



**Marine Corps Legal Services
Military Justice Report
Fiscal Year 2012**





STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS

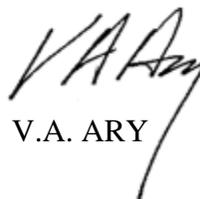
21 February 2013

Fiscal Year 2012 was a monumental year for the Marine Corps legal community. No doubt the highlight of the year was the decision of the Commandant of the Marine Corps to order a comprehensive reorganization of our community. Designed to increase our ability to respond to future legal requirements, the reorganization leveraged the depth and breadth of legal experience to meet the evolving scope and complexity of the legal mission.

The reorganization affected 49 different commands and over 800 legal billets and significantly changed the provision of military justice services by: establishing four regional Legal Services Support Sections (LSSSs); doubling the number of field grade officers serving in senior litigation billets; and, creating a complex trial team led by a Regional Trial Counsel (RTC) and composed of experienced trial counsel, a civilian highly qualified expert, and military criminal investigators – capable to flexibly respond and surge resources to any strategic or particularly complex case within the region.

The reorganization of the prosecution function to a regionally-focused model largely mirrors the Fiscal Year 2011 reorganization of the Defense Services Organization, and positions our legal community to better meet the needs of Commanders, Marines, Sailors, and their families. Litigators on both sides are now better able to receive leadership, mentorship, training, and resources to more effectively perform their mission.

The Strategic Action Plan 2010-2015 continued to guide our Marine Corps legal community throughout the year as we navigated this reorganization under the Commandant's direction. We look forward to a bright future, realizing the promise of the reorganization along the various initiatives we have implemented, to professionalize further the Marine Corps legal community. Our legal community is now organizationally in the best position it has ever been, and I am very optimistic about the future of the talented, diligent, and dedicated Marines and civilians who comprise our community.


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I. INTRODUCTION.

Fiscal Year 2012 was a year of great progress and change in the Marine Corps legal community, which underwent a complete reorganization that will elevate the practice of law in the Marine Corps. Aside from addressing metrics, this year's military justice report will focus on the reorganization and its promise to improve practices, mentorship and training, and enhance leadership.

II. BACKGROUND.

Military justice issues have been prominently featured in the news this past year. Misconduct on the battlefield, hazing, and sexual assault have all been highlighted in interest pieces, opinion pieces, and news items. Members of Congress have also expressed interest in how the military addresses misconduct, and about the inner workings of the military justice system. Finally, the Secretary of Defense's recent creation of the Defense Legal Policy Board highlights the additional attention being paid to the legal system and mission in the military. Against this backdrop, the Marine Corps acted to ensure our organization evolves to meet the complex challenges of today's legal requirements.

III. THE COMMANDANT'S REORGANIZATION.

In FY 2012, the Commandant of the Marine Corps directed a comprehensive overhaul of the Marine Corps's delivery model for legal support. The reorganization was necessary to respond to the evolution of the legal mission in scope and complexity. The largest doctrinal change in the reorganization was the complete separation of command legal advice from the provision of legal services support. The reorganization significantly transformed the provision of legal services support in the Marine Corps, especially for military justice practitioners. Before this reorganization, the Marine Corps had law centers at each major base or installation and three Legal Services Support Sections (LSSSs) in the Marine Logistics Groups that provided legal



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services. They were decentralized and operated independently of each other. Previously, the law center or LSSS was often limited to its own organic capability to address whatever cases arose in that geographic location, regardless of complexity.

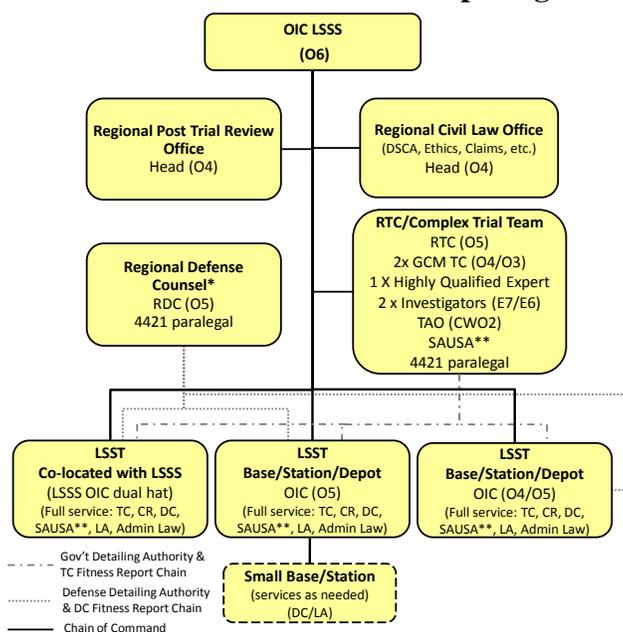
The reorganization created four regional LSSSs led by experienced judge advocates in the grade of colonel. The LSSSs are part of Marine Corps Installations Command (MCICOM) and align with the MCICOM regions. Each LSSS is responsible for providing legal services support throughout a geographic Legal Services Support Area (LSSA). The LSSS-National Capital Region is also tasked with supporting Marine Forces Reserve units, regardless of location. The LSSSs are composed of subordinate Legal Services Support Teams (LSST) and one regional office per LSSS consisting of an Administrative Support Office, a Regional Trial Counsel Office, a Regional Post-Trial Review Office, and a Regional Civil Law Office. In addition, each LSSS houses a Regional Defense Counsel Office that reports directly to the Chief Defense Counsel of the Marine Corps. Execution and supervision of legal services support is regionalized based on a balancing of the requirements for: depth and breadth of expertise; immediate functional supervision; performance to uniform standards; accountability and transparency; peer-to-peer mentorship; economies of scale; manageable and flexible MAGTF sourcing solutions; historical demand; installation demographics; and responsive commander-centric support.

The Regional Trial Counsel (RTC) Office gives the LSSS OIC the ability to surge resources when a strategic or particularly complex case arises. The centerpiece of the RTC office is the Complex Trial Team (CTT) composed of experienced trial counsel and other trial support resources such as a civilian Highly Qualified Expert (HQE), investigators from the Criminal Investigative Division (CID), and dedicated administrative support in the form of a dedicated legal administrative officer and Marine paralegal. Figure A depicts the template for organization of each LSSS.



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Figure A. New Organizational Structure of Marine Corps Legal Services Support Sections



At the regional level, the RTC office provides supervision, mentorship, training, and litigation support for Trial Services Offices within the subordinate LSSTs and a CTT to prosecute high-profile, complex, special-victim, and other significant cases. New rules for the detailing of trial counsel require minimum standards of courtroom experience, as well as experience specifically as an assistant trial counsel in a sexual assault case, before a prosecutor may be detailed as the lead attorney on a sexual assault court-martial. The RTC office, which is led by a lieutenant colonel with significant military justice experience, has a Highly Qualified Expert (HQE) and experienced investigators from the Criminal Investigative Division (CID) to assist trial counsel. The HQEs are all experienced civilian prosecutors, with significant experience handling cases involving special victims. The HQEs provide perspective, share best practices, and assist Marine Corps trial counsel in case preparation. Additionally, CID agents provide an investigative capability to prosecutors to enable them to establish more evidence in complex cases.

This legal reorganization also played an integral role in the Commandant's Sexual Assault Prevention and Response Plan, released on 20 June 2012. One clear benefit to this reorganization is its enhanced ability to address victims' issues and concerns. Over the past few years, more attention has been drawn to the need to develop better resources and processes for special victims. Victims now have access to legal assistance attorneys, per Section 581 of the



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National Defense Authorization Act for Fiscal Year 2012 (Pub. L. No. 112-81). In Section 573, the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. No. 112-239) gives each military department a year to establish a special victims capability.

Though the Marine Corps is committed to ensuring that all victims have their concerns addressed and their rights protected throughout the military justice process, in FY 12 significant attention was paid to shoring up sexual assault victims' considerations. The reorganization is a major part of the Marine Corps's strategy in addressing these matters. The RTC office and its CTT provide the Marine Corps with a special victims capability. The selection of seasoned professional prosecutors, along with an HQE, in the CTT has created a robust means of preparing for and prosecuting cases involving special victims, be they victims of sexual assault, domestic violence, or other cases envisioned under the new law. Additional complementary initiatives will increase the Marine Corps's effectiveness in meeting the mission requirement for a special victims capability as well. Major training initiatives have a significant focus on special victims. Marine Corps trial counsel, in particular, are being trained specifically in sexual assault prosecution, where periods of instruction are devoted to interacting with sexual assault victims, preserving their rights and addressing their concerns.

Reforms over the past year have also greatly expanded the capacity of the Marine Corps to support victims in all cases under the Victim-Witness Assistance Program (VWAP). In FY12, the Marine Corps began revising its VWAP order and implemented a Commanding General's Inspection Program (CGIP) functional area checklist used to ensure compliance with the VWAP. Inclusion of VWAP in CGIP inspections will ensure that commanding generals Marine Corps-wide are holding their subordinate leaders responsible and accountable for proper execution of the Marine Corps VWAP. Finally, VWAP training opportunities have increased across the spectrum of professionals involved in responding to and prosecuting sexual assault cases. From victim advocates, to investigators, to prosecutors and legal services specialists, the Marine Corps has focused this year, under the Commandant's SAPR Campaign Plan, on ensuring that training is adequate to meet the requirement to address the needs of victims and witnesses, with the utmost regard for their rights and comfort with the process.



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Marine Corps legal assistance attorneys are also standing by to assist victims. The National Defense Authorization Act of Fiscal Year 2012 amended 10 U.S.C. § 1565b, which makes legal assistance available to victims of sexual assault. The Marine Corps uses legal assistance attorneys to provide victims information in the following seven areas: (1) the Victim and Witness Assistance Program (VWAP), including the rights and benefits afforded to 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; (6) eligibility for and benefits potentially available as part of the transitional compensation program; and (7) traditional forms of legal assistance involving subjects such as leases, taxes, consumer affairs, wills, and powers of attorney. The Marine Corps worked proactively to ensure that this right went into effect immediately and that legal assistance attorneys remain accessible and are properly trained to address issues of importance to victims of crimes.

Defense Services Organization

While we must respect the rights and concerns of the victims, those interests must be carefully considered in light of the constitutional rights of the accused to a fair trial and zealous representation. Defense services are an important mission set of the Marine Corps legal community. Last year, this Report highlighted changes made to the Defense community. Defense counsel and legal services specialists on the defense team were reorganized into the Defense Services Organization, which is led by the Chief Defense Counsel of the Marine Corps (CDC), who reports to the Staff Judge Advocate to the Commandant of the Marine Corps at Headquarters, Marine Corps. This year the DSO was able to capitalize on last year's successful reorganization. The changes have come to fruition, and led to a model of support, leadership, and autonomy that has enabled the DSO to professionalize, create a true community of practice, and address matters that are unique to defending Marines.

The DSO has also embarked on its own set of initiatives over the past year, including the creation of an internal Case Information System that improves supervisory counsel oversight of



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cases, data collection, and ultimately the defense services provided to each client. Additionally, understanding that legal trouble increases the potential risk of suicide, the DSO has taken proactive measures to address the issue of dealing with suicidal clients head-on. The CDC sponsored a summit with the heads of all the Service defense organizations on the topic of at-risk clients. The DSO has continued to partner with the Headquarters Marine Corps Suicide Prevention Office to develop effective training courses for defense counsel dealing with clients at risk for suicide. Most recently, the CDC issued a policy memo formalizing procedures for recognizing and responding to clients-at-risk for suicide that provides for early identification of at risk clients and a check-list for defense counsel to follow when dealing with a client in imminent distress.

IV. MILITARY JUSTICE BY THE NUMBERS – TRENDS & ANALYSIS.

A. Background. Within the Department of the Navy, last year's trends continued during this fiscal year. Figure B illustrates the caseload¹ distribution between the two naval services.² The Marine Corps continues to try the heaviest load in the Department for general and special courts-martial.³

In FY 12, the Marine Corps litigated 121 general courts-martial and 324 special courts-martial to completion, representing about two-thirds of all courts-martial in the Department of the Navy. As depicted in Figure B, it appears that the number of total courts-martial tried to completion has been declining. In spite of the declining numbers, there has been a corresponding increase in complexity.

¹ For the purposes of this report, an FY 12 "case" is an adjudicated general or special court-martial where the findings, in cases with an acquittal, or the original sentencing date in cases with a conviction occurred within FY 12.

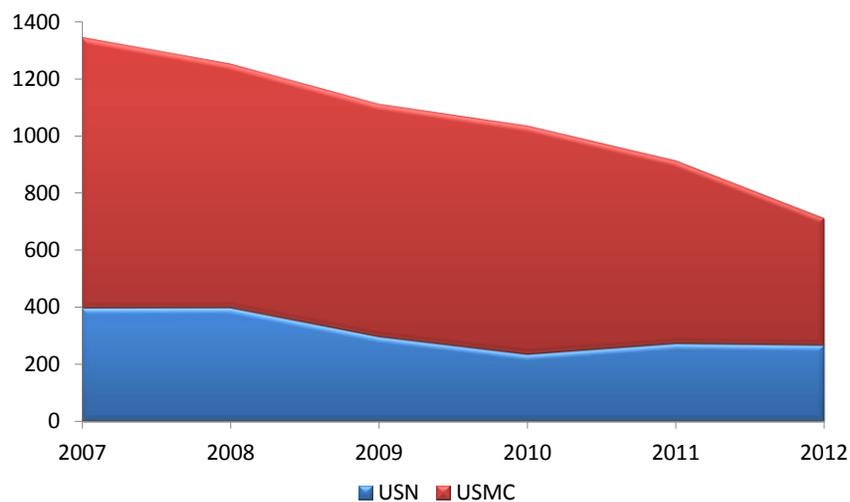
² The statistics reported for the Marine Corps come from data in the Marine Corps Case Management System. The statistics reported for the Navy come from the Navy's Case Management Tracking and Information System (CMTIS). The Marine Corps cross-checked each CMS case with CMTIS, thereby ensuring accuracy and fidelity in the Marine Corps numbers.

³ Official court-martial statistics are filed yearly in an Annual Report from the Code Committee on Military Justice. Once released, reports are available at <http://www.armfor.uscourts.gov/Annual.htm>. Article 146, Uniform Code of Military Justice (10 U.S.C. § 946) requires that every Service make an annual comprehensive report that includes information on the number and status of adjudicated military justice cases.



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Figure B. USN and USMC GCM & SPCM totals FY 06 – FY 11



	2007	2008	2009	2010	2011	2012
USMC	949	855	815	801	641	445
USN	397	398	297	235	273	267
Totals	1,346	1,253	1,112	1,036	914	712

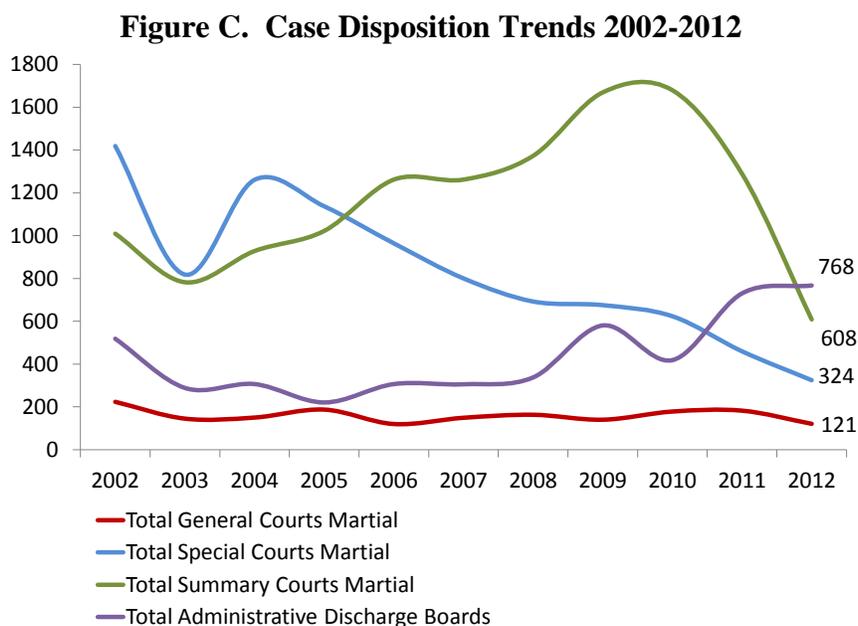
Another indicator of the overall military justice workload is the number of Requests for Legal Services (RLSs) sent to Marine Corps Law Centers and LSSSs by Commanders. Marine Corps Law Centers and LSSSs received 2575 Requests for Legal Services (RLSs) in FY 12, similar to last year's 2771 RLSs. This data indicates that for borderline cases, i.e. cases in which Commanders believe either court-martial or an administrative forum for adjudication and disposition of misconduct could be appropriate, Commanders continue to seek the advice and expertise of judge advocates at Law Centers and LSSSs, which results in a significant workload for military justice practitioners (trial and defense counsel) that is not captured in the raw numbers of adjudicated general or special courts-martial.

Annual trend figures in case disposition from 2002-2012 illustrate the increase in alternative disposition decisions by Commanders, especially for handling misdemeanor-level misconduct, such as single drug use cases and unauthorized absence. However, the number of general courts-martial litigated has remained relatively steady over the past ten years. Figure C illustrates the increase in summary courts-martial and administrative discharges that has



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corresponded to a decrease in cases being disposed of at special or general court-martial.⁴ Over the same ten-year period, the number of special courts-martial litigated has decreased by more than 50%. Administrative separation boards increased from 338 in 2008 to about 768⁵ in 2011, an increase of over 50% in just three years.



The Marine Corps consistently maintains a special and general court-martial docket of approximately 600 cases. As demonstrated above, a large percentage will be disposed of at alternative forums such as administrative separation boards, summary courts-martial, or nonjudicial punishment (NJP). These alternative dispositions still require judge advocate support, as suggested by the 768 administrative separation boards and 58 Boards of Inquiry conducted by the Marine Corps in FY 12 (an increase of over 50% from FY 11).⁶ Each board requires a defense counsel to represent the respondent and, typically, a trial counsel to serve as

⁴ Judge Advocate Division (JAD) began to collect RLS numbers in FY 11 through the Marine Corps Case Management System. Aggregating the cases adjudicated at court-martial with alternative dispositions as depicted in Figure D shows that the workload of the Marine judge advocate has remained relatively constant with respect to military justice services. The significant increase in alternative disposition methods in the past few years indicates that FY 10 number of RLSs would likely be similar to the FY 11 number.

⁵ Due to a change in the Marine Forces Reserves' tracking system for administrative discharges, the number of reservist boards had to be approximated. Annual trends indicate that roughly 100 reservist boards are conducted each year. This year, 105 reservists had boards scheduled, but some of those boards may not have been conducted to completion. The 768 reported administrative discharge boards reported here includes 105 reservist boards and 663 active duty boards.

⁶ Administrative separation boards are used for enlisted Marines. Officers are entitled to Boards of Inquiry, which more closely follows the format of a court-martial.



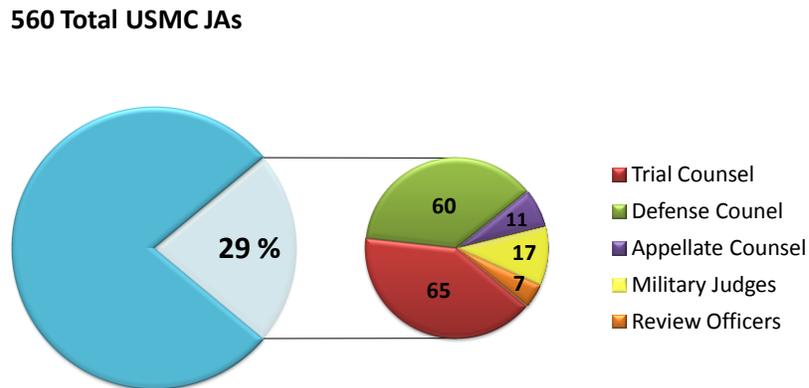
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recorder. In Boards of Inquiry, an Article 27(b) certified attorney must serve as the trial counsel. NJP counseling, Article 138, UCMJ complaints, and Request Mast petitions by Marines and Sailors also contribute to the workload of the average defense counsel. In FY 12, Marine defense counsel provided advice to over 10,000 military servicemembers during walk-in counseling sessions, in addition to the advice they provided to defense clients to whom they had been detailed.

Also contributing to the workload of Marine judge advocates – both in terms of time and expertise required – is the significant number of contested courts-martial. During Fiscal Year 2012, roughly 35% of courts-martial were contested trials. Despite the downward trend in overall court-martial numbers, the notable increase in contested cases and in complex litigation present increasing manpower and work hour requirements for all military justice personnel.

B. Military Justice Personnel. Of the entire judge advocate community in the Marine Corps, 29% are assigned to military justice billets, as represented in Figure D.

Figure D. Judge Advocates Dedicated to Military Justice as of 30 September 2012



As of 30 September 2012, the Marine Corps had 60 judge advocates assigned to defense counsel billets and 65 judge advocates assigned to trial counsel billets. Comparing this ratio of trial counsel and defense counsel to the number of RLSs received during FY 12 indicates that the average trial counsel handled 40 cases and defense counsel handled 43 cases. Finding the right caseload per counsel requires a balance. In FY 12, the Marine Corps also established certification standards, requiring trial counsel to have second-seated a case before being

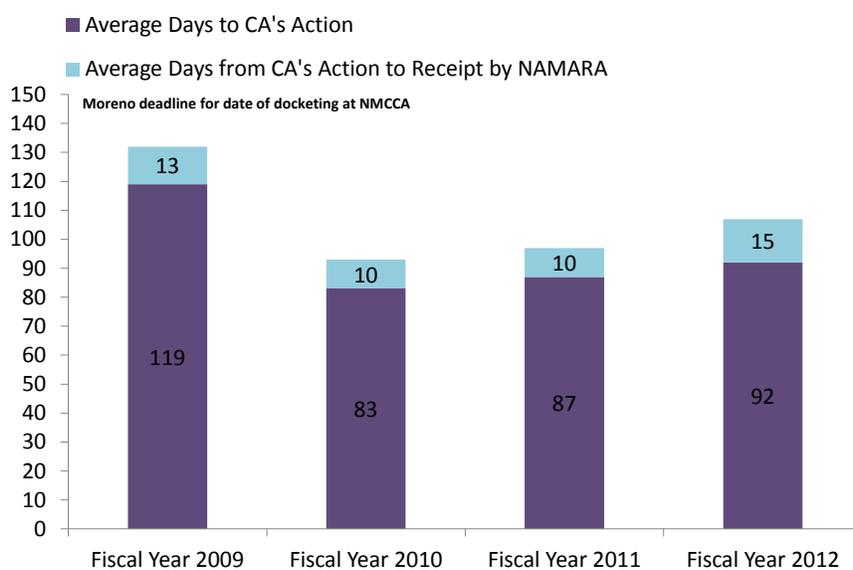


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authorized to take primary responsibility in certain types of complex litigation. Counsel must carry enough cases to gain a level of proficiency and establish an experience base, but not so many as to lessen their ability to provide competent representation in each individual case. The distribution of cases must ensure that new judge advocates can develop their capabilities using relatively simple cases, and over time achieve the requisite expertise to take on complex litigation.

C. Post-Trial Case Processing. In FY 12, over 1,000 general, special, and summary courts-martial entered the post-trial process. The appellate courts have set time standards for review, and the Marine Corps has met those standards consistently, as shown in Figure E.

Figure E. Post-Trial Processing Times for USMC Cases



United States v. Moreno sets forth time limits of 120 days from 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.⁷ Occasionally cases arise that are so complex that delay is deemed to be reasonable, given the processing times associated with large records of trial, and transcription of cases that took many in-court hours. In addition, defense

⁷ The United States Court of Appeals for the Armed Forces held that it "will apply a presumption of unreasonable delay... where the action of the convening authority is not taken within 120 days of the completion of courts-martial trial" or when the case is not docketed with the Court of Criminal Appeals within 30 days of the Convening Authority Action. *U.S. v. Moreno*, 63 M.J. 129, 142 (2006).

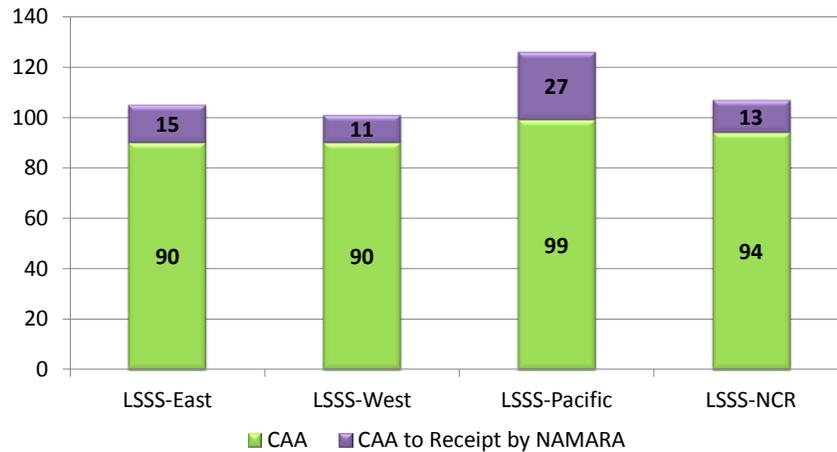


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counsel have the ability to prolong the post-trial review process by engaging in the clemency process, which often requires commanders to consider multiple rounds of requests.

As is indicated in Figure F, on average every LSSS in the Marine Corps met the *Moreno* requirements for post-trial processing in Fiscal Year 2012.

Figure F. Post-trial Processing Averages, in Days, by Law Center or LSSS (FY 11)



The decrease in post-trial cases over 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 also 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.

One significant improvement in post-trial processing times has 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. Figure G shows the progression in metrics over the last three years with respect to both transcription and authentication.



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Figure G. Post-Trial Averages: Transcription and Authentication FY 10 – FY 12

	FY 10*	FY 11	FY 12
Average Trial Time on the Record:	5.46 hrs	5.99 hrs	6.92 hrs
Average Transcription Time:	25 days	33 days	29 days
Average Authentication Time:	45 days	47 days	37 days

*Because CMS stood up on 1 February 2010, FY 10 numbers do not account for the entire fiscal year.

Because many more cases are contested, and cases are increasingly complex, there was a significant rise in the average in-court hours spent on each case. Nevertheless, average transcription time actually decreased over the past year. The court-reporter community has concentrated significantly in the past two years on revamping training and equipment, and the Marine Corps is now benefitting from those efforts. The emphasis on the quality of records and on timely authentication resulting in a greater than 20% improvement in average authentication time as well. Increased case complexity also adds to post-trial review timelines, as more complex cases require more thorough scrutiny upon review. The FY 11 Military Justice Report predicted significant improvements in these numbers based on the added training and focus in these areas, and FY 12 bore out those numbers.

D. Case Tracking. The Marine Corps's Case Management System (CMS) has emerged as the Secretary of the Navy's choice to meet a new congressional requirement to bring the entire department under a single case tracking system. First introduced during FY 10, CMS brought total visibility and transparency to Marine Corps leadership over all cases pending worldwide. CMS is invaluable as a case tracker for the end-user, as well as an oversight tool for commanders and Headquarters, Marine Corps. CMS provided the source data for much of the information in this report.

During FY 12, the Marine Corps began a CMS pilot program with the U.S. Navy. The Judge Advocate General of the Navy determined that CMS presented the best way forward to meeting a Congressionally-mandated requirement for the entire department to use a single case tracking system. Based on the JAG's input, the Secretary of the Navy selected CMS as the departmental case tracking system. At the close of FY 12, the Marine Corps and the Navy were



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working hand-in-hand to ensure that the CMS expansion will be completed by July 2013, the deadline set by Congress.

V. CONCLUSION. In FY 12, the Marine Corps legal community continued to execute the blueprint for improving the delivery of legal services in the Marine Corps in The Marine Corps Legal Services Strategic Action Plan 2010-2015 (SAP). This year, the SAP goals guided the Marine Corps legal community in its implementation of the Commandant-directed comprehensive reform of the delivery model for legal services in the Marine Corps. 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 – they now operate within an organization with enhanced capability to provide leadership, mentorship, and support, regardless of duty station or location. This reorganization enables the Marine Corps to assign the best lawyers, with an adequate and well-qualified support staff, to the most complex cases as appropriate, regardless of the issue or the location.



