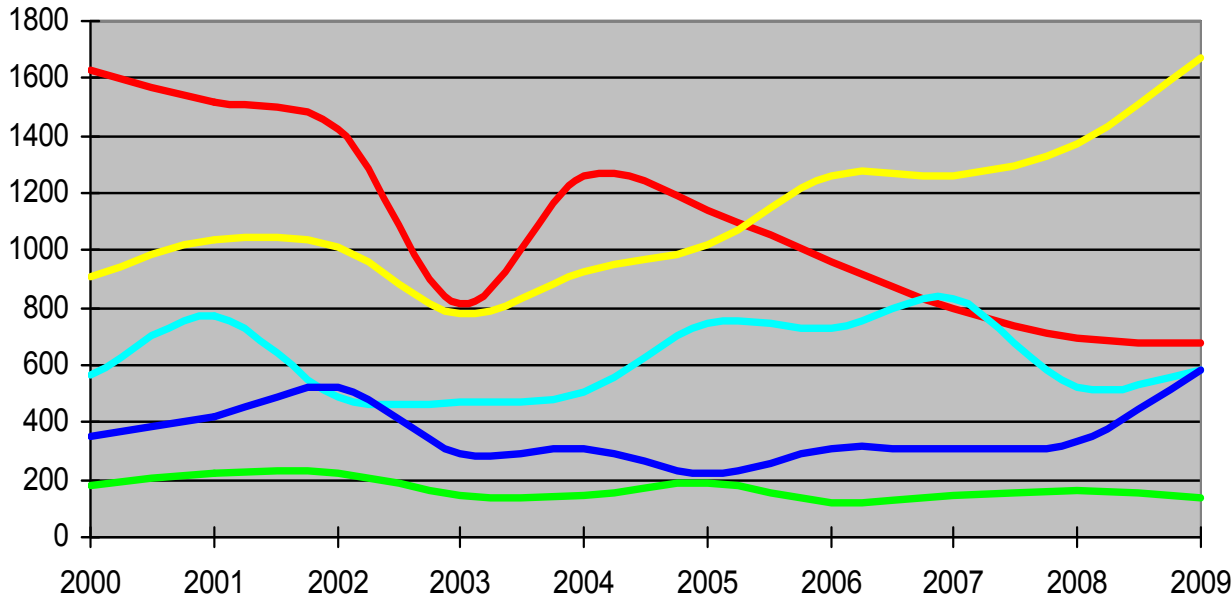


Source: Annual Code Committee Reports FY00-FY09



Military Justice Requirements

Disposition Trends 2000-2009



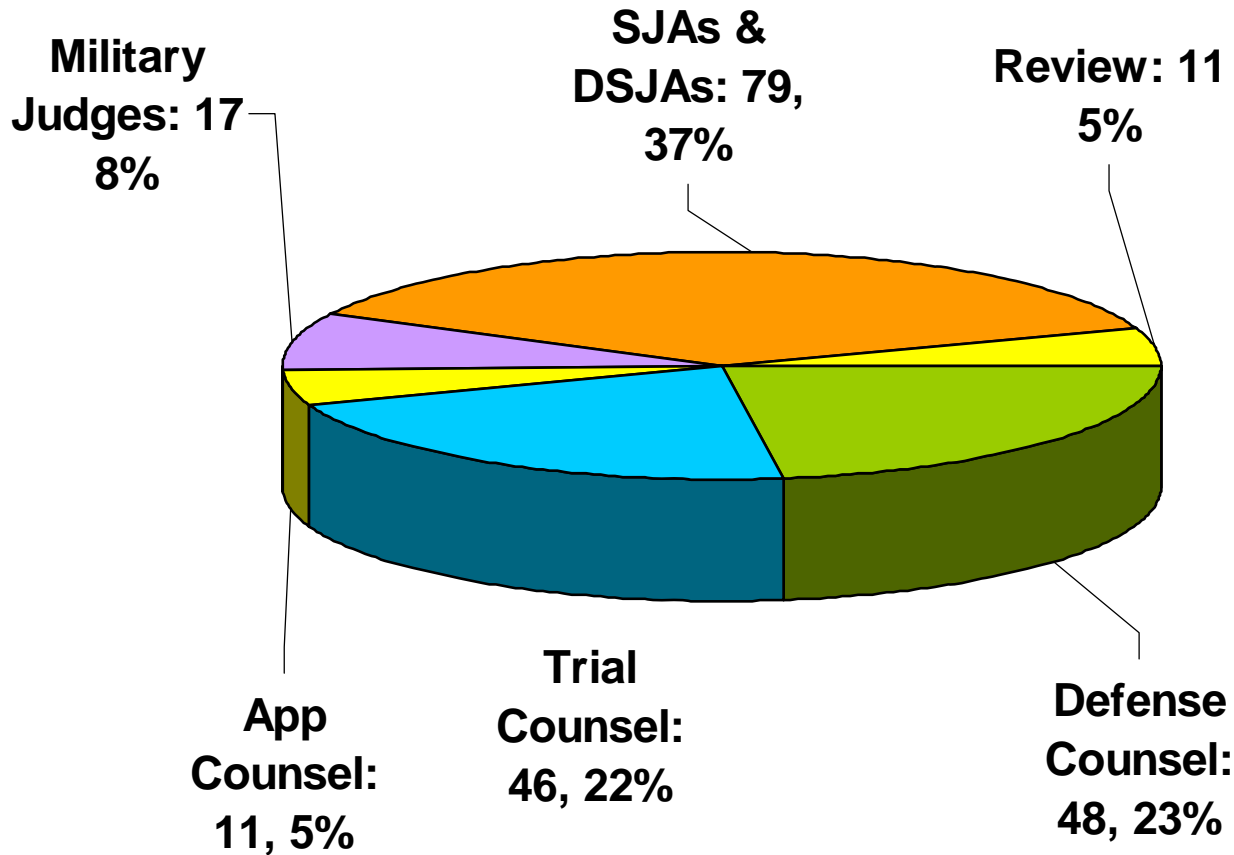
USMC Cases Total and (Rate per 10K)		
	2000	2009
GCM	176 (10)	140 (7)
SPCM	1626 (94)	675 (33)
NJP (Per 10K)	9,770 (565)	11,772 (583)
SCM	909 (53)	1670 (83)
Admin Boards (Per 10K)	349 (20)	581 (28)

GCM caseload holding at average of 151 per year. However, SPCM decreasing while SCM/Administrative forums increasing. Shift to alternative dispositions a conscious choice by commanders. Continuing trend?



Military Justice Requirements

Current Assignments to Military Justice



Total Assigned: **213**

Dedicated to solely military justice: **134**
(includes Trial Counsel, Defense Counsel and their supervisors)

SJAs & DSJAs: **79**
(not solely dedicated to military justice, but they perform in vital pretrial and post-trial roles in addition to non-miljus duties)



Military Justice Requirements

USMC Current Counsel Workload

NOTE: Does not include administrative cases (e.g., BOI, AdSep & administrative requirements)



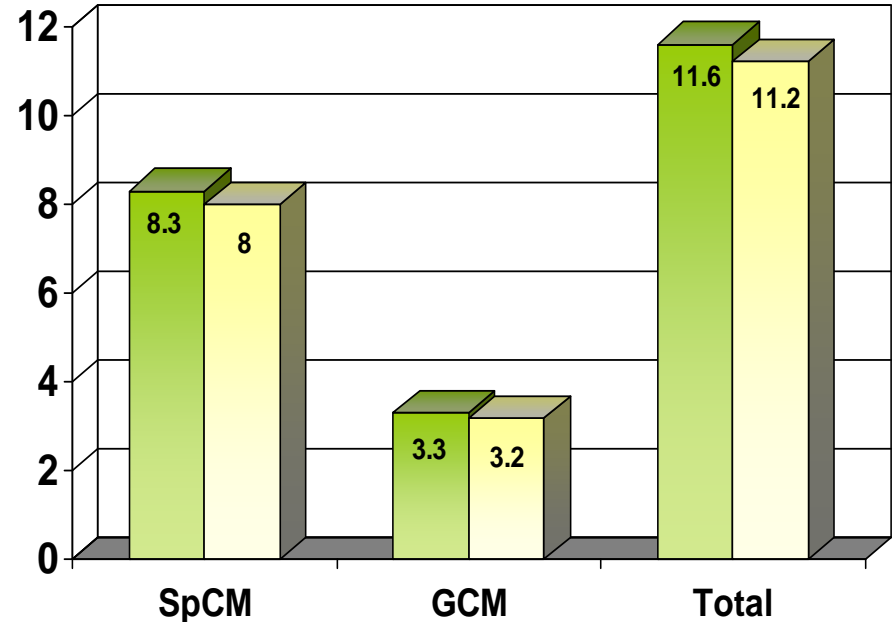
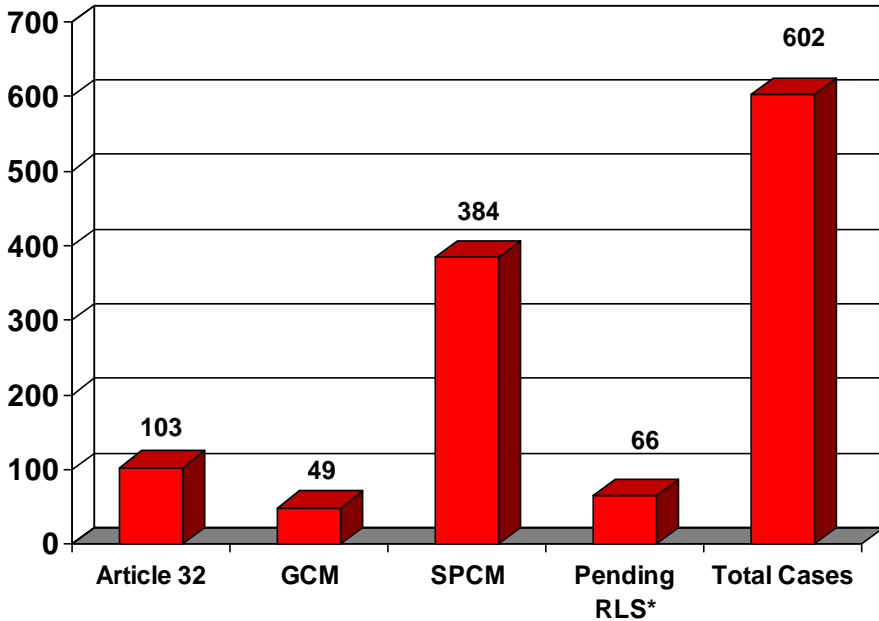
Total Pending Cases

(Marine Corps-wide)



Total Cases Per Counsel

(post-referral)



*RLS – Request for Legal Services

■ Trial Counsel ■ Defense Counsel

Right size for mission: enough TC and DC to litigate cases effectively and enough cases to gain experience.

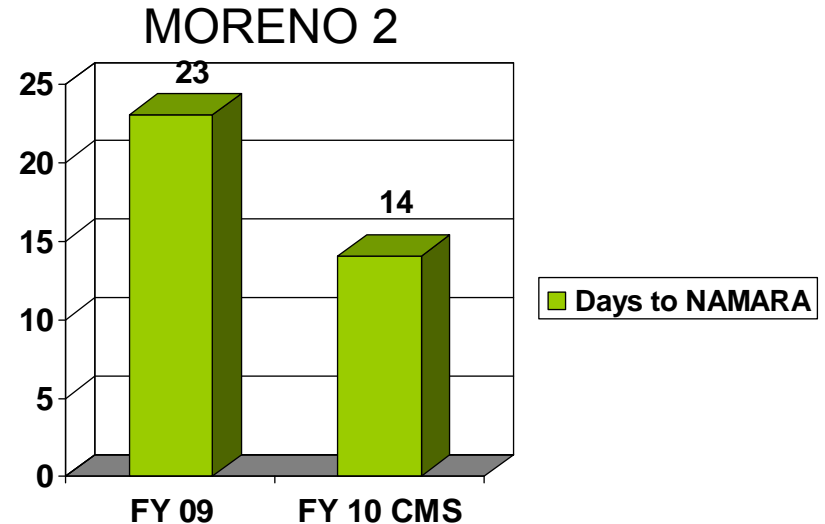
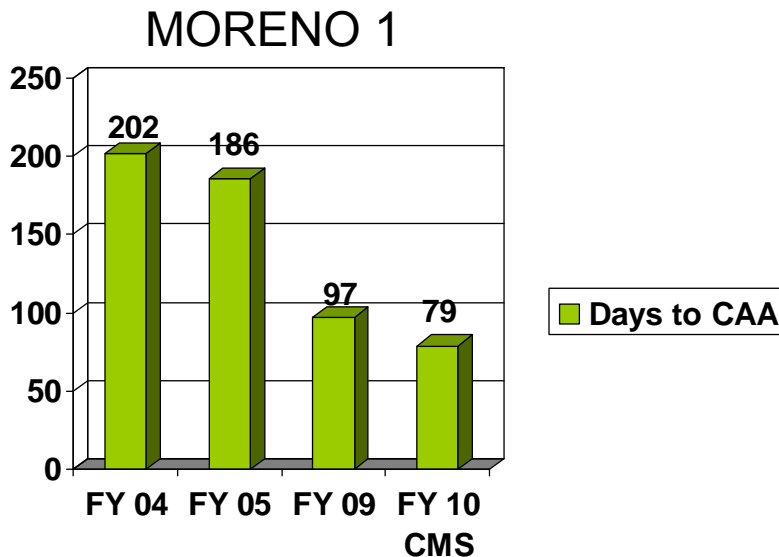


Military Justice Requirements

USMC Article 66 post-trial processing averages

Moreno 1: Date of Trial to Convening Authority's Action – 120 days

Moreno 2: Convening Authority's Action to Docketing at NMCCA – 30 days



Sources:

FY 04/05: Fleet wide Responses to request for statistics from date of trial to CAA
NOTE: No data available for CAA to receipt at NAMARA

FY 09: Responses to SJA to CMC RFI for Moreno 1 and 2 clock averages

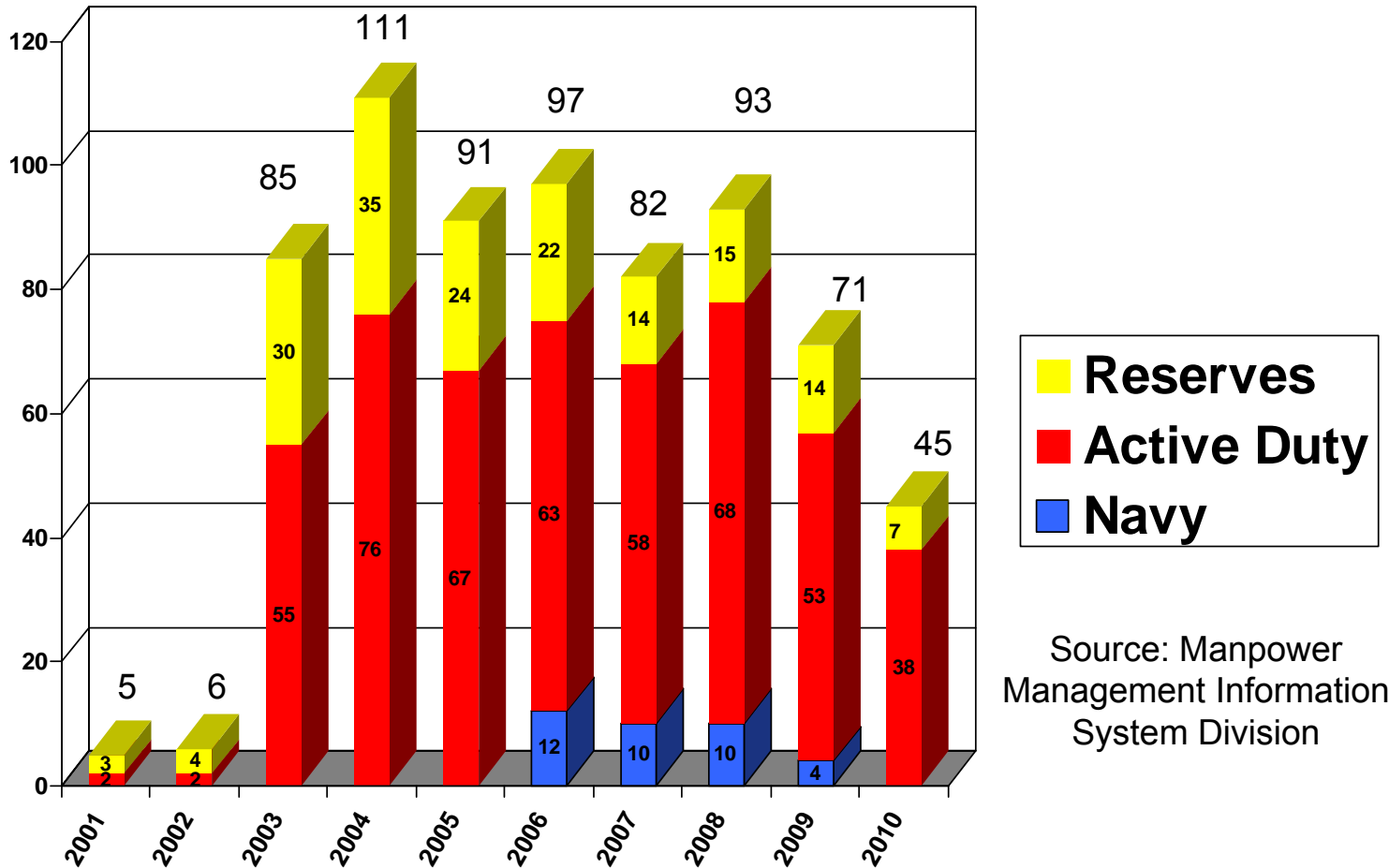
FY 10: CMS data since Feb 2010

NOTE FY 06-FY 08: Data not kept by fleet or JA Division. CMTIS unable to provide



Operational Law Requirements

Deployed In Overseas Contingency Ops 2001 - 2010



"It used to be a simple thing to fight a battle. In a perfect world, a general would get up and say, "Follow me, men," and everybody would say, "Aye, sir" and would run off. But that's not the world anymore. [Now] you have to have a lawyer or a dozen"
General James L. Jones, U.S. Marine Corps, while Supreme Allied Commander, Europe



Other Legal Requirements

Legal Assistance

- **Organization**
 - 19 Legal Assistance Offices throughout the Marine Corps
 - National Capital Region, West Coast, East Coast, and Overseas.
- **Personnel (snapshot)**
 - 26 Marine Judge Advocates
 - 6 civilian attorneys and 19 paralegals
 - 50 support staff (SNCOIC's and Clerks)
 - 3 Wounded Warrior (DES) mobilized reserve Marine Judge Advocates
 - 2 civilian Exceptional Family Member Program attorneys (East and West Coast)



Other Legal Requirements

- **Disability Evaluation System (DES):**
 - Counsel for WII in physical evaluation board process (PEB) based on FY08 NDAA Requirement
 - The Marine Corps has activated 3 Reservist JA's to fulfill this mission.
- **Office of Military Commissions (OMC):** Since 2008, the Marine Corps has been required to provide JA's (currently 9 with 2 in-bound) for the prosecution and defense of unprivileged enemy belligerents.
- **Future Missions (Emerging Requirements):**
A responsive manpower process is in place to make adjustments to meet future personnel requirements



Leadership

Management and Organizational Practices

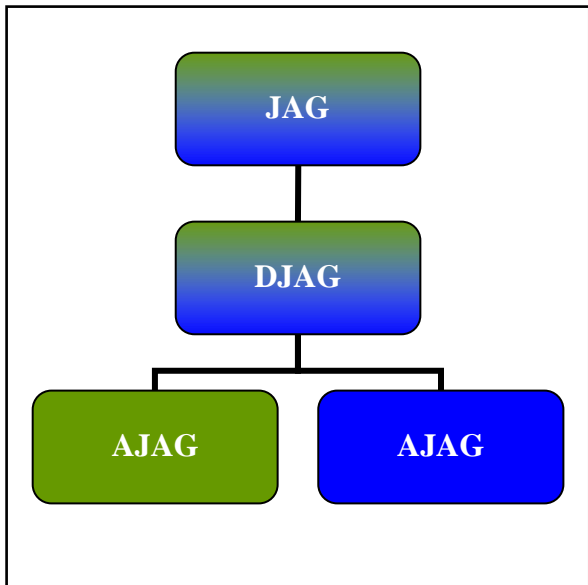
- Making mission is not purely about numbers – must consider leadership: management and organizational practices.

Organizational Objectives

- Clear lines of authority and responsibility between and among the services and the department
- **Balanced** departmental legal organization in which the Navy and Marine Corps are equal partners in departmental representation (original statutory intent) and service-level authority to meet the challenge of two Services within one Department



Departmental Representation

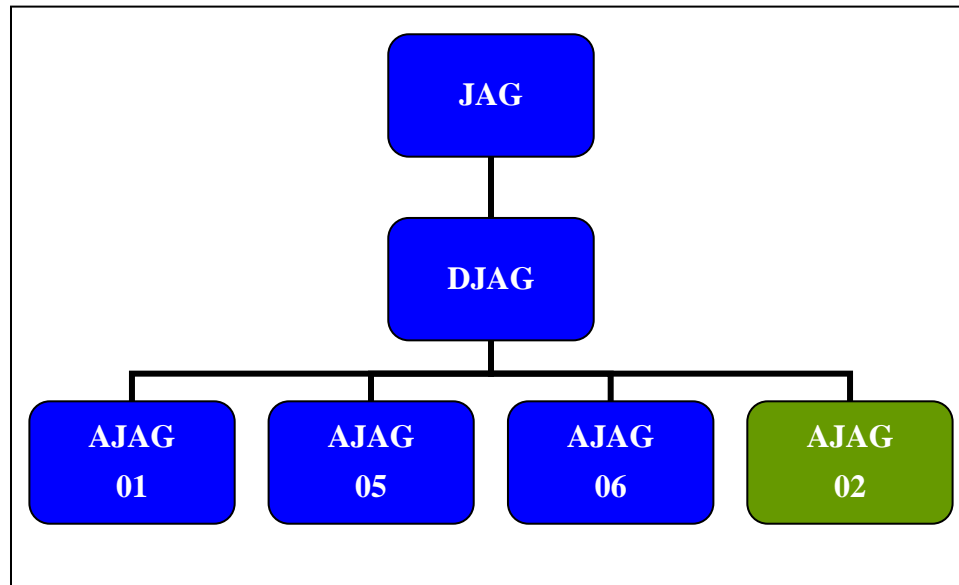


OJAG Departmental Roles

Statutory Construct

JAG = 10 USC § 5148

DJAG/AJAG = 10 USC § 5149



OJAG Departmental Roles

Regulatory Construct



Service Leadership

USMC

- SJA to CMC, 10 U.S.C. § 5046
- No statutory billet description

USN

- No statutory billet
- Service responsibility and authority resides in Departmental JAG



Current Division of Departmental & Service Authorities

JAG: Departmental – level

- **Provide independent legal advice to SECNAV.** 10 U.S.C. § 5148.
- **Article 6 inspections/supervision of the administration of military justice.** 10 U.S.C. § 806.
- **Certifies N-MC TC/DC.** 10 U.S.C. § 827.
- **Designate military judges.** 10 U.S.C. § 826.
- **Establishes CCA, judicial areas, circuits, branches.** 10 U.S.C. § 866; SNI 5400.40A.
- **Designates CCA chief judge.** 10 U.S.C. § 866.
- **Review GCMs not reviewed by CCA.** 10 U.S.C. § 869.
- **Establishes and supervises legal assistance programs.** 10 U.S.C. § 1044; JAGINST 5800.7E.
- **Staff Assistant, assist SECNAV w/ duties.** Navy Reg. 0310 (1990).
- **Commander OJAG, provide/supervise legal advice and related services throughout DON, provide legal/policy advice to SECNAV.** Navy Reg. 0331 (1990); SNI 5430.7Q.
- **Organizes, administers, assigns functions of N-MC trial judiciary and personnel.** SNI 5400.40A.
- **Ensure ethical/professional practice of law by N-MC JA's.** SNI 5430.27C.
- **Certify/designate MC JA's, upon CMC recommendation.** SNI 1120.9A.

JAG: Service - level

- **Recommend assignment for duty of Navy JA's.** 10 U.S.C. § 806.
- **Legal Advisor to CNO re: policies for provision of Navy legal services.** 10 U.S.C. § 5148; JAGINST 5400.1A; OPNAVINST 5430.48D.
- **Chief of JAGC.** SNI 5430.27C; SNI 5430.7Q.
- **Principal advisor and sponsor on matters concerned with officers in JAGC and related enlisted personnel.** Navy Reg. 1009 (1990).
- **Responsible for legal community and allocation of personnel assets.** SNI 5430.27C.

SJA to CMC: Service - level

- **Legal Advisor to CMC.** 10 U.S.C. § 5046; SNI 5430.27C.
- **SJA to CMC acts through and in support of broad statutory responsibilities of CMC in 10 U.S.C. §§ 806, 5043.**
- **Occupational Field sponsor for all AD JA's.** SNI 5430.27C.
- **Oversees CDC.** SNI 5430.27C.
- **Conducts annual inspections of law centers.** SNI 5430.27C.
- **Director of JAD.** SNI 5430.27C.
- **Principal MC Advisor and MC Exec to SENAV on MC Activities.** SNI 5430.7Q.
- **Authorizes JA's to serve as LA Attorneys and Participate in ELAP.** JAGINST 5800.7E



Recommended Division of Department & Service Authorities

JAG: Departmental – level

- **Provide independent legal advice to SECNAV.** 10 U.S.C. § 5148.
- **Establishes CCA, judicial areas, circuits, branches.** 10 U.S.C. § 866; SNI 5400.40A.
- **Designates CCA chief judge.** 10 U.S.C. § 866.
- **Review GCMs not reviewed by CCA.** 10 U.S.C. § 869.
- **Staff Assistant, assist SECNAV w/ duties.** Navy Reg. 0310 (1990).
- **Commander OJAG, provide/supervise legal advice and related services throughout DON, provide legal/policy advice to SECNAV.** Navy Reg. 0331 (1990); SNI 5430.7Q.
- **Organizes, administers, assigns functions of N-MC trial judiciary and personnel.** SNI 5400.40A.

JAG: Service - level

- **Recommend assignment for duty of Navy JA's.** 10 U.S.C. § 806.
- **Legal Advisor to CNO re: policies for provision of Navy legal services.** 10 U.S.C. § 5148; JAGINST 5400.1A; OPNAVINST 5430.48D.
- **Article 6 inspections/supervision of the administration of military justice.** 10 U.S.C. § 806.
- **Certifies USN TC/DC.** 10 U.S.C. § 827.
- **Designate USN military judges.** 10 U.S.C. § 826.
- **Establishes and supervises legal assistance programs.** 10 U.S.C. § 1044; JAGINST 5800.7E.
- **Chief of JAGC.** SNI 5430.27C; SNI 5430.7Q.
- **Principal advisor and sponsor on matters concerned with officers in JAGC and related enlisted personnel.** Navy Reg. 1009 (1990).
- **Responsible for legal community and allocation of personnel assets.** SNI 5430.27C.

SJA to CMC: Service - level

- **Legal Advisor to CMC.** 10 U.S.C. § 5046; SNI 5430.27C.
- **SJA to CMC acts through and in support of broad statutory responsibilities of CMC.** 10 U.S.C. §§ 806, 5043.
- **Article 6 inspections/supervision of the administration of military justice.** 10 U.S.C. § 806.
- **Certifies USMC TC/DC.** 10 U.S.C. § 827.
- **Suspension of JAs.** RCM 109 & JAGINST 5803.1D
- **Designate USMC military judges.** 10 U.S.C. § 826.
- **Establishes and supervises legal assistance programs.** 10 U.S.C. § 1044; JAGINST 5800.7E.
- **Ensure ethical/professional practice of law by USMC JA's.** SNI 5430.27C.
- **Occ Field sponsor for all AD JA's.** SNI 5430.27C.
- **Oversees CDC.** SNI 5430.27C.
- **Director of JAD.** SNI 5430.27C.
- **Principal MC Advisor and MC Exec to SENAV on MC Activities.** SNI 5430.7Q.

Intent: Provide SJA to CMC *service-level* responsibility/authority for professional supervision and functional leadership (establishing, enforcing performance standards and procedures) for USMC JA community.