

ANNUAL REPORT
SUBMITTED TO THE
COMMITTEES ON ARMED SERVICES
Of the
United States Senate
and the
United States House of Representatives
And to the
SECRETARY OF DEFENSE,
SECRETARY OF HOMELAND SECURITY,
And the
SECRETARIES OF THE
ARMY, NAVY, AND AIR FORCE
PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE
For the Period
October 1, 2011 to September 30, 2012

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SECTION 1

JOINT ANNUAL REPORT OF THE CODE COMMITTEE

**JOINT ANNUAL REPORT OF THE CODE COMMITTEE
PURSUANT TO THE
UNIFORM CODE OF MILITARY JUSTICE**

October 1, 2011 to September 30, 2012

The Judges of the United States Court of Appeals for the Armed Forces, the Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, the Staff Judge Advocate to the Commandant of the Marine Corps, and Professor Charles J. Dunlap, Jr., and Professor Keith M. Harrison, Public Members appointed by the Secretary of Defense, submit their annual report on the operation of the Uniform Code of Military Justice (UCMJ) pursuant to Article 146, UCMJ, Title 10, United States Code, § 946.

The Code Committee met on March 6, 2012, to consider matters pertaining to the administration of military justice. The meeting was open to the public and was previously announced by notices in the Federal Register and on the Court's website.

After approving the minutes of the 2011 Code Committee meeting, Chief Judge Baker called upon Colonel Charles Pedo, U.S. Army, Executive Secretary of the Joint Service Committee on Military Justice (JSC), to provide a report on the work of the Committee. Colonel Pedo briefed the Code Committee of the following matters that had been addressed by the Joint Service Committee over the past year: (1) passage of legislation establishing the availability of a subpoena duces tecum prior to the referral of charges; (2) work on refinements to Article 120, UCMJ, to create subdivisions of offenses depending on the age of the victim and to correct burden shifting issues under Article 120; (3) establishment of new requirements to assist crime victims; (4) the signing of Executive Order 13593, establishing a victim-advocate privilege; creating a new child pornography offense under Article 134, UCMJ; amending the marital privilege to except illegal activity from the scope of the privilege; and establishing a victim-psychotherapist privilege; (5) work on a study by the newly commissioned Army Capital Litigation Study Group and with Congressional staffs on proposed legislation (STOP Act) concerning sexual assault offenses and the authority to convene courts-martial in such cases; (6) modification of the 2012 Manual for Courts-Martial to include recent Executive Orders, revisions to Article 120, UCMJ and a discussion of United States v. Fosler and United States v. Jones; and (7) a proposal to revise the Military Rules of Evidence to mirror expected changes in the Federal Rules of Evidence.

In response to a question as to whether the victim advocates would be properly trained to understand the nature of the victim-advocate privilege, Colonel Pede replied that robust training would be required by local offices. In reply to another question, it was noted that the Department of Defense had not yet taken a position on the STOP Act.

Chief Judge Baker then asked representatives for each of the services to summarize trends in military justice in their respective services.

For the Navy, VADM Houck observed that the Department of the Navy has experienced a slight decline in the number of courts-martial and non-judicial punishments, with more trials involving contested charges. Cases have become more complex, resulting in longer trials and extended trial schedules. As for types of offenses, the number of sexual assault, child pornography and fraternization cases has increased, with most of the sexual assault victims being males. VADM Houck expressed concern regarding the STOP Act and informed the Committee that the Navy would establish a separate command for defense counsel on October 1.

For the Army, MG Clyde Tate, representing the Judge Advocate General of the Army, stated that the Army has seen an overall reduction in courts-martial but an increase in the number of sexual offenses and a 62 percent increase in child abuse cases referred to the Family Advocacy Program. Particular attention has been given to high profile murder cases, capital litigation, and the operation of the UCMJ in a combat environment.

For the Air Force, LtGen Harding also expressed concern with the STOP Act as well as with cases involving the synthetic drug known as "spice." At the non-judicial punishment level, half of the drug cases in the Air Force involve spice. Accordingly, the Air Force has developed a synthetic drug testing program and currently tests about 2,900 samples per month.

For the Coast Guard, RADM Kenney said there has been an increase in the number of courts-martial, although the Coast Guard's numbers are much smaller than the other services. There has been a rise in crimes committed with computers and a trend away from traditional drug offenses to those involving "designer" drugs such as spice.

MG Ary stated that in the Marine Corps, the number of general courts-martial has been steady, but there has been a 28 percent reduction in special courts-martial and a 23 percent decline in summary courts-martial. Administrative separations have increased 26 percent. The three types of cases that have attracted the most attention have been battlefield offenses, hazing, and sexual offenses. Since the creation of a defense command in the Marine Corps, the number of acquittals has increased, which he views as illustrative of the health of defense services. Processing times have decreased due to the decrease in the number of cases and a new case management system.

Separate reports of the United States Court of Appeals for the Armed Forces and the individual Armed Forces address further items of special interest to the Committees on Armed Services of the United States Senate and the United States House of Representatives, as well as the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force.

James E. Baker
Chief Judge

Charles E. "Chip" Erdmann
Associate Judge

Scott W. Stucky
Associate Judge

Margaret A. Ryan
Associate Judge

Lieutenant General Dana K. Chipman, USA
Judge Advocate General of the Army

Vice Admiral James W. Houck, JAGC, USN
The Judge Advocate General of the Navy

Lieutenant General Richard C. Harding, USAF
The Judge Advocate General of the Air Force

Rear Admiral Frederick J. Kenney, USCG
The Judge Advocate General of the Coast Guard

Major General Vaughn Ary, USMC
Staff Judge Advocate to the Commandant of the Marine Corps

Professor Charles J. Dunlap, Jr.
Public Member

Professor Keith M. Harrison
Public Member

SECTION 2

REPORT OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

**REPORT OF THE UNITED STATES
COURT OF APPEALS FOR THE ARMED FORCES**

September 1, 2011 to August 31, 2012

The Judges of the United States Court of Appeals for the Armed Forces submit their annual report on the administration of the Court and military justice during the September 2011 Term of Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, Title 10, United States Code, § 946.

THE BUSINESS OF THE COURT

The filing and disposition of cases are set forth in the attached statistical report and graphs for the period from September 1, 2011 to August 31, 2012. Additional information pertaining to specific opinions is available from the Court's published opinions and Daily Journal. Other dispositions may be found in the Court's official reports, the Military Justice Reporter, and on the Court's web site. The Court's web site also contains a consolidated digest of past opinions of the Court, information on the Court's history and jurisdiction, the Rules of Practice and Procedure, previous Annual Reports, a schedule of upcoming hearings, audio recordings of past hearings, and information on clerkship opportunities, bar admission, electronic filing and the Court's library.

During the September 2011 Term of Court, the Court again met its goal of issuing opinions in all cases heard during the Term prior to the end of the Term. An informal summary of selected decisions prepared by the Court's staff is set forth in Appendix A.

RULES OF PRACTICE AND PROCEDURE

Following the recommendations of the Rules Advisory Committee, the Court amended Rules 13A, 19(b), and 22(b) of the Court's Rules of Practice and Procedure. The change to Rule 13A provides that *amicus curiae* briefs submitted by supervised law students under the Student Practice Rule shall be filed no less than 14 days before the scheduled oral argument date. The changes to Rules 19(b) and 22(b) modify the time allotted to the Judge Advocates General to file certificates for review of decisions of the Courts of Criminal Appeals from 30 days to 60

days. Prior to adoption and amendment, the proposed change to Rule 13A was published for public comment in the Federal Register in Volume 77, No. 14 at page 3239; the changes to Rules 19(b) and 22(b) were published in Volume 77, No. 75 at pages 23226-28.

BAR OF THE COURT

During the September 2011 Term, 300 attorneys were admitted to practice before the Court, bringing the cumulative total of admissions to the Bar of the Court to 35,783.

JUDICIAL OUTREACH

In furtherance of a practice established in 1987, the Court scheduled special sessions and heard oral arguments outside its permanent courthouse in Washington, D.C., during the September 2011 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, with the consent of the parties, at Washington University School of Law, St. Louis, Missouri; Scott Air Force Base, Illinois; Gonzaga University School of Law, Spokane, Washington; and the University of Washington School of Law, Seattle, Washington. In addition, the Judges of the Court participated in a variety of professional training, speaking and educational endeavors on military installations, at law schools and before professional groups.

CONTINUING LEGAL EDUCATION CONFERENCE

On March 7 and 8, 2012, the Court held its annual Continuing Legal Education Conference at the Columbus School of Law, Catholic University of America, Washington, DC. The program for this Continuing Legal Education Conference was certified for credit to meet the continuing legal education requirements of State Bars throughout the United States. The conference opened with welcoming remarks from the Honorable James E. Baker, Chief Judge, United States Court of Appeals for the Armed Forces. He was followed by speakers for this year's conference, including Bruce C. Swartz, Esq., Deputy Assistant Attorney General, Criminal Division, U.S. Department of Justice; Stephen M. Sayers, Esq., of the law firm of Hunton & Williams; Professor Judith Resnik of Yale Law School; James Tierney, Esq., Director of the National State Attorneys General Program and Lecturer at Columbia Law School; Professor Keith M. Harrison of the

University of New Hampshire School of Law; Professor Deborah E. Lipstadt of Emory University; Captain Michael B. Shaw, Judge Advocate General's Corps, U.S. Naval Reserve; Professor Catherine Grosso of Michigan State University; and Brigadier General Thomas Ayres, U.S. Army, Commandant of The Judge Advocate General's Legal Center and School.

**MEMORIAL TRIBUTE FOR THE HONORABLE
MATTHEW J. PERRY, JR.**

On January 12, 2012, the Court met in special session in tribute to the memory of Judge Matthew J. Perry, Jr., who served as a Judge of the United States Court of Military Appeals from 1976 to 1979, and as a Judge and Senior Judge of the United States District Court for the District of South Carolina from 1979 to 2011. A World War II veteran, and the son of a World War I veteran, as a civil rights lawyer in South Carolina, he argued numerous cases, including Gantt v. Clemson Agricultural College, 320 F.2d 611 (4th Cir. 1963). He is remembered for his civility, humanity, and commitment to constitutional law. Speakers at the session included Chief Judge James E. Baker, U.S. Court of Appeals for the Armed Forces, Chief Justice Jean Hoefer Toal of the Supreme Court of South Carolina, and Jesse Clark, Esq., former law clerk to Judge Perry. The proceedings of the session will be published in a future volume of the Military Justice Reporter.

James E. Baker
Chief Judge

Charles E. "Chip" Erdmann
Associate Judge

Scott W. Stucky
Associate Judge

Margaret A. Ryan
Associate Judge

APPENDIX A - SELECTED DECISIONS

This appendix contains an informal summary of selected decisions of the September 2011 Term of Court. A full list and summary of the cases decided by the Court during the Term can be found on the Court's website.

United States v. St. Blanc, 70 M.J. 424 (C.A.A.F. 2012), holding that defense counsel's erroneous advice as to the maximum sentence the accused faced on the charge of wrongful and knowing possession of what appeared to be child pornography did not make the accused's waiver of his right to trial by members involuntary, and that the military judge's reliance on the Child Pornography Prevention Act in determining the maximum punishment for wrongful and knowing possession of what appeared to be child pornography was plain and obvious error that materially prejudiced the accused's substantial rights, entitling the accused to sentencing relief.

United States v. Fry, 70 M.J. 465 (C.A.A.F. 2012), holding that the military judge was not bound by a state court order that established a limited conservatorship over the accused in determining whether the accused met the mental competency requirements for court-martial jurisdiction, and that the evidence supported the military judge's conclusion that the accused had the mental capacity to enlist.

United States v. Campbell, 71 M.J. 19 (C.A.A.F. 2012), holding 1) there is only one form of multiplicity, that which is aimed at protection against double jeopardy; 2) that if an offense is multiplicitious for sentencing it must be necessarily multiplicitious for findings as well, 3) that charges are not required to be dismissed or merged based on an unreasonable multiplication of charges, and 4) that the military judge has discretion at sentencing to merge specifications and to not set the maximum punishment based on the aggregation of the maximum punishments for each separate offense.

United States v. Ballan, 71 M.J. 28 (C.A.A.F. 2012), holding that the substantial rights of the accused were not prejudiced where the military judge erred in accepting the accused's guilty plea to a specification under Article 134, UCMJ, that did not explicitly or by necessary implication contain a terminal element.

United States v. Weeks, 71 M.J. 44 (C.A.A.F. 2012), holding that the accused's conduct in using the victims' checking account information to create electronic checks through telephone calls to the retailer's automated bill pay system produced a "writing" necessary to support a conviction for forgery by uttering, however because the accused did not falsely make a writing, his conviction for forgery could not stand.

United States v. Watson, 71 M.J. 54 (C.A.A.F. 2012), holding that the accused's deliberate concealment of his inpatient psychiatric treatment from his military recruiter violated the fraudulent enlistment article of the UCMJ, although the misrepresentation concerned a matter that could have been waived by the service, and was not an absolute bar to enlistment.

United States v. Nash, 71 M.J. 83 (C.A.A.F. 2012), holding that the military judge was required to excuse a court-martial member on the basis of actual bias where that member sought to ask the accused's wife during her testimony in a prosecution arising from the accused's alleged sexual misconduct with her daughters whether she believed it was possible for a pedophile to be rehabilitated.

United States v. Hayes, 71 M.J. 112 (C.A.A.F. 2012), holding that evidence that the accused consumed alcohol in a public place while under the age of 21, in violation of Nevada law, was insufficient to support a conviction for dereliction of duty absent evidence that the accused had a military duty to obey Nevada state law generally.

United States v. Dease, 71 M.J. 116 (C.A.A.F. 2012), holding that an accused who consented to a urinalysis during a drug investigation retained an ongoing privacy interest in his urine sample after it was seized and before it was searched, and therefore could assert this privacy interest by withdrawing his consent to search before the sample was tested.

United States v. Easton, 71 M.J. 168 (C.A.A.F. 2012), holding that Article 44(c), UCMJ, which provides that double jeopardy attaches in a court-martial when evidence is introduced was an appropriate exercise of Congressional power under Article I of the Constitution to regulate the land and naval forces, notwithstanding the holding of the Supreme Court in *Crist v. Bretz*, 437 U.S. 28 (1978), that jeopardy attaches when a jury is empaneled and sworn in state and federal courts.

United States v. Humphries, 71 M.J. 209 (C.A.A.F. 2012), holding that in this contested case, the failure to allege the terminal element of Article 134, UCMJ, in an adultery specification was plain and obvious error resulting in material prejudice to the accused's substantial right to notice of the charge against him.

United States v. Behenna, 71 M.J. 228 (C.A.A.F. 2012), holding that the conviction of an Army officer for the murder of a person suspected of attacks on Coalition Forces in Iraq would be affirmed even though the military judge's instruction on self-defense was erroneous where the error was harmless beyond a reasonable doubt, and further holding that even the Government allegedly failed to disclose favorable information to the defense, it was immaterial in regard to findings and sentencing because the evidence substantially overlapped with other evidence presented by other defense experts.

United States v. Ali, 71 M.J. 256 (C.A.A.F. 2012), holding that court-martial jurisdiction existed over an accused under Article 2(a)(10), UCMJ, where the accused was a civilian foreign national contractor working as an interpreter in Iraq and was serving with or accompanying a military unit in the field, even though his employment had been terminated and he was in confinement awaiting trial; such an accused who was tried outside of the United States for a crime committed outside the United States did not have a substantial connection with the United States that entitled him to Fifth and Sixth Amendment protections.

United States v. Vela, 71 M.J. 283 (C.A.A.F. 2012), holding that the evidence was sufficient to establish that the accused had the requisite specific intent and knowledge to be convicted of aiding and abetting the wrongful placement of a weapon on the remains of an Iraqi national, and that the prosecution of the accused was not based on his immunized testimony in violation of his Fifth Amendment privilege against self-incrimination.

**USCAAF STATISTICAL REPORT
SEPTEMBER 2011 TERM OF COURT**

CUMULATIVE SUMMARY

CUMULATIVE PENDING SEPTEMBER 1, 2011

Master Docket	71
Petition Docket	87
Miscellaneous Docket.	<u>0</u>
TOTAL	158

CUMULATIVE FILINGS

Master Docket	206
Petition Docket	802
Miscellaneous Docket.	<u>34</u>
TOTAL	1,042

CUMULATIVE DISPOSITIONS

Master Docket	254
Petition Docket	820
Miscellaneous Docket.	<u>30</u>
TOTAL	1,104

CUMULATIVE PENDING SEPTEMBER 1, 2012

Master Docket	23
Petition Docket	69
Miscellaneous Docket.	<u>4</u>
TOTAL	96

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	30	3	221	254
Petition Docket . . .	0	0	820	820
Miscellaneous Docket	<u>0</u>	<u>0</u>	<u>30</u>	<u>30</u>
TOTAL	30	3	1,071	1,104

MEMORANDUM/ORDER SUMMARY

Orders

Denying petitions for grant of review	615
Petitions dismissed	1
Granting withdrawal of petition for grant of Review	2
Granting petitions for grant of review with briefs	48
without briefs	88
Granting petitions for grant of review and affirming the decision of the lower court ...	25
Granting petitions for grant of review and affirming in part and reversing in part ..	3
Granting petitions for grant of review and remanding	38
Deciding previously granted cases (trailer cases)	166
Denying petitions for extraordinary relief and writ-appeal petitions	25
Granting petitions for extraordinary relief and writ-appeal petitions	2
Granting withdrawal of petitions for extraordinary relief and writ-appeal petitions	1
Dismissing petitions for extraordinary relief and writ-appeal petitions	2
Granting motions	289
Denying motions	47
Deciding granted cases	<u>2</u>
Total	1,354

MASTER DOCKET SUMMARY

FILINGS

Petitions granted from the Petition Docket .	198
Certificates filed	8
Mandatory appeals filed.	0
Remanded/Returned cases.	<u>0</u>
TOTAL	206

DISPOSITIONS

Decisions affirmed	105
Reversed in whole or in part	149
Granted petitions vacated	0
Certificate Withdrawn	<u>0</u>
TOTAL	254

PENDING

Awaiting briefs	10
Awaiting oral argument	8
Awaiting lead case decision (trailer cases) .	5
Awaiting final action	<u>0</u>
TOTAL	23

PETITION DOCKET SUMMARY

FILINGS

Petitions for grant of review filed	802
Petitions for new trial filed	0
Returned cases	<u>0</u>
TOTAL	802

DISPOSITIONS

Petitions for grant of review denied	615
Petitions for grant of review granted	202
Petitions for grant of review withdrawn ...	2
Petitions for grant of review dismissed ...	<u>1</u>
TOTAL	820

PENDING

Awaiting pleadings	13
Awaiting Central Legal Staff review	24
Awaiting final action	<u>32</u>
TOTAL	69

MISCELLANEOUS DOCKET SUMMARY

FILINGS

Writ appeals sought	17
Writs of habeas corpus sought	3
Writs of error coram nobis sought	2
Other extraordinary relief sought	<u>12</u>
TOTAL	34

DISPOSITIONS

Petitions or appeals denied	25
Petitions or appeals granted	2
Petitions or appeals dismissed	2
Petitions or appeals withdrawn	1
Petitions or appeals remanded	<u>0</u>
TOTAL	30

PENDING

Awaiting briefs	0
Awaiting staff review	2
Awaiting final action	<u>2</u>
TOTAL	4

PETITIONS FOR RECONSIDERATION

ALL CASES

Begin Pending	0
Filed	<u>12</u>
TOTAL	12
End Pending	0

DISPOSITIONS

Denied	11
Granted	1
Dismissed	<u>0</u>
TOTAL	12

MOTIONS

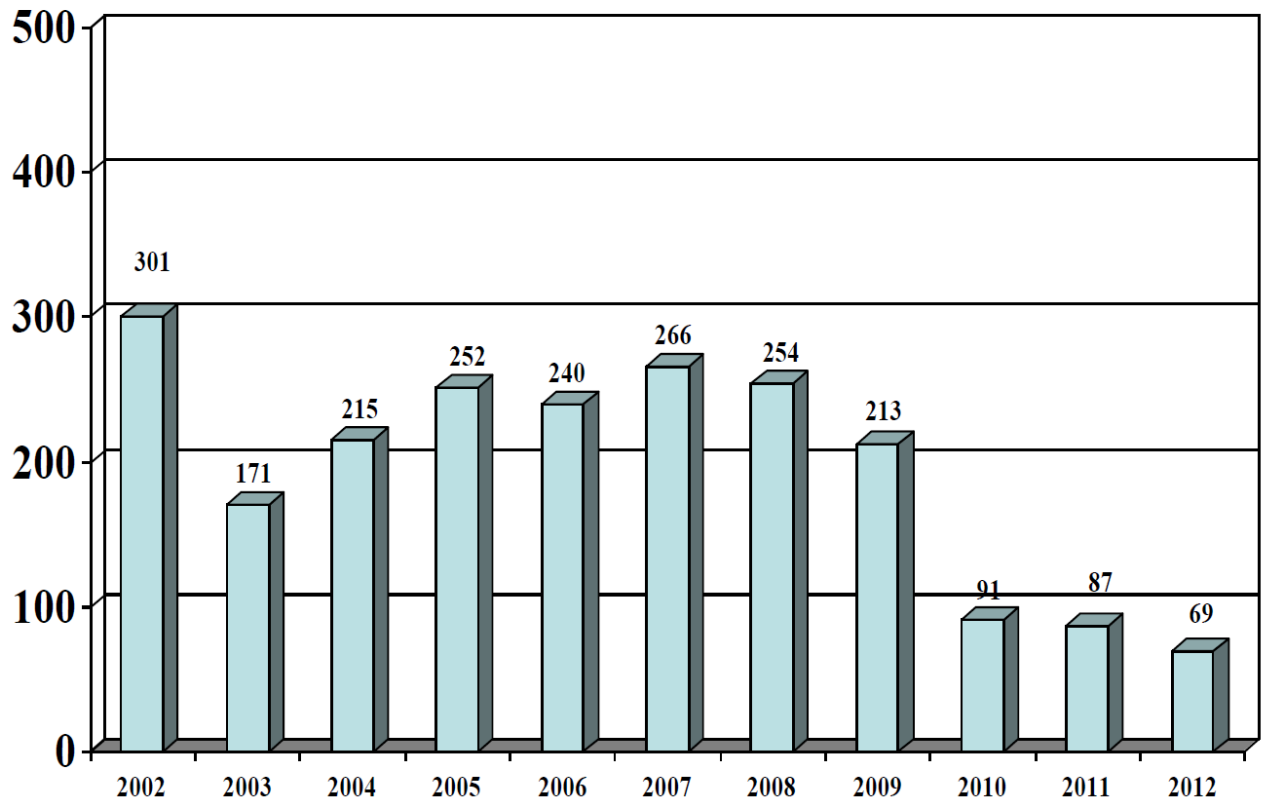
ALL MOTIONS

Begin Pending	4
Filed	<u>338</u>
TOTAL	342
End Pending	6

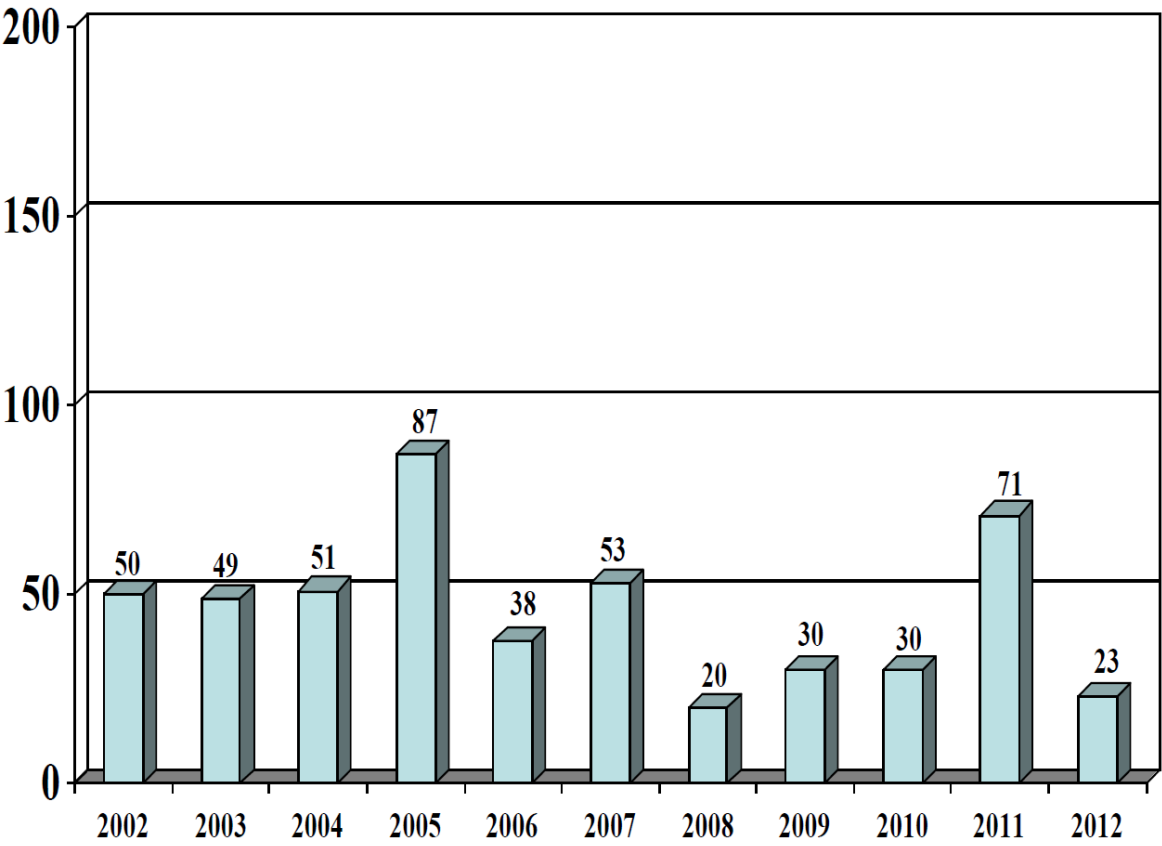
DISPOSITIONS

Granted	289
Denied	<u>47</u>
TOTAL	336

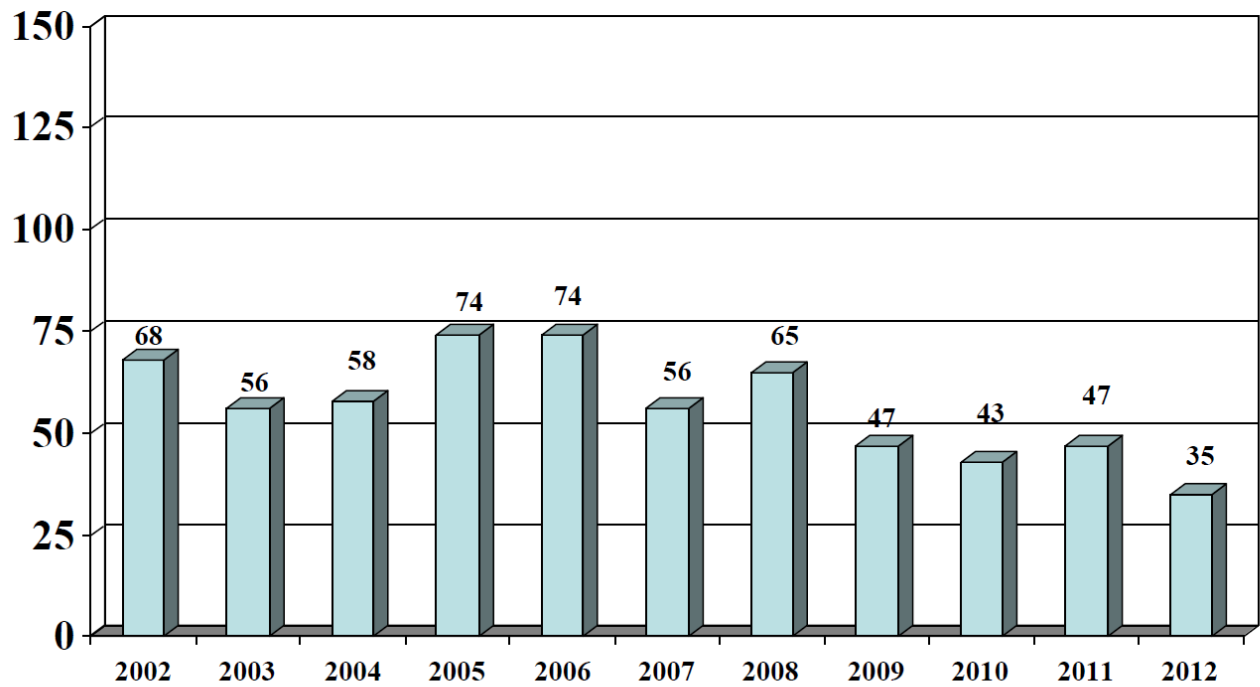
Petition Docket Term End Pending



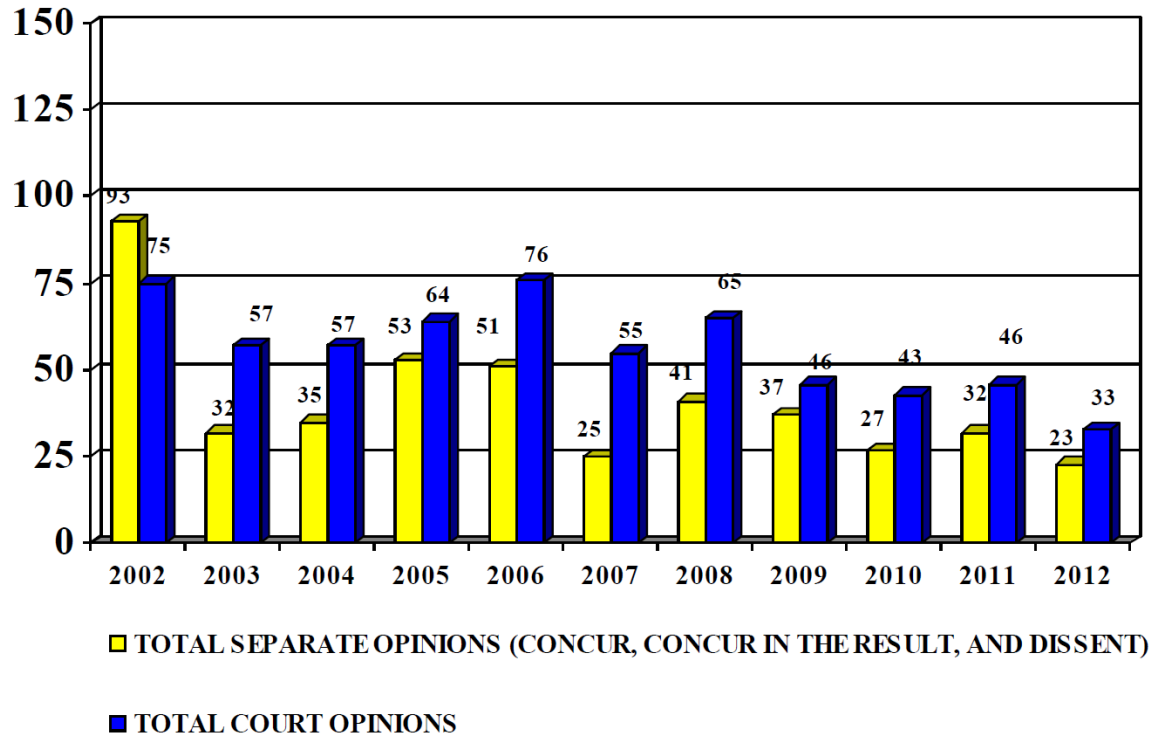
Master Docket Term End Pending



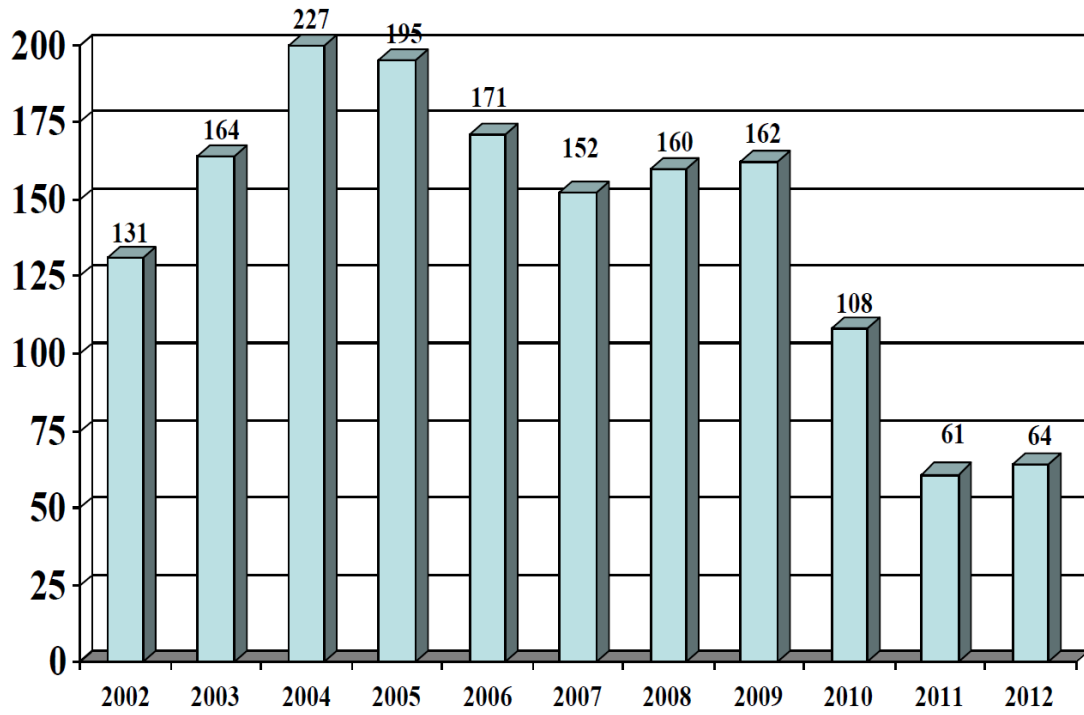
Oral Arguments Per Year



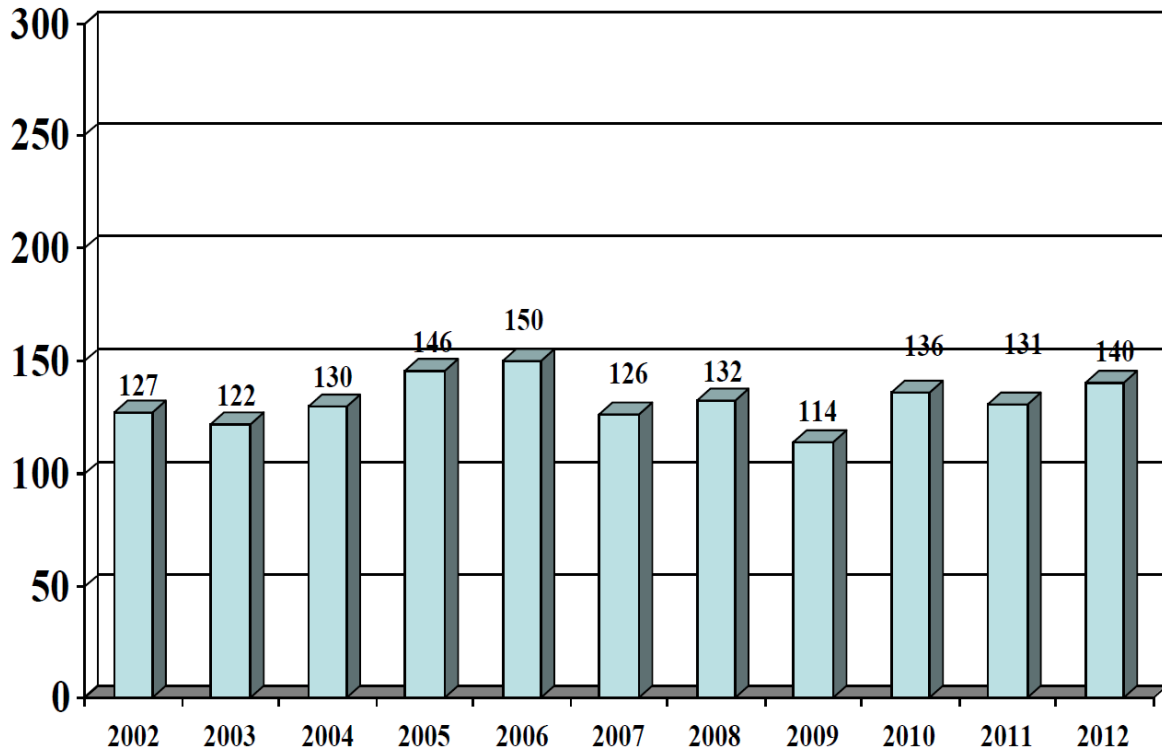
Total Opinions Per Year



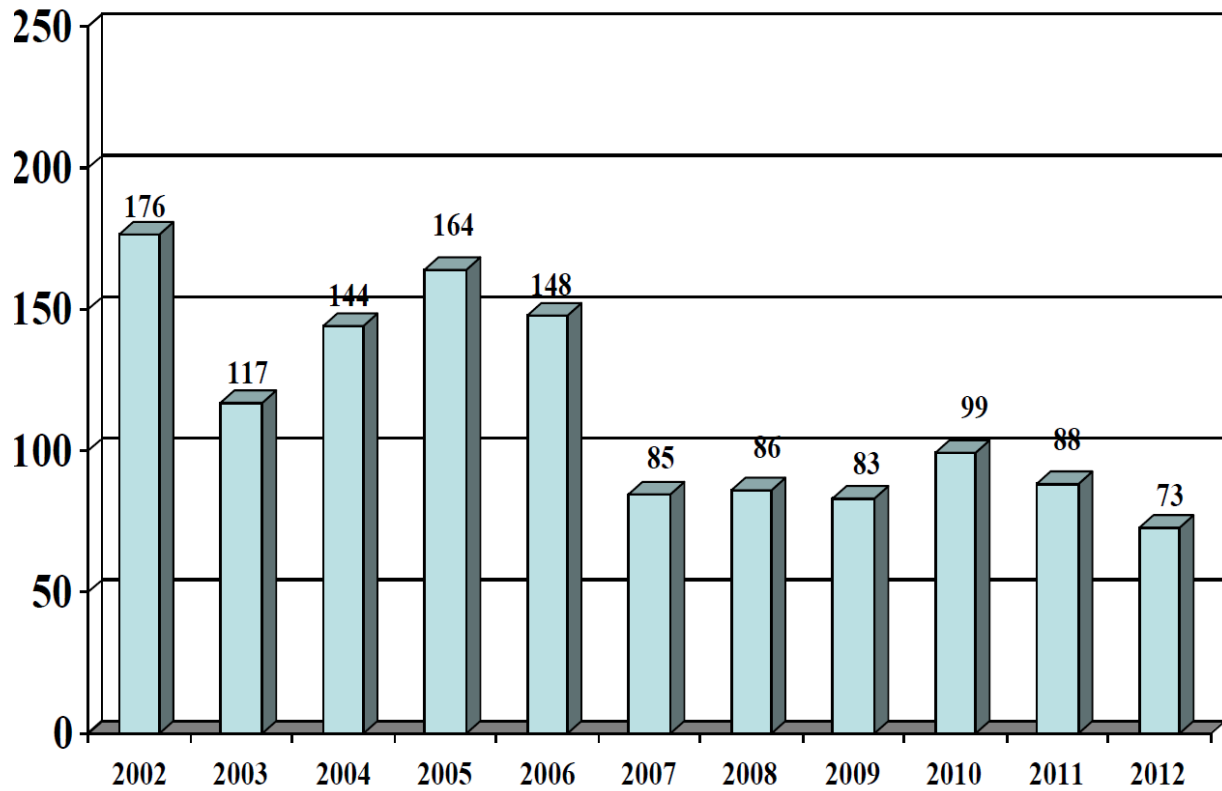
Days from Petition Filing to Grant



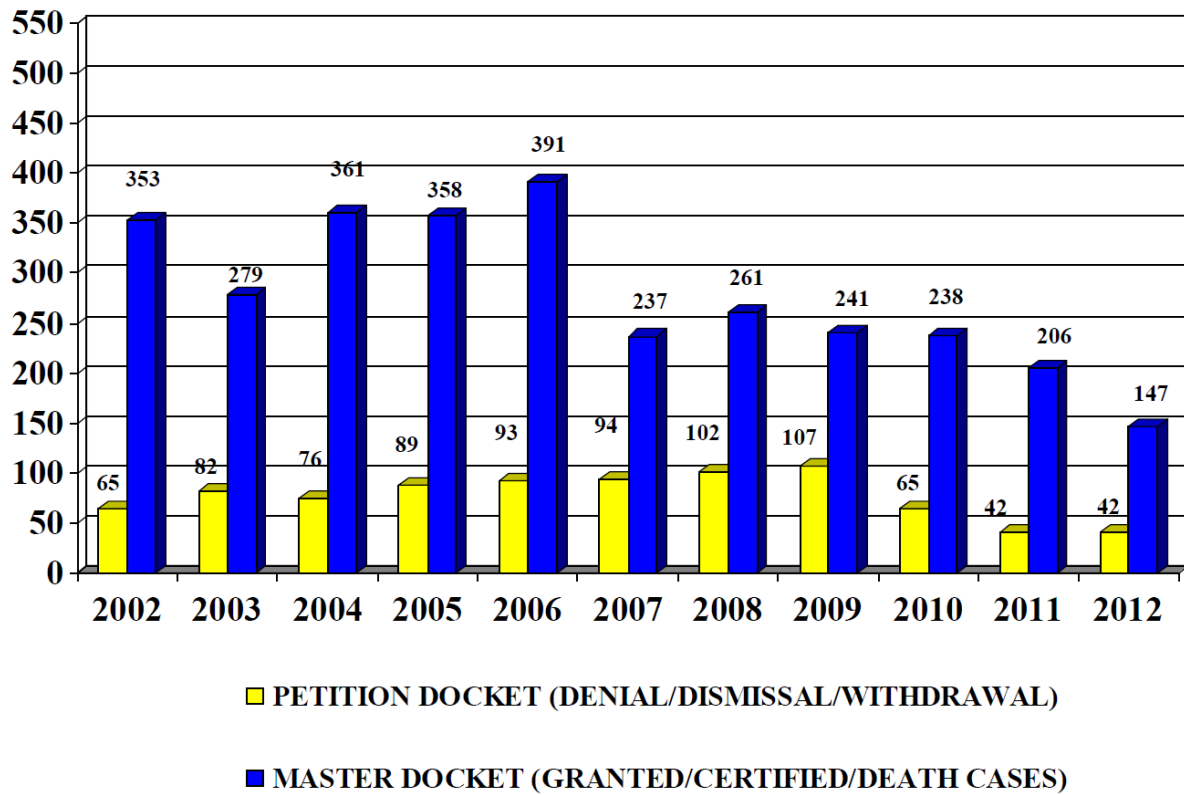
Days from Petition Grant to Oral Argument



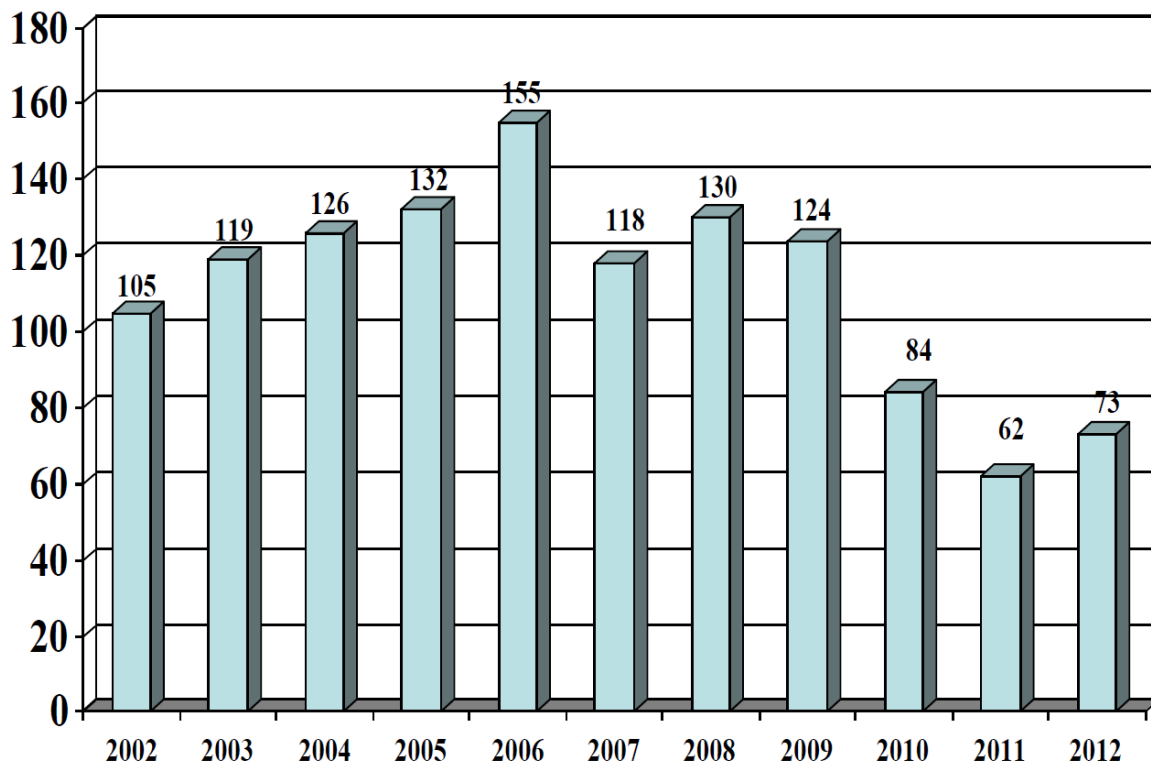
Days from Oral Argument to Final Decision



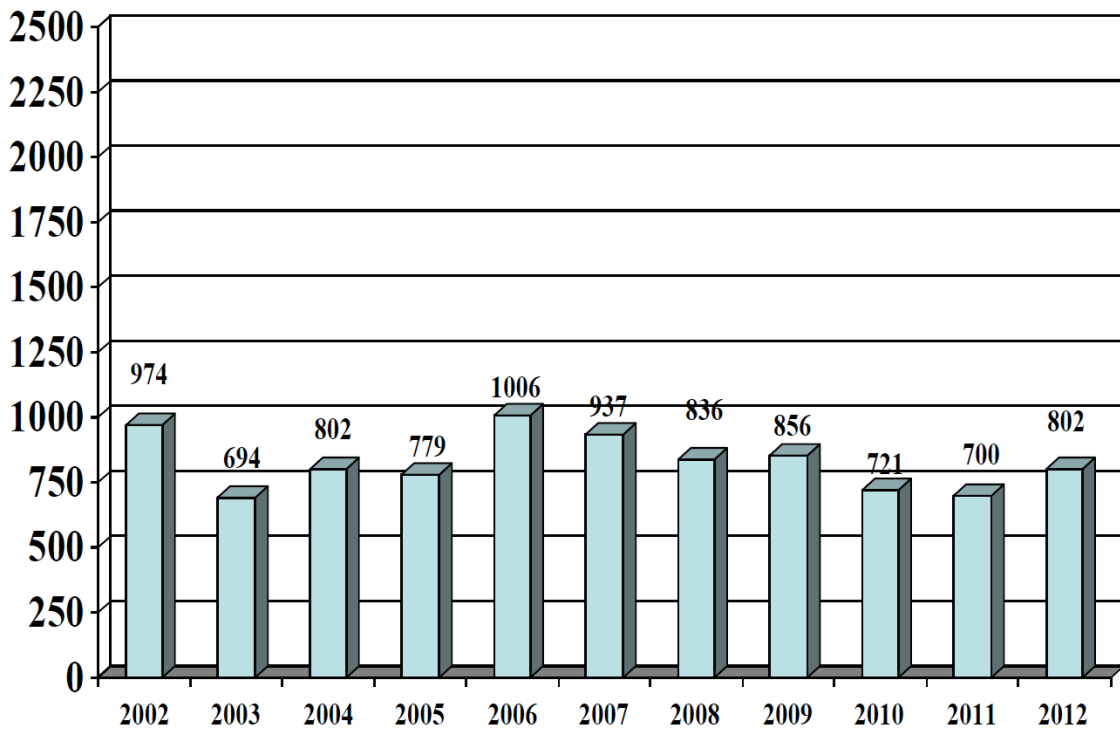
Days from Petition Filing to Final Decision



Days from Filing to Final Decision in All Cases



Total Petitions Filed Per Year



SECTION 3

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE
ARMY

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY
OCTOBER 1, 2011 TO SEPTEMBER 30, 2012

During fiscal year (FY) 2012, The Judge Advocate General (TJAG) and senior members of his staff advised Army leadership on significant issues pertaining to military justice, to include high visibility cases and investigations. The Office of The Judge Advocate General (OTJAG) continued to implement programs improving both the administration of military justice and advocacy skills of military justice practitioners. In furtherance of TJAG's duties under Article 6(a), Uniform Code of Military Justice (UCMJ), TJAG and senior leaders in the Corps visited more than 26 installations and commands in the United States and overseas, to include forward areas, discussing military justice issues with commanders and their respective Staff Judge Advocates. The JAG Corps remains committed to sustaining excellence in the practice of military justice through a variety of initiatives and programs.

On 2 January 2013, the President signed the National Defense Authorization Act (P.L. 112-239), which amended Article 146, UCMJ (10 U.S.C. §846). A new subparagraph was added requiring additional information not previously required in this annual Code Committee Report. The newly required information will be included in the FY 2013 Code Committee Report.

OTJAG CRIMINAL LAW DIVISION

The Criminal Law Division (CLD), OTJAG has two primary missions. First, the CLD advises TJAG on military justice policy, legislation, opinions, and related criminal law actions. Specific responsibilities include promulgating military justice regulations; reviewing other Army Regulations for legal sufficiency; providing legal opinions to the Army Staff related to military justice matters; producing and updating military justice publications to include the Manual for Courts-Martial (Manual); conducting statistical analysis and evaluation of trends that affect military justice within the Army; providing legal advice on military corrections issues, the Army drug testing program, sexual assault and victim assistance policies and federal prosecutions; representing the Army on the Joint Service Committee (JSC) on Military Justice; responding to congressional inquiries and requests under the Freedom of Information Act; and conducting reviews of court-martial cases

under Article 69 of the UCMJ to ascertain legal sufficiency and sentence appropriateness and to identify issues that may require corrective action by TJAG.

Second, the CLD provides comprehensive policy guidance and resources to military justice practitioners in the field, which includes a special emphasis on training (including training related to sexual assault litigation) and programs designed to guarantee long term military justice proficiency across all grades. CLD facilitates the active integration and synchronization of training by coordinating quarterly training and budget meetings with the Corps' key training arms: Trial and Defense Counsel Assistance Programs (TCAP and DCAP) and TJAGLCS. The CLD also facilitates active information flow to and from the field using web-based media.

In July 2012, the Secretary of Defense created the Defense Legal Policy Board (DLPB) as a civilian advisory committee to review incidents of U.S. military-caused death, injury, or abuse of non-combatants in Iraq and Afghanistan since 2001. The board's mandate is to assess whether certain reforms are necessary and to evaluate generally how allegations are reported, investigated, and disposed of within the military. The DLPB is required to issue a report of its findings and recommendations in April 2013. The Criminal Law Division has provided two Judge Advocates to support the DLPB process.

Traditionally-reported CLD actions for the last three fiscal years are listed below. Article 69 and other reviews decreased in FY12 due to other mission requirements (e.g.: support to DLPB and sexual assault initiatives).

	2010	2011	2012
Congressional and other inquiries	132	139	150
Officer Dismissals	24	21	16
Article 69 and other reviews	136	130	40
Freedom of Information/Privacy Act	31	45	11

Now in its third full year, the Special Victim Prosecutor (SVP) program has 23 positions, all of which will be filled in the summer of 2013. Special Victim Prosecutors continue to raise the level of trial advocacy across the entire JAG Corps (JAGC). The Army also began efforts to formalize a Special Victim Capability (SVC) to further enhance our ability to prosecute sexual assault cases. The SVC was subsequently codified in the FY13 NDAA. The SVC teams will be made up of SVPs, Criminal Investigation Division Sexual Assault

Investigators (SAI), Victim Witness Liaison (VWL), and dedicated paralegals. The SVC will work cooperatively to ensure thorough, professional investigations and prosecutions, while providing compassionate and immediate assistance to victims.

CLD conducts a bi-annual Criminal Law Synchronization Meeting with key criminal law stakeholders such as TJAGLCS, TCAP, DCAP, Defense Appellate Division, Government Appellate Division, and the U.S. Army Trial Judiciary. These synchronization meetings were invaluable in bringing the JAGC criminal law leaders together - not only to coordinate criminal law training across the JAGC, but also to discuss new criminal law initiatives that could improve and sustain the practice of military justice in the Army. Synchronization provides unity of effort and situational awareness on all criminal law training across multiple venues - civilian and military - allowing trial advocates to more easily plan for their attendance at military justice training events.

In June 2011, TJAG reviewed and revised the Military Justice Skill Identifier program. The purpose of the program is to help identify and sustain expertise and to assist in the selection of personnel for key military justice positions. In FY 2012, 135 Judge Advocates were awarded skill identifiers, a 20% increase from the 2011 total of 108. Currently there are 397 basic, 149 advanced, 122 expert, and 70 master skill-identified judge advocates.

The Army chaired the Joint Services Committee (JSC) during FY12. In December 2011, Congress passed the FY 12 National Defense Authorization Act (NDAA) amending Article 120, which became effective 28 June 2012. The JSC spent much of the year researching and preparing a new Executive Order to update the Manual in conformity with the FY12 NDAA. The JSC also continued to shepherd the previous Executive Order updating the Military Rules of Evidence. As of January 2013, both proposed Executive Orders are yet to be approved.

The Manual was reprinted in 2012, which included changes implemented by EO 13468, EO 13552, and EO 13593, as well as 2009 NDAA and 2012 NDAA statutory amendments. The JSC is planning to reprint the Manual again in early 2014 to capture the revised MRE; new Articles 120, 120b, and 120c; and all related conforming changes included in the two Executive Orders addressed above.

The JAGC Information Technology Division (ITD) continued to improve military justice web-based programs this year. At the

forefront of these improvements is Military Justice Online (MJO) which allows end-users to generate military justice actions for courts-martial, non-judicial punishment, administrative separations, and administrative reprimands. In 2012, MJO's capabilities were significantly expanded through the dedication of an ITD team specifically assigned to making MJO a better application. With the addition of the ability to create automated customizable reports, trial counsel and paralegals can now reduce the time spent in creating the report and focus on advocacy. ITD, CLD, and KM engaged in a sustained effort to increase MJO use through on-site training and integration into officer and enlisted training doctrine. ITD representatives also trained more than 200 personnel at several locations and worked closely with TJAGCLS, NCOA, and TRADOC personnel to ensure MJO training is fully integrated in the institutional learning environment.

The Trial Advocates Tracking System (TATS), a web-based database that tracks the number of active trial and defense counsel, grew to include 712 Judge Advocates. TATS provides key data on the experience and training of trial advocates and helps in assessing military justice assignments, personnel management, and required training. Using TATS as a database, CLD fully implemented the Trial Advocate Resource Library (TARL), which includes basic criminal practice and military justice reference books that are key to the development and growth of young advocates. First-time trial and defense counsel are eligible to receive the TARL.

In 2011 an additional officer was attached to CLD from the Knowledge Management (KM) Division. KM consists of a Chief Knowledge Officer (O6), Deputy Knowledge Officer (CW5), and six KM attorney positions (O3) assigned to the core JAGC divisions. The KM mission is to promote an integrated JAGC approach to identifying, retrieving, evaluating, and sharing the Corps' tacit and explicit knowledge assets to meet mission objectives. The Criminal Law KM attorney oversees the addition of discussion and documents to the milBook website and acts as a liaison between CLD, the field, and the KM Division.

THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL (TJAGLCS)

The cornerstone mission of the Criminal Law Department of The Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia is to develop, improve, and sustain

excellence in the practice of military criminal law. The need to hone these skills in the context of a joint, expeditionary force at war is paramount and occupies center stage in all curriculum review. Instruction touches a wide range of subjects from substantive criminal law to technical litigation skills, and is fully integrated into the overall Judge Advocate General's Corps-wide developmental cycle for military justice practice. At the same time, our professors provide critical reach-back capability for military justice practitioners of all Services.

The Department teaches a variety of student cohorts: initial-entry Judge Advocates in the Basic Course; newly-assigned trial advocates in the Intermediate Trial Advocacy Course; mid-level Judge Advocates in the Graduate Course, the Military Justice Managers Course, the Judge Advocate Officer Advanced Course; the Military Judge Course; the Senior Officer Legal Orientation Course; and the General Officer Legal Orientation Course (GOLO). Except for the GOLO course provided individually to General Officers, all courses are taught using a sexual assault fact pattern and are synchronized with other JAG Corps training agencies.

This past year, the Department retired the Criminal Law Advocacy course (CLAC), which was a one-week basic trial advocacy course offered four times per year. The Department also launched its replacement, the two-week Intermediate Trial Advocacy Course (ITAC). This course was designed to follow and build on what the students learned in the Basic Course and either the New Prosecutor Course (offered by the Trial Counsel Assistance Program) or Defense Counsel 101 (offered by the Defense Counsel Assistance Program). In the ITAC, students learn how to conduct sophisticated case analysis of a non-stranger sexual assault, conduct *voir dire*, prepare instructions, interview a sexual assault victim, conduct a direct and cross examination of a sexual assault victim, interview and conduct direct examinations of expert witnesses, and use technology and visuals in opening story and closing argument. For the victim interviewing exercise, the Department uses Graduate Course students to play the role of the victim. The ITAC students interview those role players in the first week and then conduct a direct and cross of those same role players in the second week. For the expert witness exercise, the Department brings in sixteen outside experts. Two are assigned to each small group and the students then interview, qualify and conduct examinations of those real-life experts.

The Department also retired the New Developments Course as part of an overall, cross-department review of courses offered at The Judge Advocate General's School. Case updates are now provided shortly after cases are published on the Department's blog called "31(b)log." The Department also increased the amount of streaming video offered on the Department's webpage. Last, one of the Department's professors, in conjunction with another Judge Advocate at Fort Huachuca, Arizona, developed an application for the 2012 MCM for use on both Apple and Android platforms.

U.S. ARMY JUDICIARY

The U.S. Army Judiciary consists of the U.S. Army Court of Criminal Appeals, Office of the Clerk of Court and the Trial Judiciary.

U.S. Army Court of Criminal Appeals/Office of the Clerk of Court

The Office of the Clerk of Court receives records of trial for review by the U.S. Army Court of Criminal Appeals (ACCA) under Article 66, UCMJ, appeals under Article 62, UCMJ, and Petitions for Extraordinary Relief. More than 750 records of trial and over 1,275 motions and briefs were referred to one of the three judicial panels of ACCA for appellate review. The Office of the Clerk of Court served ACCA decisions upon all personnel not in confinement and closed over 820 courts-martial cases during the past year.

ACCA maintains a website at <https://www.jagcnet.army.mil/acca>. ACCA's published opinions and unpublished memorandum opinions and summary dispositions can be downloaded from the website. In FY12, Clerk's Office staff uploaded more than 150 opinions and decisions of the Court to the website. Applications for admission to the bar of ACCA, Rules of the Court, notices, and forms are available on the website, as is information concerning how to request records under the Freedom of Information and Privacy Acts.

The Office of the Clerk of Court receives inquiries about courts-martial convictions from federal and state investigative agencies, law enforcement offices, victims, military historians, media, veterans, and convicted Soldiers. Because the Brady Bill requires the processing of handgun applications within three workdays, the office also receives expedited requests from the Federal Bureau of Investigation's National Instant Criminal Background Check System.

The Clerk of Court is the custodian of the Army's permanent courts-martial records (general courts-martial and those special courts-martial resulting in an approved bad-conduct discharge) dating from 1977. The 2011 transfer of records of trial for the period 1940-1976 to the National Archives and Records Administration in St. Louis, MO, has resulted in an overall decrease in the number of Freedom of Information Act requests that the Clerk's Office receives. Privacy Act requests have largely remained constant over the last three fiscal years while requests from other federal agencies, which are now tracked separately, have increased.

U.S. Army Clerk of Court requests for information for the last three fiscal years are as follows:

	FY10	FY11	FY12
Freedom of Information Act	559	725	297
Privacy Act	100	122	113
Certified Copies of Convictions	185	91	75
Requests from Federal Agencies	0	112	245
Total Number of Requests	844	1050	730

The Office of the Clerk of Court also provides assistance to overseas court-martial jurisdictions in processing requests for non-DOD civilians to travel overseas to testify at trials. This includes making travel arrangements, assisting with requests for expedited passport processing, and issuing invitational travel orders. In FY12, the paralegal responsible for the Overseas Witness Travel Program provided assistance to ten civilian witnesses.

The Management and Program Analyst continued to provide vital support to the Office of the Clerk of Court and other users of the Army Court-Martial Information System (ACMIS) in FY12. He designed, developed, and implemented over 380 timely and accurate ad hoc reports in response to requesters in addition to producing and maintaining ten monthly and quarterly reports.

The Office of the Clerk of Court is responsible for accepting applications for membership in the bar of ACCA and arranges for the admission of military and civilian attorneys. In FY12, the Clerk's Office admitted twenty-six new counsel to the bar of the Court and maintained accurate records of attorney disciplinary actions.

The Clerk of Court provided instruction to individuals attending the JAG Corps' Graduate Course and military justice courses at TJAGLCS. The Clerk also provided training for appellate counsel on promulgating orders. The Clerk's staff prepared and presented briefings on post-trial matters to newly assigned staff judge advocates.

Trial Judiciary

The 1180 courts-martial tried during this fiscal year 2012 reflect nearly 100 more courts-martial tried than in 2011. Combine that with the trends listed below, and Army judges are faced with a markedly increased workload:

1) Cases are taking longer to try (78% longer in 2012 than 2002 for GCMs and 61% longer in 2012 than 2002 for SPCMs);

2) More cases are contested (103% increase in 2012 over 2002 for GCMs and 60% increase in 2012 over 2002 for SPCMs);

3) More cases are tried to panels (38% increase in 2012 over 2002 for GCMs but a 12% decrease in 2012 over 2002 for SPCMs); and

4) More time is spent on motions practice (76% increase in 2012 over 2002 for GCMs and 95% increase in 2012 over 2002 for SPCMs).

Army trial judges - both active and reserve component - continued to preside over cases in deployed environments, with 32 general and special courts-martial tried in Iraq, Kuwait and Afghanistan during this period, resulting in a grand total of over 952 since May 2003.

The Trial Judiciary continued its ongoing effort to keep current DA Pamphlet 27-9, Military Judges' Benchbook (Benchbook), approving eleven changes to that publication addressing:

(1) Article 134, Clauses 1 and 2, based on United States v. Fosler, 70 M.J. 225 (C.A.A.F. 2011);

(2) Instructions on the recently-enacted changes to Article 120, UCMJ, effective 28 June 2012; and

(3) A standard inquiry for military judges when lack of mental responsibility is raised during a providence inquiry.

A constantly updated version of the Benchbook, along with links to the electronic version of that updated Benchbook, court dockets, other judiciary related documents and resource materials, can be found on the Trial Judiciary homepage at www.jagcnet.army.mil/usatj.

Military Judges continued playing an active role in their military and civilian communities, speaking to grade and high school audiences, local bar associations and civic organizations, law school classes and state bar continuing legal education courses. Other notable achievements by the Trial Judiciary included:

*The 55th Military Judge Course graduated 43 Army, Navy, Marine Corps, Air Force and Coast Guard students in May and invested them as new military judges.

*COL Andy Efaw mobilized and deployed to Kuwait from April to December 2012, presiding as a military judge over courts-martial convened throughout Afghanistan and Kuwait.

U.S. ARMY TRIAL DEFENSE SERVICE

During FY 2012, approximately 485 active and RC judge advocates were serving in the U.S. Army Trial Defense Service (TDS) worldwide, including 155 on active duty; 207 assigned to one of three Legal Operations Detachments-Trial Defense (LOD-TD); and 123 in the Army National Guard. TDS provides high quality, professional defense services to Soldiers across the Army. Counsel are stationed at 52 active duty installations worldwide and 105 reserve locations.

TDS detailed one or more counsel to every Army special and general court-martial referred in FY 2012, defending Soldiers facing the entire range of allegations under the UCMJ. In addition, TDS counsel assisted Soldiers facing other military justice related adverse administrative actions. The caseloads were as follows this year:

General and Special Courts-Martial:	1,102
Administrative Boards:	1,765
Nonjudicial Punishment:	38,105
Military Justice Consultations:	18,659

TDS provided defense services to Army personnel deployed to the CENTCOM Area of Responsibility. The TDS CENTCOM Region has

four field offices: one at Camp Arifjan, Kuwait and three in Afghanistan at Bagram Airfield, Camp Phoenix (Kabul), and Kandahar Airfield. The Regional Defense Counsel is an active duty Lieutenant Colonel who serves as the senior supervisory TDS attorney in CENTCOM. She is co-located with the Bagram Airfield field office.

In 2012, the Defense Counsel Assistance program (DCAP), staffed by four judge advocates and two civilian Senior Counsel/Trainers, continued to provide timely and exceptional training and advice to TDS counsel worldwide. DCAP excelled at providing quality instruction through the use of joint training with the Trial Counsel Assistance Program (TCAP). Together, they organized and taught four Advanced Trial Communications Courses, the Sexual Assault Trial Advocacy Course (SATAC), the Expert Witness Symposium, and the Joint Advocacy Symposium.

In addition to these joint training events, DCAP published a revised DC 101 Deskbook and distributed it to all newly assigned TDS counsel at six DC 101 training events conducted in the United States and Europe. DCAP is also developing a DC 201 Deskbook to address more advanced subjects. Furthermore, DCAP organized and taught six Annual and Regional TDS training events and facilitated attendance by TDS counsel at non-DoD courses in areas such as sexual assault and capital litigation.

DCAP also responds to requests for advice and assistance submitted from counsel in the field. DCAP proactively ensured that TDS counsel kept abreast of all major developments through a series of updates called "DCAP Alerts" and "DCAP Sends." DCAP's SharePoint website and the launch of the KM milBook social media website further allowed free flowing discussion and collaboration among counsel on critical issues. Finally, DCAP also worked with the Defense Appellate Division to assist TDS counsel in the preparation and filing of extraordinary writs before the Army Court of Criminal Appeals and United States Court of Appeals for the Armed Forces.

TDS personnel in the Army Reserve are now assigned to three separate units. The 22nd LOD-TD consists of 67 judge advocates, one warrant officer, and 23 enlisted paralegals. The 22nd LOD-TD area of responsibility includes Northeast Asia and the United States west of the Mississippi River. In 2012, the 22nd LOD-TD mobilized six judge advocates and three paralegals for service in CONUS, Europe, and CENTCOM. In addition, it represented over 1,500 Reserve Component Soldiers facing military justice and adverse administrative actions.

The 154th LOD-TD transformed into two separate LODs as of 1 May 2012, becoming the 16th LOD-TD, which encompasses the Northeast, Upper Midwest and Europe, and the 154th LOD-TD, which covers the Southeast, and Lower Mississippi River valley and Puerto Rico. The 154th LOD-TD, headquartered in Alexandria, VA, is comprised of 72 judge advocates, 24 enlisted Soldiers and one warrant officer. In 2012, the 154th LOD-TD mobilized thirteen judge advocates and nine paralegals for service in CONUS, Europe, and CENTCOM. Additionally, the 154th LOD-TD represented over 1,500 reserve component Soldiers facing military justice and adverse administrative actions, conducted approximately 200 administrative hearings, and represented seven active component Soldiers facing courts-martial.

The 16th LOD-TD, headquartered at Fort Hamilton, NY, is comprised of 68 judge advocates, two warrant officers, and 21 enlisted paralegals. Since June 2012, the 16th LOD-TD has handled 40 board actions and resolved over 250 cases. In 2012, the 16th LOD-TD mobilized or deployed seven Soldiers for service in CONUS and CENTCOM.

The Army National Guard (ARNG) TDS consists of 123 judge advocates, one civilian legal administrator, and 31 enlisted paralegals stationed in 46 states and territories. ARNG TDS supports all 54 of the states, territories, and the District of Columbia. In 2012, five ARNG TDS regions conducted National Guard TDS training, and with the support of DCAP, ARNG TDS conducted its first DC 101 training course. State courts-martial continued at a modest pace with three states conducting a total of five general and special courts-martial. One of the states exercised new legislative authority to conduct its first court-martial in recent history. In other matters, ARNG TDS counsel represented more than 3,200 ARNG Soldiers and deployed two TDS counsel and one paralegal NCO to the CENTCOM AOR.

GOVERNMENT APPELLATE DIVISION

The U.S. Army Government Appellate Division (GAD), with twenty-three active duty and four Individual Mobilization Augmentee military attorneys, represents the United States before the Army Court of Criminal Appeals (ACCA), the Court of Appeals for the Armed Forces (CAAF), and the U.S. Supreme Court in appeals by Soldiers convicted at courts-martial with an adjudged sentence of either a punitive discharge or confinement for one year or more. GAD also represents the United States before ACCA, CAAF, and the Supreme Court in government appeals

from courts-martial and petitions for extraordinary relief. Additionally, GAD oversees the operations of the Trial Counsel Assistance Program (TCAP).

During 2012, GAD filed 540 briefs at ACCA and 377 responses to petitions for grant of review and 15 briefs at CAAF. GAD appellate attorneys argued 44 cases before ACCA and 13 cases before CAAF.

As part of ACCA and CAAF's Project Outreach, GAD argued four cases in the civilian community. The arguments were held at the University of Washington Law School in Seattle, Washington; Valparaiso Law School in Valparaiso, Indiana; George Washington Law School in Washington, D.C.; and Creighton Law School in Omaha, Nebraska. These outreach arguments are important in displaying our military justice system to largely civilian audiences. All four arguments were tremendously successful.

TCAP continued its mission to assist prosecutors in the field. In 2012, this encompassed TCAP's traditional activities such as publishing a quarterly newsletter, answering questions from the field, and conducting training events. This year's training events consisted of fifteen outreach programs at Army installations world-wide, three regional conferences, and thirteen specialty courses (e.g. advanced advocacy, child crimes, and forensics). As in 2011, training was focused on prosecuting sexual assault and domestic violence. Several of the courses were co-hosted with the Defense Counsel Assistance Program (DCAP).

TCAP continued the quarterly iterations of the New Prosecutor Course/Effective Strategies for Sexual Assault Prosecution (NPC/ESSAP), a six-day course focused equally on the fundamentals of military justice and prosecution of sexual assaults. The course is held quarterly to ensure that all new trial counsel attend within three to four months of becoming a trial counsel and to prepare counsel for the new ITAC course taught at the Legal Center and School. The first half of the NPC focuses on ensuring that new trial counsel have a rudimentary grasp of how (technically and tactically) they should move cases through the military justice process. The second three-day block focuses on investigations, charging decisions, and interaction with victims in sexual assault cases.

There continued to be requests from the field for direct TCAP assistance, including assisting in the prosecution of several high profile cases. The support varied from providing a Highly

Qualified Expert (HQE) to assist with trial (from behind the bar), to assigning a TCAP judge advocate as lead counsel.

DEFENSE APPELLATE DIVISION

The Defense Appellate Division (DAD) provides appellate representation to eligible Soldiers and other individuals before the Army Court of Criminal Appeals (ACCA), the Court of Appeals for the Armed Forces (CAAF), and the Supreme Court of the United States. Eligible Soldiers include those convicted at courts-martial where the approved sentence consists of a punitive discharge or confinement for one year or more. DAD attorneys also assist military and civilian Trial Defense Counsel in the preparation and filing of extraordinary writs before the aforementioned courts.

The staff consists of twenty active component Judge Advocates, four civilian paralegals, and one noncommissioned officer serving two branches. As in past years, reserve component Judge Advocates continued to provide critical support and there are two mobilized reserve attorneys serving in the division. DAD was also fortunate to have ten Drilling Individual Mobilization Augmentee (DIMA) Judge Advocates. We also created two critical Capital Litigation DIMA positions.

There were 665 new cases received this year and 568 briefs were filed with ACCA. Of those ACCA filings, 228 raised substantive assignments of error. DAD attorneys also filed 388 cases with CAAF, 147 of which raised substantive assignments of error. Oral arguments were made in 57 cases (44 cases before ACCA and 13 before CAAF). This year DAD attorneys filed five Article 62 appeals; eight writ petitions; and two petitions for writ of certiorari before the Supreme Court.

We handled several notable cases. In *United States v. Ali*, 71 M.J. 256 (C.A.A.F. 2012), the court decided a matter of first impression finding that Mr. Ali, a civilian, was subject to court-martial jurisdiction in Iraq under Article 2(a)(10), UCMJ. This decision is pending a petition for writ of certiorari before the Supreme Court of the United States. In *United States v. Kreutzer*, 70 M.J. 444 (C.A.A.F. 2012), the court ruled that a Soldier under a death sentence overturned on appeal, yet in which convictions remain in effect, was not punished in violation of R.C.M. 305 and Article 13, UCMJ, when the disciplinary barracks failed to remove Kreutzer from death row for 280 days. In *United States v. Akbar*, Army 20050514, one of

two capital cases currently on direct appeal, two Defense Appellate Division attorneys argued the case before the Army Court on February 1, 2012. The argument focused on several constitutional issues including ineffective assistance of counsel. The Army Court affirmed SGT Akbar's findings and sentence in July 2012. On November 26, 2012, appellate counsel filed additional affidavits and other appellate exhibits along with a motion for en banc reconsideration of the decision as it relates to ineffective assistance of counsel. On January 16, 2013, the Army court ordered the government to obtain additional affidavits from trial defense counsel addressing new allegations of ineffective assistance of counsel. The government has until March 17, 2013 to obtain the additional affidavits. Finally, in *United States v. Easton*, 71 M.J. 168 (C.A.A.F. 2012), the Court ruled that Article 44(c), UCMJ, is a constitutional exercise of Congress and the President's authority in the military context to specifically define the point at which jeopardy attaches for purposes of the Fifth Amendment, notwithstanding the Supreme Court's ruling in *Crist v. Bretz*, 437 U.S. 28 (1978). The decision is pending a petition for writ of certiorari in the U.S. Supreme Court.

DAD attorneys continued to contribute to the public understanding of and support of the Military Justice System by representing clients at outreach arguments in cases such as *United States v. Ali*, argued at the University of Washington Law School. DAD attorneys also argued cases before the Army Court at George Washington University School of Law, Valparaiso University Law School, and Creighton School of Law.

LITIGATION DIVISION

Civil lawsuits involving military justice matters are relatively few but remain an important part of the Litigation Division's practice. Most suits are brought by former Soldiers seeking collateral review of military court-martial proceedings pursuant to a petition for writ of habeas corpus in federal district court. The following cases highlight the types of issues handled by the Army's Litigation Division.

In *Gray v. Gray* [Private Ronald Gray v. Colonel Gray, the Commandant of the United States Disciplinary Barracks], litigation continues concerning the habeas petition of a military prisoner on death row. In November 2008, the U.S. District Court for the District of Kansas granted Private Ronald Gray's motion to stay his execution and appointed counsel to assist him in pursuing habeas relief. In 1988, Gray was

convicted at court-martial of, among other charges, three specifications of premeditated murder, one specification of attempted murder, three specifications of rape and two specifications of forcible sodomy. He was sentenced to death, a dishonorable discharge, total forfeiture of all pay and allowances, and reduction to Private E-1. In 2001, at the conclusion of the military appellate process, the U.S. Supreme Court denied Gray's petition for writ of certiorari. In 2008, the President approved the death sentence and the Secretary of the Army signed the Execution Order directing that Gray be executed. In April 2009, Gray filed a petition for writ of habeas corpus. In September 2010, the Court ruled that Gray could amend his petition to present additional claims. After the government filed its response to petitioner's claims, in February 2011, petitioner filed a Petition for Extraordinary Relief in the Nature of a Writ of Coram Nobis with the Army Court of Criminal Appeals (ACCA) and requested the district court to stay the case until after ACCA acts on the petition. In October 2011, petitioner notified the Court that briefing was complete, but ACCA had yet to act on the petition. On 26 January 2012, ACCA denied the petition, finding that Gray cannot meet the threshold criteria for coram nobis review. On 17 April 2012, CAAF affirmed ACCA's decision, dismissing Gray's writ appeal without prejudice. In the U.S. District Court for the District of Kansas, Gray submitted his reply brief on 1 November 2012. The habeas case is now fully briefed and is pending the district court's decision.

In *Hennis v. Helmick, et al.*, the government continues to defend a challenge by a retiree recalled to active duty to face capital murder charges. On 28 December 2009, after ACCA and CAAF denied his extraordinary writs challenging the military's jurisdiction to prosecute him, MSG (Ret.) Timothy Hennis filed a petition for writ of habeas corpus in the United States District Court for the Eastern District of North Carolina seeking an emergency stay of his pending court-martial. After the U.S. Court of Appeals for the Fourth Circuit denied MSG (Ret.) Hennis' request for a preliminary injunction to stop the court-martial proceedings, a court-martial convicted MSG (Ret.) Hennis of three murder specifications and sentenced him to death. MSG Hennis appealed the denial of his habeas petition to the Fourth Circuit. Oral argument was held on 26 October 2011. On 17 January 2012, the United States Court of Appeals for the Fourth Circuit, in *Hennis v. Hemlick, et al.*, affirmed the decision of the District Court for the Eastern District of North Carolina which dismissed, without prejudice, the habeas petition of a Soldier who had yet to exhaust his opportunities within the

military justice system to raise his jurisdictional challenge. Petitioner unsuccessfully argued that the district court should immediately intervene based on his status as a retiree recalled to active duty and sentenced to death for murder charges of which he was acquitted twenty years earlier in state court and his contention that the military lacked jurisdiction to prosecute him for crimes that occurred prior to his reenlistment. The Court of Appeals held that it was proper for the district court to defer to the expertise of the military courts "to initially consider and resolve the mixed questions of fact and law comprising Hennis's jurisdictional challenge." Only after petitioner exhausts all available military remedies may he collaterally attack the court-martial in federal district court. MSG (Ret.) Hennis appealed the Fourth Circuit's decision to the United States Supreme Court, which denied his petition for writ of certiorari on 14 May 2012.

Cioca, et al. v. Rumsfeld, et al. and Smith v. United States, et al. were brought by individuals claiming the policies of former Secretaries of Defense Rumsfeld and Gates fostered an environment in which sexual assaults occurred and remained largely unpunished. All plaintiffs in the Cioca case are current or former military members while the plaintiff in the Smith case was a military dependent. Plaintiffs brought these cases under a Bivens theory of individual liability, contending the defendants, through acts of omission and commission, violated the plaintiffs' First, Fifth, and Fourteenth Amendment rights. The defendants countered that Bivens should not be expanded to cover plaintiffs' allegations. The Court agreed. Citing the "special factors" language of the Bivens decision, the Court found plaintiffs' allegations directly implicated the military's disciplinary system and were the province of the elected branches of government, not the judiciary. An additional claim under the Federal Tort Claims Act (FTCA) remained in Smith. Ms. Smith claimed that the United States negligently inflicted emotional distress on her during the investigation and prosecution of her alleged attacker. The Court found the FTCA barred her claim under a theory of prosecutorial immunity codified in 28 U.S.C. § 2674. The Court dismissed both cases on 9 December 2011. Cioca was appealed to the Fourth Circuit Court of Appeals. Oral arguments were originally scheduled for 4 December 2012, but have been postponed. No new date has been set. The Smith case was not appealed and the time to file an appeal has run. Two cases similar to Cioca have been filed in the last year, Marquet v. Gates and Hoffman, et al. v. Panetta, et al. The sole plaintiff in Marquet is a former West Point cadet. She filed her case in

the District Court for the Southern District of New York. The Government has filed a motion to dismiss on the same grounds raised in Cioca. A decision is pending. Hoffman involves 19 plaintiffs and was filed in the District Court for the Northern District of California. Anticipating a venue challenge, the plaintiffs withdrew the case voluntarily on 30 November 2012. It is anticipated that they will re-file the case in the District Court for the Eastern District of Virginia.

OTJAG International and Operational Law Division

The International and Operational Law Division (IOLD), OTJAG provides overarching legal advice and guidance on Army implementation of the DoD Law of War Program. The IOLD's efforts to prevent violations of the law of war by Army personnel include evaluating all new weapons for compliance with international law; reviewing all operation and concept plans and rules of engagement for compliance with domestic and international law as part of the Army Staff review in the joint review process; and preparing directives, policies, instructions, and training materials to ensure that Army personnel understand the principles and rules of the law of war. When Army personnel are alleged to have violated the law of war, the IOLD supports the reporting and investigation of the allegations and ensures that commanders receive legal advice and assistance to enable them to determine the appropriate disposition of such cases, which may include prosecution by court-martial for those subject to the UCMJ and prosecution by civilian authorities for others.

Although the UCMJ does not contain the offense of "violation of the law of war," it includes substantive criminal offenses that correspond to the war crimes delineated in 18 U.S.C. Section 2441 and grave breaches of the Geneva Conventions of 1949. Such offenses include: Article 92, Failure to Obey a Lawful Order or Regulation or Dereliction of Duty; Article 93, Cruelty and Maltreatment; Article 103, Captured and Abandoned Property; Article 118, Murder; and Article 128, Assault.

Several high-profile courts-martial involving law of war violations committed by Army personnel were completed in FY 2012. The last members of the so-called "kill team" of the 5th Brigade (Stryker), 2nd Infantry Division, which served in southern Afghanistan in 2009 and 2010, were prosecuted for their roles in murdering three Afghan civilians, collecting body parts as trophies from corpses, chronicling their kills with gruesome photographs of Afghan casualties, illegally using marijuana and

hashish, and attacking the whistleblower who alerted the command to the platoon's drug use.

Staff Sergeant (SSG) Calvin Gibbs was found guilty as the ringleader of a five-member team that murdered three Afghan civilians. He was sentenced to life in prison with the possibility of parole. SSG Gibbs was also found guilty of 12 related charges, including taking body parts as trophies from corpses. Three of SSG Gibbs' subordinates pleaded guilty in FY 2011 and cooperated with the prosecution in SSG Gibbs' court-martial in exchange for reduced sentences. The Army dismissed the charges against the fifth member of the team, SPC Michael Wagnon. Another senior platoon member, SSG David Bram was found guilty of solicitation to commit murder, conspiracy to commit assault, and impeding an investigation. He was sentenced to five years confinement.

In March 2012, the Army preferred court-martial charges against SSG Robert Bales, who allegedly shot and killed seventeen Afghan civilians and wounded six others in Panjwai, Kandahar, Afghanistan on March 11, 2012. SSG Bales is alleged to have left his base alone, at night, and forcibly entered several homes where he is alleged to have shot and killed noncombatant males, females and children, setting fire to some of the bodies. The court-martial is ongoing.

PERSONNEL, PLANS, AND POLICIES

On 30 September 2012, the Army's end-strength was 667,839 Army Soldiers on active duty, including Active Guard and Reserve (AGR) and mobilized Soldiers, compared to 706,506 at the end of fiscal year 2011 (FY11). The attorney strength of the Active Army (AA) Judge Advocate General's Corps at the end of 2012 was 1,974 (including general officers). This total does not include 63 officers attending law school while participating in the Funded Legal Education Program. The FY12 end-strength of 1,974 compares with an end-strength of 1,897 in FY11; 1,858 in FY10; 1,730 in FY09; 1,647 in FY08; 1,643 in FY07; 1,638 in FY06; 1,603 in FY05; 1,547 in FY04; 1,506 in FY03; 1,474 in FY02; and 1,462 in FY01. The diverse composition of our FY12 AA attorney population included 129 African-Americans, 52 Hispanics, 103 Asians and Native Americans, and 503 women.

The grade distribution of the Corps' AA attorneys for FY12 was 8 general officers authorized (five filling JAGC authorizations, two serving in MOS coded positions - the Legal Counsel to the Chairman of the Joint Chiefs of Staff and the Chief Prosecutor for the Commissions - and an eighth general officer serving in a branch immaterial billet - Commander, Rule of Law Field Force - Afghanistan), 145 colonels, 233 lieutenant colonels, 487 majors, and 1,109 captains. An additional 101 warrant officers, 567 civilian attorneys, and 1,797 enlisted paralegals supported legal operations worldwide.

The attorney strength of the USAR Judge Advocate General's Corps at the end of FY12 was 1,805 (which includes officers serving in Troop Program Units, the Drilling Individual Mobilization Augmentation Program, the Individual Ready Reserve, and the Active Guard & Reserves) and the attorney strength of the Army National Guard at the end of FY12 was 846. At the end of FY12, over 380 Army JAGC personnel (officer and enlisted, AA and RC) were deployed in operations in Afghanistan, Bosnia, Cuba, Kosovo, Egypt, Honduras, Israel, Iraq, Kuwait, Qatar, Djibouti and elsewhere across Africa. Judge Advocates were also deployed in support of Hurricane Sandy relief efforts in the New York region.

DANA K. CHIPMAN
Lieutenant General, USA
The Judge Advocate General

APPENDIX - U.S. ARMY MILITARY JUSTICE STATISTICS
Report Period: FISCAL YEAR 2012

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT
GENERAL	725	656	69	+17.5%
BCD SPECIAL [A]	465	444	21	+0.2%
NON-BCD SPECIAL	0	0	0	+0.0%
SUMMARY	473	463	10	-25.2%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-7.5%
PART 2 - DISCHARGES APPROVED [B]				
GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ DISMISSALS)			87 (+19)	
NUMBER OF BAD-CONDUCT DISCHARGES			284	
SPECIAL COURTS-MARTIAL -- NUMBER OF BCD'S			245	
PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG				
FOR REVIEW UNDER ARTICLE 66 - GCM			405	
FOR REVIEW UNDER ARTICLE 66 - BCD SPCM			244	
FOR EXAMINATION UNDER ARTICLE 69 - GCM			252	
PART 4 - WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEALS				
TOTAL ON HAND BEGINNING OF			97 [C]	
GENERAL COURTS-MARTIAL		[D]		
BCD SPECIAL COURTS-MARTIAL		[D]		
REFERRED FOR REVIEW			620 [C]	
GENERAL COURTS-MARTIAL				
BCD SPECIAL COURTS-MARTIAL				
TOTAL CASES REVIEWED			561 [E]	
GENERAL COURTS-MARTIAL				
BCD SPECIAL COURTS-MARTIAL				
TOTAL PENDING AT CLOSE OF PERIOD			156[C]	
GENERAL COURTS-MARTIAL				
BCD SPECIAL COURTS-MARTIAL				
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD			-2.1%	
PART 5 - APPELLATE COUNSEL REQUESTS BEFORE ACCA				
NUMBER	539			
PERCENTAGE	86.94%			
PART 6 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)				
PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF				74.33%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS				+1.65%
PERCENTAGE OF TOTAL PETITIONS GRANTED				28.26%

PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS	+142.58%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES	20.50%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+121.62%

APPENDIX - U.S. ARMY MILITARY JUSTICE STATISTICS - CONT'D

PART 7 - APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		0	
RECEIVED		10	
DISPOSED OF		9	
GRANTED	0		
DENIED	8		
NO JURISDICTION	0		
WITHDRAWN	1		
TOTAL PENDING AT END OF PERIOD		1	
PART 8 - ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		555	
SPECIAL COURTS-MARTIAL		419	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		170	
SPECIAL COURTS-MARTIAL		46	
PART 9 - COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		15	
PART 10 - STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		550064 [F]	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NONJUDICIAL PUNISHMENT IMPOSED		34772	
RATE PER 1,000		63.21	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		+2.53%	

EXPLANATORY NOTES

- [A] Cases convened by GCM convening authority.
- [B] Based on records of trial received during FY for appellate review.
- [C] Includes only cases briefed and at issue.
- [D] No reason for distinguishing; GCM and BCD SPCM are not tracked separately.
- [E] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.
- [F] This number includes only Active Component Soldiers and does not include USAR, National Guard or AGR personnel.

SECTION 4

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE
NAVY

ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

OCTOBER 1, 2011 TO SEPTEMBER 30, 2012

SUPERVISION OF THE ADMINISTRATION OF

MILITARY JUSTICE

JUDGE ADVOCATE GENERAL

The Judge Advocate General (JAG) co-chairs with the Staff Judge Advocate to the Commandant of the Marine Corps, quarterly, the Military Justice Oversight Council. This council also consists of Commander, Naval Legal Service Command (CNLSC), the Staff Judge Advocate to the Commandant of the Marine Corps, and the Assistant Judge Advocates General.

The JAG and CNLSC made frequent inspections of U.S. Navy legal offices in the United States, Europe, and the Far East in order to supervise the administration of military justice in accordance with the requirement of Article 6(a), Uniform Code of Military Justice (UCMJ). These inspections, conducted by subject matter experts, examined the full range of military justice processes.

ASSISTANT JUDGE ADVOCATE GENERAL, MILITARY JUSTICE (AJAG-MJ)

The AJAG-MJ advises the JAG in the performance of statutory duties relating to military justice matters. Additionally, the AJAG-MJ serves as a member of the Office of the Judge Advocate General (OJAG) Ethics Committee, the Judicial Screening Board, the Military Justice Oversight Council, and oversees OJAG's Military Justice Division (Code 20) and National Security Litigation Division (Code 30). The AJAG-MJ is dual-hatted as the Officer in Charge of the Navy-Marine Corps Appellate Review Activity (Code 04). In this capacity, the AJAG-MJ oversees the Administrative Support Division (Code 40), Appellate Defense Division (Code 45), and Appellate Government Division (Code 46). The AJAG-MJ has the ultimate responsibility for disposition of all records of trial pursuant to statute, regulation, or appropriate appellate court rules of practice and procedure.

CRIMINAL LAW DIVISION (CODE 20)

Organization. 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 a former state Deputy Attorney General and Assistant District Attorney, with extensive experience litigating complex cases. In her previous positions, in addition to other responsibilities, she supervised, trained, and assisted office attorneys with all aspects of case preparation and trials.

Mission. Code 20 coordinates military justice policy within the Department of the Navy (DON), drafts legal and policy advice for the JAG on a wide variety of military justice matters, and reviews all legislative and regulatory proposals affecting military justice. The Division staffs all amendments to Chapter One of the JAG Manual and all other Secretarial and JAG regulations implementing or affecting the Uniform Code of Military Justice (UCMJ). The Division monitors all decisions of military appellate courts; tracks the status of military justice cases; provides opinions and staffs requests for JAG certification of cases for review by the U.S. Court of Appeals for the Armed Forces (CAAF); and facilitates Department of Justice (DOJ) processing of executive pardon requests relating to military convictions. Code 20 staffs requests for Secretarial designation of general, special and summary court-martial convening authorities, coordinates court orders and warrants of attachment, and coordinates with DOJ to approve grants of immunity and orders to testify for civilian witnesses at trial by court-martial. Finally, Code 20 provides a representative to the Secretary of the Navy Clemency and Parole Board; provides legal opinions to the Board for Correction of Naval Records upon request; provides informal advice for all Navy and Marine Corps judge advocates engaged in military justice matters; processes all Article 69, 73, and 74(b) UCMJ reviews and requests; and acts as the initial denial authority on all Freedom of Information Act (FOIA)/Privacy Act (PA) requests for information pertaining to courts-martial.

The Code 20 Division Director serves as the Commander, Naval Legal Service Command's (CNLSC) Special Assistant for Military Justice and advises CNLSC on policies, plans, resources and procedures affecting NLSC's military justice mission. In that

capacity, the Code 20 Division Director and Code 20 Deputy Director assist the CNLSC in Article 6, UCMJ, inspections of NLSC commands and detachments.

The Code 20 Division Director continued to serve as the Navy's Representative to the Joint Service Committee (JSC) for Military Justice and functions as the Navy's voting group member at regular meetings of the JSC. The JSC is the principal vehicle for staffing amendments to the UCMJ and Manual for Courts-Martial (MCM) and provides the Navy representative for meetings of the joint-service working group supporting the JSC. The 2012 Annual Review of the MCM was completed in accordance with the President's requirement.

The Code 20 Division Director 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 involved participation in several hearings and responding to numerous requests for information for the Subcommittee reviewing and providing recommendations on military justice in combat zones.

Code 20 personnel assisted in the development, production, and execution of Navy-wide 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 educational, face-to-face conversations 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 instrumental in the development of the Defense Sexual Assault Incident Database, which is expected to be online in 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.

Improving the quality and increasing the availability of military justice and trial advocacy training was a cornerstone of the JAG's agenda for FY12. Code 20 played an important role in the improvement and centralization of military justice and trial advocacy training for the prosecution and defense bars (Navy, Marine Corps, and Coast Guard), including maximizing the

positive impact of external funding sources. Code 20 personnel identified and centralized requirements for military justice litigation and trial advocacy training to foster a collaborative environment. Code 20 established and maintained a Litigation Training Coordination Council and coordinated with the Naval Justice School to develop 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 Naval Criminal Investigative Service (NCIS) agents.

A report on the development of Performance Measures (Metrics) for Prosecutors and Defense Counsel was completed during FY12 by the Justice Management Institute under contract with Code 20. The performance measures 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 will be used to conduct a critical self-evaluation and increase the advocacy skills and training curriculum of those involved in the military justice process.

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 personnel participated 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.

Code 20 also provided steady support to CNLSC 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 inspections at

eight Region Legal Service Offices (RLSOs) and five now-former Naval Legal Service Offices (NLSOs).

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

During the past year, Code 20 completed review of 57 records of trial under Article 69(a), UCMJ; 12 records under Article 69(b), UCMJ; and 5 petitions under Article 73, UCMJ.

ADMINISTRATIVE SUPPORT DIVISION (CODE 40)

Organization. Code 40 was staffed with one officer, two civilians and ten enlisted Marine Corps staff members.

Mission. Code 40 provides administrative and logistical support services to the Navy-Marine Corps Appellate Review Activity (NAMARA) and the Navy-Marine Corps Court of Criminal Appeals (NMCCA). Code 40 personnel review for completeness all records of trial forwarded to the NMCCA for appellate review pursuant to Articles 66 and 69, UCMJ; promulgate decisions of the NMCCA in accordance with the JAG Manual and the MCM; manage the OJAG court-martial central filing system, including original records of trial maintained at NAMARA; manage and retrieve archived records of trial stored at the Federal Records Center in Suitland, Maryland; and administer all NMCCA and CAAF mandates and judgments on remand back to field commands for corrective action. During FY12, Code 40 reviewed and examined 633 records of trial for completeness prior to forwarding the records to the appropriate level for appellate review pursuant to Articles 66 and 69(a) UCMJ.

APPELLATE DEFENSE DIVISION (Code 45)

Organization. Code 45 was staffed with 11 active-duty Navy and Marine Corps judge advocates, 1 civilian attorney, and 5 civilian support personnel. 21 Navy and Marine Corps Reserve judge advocates supported Code 45.

Mission. Code 45 represents Navy and Marine Corps appellants before the NMCCA, CAAF, and the U.S. Supreme Court. Code 45 provides assistance to trial defense counsel in the field by helping to file extraordinary writs before the NMCCA and CAAF, providing general training, and providing advice on specific cases in litigation. Code 45 also works closely with the Defense Counsel Assistance Program (DCAP) by coordinating training and advice given provided to counsel in the field.

NMCCA	FY08	FY09	FY10	FY11	FY12
Briefs Filed	230	173	159	161	191
Total Cases Filed	778	831	744	531	488
Oral Arguments	6	14	15	20	19
CAAF					
Petitions with Supplemental Briefs Filed	151	96	69	81	117
Briefs Filed	27	31	21	20	19
Oral Arguments	32	23	11	7	12
U.S. Supreme Court Petitions	6	5	6	2	3

As depicted above, in FY12, a total of 514 new cases were docketed at the NMCCA and received in Code 45. Code 45 filed 488 initial pleadings with 19 oral arguments at the NMCCA. The initial pleadings include 191 briefs (this number includes summary assignments), 297 merit submissions, and 10 summary assignments. A total of 117 supplemental briefs to petitions were filed at the CAAF, resulting in 19 full briefs and 12 oral arguments.

Capital Litigation. There are no capital cases pending review. The last DON appellant under a capital sentence was afforded relief on appeal and is now incarcerated for life. This case was decided in August 2012.

Assistance to Trial Defense Counsel. Code 45 provides advice and support to Navy and Marine Corps trial defense counsel around the world. Code 45's experienced appellate attorneys respond to short-fused questions from trial defense counsel and assist in preparing and filing extraordinary writs. Code 45 also provides training on recent appellate developments and important trial issues.

APPELLATE GOVERNMENT DIVISION (CODE 46)

Organization. Code 46 was staffed with ten active-duty judge advocates, one civilian attorney, and two civilian administrative employees. Code 46 was supported by a Reserve detachment based out of Minneapolis, Minnesota. 12 Reserve judge advocates augmented Code 46, contributing an average of two briefs per month.

Mission. In accordance with Article 70, UCMJ, Code 46's primary mission is to represent the United States before the NMCCA and CAAF. Additionally, in coordination with the Navy and Marine Corps Trial Counsel Assistance Programs (TCAP), Code 46 provides support to SJAs, review officers, and trial counsel throughout the Navy and Marine Corps on pre-trial, court-martial, and post-trial matters.

Code 46 provides direct legal services to Marine and Navy judge advocates around the world, responding to hundreds of questions from the field pertaining to trial and appeal matters. Code 46 helps ensure the uniformity and consonance of legal positions taken by the United States before trial and appellate courts. Code 46 augments its delivery of legal advice to trial counsel through a robust working relationship with TCAP. Code 46's relationship with Service TCAP representatives helps ensure that important issues are not waived or surrendered for appellate litigation purposes by inconsistent or inaccurate positions by trial counsel. This coordination also facilitates improved communication between trial and appellate counsel and provides for closer coordination during government interlocutory appeals.

Pleadings. A summary of FY12 appellate activity is provided in the following chart. "Briefs Filed" includes Government briefs, answers to supplements, and supplemental briefs. "Other Pleadings" includes responses to extraordinary writs, motion responses, responses to Court Orders, and Petitions for Reconsideration. The number of NMCCA briefs filed

by the Government increased to 198 in FY12, and other filings to the NMCCA increased from 144 in FY11 to 439 in FY12. Highly complex topics dominated issues and briefings, to include military courts' statutory duties; the limits of the UCMJ's right to military counsel; Congress' revisions to Article 120, UCMJ; and the President's ability to inform substantive military law regarding lesser-included offenses. UCMJ Article 62 appeals from trial court decisions continue a downward trend: 11 in FY08, 9 in FY09, 3 in FY10, 2 in FY11, and 1 in FY12. The single UCMJ Article 62 appeal filed at the NMCCA from *United States v. Murray* involved a search and seizure issue regarding a military judge's decision to suppress DNA results from a sexual assault examination.

	FY08	FY09	FY10	FY11	FY12
NMCCA					
Briefs Filed	232	154	163	188	198
Other Pleadings	340	313	373	144	439
Oral Arguments	6	14	15	20	19
CAAF					
Briefs Filed	37	28	24	22	24
Other Pleadings	146	60	102	70	111
Oral Arguments	32	23	11	7	12

Code 46's practice at CAAF included certification of significant matters of military justice in two cases: *United States v. Porter* and *United States v. Nash*.

During FY12, Code 46 continued its representation of the United States in one capital case: *United States v. Parker*. This case was decided in August 2012.

Code 46 counsel benefitted from an intensive appellate advocacy training program that included attendance at the American Bar Association's (ABA) Appellate Judges' Education Institute, Appellate Lawyers Annual Practice Institute, the CAAF Annual Conference, and the Judge Advocate Association's Appellate Advocacy Symposium.

Code 46 expanded the DON "electronic records of trial" program to include Camp Pendleton, California; Naval Station Norfolk, Virginia; Camp Lejeune, North Carolina; and Marine Corps Base Hawaii.

ASSISTANT JUDGE ADVOCATE GENERAL, CHIEF JUDGE, DEPARTMENT
OF THE NAVY (CJDON)

The CJDON is the senior supervisory jurist in the DON, overseeing the trial and appellate judiciaries. The CJDON serves as the Rules Counsel for the judiciaries and the community sponsor for the Navy JAG Corps' MJLCT. The CJDON is selected by a competitive flag selection board and serves for three years, with appointment as the Assistant Judge Advocate General of the Navy in the third year of service. In June 2012, the first CJDON was promoted to Rear Admiral (Lower Half) prior to retirement.

THE NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS
(NMCCA)

The NMCCA is responsible for all cases referred under UCMJ Articles 62(b), 66(b), 69(d), and 73. The NMCCA may also entertain petitions for extraordinary relief. During FY12, the NMCCA was comprised of eight appellate judges, four each from the Navy and Marine Corps. Of these eight judges, four also serve on the United States Court of Military Commission Review (USCMCR), one of whom serves as the Chief Judge of USCMCR. The NMCCA was also supported by seven Navy Reserve and three Marine Corps Reserve appellate judges.

The NMCCA hosted its second annual Judicial Training course in FY12. The course brought distinguished practitioners and professors to the NMCCA for three days to train active-duty, Reserve, and civilian court personnel.

The NMCCA continues to maintain a website at <http://www.jag.navy.mil/nmcca.htm>, where the NMCCA's published and unpublished opinions can be downloaded. In addition, the NMCCA maintains audio files from past oral arguments and a docket for upcoming oral arguments. Application for admission to the NMCCA bar and rules of the court are available on the site.

The NMCCA was supported by four Navy and Marine Corps junior officer law clerks and a mid-grade officer senior law clerk. The clerks provide valuable legal and administrative support to the appellate judiciary and gain valuable legal analysis and writing experience to inform their later appellate and trial practices.

NAVY-MARINE CORPS TRIAL JUDICIARY (CODE 52)

Code 52 is a unified trial judiciary that provides certified military judges for all Navy and Marine Corps general and special courts-martial. Code 52 is organized into eight judicial circuits worldwide and is supported by Naval Reserve and Marine Corps Reserve Individual Mobilization Augmentees. During FY12, Code 52 was comprised of 22 active-duty and 17 Reserve judges.

Code 52 provided comprehensive and timely judicial services to Fleet activities, shore activities, and Marine forces around the world. Marine Corps cases were tried in the forward-deployed combat zone in Afghanistan. Code 52 judges presided over numerous high-profile cases, including the final trial for the Haditha events. Code 52 also provided officers to serve as Military Judges on the Military Commissions.

During FY12, Code 52 realigned the areas of responsibility within the Circuits and established the Hawaii Judicial Circuit. A Navy military judge was reassigned to Pearl Harbor, Hawaii, to preside over judicial services in addition to the Marine Corps military judge already assigned to the area. In addition to the realignment, Code 52 updated the Uniform Rules of Practice and the Trial Guide.

In FY12, Code 52 presided over 287 general courts-martial and 854 special courts-martial, for a total of 1,141 cases. 722 cases were tried to verdict.

Code 52 co-sponsored the Joint Military Judges Annual Training with The National Judicial College (NJC). All members of the active trial judiciary, and nearly all Reserve members, participated in this training. The NJC provided judge-specific training courses that Code 52 judges attended throughout the year. Successful completion of NJC curriculum can lead to a professional certificate, Masters degree, or Doctorate degree. Many Code 52 judges have been awarded the Professional Certificate in Judicial Development, General Jurisdiction Trial Skills from the NJC.

Code 52 judges also provided training at the Defense Institute of International Legal Studies, Navy and Marine Corps Senior Officers Courses, Legal Officer Courses, Naval Justice School Basic Lawyer Courses, the Army Judge Advocate General's Legal Center and School Military Judges Course, and other Service courses. Code 52 judges routinely mentored judge advocates

through formal and informal training sessions in all judicial circuits.

NAVAL LEGAL SERVICE COMMAND (NLSC)

CNLSC also serves as the Deputy Judge Advocate General of the Navy.

In FY12, NLSC was comprised of 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 NLSOs, which provided defense and legal assistance, and nine RLSOs, which provided prosecution and command services. From these commands, NLSC provided counsel for court-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 of the Sea Services, including basic legal training for Navy, Marine Corps and Coast Guard judge advocates and legalmen. During FY12, NLSC provided counsel for 134 general courts-martial, 145 special courts-martial and 1,419 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 for personnel to meet the JAG Corps' Individual Augmentation (IA) requirements and provided two-thirds of the personnel requirements in support of Overseas Contingency Operations. During FY12, 40 judge advocates and 4 legalmen from NLSC deployed in direct support of operations in Iraq, Afghanistan, Djibouti, and Guantanamo Bay, Cuba.

During FY12, NLSC prepared to realign the NLSO organization. Realignment was necessary in order to meet growing demands for legal services and continue providing quality military justice service. As of October 1, 2012, CNLSC replaced eight NLSOs with four Defense Service Offices. The four Defense Service Offices are: Defense Service Office North, which covers the northeast continental U.S., Europe and Southwest Asia; Defense Service Office Southeast, which covers southeast and central continental U.S.; Defense Service Office Pacific, which covers Japan, Hawaii, and Southeast Asia; and

Defense Service Office West, which covers western continental U.S. The Defense Service Offices' 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.

A.

NAVAL JUSTICE SCHOOL (NJS)

Organization. NJS is an echelon three command reporting to CNLSC. The main NJS facility is located in Newport, Rhode Island. Teaching detachments are based in San Diego, California, and Norfolk, Virginia (areas of fleet concentration). A three-person Branch Office is co-located with the U.S. Army's Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia.

Mission. NJS oversees formal training of naval judge advocates and legalmen to ensure their career-long professional development and readiness; provides comprehensive formal training to all Sea Service judge advocates and other legal personnel in order to promote justice and ensure the delivery of quality legal advice and other services to the commander; trains commanders and senior officers in the practical aspects of military law to enable them to perform their command and staff duties; and trains other personnel to assist in the sound administration of military justice.

In FY12, NJS provided instruction to more than 20,402 students worldwide, including 3,545 in resident courses ranging in length from three days to eleven weeks.

In addition to teaching NJS courses, NJS instructors provide off-site training in military justice, administrative law, and operational law to other commands on board Naval Station Newport including the Naval War College, Command Leadership School, Officer Development School, Senior Enlisted Academy, Surface Warfare Officers School Command, Officer Candidate School, Naval Academy Preparatory School, Limited Duty/Chief Warrant Officer Indoctrination School, Supply Officers School Command, and the Submarine Officer Advanced Course at Naval Submarine Base New London, Groton, Connecticut.

Academic Programs. NJS has eight "core" courses that include training in military justice. These courses are:

1. Basic Lawyer Course (BLC). This ten-week course, offered three times annually, provides accession training for

all judge advocates in the Navy, Marine Corps, and Coast Guard. The course includes extensive training in military justice and court-martial advocacy, as well as training in legal assistance, administrative law, standards of conduct, and operational law. Teaching methods include lecture, seminar, and practical exercises. Upon graduation, judge advocates are certified per UCMJ Article 27(b). FY12 graduates: 192.

2. Legalman Accession Course. This 11-week course, offered once in FY12, trains Navy enlisted personnel selected for conversion to the legalman (LN) rating. The course provides ten ABA-approved credits toward a paralegal degree or certificate in partnership with Roger Williams University. In addition to military-specific training in military justice, court reporting, administrative investigations, and administrative separations, the course includes four college-level courses taught by NJS officer instructors: Ethics, Legal Research and Writing I, Introduction to Law, and Emerging Legal Technologies. FY12 graduates: 9.

3. Legal Services Specialist Course. This 11-week course, offered three times annually, provides accession-level training to junior enlisted Marines seeking the Military Occupational Specialty of Marine Corps Legal Services Specialist. Curriculum consists of training in military justice, post-trial review, and legal administration. FY12 graduates: 77.

4. Legal Services Court Reporter Course. This 13-week course, offered twice annually, provides court reporter training to Legal Services Specialists, pay grades E-3 to E-7, seeking the Military Occupational Specialty of Marine Corps Legal Services Court Reporter. The curriculum consists of court reporter training in closed-mask capture of legal proceedings at 225 wpm, court-reporting grammar and punctuation, speech-recognition technology, digital recording software, and the production of verbatim and summarized court-martial records of proceedings. FY12 graduates: 18.

5. Senior Officer Course (SOC) in Military Justice and Civil Law. This three-day 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 FY12, NJS provided 29 offerings of the SOC in Newport, Rhode Island; San Diego, California; Norfolk, Virginia; Camp Pendleton, California; Camp Lejeune, North Carolina; Parris Island, South Carolina; Quantico, Virginia; and Pensacola, Florida. Per NAVADMIN 302/12, this course is now mandatory for Navy O-6s en route to command. FY12 graduates: 917.

6. Legal Officer Course. This three-week course prepares non-lawyer Legal Officers to perform a host of military law functions in commands not large enough to warrant assignment of a judge advocate. FY12 graduates: 498.

7. Legal Clerk Course. Legal Clerks are typically assigned to assist non-lawyer Legal Officers within a command as a collateral duty. This two-week course provides training in the preparation of legal forms and reports, service record entries, nonjudicial punishment, and court-martial procedures. FY12 graduates: 391.

8. Senior Enlisted Leadership Course (SELC) in Military Justice and Civil Law. This three-day course provides senior enlisted leaders of all services training in a wide range of military law topics with primary focus on military justice matters. In Newport, Rhode Island, portions of the SELC are incorporated into the core curriculum at the Navy's Senior Enlisted Academy. FY12 graduates: 347.

Continuing Legal Education. In addition to the "core" courses, NJS provided 23 continuing legal education (CLE) courses, many of which are pre-approved for CLE credit from state bar associations. Most of these courses focus upon military justice. In FY12, these resident courses reached 776 active duty and 96 reserve legal professionals.

The bi-annual Trial Counsel and Defense Counsel Orientation courses teach Navy and Marine Corps counsel how to effectively prepare, manage, and try cases 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 designed to develop important trial advocacy skills in judge advocates in their first trial billets and in 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 to refine trial advocacy techniques. It became clear in FY12 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 FY12. 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. The Senior Trial and Defense Counsel Litigation and Mentoring Course develops management skills for senior trial and defense counsel and gives senior trial and defense counsel the skills 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 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 TCAP. Defending Sexual Assault Cases (DSAC) is a week-long course that provides training on sexual assault litigation for defense counsel. DSAC has been taught in conjunction the Center for American and International Law in Plano, Texas. PAFSA and DSAC are among the most in demand NJS military justice courses.

NJS also continues to provide Basic and Advanced SJA Courses. The SJA courses incorporate military justice training relevant to SJAs including search and seizure, investigations, charging, preferral, convening courts-martial, referral, the Victim-Witness Assistance Program, Sexual Assault-Initial Disposition Authority, and post-trial processing.

Legalman Paralegal Education Program (LPEP). Begun in 2010, LPEP is a government-funded full-time education program leading to an Associate of Science degree in Paralegal Studies. The program is mandatory for all LNs in order to meet minimum occupational standards for the LN rating. Following LN accession, students participate in either the resident option,

during which they study in-residence at Roger Williams University (RWU) for one semester, or the distance learning option, during which they study either online or with ABA-approved schools local to their permanent duty stations. Fleet legalmen are eligible to return to Newport for the in-resident semester with RWU or participate in the distance learning option as their degree plan requires. In FY12, 25 students attended LPEP as resident students, and an additional 145 students were enrolled in the distance learning option.

Publications. NJS publishes one edition of the Naval Law Review annually. NJS also publishes a course catalog, the USN/USMC Commander's Quick Reference Handbook for Legal Issues (Quickman), as well as various study guides in support of its academic programs.

Distance Learning. In FY12, NJS 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 the Supreme Court's decisions in U.S. v. Lafler and U.S. v. Frye. Approximately 100 attendees participated in these hour-long interactive sessions and many more viewed recordings of the sessions, which continue to be available for viewing online. In addition, NJS partnered with TJAGLCS to start offering full courses online via Blackboard. Dubbed "NJS Online," military practitioners now have worldwide access to military justice courses. The courses last approximately two to four weeks and require two to four hours of mostly self-paced work per week. Instructors deliver training using a variety of online teaching tools, including assigned readings, recorded video training modules, live interactive sessions using DCO, discussion boards, and practical assignments. The FY12 military justice course was "Working With Experts." In FY13, NJS will expand NJS Online to offer courses on post-trial processing and ethics for trial and defense counsel.

Coordination. Through the Interservice Legal Education Review Committee (ISLERC), the Commanding Officer, NJS; Dean of Students for TJAGLCS; and Commandant, Air Force Judge Advocate General's School meet bi-annually to discuss new initiatives and opportunities for cross-training and increase cooperation and efficiency in the training of legal personnel within the Department of Defense.

NAVY ACTIVITIES

1. Military Justice Litigation Career Track (MJLCT). FY12 saw continued expansion in the MJLCT. At the close of FY12, there were 67 Navy MJLCT officers, and 45 were assigned within the 52 MJLCT-designated billets. The remaining MJLCT officers were serving in billets at the Office of Military Commissions, on board aircraft carriers, at NJS, and attending post-graduate school to obtain Master of Laws degrees in Trial Advocacy. The "billet-fill rate" of nearly 87 percent is an improvement from last year's rate of 77 percent and should stay relatively stable with projected FY13 rotations.

The promotion rate for MJLCT officers continues to be monitored, and the in-zone MJLCT officers were selected for promotion by the FY13 boards at a rate consistent with or better than the overall in-zone selection rate.

2. 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 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 Navy JAG Corps implemented several key initiatives to ensure that both the government and the accused receive the highest level of advocacy in all cases, including sexual assault cases. The MJLCT 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 University, 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 FY12, 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 highly qualified experts (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, the Navy 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.

3. 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 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 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.

4. Defense Counsel Assistance Program (DCAP). DCAP is aligned under NLSC and reports to the Chief of Staff, Naval Legal Service Office (COS-NLSO, as of October 1, 2012, COS-DSO). The DCAP office is staffed with an active-duty Navy O-5 Director co-located with Defense Service Office West in San Diego, California, 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 MJLCT. 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 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 FY12, 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 NJS 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.

5. Trial Counsel Assistance Program (TCAP). TCAP is aligned under NLSC and reports to the Chief of Staff, Region Legal Service Offices (COS-RLSO). TCAP is directed by a Navy O-5 who is a MJLCT designated Expert. The Deputy Director is a GS-15 civilian who is a former prosecutor and specializes in sexual assault prosecution and victims' rights. The Assistant Director is a senior O-4 MJLCT designated Specialist I. 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 pre-trial 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 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 FY12, 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 and assists 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 expanded 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 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 and in-person at offices worldwide. Navy TCAP partnered with Marine Corps TCAP and NCIS to plan and execute two widely attended Mobile Training

Teams (MTTs) in Camp Lejeune, North Carolina, and San Diego, California, supporting Navy trial counsel, Marine prosecutors, and NCIS criminal investigators with complex litigation training and advice. TCAP also provided targeted on-site mobile training teams to all nine RLSOs focused on trial advocacy and sexual assault prosecution, as well as on-site case consultation and assistance. TCAP assisted OJAG's Legal Assistance Division in formulating the legal assistance to victims practice area and advised on the interface between TCAP, the Victim and Witness Assistance Program, and legal assistance.

CONCLUSION

Military Justice remained a principal focus of effort for the Navy in FY12. The aforementioned initiatives, particularly the NLSC reorganization, hiring of HQEs, emphasis on training, and development of common case-tracking systems, will optimize the Navy's military justice capabilities. With significant developments on the horizon – including eliminating sexual assault in our ranks, addressing the problem of synthetic drug use, developing case management and tracking systems, and assessing the NLSC reorganization – continued careful self-reflection and meaningful critique will remain priorities in FY13.

MARINE CORPS ACTIVITIES

In FY12, the Marine Corps litigated 125 general courts-martial and 322 special courts-martial to completion. At any given time, the Marine Corps averaged approximately 600 cases being handled at Legal Services Support Teams (LSSTs) and Legal Services Support Sections (LSSSs) Marine Corps-wide. Analysis of military justice trends indicates that, while the number of general courts-martial and special courts-martial decreased in FY12, the complexity of those cases increased. Therefore, there appears to be no reduction in the demand for military justice resources and expertise.

In FY12, Marine Corps LSSTs and LSSSs received 2,575 Requests for Legal Services (RLSs) on military justice cases from commands within the Department of the Navy. Of those 2,575 RLSs, 17 percent resulted in adjudicated general or special courts-martial. The other 83 percent were adjudicated using alternate forums or disposition methods. Commanders' decisions to dispose of offenses through alternative dispositions still require advice and case-work on the trial counsel side, client representation on the defense side, and military justice expertise and advice from the cognizant Staff Judge Advocate. As of September 30, 2012, the Marine Corps had 65 judge advocates assigned to trial counsel billets and 60 judge advocates assigned to defense counsel billets. Comparing this ratio of trial and defense counsel to the number of RLSs received during FY12 indicates that, on average, each trial counsel handled 40 cases and each defense counsel handled 43 cases during FY12.

INITIATIVES

Every initiative to improve the delivery of legal services in the Marine Corps is based on the Marine Corps Legal Services Strategic Action Plan 2010-2015 (SAP). In FY12, to achieve the SAP's strategic goals, the Marine legal community focused its efforts on seven key initiatives, many of which targeted the practice of law in the military justice functional area. These initiatives were:

1. Reorganization of the Marine Corps Legal Community. In FY12, the Commandant of the Marine Corps comprehensively reevaluated the delivery model for legal services in the Marine Corps and directed a complete reorganization of the legal community. The Commandant's reorganization directly linked to the fourth of the five SAP goals: "Evaluate and, as appropriate,

adapt organizational structure to right-size the legal community and achieve maximum efficiency with limited resources." The reorganization created a regional model that provides flexibility to better utilize the experience and supervision of more seasoned prosecutors. Practically speaking, the new regional model, which became fully operational on October 1, 2012, allows the Marine Corps to place the right counsel, with the appropriate expertise, supervision, and support staff, on the right case, regardless of location.

The legal reorganization greatly increases the experience, training, and expertise available for prosecuting complex cases. The reorganization divided the legal community into four geographic regions – National Capital Region, East, West, and Pacific. These regions are designated Legal Service Support Areas (LSSA) and are aligned with the structure of our regional installation commands. Each LSSA contains a Legal Services Support Section (LSSS) that is supervised by a colonel judge advocate officer-in-charge. Each LSSS contains a Regional Trial Counsel (RTC) office that is led by an experienced lieutenant colonel litigator whose extensive experience provides effective regional supervision over the prosecution of courts-martial cases. This new construct provides for better sharing of resources throughout the legal community and ensures that complex cases, such as sexual assaults, are assigned to experienced counsel best suited to handle them.

Within the RTC is a Complex Trial Team (CTT) that gives the Marine Corps a special victim capability. This existing capability will comply with the newly required special victim capability established by the FY13 National Defense Authorization Act. The CTT contains a civilian Highly Qualified Expert (HQE), two experienced military prosecutors, military criminal investigators, a legal administrative officer, and paralegal support. The civilian HQE is an experienced civilian prosecutor who provides training and mentoring for all prosecutors in the region. The HQEs are assigned to the actual trial shops, working directly with prosecutors, where they will have the most impact. The HQEs will report directly to the cognizant RTC and will provide expertise on criminal justice litigation with a focus on prosecution of complex cases. Principal functions will be to consult and mentor on the prosecution of complex cases, develop and implement training, and create standard operating procedures for investigation and prosecution of sexual assault and similarly complex cases. Additionally, the HQEs will be responsible for the training of all personnel with designated responsibilities associated with

the Marine Corps Victim and Witness Assistance Program (VWAP). This will include being designated as the Regional Victim Witness Liaison Officer for Marine Corps installations.

The two military prosecutors in the CTT are selected based on experience, training, and demonstrated ability as successful litigators. To augment the experience they already bring to the billet, the Marine Corps is beginning to send these prosecutors to the Army's two-week course for sexual assault investigators at Fort Leonard Wood to help them better understand the most current techniques used to investigate sexual assault. The CTT prosecutors will either prosecute complex cases themselves or train and assist other counsel in the region with complex cases. The criminal investigators and the legal administrative officer in the CTT provide a key support role in complex prosecutions. Historically, a prosecutor was individually burdened with the coordination of witnesses and experts, the gathering of evidence, background investigations, and finding additional evidence for rebuttal, sentencing, or other aspects of the trial. These logistical elements of a trial are even more demanding in a complex trial; the presence of criminal investigators and the legal administrative officer allow Marine Corps prosecutors to focus on preparing their case.

This legal reorganization complements the September 2011 reorganization of Marine Corps defense services into the Defense Services Organization. The September 2011 reorganization mandated that funding for training, resources, and facilities be consistently provided across the Marine Corps legal community, and required equitable distribution, commensurate with mission requirements, between the defense function and the prosecution function with respect to access to resources, facilities, attendance at continuing legal education courses, training funds, and support staff. The creation of the Defense Service Organization also ensured defense autonomy in the assignment of defense counsel.

Altogether, the legal reorganization ensures an adequate level of experience and supervision not only at the headquarters level, but also in each LSSS and LSST. To that end, the Marine Corps specifically classified certain key military justice billets, including senior trial and defense counsel, so that billet holders must possess a Master of Laws degree in Criminal Law.

2. Sexual Assault Prevention and Response

A. Legal Assistance for Victims of Crimes. In addition to the victim advocate systems already in place, the Marine Corps implemented 10 U.S.C. § 1565b, which makes legal assistance, assistance by a Sexual Assault Response Coordinator, and assistance by a sexual assault victim advocate available to victims of sexual assault. The Marine Corps uses legal assistance attorneys to provide victims information about the following areas: (1) the Victim and Witness Assistance Program, including the rights and benefits afforded the victim; (2) the differences between the two types of reporting in sexual assault cases (restricted and unrestricted); (3) the military justice system, including the roles and responsibilities of the trial counsel, defense counsel, and investigators; (4) services available from appropriate agencies or offices for emotional and mental health counseling and other medical services; (5) the availability of and protections offered by civilian and military protective orders; and (6) eligibility for and benefits potentially available as part of the transitional compensation program.

B. Detailing and Training of Counsel. Marine Corps Bulletin (MCBul) 5813, "Detailing of Trial Counsel, Defense Counsel, and Article 32, UCMJ, Investigating Officers" was published on July 2, 2012. The MCBul ensures that judge advocates who are detailed as trial counsel (TC), defense counsel (DC), and Article 32 Investigating Officers (IOs) possess the appropriate expertise to perform their duties. Per the MCBul, detailing authorities must consider a number of factors when detailing TC, DC, and Article 32 IOs, including trial experience, education, training, and the individual characteristics of the case (e.g., special victims).

The Marine Corps Trial Counsel Assistance Program (TCAP) continued to focus on training Marine Corps trial counsel, paralegals, investigators, and victim witness assistance personnel on processing sexual assault cases. TCAP operates as a centralized resource for Marine Corps trial counsel by maintaining a restricted membership SharePoint site, answering calls for assistance, and providing information regarding new developments, including updates to regulations governing sexual assault cases. TCAP training events included lectures and practical exercises designed to develop and hone skill sets for legal services personnel who handle criminal cases in response to allegations of sexual assault.

TCAP offered week-long courses focused primarily on the prosecution of sexual assault cases, general trial advocacy skills, victim support, and prosecutorial ethics. Instruction was provided by a mix of experienced judge advocates and expert witnesses who frequently testify in sexual assault cases (e.g., computer forensic experts, forensic DNA analysts, sexual assault nurse examiners). Additionally, two-day sexual assault Mobile Training Teams (MTT) served to supplement the week-long TCAP courses, with a heavier focus on issues relating to sexual assault cases and limited instruction on trial advocacy.

Marine Corps TCAP and Navy TCAP co-sponsored the annual Prosecuting Alcohol Facilitated Sexual Assault (PAFSA) course at the Naval Justice School in Newport, RI. This weeklong course is specifically tailored to educate and train judge advocates on prosecuting sexual assaults facilitated by alcohol.

C. Withholding of Initial Disposition Authority. Effective June 28, 2012, the Secretary of Defense withheld initial disposition authority to the Special Court-Martial Convening Authority in the grade of O-6 or above for allegations of the following offenses: rape, sexual assault, forcible sodomy, and any attempts to commit those offenses. The Commandant of the Marine Corps expanded this withholding to also include allegations of aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, and any attempts to commit those offenses. This withholding of initial disposition authority also applies to all other alleged offenses arising from or relating to the same incident, whether committed by the alleged offender or the alleged victim (i.e., collateral misconduct).

3. Victim and Witness Assistance Program (VWAP). The Marine Corps VWAP conducted its annual training event in FY12 to train victim witness assistance personnel on the policies and best practices for responding to victims of crimes. Those trained included installation-level victim witness liaison officers and unit-level victim witness assistance coordinators, who are frequently first responders to allegations of sexual assault. During FY12, the Marine Corps VWAP trained 111 personnel who provide victim witness assistance on sexual assault matters. The Marine Corps VWAP will publish a new Marine Corps Order on the VWAP in FY13. The new order will be a stand-alone document that will highlight the importance of VWAP to commanders.

4. Case Tracking. The Marine Corps' Case Management System (CMS), first introduced during FY10, brought to Marine Corps

leadership total visibility over all cases pending worldwide. CMS is invaluable as a case tracker for the end-user and as an oversight tool. Based upon its proven success, CMS was adopted for use by the Navy during FY12. Upon its implementation by the Navy in FY13, CMS will satisfy the Congressionally-mandated requirement for DON to use a single case tracking system.

5. Building Communities of Practice. Through the TCAP, trial counsel Marine Corps-wide are virtually linked using a SharePoint site, and in-person during regional training courses. In addition, TCAP provides a real-time helpdesk to trial counsel for additional help on cases, beyond the capacity of their regional support structure. The Defense Service Organization has a Defense Counsel Assistance Program that operates similar to the TCAP, with online SharePoint resources for sharing ideas as well as legal products and resources. A post-trial SharePoint site was also established in FY12, enabling post-trial review officers and civilian support staff to engage with each other on complicated questions involving post-trial processes. All of these resources and innovations ensure that Marine Corps judge advocates know they are a part of a community of practice - a coordinated global practice group.

6. Manpower Initiatives Affecting Military Justice. The final report of the Independent Review Panel to Study the Judge Advocate Requirements of the Department of the Navy, published in February 2011, concluded that there was a requirement for approximately 550 active-duty Marine judge advocates. The Marine Corps reached that goal in April 2012 and finished FY12 with an inventory of 559 judge advocates.

To retain experience in the company grade ranks, the Marine Corps offered 85 percent of judge advocates an opportunity to remain on active duty through the career designation process. By maintaining high career designation rates and reducing the cost to company grade judge advocates of staying on active duty through the continuation of the Law School Education Debt Subsidy (LSEDS) program, the Marine Corps increased the level of expertise in supervisory positions.

7. Reserve Support. After reorganizing the Marine Corps active duty legal community, the next step is to ensure that Marine Forces Reserve is properly situated to support the Marine Corps' legal mission. The reserve legal community began a reorganization effort in FY12 with an anticipated completion in FY13.

POST-TRIAL CASE PROCESSING

In FY12, over 1,000 general, special, and summary courts-martial entered the post-trial process. The Marine Corps worked diligently to ensure that its post-trial processing comports with all notions of speedy due process. The appellate courts have set time standards for review, and the Marine Corps has met those standards consistently.

United States v. Moreno sets forth time limits of 120 days from the date of trial (sentencing) to Convening Authority's Action (CAA) and 30 days from CAA to docketing of the case with the Court of Criminal Appeals, for a total of 150 days. In FY12, the Marine Corps averaged 92 days from the date of trial to CAA and 15 days from CAA to docketing of the case with the court of criminal appeals, well within the standards required by Moreno. At the end of FY12, no cases exceeded the post-trial processing time limits set by Moreno.

Compliance with the Moreno time limits is primarily due to increased vigilance by military justice supervisors at all levels, along with additional oversight by Judge Advocate Division through the use of CMS. Cases that are over 90 days post-disposition are flagged on CMS via an automatic alert system that is reported to the SJA to CMC. Cases that exceed 120 days are flagged with a red alert and reported to the SJA to CMC. Because CMS is a real-time case tracker, Judge Advocate Division is able to identify issues before they occur and to offer assistance as the need arises. The institutionalization of active monitoring at all supervisory levels through a single database real-time tracking system continues to ensure that every LSSS and SJA office consistently meets post-trial processing requirements.

Another significant improvement in post-trial processing times occurred with court-reporter transcription and record of trial authentication. In cases with convictions, a verbatim transcript must be prepared for post-trial review, and then must be authenticated by the military judge and the trial counsel assigned to the case. An increase in contested and complex cases led to a significant rise in the average in-court hours spent on each case. The increased complexity also adds to the required time for post-trial review, as more complex cases require more thorough scrutiny upon review. Nevertheless, average transcription time actually decreased over the past

year. The enlisted community has concentrated significantly in the past two years on training court-reporters, and the Marine Corps is now benefitting from those efforts. On the officer side, leaders and supervisors have emphasized to trial counsel and the military judges that authentication must happen with more efficiency, resulting in a greater than 20 percent improvement in average authentication time as well.

CONCLUSION

The Marine Corps' reorganization helped to greatly improve the military justice process in FY12. Having worked through most of the challenges presented by the reorganization, the Marine Corps is now better positioned than it has ever been to flexibly, professionally, and competently provide legal services. Commanders, Marines, and others who are eligible for legal services will be the direct beneficiaries of these changes. However, the Marines within the community benefit as well from an organization that is capable of providing leadership, mentorship, and support, regardless of duty station or location. This reorganization ensures that the best qualified judge advocates and support staff are assigned to the most complex cases, regardless of the issue or the location. In FY12 and beyond, the Marine Corps legal community can proceed knowing it is well-resourced and structured to enable the utmost professionalism and competence as it provides legal services worldwide.

Through the abovementioned efforts, and with the Strategic Action Plan as its guide, the Marine Corps legal community promises to meet its mission in FY13 and beyond, while it continues to aggressively experiment with new initiatives to elevate the practice of law in the Marine Corps.

The following chart reflects cases tried in the Marine Corps over the last five fiscal years.¹

Fiscal Year	End Strength	GCM	SPCM	SCM	Total Courts	NJP
FY12	198,190	125	322	608	1,055	7,698
FY11	201,157	178	452	1,289	1,919	9,798
FY10	202,729	197	649	1,695	2,541	11,774
FY09	202,000	140	675	1,670	2,485	11,772
FY08	198,505	163	692	1,373	2,228	10,425

¹ Court-martial numbers for FY10-FY11 were modified after reconciling data in the Marine Corps Case Management System with data in the Navy's Case Management Tracking and Information System.

APPENDIX - U.S. NAVY/MARINE CORPS MILITARY JUSTICE STATISTICS

Report Period: FY 2012

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED		CONVICTED		ACQUITTALS		RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT
	USN	USMC	USN	USMC	USN	USMC	
GENERAL	137	125	115	115	22	10	+23%
BCD SPECIAL	138	322	127	285	11	37	-24%
NON-BCD SPECIAL	0	0	0	0	0	0	0
SUMMARY	108	608	108	606	0	2	-49%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT							-17%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES	51	
NUMBER OF BAD-CONDUCT DISCHARGES	76	
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	227	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	201	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	247	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	69	

PART 4 - WORKLOAD OF THE U.S. NAVY-MARINE CORPS CRT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		227	
GENERAL COURTS- MARTIAL	106		
BCD SPECIAL COURTS-MARTIAL	121		
REFERRED FOR REVIEW		493	
GENERAL COURTS- MARTIAL	227		
BCD SPECIAL COURTS-MARTIAL	266		

TOTAL CASES REVIEWED		536	
GENERAL COURTS-MARTIAL	229		
BCD SPECIAL COURTS-MARTIAL	307		
TOTAL PENDING AT CLOSE OF PERIOD		179	
GENERAL COURTS-MARTIAL	102		
BCD SPECIAL COURTS-MARTIAL	77		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+1.3%	

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE
U.S. NAVY-MARINE CORPS COURT OF CRIMINAL
APPEALS (CCA)

NUMBER	493	
PERCENTAGE	100%	

PART 6 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED
FORCES (CAAF)

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (117)	21%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+7%
PERCENTAGE OF TOTAL PETITIONS GRANTED (47)	40%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-4%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA	8.4%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+2.7%

APPENDIX - U.S. NAVY/MARINE CORPS MILITARY JUSTICE STATISTICS -
CONT'D

PART 7 - APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD		7	
RECEIVED		60	
DISPOSED OF		59	
GRANTED	0		
DENIED	59		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		8	

PART 8 - ORGANIZATION OF COURTS

TRIALS BY MILITARY JUDGE ALONE	513	
GENERAL COURTS-MARTIAL	147	
SPECIAL COURTS-MARTIAL	366	

TRIALS BY MILITARY JUDGE WITH MEMBERS	209	
GENERAL COURTS-MARTIAL	102	
SPECIAL COURTS-MARTIAL	107	
PART 9 - COMPLAINTS UNDER ARTICLE 138, UCMJ		
NUMBER OF COMPLAINTS	47	
PART 10 - STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	527,800	
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	15,237	
RATE PER 1,000	28	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	17%	

NANETTE M. DERENZI
Vice Admiral, JAGC, U.S. Navy
Judge Advocate General of the Navy

SECTION 5

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE
AIR FORCE

REPORT OF
THE JUDGE ADVOCATE GENERAL
OF THE UNITED STATES AIR FORCE
OCTOBER 1, 2011 TO SEPTEMBER 30, 2012

THE AIR FORCE COURT OF CRIMINAL APPEALS

The Air Force Court of Criminal Appeals reviewed 261 cases in Fiscal Year 2012, which is more than a 20% increase in cases reviewed the prior year. In addition, the Court heard three oral arguments at offsite locations pursuant to its "Project Outreach" program, to include civilian audiences at Willamette University College of Law and Duke University School of Law, as well as an audience of judge advocates attending the Continental United States Trial Advocacy Course at Lackland AFB, TX.

The overall size of the Court increased from five to six active-duty judges in 2012. The Court experienced substantial personnel turnover, to include a new Chief Judge, two new Associate Judges, and a new paralegal, after the departure of personnel previously assigned in those positions. The Court also employed a law student as a civilian legal intern for the summer.

In addition to reviewing Air Force courts-martial, three of the Court's appellate judges were invested to the United States Court of Military Commission Review (USCMCR), bringing the Air Force representation on that Court back to three appellate judges after previously assigned judges retired. The USCMCR hears appeals of cases convened under the Military Commissions Act of 2009. The USCMCR not only hears cases with a finding of guilty from military tribunals at Guantanamo Bay, but also hears appeals on issues taken prior to and during trial.

Furthermore, members of the Court went beyond their statutory responsibilities and used their judicial expertise to assist the Air Force and Department of Defense with critical environmental hearings. The appellate judges traveled inside and out of the continental United States to conduct approximately 40 environmental impact hearings in accordance with the National

Environmental Policy Act. The judges served as presiding officers over the environmental hearings that allowed for federal receipt of public comment on how potential changes in Air Force missions could impact the environment. The hearings spanned far and wide into states and territories including Alaska, Arizona, California, Florida, Georgia, Idaho, Nevada, New Hampshire, New Mexico, New York, South Carolina, Utah, Vermont and the Commonwealth of the Northern Mariana Islands.

Finally, the judges and attorney law clerks maintained dedication to community service by serving as judges at several local moot court competitions hosted by various organizations, such as the American Bar Association, National Bar Association, Federal Bar Association, Black Law Students Association, Phi Alpha Delta Law Fraternity and the Catholic University of America Columbus School of Law. Like the Outreach arguments and internship program, discussions with attendees at such venues furthered civilian education and understanding of military law and procedure.

TRIAL JUDICIARY

The Air Force Trial Judiciary Directorate (JAT) is responsible for trying and docketing all Air Force general and special courts-martial and presiding over an array of federal hearings. The Directorate is staffed by eighteen active-duty trial judges, four reserve trial judges, one noncommissioned officer, and one civilian employee. The office of the Chief Trial Judge is co-located with the Central Docketing Office at JB Andrews, MD. Air Force trial judges serve within five regions and are dispersed at thirteen geographically advantageous locations around the globe.

In Fiscal Year 2012, Air Force judges presided over 571 general and special courts-martial. Judges also served as investigating officers in complex and high-profile Article 32 investigations, as legal advisors for officer discharge boards, and in post-trial DuBay hearings, contingency confinement hearings, and competency hearings.

The Chief Trial Judge and Chief Regional Military Judge in Europe covered the five courts-martial at deployed locations within the United States Central Command area of responsibility. Two of those trials took place at Bagram Air Base, Afghanistan. Currently, three Air Force trial judges are appointed for the military commissions in Guantanamo Bay, Cuba.

Air Force trial judges taught military justice in classrooms and courtrooms around the world. The Chief Trial Judge and Deputy Chief Trial Judge instructed new military judges at The Army Judge Advocate General's Legal Center and School in Charlottesville, VA. Air Force trial judges trained new judge advocates, trial and defense counsel, and staff judge advocates at the Air Force Judge Advocate General's School, Maxwell AFB, AL. Air Force trial judges also provided practical instruction at more than a dozen trial advocacy courses held throughout the world to enhance current and future practitioners' litigation skills.

The Trial Judiciary continued its Air Force JAG Corps-wide training program, A View from the Bench. Now in its second year, A View from the Bench provided practical litigation and advocacy tips to counsel on a quarterly basis. Four judges wrote articles and had them distributed electronically through multiple venues. The Air Force JAG School hosted three webcasts for each judge to deliver a lecture on their article's topic. This year's webcasts included: Voir Dire, Opening Statements, and Motion Practice. Through this forum, the Trial Judiciary trained 919 members of the Air Force JAG Corps without travel costs.

An Atlantic Region judge reached beyond the Air Force with his writing. The William & Mary Law Review published Judge Joshua Kastenberg's article Hugo Black's Vision of the Lawyer, the First Amendment, and the Duty of the Judiciary: The Bar Applicant Cases in a National Security State.

Finally, Air Force trial judges continued to hone their judicial skills by attending Joint Military Judges Annual Training (JMJAT) at the National Judicial College in Reno, NV. The weeklong seminar, formerly called the Interservice Military Judges' Seminar, is in its 38th year. The Navy-Marine Corps Trial Judiciary led the planning and support for more than 100 DoD judges. JMJAT explored search and seizure precedent and evolving areas of military practice.

Air Force Judiciary

The Air Force Judiciary Directorate (JAJ) is responsible for the administration of military justice across the Air Force. JAJ advises The Judge Advocate General, the Chief of Staff of the Air Force, and the Secretary of the Air Force on military

justice matters, works with the other uniformed services to propose legislation and modifications to executive orders pertaining to military justice, assists convening authorities and staff judge advocates in the field, and provides the highest quality defense services to Airmen worldwide. Through its enlisted court reporter program, the directorate provides expeditionary court reporter support for all deployed courts, mishaps, and other investigations. The directorate also supervises the delivery of court reporter services worldwide for all in-garrison events and, through its file sharing program, optimizes the use of available civilian court reporter assets to transcribe past events.

The directorate performs its mission through five divisions: the Government Trial and Appellate Counsel Division (JAJG); the Appellate Defense Division (JAJA); the Trial Defense Division (JAJD); the Military Justice Division (JAJM); and the Clemency, Corrections and Officer Review Division (JAJR).

GOVERNMENT TRIAL & APPELLATE COUNSEL DIVISION

Appellate Government Counsel

During this past year, appellate counsel vigorously represented the government in Article 66 and Article 67 appeals of Air Force courts-martial convictions. The division also sought and obtained certification from TJAG in four cases for United States Court of Appeals for the Armed Forces (CAAF) review, and filed government appeals in two cases under Article 62, UCMJ.

Appellate government counsel zealously represented the government in oral arguments before CAAF and AFCCA. They contributed to Project Outreach, sponsored by CAAF and AFCCA, by conducting oral arguments in four cases before audiences at various law schools and military installations across the United States. These arguments helped educate attendees on the fairness and professionalism of the military justice system and provided excellent recruiting opportunities.

Counsel provided intense advocacy training and field support. Division counsel educated judge advocates and paralegals at Air Force training events such as Trial Advocacy Courses, the Military Justice Administration Course, the Trial and Defense Advocacy Course, Numbered Air Force conferences, and the KEYSTONE Leadership Summit. The division also created and posted comprehensive trial and appellate materials on the JAJG

Learning Center hosted on the Air Force Judge Advocate General's School CAPSIL online resource. Appellate counsel also published an electronic newsletter containing appellate updates along with timely and relevant articles for military justice practitioners at all levels.

The division continued to fulfill its obligation to support war-fighting commanders through the deployment of personnel. One of our experienced appellate government counsel completed a six-month deployment to the Combined Joint Interagency Task Force 435, bringing legal stability and progress to Afghanistan, and another of our field grade appellate counsel is currently deployed to EUCOM.

Throughout the year, division personnel continued to engage in a variety of activities designed to further the professionalism of military justice practice, particularly at the appellate level. The division's counsel participated in events hosted by CAAF, including the Court's annual Appellate Advocacy Symposium, hosted in conjunction with the Judge Advocates' Association. Appellate government counsel have actively built relationships with sister service counterparts through participation in quarterly meetings and regular consultation on matters of common interest to all the services. The division also hosted one summer intern, a law student who had completed his second year of law school and expressed an interest in service as a judge advocate. This bright young professional significantly supported the division mission by conducting legal research and writing more appellate briefs and motions than any other intern in many years, and was positively influenced by his experience in the internship program. JAJG's intern recently applied for and was granted accession as a new Air Force judge advocate upon completion of law school and his bar examination, continuing a long-standing tradition of JAJG interns advancing to service as Air Force judge advocates. The division also hosted two sharp externs, law students who graciously volunteered their time to support our appellate mission and have expressed interest in becoming judge advocates.

The division receives crucial appellate counsel support from eleven assigned reserve judge advocates. They continue to provide superb support, greatly assisting the division in carrying out its mission. In addition to preparing written briefs, two reserve counsel presented oral arguments before CAAF during the fiscal year.

A summary of Air Force Appellate Government practice follows:

AFCCA	FY08	FY09	FY10	FY11	FY12
Briefs Filed	188	156	123	144	233
Cases Argued	19	16	9	14	14
CAAF	FY08	FY09	FY10	FY11	FY12
Briefs Filed	41	23	28	29	36
Cases Argued	15	13	12	15	9
SUPREME COURT	FY08	FY09	FY10	FY11	FY12
Petition/Waivers Filed	4	3	3	1	1
Briefs Filed	0	0	0	0	0

Senior Trial Counsel

Personnel authorizations for the fiscal year included 17 Senior Trial Counsel (STC) at ten locations worldwide: four counsel at JB Andrews, MD; two counsel each at Ramstein AB, Germany; JB Lewis-McChord, WA; Randolph AFB, TX; and Nellis AFB, NV. Bases with one counsel each include Peterson AFB, CO; Offutt AFB, NE; Scott AFB, IL; Maxwell AFB, AL; and Kadena AB, Japan. STCs are detailed to prosecute cases by the division headquarters at JB Andrews, MD, and their primary responsibility is to represent the government in the most complex, litigated general courts-martial. STCs routinely prosecute between 70 and 80% of all Air Force general courts-martial. They are also available for special courts-martial, discharge boards and other proceedings, as resources allow.

In 2012, the STC program underwent a major change in structure with the transfer of billets from Travis AFB, CA (to Nellis AFB, NV), and Kadena AB, Japan (to Maxwell AFB, AL). These transfers are part of the continuing effort to ensure a minimum of two STCs at each STC location and will continue with the transfer of the Offutt AFB, NE, billet to Peterson AFB, CO, and the Scott AFB, IL, billet to Maxwell AFB, AL, on the PCS of the STC incumbent.

In 2012, the STC program also underwent a major change in focus with the stand up of the Air Force's first Special Victims

Trial Capability (SVT). The SVT is staffed by a cadre of specifically trained senior prosecutors whose primary responsibility is to try courts-martial involving sex offenses, serious domestic violence, and crimes against children.

The SVT leverages existing resources within the STC program. Those seasoned STCs who meet certain qualifications (e.g. demonstrated litigation excellence, advanced subject-matter training, mastery of the legal issues common to these special-victim cases) earn the designation SVT-STC. The Chief STC details these SVT-STCs against worldwide requests for this special capability, making them available to advise base-level trial counsel on interviewing victims and drafting charges, attend Article 32 hearings, and of course prosecute those cases referred to trial by courts-martial. Because the available number of SVT-STC is finite, and the number of cases they could be detailed against at times is significant, continuity of a particular SVT-STC through the life of a special-victim court-martial can be difficult to maintain, but the Government Trial & Appellate Counsel Division continues to work with requesting legal offices to do just that.

The stand up of the SVT is not merely a designation of personnel; it is a dedicated focus, supported by dedicated resources, within the Government Trial & Appellate Counsel Division. These SVT-STCs are supported by a deep bench of criminal appellate counsel, an SVT-STC co-located with the Defense Computer Forensic Laboratory whose primary responsibility is to serve as a conduit between the forensic experts and legal office personnel, and a new SVT-STC intake counsel at JB Andrews, MD, (the SVT Chief of Policy and Coordination) whose primary responsibility is to liaise with AFOSI's special victim personnel and provide reach-back support to legal offices as they grapple with the myriad legal and factual issues these cases present. All told, this combined effort will ensure that the Air Force responds appropriately to cases involving special victims and ensure that justice is done in each case.

In the past year, STCs again spent more than 2,000 days on temporary duty away from their home station, and represented the government in more than 300 courts-martial and related proceedings. In August, the sixth annual Senior Trial Counsel Conference was held at JB Andrews, MD, bringing together the assigned STCs as well as those projected to join the program during the summer assignment season. The attorneys met for a week of training and networking with trial and appellate

counsel. STCs also attended training courses across the country including the Prosecuting Complex Cases Course at the Naval Justice School, the Computer Crimes Course at the Naval Justice School, the new Special Victims Unit Course put on by the Army at Ft Leonard Wood, and the Sexual Assault Investigation and Prosecution Course put on by the Navy. STCs also continued the tradition of spending a week performing appellate work in our appellate office, which broadened their trial and appellate perspective and enhanced their litigation skills.

APPELLATE DEFENSE DIVISION

The Appellate Defense Division ended Fiscal Year 2012 with twelve regular component (active duty) judge advocates, eight reserve judge advocates, one civilian attorney, and three paralegals. The Division moved its docket with seven personnel deployed—the most in Division history, at various times throughout the year and for absences lasting six to eight months including training and post-deployment reconstitution time. As in past years, reserve component Judge Advocates continued to provide significant support. The Division was fortunate to have Major Anthony Ortiz, an Individual Mobilization Augmentee Judge Advocate, perform duty for over six months alongside regular component appellate defense counsel.

Promoting timely appellate review remained a priority. The Division considerably reduced the number of cases pending initial briefing to the United States Air Force Court of Criminal Appeals (AFCCA). Between 1 October 2011 and 30 September 2012, the Division reduced this number from 195 to 131, and reduced by half the number of cases in which counsel moved for an enlargement of time to submit assignments of error. For most of June and July, the Division had no cases pending initial filing with the Air Force Court of Criminal Appeals greater than one year after receipt of a record of trial; however, by year's end, this increased to two cases. Applying the 18-month docketing-to-decision appellate processing standard of *United States v. Moreno*, 63 M.J. 129, 142 (CAAF 2006), counsel moved AFCCA to expedite review of cases where prejudice was apparent, to include considerations of likelihood of success on the merits and loss of meaningful relief with passage of time.

JAJA advocacy contributed to four AFCCA rulings favorable to appellants for erroneous admission of testimonial hearsay of laboratory officials and others in light of *United States v.*

Blazier, 69 M.J. 218 (CAAF 2010). Several other notable rulings clarified the rights of the accused and impacted the practice of military justice at the trial level. In *United States v. Dease*, 71 M.J. 116 (CAAF 2012), in an Article 62 appeal, the United States Court of Appeals for the Armed Forces (CAAF) held that the military judge did not abuse his discretion in ruling that Appellant had a privacy interest in his urine sample and could withdraw consent prior to testing. In *United States v. Hayes*, 71 M.J. 112 (CAAF 2012), CAAF held that the conviction for a violation of Article 92(3), dereliction of duty, was legally insufficient, as the Government failed to establish through competent evidence that there was a specific military duty, under Article 92 to either obey state laws in general, or, more specifically, the Nevada state law concerning consumption of alcohol by persons under the age of twenty-one. The Article 92 charge and its specification were dismissed. In *United States v. Rose*, 71 M.J. 138 (CAAF 2012), the court found that Appellant received ineffective assistance of counsel where the Appellant's reasonable request for information regarding sex offender registration "went unanswered" by his trial defense counsel, and had it been correctly answered, he would have pled not guilty. In a significant post-Fosler ruling, CAAF held that it was plain error to omit the terminal element of Article 134, UCMJ, in a contested adultery specification in *United States v. Humphries*, 71 M.J. 209 (CAAF 2012). The court stated that the Government did not plead the terminal element of Article 134, UCMJ, and, after a close reading of the trial record, there was nothing during the trial counsel's case-in-chief that reasonably placed the accused on notice of the prosecution theory as to which clause(s) of the terminal element of Article 134 had been violated. Owing in large part to post-Fosler advocacy, over half of all assignments of error submitted to AFCCA were filed as issues briefs, as compared to cases submitted on the merits, the highest ratio of issues-to-merits filings in many years.

On 11 October 2012, AFCCA held oral argument in the capital case, *United States v. Witt*, ACM 36785. With the full support of his OCONUS commander, Major Dan Schoeni temporarily redeployed from Bogota, Columbia, and returned to JB Andrews, MD, to argue on SrA Witt's behalf along with Mr. Dwight Sullivan, the Division's Senior Appellate Defense Counsel.

The Appellate Defense Division continued to support trial defense counsel in the field through consultation, including in time-critical situations. Appellate defense counsel also kept counsel in the field updated on new developments in military criminal law via appellate updates throughout the year. These

appellate updates included briefings at five Trial Advocacy Courses conducted in locations around the world.

The following figures reflect the division's workload over the past five fiscal years:

AFCCA	FY08	FY09	FY10	FY11	FY12
Briefs Filed	352	285	290	299	295
Cases Argued	14	16	4	9	12
CAAF	FY08	FY09	FY10	FY11	FY12
Supplements to Petitions	293	336	204	160	220
Grant Briefs	15	12	18	11	12
Cases Argued	15	13	17	17	9
SUPREME COURT	FY08	FY09	FY10	FY11	FY12
Petition/Waivers Filed	4	3	2	1	1
Briefs in Opposition	0	0	0	0	0
Briefs on the Merits	0	0	0	0	0

Appellate defense counsel participate in Project Outreach, sponsored by CAAF and AFCCA, by conducting oral arguments before external audiences with ties to the military and legal professions. The Project serves a dual-purpose as a recruiting tool while highlighting the fairness and professionalism of the military justice system. During the year, Outreach arguments were presented at Gonzaga University College of Law, Willamette University College of Law, University of Oklahoma School of Law, and Lackland AFB, TX.

TRIAL DEFENSE DIVISION

The Trial Defense Division (JAJD) is responsible for providing all defense services within the Air Force through its worldwide team of Area Defense Counsel (ADCs), Defense Paralegals (DPs), Senior Defense Counsel (SDCs), Chief Senior Defense Counsel (CSDCs), and Defense Paralegal Managers (DPMs). JAJD is also responsible for assisting Airmen in navigating the disability

evaluation system through its cadre of Disability Counsel and Disability Paralegals. Division personnel report to the Chief, JAJD, who reports to the Director, United States Air Force Judiciary (JAJ). The Chief, JAJD, is assisted by a Deputy Chief, Policy and Training, and an Office Superintendant at JB Andrews, MD.

During Fiscal Year 2012, the division was staffed with eighty-four ADCs, which is one more billet than last year, thanks to an additional position being provided at Davis-Monthan AFB, AZ. The ADCs teamed with seventy-two base-level DPs stationed at sixty-eight bases worldwide. The division also had nineteen SDCs and three CSDCs. Each CSDC supervised six-seven SDCs, and a DPM was assigned to each of the three CSDCs. The SDCs were stationed at JB Andrews, MD; JB Langley-Eustis, VA; JB Charleston, SC; Hurlburt Field, FL; Maxwell AFB, AL; Barksdale AFB, LA; JB San Antonio-Randolph, TX; Sheppard AFB, TX; Tinker AFB, OK; Peterson AFB, CO; Offutt AFB, NE; JB Lewis-McChord, WA; Travis AFB, CA; Nellis AFB, NV; Davis-Monthan AFB, AZ; Yokota AB, Japan; Kadena AB, Japan; RAF Lakenheath, United Kingdom; and Ramstein AB, Germany. Each SDC was co-located with the ADC office at their respective location.

The continuing success of the Air Force's ADC Program is largely attributable to its independence and its zealous personnel. To ensure the best representation for Air Force clients, training remains JAJD's top priority. Each SDC provided on-the-job training and mentoring to the ADCs in their charge on a continuing basis. Each CSDC, in turn, mentored the SDCs in their charge. Newly appointed ADCs and DPs received formal training at the combined Defense Orientation Course held at AFJAGS. SDCs attended a division-run Leadership Course at JB Andrews, MD. Defense personnel also attended Trial Advocacy Courses conducted at the Air Force Judge Advocate General's School (AFJAGS). Furthermore, the division continues to send ADCs and SDCs to the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course at AFJAGS as appropriate.

In addition to traditional defense services, JAJD continues to provide oversight responsibility for the Office of Airmen's Counsel (OAC) at JB San Antonio-Lackland, TX. The OAC provides counsel for Airmen going through the disability evaluation system and personally represents Airmen at the Formal Physical Evaluation Board hearings. The OAC grew to a total of nineteen personnel, adding seven active duty JAGs and seven active duty paralegals to the prior permanent staff of four attorneys and

one paralegal. To accommodate this growth, the OAC expanded its space allocation to ensure a professional, independent office.

Upgrading of ADC facilities also remains a JAJD priority. The JB San Antonio-Randolph, TX, ADC office was completely remodeled this year to accommodate a visiting attorney's office, a break room, and an enclosed space for the DP. In addition, construction was completed at the brand-new ADC stand-alone facility at Al Udeid, while the finishing touches are being put on the new offices for the defense team at Maxwell AFB, AL, which should be ready for move-in early 2013. Finally, the ADC offices at Pope Field, NC; Grand Forks AFB, ND; and Ramstein AB, Germany, all received duress alarm upgrades to enhance the security and safety of our personnel and their clients.

MILITARY JUSTICE DIVISION

The Military Justice Division (JAJM) prepares opinions and policy positions for the Secretary of the Air Force, The Chief of Staff, and The Judge Advocate General. The division also assembles reports on military justice issues requested by the White House, Congress, Department of Defense and the Air Staff. JAJM represents the Air Force on the DoD Joint Services Committee on Military Justice (JSC). The division also provides representatives to all interservice activities involving military justice and support for the Article 146, UCMJ, Code Committee. Lastly, JAJM serves as the action agency for the preparation of advisory opinions on military justice issues raised in applications submitted to the Air Force Board for Correction of Military Records (AFBCMR).

During the past fiscal year, JAJM provided 108 formal opinions concerning AFBCMR applications; received forty inquiries in specific cases requiring formal written replies to senior officials, including the President and Members of Congress; and reviewed forty-two records of trial for review under Article 69a, UCMJ, and 7 records under Article 69b, UCMJ.

As in past years, the division presented the annual Military Justice Administration Workshop at the Air Force Judge Advocate General's School, a "back to basics" one-week workshop attended by both judge advocates and paralegals. In 2012, however, the division held the class a second time in one year for the first time. Division personnel also taught at the GCMCA Staff Judge Advocate's Conference, the Staff Judge Advocate Course, and GATEWAY, an intermediate judge advocate course for majors at

Maxwell AFB, AL. Division personnel briefed Air Force JAG Corps leaders on the status of their military justice programs and new initiatives in the military justice arena and the importance of swift post-trial processing during the first annual Installation Leadership Course. Division personnel were also very active in developing and providing training for Air Force sexual assault prevention and response policies and procedures.

In Fiscal Year 2012, Secretary Panetta ordered a new policy withholding initial disposition authority for sexual assault accusations from commanders unless they are special court-martial convening authorities in the grade of at least O-6. JAJM conducted extensive training of its SJAs and commanders to properly implement SecDef's policy. Additionally, the Air Force is working to integrate JA and AFOSI capabilities to team senior trial counsel with trained investigators to build synergy in how we approach our investigations and prosecutions of these cases. Fiscal Year 2012 also marks the implementation of the new MRE 514, creating a privilege of confidential communication between victims of sexual and violent offenses, and victim advocates; and Art. 54(e) which requires the government to provide a copy of the record of trial to any sexual assault victim who testified at trial.

JAJM also supported the war effort in Fiscal Year 2012 by deploying two judge advocates to Afghanistan.

JAJM continued to coordinate military justice actions with high-level agencies, such as working closely with the DoJ on testimonial immunity requests for non-military witnesses and with the Office of the Secretary of the Air Force on officer requests to resign rather than face trial by court-martial. Division personnel were once again instrumental in drafting proposed changes to the Military Rules of Evidence and Rules for Courts-Martial for a pending executive order.

CLEMENCY, CORRECTIONS AND OFFICER REVIEW DIVISION

At the end of Fiscal Year 2012, 376 Air Force personnel were in confinement. Of those, 89 inmates were in long-term confinement at the United States Disciplinary Barracks, Fort Leavenworth, KS, and 65 were serving their sentence in the Federal Bureau of Prisons system. Only one individual attended the Air Force Return-to-Duty Rehabilitation Program; that candidate successfully completed the program and was returned to duty. The number of Air Force members and former members on

parole or Mandatory Supervised Release at the end of Fiscal Year 2012 was 82.

During the reporting period, the division completed twelve Article 71, UCMJ, reviews of officer dismissal cases. As was recommended, the Secretary approved the dismissals in all cases. The division also prepared two cases for Secretarial clemency under Article 74, UCMJ.

THE JUDGE ADVOCATE GENERAL'S SCHOOL

The Air Force Judge Advocate General's School is the educational arm of the JAG Corps. Located at Maxwell AFB, AL, the JAG School provided education and training in all aspects of military legal practice to attorneys and paralegals from all military services, other federal agencies, and many foreign countries. Military justice instruction included advocacy, administration, the rules of evidence, and the rules of procedure. JAG School faculty members also provided instruction on military justice for several schools and colleges throughout Air University, the Air Force's center for education. During Fiscal Year 2012, the JAG School instructed just under 18,000 students at these military institutions.

Additionally, the JAG School published articles concerning military justice and other criminal justice issues in The Reporter, The Air Force Law Review, and The Military Commander and the Law. JAG School webcasts allow subject-matter experts to brief timely military justice topics to all base legal offices and defense offices. Recorded webcasts are available on CAPSIL, a web-based collaborative learning and management system administered by the JAG School and accessible to all members of the JAG Corps. The JAG School has 39 web-based training modules on military justice topics.

Nearly 2,900 students attended in-residence courses in Fiscal Year 2012. Of those 54 courses, the following devoted substantial resources to military justice-related topics:

Advanced Trial Advocacy Course
Annual Survey of the Law (Reserve and Air National Guard)
Article 32 Investigations Course
Defense Orientation Course (for new ADCs and DPs)
Interservice Military Judge's Seminar
Judge Advocate Staff Officer's Course
Law Office Manager Course

Military Justice Administration Course
Paralegal Apprentice Course
Paralegal Craftsman Course
Staff Judge Advocate Course
Trial and Defense Advocacy Course

In addition to the above courses, the JAG School hosted trial advocacy courses at Lackland AFB, TX; Nellis AFB, NV; Yokota AB, Japan; and Ramstein AB, Germany. The courses for Fiscal Year 2012 focused on foundational advocacy.

LEGAL INFORMATION SERVICES

During Fiscal Year 2012, the Legal Information Services Directorate (AFLOA/JAS) continued to develop new legal information technology (IT) tools and improve existing ones to better support military justice business processes throughout the Air Force.

Since October 2011, AFLOA/JAS, in concert with the advice and assistance of a professional IT project management contractor, conducted a comprehensive needs assessment, identified military justice business processes and gathered IT requirements for modernizing the Automated Military Justice Administration Systems (AMJAMS). These efforts confirmed the need to create a modernized system with a common operating framework to support military justice practitioners at all levels leading to enhanced case management, increased visibility over individual cases for practitioners and managers, and automated functions to speed delivery of processes, reduce errors, and improve data capture for reporting and decision making purposes. These efforts additionally resulted in the creation of a Software Requirements Specification, System Use Cases, System Models, and Market Research, and user interface mockups.

The next generation of AMJAMS, if funded, will support the following four user group modules: convening authorities/installation-level, trial courts, appellate courts, and statistical data and reports analysis, with the following interactive capabilities: case management including an electronic trial brief and proof analysis, court docketing and calendaring, electronic filing, electronic discovery, electronic record of trial production, court-member management, appointment, task and suspense management, document production and assembly, records management, victim witness assistance management and increased reporting and analysis capabilities.

The next generation of AMJAMS will replace legacy systems which currently have limited or no interface capability with AMJAMS, and will interface and share information with other Department of Defense systems.

The current AMJAMS system was modified to maintain its usefulness pending funding for the next generation of AMJAMS. These changes included modifying the pending offenses section, adding a new data field to the Pretrial Agreement section, changing language and drop down entries, and creating a new report to track Senior Trial Counsel coordination on sexual assault allegations. Finally, the Area Defense Electronic Reporting (ADER) System, Spiral 2.1, was released. This Spiral included adding capability to track Article 15 Supplemental Actions, ability for temporarily assigned paralegals to open cases for the assigned office, ability for AFLOA/JAJD to bulk transfer cases from a departing defense paralegal to a newly assigned defense paralegal, and added new active case reports and individual case reports.

PERSONNEL

As of 30 September 2012, the Air Force Judge Advocate General's Corps had 1,266 judge advocates on active duty. Company grade officers (lieutenants and captains) made up 49% of that number (616); 24% were majors (307); and just over 17% were lieutenant colonels (220). Colonels (117) and above, including one lieutenant general, one major general, and four brigadier generals, comprised 10% of the Corps. The Air Force Judge Advocate General's Corps Reserve included 901 Air Force Reserve IMA, Air Force Reserve unit-assigned, and Air National Guard judge advocates, of which 20% (183) were company grade officers and 69% (615) were field grade officers (majors and lieutenant colonels). The remaining 11% consisted of 98 colonels, 4 brigadier generals, and 1 major general.

On 2 January 2013, the President signed the FY13 NDAA, which amended section 946 of title 10, United States Code (Article 146, UCMJ). A new subparagraph was added requiring additional information not previously required in this annual Code Committee Report. The newly required information will be included in the FY2013 Code Committee Report.

RICHARD C. HARDING
Lieutenant General, USAF
The Judge Advocate General

Period: Fiscal Year 2012

PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE(+)/ DECREASE (-) OVER
GENERAL	182	166	16	-43.95%
BCD SPECIAL	389	111	36	-3.34%
NON-BCD SPECIAL [A]		242		
SUMMARY	140	137	3	-2.86%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				

PART 2 - DISCHARGE APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES [B]	
NUMBER OF BAD CONDUCT DISCHARGES	
SPECIAL COURT-MARTIAL (CA LEVEL)	
NUMBER OF BAD CONDUCT DISCHARGES	

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	124	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	111	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	44	

PART 4 - WORK LOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD			345	
GENERAL COURTS-MARTIAL		226		
BCD SPECIAL COURTS-MARTIAL		104		
REFERRED FOR REVIEW			235	
GENERAL COURTS-MARTIAL		124		
BCD SPECIAL COURTS-MARTIAL		111		
TOTAL CASES REVIEWED			260	
GENERAL COURTS-MARTIAL		133		
BCD SPECIAL COURTS-MARTIAL		127		
TOTAL PENDING AT CLOSE OF PERIOD			320	
GENERAL COURTS-MARTIAL		217		
BCD SPECIAL COURTS-MARTIAL		88		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (260/580)				

PART 5 - APPELLATE COUNSEL REQUESTS BEFORE THE AIR FORCE COURT OF CRIMINAL APPEALS

NUMBER	226/235	
PERCENTAGE	96.17%	

PART 6 - U.S. COURT OF APPEALS FOR THE ARMED FORCES				
PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF 243/260 [C]				93.46%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD				+17.76%
PERCENTAGE OF TOTAL PETITIONS GRANTED 36/243				14.81%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD				+6.29%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY AFCCA 36/260				13.85%
RATE OF INCREASE (+) / DECREASE (-)OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD				+4.98
PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69				
PENDING AT BEGINNING OF PERIOD			3	
RECEIVED			0	
DISPOSED OF			9	
GRANTED		0		
DENIED		8		
NO JURISDICTION		1		
WITHDRAWN		0		
TOTAL PENDING AT END OF PERIOD			0	
PART 8 - ORGANIZATION OF COURT				
TRIALS BY MILITARY JUDGE ALONE			259	
GENERAL COURTS-MARTIAL		79		
SPECIAL COURTS-MARTIAL		180		
TRIALS BY MILITARY JUDGE WITH MEMBERS			312	
GENERAL COURTS-MARTIAL		103		
SPECIAL COURTS-MARTIAL		209		
PART 9 - COMPLAINTS UNDER ARTICLE 138				
NUMBER OF COMPLAINTS		27		
PART 10 - STRENGTH				
AVERAGE ACTIVE DUTY STRENGTH		327,285		
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)				
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED			6,318	
RATE PER 1,000			19.30%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD			-1.56%	
EXPLANATORY NOTES				
[A] Of the 389 SPCMs tried, there were 111 convictions with a BCD adjudged, 242 convictions without a BCD adjudged, and 36 acquittals.				
[B] Includes 13 officer dismissals.				

SECTION 6

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE
COAST GUARD

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE
U. S. COAST GUARD

October 1, 2011 to September 30, 2012

PERSONNEL AND TRAINING

The Coast Guard has approximately 195 officers designated as judge advocates serving on active duty, of whom 150 are serving in legal billets and 45 are serving in "out-of-specialty" billets. Those Coast Guard lawyers currently practicing law include the Staff Judge Advocate to NORTHCOM, and the assigned Staff Judge Advocate to Joint Interagency Task Force South (JIATF South), as well as staff attorneys advising NORTHCOM, AFRICOM, and SOUTHCOM. Among the approximately 45 military attorneys serving in "out-of-specialty" billets are the Seventh District Commander, the Director, JIATF South, and other commanding and executive officers of Coast Guard cutters, sectors, training centers, and support commands. The Coast Guard also employs 95 civilian attorneys ranging from GS-13 to SES.

The Coast Guard sent attorneys to 33 different courses of instruction during this fiscal year, primarily at the various service JAG schools. Twenty-five Coast Guard officers are currently undergoing postgraduate studies in law and will be certified as judge advocates at the successful completion of their studies. Two judge advocates are attending the Graduate Course at the United States Army Judge Advocate General's Legal Center and School and another is a fellow in the Center for Law and Military Operations. One civilian attorney is attending a LLM program in procurement law. In addition, one judge advocate is attending the Master's program at the Naval War College in Newport, Rhode Island. Twenty-five Coast Guard officers completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified under Article 27(b), UCMJ.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

The judges on the U.S. Coast Guard Court of Criminal Appeals during fiscal year 2012 were:

Chief Judge Lane I. McClelland
Judge Patrick J. McGuire
Judge Brian T. McTague
Judge John F. Havranek
Judge Charlie M. Johnson
Judge Kathleen A. Duignan (Sworn in December 2011)
Judge Andrew Norris (Sworn in April 2012)

In addition to the decisional work of the Court, as reflected in the Appendix, the judges of the Court have been involved in various professional conferences, committees and seminars during the past fiscal year.

MILITARY JUSTICE ORGANIZATION

Fourteen Staff Judge Advocates advise seventeen officers exercising general court-martial jurisdiction. Those fourteen SJAs as well as three additional independent duty SJAs at training centers advise approximately 350 officers exercising special court-martial jurisdiction. Responsibility for detailing trial and defense counsel to general and special courts-martial rests with the Chief, Office of Legal and Defense Services, a staff office reporting to the Deputy Judge Advocate General charged with providing defense and personal legal services to Coast Guard members. Pursuant to an inter-service memorandum of understanding, the U.S. Navy provides trial defense counsel for all Coast Guard courts-martial. In return, at least four Coast Guard attorneys are assigned to full time duty, typically for one-year or two-year assignments, at one or more Navy Defense Service Offices or Regional Legal Service Offices.

The Coast Guard has one general courts-martial judge and eight collateral-duty special courts-martial judges. The Chief Trial Judge details all military judges to Coast Guard courts-martial.

The Office of Military Justice at Coast Guard Headquarters is responsible for representing the United States in all courts-martial appeals and providing support to staff judge advocates and trial counsel throughout the Coast Guard. The office is also responsible for developing military justice policy for the Coast Guard, including participation on the Joint Service

Committee (JSC) on Military Justice. Within the office, two officers, a LCDR (O-4) and a LT (O-3), are assigned primary duty as appellate government counsel.

TRAINING OPPORTUNITIES WITH OTHER SERVICES

To improve the trial advocacy skills and experience levels of Coast Guard Judge Advocates, the Judge Advocate General assigns Trial Counsel for limited periods of time (usually three months) to certain installations which have a robust military justice practice. Coast Guard Judge Advocates have been assigned to Marine Corps Base Quantico, Marine Corps Base Camp Pendleton, the Army's Trial Counsel Assistance Program in Arlington, Virginia, the Staff Judge Advocate for the Military District of Washington and the Navy Regional Service Office, Norfolk, VA. This year, two Judge Advocates were assigned to Marine Corp Base Quantico, each for 3 to 4 months temporary assignments. This is in addition to the existing Memorandum of Understanding with the Navy, discussed in the previous section, which provides for Coast Guard Judge Advocates to be assigned full-time as defense counsel at Navy Defense Service Offices or Navy Regional Legal Service Offices.

MILITARY JUSTICE STATISTICS

NOTE: All statistics are based on the number of courts-martial records received and filed at Coast Guard Headquarters during fiscal year 2012 and, where indicated, records received during each of the four preceding fiscal years. The number of courts-martial varies widely from year to year; consequently, this is not a reliable indicator of the administration of military justice given the relatively small number of courts-martial overall.

Fiscal Year	12	11	10	09	08
General Courts-Martial	14	06	12	12	13
Special Courts-Martial	14	32	20	19	19
Summary Courts-Martial	17	19	09	14	28
Total	45	57	41	45	60

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains the Coast Guard, Fiscal Year 2012 military justice statistics.

F. J. KENNEY
Rear Admiral, U. S. Coast Guard
Judge Advocate General of the Coast Guard

Appendix A: U. S. Coast Guard Courts-Martial/NJP
Statistics for
October 1, 2011 to September 30, 2012 (FY 2012)

** On 2 January 2013, the President signed the FY13 NDAA, which amended section 946 of title 10, United States Code (Article 146, UCMJ). A new subparagraph was added requiring additional information not previously required in this annual Code Committee Report. The newly required information will be included in the FY 2013 Code Committee Report.

APPENDIX: U.S. COAST GUARD MILITARY JUSTICE STATISTICS

Report Period: 1 OCTOBER 2011- 30 SEPTEMBER 2012

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	14	13	01	+ 133%
BCD SPECIAL	14	14		+ 16%
NON-BCD SPECIAL	00	00	00	- 70%
SUMMARY	17	17	00	+ 10%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+ 3.6%

PART 2 - DISCHARGES APPROVED

GENERAL COURTS-MARTIAL	01	
NUMBER OF DISHONORABLE DISCHARGES		
NUMBER OF BAD-CONDUCT DISCHARGES	08	
SPECIAL COURTS-MARTIAL	13	
NUMBER OF BAD-CONDUCT DISCHARGES		

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	13	
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	14	
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	03	

PART 4 - WORKLOAD OF THE COAST GUARD COURT OF CRIMINAL APPEALS*

TOTAL ON HAND BEGINNING OF PERIOD		18	
GENERAL COURTS-MARTIAL	05		
BCD SPECIAL COURTS-MARTIAL	13		
REFERRED FOR REVIEW		19	
GENERAL COURTS-MARTIAL	11		
BCD SPECIAL COURTS-MARTIAL	08		
TOTAL CASES REVIEWED		19	
GENERAL COURTS-MARTIAL	05		
BCD SPECIAL COURTS-MARTIAL	14		
TOTAL PENDING AT CLOSE OF PERIOD		18	
GENERAL COURTS-MARTIAL	12		
BCD SPECIAL COURTS-MARTIAL	06		

* The Court also decided three Writs.

RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+ 35.7%	
PART 5 – APPELLATE COUNSEL REQUESTS BEFORE U.S. COAST GUARD COURT OF CRIMINAL APPEALS (CCA)		
NUMBER	19	
PERCENTAGE	100%	
PART 6 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)		
PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF	3/19	15.7%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		- 25%
PERCENTAGE OF TOTAL PETITIONS GRANTED 0/3		0%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		- 100%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA		0%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		- 25%

U.S. COAST GUARD MILITARY JUSTICE STATISTICS - CONT'D

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		01	
RECEIVED		00	
DISPOSED OF		00	
GRANTED	00		
DENIED	00		
NO JURISDICTION	00		
WITHDRAWN	00		
TOTAL PENDING AT END OF PERIOD		01*	
PART 8 – ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE		15	
GENERAL COURTS-MARTIAL		06	
SPECIAL COURTS-MARTIAL		09	
TRIALS BY MILITARY JUDGE WITH MEMBERS		19	
GENERAL COURTS-MARTIAL		11	
SPECIAL COURTS-MARTIAL		08	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		00	
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		42932	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		969	
RATE PER 1,000		22.57	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-21.41%	

* Forwarded to CG Ct. Crim. App. for Review under Art 66(d)