

ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

OCTOBER 1, 1999 TO SEPTEMBER 30, 2000

**SUPERVISION OF THE ADMINISTRATION OF
MILITARY JUSTICE**

In compliance with Article 6(a), Uniform Code of Military Justice, the Judge Advocate General and the Deputy Judge Advocate General made frequent inspections of legal offices in the United States, Europe, and the Far East in order to supervise the administration of military justice.

ARTICLE 69(a), UCMJ, EXAMINATIONS

Thirty general courts-martial records of trial not statutorily eligible for automatic review by the Navy-Marine Corps Court of Criminal Appeals (NMCCA) were forwarded for examination to the Office of the Judge Advocate General in fiscal year 2000. Twenty were pending at the end of fiscal year 1999. Of the 35 cases completed, none required corrective action by the Judge Advocate General. Fifteen cases are pending review at the close of fiscal year 2000.

ARTICLE 69(b), UCMJ, APPLICATIONS

In fiscal year 2000, 11 applications under Article 69(b), UCMJ, were received for review. Seventeen such applications remained pending from fiscal year 1999. Of these 28 applications, 20 were denied on the merits. Eight cases are currently pending review.

ARTICLE 73, UCMJ, PETITIONS

In fiscal year 2000, the Office of the Judge Advocate General received four petitions for a new trial. Two petitions were denied and two petitions are pending review at the close of fiscal year 2000.

APPELLATE DEFENSE DIVISION

Active-Duty Personnel. The Navy-Marine Corps Appellate Review Activity, Appellate Defense Division (Code 45) was staffed by 14 active-duty officers and two civilian staff employees at the close of fiscal year 2000. CDR Richard W. Bagley, Jr., JAGC, USN, remained the Division Director in this reporting period. Table 1 illustrates officer distribution by branch of service and grade. Active-duty personnel are usually assigned for three-year tours of duty. During fiscal 2000, seven new attorneys reported for duty in the Appellate Defense Division, but the Division also lost 11 experienced appellate counsel.

Table 1
 Active-Duty Personnel Assigned on board
 Navy-Marine Corps Appellate Review Activity
 Appellate Defense Division

Service	CDR/LtCol (0-5)	LCDR/Maj (0-4)	LT/Capt (0-3)	First Tour (0-2/0-3)	Totals
Navy	1	2	5	3	11
Marine Corps	0	2	1	0	3
Totals	1	4	6	3	14

Reserve Personnel. Four Naval Reserve units and a number of U.S. Marine Corps Reserve judge advocates supported the Appellate Defense Division. Table 2. Operating under the flexible drilling (flex-drill) system, the Reserve Branch Head mails records of trial to Reservists, who review them and brief the issues they deem appropriate. The case is returned to the Appellate Defense Division, reviewed by an active duty counterpart, and filed with NMCCA by the Reserve Branch Head. Reservists also routinely spend two weeks of active duty training per year at Appellate Defense Division headquarters. These Reserve elements accounted for approximately 74% of all cases reviewed and filed with NMCCA in fiscal year 2000. Although this percentage is high, it is imperative to note that active-duty counsel continue to have responsibility for reviewing and briefing the majority of complex, multiple-issue cases.

During fiscal year 2000, NR NAVJAG 109 in Columbus, Ohio, was commanded by Captain Ben J. Piazza, JAGC, USNR. He was relieved by Captain John Fabian, JAGC, USNR on 1 October 2000. NR NAMARA (Defense) 111 in Oklahoma City, Oklahoma, was commanded by Captain Kristy L. Christen, JAGC, USNR, and she was relieved by Captain Donald Davidson, JAGC, USNR during this reporting period. In fiscal year 2000, the Appellate Defense Division was augmented by two additional Naval Reserve units headquartered in Fort Worth, Texas, and Los Angeles, California. The Fort Worth unit is commanded by Captain Robert White, JAGC, USNR and the Los Angeles unit is commanded by Captain Donald Nelson, JAGC, USNR.

Table 2
 Naval and Marine Corps Reserve Units/Personnel Supporting
 Navy-Marine Corps Appellate Review Activity
 Appellate Defense Division

Unit	CAPT/Col (0-6)	CDR/LtCol (0-5)	LCDR/Maj (0-4)	LT/Capt (0-3)	Totals
NAVJAG 109 Columbus, OH	1	2	3	1	7
NAMARA 111, Okla. City, OK	1	1	2	3	7
NAVJAG 519 Los Angeles, CA	4	1	0	0	5
NAVJAG 211 Fort Worth, TX	1	3	2	1	7
VTU 0614, Wash. DC	1	1	0	0	2
USMCR IMA	0	3	4	1	8
Totals	8	11	11	6	36

Navy-Marine Corps Court of Criminal Appeals Practice. The Appellate Defense Division received 1605 records of trial docketed for Article 66, UCMJ, review by NMCCA in fiscal year 2000. This represents a decline of 159 records from fiscal year 1999. The Appellate Defense Division reviewed and filed 1188 cases with NMCCA in fiscal year 2000. While this represents a decline of 610 cases compared to fiscal year 1999, it is worth noting the number of Extraordinary Writs and Supreme Court petitions for certiorari increased significantly during this reporting period. Counsel in the Division drafted, filed, and argued eight Extraordinary Writs, and drafted and filed 10 Supreme Court cert petitions. Tables 3-5 reflect the numbers and types of pleadings filed in fiscal year 2000 and fiscal year 1999.

Table 3
 Cases Filed by Active-Duty
 Navy-Marine Corps Appellate Defense Counsel
 at the Navy-Marine Corps Court of Criminal Appeals

Fiscal Year	Fully Briefed	Summary Assignment	Submitted on Merits	Total Records Reviewed
FY-00	180	25	86	291
FY-99	278	94	253	625

Table 4
 Cases Filed by Reserve
 Navy-Marine Corps Appellate Defense Counsel
 at the Navy-Marine Corps Court of Criminal Appeals

Fiscal Year	Fully Briefed	Summary Assignment	Submitted on Merits	Total Records Reviewed
FY-00	86	59	752	897
FY-99	70	84	1019	1173

Table 5
 Cases Filed by Combined Active-Duty and Reserve
 Navy-Marine Corps Appellate Defense Counsel
 at the Navy-Marine Corps Court of Criminal Appeals

Fiscal Year	Fully Briefed	Summary Assignment	Submitted on Merits	Total Records Reviewed
FY-00	266	84	838	1188
FY-99	348	178	1272	1798

The decline in the number of cases reviewed is attributable to a number of factors: (1) the net loss of five active-duty counsel; (2) the assignment of three experienced appellate attorneys to the full-time representation of capital cases; and (3) the replacement of nine experienced counsel with five inexperienced appellate counsel.

Appellate Defense Division attorneys also argued 20 times before NMCCA, including one en banc argument.

United States Court of Appeals for the Armed Forces (CAAF) Practice. Table 6 reflects a sizable increase in the percentage of

"petitions for review filed" of Navy-Marine Corps cases and those where a petition was granted by CAAF in fiscal year 2000--roughly 29% compared to 14% in the previous fiscal year--while the number of oral arguments at CAAF decreased by only 12.

Table 6
Representation by
Navy-Marine Corps Appellate Defense Counsel
before the U.S. Court of Appeals for the Armed Forces

Fiscal Year	Petitions for Review Filed	Petitions Granted/ Briefs Filed	Oral Argument	Published Opinions
FY-00	171	49	43	49
FY-99	323	45	55	54

Capital Litigation. In fiscal year 2000, the Appellate Defense Division continues to be actively involved in the appeals of three capital cases. The defense brief in United States v. Private Kenneth G. Parker, USMC, NMCM No. 95-1500 was filed with NMCCA on 23 July 1999 and the Government's answer is still pending. Appellate defense teams are currently researching and writing briefs in United States v. Private Wade L. Walker, USMC, NMCM No. 95-1607 (a companion case to Parker) and United States v. Private Jesse Quintanilla, USMC, NMCM No. 98-1632, in which a motion for Extraordinary Relief was filed on 31 July 2000 with NMCCA.

The Navy-Marine Corps Defense Capital Litigation Resource Center (CLRC) partially completed its third year of operations. Captain Henry Lazzaro, JAGC, USNR, the Director, was released from active duty in June 2000. The Director position will remain gapped and will be filled by summer 2001. The CLRC, unique among the services, is co-located with the Appellate Defense Division and provides advice on pretrial, trial, and sentencing strategies. It also serves as a research and resource clearinghouse with banks of motions relating to capital litigation as well as information on expert consultants and witnesses.

In fiscal year 2000, the CLRC provided its expertise in three other courts-martial where the death penalty was sought or seriously considered. This relatively low number reflects the limited term of operation for the CLRC during this reporting period. In all three cases, however, the charges were ultimately referred non-capital. The CLRC afforded advice and assistance in the case of United States v. Intelligence Specialist First class James W. Fuhrman, USN, where the Appellant pled guilty in return for a life sentence (later reduced to 50 years by the convening authority). The CLRC maintained liaison with the

Army and Air Force and provided advice and assistance in one potential Army capital case (United States v. Sgt Frank Ronghi, USA) in which negotiations led to a pretrial agreement for a plea to murder in return for a life sentence without parole.

The CLRC continued to provide advice to, and coordination and procurement of training for, counsel for three Marine Corps cases awaiting appellate review where a death sentence was approved by the convening authority. Finally, the CLRC plays a large role in training trial and appellate defense counsel at the annual Defense Capital Litigation Course taught at the Naval Justice School, Newport, Rhode Island.

Trial Defense Assistance. The Appellate Defense Division provides advice and support to Navy and Marine Corps trial defense counsel on a continuing basis. The Division began publication of a monthly newsletter, entitled Timely Objection, which summarized and analyzed all recent CAAF and NMCCA cases. The newsletter also covered recent Federal and State appellate decisions involving criminal justice, and contained a "Trial Tips" section designed to aid the trial practitioner and a training section highlighting military and civilian training relevant to courts-martial practice. Publication of Timely Objection has been suspended to allow all counsel to concentrate on current cases. Publication will resume in summer 2001.

The Appellate Defense Division also maintains a rotating Field Call watch comprised of experienced appellate attorneys who reply to short-fused questions from trial defense counsel in the field and assist them in filing extraordinary writs, if the case warrants.

APPELLATE GOVERNMENT DIVISION

Appellate Representation. Members of the Appellate Government Division filed a total of 1,020 pleadings last year (excluding requests for enlargement of time). Seven hundred sixty-five of these pleadings were filed with NMCCA, and 255 were filed with CAAF. Additionally, the Division participated in 57 oral arguments before the two courts, including about 40% of all arguments before CAAF.

Field Assistance. The Division's Trial Counsel Assistance Program responded to over 1200 telephone calls or electronic messages from trial counsel and staff judge advocates. The issues involved ran the gamut of military justice matters involving all phases of proceedings. The Division provided additional assistance through worldwide dissemination of four Viewpoint publications, in which issues of significant military justice interest were discussed in depth, and periodic case law updates, in which significant military appellate decisions were summarized and discussed.

Presentations. The Appellate Government Division provided training at the Trial Service Office Conference in Jacksonville, Florida, in May 2000, and at the monthly OJAG-wide training in Washington, DC, in January, March, and July 2000.

Reserves. Throughout the year the Appellate Government Division was supported by its Marine Corps Reserve members and its two Naval Reserve units. These Reservists made significant contributions to the Division's successful accomplishment of its mission.

NAVY-MARINE CORPS TRIAL JUDICIARY

The Navy-Marine Corps Trial Judiciary (NMCTJ) consists of 33 active-duty judges and 22 Reservists serving in 12 circuits and five branch offices. During fiscal year 2000, NMCTJ provided judicial services in 428 general courts-martial and 2381 special courts-martial. These numbers represent an increase in general courts-martial (79) and special courts-martial (279) compared to fiscal year 1999. NMCTJ provided judicial services to Fleet and Shore Activities, and Marine Forces in the United States and around the world. Members of the Trial Judiciary participated in continuing education at the Army Judge Advocate General's School, the Interservice Military Judges' Seminar at Maxwell Air Force Base, and various courses at The National Judicial College at the University Of Nevada.

NMCTJ also provided training at various levels, including the Navy-Marine Corps Senior Officer Course and other in-service courses. NMCTJ performed an active role in mentoring judge advocates through both formal and informal training sessions.

NAVAL LEGAL SERVICE COMMAND

Naval Legal Service Command (NAVLEGSVCCOM) is commanded by the Deputy Judge Advocate General of the Navy and includes 293 judge advocates, 16 Limited Duty Officers (Law), 204 legalmen, and 238 civilians. NAVLEGSVCCOM provides a wide range of legal services to afloat and ashore commands, active duty-naval personnel, family members, and retirees from 55 offices world-wide: eight Naval Legal Service Offices (NLSOs), five Trial Service Offices (TSOs), the Naval Justice School, and 47 detachments and branch offices. NAVLEGSVCCOM provides counsel for courts-martial, administrative boards, physical evaluation boards, legal assistance, and local commanders. NAVLEGSVCCOM also provides assistance for claims processing and adjudication, and training judge advocates, legalmen, and other DoD personnel. During fiscal year 2000, NAVLEGSVCCOM provided counsel for 225 general courts-martial, 818 special courts-martial, 269 Article 32 investigations, 911 administrative separation boards; processed over 30,000 claims; provided over 235,600 legal assistance services, and provided command assistance services for over 3,900 commands.

Last year NAVLEGSVCCOM opened a legal service office in London, England to support Naval commands, sailors, and their families in Northern Europe.

NAVLEGSVCCOM is currently researching improvements to a military justice module for the Time Matters Case Management System. When fully implemented, this system will allow us to more closely track military justice cases.

NAVAL JUSTICE SCHOOL

Organization. Naval Justice School (NJS) reports to Commander, Naval Legal Service Command, for administrative and operational control. 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).

Mission Statement. NJS shall:

1. Oversee training of judge advocates, Limited Duty Officers (Law), and legalmen to ensure their career-long professional development and readiness.
2. Provide comprehensive formal training to all sea service judge advocates and other legal personnel to promote justice and ensure the delivery of quality legal advice and other legal services.
3. Train sea service commanders and senior officers in the practical aspects of military law to enable them to perform their command and staff duties, and train other sea service personnel to assist in the sound administration of military justice.

Coordination. Through the Interservice Legal Education Review Committee (ISLERC), the Commanding Officer of NJS and the Commandants of the Army and Air Force JAG Schools meet semi-annually to discuss new initiatives and opportunities for cross-training, and to increase cooperation and efficiency in the training of legal personnel within the Department of Defense.

Academic Programs. NJS has five "core" courses, each containing substantial blocks of instruction relating to military justice and operation of the UCMJ. These courses are:

1. Accession Judge Advocate Course. This nine-week course, offered four times per fiscal year, is the accession-level course in military justice for all judge advocates of the Navy, Marine Corps, and Coast Guard. Most of the course is dedicated to military justice and court-martial advocacy training (other topical areas include legal assistance and administrative law). Upon graduation from NJS, judge advocates are certified in accordance with Article 27(b), UCMJ. Fiscal year 2000 graduates:

Navy	107
Marine Corps	57
Coast Guard	20
Air Force	0
International	4

2. Accession Legalman Course. This nine-week course, offered four times per fiscal year, trains enlisted personnel selected for conversion to the legalman rating. In fiscal year 2000, the course consisted of two phases: (a) Paralegal, dedicated to training Navy legalmen in military justice practice (six weeks), and (b) Court Reporters (three weeks). Fiscal 2000 graduates: 84.

3. Senior Officer Course (SOC) in Military Justice and Civil Law. This five-day course is taught in Newport, Rhode Island, and other areas of fleet and Fleet Marine Force concentration. In fiscal year 2000, the course was offered 18 times at eight different locations. The course prepares senior officers to execute the legal responsibilities of command. Most of the course focuses on such areas as nonjudicial punishment and court-martial procedures. Fiscal year 2000 participants in SOC:

Navy	428
Marine Corps	132
Coast Guard	15
Civilian	0
Air Force	3

4. Legal Officer Course. In the sea services, non-lawyer "legal officers" perform a host of military justice functions in many commands that are not large enough to warrant assignment of a judge advocate. This four-week course prepares these collateral duty legal officers (typically paygrades 0-1 to 0-3) to assume legal duties in their respective commands. This course is offered 16 times per fiscal year, at Newport, Rhode Island, San Diego, California, and Norfolk, Virginia. Fiscal year 2000 legal officers trained:

Navy	446
Marine Corps	82
Coast Guard	2
International	1

5. Legal Clerk Course. Legal clerks are typically assigned to assist non-lawyer legal officers within a command. This is usually a collateral duty for a Navy command yeoman or personnelman, or a Marine Corps legal services specialist. This two-week course provides training in the preparation of legal forms and reports, service record entries, post-mast and post court-martial procedures. In fiscal year 2000, the course was offered 19 times at Newport, Rhode Island, San Diego, California, and Norfolk, Virginia. Fiscal year 2000 participants:

Navy	245
Marine Corps	22
Civilian	4

In addition to the above "core" courses, NJS offered numerous continuing legal education programs throughout the fiscal year that contained detailed instructions relating to the operation of the UCMJ. These included:

<u>Officer Courses</u>	<u>Length</u>
Reserve Judge Advocate Course	Two weeks
Staff Judge Advocate Course	Two weeks
Capital Litigation Course (Separate offerings for Prosecution and Defense)	2.5 days
Intermediate Trial Advocacy Course	One week
Advanced Trial Advocacy Course	One week
Coast Guard Law Specialist Course	One week
Computer Crimes	Two days
National College of District Attorneys Course	One week
Advanced Staff Judge Advocate Course	One week
Law of Military Operations	Two weeks
Joint Operational Law	Two weeks
Career Force Indoctrination	One week
Staff Judge Advocate Environmental Law	Three days
Litigating Complex Cases	Three days
Legal Assistance Manager's Workshop	Two days
Estate Planning	Three days
SOAC Course	Two days
Continuing Legal Education	Four days

<u>Enlisted Courses</u>	<u>Length</u>
Reserve Legalman Course	Two weeks
Legalman Legal Writing	One week
Military Justice Course for the Staff Judge Advocate/Command Judge Advocate/Shipboard LN	One week
NLSO/TSO Legalman Course	Three days
Coast Guard Legal Clerk Course	Two weeks
Senior Legalman Course	One week

International Programs. In fiscal year 1998, NJS introduced Legal Considerations for Peacekeeping and Military Operations. In fiscal year 2000, 64 students from 43 countries attended the Fall and Spring offerings of this five-week resident course held in Newport, Rhode Island. The course covers topics including international law, UN organizations, UN Charter, regional organizations, humanitarian relief organizations, non-governmental organizations, law of armed conflict, rules of engagement, status of forces agreements, national policy for peace operations, legal issues regarding de-mining, and preventive diplomacy. The students hear from notable guest speakers, engage in interactive group problems and take field trips to Washington, D.C. and UN Headquarters in New York City. In the past two years, 203 students have completed the course.

DIILS Staff. In June of 2000, oversight of the Defense Institute of International Legal Studies (DIILS) program transferred from NJS to the Defense Security Cooperation Agency as a joint agency activity. NJS and DIILS continue mutual support and shared administrative resources. DIILS has presented programs to over 13,000 senior military and civilian government officials in 73 countries worldwide since its inception in late 1992. Teams, consisting of judge advocates from all uniformed services, utilize the UCMJ and their experiences to compare, contrast, and develop military justice systems in emerging democracies. In fiscal year 2000, DIILS presented 53 weeks of seminars in 32 developing nations. Significantly, 26 percent of the participants have been civilian members of these governments who determine policy and create new military justice codes.

Publications. NJS publishes the Naval Law Review, all materials in support of academic programs, and any additional materials directed by higher authorities. NJS will soon publish Volume 47 of the Naval Law Review, containing several articles related to operational, environmental, and international law and military justice.

MARINE CORPS ACTIVITIES

The Marine Corps active-duty judge advocate community consisted of approximately 420 judge advocates during fiscal year 2000. Nearly half of all judge advocates were company-grade officers, in pay grade O-3 or below. Forty-five officers were new accessions, ordered to begin active duty at The Basic School in Quantico, Virginia. In addition to the new accessions, 10 officers graduated from ABA-accredited law schools by way of government-sponsored law education programs. Four of these officers graduated from the Funded Law Education Program (FLEP) and six graduated from the Excess Leave Program (ELP). Twelve officers are currently assigned to FLEP and 15 are now attending law school under the ELP.

Thirteen judge advocates attended resident professional military education courses in fiscal year 2000. Eight majors received LL.M degrees from the graduate course at The Judge Advocate General's School of the Army, Charlottesville, Virginia. Three captains completed the Amphibious Warfare School, Quantico, Virginia and one lieutenant colonel completed the Marine Corps Command and Staff Course, Quantico, Virginia. One lieutenant colonel completed top-level school and two majors received LL.M degrees through the Special Education Program (SEP). Thirteen officers are currently attending resident professional military education courses and two are assigned to the SEP. As unrestricted officers, Marine Corps judge advocates continued to fill numerous non-legal billets. Five judge advocates serve in command billets: Security Battalion, Marine Corps Base, Camp Pendleton, California; Marine Corps Security Force Company, Kings Bay, Georgia; Headquarters Battalion, Marine Corps Bases, Hawaii; 1st Battalion, Recruit Training Regiment, Marine Corps Recruit Depot, San Diego, California; and Headquarters and

Service Battalion, Marine Corps Recruit Depot, San Diego, California.
Ten judge advocates served in joint billets.

The Marine Corps Reserve judge advocate community averaged 395 officers during fiscal year 2000. Approximately 275 of these officers were actively participating in the Reserve. Fourteen Reserve judge advocates, major through colonel, serve as appellate counsel in the Navy-Marine Corps Appellate Review Activity. Reserve judge advocates serve at bases and stations throughout the country and overseas. They provide legal support beside, and are almost indistinguishable from, their active-duty counterparts in billets ranging from instructors at Naval Justice School to legal assistance attorneys at Marine Corps Base, Camp Pendleton, California. Reserve judge advocates also serve in non-legal billets in various combat arms and supporting commands.

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Rear Admiral, USN
The Judge Advocate General of the Navy