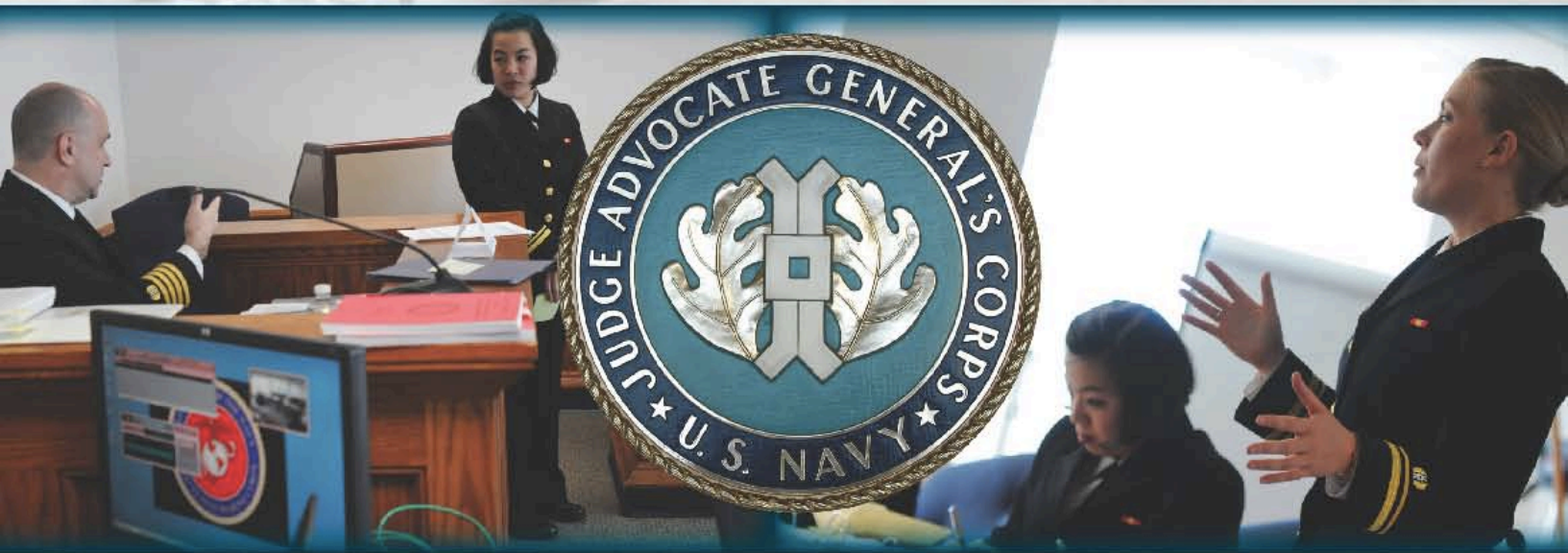


Report of the Judge Advocate General of the Navy



to the
American Bar Association
2012 Annual Report

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I. INTRODUCTION

A. Judge Advocate General

The Judge Advocate General of the Navy (JAG), Vice Admiral Nanette M. DeRenzi, provides legal and policy advice to the Secretary of the Navy (SECNAV) and the Chief of Naval Operations (CNO) on legal matters in the areas of military justice, administrative law, environmental law, ethics, claims, admiralty, operational and international law, national security litigation and intelligence law, general litigation, and legal assistance. The Office of the Judge Advocate General (OJAG) supports the JAG in exercising her responsibility to formulate and implement policies and initiatives pertaining to the provision of legal services within the Navy. The JAG directs a worldwide organization of 2,291 personnel including 855 judge advocate officers, 443 enlisted legalmen, 437 civilian personnel, 419 Reserve judge advocate officers, and 137 Reserve enlisted legalmen.

B. Naval Legal Service Command

Rear Admiral James W. Crawford, III commands Naval Legal Service Command (NLSC). NLSC provides prosecution and other command services to shore and afloat commands throughout nine Region Legal Service Offices (RLSOs). Defense counsel, personal representation, and legal assistance services are provided to individual Sailors through eight Naval Legal Service Offices (NLSOs). Additionally, Rear Admiral Crawford is responsible for the Naval Justice School in Newport, Rhode Island, and its two teaching detachments in Norfolk, Virginia, and San Diego, California.

In order to meet operational needs in the fleet and to continue to provide quality military justice service, NLSC will realign its offices on October 1, 2012. The eight NLSOs will realign to four Defense Service Offices (DSOs). The legal assistance mission will transfer from the NLSOs to the nine RLSOs. The DSO's sole mission will be providing defense services to servicemembers in military justice and personal representation. The RLSOs will be responsible for providing command advice, prosecution of courts-martial, and legal assistance.

This change will broaden the professional development of new judge advocates and more quickly prepare them to assume increased responsibility. Under the new structure, accessions will be assigned to one of the RLSO locations and spend their first tour practicing in the three areas essential to becoming a well-rounded judge advocate: government services, legal assistance, and defense services. The new structure will also improve our military justice practice by aligning the right number of trained and experienced litigators with the Navy's court-martial caseload.

1. Chief of Staff, Region Legal Service Office and Trial Counsel Assistance Program

Captain John Hannink is the Chief of Staff, Region Legal Service Office (RLSO COS) for nine RLSOs. The RLSOs provide prosecution and other command services to shore and afloat commands. RLSOs, their detachments and branch offices, are organized into departments and

divisions that provide services in the functional areas of trial counsel, command services/administrative law, court reporting, ethics counseling and command administration.

Reporting to RLSO COS is the Navy's Trial Counsel Assistance Program (TCAP). Established on October 1, 2010, the Navy's Trial Counsel Assistance Program (TCAP) exists to provide high-quality advice, assistance, support and resources for trial counsel (the Navy's court-martial prosecutors) worldwide. TCAP provides full-spectrum advice to trial counsel, serving as a resource through every phase of pretrial investigation and court-martial litigation including charging decisions, theme and theory, motions and responses, discovery issues, securing and preparing expert witnesses, devising trial strategy, assisting with post-trial matters, compliance with the Victim Witness Assistance Program (VWAP) and professional responsibility. TCAP personnel are authorized to consult with detailed counsel through every phase of court-martial litigation.

During the past year, TCAP provided nine on-site assistance visits to RLSO headquarters, delivering trial advocacy training and prosecution process assessments. Further, TCAP personnel conducted outreach training using a multi-disciplinary approach to improve efforts between prosecutors, NCIS agents, military investigators and other military justice stakeholders, including Sexual Assault Response Program contributors. Training included joint sessions in the northwest, Hawaii and Europe with NCIS investigators and prosecutors. TCAP's staff conducted advanced family and sexual violence training at the Federal Law Enforcement Training Center (FLETC); sexual assault prevention training at the U.S. Naval Academy; and alcohol facilitated sexual assault training at the Army JAG School and Air Force Keystone conference.

During the reporting period, TCAP collaboratively engaged trial counsel in the field with regular case review conferences and provided advice through numerous field calls each month. TCAP personnel reviewed case details on nearly all general courts-martial prior to trial and provided substantive support on 50 percent of those cases. Additionally, TCAP provided counsel to serve as second chair assistants in two complex sexual assault prosecutions. TCAP coordinated with Navy Appellate Government (OJAG Code 46) to ensure courts-martial prosecutions were effectively postured to withstand appellate review. TCAP personnel also routinely served as instructors in a variety of courses at Naval Justice School, including the Intermediate and Basic Trial Advocacy courses, Trial Counsel Orientation, Senior Trial Counsel/Senior Defense Counsel course, and the Litigating Complex Cases course. Instruction topics included victim/witness assistance, case theme and theory, effective direct and cross examination, familiarization with changes to Article 120, Uniform Code of Military Justice (UCMJ) and specialized topics in sexual assault prosecutions. TCAP personnel also presented webinar training on Military Rule of Evidence 404(b).

TCAP developed a restricted membership SharePoint knowledge management portal as a central repository for trial resources and a discussion forum for trial counsel with links to other sites promoting effective prosecution resources. TCAP coordinated with Army and Marine Corps TCAP offices to leverage efficiencies and create an expert witness database, a motions and responses bank, and standardized trial forms (e.g., case trackers, prosecution memos, proof analysis, discovery motions and responses, evidence notices and pretrial agreements).

2. Chief of Staff, Naval Legal Service Office and Defense Counsel Assistance Program

Captain Karen Fischer-Anderson continued her assignment as the first Chief of Staff (NLSO COS) for eight NLSOs. The NLSOs provide legal service to support fleet operational readiness. NLSO areas of practice include military criminal defense, personal representation, civil legal assistance and income tax preparation. Clients include military members, their families and retirees as resources permit.

Captain Fischer-Anderson was instrumental in the planning for a reorganization of the Naval Legal Service Offices into a defense-only function, a transition that will be completed on October 1, 2012. Captain Fischer-Anderson served as the primary advisor to Commander, Naval Legal Service Command for all matters concerning the establishment of a defense-only function, and for the transfer of the civil legal assistance and income tax preparation functions to the Region Legal Service Offices. On October 1, 2012, four Defense Service Offices will replace the eight Naval Legal Service Offices and will provide military criminal defense, personal representation, and other defense-only services.

The Defense Counsel Assistance Program (DCAP) reports to NLSO COS. The mission of the DCAP is to support and enhance the proficiency of the Navy defense bar, providing experienced reach-back and technical expertise for case collaboration, and to develop, consolidate and standardize resources for defense counsel. The office primarily supports the Navy trial defense bar with active cases. Although not typically assigned as detailed defense counsel, DCAP personnel may be detailed to a case by NLSO COS. Otherwise, DCAP personnel are authorized to consult with detailed counsel through every phase of court-martial litigation.

During this reporting period, DCAP personnel assisted detailed defense counsel across the spectrum of trial practice, helping develop written work products and oral arguments. DCAP assistance included developing case strategies, drafting motions for appropriate relief and crafting arguments for motion sessions, developing investigations, discovery, requests for witnesses and expert assistants, developing voir dire strategies and questions, assisting with complex or “emergency” legal research, preparing clients and witnesses for testimony, and helping counsel prepare opening statements, closing arguments, and direct and cross-examination. DCAP personnel were available for on-site visits during the trial preparation phase, and to assist “behind the bar” during trial as requested. Finally, DCAP provided advice on post-trial matters and also frequently consulted with defense counsel concerning professional responsibility and ethics issues.

DCAP spear-headed the development of a new Defense Counsel Orientation course that was offered for the first time in April, 2012 and will continue to be offered on a semi-annual basis. The course is designed to prepare new defense counsel to represent courts-martial clients. DCAP also completed a Defense Deskbook designed to provide a comprehensive orientation to new defense counsel and to provide standardized guidance on creating and maintaining case files and trial notebooks, as well as providing standardized forms and checklists defense counsel can utilize as a starting point for their case preparation for every defense case. DCAP also revamped

the Senior Defense Counsel course to focus on supervisory counsel responsibilities, and continued to develop the Navy and Marine Corps Defending Sexual Assault Cases Course hosted by the Center for American and International Law in Plano, Texas.

In addition to these initiatives, DCAP presented training during a half-dozen field assist visits, webinars on Defense Connect Online (DCO), and participated as instructors at a number of courses and seminars. DCAP personnel developed topical resources for use by the field in a number of areas and a SharePoint central site for the dissemination and exchange of information concerning issues of interest to the Navy defense bar. Finally, DCAP continued to serve as a resource consolidator, ensuring that the materials developed by counterpart offices in our sister services, OJAG Criminal Law Division (Code 20) and the Naval Justice School were available to and used by Navy defense counsel.

II. Progress and Achievements: July 2011 – June 2012

A. Civil Law (OJAG Code 01)

1. International and Operational Law (OJAG Code 10)

The International and Operational Law Division provides legal and policy advice and training on international and operational law issues to the DON, the DoD, and the national security establishment. The Division also plays a leading role in supporting the DoD General Counsel, the Chairman of the Joint Chiefs of Staff (CJCS) legal counsel, and staff judge advocates assigned to combatant commanders and maritime component commanders.

During the reporting period, Division attorneys provided advice on the drafting, negotiation, interpretation, and implementation of international agreements with foreign nations and international organizations. The Division worked closely with its DoD and State Department counterparts to implement agreements on foreign basing and mutual support matters, including personnel exchanges and status of forces agreements.

International agreement support allowed U.S. naval forces to work more effectively with forces from other nations and increase maritime domain awareness by sharing information, personnel, equipment, and facilities with friendly and allied nations abroad. The Division oversaw monitoring of host nation adherence to foreign criminal jurisdiction procedures and gathered all required inputs from Navy commands on the exercise of criminal jurisdiction by foreign tribunals over U.S. personnel. The Division also served as the Navy's representative to the State Department for international agreements, as required by the Case Act (1 U.S.C. § 112b).

The Division supported the Navy JAG in his role as DoD Representative for Ocean Policy Affairs (REPOPA) and actively participated in interagency ocean policy committee meetings, including representing DoD at the International Maritime Organization (IMO) on maritime environmental issues and efforts to develop a mandatory Polar Code. Division-drafted legislation was enacted by Congress to prevent the automatic application, under a U.S. statute, of an amendment to a treaty with serious negative consequences for the operation of Navy vessels. The Division represented the Navy at law of the sea interagency meetings and provided significant support for Secretary of Defense, CJCS, and CNO testimony at Senate Foreign Relations Committee hearings on United States accession to the Law of the Sea Convention. Further, the Division participated on an interagency team that provided Law of the Sea Convention briefings to the staffs of more than 30 senators.

An important responsibility of the Division continued to be the publication and maintenance of the DoD Maritime Claims Reference Manual, which is the definitive guide to international maritime claims. The manual, which covers the maritime claims of the world's countries and territorial dependencies, is available at:
http://www.jag.navy.mil/organization/code_10_mcrm.htm.

The Division worked diligently to increase fleet-wide knowledge of international and operational law issues. The Division published periodic operational law advisories that provided

information on force protection, law of the sea, law of armed conflict, international agreements, and other operational and international law topics to judge advocates around the world. Training offered by Division attorneys during the reporting period included:

- Law of the Sea at the Naval War College, Naval Justice School, and National Defense University
- International Agreements at the Naval War College and Naval Justice School
- Law of War at the Naval War College, Naval Justice School, Walter Reed National Military Medical Center
- Legal Aspects of Combating Terrorism at the Defense Institute of International Legal Studies, attended by students from Canada, Pakistan, Yemen, Lebanon, the Palestinian Authority, Moldova, and the Democratic Republic of Congo

Division attorneys represented the Navy at meetings of the DoD Law of War Working Group and participated in the ongoing initiative to draft a DoD Law of War Manual. The Division conducted mandatory reviews in compliance with the law of armed conflict and domestic law for all weapons and weapons systems acquired by DON, including an anti-personnel directed energy non-lethal weapon. In coordination with the Staff Judge Advocate to the Commandant of the Marine Corps, the Division supported the Joint Non-Lethal Weapons Directorate. The Division represented the Navy on DoD coordination of U.S. policy for interactions with the International Criminal Court. The Division also supported the JAG in conducting a pre-release assessment of law of war considerations for the movie “Act of Valor.”

2. Admiralty and Maritime Law (OJAG Code 11)

The Admiralty and Maritime Law Division advises the fleet and Navy leadership on admiralty and maritime law issues while operating the Navy’s admiralty claims and litigation office. The Division is responsible for admiralty and maritime law matters, including claims and litigation related to maritime torts, contract, salvage, international law, and maritime legislation and regulations. Internally, the Division is working to increase coordination with uniformed and civilian Navy lawyers in the fleet and improve training for lawyers in the Division.

The Division’s administrative claims and litigation practice carried 425 cases during the one-year reporting period. Affirmative cases included property damage from collisions and allisions with Navy vessels, allisions with Navy piers, and an allision with an underwater degaussing range. Defensive cases included personal injury, death, and property damage.

In the past 12 months, the Division reviewed and/or adjudicated approximately \$23 million in affirmative administrative claims by the Navy for damage to Navy vessels and other Navy property. Incidents included: a submarine sonar dome damaged in transit from the east coast to the west coast; a Navy barge towed by an Italian tug and pushed into another Navy barge; a Navy vessel’s mooring lines struck by a yacht; multiple tug collisions with Navy vessels; and a shipyard fire on board a submarine.

Additionally, the Division reviewed and/or adjudicated approximately \$26.3 million in defensive administrative claims against the Navy. Incidents included damage, injury or death

resulting from multiple buoy strikes in overseas locations, counter-piracy operations, minor collisions/allisions, vessel wakes, fishing gear strikes, and MWR marina operations. As of the end of the reporting period, the pending significant defensive cases included damage to a Maltese tug under contract to provide services to a Navy vessel, storm related damage to private boats moored at a Marine Corps Community Services' Marina, and the death of an MWR marina patron.

The Division continued to support the litigation efforts of the Department of Justice (DOJ) Aviation and Admiralty Office. The U.S. District Court for the Eastern District of Virginia ruled in favor of the United States in a case involving a tug and tow which was damaged and rendered inoperable at the Sewell Point Degaussing Range. Range damage estimates totaled approximately \$3.5 million. The United States was awarded the maximum limitation amount of \$2,520,000. Other resolved cases included personal injury suits filed by a Navy vessel visitor and the crewmember of a Navy vessel supporting Navy sea lion training. As of the end of the reporting period, significant pending litigation matters included suits by contractor seaman for injuries sustained on board Navy research vessels chartered to academic institutions, suits by shipyard workers injured when a Vertical Launch System hatch on a Navy vessel closed on them, and suits by shipyard workers who were injured as they were embarking onto Navy vessels.

The Division's relationship with DOJ continued to provide our personnel with a unique opportunity to coordinate litigation strategy and to work directly with DOJ in defense of the Navy in federal courts. Pursuant to that relationship, the Division currently has one judge advocate assigned as a full-time trial attorney within DOJ's Aviation and Admiralty Office. In addition to litigating a variety of Navy cases, the assigned officer was involved in claims arising from the Deepwater Horizon incident.

Division attorneys continued to increase interaction with fleet and joint commands, advising on maritime personal injury, property damage, cargo, counter-piracy, sovereign immunity issues, and unique risks involving civilian personnel access to Navy vessels to film movies and sporting events. The Division provided significant support to the first annual Carrier Classic basketball game on board an active U.S. Navy aircraft carrier; drafting provisions of the production assistance agreement, providing on-site support, and participating in the after action review. The Division also assisted in the production assistance agreement for a major motion picture filmed onboard Navy installations and vessels. Additionally, the Division is supporting the initial planning for future NCAA basketball games on Navy vessels and installations.

The Division continued to support the Navy effort to protect underwater cultural resources. The Division coordinated the inter-agency position on proposed amendments to the Sunken Military Craft Act, assisted DOJ in preparing arguments before the 11th Circuit Court of Appeals in litigation between the Kingdom of Spain and a U.S. salvor, and helped the Naval Heritage and History Command draft and promulgate regulations implementing the Sunken Military Craft Act.

3. Environmental Law (OJAG Code 12)

During the reporting period, the Environmental Law Division focused its efforts on implementation of the National Ocean Policy (Executive Order 13547) and environmental planning analyses for training and testing activities at-sea involving fleets and the many U.S. Navy organizations involved in research, development, testing and evaluation of existing and future systems.

Division personnel worked closely with the CNO's Environmental Readiness Division and the environmental planning staffs for U.S. Fleet Forces and U.S. Pacific Fleet as they prepared the draft Atlantic Fleet Training and Testing and Hawaii-Southern California Training and Testing Environmental Impact Statements/Overseas Environmental Impact Statements, released for public comment in May 2012. These EIS/OEIS will support the second generation of incidental take authorizations for Atlantic and Pacific Fleet training and testing ranges. These incidental take authorizations will be critical to ensure that naval forces continue to have the ability to adequately train and prepare for missions after the current incidental take authorizations expire in January 2014.

Division personnel continued to coordinate policy positions for the Joint Staff and Office of the Assistant Secretary of the Navy (Energy, Installations & Environment) as members of the National Ocean Council created by Executive Order 13547 in July 2010. The Division continued its participation on several working groups that developed draft strategic action plans for nine priority objectives identified in Task Force recommendations. The Division also coordinated comments for the draft Implementation Plan that underwent a lengthy public comment period in early 2012.

4. Administrative Law (OJAG Code 13)

The Administrative Law Division consists of several subject-matter branches, each supporting headquarters, the fleet, and field by addressing a high-volume of substantive legal inquiries and issues, including the following:

The Personnel Law Branch (Code 131) was responsible for ensuring the accuracy and legal sufficiency of every DON document related to the officer promotion process. Code 131 processed and reviewed over 475 Navy and Marine Corps officer promotion board reports and other military personnel law matters. Code 131 collaborated with attorneys from Headquarters Marine Corps, the Office of the Chief of Naval Personnel, the Office of the CNO, and the Office of the SECNAV on a broad spectrum of personnel law issues. The branch provided written opinions and legal comments on high visibility personnel law issues to include: advising DON and DOJ counsel in litigation against the government; providing legal counsel on navigating the transition beyond the repeal of the "Don't Ask Don't Tell" policy; reviewing multiple DoD and SECNAV instructions; reviewing and commenting on proposed legislation; assisting senior Navy leaders prepare for Congressional testimony; providing legal analysis and opinions for complex Board of Corrections for Naval Records (BCNR) petitions; and advising DON on implementation of force reduction strategies to conform to existing statutory and regulatory guidance.

The Standards of Conduct and Government Ethics Branch (Code 132) responded to more than 1,000 field calls and provided verbal and written opinions to headquarters and field attorneys on a range of subjects such as gift acceptance; outside employment; political activities; post-government employment restrictions; support to non-federal entities; government travel; use of government property, personnel, and assets; emerging media; and use of military seals, logos, and insignia. The branch managed the Public Financial Disclosure System for more than 340 Navy flag officers and reviewed all flag nomination packages. Additionally, the branch managed the Confidential Financial Disclosure System for personnel assigned to the OJAG headquarters. The branch developed and taught several standards of conduct programs to judge advocates and other ethics counselors, and also provided training to non-legal audiences including officers attending career transition seminars, public affairs personnel, flag officer staff members, and Reserve officers. The branch kept ethics counselors apprised of recent ethics law developments by drafting and distributing informational "Ethics-grams" focused on current issues in the standards of conduct arena including the STOCK Act, social media guidance, post-government employment restrictions, book deals, ethics counselor training and certification, and travel requirements. The branch remains closely aligned with the Navy General Counsel Ethics Program and continues to monitor compliance with the joint Ethics Counselor Certification and Training Program, and also continued to update and improve its Navy Knowledge Online webpage, affording the Navy legal community access to ethics resource materials.

The Legislation, Regulations, Freedom of Information Act/Privacy Act (FOIA/PA), and Disability Law Branch (Code 133) coordinated OJAG review and comment on approximately 400 legislative items and over 300 DoD and DON regulations, directives, and instructions. Acting as the OJAG FOIA/PA coordinator, Code 133 reviewed, forwarded, and/or responded to approximately 43 FOIA/PA requests and provided advice to commands on the release of information to the media and other requestors of information. Additionally, the branch processed 53 disability appeals and combat-related disability certifications, and over 70 Federal Register publications, including Code of Federal Regulations (CFR) amendments.

The Command Authority and Investigations/Military Rights and Benefits/Military Affairs/Professional Responsibility Branch (Code 134) reviewed "complaints of wrong" filed against superiors (under Article 138, Uniform Code of Military Justice and Article 1150, U.S. Navy Regulations) and final appeals of formal equal opportunity complaints. The branch briefed 52 of those complaints to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) or Deputy Assistant Judge Advocate General (Administrative Law) for final action. The branch drafted advisory opinions for the BCNR and managed the Navy's professional responsibility program. The branch also reviewed and provided comment on more than 54 legislative items and regulations that affect military members' rights and benefits, reviewed policy and regulatory issues, and provided guidance to senior Navy leadership in matters associated with implementation of the repeal of the "Don't Ask, Don't Tell" policy. In addition, the branch responded to hundreds of questions and drafted detailed policy reviews for OJAG headquarters and field legal offices on issues including the Naval Academy's admission policies, religious accommodation, extremist activities, regulation of personal firearms, freedom of speech and expression, and defense support to civil authorities (natural and man-made disaster response).

5. General Litigation (OJAG Code 14)

The General Litigation Division provides litigation support for all civil cases except those involving admiralty, common-law torts, and matters reserved to the Navy General Counsel. During the reporting period, the Division defended: constitutional challenges to federal statutes; attempts to overturn Navy policies and programs; attacks on the legality of Navy/Marine Corps personnel decisions; assorted personnel claims to correct records or obtain pay; and FOIA/PA appeals. The Division also assisted servicemembers and civilian employees to obtain representation when they were sued for monetary damages in their personal capacity for official actions that allegedly violated another person's constitutional rights – so called "Bivens" lawsuits or constitutional torts.

Division attorneys located evidence and witnesses; drafted motions, memoranda, and other court pleadings; conducted discovery and depositions; and assisted with oral arguments in federal courts throughout the country. They successfully defended the Navy and Marine Corps in the vast majority of cases.

During the past year, the Division attorneys defended a current caseload of more than 70 active cases in federal district courts, courts of appeal, the U.S. Court of Federal Claims, and the Supreme Court of the United States – with potential liability in the tens of millions of dollars. This past year was dominated by high-visibility, complex cases and pre-litigation support, including: three high-profile suits brought by current and former service members alleging that their constitutional rights were violated after they reported sexual assaults; a continuing series of individual and class action suits by a few Navy chaplains alleging violations of the establishment and free exercise clauses of the First Amendment; a challenge to the procedures used by the Marine Corps to select Reserve colonels for involuntary retirement; review of the constitutional limitations on infusing diversity into the Navy's recruitment and promotion procedures; and habeas corpus petitions, including several former servicemembers collaterally attacking their courts-martial.

Perhaps most visible, the Division coordinated Navy support to federal prosecutors in several Somali piracy cases currently being prosecuted in federal courts in Norfolk, Virginia. The Division assisted through 11 guilty pleas and a jury trial that resulted in a conviction of the highest ranking, and first ever land-based, pirate in the United States. The Division will provide extensive support throughout the coming year in three capital cases arising from the piracy of the sailing vessel QUEST, which resulted in the death of four Americans.

The Division also supported the DOJ in its defense of three cases challenging actions taken by senior military leaders in connection with reports of sexual assault. The plaintiffs are current and former service members and the defendants are current and former Secretaries of Defense, Secretaries of the Navy, and Commandants of the Marine Corps. The plaintiffs allege that fellow service members sexually assaulted them and that the defendants failed to act to prevent rape and sexual assault in the military. The Division secured DOJ representation for all of the defendants and assisted in the dismissal of one of the three cases at the trial level.

In addition to litigation in which the United States is a party, the Division attorneys and paralegals responded to more than 700 requests for official Navy/Marine Corps information for litigation purposes. These requests were subpoenas or other written requests asking the Navy to release documents or approve witnesses in litigation not involving DON. A decision is required in each case to determine whether such information can be released.

SECNAV's authority to adjudicate administrative appeals under the FOIA and PA has been delegated to the Division Director for all cases not specifically required to be appealed through the Navy General Counsel. Over the past year, the Division completed approximately 180 FOIA/PA appeals. A dedicated FOIA paralegal, along with all Division and Reserve attorneys, ensure that these appeals are thoroughly and fairly adjudicated. Once a requester has obtained a FOIA/PA appeals decision from this office, the requester can seek relief in a federal court. If the FOIA/PA requester seeks relief in federal court, the Division provides litigation support.

The Division reviewed proposed regulations and legislation related to litigation. It also reviewed, when requested, proposed departmental actions to assess the litigation risk of the proposed action. Additionally, the Division wrote and coordinated a legislative proposal, adopted by DoD and forwarded to Congress, that requires exhaustion of administrative remedies by a correction board prior to seeking judicial review of a military personnel decision.

6. Claims and Tort Litigation (OJAG Code 15)

The Claims and Tort Litigation Division adjudicates tort claims under the Federal Tort Claims Act, the Military Claims Act, and the Foreign Claims Act. The Division is also responsible for actions under the Federal Claims Collection Act, the Medical Care Recovery Act, and the Third Party Payers Act, which allow for the pursuit of affirmative claims on behalf of the United States against third-party tortfeasors and insurers for damage to government property and for the recovery of medical costs paid on behalf of active duty members, dependents, and retirees. The Division further administers payments under the Military Personnel and Civilian Employees' Claims Act, which compensates military and civilian employees for loss, damage, or destruction of personal property occurring "incident to service." The Division also provides litigation support to the United States Attorneys for claims that result in litigation.

During the reporting period, the Division processed more than 8,600 claims against the United States and approximately 38,000 affirmative claims against liable parties on behalf of the United States. Collections on affirmative claims for this period totaled approximately \$21.1 million dollars. In addition, at any given time during this reporting period, the Division managed approximately 185 tort cases in litigation.

The Division has resolved almost all of the administrative claims submitted by residents of the island of Vieques, Puerto Rico. More than 8,400 claims have been filed against the Navy, seeking in excess of \$4.2 billion for alleged adverse health effects resulting from the Navy's use of the island for military training between 1941 and 2003. All lawsuits filed in this matter have been dismissed based on the discretionary function exception to the Federal Tort Claims Act and in February, the First Circuit Court of Appeals upheld the dismissal of a suit brought by 7,125 plaintiff residents of Vieques.

The Division continued to process claims pertaining to the contamination of groundwater at Marine Corps Base Camp Lejeune, North Carolina. Since 2000, more than 3,000 administrative claims have been filed under the Federal Tort Claims Act, seeking in excess of \$39 billion (not including one claim filed for \$900 billion). In accordance with language in the FY12 National Defense Authorization Act, the administrative claims will not be adjudicated until the conclusion of the Agency for Toxic Substances and Disease Registry (ATSDR)'s ongoing scientific studies. The ATSDR has been studying Camp Lejeune for more than a decade to determine if any link exists between exposure to solvents in the water and any disease or illness. In 2007, Congress tasked the National Academy of Sciences (NAS) to study whether any scientific evidence linked exposure of chemicals in the water to any diseases or illnesses, and to evaluate ATSDR's studies to determine if additional studies would be useful. In June 2009, the NAS released a comprehensive review of all evidence to date, concluding that there is no scientific evidence linking exposure to the solvents in Camp Lejeune's water to any adverse health effects.

Division personnel exercised the Disaster Response Plan twice during this reporting period. In April, the Division Disaster Response Team responded to the crash of an F/A-18D aircraft into an apartment complex adjacent to NAS Oceana, Virginia Beach, Virginia. The crash resulted in the destruction of 27 of the 64 units in the apartment complex; the remaining 37 units were rendered uninhabitable for the following 35 days until environmental remediation could be completed. The day after the crash, the Team was on-scene and working with local commands and judge advocates. The team held community forums and used electronic media to explain the claims process and distribute claims packages. The Team manned a claims information hotline, helped staff a Resident Assistance Center, and implemented procedures to make advance claims payments for damaged property in the amount of \$155,000. The Navy also paid approximately \$280,000 in emergency assistance funds to residents displaced by the crash. Fortunately, there were no deaths or serious injuries as a result of the crash.

In June, the Team deployed to Naval Air Station Pensacola, Florida in response to flooding in Navy housing caused by record-breaking rains. The Team assisted 60 multi-service families whose homes had been damaged. Within five hours of arrival, the Team hosted a community meeting for residents, provided claims packages, and assisted residents with the claims process.

7. Legal Assistance (OJAG Code 16)

The Navy Legal Assistance (LA) Program continues to promote the readiness and welfare of active duty and Reserve servicemembers via the provision of timely and quality legal support services designed to address personal civil legal matters. Navy LA Program clients and customers include active and Reserve members of all five military services, eligible family members and dependents, military service retirees, and in some cases DoD civilians. LA services are provided everywhere the Navy has a presence; at home and abroad, whether at sea or in a combat zone.

During this reporting period, Navy LA providers assisted customers and clients in a wide array of matters, including: personal estate planning (wills, powers of attorney, healthcare directives, living wills, and advice on beneficiary designations); family law/domestic relations;

consumer law; landlord/tenant law; home ownership and foreclosure issues; immigration and naturalization matters; military rights and benefits (including SCRA and USERRA rights); and support for military crime victims.

The Division is focused on expanding efficiencies and effectiveness to support the pending organizational realignment of the Navy LA mission from NLSOs to RLSOs in October 2012. The reorganization is designed to separate the military justice defense function from LA, attaching the LA mission to the more generalized and comprehensive RLSO organization. The transition will be seamless and transparent to LA customers, clients, and the larger Navy, with a continuation of standard LA services. However, the transition also afforded an opportunity to engineer advancements in the provision of LA to include the standardization of many documents, practices, and processes. Key Navy LA manuals, instructions, policies, and references have been revised to advance best practices and support for clients and customers. The Division also expanded its use of emerging technologies to better reach clients remote from direct assistance via web-based communication tools, including Defense Connect Online (which facilitates virtual interviews and file sharing). The Division continues to provide comprehensive preventative law and deployment-related outreach briefs/programs to educate servicemembers on their legal rights, responsibilities, and duties; thus enhancing individual and operational readiness.

The Division expanded during this period to assume responsibility for the management and execution of the Navy Disability Evaluation System (DES) Outreach Attorney Program. The Program is staffed by 12 Navy Civilian Attorneys (including a Program Manager) charged with providing legal support to wounded, ill, and injured Sailors and Marines navigating DES processing. These attorneys are positioned at eight major Navy and Marine Medical Treatment Facilities (MTF) around the U.S., provide outreach and counsel to wounded personnel, and provide support up to the point of Formal Physical Evaluation Board (FPEB) review.

As in previous years, the Division managed and executed a Tax Assistance Program to aid servicemembers and their families with free electronic filing of their income tax returns. The Program assisted in the filing of more than 37,000 servicemembers' Federal and State tax returns via 71 tax assistance centers around the U.S. and across the globe. Tax Center managers and staff contributed over 82,000 man-hours to individual tax assistance, sparing personnel an estimated \$3.3 million in tax preparation fees. Previous reliance on "full-service" tax assistance practices were supplanted by a "self-service" focus at Navy JAG managed tax centers inside the U.S. In essence, individual servicemember/dependent customers were taught to prepare and file their own taxes as opposed to relying on preparation by Tax Center staff. This effort educated more than 10,000 personnel in effective tax return preparation, thus promoting self-reliance, financial awareness, and long-term financial accountability and readiness. The Division continued its cooperation with the Internal Revenue Service and Armed Forces Tax Council in executing the Tax Assistance Program.

Finally, the Division continued its close relationship with the ABA and particularly the ABA's Standing Committee on Legal Assistance for Military Personnel (LAMP) throughout the year. Navy LA providers enthusiastically engaged the ground-breaking ABA Military Pro Bono Project to secure additional support for clients and Operation Stand-By to advance understanding of multiple civil law matters. Both programs allow Navy LA providers around the globe to

partner with civilian attorney volunteers and resources in the U.S. to assist personnel beyond the traditional scope of the Navy Legal Assistance Program. We are particularly appreciative of this outstanding outreach and support by the ABA. The Division looks forward to continued engagement with the LAMP Committee, including attendance at Committee meetings and CLE courses, in the coming year. Attendance at the CLE/Meetings in Tucson, AZ in November 2011; Arlington, VA in March 2012; and Fort Worth, TX in July 2012 proved highly informative and beneficial to our shared commitment to best serve the men and women of our Nation's Armed Services.

8. Information Operations and Intelligence Law Division (OJAG Code 18)

The Information Operations and Intelligence Law Division (Code 18) provides legal and policy advice in the areas of information operations, intelligence law and cyberspace matters to the JAG, DON, DoD, and greater national security establishment. OJAG consolidation of all information operations, intelligence law and cyberspace operations, and general space law matters into a single Division provided a comprehensive approach to legal services in these vital areas.

During the reporting period, the Division provided direct support to active duty and civilian legal advisors involved in DON information operations, intelligence matters and cyberspace operations. The Division worked closely with the DoD and DON Offices of General Counsel for Intelligence, CJCS Legal Counsel, OPNAV Staff, joint-assigned and fleet Navy judge advocates, and legal staffs at Fleet Cyber Command/U.S. Tenth Fleet and associated Network Warfare activities to provide operational legal advice on issues such as: assessment of network capabilities in cyberspace; biometrics; collection and dissemination of intelligence; employment of information operations capabilities; review and oversight of Special Access Programs; and information assurance and information sharing agreements. The Division was an active participant in joint legal review of revision of the Standing Rules of Engagement regarding full spectrum cyberspace operations, cyberspace "attack", and cyber capabilities considered "weapons" within the law of armed conflict.

The Division also served as the JAG Corps manager for the evolving community of information operations, intelligence law and cyber law practitioners. Working closely with fellow service JAG schools, further fortified education and training, and promoted new initiatives to meet client requirements for high quality and effective legal counsel in national security, information warfare, cyber, and space law. The Division continued to lead development of national security and "cyber specialization" education opportunities, leveraging newly approved ABA graduate law (LL.M.) National Security programs to build JAG Corps capacity. The Division and the Naval Justice School further refined competency-based military legal training among the Army and Air Force JAG Schools to increase inter-service collaboration and shared delivery of information operations, intelligence law and cyber law education and training. This included enhancing Navy JAG Corps sponsored Information Operations Legal Training (IOLT) with modules on cyber law, space law and "Intelligence In Support of Information Operations" taught by inter-service and Joint Military Intelligence Training Center (JMITC) experts. The Division developed basic intelligence law education for JAG Corps officer and enlisted baseline and operational courses. The Division continued to forecast long-

term requirements for legal support to identify key personnel possessing information dominance skills. The Division designed a National Security Law specialty community plan for career development, as well as novel sub-specialty designation codes to identify active duty and Reserve counsel with unique national security qualifications in cyber and intelligence law. The JAG Corps Intelligence Law Reference Guide provided a quick reference tool on principle intelligence law issues for new and advanced practitioners. Finally, the Division established a new National Security and Cyberspace Law Community of Practice (COP) to provide a collaborative forum for DON uniformed and civilian attorney national security practitioners to engage in information sharing on matters involving intelligence law and cyberspace operational matters.

The rapid pace and proliferation of issues in the national security arena and cyber domain validate the requirement for a sustained information operations and intelligence law capability within our Navy JAG Corps. The Division continues to establish the path for professional development and legal guidance in this dynamic area of law.

B. Military Justice (OJAG Code 02)

1. Criminal Law Division (OJAG Code 20)

The Criminal Law Division (Code 20) provides military justice policy advice to the JAG, DoD, and individual judge advocates around the world. Code 20 formulates and administers criminal law policy and procedures. The Division staffs all amendments to Secretarial and JAG regulations implementing the UCMJ, including changes to Chapter 1 of the Manual of the Judge Advocate General (JAGMAN).

During the reporting period, the Division reviewed legislative and regulatory proposals affecting military justice. The Division Director continued to serve as the Navy representative, and voting group member, to the Joint Service Committee for Military Justice (JSC), the principal vehicle for staffing amendments to the UCMJ and the Manual for Courts-Martial (MCM). The Division also provided a Navy representative for meetings of the joint-service working group supporting the JSC. Proposals included changes to Article 120, UCMJ, changes to the MCM in compliance with Executive Orders, and a revision of the Military Rules of Evidence to coincide with the Federal Rules. The 2012 version of the MCM was promulgated during this reporting period.

The Division reviewed the decisions of military appellate courts and staffed JAG certification of cases decided by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) for review by the U.S. Court of Appeals for the Armed Forces (CAAF). The Division staffed requests for Secretarial designation as general and special court-martial convening authority and Secretarial substitution of administrative discharge for punitive discharge under Article 74(b), UCMJ. The Division coordinated court orders and warrants of attachment and provided written opinions to the Board for Correction of Naval Records (BCNR). The Division Director and Deputy Director participated in Echelon III command inspections pursuant to Article 6, UCMJ. The Deputy Director sat as a voting member of the Naval Clemency and Parole Board. The Division completed legal review of 59 courts-martial under Articles 69(a) and (b), UCMJ, and reviewed two petitions for new trials forwarded under Article 73, UCMJ. The Division provided a representative to the ABA's Standing Committee on Armed Forces Law. The Division also assisted with the establishment of rules pertaining to synthetic cannabinoid urinalysis testing, as well as policy development for hand-held breathalyzers.

The Division provided guidance to the field through the publication of community-wide informational newsletters targeted toward litigation attorneys, military judges and staff judge advocates on emerging topics involving military justice. Regular features of the newsletter included updates on appellate court holdings and a monthly practice point for litigators.

The Division provided support to the JAG and Navy leadership in the area of sexual assault policy. Division personnel reviewed draft legislation on expedited transfer of sexual assault victims, increased access to records of trial, and changes to Article 120, UCMJ. The Division assisted in developing fleet-wide training on sexual assault prevention and response. The Division also assisted in analyzing year-end data on sexual assaults. In addition, the Division provided input to the Department of the Navy Sexual Assault Prevention and Response Office on

training and education initiatives for counsel involved in the prosecution/defense of sexual assault cases.

The Division also served as the home for the Military Justice Community of Practice. The Division maintained a web page with links to hundreds of military justice documents including sample motions, voir dire questions, mock cross-examinations, charging tips, and other helpful court-martial forms, all organized in searchable, subject matter areas. The web page contained a chat room where judge advocates could share ideas or solicit advice on tough questions, and served as a training resource, with courtroom advocacy tips and pre-loaded training on every stage of the trial process. This year, the webpage was updated to include an index of Division newsletters on military justice, a copy of the most recent NDAA, and a copy of the 2012 version of the MCM.

The Military Justice Litigation Career Track (MJLCT), instituted in May 2007, was designed to identify, develop, and retain judge advocates with significant military justice knowledge and litigation skills. The track develops litigators who are more capable of prosecuting or defending complex, high-visibility cases, and provides better mentorship for junior litigators. This year, the MJLCT community welcomed four new members as specialists. The community now includes 63 members, which should increase to roughly 70 attorneys when fully manned.

2. National Security Litigation Division (OJAG Code 30)

The National Security Litigation Division serves as the JAG's central point of contact for national security litigation and litigation involving classified information. The Division works with other agencies in the intelligence community to refine the Navy's classified litigation practice and coordinate the litigation of high visibility cases. The Division also reviews proposed legislation and regulations pertaining to national security matters and interacts with other agencies in the intelligence community on these and other issues.

During the reporting period, the Division provided specialized training to judge advocates of all services involved in litigating national security cases or cases involving classified information. The Division participated in the Litigating Complex Cases course at Naval Justice School and provided comprehensive instruction on all phases of litigating a case and the unique issues involved with national security litigation. In addition to this course, the Division participated in teaching and presenting several other courses throughout the last year including: Prospective Executive Officers and Prospective Commanding Officers, legalmen courses at Naval Justice School; and graduate-level courses at the Army JAG School.

The Division provided extensive investigative and litigation support to commanders, staff judge advocates, prosecutors, and defense counsel. Attorneys from all services sought guidance from the Division on classified litigation. Litigation support included processing security clearance requests for courts-martial personnel, coordinating requests for classification reviews of classified evidence, and coordinating the assertion of the classified information privilege under Military Rule of Evidence 505. The number of cases involving or potentially involving classified information significantly increased as a result of ongoing military operations and

deployment of Navy personnel in support of theater operations. These cases ranged in severity from attempted espionage to mishandling classified information.

The Division maintained an extensive library of resources and exemplars used in support and training missions. The primer for Litigating Classified Information Cases was used throughout DoD and provided detailed guidance on handling the stages of national security cases and other cases involving classified information. Document exemplars were provided for every stage of investigation and litigation. The Division completed an update of the primer to include the latest laws and regulations as well as additional information on agency and intelligence community coordination, and the Foreign Intelligence Surveillance Act. The Division also maintained an electronic database of historical files that enhanced efficiency and research capabilities.

The Division managed the personnel and information security programs for OJAG and NLSC. Division personnel assisted fleet office security managers and served as a conduit of information and assistance that ensured subordinate commands were in compliance with regulations. The Division security manager and assistant security manager assisted in the maintenance of OJAG's sensitive compartmented information facility. Division personnel ensured secure communications technology was up-to-date and operational for OJAG. Daily, the OJAG/NLSC security management team ensured all OJAG and NLSC security matters, actions, and requests were quickly and efficiently resolved.

3. Appellate Defense Division (OJAG Code 45)

The Appellate Defense Division represents Sailors and Marines before the NMCCA, the CAAF, and the U.S. Supreme Court.

During the reporting period, the Division filed initial pleadings in 434 cases, including 154 briefs, and orally argued 18 cases at the NMCCA. The Division petitioned 113 cases to the CAAF, resulting in 21 initial CAAF briefs. The Division orally argued 11 cases before the CAAF. It also petitioned the Supreme Court in three cases.

In addition to providing appellate representation, the Division provided training and assistance to trial defense counsel to improve the quality of defense representation throughout the Navy and Marine Corps. The Division's experienced appellate defense attorneys provided requested training to trial defense attorneys in a classroom environment and one-on-one over the phone on a wide range of topics. This interaction continued to improve quality of trial practice and strengthened the link between trial and appellate defense counsel. The Division's experienced appellate attorneys routinely replied to short-fused questions from trial defense counsel and assisted in preparing and filing extraordinary writs.

The Division continued its internal training program that included bringing writing and appellate advocacy experts to conduct in-house training seminars for Division personnel. The Division also maintained a rigorous three-tiered moot court program that leveraged the experience and expertise of the Division's attorneys.

4. Appellate Government Division (OJAG Code 46)

Under Article 70, UCMJ, Code 46 represents the United States before the NMCCA and the CAAF. The Division Director determines those cases in which the government should seek review at the NMCCA and makes recommendations to the JAG on seeking review at CAAF. The Division's attorneys, Deputy Director, and Director participate in preparing the briefs, appeals, and other papers filed by the government and participate in oral arguments before those courts.

During the reporting period, the Division reviewed all cases decided adversely to the government in the lower courts to determine or recommend whether they should be appealed and, if so, what position should be taken. Closer coordination with the other service appellate divisions, in part due to a joint government appellate website spearheaded by the Division, enhanced the practice of appellate litigation allowing idea-sharing, discussion forums, and access to case and brief documents.

In coordination with TCAP, the Division responded to hundreds of trial and appellate questions from Navy and Marine Corps judge advocates across the globe. The Division augmented its delivery of advice to trial counsel by introducing the first Navy-wide “Shared Article 62 Litigation Folders” that facilitate instant collaboration between the trial and appellate counsel on the Division SharePoint site on trial and appellate matters during interlocutory appeals. In addition, the Division’s advice enabled trial counsel to ensure that positions taken in courts-martial can survive appellate litigation by “making the record”; ensuring both error and lack of prejudice are fully litigated on the record.

While the number of special and general courts-martial adjudicated in the DON has declined in recent years, the number of appellate briefs filed has steadily risen; more briefs were filed this year by the Division than last year at the CAAF and NMCCA. Additionally, more cases litigated on appeal tend to be for serious offenses such as sexual assault, child pornography, and homicide, increasing the complexity of the appellate issues. The Division continued close coordination with the Air Force, Army, and Coast Guard to present a unified response to the CAAF’s “lesser-included offense” litigation, which established far-reaching precedent. The close coordination resulted in increasingly focused opinions from the CAAF on lesser-included offenses and Article 134 cases beginning with *Fosler* and continuing with *Ballan* and *Norwood*. These influential cases, all litigated by Division counsel, affect servicemembers’ rights and the ability of the United States to preserve convictions on appeal. In *Ignacio*, the Division successfully defended the Military Judges’ Benchbook Article 120 instruction (post-*Prather* and *Medina*). Other litigation included indecent conduct vis-a-vis indecent language (*King*), instructional error causing inconsistent findings (*Stewart*), jurisdiction over a servicemember where there are state decisions on mental competence, and development of the *Melendez-Diaz* precedent affecting admission of military laboratory results in *Sweeney*. The Division filed approximately 210 briefs, answers, and ex writs before the NMCCA and CAAF, conducted 27 oral arguments, and filed approximately 746 pleadings.

The “digital records of trial” initiative, spearheaded by the Division, expanded to include RLSO Mid-Atlantic and Legal Service Support Section Camp Lejeune, North Carolina. These offices join Marine Corps Base Camp Pendleton, California, and Marine Corps Base Hawaii in a growing list of installations leveraging technology to save money and increase the speed and efficiency with which DON can review and process cases on appeal. This initiative consists of scanning and bookmarking records of trial in Adobe PDF files, and sending only one paper copy by mail along with several compact discs to facilitate easily searchable review by the appellate courts, trial, and defense counsel.

The Division was DoD’s first military justice office with a fully paperless practice, a successful initiative resulting in increased efficiency and the ability for instant collaboration regardless of geographic location. The Division continued to leverage Web 2.0 and Cloud Computing technologies, providing military justice and case information to military trial and appellate prosecutors via a discussion board, hyperlinked case wiki, and a military justice blog. The Reserve unit supporting the Division continued to contribute directly to the Division’s mission and served the essential function of blogging timely military justice updates. The new joint government website, updated daily and accessible to prosecutors and appellate government counsel from all services, continued to offer the possibility for collaboration and provided counsel in the field access to the United States’ positions, pleadings, and resources.

Division personnel taught several highly successful new courses on critical issues of trial-appellate intersection, including preserving and making the record, standards of review, standards of prejudice, appellate fact-finding hearings, Article 62 appeals, and extraordinary writs. At NJS, Division personnel presented appellate scenario-based training at the Litigating Complex Cases Course and instructed at the Senior Trial Counsel and Trial Counsel Orientation Courses. At the Navy’s East and West Coast JAGC Training Symposia, Division personnel instructed on preserving the record, making use of appellate resources during trial, best practices for virtual offices, and, at the invitation of the Marine Corps Trial Counsel Assistance Program, presented appellate training to Marine Corps trial counsel.

The Division continued its participation in outreach programs, arguing two cases at the Washington University School of Law, St. Louis, Missouri, and Scott Air Force Base, Illinois. The Division sent several attorneys to act as moot court appellate judges in law student competitions for the National Black Law Students’ Association and the American Bar Association. Finally, the Division continued to conduct quarterly “Joint Appellate Government Directors’ Meetings” with the other services, discussing commonalities and Government positions before military appellate courts as well as matters of mutual concern such as victim-witness issues and amicus briefs in support of other services’ appellate litigation.

C. Judiciary (OJAG Code 05)

1. Navy-Marine Corps Court of Criminal Appeals (OJAG Code 51)

In February of this year, the NMCCA reduced its number of active duty appellate judges from nine to eight. This reduction was possible due to the successful elimination of a backlog of cases pending Article 66, UCMJ, review over the previous five years and a reduction in the number of cases being tried. The Court is expected to maintain this level of judicial staffing through the end of fiscal year 2012.

The NMCCA's formal law clerk program was initiated as a pilot program in 2006 and continued to be a tremendous success. The program "graduated" 20 Navy clerks, who have been assigned as appellate government or appellate defense counsel, and a number have rotated back to operational billets. The first Marine judge advocate to participate in the program recently reported to the Court. There are two law clerks for each panel of the Court.

The NMCCA decided and released more than 600 decisions during the reporting period. Its decisions addressed a wide array of complex and interesting legal issues, including: whether certifications contained on laboratory specimen custody documents are testimonial hearsay where the signing official does not testify; whether an accused's conduct falls within the liberty interests identified by the Supreme Court in *Lawrence v. Texas*, as applied by the U.S. Court of Appeals for the Armed Forces in *United States v. Marcum*; whether a 2008 opinion authorizing a partial rehearing on the sole element of premeditation for a charge of premeditated murder violated the accused's constitutional protection against Double Jeopardy; whether the Secretary of the Navy falls within the statutory ambit of Article 2, UCMJ, and the statutory interplay of Articles 2 and 37, UCMJ, with respect to unlawful command influence (UCI) allegations; whether an oral request that a minor victim transmit to the appellant via an internet webcam sexual pictures of herself for his viewing and sexual gratification is an indecent act; whether a sentence to confinement for 30 days, restriction with hard labor without confinement for 45 days, reduction to pay grade E-1, and forfeiture of \$1500 pay per month for three months awarded at a sentencing rehearing is in excess of or more severe than the bad-conduct discharge awarded at the initial trial; whether the Jencks Act applies in cases where no recording of the Article 32 investigation was made; and whether the theory of constructive force by parental compulsion is encompassed in the definition of force under Article 120(t)(5), UCMJ.

After several years of backlogged cases and unacceptably long processing times, the backlog was eliminated and processing times for docketed cases were well-within the guidelines established by *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006).

The following chart indicates the total number of cases pending review, for cases in the appellate process.

Total Number of Cases Pending Appellate Review

	30 Jun 2008	30 Jun 2009	30 Jun 2010	30 Jun 2011	30 Jun 2012
Appellate Defense Division brief not yet filed	184	104	94	79	85
Appellate Government Division answer not yet filed	27	25	19	24	27
NMCCA All pleadings filed	153	173	85	134	69
TOTAL PENDING REVIEW	364	302	198	237	182

The NMCCA continued to schedule an increased number of oral arguments (25 in the past 12 months) and posts audio from all oral arguments on the Navy JAG Corps website (www.jag.navy.mil). The Court also continued to participate in affirmative outreach programs, including an off-site oral argument at the U.S. Naval Academy.

Two NMCCA judges continued to serve as appellate judges on the U.S. Court of Military Commission Review, and two additional nominees received appointment.

The court submitted for posting all published and authored decisions to West Publishing and LEXIS. These decisions were also posted on the Navy JAG Corps website. Additionally, the NMCCA maintained a Knowledge Center within the Navy JAG Corps' Military Justice Community of Practice on Navy Knowledge Online.

2. Navy and Marine Corps Trial Judiciary (OJAG Code 52)

The primary mission of the Navy-Marine Corps Trial Judiciary (NMCTJ) is to provide certified military judges to preside over all general and special courts-martial across the naval service and other judicial functions as assigned by the Chief Judge of the NMCTJ.

During the reporting period, the Hawaii judicial circuit was re-established, responsible for all Hawaiian Islands. A Navy trial judge returned to Pearl Harbor in the summer of 2012, following an absence of Navy judicial presence for several years. The Navy judge will hear cases along with the Marine Corps trial judge already stationed at Kaneohe Bay.

The NMCTJ utilized the talents of 25 active duty Navy and Marine Corps judge advocates, as well as 16 Navy and Marine Corps Reserve judge advocates who have been certified as military judges. These judges disposed of more than 1,100 cases referred for trial by special and general court-martial during fiscal year 2011. The use of "terms of court" in locations where there is no resident trial judge provided for the orderly recall of the trial judiciary Reserve Component to meet the case load demand. After all cases for a term of court were completed, visiting judges regularly conducted training for local counsel.

The NMCTJ continued to collaborate with NJS by providing military judges to preside over the moot court exercises for each Basic Lawyer Class. NJS and the NMCTJ recognized this effort as a key means to enhance trial advocacy skills of new counsel.

The NMCTJ continued its support of the Navy-Marine Corps efforts in Iraq and Afghanistan by routinely deploying a military judge to Bahrain and the theater of Marine Corps operations. These experienced officers contributed significantly to supporting overseas contingency operations.

Finally, the NMCTJ has three judges assigned to serve, as needed, as military trial judges at the Office of Military Commissions.

D. Operations (OJAG Code 06)

1. The Executive Administration Division (OJAG Code 60)

OJAG Code 60 provides key administrative support and oversight in a variety of administrative roles, facilities upkeep, Defense Travel System operations, indoctrination and sponsorship, government travel credit card coordination, disaster preparedness, health promotions and family accountability reporting.

During the reporting period, the Division expanded the scope of its services by adding an additional senior civilian. The Division assumed control of headquarters program oversight and incorporated security manager functions, which effectively streamlined administrative operations and centralized oversight of administrative functions.

2. Military Personnel Division (OJAG Code 61)

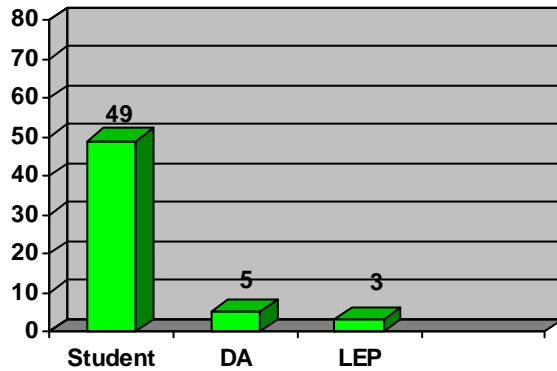
The Military Personnel Division (Code 61) manages recruitment, retention, assignment, and career progression of Navy judge advocates. Within these focus areas, the Division is also responsible for implementing the Judge Advocate General's diversity initiatives.

During the reporting period, the Division managed the recruiting program and budget for Navy JAG Corps headquarters and 18 NLSC commands to reach more than 105 law schools and multiple national diverse legal/law student affinity groups. Some of the primary focus areas of the recruitment program included the accession process and student loan repayment initiatives.

Navy JAG Corps personnel aggressively recruited from ABA accredited law schools and attended regional and national minority legal job fairs, conferences, and conventions including: the National Black Law Students Association Annual Convention, National Bar Association Annual Convention, Hispanic National Bar Association Annual Convention, National Asian Pacific American Bar Association Annual Convention, Vault Legal Diversity Job Fair, and the African American, Hispanic, and Asian law students' national conferences.

The Navy JAG Corps Student Application Program (for 2nd and 3rd year law students at ABA accredited schools) and Direct Appointment Program (for licensed attorneys with a juris doctor from an ABA-accredited school) continued to be the sources for the majority of officer accessions for the Navy JAG Corps. The JAG Corps received 803 applications for 54 positions in 2012. The application process includes an online application and an interview with a panel of judge advocates. Selection for the JAG Corps commissioning programs was very competitive. The remaining officers accessed into the community are selected through the Law Education Program (LEP), which provides the Navy JAG Corps with a cadre of lawyers who already possess experience as naval officers. Officers who transition to the JAG Corps via LEP are chosen by a competitive selection board and receive a fully-funded law school education. The following chart reflects the number of officers who were accessed into the Navy JAG Corps through the three accession sources in 2012.

Accessions for Navy Judge Advocates

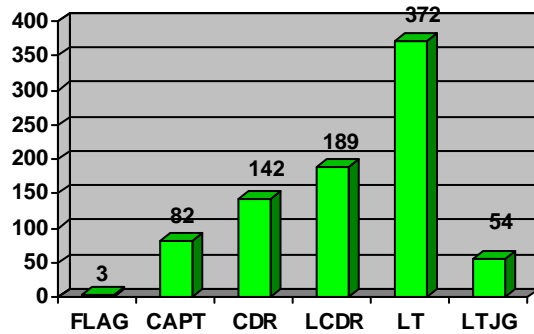


Internal studies show that Navy Judge Advocate Continuation Pay (JACP) is an incentive program to address high student loan debt. It is an important recruiting and retention tool and the only incentive pay/program for Navy judge advocates. 84 percent of junior officers surveyed (who typically have six years or fewer as attorneys) possessed student loan debt, and the average debt was \$96,000. Among new accessions to the JAG Corps, 95 percent possessed student loan debt averaging \$104,000. Survey results indicate that Navy judge advocates are taking advantage of the debt management options under the College Cost Reduction Act.

To provide further professional development for judge advocates, the Navy JAG Corps provided an opportunity for eligible officers (lieutenant through commander) to obtain fully funded formal education beyond J.D. This program supported specific Navy requirements for specialized education in critical practice areas, including environmental law, international and national security law (including cyber law) and advanced trial advocacy. Of the officers enrolled in funded postgraduate legal education, a majority obtain Masters of Law (LL.M.) degrees from ABA-accredited civilian institutions throughout the country; the remaining officers receive their LL.M. degrees from the Army JAG's Legal Center and School located in Charlottesville, Virginia.

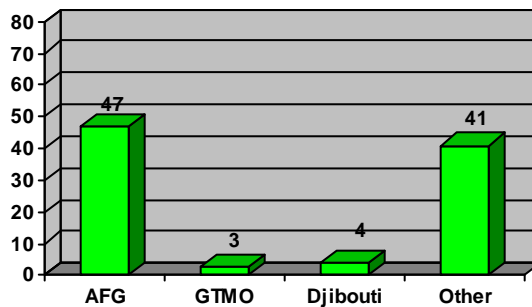
The Division assisted JAG Corps leadership to assess manpower needs to meet current and future mission requirements. The following chart illustrates the military rank distribution of active duty judge advocates as of April 2012:

Military Rank Distribution of Judge Advocates in the Navy



Many judge advocates and legalmen (paralegals) are currently deployed in direct support of operational forces. The following chart identifies the number of active duty judge advocates and legalmen providing legal services with units deployed to Afghanistan, Guantanamo Bay, Djibouti, Honduras, and other locations, as of April 2012.

Deployments in Direct Support of Operational Forces



In May 2008, the Deputy Secretary of Defense announced that military commissions were a national priority. The Navy JAG Corps responded, and the requirement for active duty and Reserve judge advocates and legalmen has remained steady. As of May 2012, the Navy legal community provided 13 active duty judge advocates and 24 active duty legalmen to augment the Office of Military Commissions. Officers serve as prosecutors, defense counsel, and commission clerks, while legalmen provide critical paralegal support.

As part of the Navy’s strategic life-work balance initiatives, the JAG Corps continues to support a Telework Program and Flexible (“Flex”) Work Hour Program. The JAG Corps recently established a formal mentoring program for officer, enlisted, and civilian employees.

This program will ensure that all employees receive information and opportunities for professional development from the beginning of their careers.

3. Reserve and Retired Affairs (OJAG Code 62/001R)

The Navy Reserve Law Program (NRLP) continues to provide critical legal support. The NRLP consists of 419 Reserve judge advocates and 137 legalmen. Each Reservist provides a minimum of 38 personnel-days of support per year to the Navy, but many Reservists serve for longer periods in order to support contingency operations, national emergencies, and additional requirements.

Members of the Reserve legal community continued to contribute record levels of active duty support and accounted for more than 100 personnel-years of work last year. Since September 11, 2001, Reserve judge advocates and legalmen performed more than 370 deployments as individual augmentees to military operations in Afghanistan, Iraq, Kuwait, Guantanamo Bay, the Horn of Africa, and Bahrain. Currently, there are 25 Reserve judge advocates and 12 Reserve legalmen deployed and 21 Reserve judge advocates and legalmen on long-term active duty "recall" or "active duty for special work" assignments. Twelve Reserve judge advocates and one legalman are assigned to the Office of Military Commissions. The depth of litigation experience resident in the Reserve legal community lends itself to these high-visibility cases, and Reserve judge advocates are actively involved in either prosecution or defense of several high-value detainees.

The Deputy Judge Advocate General (Reserve Affairs and Operations) is realigning the Reserve law units to provide the optimal support to the Navy and to the realigned NLSC. Two new, specialized Reserve Staff Judge Advocate units will focus on providing support to the U.S. Pacific Fleet and Naval European Command/Sixth Fleet.

The Reserve judge advocate community recently held its annual Military Law Training Symposia (MLTS) in Little Creek, Virginia and San Diego, California. The enlisted MLTS is scheduled for August 2012. These symposia provide an invaluable opportunity for communication within the community and information on new developments within the Reserve Law Program.

4. Management and Plans (OJAG Code 63)

During the reporting period, the Management and Plans Division focused on planning and preparation for the realignment of NLSC. The Division worked closely with NLSC commands to accurately capture and analyze services, optimum workload and staffing levels, and data from the Case Management and Tracking Information System (CMTIS). The Division provided essential insight for the final NLSC realignment plan.

The Division piloted a new military justice case tracking system to comply with a Congressional mandate that DON implement a single courts-martial tracking system. Working closely with the Office of the Staff Judge Advocate to the Commandant of the Marine Corps, the case tracking system was tested for six months at the Navy's largest RLSO. The pilot was a

success, and the Division prepared a report to Congress outlining the implementation of the single case tracking system by July 31, 2013.

The Division conducted a full-scale review of the courthouse security program. The program is designed to deter, detect and ultimately defeat internal and external threats. A new instruction detailed roles and responsibilities, provided a means to evaluate the effectiveness of courthouse security measures, and focused security assets where and when needed. Every courthouse in NLSC received an on-site assist visit and certification inspection. The results of the certification inspections were provided in writing, and each courthouse received a plan of action for necessary improvements. Additionally, as facility improvements were identified, they were coordinated with the facility director for budgeting.

The Division continued to build on the previous year's success in facilities improvements despite funding challenges. Recognizing the need for courthouse security enhancements and improvements to the physical structure of many facilities, OJAG and NLSC developed a list of prioritized projects. Major facility improvement projects within the next year include the installation of enhanced duress alarm systems, security improvements to courtrooms, renovation of office facilities, and a MILCON project to construct new legal offices and a courtroom in Bahrain.

Continuous Process Improvement (CPI) continued to play a major role in the improvement of legal services. For example, the Navy-wide CPI study on Officer Boards of Inquiry (BOI) reduced BOI processing times by eight percent over the last seven months.

5. Fiscal and Resource Services (OJAG Code 64)

During the reporting period, the Division participated in the effort to realign NLSC. The Division initiated measures to comply with the DoD's Financial Improvement and Audit Readiness (FIAR) initiative for auditable financial statements. Additionally, the Division planned for potential future budget reductions. Prior to the establishment of Code 66, Code 64 was involved in hiring Disability Evaluation System attorneys and implementation of civilian services realignment within OJAG/NLSC.

6. Knowledge and Information Services (OJAG Code 65)

The confidentiality, integrity and authenticity of JAG Corps data is of prime concern to OJAG Code 65. The Division worked diligently to obtain approval from Naval Network Warfare Command for all OJAG information technology (IT) systems, including the Case Management and Tracking Information System, JAG Personnel System, and the Claims Freedom of Information Act Management System. The Division is also preparing to move all IT systems from the data center at the Washington Navy Yard to a new data center in Quantico, VA. The Division managed OJAG's transition to a new management application, saving support and maintenance funds.

7. Civilian Personnel Management Services (OJAG Code 66)

OJAG launched Code 66 in April 2012 to ensure civilian workforce interests are addressed and well-represented at the headquarters level. The Division performs classification/position management, administers training, manages time and attendance/payroll, oversees performance management, and coordinates with Human Resource Offices. In 2012, the Division was essential to the management of civilian personnel realignment related to NLSC realignment and administrative reorganization. The Division also led this year's civilian tuition reimbursement initiative, which resulted in over \$14,000 to fund individual educational goals that align with NLSC mission objectives.

8. Naval Justice School

Headquartered in Newport, Rhode Island, with teaching detachments in San Diego, California, and Norfolk, Virginia, and a branch office in Charlottesville, Virginia, the Naval Justice School (NJS) oversees the formal training and education of Navy, Marine Corps and Coast Guard judge advocates and enlisted legal personnel to ensure career-long professional development and readiness. NJS provides comprehensive formal training and education to all sea service judge advocates and other legal personnel; trains commanders and senior officers in the practical aspects of military law to enable them to perform their command and staff duties; and trains senior enlisted leaders and other officer and enlisted personnel to assist in the sound administration of military justice, administrative law, and operational law.

All Navy, Marine Corps, and Coast Guard judge advocate accessions received instruction on the fundamentals of military law, and during the reporting period, NJS graduated three Basic Lawyer Courses (BLCs) with 161 new sea service attorneys. The BLC course of instruction included legal assistance, administrative law, military justice, trial advocacy skills training and various aspects of international and operational law.

The revised Legalman Accession Course served as the cornerstone for the Navy JAG Corps' paralegal professional development program. NJS completed one offering of the course, providing nine graduates with ten ABA-approved credit hours toward their paralegal degrees. NJS instructors served as adjunct faculty for Roger Williams University. Roger Williams University awarded credits for four courses completed in the first eight weeks of accession training: Legal Ethics, Introduction to Law, Emerging Technologies, and Legal Research and Writing I. The remaining three weeks of the curriculum covered military-specific topics to prepare the students for their first tour as legalmen.

In support of overseas contingency operations, NJS provided two offerings of the Afghanistan Pre-deployment Legal Training Course to prepare 73 judge advocates and legalmen for deployments to Afghanistan. The program manager ensured that the course remained aligned with current operations. Many instructors had prior deployment experience, which provided an experienced cadre to coordinate and teach the course. Guest instructors recently returning from deployments supplemented NJS faculty.

The NJS training and education plan included professional development courses for sea service judge advocates, enlisted personnel, and civilian legal professionals to maintain competency in the core capability areas for legal services. NJS provided continuing legal education and training to 566 judge advocates and 377 enlisted and civilian legal professionals around the world. Nearly 400 judge advocates satisfied their Continuing Legal Education requirements.

Continuing Legal Education courses offered during the reporting period included:

- Litigating Complex Cases
- Basic Trial Advocacy
- Intermediate Trial Advocacy
- Advanced Staff Judge Advocate Course
- Legal Assistance Course
- Law of Naval Operations
- Information Operations Law Training
- Trial Counsel/Defense Counsel Orientation
- Law of Military Operations
- Staff Judge Advocate Course
- Reserve Lawyer Legal Assistance
- Reserve Lawyer Command Support
- Mid-Level Legalman Course
- Coast Guard Judge Advocate Course
- Legal Assistance for Paralegals
- Legalman Research and Writing
- Senior Legalman Course
- Legalman and Legal Services Specialist Mid-Career Course
- Paralegal Research and Writing Course
- Staff Judge Advocate Legalman Course
- Coast Guard Legal Technician Course
- Prosecuting Alcohol Facilitated Sexual Assault Cases
- Defending Sexual Assault Cases
- Mobile Training Teams for Prosecutors of Sexual Assault Cases

In November 2010, NJS launched an on-line distance learning program with a series of bi-weekly interactive webcasts to deliver current, practical advice to judge advocates in areas of law relevant to JAG practice. To date, NJS has offered more than 35 webcasts, with more than 700 attendees in locations around the world. The web casts have allowed NJS to provide timely and relevant training in a cost-effective way. Sessions thus far have covered topics in military justice, immigration law, fiscal law, trial advocacy, estate planning, and legal assistance, and average approximately 40 attendees per session.

NJS is also preparing to launch “NJS Online,” which will offer full NJS courses over the web. NJS Online will also offer short, self-paced training modules that will serve as topic “refreshers” in various practice areas. NJS Online will serve as the one stop repository for up-to-date resource and reference documents. NJS Online’s first prototype course – “Working With

Experts” – is currently underway, and NJS will offer at least two more test courses this fiscal year before launching NJS Online in FY 13.

NJS offered three leadership courses for Navy judge advocates. The one-week Leadership Training Symposium was held in Washington, DC for officers selected for promotion to lieutenant commander. The course combined presentations from senior leaders with specialized leadership development training in areas such as ethical decision-making and the Myers-Briggs[®] Type Indicator. The two-week Naval Legal Service Command Prospective Commanding Officer/Prospective Executive Officer Military Justice and Leadership Course provided a refresher on military law and military justice topics in conjunction with briefs from subject matter experts on leadership and management issues. As part of the leadership curriculum, NJS produced an ethical decision-making module to assist students in implementing ethical-decision making training at their new commands. NJS held a two-week course for those officers selected as JAG Corps Professional Development Officers (PDOs). PDOs are selected to manage the professional development programs at their respective commands. The course included presentations from NJS staff on substantive legal issues and the role of the PDO, senior officer-led seminars on leadership development, presentations covering the programs PDOs will manage, and a series of practical exercises designed to hone the students’ instructional and organizational skills.

Training and education for Reserve judge advocates and legalmen is critical to NJS’ mission. All continuing legal education courses were open to Reservists. NJS conducted two courses specifically targeted to Reserve audiences: the Reserve Lawyer Legal Assistance Course and the Reserve Lawyer Command Support Course.

During the reporting period, NJS provided legal instruction to over 2,400 naval officers and enlisted personnel in resident courses and almost 25,500 servicemembers in non-resident courses. Resident courses included multiple offerings of the Senior Officer Course, Legal Officer Course, Senior Enlisted Leadership Course, and Legal Clerk Course. Non-resident instruction was provided in Newport at the Defense Institute of International Legal Studies, Naval War College, Command Leadership School, Surface Warfare Officers School, Officer Development School, Officer Candidate School, Supply Corps School, the Senior Enlisted Academy, and the Submarine Officers Advanced Course in Groton, Connecticut. All instruction focused on the command's role in the administration of military justice, administrative law, and operational law.

D. Legalmen

In September 2010, the first group of Sailors began the Legalman Paralegal Education Program (LPEP). LPEP provides legalmen a government-funded, full-time education program through either in-resident or distance learning studies in partnership with Roger Williams University. Since its inception, 93 legalmen have received Associate’s Degrees in Paralegal Studies. An additional 97 are currently enrolled.

Paralegal education is the first step to lifelong learning and development for Legalmen. Paralegal education develops career-relevant competencies through the paralegal degree major

courses, and broader practical skills such as analytical reasoning, critical reading and writing, and formulating solutions to problems.

Through paralegal education, legalmen develop professional competencies to meet the demands of increased responsibility, changing mission areas, and more complex legal services. Increased paralegal competency results in increased support to fleet commanders and non-attorney legal officers to manage legal issues that fall within identified paralegal function or task areas.

Additionally, the JAG Corps continued improving other professional development tools available to legalmen. A military-specific training program was created to ensure that every legalman meets minimum skill requirements in their current and future job assignments, regardless of location or type of duty. This task-based training ensures each legalman is qualified to support mission requirements in diverse and worldwide operational settings.

E. Strategic Planning Office (SPO)

The Strategic Planning Office (SPO) provides policy, guidance, and direction for all Navy JAG Corps transformation and strategic planning efforts. Staffed by four judge advocates, the SPO implements the JAG Corps leadership commitment to systemic, community-wide improvement through a culture of continual transformation.

In 2006, the Judge Advocate General released *JAG Corps 2020*, the long-range strategic vision for the Corps. *JAG Corps 2020* documents the vision and roadmap for continuous transformation in the community, keeping the JAG Corps best able to provide solutions from a uniformed military perspective to legal issues involving military operations, organization, and personnel whenever and wherever such solutions are required. In November 2011, the JAG released *JAG Corps 2020.1*, updating this vision to reflect changes in the DoD environment and harvesting experiences gained over the past five years.

During the reporting period, the SPO team assisted with the development and dissemination of the JAG's Guidance for 2012. Within the strategic plan *JAG Corps 2020.1*, the JAG's Guidance for 2012 established the JAG Corps' goals for 2012 to ensure continued community success. The JAG's Guidance for 2012 outlined specific actions in four critical focus areas essential to accomplishment of the JAG Corps mission:

- Recruit and retain the right people;
- Prepare our people for success;
- Assign the right people to the right places;
- Maintain and develop best business practices.

The following is a sampling of the SPO's work in support of these focus areas during the reporting period:

The SPO explored new business practices and technologies to help the JAG Corps work smarter.

The SPO conducted a comprehensive survey and authored a review of Judge Advocate Continuation Pay (JACP). The information was essential to the JAG's effective advocacy to preserve JACP in 2011 despite Navy-wide reductions in special and incentive pay.

The SPO managed a formal working group to study the officer detailing process. The group worked for almost a year, gathered input from throughout the JAG Corps, analyzed trends, and made several key recommendations to improve the detailing process, many of which were implemented in the FY13 detailing process.

The SPO completed a thorough review of Navy billets that require specialized legal skills and negotiated tuition reduction agreements with nine law schools to maximize postgraduate education opportunity for judge advocates.

The SPO implemented the recommendations of the JAG's 2010 Annual Report on Military Justice within the Department of the Navy, including a review of the Victim/Witness Assistance Program, creation of a formal training program for trial and appellate judges, expanded use of electronic records of trial, best practice and time parameters for authentication of records of trial, and improvements to post-trial reports.

The SPO increased the use of distance communication via webcam, completed a pilot program using Defense Connect Online to provide remote legal services, and established a distance learning department at NJS to develop distance learning strategies and course content.