



REPORT ON THE STATE OF
**MILITARY
JUSTICE**

2012

Report on the State of Military Justice in the Department of the Navy
for Fiscal Year 2012

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Report on the State of Military Justice in the Department of the Navy for Fiscal Year 2012

Introduction

Military Justice remained a principal focus of effort for the Navy and Marine Corps in Fiscal Year (FY) 2012. Notably, during FY 2012, both the Navy and the Marine Corps reorganized the offices through which they deliver legal services. The Marine Corps established a new organization of Legal Service Support Sections along regional lines. The Navy completed the reorganization of the Region Legal Service Offices and prepared to stand up the Defense Service Offices as the fiscal year ended. Each of these reorganizations was, in significant part, intended to and will optimize our military justice capability.

The fiscal year included other initiatives as well. Efforts continued to transition the Navy to the Case Management System used by the Marine Corps in order to obtain a common, effective case-tracking system for the Department of the Navy (DON), as mandated by Congress. At the same time, the Navy and Marine Corps, along with other DON agencies, pursued development of the Naval Justice Information System (NJIS) which will provide a "cradle-to-grave" case tracking and processing system for law enforcement and criminal justice activities, including corrections and command actions.

The Navy implemented a multi-faceted approach to address sexual assault awareness and training, prevention, victim response, and investigation and accountability. Navy and Marine Corps judge advocates were integrally involved in all levels of sexual assault prevention and response initiatives, and a principal line of effort included optimizing litigation capability.

The state of military justice in FY 2012 is reflected in greater detail in the report that follows. The processes, procedures, and initiatives described in this report represent an ongoing commitment to excellence in our military justice practice. We remain resolute in ensuring that each accused and commander receives superb legal advice, that each victim's rights are protected, and that justice is done in every case.


Part I discusses the joint Navy-Marine Corps functions overseen by the Judge Advocate General (JAG) including: the Navy-Marine Corps Trial Judiciary; the Navy-Marine Corps Appellate Review Activity; the Navy-Marine Corps Court of Criminal Appeals; and Naval Justice School.

Part II addresses Navy JAG Corps matters, including the performance of Naval Legal Service Command, its Region Legal Service Offices and Defense Service Offices (former Naval Legal Service Offices), and their affiliated detachments and branch offices.

Part III will discuss Marine Corps matters, including the performance of the Legal Service Support Sections and Law Centers. Part III will be submitted by the Staff Judge

Advocate to the Commandant of the Marine Corps to the Secretary of the Navy, via the Commandant of the Marine Corps, and will be reviewed by the JAG.

This annual report remains a vital tool in the DON's ongoing process of self-evaluation and improvement. With significant developments on the horizon—including new initiatives to eliminate sexual assault in our ranks, address the problem of synthetic drug use, develop case management and tracking systems, and assess the reorganization of the Navy and Marine Corps legal communities—continued careful self-reflection and meaningful critique will be more important than ever in FY 2013.



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Executive Summary

In FY 2012, the Navy and Marine Corps legal communities instituted important initiatives to enhance military justice capabilities. The Department focused on two major efforts implicating military justice -- addressing sexual assault and deterring the abuse of synthetic drugs. Judge advocates from both services were actively involved in all levels of sexual assault prevention and response initiatives. The Navy and Marine Corps began the process of hiring Highly Qualified Experts (HQEs) to enhance complex litigation capability with a focus on sexual assault cases. In September 2012, the Navy hired an HQE to work at the Office of the Judge Advocate General (OJAG) headquarters to enhance sexual assault litigation training, trial practice and policy. This HQE is assigned to the Criminal Law Division of OJAG and provides advice at the policy and training oversight level. In December 2012, the Navy hired a second HQE to work with the Defense Counsel Assistance Program. The Navy is in the process of hiring a third HQE with civilian criminal litigation and training experience who will work with the Trial Counsel Assistance Program. To further refine the JAG Corps' litigation capabilities, the Navy established an externship program in 2012 with the sex crimes units in the Office of the State Attorney in Jacksonville, Florida, and the District Attorney's Office in San Diego, California. These externships enabled officers to gain valuable insight into how civilian prosecutor offices manage a high volume of sexual assault cases. We intend to expand the program this year.

To help detect and prevent synthetic compound abuse by service members, the Navy began random urine testing for synthetic compounds, including spice and similar products, in March 2012. Judge advocates played a critical role in advising commanders on measures available to hold service members accountable for abusing synthetic drugs.

While the total number of court-martial cases decreased slightly from FY 2011, general court-martial (GCM) numbers remained relatively steady. A total of 722 court-martial cases were tried to findings (acquittal or conviction) within the DON: 263 GCMs and 459 special courts-martial (SPCMs). Within the total cases tried to findings, 275 (137 GCMs; 138 SPCMs) were tried by Navy Region Legal Service Offices (RLSOs) and 447 cases (125 GCMs; 322 SPCMs) were tried by Marine Corps Law Centers or Legal Service Support Sections. Judge advocates practicing military justice faced a wide range of complex issues.

The Military Justice Oversight Council (MJOC) continued to provide a valuable forum to review military justice in the Navy and Marine Corps. In FY 2012, the MJOC drove more accurate and expeditious pre-trial, trial, and post-trial processing, and addressed other military justice issues.

Case tracking and accountability remained a priority during FY 2012. The Navy and Marine Corps legal communities laid the foundation to transition the Navy to the Case Management System (CMS) to meet the Congressional mandate for a common DON case-tracking system. Additionally, the DON continued to pursue development of the Naval Justice Information System (NJIS), an integrated case-tracking and processing system for law enforcement and criminal justice activities, including corrections, command, and judicial actions. NJIS will provide a seamless and reliable system to manage cases at all phases across the DON.

During FY 2012, the Criminal Law Division of the Office of the Judge Advocate General (Code 20) performed crucial military justice functions. Code 20 assisted in the development of sexual assault prevention and response (SAPR) training for use across the Fleet. Within the DON, Code 20 contributed to the Justice Management Institute's development of Performance Measures (Metrics) for Prosecutors and Defense Counsel and efforts to improve and standardize military justice training, in coordination with the Naval Justice School. Additionally, Code 20 was integrally engaged in the Joint Service Committee (JSC) for Military Justice (the principal DoD vehicle for amending the Uniform Code of Military Justice and Manual for Courts-Martial), a nine-month DoD Domestic Violence Working Group that developed a plan to collect and maintain an accurate count of domestic violence incidents and responses, and the Defense Legal Policy Board (DLPB) (a federal advisory committee that advises the Secretary of Defense on military justice issues).

Throughout FY 2012, the Naval Justice School (NJS) provided essential legal training to officers, enlisted personnel, and civilians for all the sea services. In the military justice practice area, the ten-week Basic Lawyer Class (BLC) curriculum relied on practical exercises to reinforce key military justice concepts and trial advocacy skills. In fact, military justice comprises 60 percent of the BLC curriculum, and students must pass the final mock trial before receiving certification as judge advocates. NJS also offered specialized instruction focused on sexual assault litigation. For example, the Prosecution of Alcohol-Facilitated Sexual Assaults (PAFSA) Course is a week-long course that focuses on the substantive aspects of prosecuting alcohol-facilitated sexual assaults and includes small-group practical exercises to hone litigation skills, such as conducting direct and cross-examinations of sexual assault nurse examiners, toxicologists, victims, and the accused.

The Navy-Marine Corps Trial Judiciary (NMCTJ) presided over 1,141 cases referred for trial by court-martial. Of the cases arraigned, 419 were withdrawn by the convening authority and alternatively disposed of prior to findings or were dismissed by the military judge. There were no short-falls in trial judiciary services.

Within the Navy-Marine Corps Appellate Review Activity (NAMARA), staffing of the Appellate Defense Division (Code 45) and the Appellate Government Division (Code 46) remained stable. Code 45 continued to file timely pleadings throughout the fiscal year. Despite some fluctuation, the FY 2012 case load averaged about 400 cases in various stages of appellate review at the Navy and Marine Corps Court of Criminal Appeals (NMCCA) and the United States Court of Appeals for the Armed Forces (CAAF). The number of NMCCA briefs filed by Code 46 increased from 188 in FY 2011 to 198 in FY 2012, and the number of other filings also increased. Code 46 expanded its digital records of trial program, initiated in FY 2010, to include Camp Pendleton, California; Naval Station Norfolk, Virginia; Camp Lejeune, North Carolina; and Marine Corps Base Hawaii.

During FY 2012, eight active-duty appellate military judges were assigned to the NMCCA: four Navy and four Marine Corps. Four of the NMCCA judges served simultaneously on the U.S. Court of Military Commission Review (CMCR). The roster of active-duty appellate judges was augmented by 10 Reserve Component judges (seven Navy and three Marine Corps). Fewer cases were docketed at the NMCCA in FY 2012 (485) than in FY 2011 (598), but the NMCCA disposed of a total of 528 cases in FY 2012.

At the close of FY 2012, there were 67 officers in the Navy JAG Corps' Military Justice Litigation Career Track (MJLCT), a specialized cadre of litigators established in 2007. Of the 67 officers in the career track, 45 were assigned to the 52 MJLCT-designated billets. The remaining 22 officers in the career field were programmed to serve in billets outside the track. MJLCT officers continued to promote at a rate consistent with the overall selection rate. The FY 2013 O-6, O-5, and O-4 promotion boards selected five of the seven in zone MJLCT officers.

Naval Legal Service Command (NLSC) continued to provide essential advice and services. During FY 2012, NLSC prepared to realign the Naval Legal Service Office organization. Realignment was necessary in order to meet growing demands for legal services and continue providing quality military justice service. As of 1 October 2012, Commander, Naval Legal Service Command replaced eight Naval Legal Service Offices with four Defense Service Offices (DSOs). The four DSO offices are: DSO North, which covers the northeast continental U.S., Europe and Southwest Asia; DSO Southeast, which covers southeast and central continental U.S.; DSO Pacific, which covers Japan, Hawaii, and Southeast Asia; and DSO West, which covers western continental U.S. The DSOs' sole mission is to defend service members in military justice proceedings, represent them at administrative boards, and provide advice on non-judicial punishment and adverse personnel actions. As part of realignment, the JAG Corps will focus the military justice caseload on a smaller group of more experienced litigators. Senior litigators will be assigned to try the most complex cases and mentor junior counsel.

During FY 2012, NLSC provided counsel for 134 GCMs, 145 SPCMs, and 1,419 Administrative Boards. The average processing time for courts-martial (from preferral to the Convening Authority's Action) was slightly above the average processing times of the five preceding fiscal years.

The Trial and Defense Counsel Assistance Programs (TCAP and DCAP) were realigned on 1 October 2012. TCAP reports to the Chief of Staff, Region Legal Service Offices, and DCAP reports to the Chief of Staff, Defense Service Offices. Both continued to provide valuable reach-back support to counsel in the field and standardization and training for prosecution and defense functions.

The assessment of military justice in the U.S. Marine Corps will be submitted by the Staff Judge Advocate to the Commandant of the Marine Corps to the Secretary of the Navy, via the Commandant of the Marine Corps, and will be reviewed by the Judge Advocate General of the Navy.

PART I: THE DEPARTMENT OF THE NAVY

A. Departmental Military Justice

1. Military Justice Oversight Council

The Judge Advocate General of the Navy (JAG) established the Military Justice Oversight Council (MJOC) in November 2009 as a forum to review military justice in the Navy and Marine Corps. MJOC membership includes the JAG and Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) as co-chairs, as well as the Deputy JAG/Commander, Navy Legal Service Command (CNLSC), the Assistant Judge Advocate General (AJAG) (02 - Military Justice), AJAG (05 – Chief Judge DON), AJAG (06 - Operations and Management/COS-RLSO), Deputy SJA to CMC, and the Marine Corps Judge Advocate Division Deputy Director for Community Development Strategy and Plans (CDSP).

The MJOC conducts quarterly reviews on pre-trial, trial, and post-trial processing of Navy and Marine Corps cases. The MJOC mandates reporting from the AJAGs (06), (02), and (05) and from the CDSP on any case dismissed on speedy trial grounds and any post-trial case that meets certain criteria. The AJAG (06) reports cases tried within NLSC and the CDSP reports cases tried by Marine offices. Each Service reports any cases dismissed on speedy trial grounds. Post-trial reporting “triggers”¹ include NLSC cases at 75 days from sentencing without convening authority’s action (CAA) and Marine cases that are not docketed with Navy-Marine Corps Court of Criminal Appeals (NMCCA) within 150 days of sentencing. The AJAG (05) briefs the MJOC on judicial resources and reports specific cases docketed longer than one year or in panel longer than six months when the appellant is confined. Cases upon third enlargement (extension of the filing deadline) are also reported. The AJAG (02) reports the status of all mandates and cases received by NAMARA monthly.

During FY 2012, the MJOC continued to provide complete visibility on pre-trial, trial, and post-trial processing to the JAG, CNLSC, and SJA to CMC, enhancing supervision at all levels and thereby reducing processing times. In FY 2012, no DON cases were dismissed on speedy trial grounds. Seven DON cases (of 717 cases tried to findings) exceeded 120 days from sentencing to convening authority’s action or 150 days from sentencing to docketing at NMCCA. Delay in these cases was primarily due to voluminous records of trial. Neither NMCCA nor CAAF granted relief in any Navy or Marine Corps case for unreasonable post-trial delay. Furthermore, no NMCCA case exceeded the *Moreno* guideline of 18 months from docketing to decision. The MJOC continued to serve as a standing executive strategic planning group addressing resource, education, training, and other issues to ensure the health of the trial bar, prosecution and defense support, and the trial and appellate judiciary.

¹ In *United States v. Moreno*, 63 M.J. 129 (C.A.A.F. 2006), the Court of Appeals for the Armed Forces (CAAF) set down post-trial processing guidelines: (1) 120 days from sentencing to convening authority’s action (CAA); (2) 150 days from sentencing to docketing at the courts of criminal appeals; and (3) 18 months from docketing to decision at the courts of criminal appeals. Violation of the guidelines does not raise a presumption of prejudice but raises a rebuttable presumption of unreasonable delay.

2. Case Tracking and Management

During FY 2012, the Navy's Court-Martial Tracking and Information System (CMTIS) was used to track cases at the Navy's Region Legal Service Offices and cases undergoing appellate review. The Marine Corps' Case Management System (CMS) was used to track cases prosecuted within the Marine Corps. In FY 2012, the Secretary of the Navy notified Congress that CMS will serve as the mandated single, common DON case tracking system. The Navy and the Marine Corps are working together to effect the transition, which is expected to begin by 1 July 2013. At the same time, the Department continued to pursue the broader Naval Justice Information System (NJIS). NJIS is intended to provide "cradle-to-grave" support for DON law enforcement and criminal justice activities worldwide and is intended to meet the requirements of DOD 7730.47-M, Manual for Defense Incident-Based Reporting System (DIBRS). The JAG and SJA to CMC, along with leaders from the Naval Criminal Investigative Service (NCIS), and the Navy and Marine Corps manpower and corrections offices, serve as members of the NJIS Executive Steering Committee. Both the JAG and SJA to CMC are also represented on the Board of Governors and are fully engaged in validating requirements and in system development. Deployment of this comprehensive, unified, multi-discipline case tracking and processing system will be an area of focus for OJAG and the Marine Corps legal community through the next several fiscal years.

3. Sexual Assault Initiatives

The Navy implemented a multi-faceted approach to address sexual assault awareness and training, prevention, victim response, and investigation and accountability. Navy and Marine Corps judge advocates were integrally involved in all levels of sexual assault prevention and response initiatives, and a principal line of effort included optimizing litigation capability.

When an incident does occur, the DON is dedicated to ensuring victims of sexual assault receive full-spectrum and timely support to include medical treatment, counseling, and legal assistance. The Navy is in the process of hiring 66 full-time professional, credentialed victim advocates. They will augment the more than 3,000 active-duty command victim advocates, and will work with specially-trained NCIS investigators and JAG Corps prosecutors to form the core of our special victim capability.

The JAG Corps is intensely focused on upholding the special trust placed in us to provide a fair, effective, and efficient military justice system. We've implemented several key initiatives to ensure that our clients, both the government and the accused, receive the highest level of advocacy. The Military Justice Litigation Career Track continues to provide officers with significant litigation experience to lead trial and defense departments and provide proven experience in the courtroom, personally conducting or overseeing litigation in sexual assault and other complex cases. This program leverages trial counsel, defense counsel, and judicial experience to enhance the effectiveness of our court-martial practice for complex cases. The Navy also continues to send career litigators to civilian post-graduate schools such as George Washington University, Georgetown, Temple University, and California Western School of Law to receive Master of Laws degrees in litigation or trial advocacy. Many of the programs require

students to participate in externships with local U.S. Attorney offices or defense clinics, providing practical civilian criminal justice experience to Navy litigators.

To further refine the JAG Corps' litigation capabilities, in FY 2012, the Navy established an externship program and assigned two mid-level career officers to work in the sex crimes units in the Office of the State Attorney in Jacksonville, Florida, and the San Diego District Attorney's Office in San Diego, California. These six-week clinical training externships enabled the officers to gain valuable practical experience and insight into how civilian prosecutor's offices manage a high volume of sexual assault cases. We intend to expand the program this year, targeting those officers who complete their Master of Laws degrees in trial advocacy.

This past year, the JAG Corps hired two HQEs and is in the process of hiring two more. HQEs channel significant sexual assault litigation experience into enhanced litigation skills and practices for prosecution and defense teams in the field. In September 2012, we hired an HQE to work at the headquarters level to enhance sexual assault litigation training, trial practice and policy. She has nearly 20 years of experience prosecuting sex crimes, domestic violence and human trafficking crimes. She replaced the GS-15 deputy director in the Criminal Law Division of OJAG and provides advice at the policy and training oversight level. In December 2012, the Navy hired an HQE to work with the Defense Counsel Assistance Program. He is a retired Marine Corps Lieutenant Colonel who completed two tours as a military judge while on active duty and has over 15 years of civilian experience as an assistant federal public defender and preeminent civilian military criminal defense attorney. The Navy is in the process of hiring another HQE with civilian criminal litigation and training experience who will work with the Trial Counsel Assistance Program.

4. Synthetic Drugs

To help detect and prevent an alarming trend of synthetic compound abuse by service members, the Navy began random urine testing for synthetic compounds, including spice and similar products, in March 2012. The random testing will eventually allow for 2,500 Navy samples to be tested per month. Samples are collected using established urinalysis procedures. Synthetic compound samples are shipped to the Navy Drug Screening Lab (NDSL) in Great Lakes and then are forwarded to a civilian contract lab for analysis. Commanders may not take disciplinary or adverse administrative actions against a service member based solely on a positive urinalysis result from the civilian contract lab; however, based on DoD policy, commanders may use contract lab positive results to initiate an investigation, and the results of the investigation may be used as evidence in disciplinary or adverse administrative actions. In addition, the President signed the Synthetic Drug Abuse Prevention Act (SDAPA) in July 2012, making the use, possession or distribution of certain synthetic drugs illegal. Specifically, the Act added fifteen synthetic cannabinoids, commonly known as "spice," and eleven synthetic cathinones, commonly known as "bath salts," to Schedule I of the Controlled Substances Act. Service members caught using, distributing, or possessing these substances may be charged with a violation of Article 112a, UCMJ.

5. Office of the Judge Advocate General, Criminal Law Division (Code 20)

During FY 2012, the Criminal Law Division of the Office of the Judge Advocate General (Code 20) maintained the initiative in elevating the Department's military justice practice and level of expertise. Code 20 was staffed by eight active duty judge advocates, one reservist on one-year orders, an eight-member reserve unit and four civilian staff members. A Highly Qualified Expert (HQE) was hired and joined Code 20 in September 2012.

Code 20's HQE is Ms. Asha Vaghela, a former New Jersey Deputy Attorney General, specializing in Human Trafficking in the New Jersey Division of Criminal Justice's Gangs and Organized Crime Bureau, and previous chair of the New Jersey Attorney General's Human Trafficking Task Force. Before joining the Attorney General's Office, Ms. Vaghela was an Assistant District Attorney (ADA) in New York City with the Bronx County District Attorney's Office, where she supervised, trained, and assisted her bureau's ADAs with all aspects of their case preparation and trials. While working as an ADA, Ms. Vaghela also prosecuted felony cases, including domestic violence cases, adult and child homicides, child physical and sexual abuse cases, adult sexual abuse, internet crimes against children, and unsolved cases linked by DNA to suspects in law enforcement databases, from inception throughout the trial process.

Code 20 personnel assisted in the development, production, and training for sexual assault awareness entitled Sexual Assault Prevention and Response - Leadership/Fleet (SAPR-L and SAPR-F). Focused on the themes of awareness and courage, the training utilized a dramatization followed by facilitated discussion to engage all service members in an educational face-to-face conversation about sexual assault. Further, as part of the SAPR Cross Functional Team, Code 20 personnel met monthly with Navy's major stakeholders to discuss SAPR related developments across the Fleet. Code 20 personnel were also instrumental in the roll-out of the Defense Sexual Assault Incident Database, which is expected to be online in CY 2013. This comprehensive database will be operated by Commander, Navy Installations Command (CNIC) and will allow more accurate tracking and reporting of sexual assault incidents.

Code 20 played an important role in the improvement and centralization of military justice and trial advocacy training for both the prosecution and defense bars (Navy, Marine Corps, and Coast Guard), including maximizing the positive impact of external funding sources. Implementing a new requirement approved by JAG and CNLSC as of 5 June 2012, Code 20 personnel executed new responsibilities to identify and centralize requirements for military justice litigation and trial advocacy training to foster a collaborative environment. Code 20's responsibilities include establishing and maintaining a Litigation Training Coordination Council and close coordination with the Naval Justice School in the development of new curricula. Code 20's civilian and military attorneys also provided trial advocacy, military justice, sexual assault and child sexual abuse litigation training for senior military and civilian personnel, and NCIS agents. Improving the quality and increasing the availability of military justice and trial advocacy training was a cornerstone of the JAG's agenda for FY 2012.

A report on the development of Performance Measures (Metrics) for Prosecutors and Defense Counsel was completed during FY 2012 by the Justice Management Institute under contract with Code 20. The performance measures developed were organized into six primary

categories including due process, victims' rights and safety, accountability, timeliness, competency and communication. Within each of these categories, two separate series of measures were established. "System measures" focus on macro-level performance of the JAG Corps and "individual measures" indicate the extent to which individual performance contributed to the attainment of overall JAG Corps goals and objectives. These performance measures are being used to conduct a critical self-evaluation and increase the advocacy skills and training curriculum of those involved in the military justice process.

The Director of Code 20 continued to serve as the Navy representative to the Joint Service Committee (JSC) for Military Justice, which is the principal vehicle within the Department of Defense for staffing amendments to the UCMJ and MCM. Code 20 also provided a Navy representative to the Working Group supporting the JSC. The JSC's 2012 Annual Review was completed in accordance with the President's requirement that the MCM be reviewed annually. The JSC prepared two different Executive Orders (EOs) implementing changes to the MCM. The first EO changed the Military Rules of Evidence to align with the Federal Rules of Evidence. In addition, the JSC drafted an EO containing the changes to the MCM that implemented the statutory changes to Articles 120, 120b, and 120c, UCMJ. The JSC also responded to multiple requests from the Department of Defense and Congress regarding sexual assault in the military and issues related to self-injury.

During FY 2012, Code 20 personnel participated in a nine-month DoD Domestic Violence Working Group that developed a plan to enable DoD to collect and maintain an accurate count of domestic violence incidents and related legal, disciplinary, and command actions. The working group's report will be presented to Congress in January 2013. Code 20 personnel assisted in the development of guidance for the Navy to implement the Secretary of Defense's mandate to withhold the initial disposition authority (IDA) for allegations of rape, sexual assault, forcible sodomy, and attempts to commit these offenses, to those officers who are Special Court-Martial Convening Authorities in the rank of captain or colonel or above. Code 20 provided input on a number of various legislative proposals affecting military justice or sexual assault prevention and response.

Code 20 also assisted in the staffing of the Navy's legislative proposal to amend the Stored Communications Act as part of the FY 2014 National Defense Authorization Act. The proposal is currently undergoing interagency vetting. The Stored Communications Act empowers courts of "competent jurisdiction" to issue a warrant or order to a provider of electronic communications and remote computing services to disclose the contents of any wire or electronic communication. Not enumerated as courts of "competent jurisdiction," courts-martial have faced legal challenges in obtaining evidence under the Stored Communications Act from providers of electronic communications and remote computing services. Enumerating a court-martial convened under the UCMJ as a court of "competent jurisdiction" will help eliminate some of the challenges in the future.

Code 20 conducted an extensive review and correction of DON criminal conviction records from 1998 through 2011 to ensure that conviction records are accurately reflected in the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC) database. This project involved the review of 2,986 appellate opinions, 526 Article 69, UCMJ, reviews and 12 Article 73, UCMJ, actions, as well as the review of 689 records of trial. As of the end of the

fiscal year, 302 FBI NCIC records had been updated as a result of this initiative. Additionally, a process was developed and implemented to ensure timely updates and corrections for every DON case as it is decided by the appellate courts.

Code 20 personnel continued participation in the ongoing development of the Naval Justice Information System (NJIS). This involved regular participation in the NJIS Board of Governance and various technical working groups. When implemented, this comprehensive system will manage cases at all phases and will be used to integrate law enforcement, investigations, and corrections, as well as command and judicial actions.

The Director of Code 20 was assigned to serve as the Service Advisor to the Defense Legal Policy Board (DLPB). The Board is a federal advisory committee that provides the Secretary of Defense independent, informed advice, opinions, and recommendations concerning matters relating to legal and legal policy matters within the Department of Defense. Code 20's responsibility has involved participation in several hearings and responding to numerous requests for information for the Subcommittee that is reviewing and providing recommendations on military justice in combat zones.

Code 20 also provided steady support to Commander, Naval Legal Service Command, through on-site participation in the worldwide Article 6, UCMJ, inspections. Throughout the year, Code 20 personnel conducted the military justice component of the Article 6, UCMJ, inspections at eight Region Legal Service Offices and five former Naval Legal Service Offices.

Code 20 enhanced its active contact with the field through the monthly publication of the Code 20 Newsletters and Sidebars. These publications provide cogent and prompt updates on military justice matters for trial practitioners and SJAs alike.

6. Naval Justice School

The Naval Justice School (NJS) falls under the cognizance of NLSC and provides legal training to officers, enlisted personnel, and civilians for all the Sea Services.

In the military justice area of practice, the curriculum of the ten-week Basic Lawyer Class (BLC) relies on practical exercises to reinforce key concepts and trial advocacy skills. Students draft mock pre-trial agreements and several sets of charges for a hypothetical accused, and they participate in a mock guilty plea and sentencing exercise, seminars focusing on specific skills (such as laying a foundation and conducting direct and cross examinations), and the well-established final mock trials (presided over by active and reserve trial judges). Military justice comprises 60 percent of the BLC curriculum, and students must pass the final mock trial before receiving certification under Article 27(b) of the Uniform Code of Military Justice.

NJS also offers other courses that focus specifically on aspects of military justice. The bi-annual Trial Counsel and Defense Counsel Orientation courses teach Navy and Marine Corps counsel how to effectively prepare, manage, and litigate courts-martial from the investigation stage through sentencing, with a particular focus on the practical aspects of defense and prosecution. The Basic Trial Advocacy (BTA) Course is a beginner-level course designed to provide important trial advocacy skills for new judge advocates in their first trial billets and a

refresher for judge advocates transitioning to trial billets from non-trial billets. The Intermediate Trial Advocacy (ITA) course was designed to build upon the basic concepts covered in BTA and refine trial advocacy techniques. It became clear in 2012 that students attending ITA were indistinguishable from students attending BTA; therefore, while BTA will continue to be offered, the NJS Board of Advisors approved removing ITA from the course catalog after 2012. The Litigating Complex Cases course addresses various substantive and procedural topics of practical concern to trial and defense counsel handling complex cases. This course is designed for experienced judge advocates familiar with case preparation and management and is one of the most valuable training opportunities offered by NJS. The Senior Trial and Defense Counsel Litigation and Mentoring Course develops management skills for senior trial and defense counsel providing them the capability to lead and professionally develop junior counsel. The course also covers developments in military justice and guidance for supervising and trying more sensitive and high-visibility cases such as sexual assaults.

NJS also offers specialized instruction focused on sexual assault litigation. Prosecution of Alcohol-Facilitated Sexual Assaults (PAFSA) is a week-long course that has been taught in conjunction with AEquitas, the Prosecutor's Resource on Violence Against Women. It focuses on substantive aspects of prosecuting alcohol-facilitated sexual assaults and includes small-group practical exercises to hone skills such as conducting direct and cross examinations of sexual assault nurse examiners, toxicologists, victims, and the accused. In addition, NJS facilitates two-day East Coast and West Coast Sexual Assault Prosecution and Investigation Mobile Training Teams (MTTs) twice annually for prosecutors and NCIS agents. These MTTs are coordinated in conjunction with the Navy and Marine Corps Trial Counsel Assistance Programs. Defending Sexual Assault Cases (DSAC) provides defense counsel training on sexual assault litigation. DSAC has been taught in conjunction with the Center for American and International Law (CAIL) in Plano, Texas. PAFSA and DSAC are among the best attended NJS military justice courses.

NJS continues to provide Basic and Advanced Staff Judge Advocate (SJA) Courses as core training. The courses incorporate military justice training relevant to SJAs. Topics include search and seizure, investigations, charging, preferral, convening courts, referral, the Victim-Witness Assistance Program, Sexual Assault-Initial Disposition Authority (SA-IDA) and other issues related to sexual assault cases, and post-trial processing.

NJS also provides military justice training as a substantial component of its Senior Officer Course (SOC). The course is designed for commanding officers, executive officers, and officers in charge and is open to other officers in grades O-4 and above with NJS approval. The SOC trains officers in the execution of the legal responsibilities of command with instruction in military justice (including sexual assault case disposition), administrative law, and civil law. In FY 2012, NJS provided 29 offerings of the SOC in Newport, San Diego, Norfolk, Camp Pendleton, Camp Lejeune, Parris Island, Quantico, and Pensacola. Per NAVADMIN 302/12, this course is now mandatory for O-6s en route to command.

In FY 2012, NJS continued and built upon the success of its Defense Connect Online (DCO) webcast program. NJS offered four military-justice-related DCO webcasts, including sessions on serving as an Article 32 investigating officer and the impact of recent U.S. Supreme Court decisions. Approximately 100 attendees participated in these one-hour interactive sessions

and many more viewed recordings of the sessions, which continue to be available for viewing online. Further, NJS advanced its distance learning program with the delivery of a robust online prototype course entitled, "Working with Experts." This four-week military justice course was attended by trial and defense counsel from across the Fleet and provided training on topics such as obtaining expert consultants, preparing expert witnesses for trial, and litigating motions related to the admissibility of expert testimony. The course was offered on Blackboard, a distance learning system, to which NJS has access through a Memorandum of Agreement with the Army Judge Advocate General's Legal Center and School (TJAGLCS). NJS intends to deliver several additional distance learning courses in military justice in FY 2013.

Many NJS courses for enlisted legal specialists include military justice training as part or all of the curriculum. Such courses include the Legalman Accession Course designed for Navy enlisted personnel selected for conversion to the Legalman rating, the Legal Services Specialist Course for Marine enlisted personnel seeking the legal (4400) MOS, the Legal Services Court Reporter Course, the Legal Clerk Course for Navy non-legal enlisted personnel performing legal duties, the Coast Guard Legal Tech Course, the Senior Enlisted Leadership Course, the Mid-Level Legalman Course, the Legal Services Post-Trial Review Course, the Legal Services Advanced Military Justice Course, the Legal Services Administrative Law Course (which focuses on administrative separation boards), and the Legal Services Administrative Board Recorder Course.

B. The Navy-Marine Corps Trial Judiciary (NMCTJ)

1. Numbers, Service, and Location

The Navy-Marine Corps Trial Judiciary (NMCTJ) is a unified trial judiciary with the core mission of providing certified military judges to preside over all general and special courts-martial convened within the Department of the Navy. The NMCTJ is organized into eight judicial circuits worldwide and is augmented and supported by Navy Reserve and Marine Corps Reserve Trial Judges. During FY 2012, the NMCTJ consisted of 22 active-duty and 17 reserve judges.

During FY 2012, the NMCTJ provided comprehensive and timely judicial services to fleet and shore activities and to Marine forces in the United States and around the world. One term of court was held onboard the USS NIMITZ (CVN 68) while she was underway in the Pacific; Judge Thomas Booker heard four guilty plea cases.

In FY 2012, the NMCTJ presided over 1,141 courts-martial referred to trial (287 general courts-martial (GCM) and 854 special courts-martial (SPCM)) and arraigned. Of the cases arraigned, 419 were withdrawn by the convening authority and alternatively disposed of prior to findings or dismissed by the military judge. A total of 722 cases were tried to findings: 263 GCMs and 459 SPCMs.

Within the total of cases tried to findings, 275 cases (137 GCMs; 138 SPCMS) were tried by Navy Regional Legal Service Offices (RLSOs) and 447 cases (125 GCMs; 322 SPCMS) were tried by Marine Corps Law Centers or Legal Service Support Sections. By findings, the cases

tried resulted in 642 convictions (231 GCMs; 411 SPCMS) and 80 acquittals (32 GCMs; 48 SPCMS).

Overseas trials were held in Japan, Germany, Italy, Bahrain, and several Marine cases were tried in the combat zones of Afghanistan. In addition to presiding over regularly referred courts-martial, NMCTJ judges were appointed as Article 32 investigating officers in high visibility cases and presided over numerous high-profile cases that included offenses ranging from unauthorized absence to rape, murder, and law of war violations. Three trial judges are assigned to and available for any forthcoming military commission cases.

During FY 2012, the WestPac Circuit reorganized into two distinct circuits, the Hawaiian and WestPac Circuits. The Hawaiian Circuit has its principal office in Kaneohe Bay, Hawaii, and is responsible for all of Hawaii. The WestPac Circuit has its principal office in Yokosuka, Japan, and is responsible for Okinawa and Iwakuni, Japan; New Zealand; Australia; Korea; Guam; Philippines; Diego Garcia; and areas of Asia and the Pacific and Indian Oceans not included within another circuit. This division provides the NMCTJ with two distinct circuits, each staffed by two active duty judges. Each Circuit has one Marine and one Navy judge who are located in the same geographic time zones. This staffing model meets the needs for Service specific judicial support while enabling greater flexibility in detailing, docketing and ensuring timely judicial communication and collaboration in each circuit.

All NMCTJ active duty and almost all reserve Judges attended the Joint Military Judges Annual Training (JMJAT) for all DOD and Coast Guard military trial judges. This year's JMJAT was hosted by the NMCTJ at the National Judicial College at the University of Nevada. NMCTJ judges attended various National Judicial College (NJC) courses throughout the year at various locations. The NJC provides judge-specific training for military judges. Several NMCTJ judges were awarded the professional Certificate in Judicial Development, General Jurisdiction Trial Skills from the NJC.

The active duty and reserve NMCTJ judges provided training at various locations, including the Defense Institute of International Legal Studies, Navy-Marine Corps Senior Officers Courses, Legal Officer Courses, Naval Justice School Basic Lawyer Courses, the Army Judge Advocate General's Legal Center and School's Military Judges Course, the National Judicial College and other in-service courses. Across the Navy and Marine Corps, the NMCTJ actively mentored junior judge advocates by means of both formal and informal training sessions.

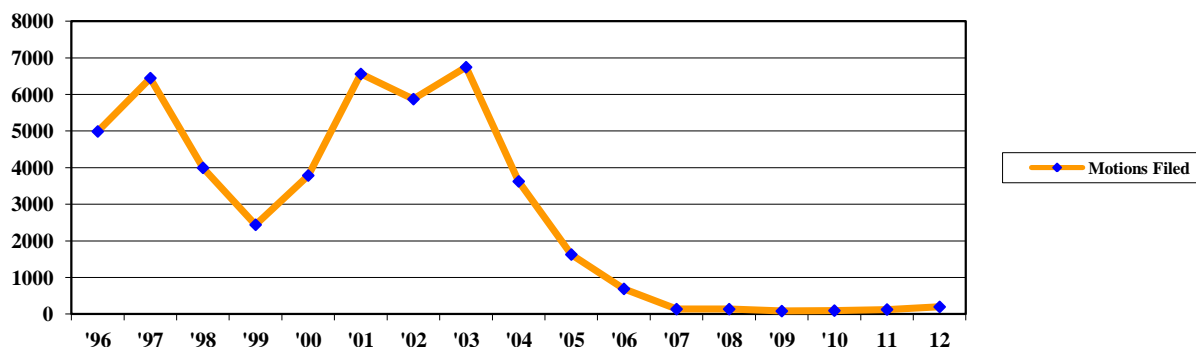
C. The Navy-Marine Corps Appellate Review Activity (NAMARA)

1. Appellate Defense Division (Code 45)

The Appellate Defense Division's staffing remained relatively stable in 2012 with 11 active duty counsel, augmented by 21 Reserve counsel. The Appellate Defense Division Director is a Navy O-6, who is a Military Justice Litigation Career Track (MJLCT) designated Expert. The Deputy Director is a civilian attorney, formerly an active duty Navy judge advocate (and current Reserve CDR) with significant appellate advocacy experience. In FY 2012, the

Division continued to file timely pleadings, requesting enlargements (extensions of time) largely consistent with historically low rates. Requests for enlargements did rise in FY 2012 from 124 to 195 as indicated in the chart below; but, the increase was attributable to an unexpected turnover of a significant number of experienced counsel in the Division during the spring and summer time frame. Thereafter, manning stabilized and the anomaly was corrected.

CY Defense Enlargement of Time Requests



Within Code 45, any request of a third enlargement must be discussed with the Division Director to ensure counsel’s work load is appropriate to their experience. Appellate defense counsel continue to manage their case load quite well, and are providing mutual support in editing briefs of other counsel, preparing for and conducting moot courts, and performing other required collateral duties.

The case load fluctuates in the Appellate Defense Division through any given year, but current case loads average about 400 active cases in various stages of appellate review at both NMCCA and CAAF, as well as continued oversight of cases returned for re-hearings, *DuBay*² hearings, and new trials. Based on measures of timeliness and quality of pleadings, the current case load per active duty counsel is appropriate. The FY 2012 case load included:

- Cert Petition U.S. S. Ct. 3
- Petitions to CAAF 117
- Supplements at CAAF 117
- Extraordinary Writs at CAAF 2
- Briefs at NMCCA 191 (this number includes summary assignments)
- Merit submissions at NMCCA 297
- Extraordinary Writs at NMCCA 14

² Under *United States v. DuBay*, 37 C.M.R. 411 (C.M.A. 1967), military appellate courts return cases to the trial level for limited fact finding to facilitate further appellate review.

While the majority of counsel in the Division are new appellate attorneys, they are at various stages of their military careers, and are mentored by an experienced leadership team. The value of senior mentorship is reflected in the quality of the research, writing and oral argument before both NMCCA and CAAF. The Deputy Director is responsible for initial training of newly reported counsel, and ongoing training (internal and external) and mentorship. Code 45 develops appellate advocacy skills through an intensive in-house training and mentoring program as well as external courses aimed at honing writing skills and appellate advocacy.

The Division Director has established a “Rule of Three” – each pleading must be reviewed three times (the last being the Deputy or the Director) prior to filing, and each oral argument must be “mooted” by Division counsel at least three times. NMCCA judges have commented on the high quality of pleadings and arguments.

The reserve component (RC) of the Appellate Defense Division provides meaningful support. RC counsel are generally assigned guilty plea cases and records of trial under 200 pages. These cases are typically without error. RC counsel are trained to spot errors and are continually trained on developing case law. RC counsel each carry an average of five cases. Generally, if a case assigned to an RC counsel is appealed to CAAF from NMCCA, it is re-assigned to an active duty counsel to assist in drafting the appropriate pleadings.

2. Appellate Government Division (Code 46)

The Appellate Government Division was staffed with ten active duty judge advocates, one civilian attorney, and two civilian administrative employees. A Marine colonel serves as Division Director. An experienced civilian (former Marine judge advocate) continues to serve as Deputy Director.

Reserve support continues to be critical to the accomplishment of the Code 46 mission. The Appellate Government Division is supported by NAVJAG 116, a reserve detachment based out of Minneapolis, Minnesota. NAVJAG 116 is headed by an O-6 and its 12 reserve judge advocates augment the Appellate Government Division, contributing an average of two briefs per month.

In accordance with Article 70, UCMJ, the primary mission of the Appellate Government Division is to represent the United States before NMCCA and CAAF. Additionally, in coordination with the Navy and Marine Corps Trial Counsel Assistance Programs (TCAP), the Division continues to provide support to Staff Judge Advocates, review officers, and trial counsel throughout the Navy and Marine Corps on issues related to pretrial, court-martial, and post-trial matters.

The Division provides direct legal services to Marine and Navy judge advocates across the globe, responding to hundreds of questions from the field relating to trial issues and appeals, and helps ensure the uniformity and consonance of legal positions taken by the United States both before trial and appellate courts. The Division continues to augment its delivery of legal advice to trial counsel through a robust liaison relationship with the various Service TCAPs. The Division’s relationship with the Service TCAPs helps ensure that important issues have neither

been waived nor surrendered for appellate litigation purposes by inconsistent or inaccurate positions by trial counsel in the field. This coordination also furthers the communication between the trial and appellate counsel allowing closer coordination during government interlocutory appeals (appeals of trial judge rulings made before trial has concluded).

A summary of this year’s appellate activity compared to previous years is set forth in the chart below. Calculations for “Briefs Filed” include Government briefs, answers to supplements, and supplemental briefs. “Other Pleadings” include responses to extraordinary writs, motion responses, responses to Court Orders, and Petitions for Reconsideration.

	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
NMCCA						
Briefs Filed	486	232	154	163	188	198
Other Pleadings	528	340	313	373	144	439
Oral Arguments	8	6	14	15	20	19
CAAF						
Briefs Filed	45	37	28	24	22	24
Other Pleadings	158	146	60	102	70	111
Oral Arguments	21	32	23	11	7	12

Article 62 appeals³ continued a downward trend from eight in FY 2007, 11 in FY 2008, nine in FY 2009, three in FY 2010, two in FY 2011, to one in FY 2012. The single Article 62 appeal filed at NMCCA in FY 2012 was *United States v. Murray*. The appeal involved a search and seizure issue, regarding a military judge’s decision to suppress DNA results from a sexual assault examination. Code 46’s practice at CAAF included certification of significant matters of military justice in two cases: *United States v. Porter*⁴ and *United States v. Nash*.⁵ The Division continued its representation of the United States in one capital case: *United States v. Parker*.⁶

³ An appeal under Article 62, UCMJ allows the United States to appeal a military judge’s ruling that terminates proceedings with respect to a charge or specification or excludes evidence that constitutes substantial proof of a fact material to the proceeding.

⁴ In *Porter*, NMCCA held that the military judge should not have admitted into evidence portions of a drug laboratory report documenting actions taken by analysts at the laboratory without requiring the lab analysts to testify at trial.

⁵ In *Nash*, NMCCA held that the military judge erred by failing to grant a defense challenge for cause against a member of the court-martial panel.

⁶ *Parker* was convicted on 20 July 1993 of two specifications of premeditated murder, two specifications of conspiracy to commit murder, two specifications of violating a lawful general order by possessing an unregistered firearm, one specification of robbery, and two specifications of kidnapping. He was sentenced to death, total forfeitures, and a reduction to E-1.

Appellate Government Counsel have benefitted from an intensive and leveled appellate advocacy training program that includes attendance at the ABA's Appellate Judges' Education Institute and Appellate Lawyers Annual Practice Institute, Bryan Garner's Legal Research and Writing Seminar, the CAAF Annual Conference and the Judge Advocate Association's Appellate Advocacy Symposium.

During FY 2012, the Division continued the expansion of the Department of the Navy's electronic record of trial program, which at year's end included: Camp Pendleton, Norfolk Naval Station, Camp Lejeune, and Marine Corps Base Hawaii. As the field activities and the Division, in coordination with NMCCA, expand their technological capabilities, the intent is to migrate all installations to processing a majority of their courts-martial electronically.

3. NAMARA Oversight of Appellate Case Processing

In FY 2012, NAMARA continued to use the Case Management Tracking and Information System (CMTIS) as the official case tracking system at the post-trial and appellate levels. NAMARA personnel also monitor CMS to track inbound Marine Corps cases and enter key information into CMS to facilitate tracking of Marine cases within the Marine Corps. NAMARA personnel also extract CMTIS data to create spreadsheets for routine monitoring of cases once they have reached the appellate level. NAMARA coordinates regularly with NLSC and the Marine Corps Judge Advocate Division (CDSP) to maintain positive control over Navy and Marine Corps cases received and an accurate picture of cases moving through the post-trial and appellate review processes. The NAMARA section in CMS allows Marine Corps cases to be tracked during the post-trial and appellate review processes, and coordination with the RLSOs and the LSSSs has essentially eliminated the possibility of NAMARA not receiving a record of trial.

During FY 2012, NAMARA continued to use a variety of procedures to ensure appellate case accountability. To ensure records of trial are not lost in shipping, NAMARA provides Marine Corps SJAs and RLSO commanding officers a report of cases received the previous month for verification against their shipping receipts. Daily situation reports are generated for all cases received at NAMARA and cases that have completed the appellate review process. Using internal reports, extensive efforts have been taken to ensure appellate review is completed for every case. Additionally, NAMARA continues to work closely with the Navy and Marine Corps Appellate Leave Activity (NAMALA) to reconcile Notifications of Completion of Appellate Review and to ensure that supplemental court-martial orders are properly promulgated in every case. The coordination with NAMALA has generated efficiencies in the appellate process that ultimately ensure final discharge is executed and a DD 214 issued in all appropriate cases.

D. Navy-Marine Corps Court of Criminal Appeals (NMCCA)

1. Caseload and Trends

The NMCCA maintained discipline in the prioritization of case dispositions as it has in recent years. No cases exceeded 18 months from docketing to decision in FY 2012, and at the close of the fiscal year, no case exceeded six months in panel.

As noted above, 722 courts-martial (263 GCMs; 459 SPCMs) were tried to findings in the DON in FY 2012. For cases resulting in conviction, the punitive discharge rate, including officer dismissals, was 64 percent. As a result, fewer cases were docketed at NMCCA in FY 2012 (485) than in FY 2011 (598). NMCCA disposed of 528 cases in FY 2012, resulting in 43 more cases being resolved than were docketed. At the end of the fiscal year, there were 181 cases docketed and pending review, a number that has been relatively stable over the last four years (varied between 181 and 225 cases).

While the trial caseload has declined steadily over the last 10 years, the actual work performed at the appellate level has not declined correspondingly. The total number of GCMs tried has remained relatively constant since 2006, while the SPCM load had dropped significantly. At the appellate level, the percentage of cases requiring summary disposition (cases affirmed on the merits without any assignments of error and no corrective action by the court) has declined from 71 percent in 2009 to 56 percent in FY 2012. In FY 2012, 232 of the 528 cases decided required a written opinion; in 2009, 230 of the 788 cases decided required opinions. Thus, while the case load has dropped, the work has remained consistent. It is worth noting that the cases resolved in FY 2012 included a capital murder, which consumed a significant amount of time by the three judges and clerk staff assigned.

2. Staffing of the NMCCA

A high rate of turnover among the appellate judiciary resulted in a shortfall of judges during the summer months of FY 2012. The result was that the court operated with 7.6 Active Duty Component (AC) judges rather than the 9.2 AC judges seen in FY 2011 (number of judges calculated by adding the total number of months on board for all judges, divided by 12 months). By the end of the fiscal year, eight AC judges were permanently assigned to the court (four Navy, four Marine Corps). Despite the turnover rate, the court maintained exceptional productivity through a combination of high production prior to the transfer of the four experienced departing AC judges, maintenance of that production level by the four AC judges who remained on the court, and by relying on the Reserve Component (RC) judges to bridge the gap. One of the remaining four judges extended for a fourth year on the court and was appointed as the Chief Judge. He oversees three former trial judges, former staff judge advocates, and MJLCT designated officers on a court that represents a well-balanced group of experienced senior officers.

The AC roster of appellate judges is augmented by 10 RC judges (seven Navy and 3 Marine Corps). The RC appellate judges resolved about 13 percent of the court's *per curiam* opinions (written opinions generally not as extensive as authored or published opinions), and 69 percent of the "merit submission" or summary disposition cases. The staffing of the RC billets at the end of the fiscal year was sufficient to augment the AC judiciary, given the current workload.

The court has been aided by a training program, initiated in FY 2011, which brings all AC judges, all available RC judges, and all law clerks, to a central location for two days of appellate judicial training. The FY 2012 course focused on judicial writing, standards of review, and complex evidentiary issues. This internal training initiative is in addition to the one-day annual William S. Fulton, Jr. Appellate Military Judges Conference attended by military judges from all of the Services, and additional training obtained from outside sources, such as the National Judicial College and the Appellate Judges Education Institute. Because there is no joint Service conference for the appellate judiciary other than the one-day Fulton Conference, this two-day training event which brings outside experts to the court has proven to be an effective way to provide vital judicial training specifically tailored to the present needs of the court.

Each Service (Navy and Marine Corps) is required to nominate appellate judges to serve as military judges on the U.S. Court of Military Commissions Review (CMCR). Currently, four of the eight NMCCA judges also serve as CMCR judges, one of whom is the Chief Judge of CMCR. While the CMCR presently has no pending cases, there is no way to predict the impact an unknown CMCR workload will have on NMCCA if and when cases, interlocutory appeals or extraordinary writs are presented to CMCR for review and decision. Fiscal Year 2012 saw NMCCA struggle to compensate for the impact of two judges diverted to CMCR for significant parts of the fiscal year.

The Clerk of the Court of the NMCCA continues to be a former judge of that same court. He is a senior administrator supporting the NMCCA, overseeing the civilian staff, which is composed of a docketing clerk and two secretaries. He also serves as the appellate Clerk of Court, which includes the responsibility to release opinions and orders, and to manage the court's records and internal processes. This level of support is adequate for the current case load.

The NMCCA also retains one billet for a Senior Law Clerk, who serves as the administrative assistant to the Clerk of Court, and the mid-level manager of the active duty judge advocate law clerks who join the court for terms of about nine months. The Senior Law Clerk works for the Chief Judge of the NMCCA, performing legal research, record digesting, indexing, and drafting. He also serves as the administrative officer for the court, managing correspondence, fitness reports, collateral duty assignments, and various *ad hoc* tasks. He exercises day-to-day oversight of the rotating law clerks, and serves as the assistant to the Chief Judge, Department of the Navy. In FY 2013, a full time assistant to the Chief Judge, Department of the Navy, will be added to the billet list, permitting the Senior Law Clerk to devote full time to the operations of the NMCCA.

The clerk program continues to be a successful part of the cooperation between the NMCCA and NAMARA. Four active duty judge advocates serve about nine months at the NMCCA, enhancing the productivity of the court, and then rotate to one of the appellate divisions, bringing the clerk experience into the appellate divisions. Both Navy and Marine Corps judge advocates are eligible for, and participate in, the program.

PART II. THE NAVY JUDGE ADVOCATE GENERAL’S (JAG) CORPS

A. The Military Justice Litigation Career Track (MJLCT)

At the close of the fiscal year, there were 67 Navy MJLCT officers, of which 45 were filling the 52 MJLCT-designated billets. Additional officers are serving in billets at the Office of Military Commissions, on board aircraft carriers, at the Naval Justice School, and attending post-graduate school to obtain Masters of Law degrees in Trial Advocacy. The “billet-fill rate” of almost 87 percent is an improvement from last year’s rate of 77 percent, and should stay relatively stable with the projected FY 2013 rotations.

The promotion rates for MJLCT officers continue to reflect a rate of promotion consistent with a “best and fully qualified” rate as compared to the overall selection rate. The FY 2013 O-6, O-5 and O-4 promotion boards selected five of the seven MJLCT officers in zone.

FY Board	Overall IZ O-6	MJLCT IZ O-6	Overall IZ O-5	MJLCT IZ O-5	Overall IZ O-4	MJLCT IZ O-4
2009	55%	0 of 1 0%	61%	0 of 1 0%	72%	N/A
2010	71%	3 of 3 100%	66%	3 of 4 75%	71%	2 of 2 100%
2011	60%	1 of 2 50%	63%	3 of 5 60%	77%	2 of 3 67%
2012	60%	1 of 1 100%	53%	2 of 2 100%	71%	4 of 4 100%
2013	38%	1 of 2 50%	63%	2 of 3 67%	80%	2 of 2 100%

B. Naval Legal Service Command Overview

Rear Admiral Nanette DeRenzi commanded Naval Legal Service Command (NLSC) until July when she was promoted to Vice Admiral and became the Judge Advocate General. Rear Admiral James Crawford assumed command of NLSC in July and also serves as the Deputy Judge Advocate General of the Navy.

In FY 2012, NLSC included 402 Judge Advocates, one Civil Engineer Corps Officer, five Limited Duty (Law) Officers, 195 Legalmen, and 264 civilians. NLSC provided a wide range of legal services to afloat and ashore commands, active duty naval personnel, family members, retirees, and eligible beneficiaries from the other services at 99 offices worldwide.

NLSC provided legal advice, services, and training to the fleet through 18 commands. There were eight Naval Legal Service Offices (NLSOs), which provided defense and legal assistance, and nine Region Legal Service Offices (RLSOs), which provided prosecution and command services. From these commands, NLSC provided counsel for courts-martial

prosecution and defense, administrative boards, physical evaluation boards, legal assistance, and legal advice to local commanders and their staffs. The Naval Justice School provided legal training to officers, enlisted and civilians for all the Sea Services, including basic legal training for Navy, Marine Corps and Coast Guard judge advocates, and legalmen. During FY 2012, NLSC provided counsel for 134 General Courts-Martial, 145 Special Courts-Martial and 1419 administrative boards. NLSC also provided 111,158 attorney legal assistance services, and 70,121 non-attorney legal assistance customer services. NLSC continued to be the primary source of personnel to meet the Navy JAG Corps Individual Augmentation (IA) requirements, providing two-thirds of the overall personnel requirements in support of Overseas Contingency Operations (OCO). During FY 2012, 40 Judge Advocates and four Legalmen from NLSC deployed as IAs in direct support of operations in Iraq, Afghanistan, Djibouti and Guantanamo Bay, Cuba.

1. NLSC Realignment

The Department of the Navy is operating in an increasingly complex legal and policy environment. During FY 2012, NLSC prepared to realign the Naval Legal Service Office organization. Realignment was necessary in order to meet growing demands for legal services and continue providing quality military justice service. Realignment is also aimed at improving the JAG Corps' training for first tour judge advocates by more thoroughly preparing them to meet the Navy's legal needs. During the first two years of all new judge advocates' careers, they will receive more comprehensive training in prosecution and defending cases, providing legal assistance and advising Navy commanders.

As of 1 October 2012, Commander, Naval Legal Service Command replaced eight Naval Legal Service Offices with four Defense Service Offices (DSOs). The four DSO offices are: DSO North, which covers the northeast continental U.S., Europe and Southwest Asia; DSO Southeast, which covers southeast and central continental U.S.; DSO Pacific, which covers Japan, Hawaii, and Southeast Asia; and DSO West, which covers western continental U.S. The DSOs' sole mission is to defend service members in military justice proceedings, represent them at administrative boards, and provide advice on non-judicial punishment and adverse personnel actions. In 12 locations, Sailors requiring DSO services will make initial contact with an attorney by telephone or other remote communication technology. Subsequent in-person consultation will be arranged if and when necessary. The 12 locations are Everett, Whidbey Island, Port Hueneme, Lemoore, Corpus Christi, New Orleans, Millington, Kings Bay, Guantanamo Bay, Newport, Earle and Sigonella. As part of realignment, the JAG Corps will focus the military justice caseload on a smaller group of more experienced litigators. Senior litigators will be assigned to try the most complex cases and mentor junior counsel.

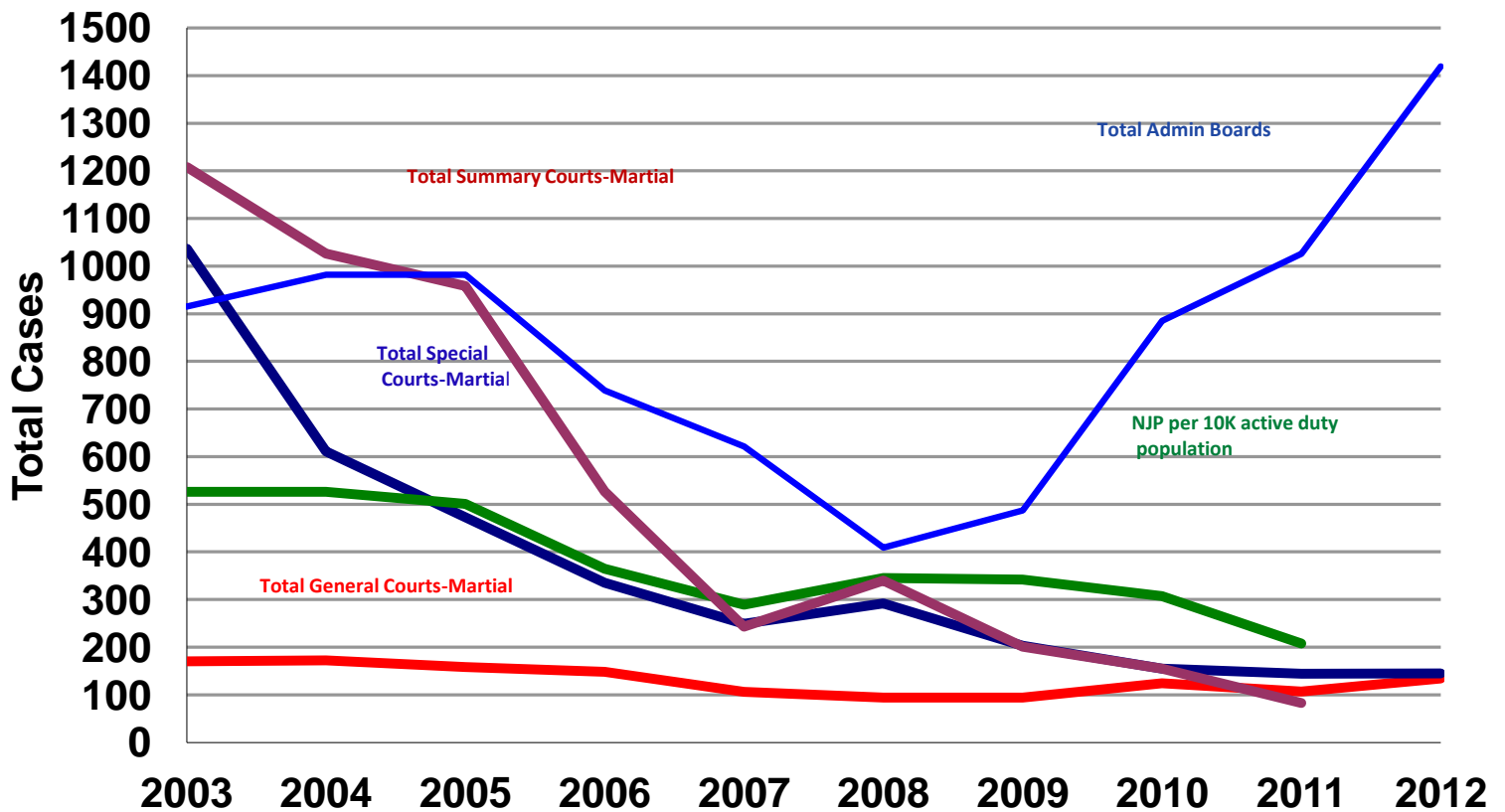
Additionally, as part of the realignment, the JAG Corps will focus the first two years of all new judge advocates' careers on comprehensive training in prosecuting and defending cases, providing legal assistance, and advising Navy commands. New judge advocates are required to complete Professional Development Standards at their first duty station, following completion of the Basic Lawyer Course at Naval Justice School. These standards ensure that our judge advocates are fully equipped to operate effectively in their first-tour assignments, including supporting criminal litigation, providing command services, and providing legal assistance to

Sailors and their families. We assigned mid-level officers as Professional Development Officers (PDOs) to manage and track judge advocate training and professional military education. First-tour judge advocates have reading and writing requirements, as well as knowledge assessments performed by PDOs and senior leadership.

2. NLSC Workload

There are two trends in the quantity of the military justice workload within the Navy over the last two fiscal years. The number of General and Special Courts-Martial have generally remained steady, while Non-Judicial Punishment and Summary Courts-Martial have declined by 16 percent and 33 percent respectively. Administrative boards have increased by 42 percent. These trends are shown on the Navy graph and chart below.

Navy FY Trends: post-FY 2003

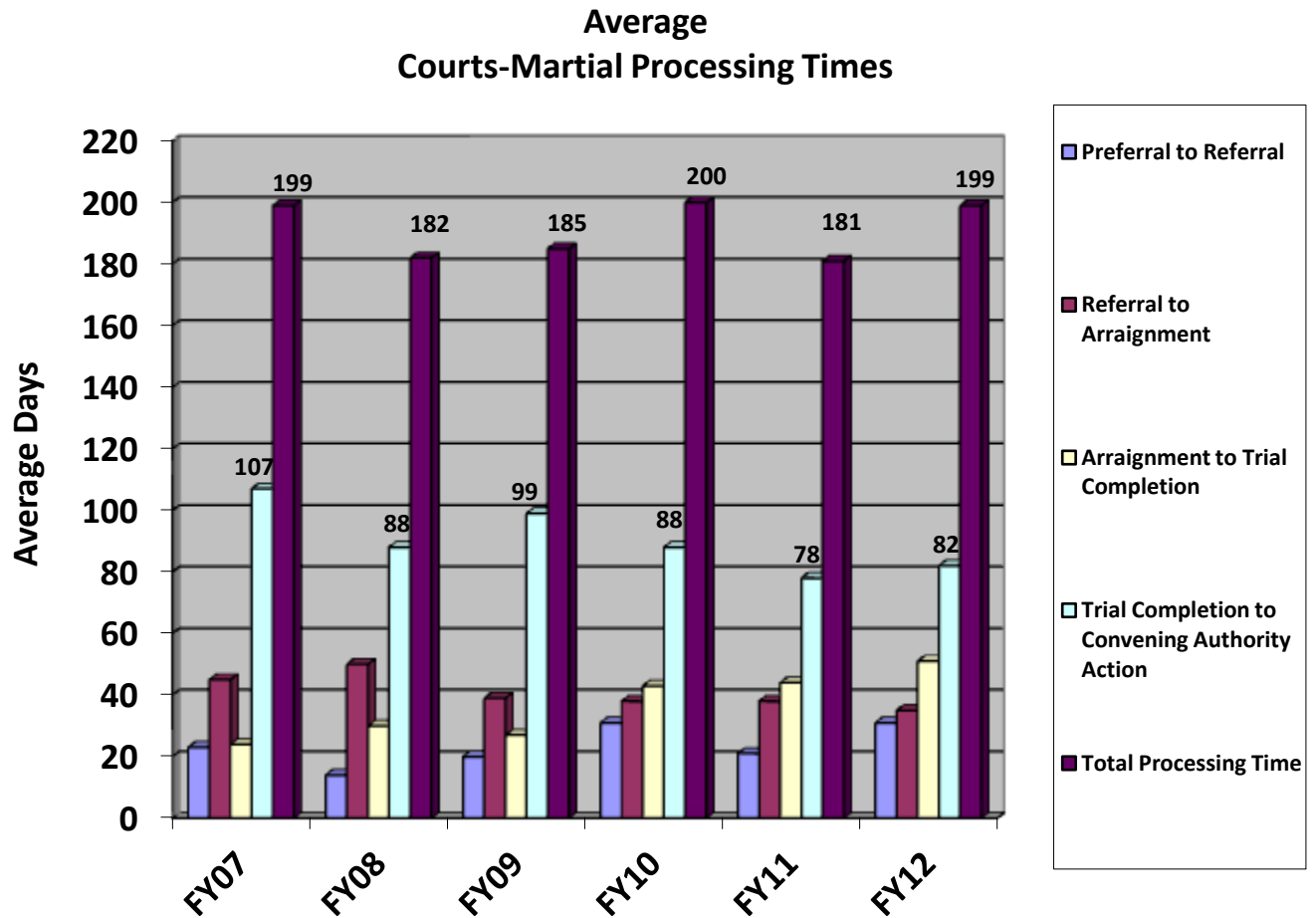


		Navy Cases FY Total and (Rate per 10,000)			
	2003	2009	2010	2011	2012
General Courts - Martial	170 (4.45)	94 (2.85)	124 (3.78)	125 (3.8)	142 (.35)
Special Courts - Martial	1,036 (27.10)	203 (6.16)	155 (4.72)	163 (4.95)	164 (5.03)
NJP	19,770 (517.22)	11,145 (338.44)	10,066 (306.61)	8,976 (276.08)	7539 (231.47)
Summary Courts- Martial	1,208 (31.60)	203 (6.16)	155 (4.72)	163 (4.92)	108 (3.31)
Admin Boards	915 (24.35)	487 (14.92)	944 (28.61)	999 (30.73)	1419 (43.57)
Navy-Marine Corps Court of Criminal Appeals (NMCCA)					
Cases docketed	1,727	650	678	598	485
Cases reviewed	2,162	788	688	571	528

- FY 2003-FY 2010 Courts-Martial and NJP data from CAAF Annual Reports.
- FY 2012 NMCCA, GCM/SPCM and Admin Board data from JAG CMTIS
- The FY 2011 and 2012 GCM/SPCM case numbers in this table are from CMTIS and include all cases arraigned, whether tried to findings or withdrawn and alternatively disposed of prior to findings.

3. Court-Martial Processing

In FY 2012, the overall average processing time for courts-martial (Preferral to Convening Authority Action) was slightly above, but consistent with the average of the five preceding fiscal years.



C. Defense Counsel Assistance Program.

The Defense Counsel Assistance Program (DCAP) is aligned under NLSC and reports to the Chief of Staff, Naval Legal Service Office (COS-NLSO, as of 1 October 2012, COS-DSO). The DCAP office is staffed with an active duty Navy O-5 Director co-located with DSO West in San Diego and an active duty Navy O-4 Deputy Director co-located with Code 45 in Washington, D.C. Both the Director and Deputy Director are members of the Military Justice Litigation Career Track. In December 2012, the Navy hired an HQE to work with DCAP.

DCAP's mission is to provide assistance to Navy, Marine Corps, and Coast Guard defense counsel throughout the fleet, offering advice and technical expertise on all issues relevant to military justice and adverse personnel actions. DCAP offers assistance during every

phase of court-martial litigation, including initial case analysis, evidentiary issues, pre-trial motions, negotiations, openings, examinations, closings, and post-trial processing.

Although not typically detailed as defense counsel, DCAP personnel are considered members of the detailed defense counsel's office and are authorized to consult with detailed counsel on a confidential and privileged basis through every phase of court-martial litigation. DCAP assistance includes developing case strategies, drafting motions for appropriate relief and crafting arguments for motion sessions, developing investigations, conducting 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. Finally, DCAP provides advice on post-trial matters and frequently consults with defense counsel regarding professional responsibility and ethics issues.

DCAP provides regular training to current and prospective defense counsel worldwide, both through command visits and via Defense Connect Online with an emphasis on providing a defense perspective. Furthermore, DCAP has created a library of relevant continuing legal education and regularly publishes updates and guidance to defense counsel through written DCAP Advisories. DCAP also maintains a SharePoint site, providing defense counsel with resources such as a motions bank, an expert witness database, and an online discussion forum so individual counsel can provide the defense community with their own experiences and expertise. In FY 2012, DCAP provided sexual assault and trial advocacy training during on-site visits to Naples, Pearl Harbor, and Yokosuka.

The DCAP Director is a member of the Litigation Training Coordination Council and works closely with the Naval Justice School to provide comprehensive training to defense counsel of all experience levels. Additionally, DCAP helps ensure that training materials and opportunities are available and utilized by Navy defense counsel.

D. Trial Counsel Assistance Program

TCAP is aligned under the NLSC and reports to the Chief of Staff, Region Legal Service Offices (COS-RLSO). TCAP is directed by a Navy O-5, a MJLCT designated Expert who previously served as a military judge, NLSO CO, an XO and senior defense counsel during the Trial Defense Command pilot program, a senior trial counsel and an assistant senior defense counsel. The Deputy Director is a GS-15 civilian who specializes in sexual assault prosecution and victims' rights. A former state prosecutor with extensive experience, she served as the Director of the National Center for the Prosecution of Violence Against Women and is a noted author in the field. She led efforts to enhance Sexual Assault Prevention and Response policies and training, improve the Victim and Witness Assistance Program, and was engaged in numerous initiatives involving sexual assault litigation training and evaluation. The Assistant Director is a senior O-4 MJLCT designated Specialist I who has completed two tours as a defense counsel, an Officer-in-Charge, and an independent duty SJA to a general court-martial convening authority, where he provided extensive advice in military justice matters. The Navy is in the process of hiring a new HQE with civilian criminal litigation and training experience who will work with the TCAP.

TCAP's mission is to provide advice, assistance, support, resources and training for Navy trial counsel worldwide. The program supports and enhances the proficiency of the Navy prosecution bar, providing experienced reach-back and technical expertise. TCAP provides a full spectrum of advice and serves as a resource for trial counsel in the field through every phase of pretrial investigation, court-martial litigation and post-trial processing. TCAP counsel regularly assist and advise trial counsel on all aspects of prosecution, including drafting charges, trial preparation (including handling motions), discovery issues, securing and preparing expert witnesses, devising trial strategy, and professional responsibility issues. TCAP collaboratively engages trial counsel in the field with regular case review conferences. Likewise, TCAP coordinates with Code 46 (Appellate Government) to ensure unity-of-effort in ensuring court-martial prosecutions are effectively postured to withstand appellate review.

When requested, TCAP provides more in-depth case assistance. For example, TCAP counsel have been detailed as trial counsel and assistant trial counsel when an advanced level of proficiency is demanded. In the past year, the former TCAP director served as trial counsel in the prosecution of a commanding officer for sexual assault of two subordinates. The current director is presently serving as trial counsel in a high-visibility sexual assault case. The Assistant Director served as trial counsel in one high-profile sexual assault case. In addition, he handled several motions in complex cases and mentored junior counsel from RLSO Naval District Washington. TCAP regularly assists several RLSO counsel with sexual assault victim interviews as requested.

TCAP is also responsible for monitoring all high-visibility cases, as well as assisting OJAG in monitoring the post-trial processing of cases to ensure compliance with judicially-mandated timelines. The Director of TCAP monitors the relative experience levels of trial counsel through on-site, periodic observations of Navy judge advocates in the performance of their prosecution functions, and provides recommendations for improvement as well as resource recommendations to COS-RLSO as necessary.

In addition to case assistance and advice, TCAP provides resources to assist trial counsel. TCAP maintains an online repository for useful resources such as sample motions and responses, foundation questions, articles and manuals on prosecution, case disposition tracking, and an expert witness database. TCAP has expended significant effort in expanding its expert witness database to ensure the ability of trial counsel to secure experts in all disciplines for the government and defense. The TCAP website also has a trial counsel discussion board that enables real-time response to demands from the field and leverages enterprise knowledge for remote offices. TCAP monitors questions and responds to postings on the site and ensures that trial counsel are aware of all available resources. The discussion board also facilitates a closer prosecution bar by enabling discussions between trial counsel worldwide.

Finally, TCAP plays a significant role in trial counsel training. TCAP partners with NJS and Code 20 in the development of litigation training for trial counsel. TCAP personnel routinely serve as instructors on a variety of courses at the NJS schoolhouse, on Defense Connect Online (DCO) and in-person at offices worldwide. TCAP coordinated the planning and execution of Prosecuting Alcohol Facilitated Sexual Assault (PAFSA) course, an advanced trial advocacy course. Navy TCAP partnered with Marine Corps TCAP and NCIS to plan and execute two widely attended Mobile Training Teams (MTTs) in Camp Lejeune, NC, and San Diego, CA, supporting Navy trial counsel, Marine prosecutors, and NCIS criminal investigators

with the complex litigation training and advice. TCAP also provided targeted on-site mobile training teams to all nine RLSOs which focused on trial advocacy and sexual assault prosecution, as well as on-site case consultation and assistance. TCAP provided support to Code 16 (Legal Assistance) in formulating practice with regards to legal assistance to victims, as well of the development of advice to the field on the interface between TCAP, VWAP and legal assistance.

PART III: THE U. S. MARINE CORPS

The assessment of military justice in the U.S. Marine Corps will be submitted by the Staff Judge Advocate to the Commandant of the Marine Corps to the Secretary of the Navy, via the Commandant of the Marine Corps, and will be reviewed by the Judge Advocate General of the Navy.