



**Marine Corps Legal Services
Military Justice Report
Fiscal Year 2011**





STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS

20 January 2012

In Fiscal Year 2011 (FY 11), the Marine Corps continued to try over 70% of the cases in the Department of the Navy. The number of adjudicated general courts-martial in the Marine Corps remained relatively constant at 178, while special courts-martial declined to 452 for a total of 630 adjudicated courts-martial. Over one third of those courts-martial were contested. The number of requests for legal services and alternative dispositions (nonjudicial punishment, summary court-martial and administrative separation) remained high. Despite the decline in overall courts-martial, the heavy contested caseload and work related to alternative dispositions amounted to a constant stream of military justice work for the Marine Corps legal community.

The Marine Corps continues to focus on streamlining the post-trial process. Overall post-trial processing times remained constant in FY 11 after significant gains were made in FY 10. The post-trial review process has become more efficient, while court reporters are taking longer on average to transcribe records of trial, due primarily to two factors: 1) phasing out of experienced stenographers in favor of speech recognition technology and 2) increased average time in court per court-martial. In FY 11, new training programs geared toward improving court reporter transcription skills were implemented and new software was purchased to increase efficiency.

Using the Strategic Action Plan 2010-2015 as a blueprint, the Marine Corps continued the drive to elevate the practice of law by capitalizing on initiatives from FY 10 and by creating and implementing new ones. Judge Advocate Division reorganized to better serve the Marine Corps legal community: the Reserve Legal Services Support Section, composed of 105 reserve judge advocates, was subsumed under Judge Advocate Division, and a new directorate for Community Development Strategy & Plans was created. Judge Advocate Division also re-dedicated itself to improving and institutionalizing communities of practice for the provision of military justice. Perhaps one of our biggest changes was the reorganization of the Marine defense bar into the Defense Services Organization, which clarified duties, responsibilities, and authorities of supervisory defense counsel. The Trial Counsel Assistance Program completed its first full year, training 118 Marine judge advocates and assisting in over 300 cases world-wide. FY 11 was also the first full year for the Marine Corps Case Management System (CMS), which has proven to be an invaluable tool for case tracking, case management, and data collection. CMS's capability was also expanded to track the entire post-trial process, including the appellate

review process and execution of the punitive discharge. Finally, the Staff Judge Advocate to the Commandant of the Marine Corps's role as the supervisor for the administration of military justice was memorialized in SECNAVINST 5430.27D.

As with other areas of practice, the Marine Corps legal community constantly strives to improve the delivery of military justice services. FY 11 trends included an increase in alternate disposition decisions and a high load of contested courts-martial, both of which continue to require expertise and knowledgeable advice from Marine judge advocates. Through a philosophy of introspectiveness, the Marine Corps legal community continues to experiment aggressively to realize efficiencies, while maintaining the flexibility to meet future challenges.



V. A. ARY

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I. INTRODUCTION. Military justice plays a critical role in the maintenance of good order and discipline in the Marine Corps and is a core statutory mission for Marine judge advocates. This report analyzes the trends in military justice over the past fiscal year in order to forecast future military justice requirements for the Marine Corps legal services community. Additionally, it describes those military justice initiatives accomplished in the Marine Corps during Fiscal Year 2011 (FY 11).

Two Congressionally-mandated reviews of the Department of the Navy's legal mission were completed in FY 11. The Department of Defense Inspector General (DoDIG) was directed by the Senate Armed Services Committee to review the systems, policies, and procedures for post-trial review of courts-martial in the Department of the Navy and to assess their adequacy. The findings of this review, which began in February 2010, were published on 10 December 2010 in the DoDIG Report, *Evaluation of Post-Trial Reviews of Courts-Martial within the Department of the Navy*. Despite noting that "significant post-trial processing problems" had persisted for the last two decades, overall the DoDIG report concluded that the Marine Corps had instituted many significant improvements over the last three to four years.¹

The Final Report of the Independent Review Panel to Study the Judge Advocate Requirements of the Department of the Navy (the 506 Panel) was published on 22 February 2011.² The 506 Panel concluded that the demand for judge advocate support will continue into the foreseeable future driven by the increasing complexity and intensity of the legal and policy environment in which Commanders are required to operate. Furthermore, the Panel emphasized that military justice – from complex, high-profile general courts-martial to due process advice and representation during administrative proceedings – remains an important and necessary core function for Marine judge advocates.

¹ DoDIG Report, *Evaluation of Post-Trial Reviews of Courts-Martial within the Department of the Navy*, 10 Dec 2010, p. 2.

² The National Defense Authorization Act for Fiscal year 2010, Public Law Number 111-84, section 506, directed the convening of the Independent Review Panel to Study the Judge Advocate Requirements of the Department of the Navy. The Final Report was published on 22 February 2011.

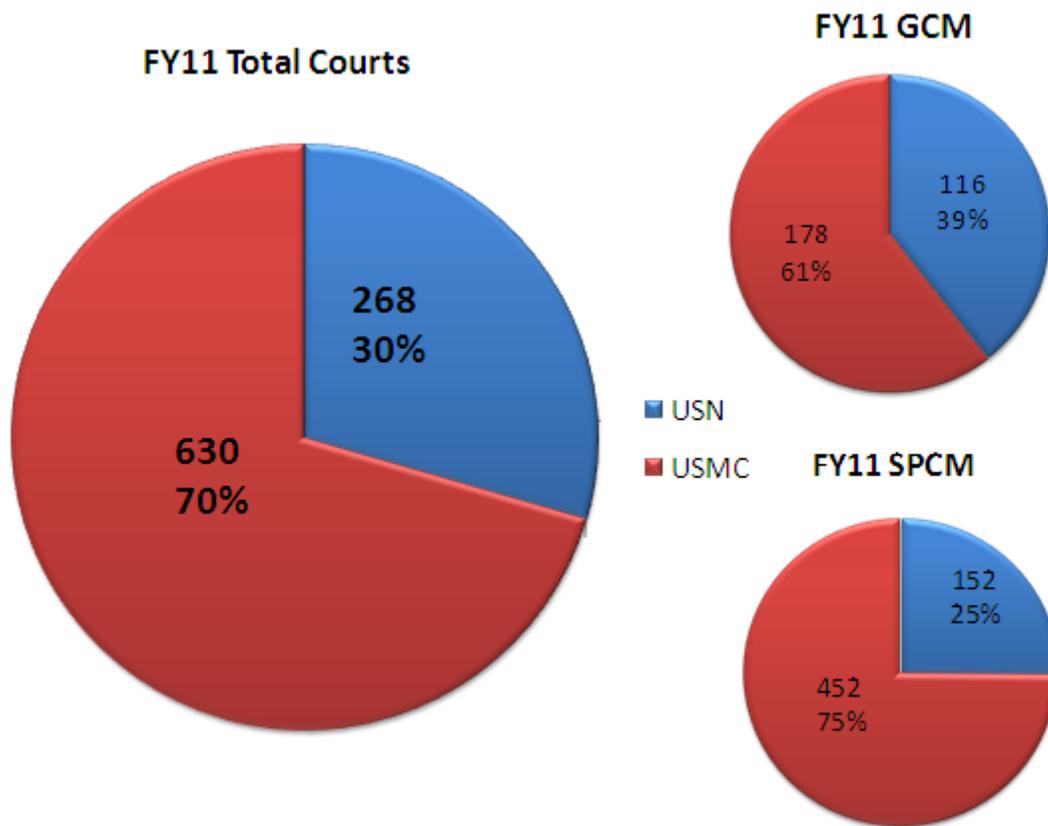


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II. MILITARY JUSTICE MISSION ACCOMPLISHMENT – TRENDS & ANALYSIS.

A. Background. Analysis of Departmental trends indicates that while the number of general courts-martial has remained relatively constant, the overall number of adjudicated special courts-martial continues to decline.³ Figures A and B illustrate the caseload distribution between the two naval services.⁴ The figures show that the Marine Corps continues to try the heaviest load in the Department for general or special courts-martial.⁵

Figure A. General and Special Court-Martial Statistics for FY 11



³ For the purposes of this report, an FY 11 “case” is an adjudicated general or special court-martial where the findings and, for convictions, the original sentencing dates occurred within FY 11.

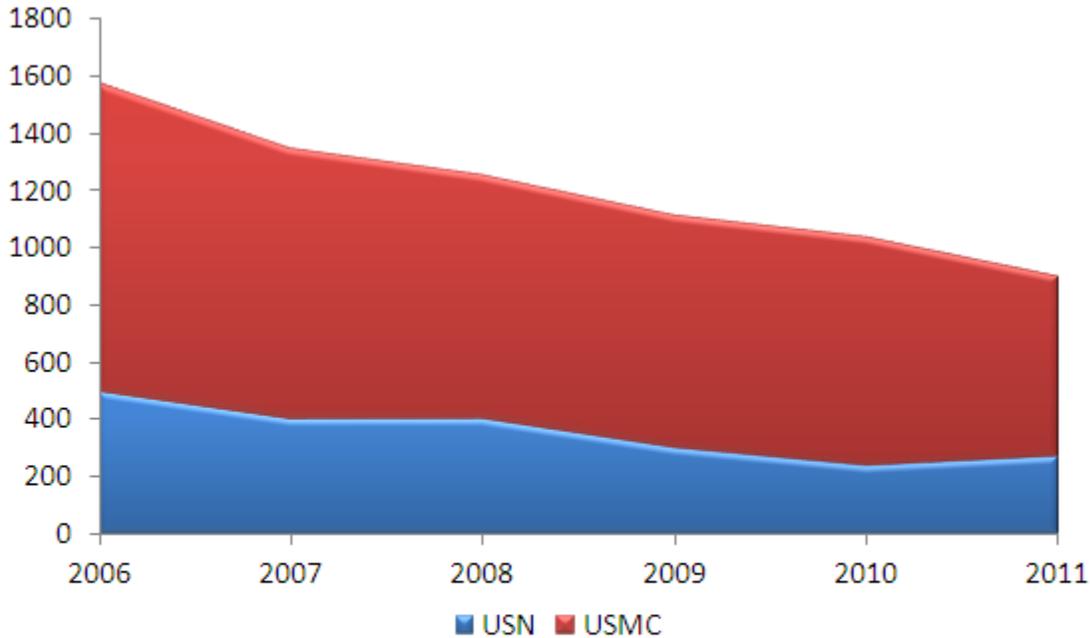
⁴ The statistics reported for the Marine Corps come from data in the Marine Corps Case Management System. The statistics reported for the Navy come from data in the Navy’s Case Management Tracking and Information System (CMTIS). The Marine Corps worked with the Navy to reconcile CMTIS and CMS numbers by cross-checking names case-by-case, thereby ensuring accuracy and complete fidelity in both Marine Corps and Navy numbers reported with respect to cases tried by the Marine Corps.

⁵ 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



	2006	2007	2008	2009	2010	2011
USMC	1,084	949	855	815	801	630
USN	493	397	398	297	235	268
Totals	1,577	1,346	1,253	1,112	1,036	898

In FY 11, the Marine Corps litigated 178 general courts-martial and 452 special courts-martial to completion, representing 70% of all courts-martial in the Department of the Navy. At any given time the Marine Corps manages a docket of approximately 600 cases being handled at Law Centers and Legal Services Support Sections (LSSSs) Marine Corps-wide. 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. As illustrated in Figure C, Marine Corps Law Centers and LSSSs received 2770 Requests for Legal Services (RLSs) in FY 11 for military justice assistance from commands within the Department of the Navy.

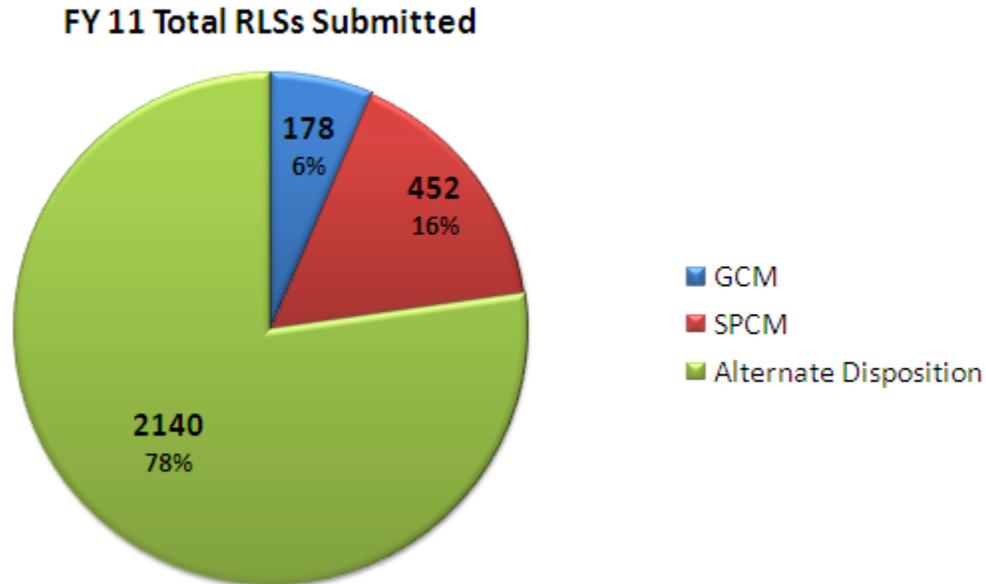
Of the 2770 RLSs in FY 11, 22% resulted in adjudicated general or special courts-martial. The other 78% were addressed through alternate forums or disposition methods. This data indicates that for borderline cases, Commanders continue to seek the advice and expertise of judge advocates at Law Centers and LSSSs, which results in a significant workload for military



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justice practitioners (trial and defense counsel) that is not captured in the raw numbers of adjudicated general or special courts-martial.⁶

Figure C. FY 11 Total RLSs submitted compared to adjudication at SPCM & GCM



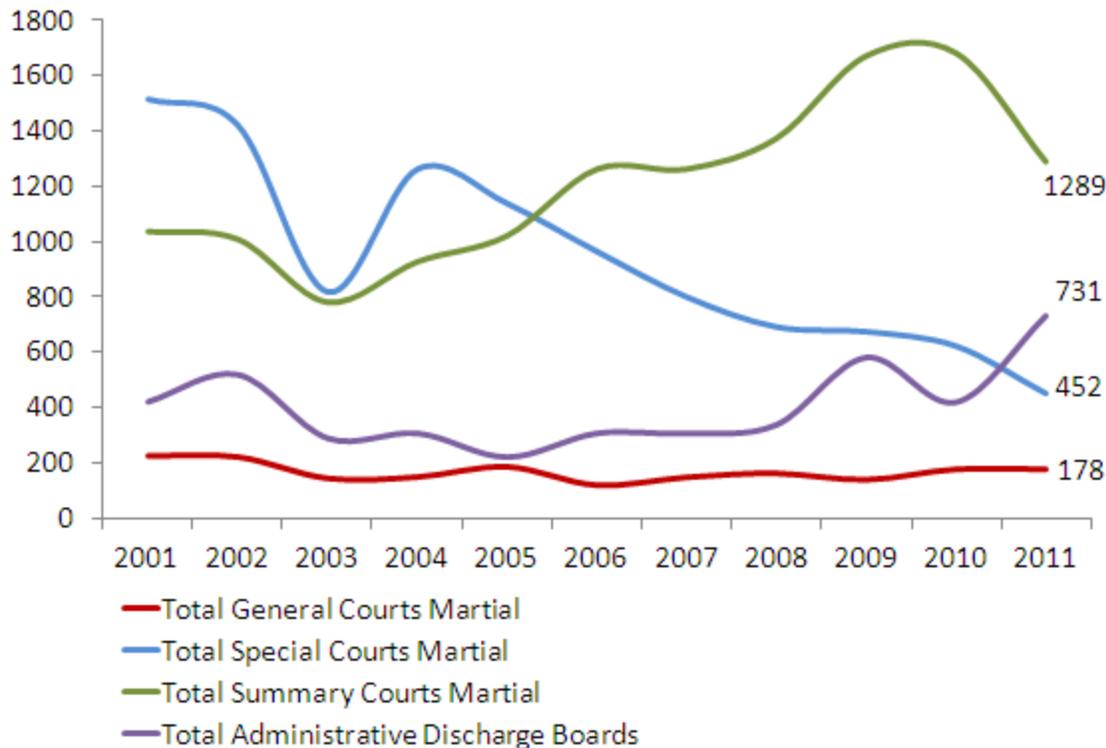
Annual trends figures in case disposition from 2001-2011 illustrate the increase in alternate disposition decisions by Commanders, especially for handling misdemeanor-level misconduct, such as single drug use cases and unauthorized absence. Figure D illustrates the increase of summary courts-martial and administrative discharges that has corresponded to decreases in cases being disposed of at special or general court-martial.⁷ The number of general courts-martial litigated has remained relatively steady over the past ten years, with an increase from 140 in 2009 to 178 in 2011. Over the same ten-year period, the number of special courts-martial litigated has decreased in the Marine Corps by more than 50%. Administrative separation boards increased from 338 in 2008 to 731 in 2011, an increase of over 50% in just three years.

⁶ Anecdotal evidence suggests that Commanders focused on combat operations may have been more willing to utilize an alternate disposition for borderline cases that in the past would have been referred to court-martial. Drawdowns in Iraq and Afghanistan may drive up numbers of special and general courts-martial in future years.

⁷ 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 alternate disposition methods in the past few years indicates that FY 10 number of RLSs would likely be similar to the FY 11 number.



Figure D. Case Disposition Trends 2001-2011



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 731 administrative separation boards and 38 Boards of Inquiry conducted by the Marine Corps in FY 11. Each board requires a defense counsel to represent the respondent and, typically, a trial counsel to serve as recorder. 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 11, Marine defense counsel provided advice to over 10,000 military servicemembers during walk-in counseling sessions, in addition to the advice defense counsel provided to defense clients to whom they had been detailed. Also committing to the workload of Marine judge advocates – both in terms of time and expertise required – is the significant number of contested courts-martial. During FY 11, over one-third of courts-martial were contested.⁸

⁸ The Marine Corps Case Management System (CMS) was recoded in July 2011 to track whether courts-martial were contested or uncontested. The precise number of contested cases cannot be determined from pre-July 2011 data, but numbers from both

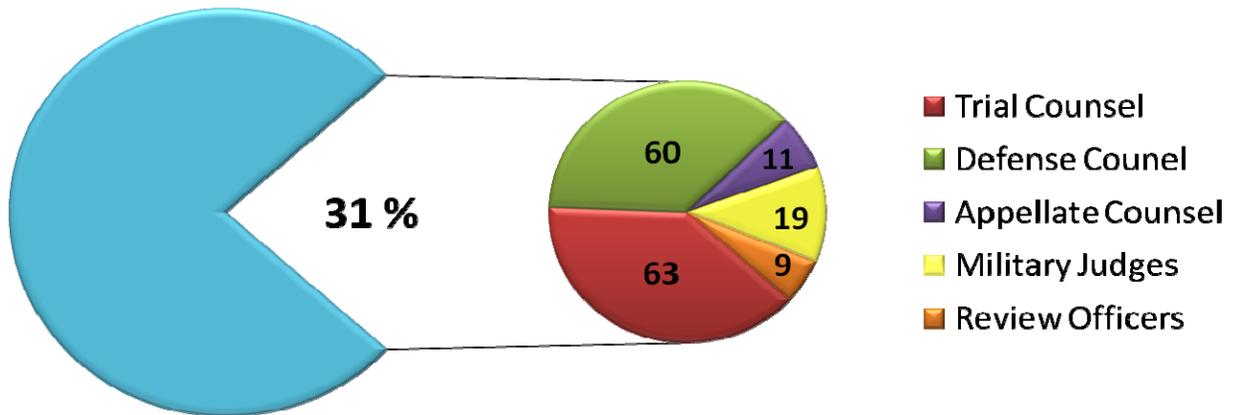


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B. Military Justice Personnel. As of 30 September 2011, the Marine Corps had 60 judge advocates assigned to defense counsel billets and 63 judge advocates assigned to trial counsel billets, as represented in Figure E.

Figure E. Judge Advocates Dedicated to Military Justice as of 30 September 2011

530 Total USMC JAs



Comparing this ratio of trial counsel and defense counsel to the number of RLSs received during FY 11 indicates that the average trial counsel handled 44 cases and defense counsel handled 46 cases. Although not an exact science, finding the right caseload per counsel requires a balance. 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. Anecdotally, the number of Marine judge advocates currently assigned to military justice billets appears to be achieving this balance.

C. Judicial Evaluation of Counsel. In December 2011, the Judge Advocate Division surveyed military judges who regularly preside over cases tried by Marine counsel, requesting an assessment of trial counsel and defense counsel performance.⁹ Military judges were asked to

CMS and the Defense Services Organization (which uses a separate tracking mechanism) show that well over one-third of courts-martial went contested in FY 11.

⁹ The survey included Reserve Marine Judges and Navy Judges.



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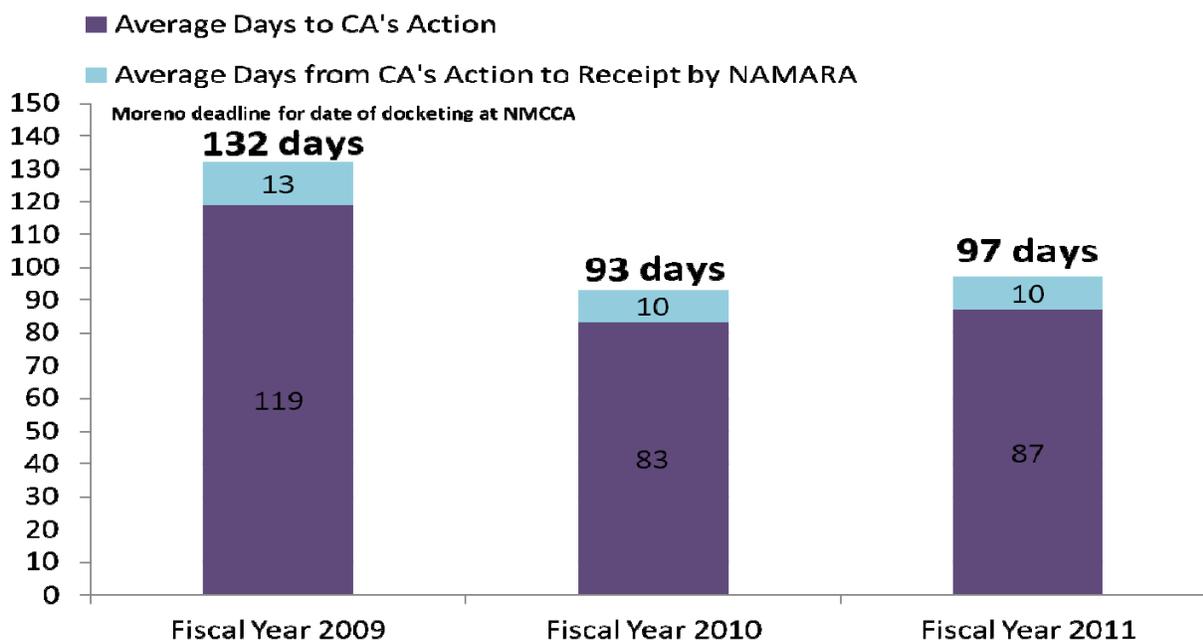
assess trial counsel in the following areas: charging; communication with the judiciary; pretrial motions practice; witness preparation; and trial performance, including sentencing. The judges evaluated defense counsel in corresponding areas: client preparation, communication with the judiciary, motions practice, witness preparation, and trial performance, including sentencing. They were asked to rate counsel on a five-point scale. Recognizing that the value of qualitative assessments of litigation performance is limited due to lack of objective metrics, participating judges were also asked to provide detailed comments on any areas of performance warranting attention, either positive or negative.

The results are consistent with the results from a similar study conducted in FY 10, and indicated that Marine judge advocates are accomplishing the trial mission on both sides of the aisle. The judge assessments were generally above the mid-range, indicating an acceptable level of proficiency by both trial and defense counsel. The comments were generally positive, describing an industrious and dedicated trial and defense bar. However, the military judges pointed out a lack of experienced trial counsel prosecuting cases. They reported that most trial counsel mistakes stem from inexperience rather than lack of effort or skill. The defense bar was generally lauded for its mentorship and training efforts. Military judges noted that counsel on both sides need to improve their knowledge of the military rules of evidence. The complete assessments were provided to the Chief Defense Counsel of the Marine Corps and the Trial Counsel Assistance Program branch head to identify areas of concentration for training of the respective communities.

D. Post-Trial Case Processing. In FY 11, 1,919 general, special, and summary courts-martial entered the post-trial process. For those special and general courts-martial required to be forwarded to Navy and Marine Appellate Review Activity, post-trial processing times increased slightly: as indicated in Figure F, the average time it took to process a case from date of final adjudication to convening authority's action increased by 4 days in FY 11.



Figure F. 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.¹⁰ The average post-trial processing time for Marine Corps courts-martial remains well within the standards required by *Moreno*.¹¹ On 24 February 2010, one week after the effective date of implementation of CMS, 41 of the 121 total cases in the post-trial process exceeded 120 days from the date of trial (sentencing) to CAA.¹² Figure G shows the progression of post-trial tracking after CMS implementation.

¹⁰ The United States Court of Appeals for the Armed Forces has 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).

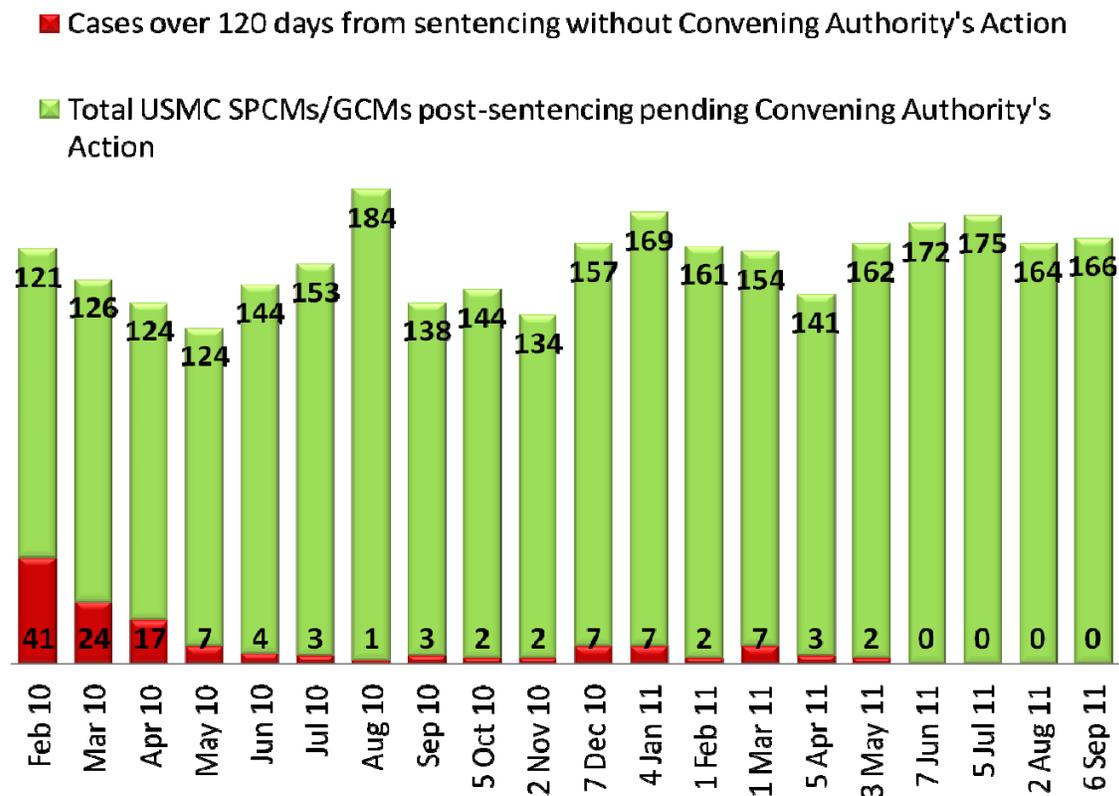
¹¹ Receipt by NAMARA marks the conclusion of the service-level post-trial processing mission. On average, those cases that are ultimately docketed with NMCCA are docketed 1-3 days from the date NAMARA receives the record.

¹² CMS flags all cases over 90 days without either: 1) a completed CAA or 2) receipt by NAMARA. As previously mentioned, once NAMARA receives the completed record of trial the service-level post-trial processing responsibility for the Marine legal community is complete; however, in FY 12 the Marine Corps’s CMS will track the appellate process of every Marine court-martial to its final resolution.



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Figure G. Marine Corps Cases in the Post-trial process (Post-CMS)



As of 28 September 2010, after seven months of mandatory CMS use, only three of 138 total cases fell in this category.¹³ By the end of FY 11, no cases fell into this category. From time to time cases will exceed 120 days from date of trial to CAA, but these cases are rare and are carefully followed at Judge Advocate Division to ensure they are processed as quickly as practicable. None of these cases have appeared to jeopardize convictions due to unreasonable delay. The most common cause for a case to exceed 120 days without CAA is the length of time required to prepare a record of trial in a lengthy contested trial.

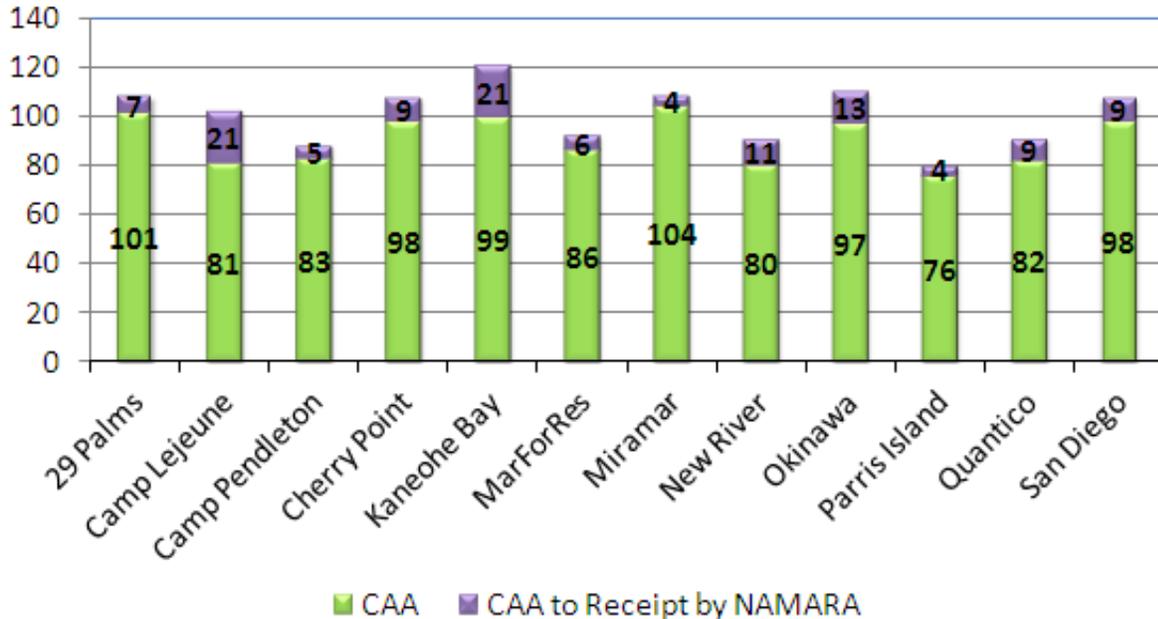
As is indicated in Figure H, every Law Center or LSSS in the Marine Corps meets the requirements of *Moreno* for post-trial processing of a case from date of adjudication to completion of CAA and receipt at NAMARA.

¹³ “Some cases will present specific circumstances warranting additional time, thus making those periods [of delay] reasonable.” *Moreno* at 143.



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Figure H. 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 appear over 90 days are flagged on CMS via an automatic alert system that is reported to the SJA to CMC. Cases that exceed 120 days are also flagged and reported to the SJA to CMC. Because CMS is a real-time case tracker, Judge Advocate Division is able to identify issues as 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 law center, LSSS, and SJA office consistently meets post-trial processing requirements.

Any increases in post-trial processing times in FY 11 are likely explained through recent changes to the Marine Corps court reporter community. In FY 09, the Marine Corps moved from stenography to speech recognition transcription. As the more senior, more experienced Marines trained as stenographers were being replaced with more junior Marines using new technologies and new programs, the court reporter community has had to adapt and adjust. At the same time, the heavy load of contested cases and an increase in motions practice have required more court reporter time to produce longer records of trial. Figure I shows the increase



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in average time on the record in court, and the subsequent increase in average transcription and authentication times for court reporters in FY 11. Because training and equipment were significantly improved during FY 11, FY 12 averages are expected to improve upon the FY 11 numbers.

Figure I. Post-Trial Averages: Transcription and Authentication in FY 10 & FY 11

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

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

Considering the data in Figure I, post-trial processing averages in Figure H also suggest that post-trial review after authentication has become more efficient in FY 11. The slight increase from 93 days to 97 days for total post-trial processing time as depicted in Figure F appears to be due entirely to the learning curve experienced by the court reporter community.

III. INITIATIVES. The Marine Corps Legal Services Strategic Action Plan 2010-2015 (SAP) establishes the blueprint for improving the delivery of legal services in the Marine Corps and anchors every initiative undertaken in FY 11. Although they are addressed more robustly in the SAP report itself, the goals can be distilled down to the following five principles:

- 1) Set standards;
- 2) Train to those standards;
- 3) Inspect to those standards;
- 4) Examine and adapt the force to achieve those standards; and
- 5) Memorialize what we have learned in doctrine.¹⁴

The military justice mission presents unique sets of issues and challenges to the Marine Corps legal community. To progress toward solutions for problem sets and to improve the overall

¹⁴ There is currently a working group led by the Judge Advocate Division revising the doctrine for Legal Services Support in the Marine Corps.



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delivery of legal services within the Marine Corps, the Marine Corps legal community focused its efforts on key initiatives, following the guidance provided by the Strategic Action Plan.

A. Goal: Setting Standards.

1. Case Management System (CMS). The SJA to CMC's February 2010 mandate that all law centers and LSSSs throughout the Marine Corps use CMS as the single common court-martial tracking system continued to pay dividends in FY 11. Fielded in six months at a cost of approximately \$60,000.00,¹⁵ CMS is a cost-effective Lotus Notes-based¹⁶ case-tracking system. CMS utilizes off-the-shelf technology, supportable by current Marine Corps IT systems, and it is web-enabled to ensure world-wide portability and access. CMS provides commands with accurate, reliable, and real-time tracking of Marine Corps courts-martial throughout the world. In today's budget-constrained world, CMS remains a cost-effective means of case tracking, and provides the data necessary for the trend analysis provided in this and many other reports.

Through a series of initiatives and improvements to CMS, in FY 11 the Marine Corps achieved total real-time visibility of all special and general courts-martial from receipt of RLS until completion of appellate review at the Navy-Marine Corps Appellate Review Activity (NAMARA). During FY 11 the Marine Corps also expanded CMS's capabilities to track courts-martial beyond the completion of appellate review to the ultimate termination point of certain cases: execution of the punitive discharge following appellate review. In FY 11 the Marine Corps brought the Navy and Marine Corps Appellate Leave Activity (NAMALA) in as a CMS user, providing tracking and oversight functions for punitive discharge cases through issuance of the DD-214. The Marine Corps also improved the functional capability of CMS in three additional ways: by expanding capability for report generation; by capturing all summary courts-martial processed and reviewed throughout the Marine Corps; and by requiring supervisor certification and validation to ensure compliance with Marine Corps responsibilities under the Victim-Witness Assistance Program.

¹⁵ The \$60,000.00 figure includes the cost of follow-on fleet-wide training.

¹⁶ Lotus Notes is the same software application the Army uses to track its military justice and administrative law matters.



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The success of CMS within the Marine Corps as a comprehensive case-tracking oversight tool prompted the Judge Advocate General of the Navy to request Marine Corps support in fielding a CMS Pilot Program for the Navy's busiest Region Legal Service Office (RLSO), RLSO Mid-Atlantic in Norfolk, Virginia. To support the Navy's CMS Pilot Program, in FY 11 the Marine Corps utilized existing IT architecture to replicate CMS and recode the duplicate to make it Navy-specific. The Navy's CMS Pilot Program began its six-month evaluation phase in FY 12, on 1 December 2011.

2. Department of the Navy Criminal Justice Information System (DONCJIS) & Future Tracking Systems. During FY 11, the DONCJIS project, which was intended to create a single case tracking system for Marine Corps and Navy investigators and military justice providers, was terminated because it could not achieve its technical objectives.¹⁷ As the Department and the Secretary of the Navy continue to follow-up on the recommendations of the 506 Panel, the Secretary has made clear his intention to pursue a single case-tracking system for the Department. The Marine Corps remains committed to supporting the Secretary and engaging in future projects for any follow-on systems. In the interim, the Marine Corps will continue to utilize CMS, and evolve and grow the system to meet all case tracking and reporting requirements.

3. Community Development, Strategy & Plans. In April 2011 the Secretary of the Navy directed the SJA to CMC to take on an expanded mission set that required a reorganization of Judge Advocate Division. In response, Judge Advocate Division created a new Directorate for Community Development, Strategy and Plans (CDSP). The CDSP Directorate subsumed three branches and part of another branch under its purview: Information, Plans and Programs (JAI), Judge Advocate Support (JAS), the Reserve Support Section (JAS-R) and the Trial Counsel Assistance Program (TCAP), which had been part of the Military Justice Branch (JAM). This reorganization of Judge Advocate Division was incorporated into Marine Corps Order (MCO) 5216.9W *Headquarters U.S. Marine Corps Organization and Organization Codes*, as depicted in Figure D.

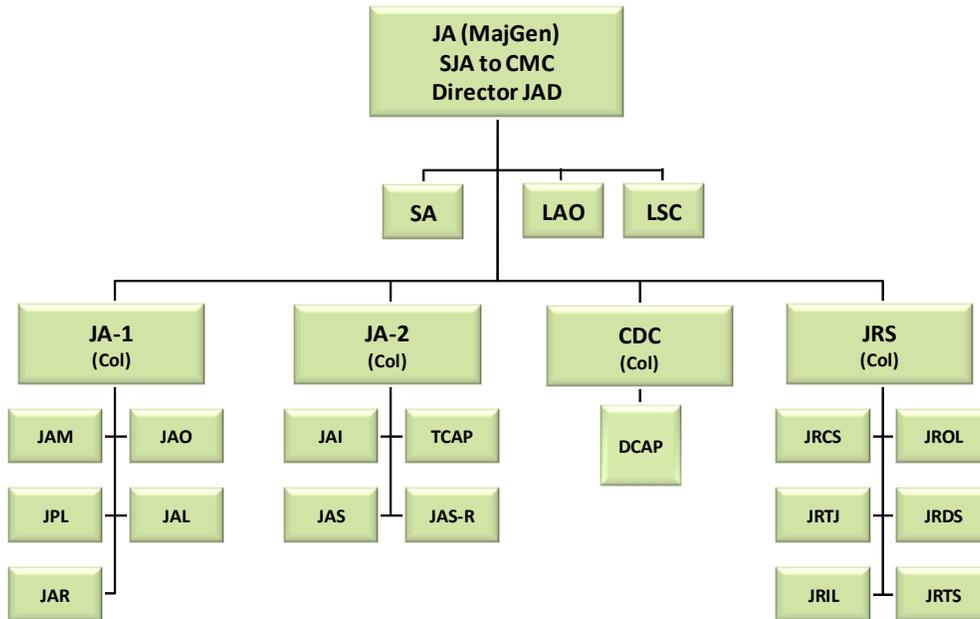
¹⁷ In a letter dated 22 September 2010, the Under Secretary of the Navy canceled DONCJIS stating that it "cannot achieve its technical objectives without at least thirty million dollars in additional funding."



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Under the old organization, the Reserve component (JRS) operated separately from Judge Advocate Division, and all branches were under the Deputy SJA to CMC (“JA-1” in Figure J). SJA legal support and the policy-related branches, such as JAM, and remained under the Deputy SJA to CMC. The elements of Judge Advocate Division that are focused on the development of individual Marines’ expertise and sophistication or of the community’s capabilities and responsiveness, such as TCAP, were brought into the new CDSP Directorate.

Figure J. FY 11 Judge Advocate Division Organizational Chart.



This reorganization was tailored to facilitate implementation of the recently amended SECNAVINST 5430.27D, which expanded the role of the SJA to CMC to include regulatory responsibility for the military justice and legal assistance functions within the Marine Corps. Working in conjunction with Judge Advocate Division’s Military Justice (JAM) and Legal Assistance (JAL) branches, and the Chief Defense Counsel (CDC) of the Marine Corps, the CDSP Directorate enables the Marine Corps legal community to provide those services. In addition, the SJA to CMC serves as the occupational field sponsor for, and oversees the professional development, training, and education of, all Marine judge advocates, legal administrative officers, and legal service specialists. The CDSP Directorate, through JAS, serves as a liaison for manpower and assignments issues, and provides input to HQMC on manpower



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and assignment-related questions for the Judge Advocate Division. Finally the CDSP Directorate serves as a capability enabler within Judge Advocate Division, and is ultimately responsible for implementation of various SAP goals and strategic long-term development and planning for the Marine Corps legal community. This reorganization ensures that resources and focus are distributed where necessary, i.e. to areas identified through the analysis of mission requirements.

4. Victim Witness Assistance Program (VWAP). During FY 11 the action office for VWAP was transferred from the Military Justice Branch to the CDSP Directorate. The second annual VWAP training conference was held at Quantico, Virginia in March of 2011. The conference provided baseline training to VWAP personnel by nationally recognized civilian experts, including specialized training on handling victims of sexual assault, and developed a series of objectives for each VWAP office to meet within certain set timelines. The students left with the ability to train unit level (Battalion and Squadron) Victim Witness Assistance Coordinators at their home stations. CDSP continued its coordination with the Department of Justice to ensure funding was available for at least three future training conferences.

5. Marine Corps Electronic Administrative Separation (MCEAS). Over the past several years processing times for individual enlisted involuntary administrative separations as a whole have increased. As shown in Figure D, the total number of administrative separation boards has also increased over the past few year. The SJA to CMC, as a primary stakeholder in the involuntary administrative separation process, is working with the Deputy Commandant for Manpower and Reserve Affairs and HQMC Manpower Management, Separations & Retirement Branch (MMSR) to perfect an electronic web-based system that provides Commanders the ability to produce, track, manage, and administer the involuntary administrative separation process with efficiency. Rolled out to the Marine Corps Reserve in November 2010, MCEAS is currently being tested by both I Marine Expeditionary Force (MEF) and II MEF to adopt for use by the active force. The ultimate goal of MCEAS is to eliminate process inefficiencies, standardize document generation, and incorporate a workflow that facilitates stakeholder



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notification and tracking from initiation to final separation. MCEAS will address much of what CMS was able to accomplish for court-martial case tracking.¹⁸

6. Future Initiatives. Judge Advocate Division continues to strive to elevate the practice of law, while constantly looking inward at ways to improve delivery of legal services in the future. Many initiatives for FY 12 are already underway. For example, a complete revision of the Marine Corps Manual for Legal Administration should be published in FY 12.¹⁹ In addition, in July 2011, the Marine Corps began examining the feasibility of adopting an electronic filing and service capability, and a pilot program is undergoing study for FY 12 at Marine Corps Air Station Miramar.

B. Goal: Training to those Standards.

1. Leadership – SJA to CMC authority. Internal and external reviews identified a gap in Service-level responsibility and authority to supervise the administration of military justice and set standards for the delivery of legal services in the Marine Corps. In response, the Secretary of the Navy decided to pursue legislative change to institutionalize the authority of the SJA to CMC to supervise the legal mission in the Marine Corps and to ensure a direct relationship is maintained between the Secretary and the SJA to CMC.²⁰ Placing increased authority and accountability with Service-level legal leadership through statute will formalize the role of the SJA to CMC with the authority and responsibility to set standards and then train and inspect to those standards. The legislative change will enhance the authority of the SJA to CMC to meet his responsibilities to the Secretary and the Commandant of the Marine Corps, thus enabling improved delivery of military justice services, and better positioning the Marine legal community to meet future challenges in an increasingly complex legal environment.

¹⁸ The Commandant of the Marine Corps stated in the Marine Corps's Strategic Plan 2010-2014 that his first goal included strengthening "technical processes to gain efficiencies and encourage innovation." It is with that guidance in mind that the Marine Corps legal community is constantly looking to leverage technology to improve the delivery of legal services.

¹⁹ U.S. MARINE CORPS, ORDER P5800.16A W/ CH 1-6, MARINE CORPS MANUAL FOR LEGAL ADMINISTRATION (31 Aug 99) [hereinafter LEGADMINMAN].

²⁰ SECNAV letter to Independent Review Panel (the 506 Panel) of 5 November 2010.



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Additionally, the SECNAVINST 5430.27D revision in April of FY 11 significantly expanded the role of the SJA to CMC by making the SJA to CMC responsible for the supervision and management of the Marine legal community. Specifically, the instruction made the SJA to CMC a co-chair of the Military Justice Oversight Committee, and formalized the role of the SJA to CMC as the supervisor of the military justice function in the Marine Corps.

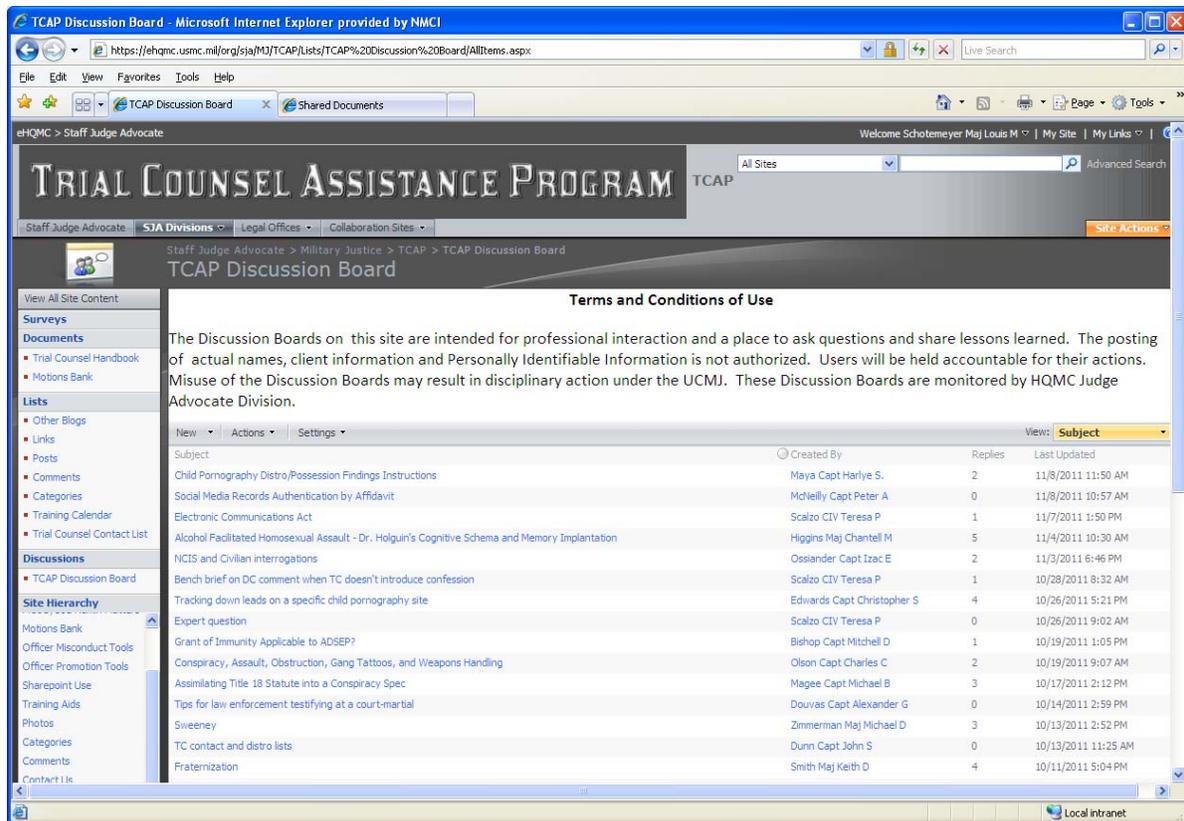
2. Building Communities of Practice. The collaboration and mentorship that come from a true community of practice ensure that Marine judge advocates are best positioned to succeed in delivering quality legal services. To that end, the Marine Corps has re-committed to establishing communities of practice, in both the prosecution and defense bars.

a. Marine Corps Trial Counsel Assistance Program (TCAP). In FY 11, TCAP moved under the CDSP Directorate and became its own branch. TCAP continued to invest in training Marine trial counsel and providing guidance in the prosecution of individual courts-martial. In FY 11, TCAP provided in-person training to approximately 118 Marine trial counsel during six different training courses. Three of these training sessions were in collaboration with the Navy's Trial Counsel Assistance Program. Additionally, during FY 11 TCAP implemented an electronic discussion board (depicted below) in an effort to build a community of practice among trial counsel and elevate trial counsel skill-level to better support Commanders.

The discussion board allows individual trial counsel to communicate with the entire trial counsel community, regardless of location. This permits quick dissemination of lessons learned and uses technology to leverage experience in the trial counsel community. TCAP also provided guidance in the prosecution of more than 300 cases. TCAP continues to pursue coordination among local military justice offices and to foster relationships among individual counsel in an effort to build a solid community of practice.



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b. The Marine Corps Defense Service Organization. Since 1985, the Marine Corps has maintained an independent defense organization headed by the Chief Defense Counsel of the Marine Corps (CDC). Although this model has proven effective at providing defense counsel with mentorship, supervision and resources to represent accused servicemembers professionally and competently, the SJA to CMC, in conjunction with the CDC and a working group of senior judge advocates, recently completed an eighteen-month evaluation of Marine Corps trial defense services to address potentially outdated or outmoded policies and procedures. On 29 September 2011, the SJA to CMC published a complete revision to the Marine Corps service regulations for the provision of defense counsel services that also reorganized the Marine Corps defense counsel community into the Marine Corps Defense Services Organization (DSO) and clarified the duties, responsibilities, and authorities of supervisory defense counsel. In addition, this revision ensures compliance with appellate court decisions concerning the assignment of defense counsel and otherwise helps improve the provision of defense services overall.



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3. New Training Based on FY 10 Training & Readiness (T/R) Manual. In September 2011, the Marine Corps Detachment (MarDet) at Naval Justice School, Newport, Rhode Island (NJS) convened the first enlisted advanced training courses following the FY 10 revision of the T/R Manual. New Post-Trial Review and Military Justice Courses are the first advanced courses for legal service specialists beyond the lance corporal (E-3) level. Additionally, MarDet curriculum developers submitted Programs of Instruction (POI) for advanced training in Administrative Law, Legal Research & Writing, and Legal Ethics. Legal Research & Writing and Legal Ethics were existing courses offered by U.S. Navy personnel. The POIs were submitted to formalize and fund this training for Marines.

C. Goal: Inspecting to those Standards.

1. Commanding General's Inspection Program and Automated Inspection Reporting System (AIRS) Checklist. In May 2010, Judge Advocate Division developed, and the Inspector General of the Marine Corps (IGMC) implemented, AIRS Checklist 091 – SJA Office, Law Center, and Legal Service Support Section. The checklist included standards for all SJA-level legal services functional areas, including military justice, and is institutionalized as a formal part of the Commanding General's Inspection Program (CGIP). Since implementation, more than ten formal IGMC CGIP inspections have been conducted Marine Corps-wide using the AIRS 091 inspection checklist, in addition to more informal local "assistance visits." The checklist provides Commanders and staff judge advocates with a tool to measure the efficiency and effectiveness of the legal services being provided, while also evaluating the readiness of legal service providers on a much broader scale. In FY 11, Judge Advocate Division began the process of substantial revision to the AIRS Checklist. The final revision will be released after publication of the revised Marine Corps Manual for Administration (LEGADMINMAN).

2. SJA to CMC Inspection Authority. SECNAVINST 5430.27D clarified and expounded upon the Article 6, Uniform Code of Military Justice (UCMJ) inspection authority to the SJA to CMC, consistent with the authority of the Judge Advocate General of the Navy,²¹ reducing to writing what had become common practice, and ensuring that both responsibility and

²¹ 10 U.S.C. § 806.



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accountability lie with the SJA to CMC for inspecting the provision of military justice within the Marine Corps.

D. Goal: Examining and Adapting the Force to Achieve those Standards.

1. Manpower Initiatives Affecting Military Justice. The 506 Panel report presented a thorough review of the manpower requirements associated with the Marine Corps's military justice and other legal missions and concluded that there was a requirement for approximately 550 active-duty judge advocates.²² The Marine Corps began to address the judge advocate shortage well in advance of receiving the final report of the 506 Panel. Specifically, at the beginning of FY 11, there were 473 judge advocates across the Marine Corps.²³ By the end of FY 11, there were 530. The Marine Corps anticipates reaching the 550 judge advocate inventory recommended by the 506 Panel in FY 12. However, the focus of Judge Advocate Division has not been on achieving a specific target number, but rather to ensure that the force is right-sized to provide adequate capability and capacity to flexibly and effectively meet the needs of the Marine Corps. As cases become increasingly complex and while the Marine Corps sustains a high number of contested courts-martial, experience is as important as raw manpower numbers.

To retain experience in the company grade ranks, the Marine Corps has continued to offer all judge advocates an opportunity to remain on active duty. 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,²⁴ the Marine Corps has avoided sacrificing experience while increasing its manpower numbers. The Marine Corps also brought in 12 majors with litigation experience from Return to Active Duty (RAD) boards conducted in FY 10 to ensure that manpower was growing proportionately at higher grades as well. Finally, the Marine Corps began to send 15 judge advocates to Masters of

²² The 506 Panel report complemented internal Marine Corps studies that had also identified the requirement to increase the number of judge advocates.

²³ The beginning of FY 11 numbers include 38 judge advocates who graduated from Naval Justice School on 8 October 2010.

²⁴ For FY 12, MARADMIN 660/11, which was published in November 2011, announced an increase in the Law School Education Debt Subsidy (LSEDS) from \$45,000.00 to \$50,000.00 in exchange for a commitment to five additional years on active duty. This new LSEDS program increases the commitment to five years from three years, thus ensuring that senior company grade officers are retained on active duty until they are eligible for promotion to major.



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Laws (LL.M.) programs in FY 11, an increase of 5 over previous years, to build expertise among field grade officers.

2. Court Reporter Program. In FY 09, the Marine Corps began a program that would leverage speech recognition technology to replace the expensive, training-intensive stenographer program. The program promises to yield dividends, but it is an evolutionary process that will require a few years to complete as stenographers are slowly phased out, and we learn how to most effectively train and equip our new voice writers.

In FY 11, the Marine Corps Detachment at NJS submitted a new Program of Instruction to Training and Education Command to increase initial court reporter training from 11 to 13 weeks. With a focus on enhancing transcription skills, the increase in training time provided students more opportunity to hone their new skills in transcript production and speech recognition. During the second iteration of the court reporter course, civilian contractors assisted novice learners in mastering speech recognition skills while NJS instructors evaluated and identified equipment that would improve the Marine Corps Court Reporting Program, including better computer hardware and closed-mask recorders.

Experienced court reporters were sent back to NJS for additional training that included instruction from civilian contractors on speech recognition and computer-aided transcription (CAT) software such as Eclipse Vox. Improvements in the training curriculum and better software are producing much faster and more accurate court reporters. As those court reporters move on to law centers in FY 12 and begin to have an impact, transcription times should decrease. Judge Advocate Division intends to continue to evaluate other CAT systems in FY 12, in order to identify the best enterprise solution for the Marine Corps Court Reporting Program.

3. Reserve Legal Services Support Section (JRS). As depicted in Figure J, the Judge Advocate Division reorganization also brought the JRS within the Judge Advocate Division structure. On 1 October 2010, the Marine Corps transferred the Marine Forces Reserve JRS, formerly part of Mobilization Command, to JAD. This move enhanced the ability of the SJA to CMC to coordinate the employment of over 310 Marine reserve judge advocates, including those



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whose focus is military justice. Three of the six JRS branches – the Defense Services Branch, the Trial Services Branch, and the Trial Judiciary Branch – perform functions specifically related to military justice. They are staffed by seasoned attorneys capable of responding to the requirements of the trial and defense communities as well as to serve as judges to support the judiciary. TCAP and the DSO have increased utilization of the JRS to capitalize on the litigation expertise of Marine reserve judge advocates. Reservists have assisted in case preparation and training in both prosecution and defense, and conducted Article 32 investigations in complex cases. Reservists have supported TCAP and DSO training courses held on the east and west coasts with specialized instruction and practical exercises on each step of courts-martial proceedings, including the prosecution of sexual assault cases.

IV. CONCLUSION

The Marine Corps continued to try the majority of the court-martial caseload for the Department of the Navy in FY 11. While the number of special court-martial cases declined, there has not been a concurrent reduction in the demand for military justice resources and expertise. The number of general court-martial cases remained relatively constant, contested court-martial numbers are high, and alternate disposition numbers (e.g. administrative separations and summary courts-martial) remained high. Commanders' decisions to dispose of offenses at lower forums 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 discussed by the 506 Panel, the Marine Corps has been successful in its efforts to right-size the legal community in order to meet these constant demands for military justice services and resources. Ending FY 11 with 530 active duty judge advocates, the Marine Corps judge advocate community is well-positioned to achieve the 506 Panel goal of 550 active duty judge advocates by mid-FY 12. More importantly, Judge Advocate Division continues to look at ways to organize efficiently and effectively. Through training and development initiatives, the Marine Corps legal community continues to improve its level of expertise and sophistication at



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all ranks to ensure that Commanders are provided with maximum competence and flexibility in the provision of legal services.

Through a number of leadership and training initiatives, Judge Advocate Division is focused on developing communities of practice to ensure that our judge advocates are operating at their maximum potential. Thus far, the complete revision of the defense services regulations has been regarded as a great success. Meanwhile TCAP, completing its first full year as a separate branch, is providing a similar positive impact for prosecutors. The post-trial review process has notably improved in efficiency and effectiveness through total visibility of cases, while structural changes in the court reporter community have affected productivity, which has been addressed through revolutionized training programs. In FY 12, Judge Advocate Division will better be able to assess the impact of TCAP and the DSO on quality of the trial and defense bar within the Marine Corps legal community, and the effect of improvements in court-reporter training programs.

As with other areas of practice, the Marine Corps legal community constantly strives to improve the delivery of military justice services. In FY 11, the Marine Corps legal community was able to capitalize on some major changes to regulation and policy in FY 10. The impact of many of the initiatives highlighted in this Report will be truly realized in FY 12 and onward. Trends in military justice, including increasing use of alternate disposition and a high load of contested courts-martial, will continue to require sophistication and expertise. Through a philosophy of introspectiveness, and with the Strategic Action Plan as its guide, the Marine Corps legal community promises to meet its mission in FY 12 and beyond, while it continues to aggressively experiment with new initiatives to elevate the practice of law in the Marine Corps.





