

ANNUAL REPORT

Submitted to the

**Committees on Armed Services
of the
United States Senate
and the
United States House of Representatives**

**and to the
Secretary of Defense
Secretary of Homeland Security
and the
Secretaries of the Army, Navy and Air Force**

**Pursuant to the
Uniform Code of Military Justice
for the period
October 1, 2015 to September 30, 2016**

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Section 1
Joint Annual Report of the Code Committee

Section 1

Joint Annual Report of the Code Committee Pursuant to the Uniform Code of Military Justice

October 1, 2015 to September 30, 2016

The Judges of the United States Court of Appeals for the Armed Forces, the Judge Advocates General of the Army, Navy, Air Force, and Coast Guard, the Staff Judge Advocate to the Commandant of the Marine Corps, and Dean Lisa Schenck and Mr. James E. McPherson, Public Members appointed by the Secretary of Defense, submit their annual report on the operation of the Uniform Code of Military Justice (UCMJ) pursuant to Article 146, UCMJ, Title 10, United States Code, § 946.

The Code Committee met on March 1, 2016, to consider matters pertaining to the administration of military justice. The meeting was open to the public and was previously announced by notices in the Federal Register and on the Court's website.

Chief Judge Erdmann commented that the 2016 meeting of the Code Committee may be the final meeting due to pending legislation to create a Military Justice Review Panel composed of 13 members meeting periodically for comprehensive reviews and more frequently for focused reviews. This change is pending in the proposed Military Justice Act of 2016.

After approving the minutes of the 2015 Code Committee meeting, Major Harlye Carlton, Executive Secretary of the Joint Service Committee on Military Justice (JSC), provided a briefing on the work of the JSC.

Major Carlton noted that the JSC updated its internal operating procedures and created a new external website (<http://jsc.defense.gov>) which is available to the public with updated RCMs and MREs. The website allows for public comments to promote transparency for the public.

Executive Order (EO)13696, was implemented as of June 17, 2015. There have also been two supplementary EOs that have been published in the Federal Register. The JSC completed its 2015 annual review and reviewed 64 comments. It has also begun the 2016 annual review. Major Carlton noted that suggestions or comments can be made at anytime through the JSC website.

Proposed Executive Order 2015 proposes change to RCMs, MREs, and a few sections in Part IV. One thing to note is that one FY-16 National Defense Authorization Act (NDAA) requirement included in PEO 2015 requires implementation by May 23, 2016. The JSC is hopeful that the EO will be signed by that date.

Notable provisions of PEO 2015 include:

RCM 104: SVC/VLCs cannot be given negative fitness reports because of zealous advocacy in the representation of their clients.

RCM 306: Victim preference on jurisdiction. The convening authority must allow victims of sexual assault in the United States to express their opinions on whether they would prefer the case to be tried by court-martial or to have civilian authorities take jurisdiction.

RCM 705: Victim consultation on pretrial agreements. This would require that the convening authority provide victims an opportunity to provide input on pretrial agreements. While the victim must be provided the opportunity for input, and the convening authority must consider it, the victim's input is not binding on the convening authority.

RCM 907: Failure to state an offense. This is a recommendation based on CAAF's 2012 holding in United States v. Humphries on the issue of waiver of the failure to state an offense.

RCM 1103: Preparation of verbatim transcripts. The JSC is proposing that verbatim transcript requirements align with jurisdictional maximum of special courts-martial.

RCM 1107: FY-14 NDAA limits on CA actions. There are no substantive changes to Article 60, but since last year's implementation of RCM 1107, the JSC has received comments from practitioners about how it can ensure clarity, e.g., when a convening authority can order a rehearing, and the JSC has suggested changes along those lines.

RCM 1203: Procedures for victims' writs of mandamus. The FY-16 NDAA required that the President promulgate rules for enforcing Article 6b rights. Therefore, the JSC recommends amending RCM 1203 to require the Judge Advocates General establish means by which victims can petition for writs of mandamus from the Courts of Criminal Appeals.

MRE 304: The JSC recommended clarifying that not every element or fact in a confession or admission must be independently corroborated for it to be admitted into evidence.

MRE 311: Exclusionary rule. The JSC proposes changes to comply with Supreme Court case law that the exclusionary rule should be applied to exclude evidence from a search or seizure only if the exclusion would deter future unlawful searches and seizures, and that the benefits of deterrence would outweigh the costs to the justice system.

MRE 504: Spousal Privilege. The JSC proposes making the spousal privilege gender neutral and to add clarification on the application of the privilege.

The JSC also suggest other changes to the Military Rules of Evidence to align them with Federal Rules of Evidence changes.

Part IV proposed changes in PEO 2015 include making punitive discharges mandatory for certain sexual assault offenses and limiting criminalization of certain language in communication of threat allegations.

Major Carlton also briefed the committee on the following JSC studies:

- Collateral Misconduct Subcommittee. The JSC created this subcommittee which conducted an intensive 6-month study regarding whether to recommend automatic immunity for a victim's collateral misconduct in sexual assault cases.
- A study into the extension of SVC/VLC services to victims not eligible for legal assistance services. This study has been completed and the results have been provided to Congress.
- Mental Health Balancing Study. This is an ongoing study focused on the release of mental health records that considers whether additional guidance should be provided to the field.

Regarding proposed legislation, Major Carlton informed the committee of the Military Justice Act of 2016 proposed by the Military Justice Review Group. If the act is implemented with a one-year implementation timeline, the JSC would have about 2 ½ months to get the completed proposed EO into the Federal Register to allow for a public comment period. The JSC also assisted the Sentencing Interim Guidance Working Group (SIG). This group is working on sentencing parameters and criteria. There is a four-year guideline requirement, but interim guidance is required within one year. The SIG is made up of a group of military judges, who are starting this work ahead of time.

The 2016 Manual for Courts-Martial

Maj Carlton noted that the JSC is meeting regularly to review the MCM to get it ready for publication. Their hope is to get the manual out as quickly as possible, but each time the committee nears publication it seems there is new EO on the horizon. Now with PEO-15 likely getting signed, the JSC is also working to get an electronic MCM available that will allow practitioners to get have access to the most updated manual.

Briefings from the services:

Army

Lieutenant General Darpino began by noting that the Army was comprised of about 508,000 active duty personnel in FY-14, about 490,000 in FY-15 and the plans to slope down to 450,000 active duty personnel within the next few years. The Army JAG Corps would also be reduced in size from 1,930 down to 1,820. The reduction in size of

the Army JAG Corps is not proportional to the reduction in active duty forces. In addition to the active duty members, there are also 900 judge advocates in the National Guard and 1,782 in the U.S. Army Reserve. The Army JAG Corps is busy deploying, and has about 219 judge advocates deployed worldwide in addition to judge advocates that are forward stationed. The number of GCM and special courts-martial has gone down from last year to 862 general and special courts-martial, but General Darpino noted that the cases are significantly more complex. The Army has 24 special victims prosecutors who have advised in 1,277 sexual assault cases. Additionally, there are 23 GS-11 Special Victims Witness Liaisons, who will sit side by side with special victims prosecutors to provide assistance and support to sexual assault victims. There are currently 138 active duty SVCs and 221 in the Reserve and National Guard. The Army plans to keep its growth at a minimum to focus on its current workload.

Navy

Rear Admiral Hannink began by noting there are currently 868 active duty judge advocates, 27 shy of the 895 currently authorized, and that additional personnel would be taking on victim's legal counsel or trial counsel roles in the near future. Of the 868 active duty judge advocates, 77 are part of the military justice litigation career track. There are 395 reserve judge advocates, about 50 less than what is authorized due to an increasing rate of retention for those on active duty. The Navy also has 465 active duty legalmen and 151 reserve legalmen. RADM Hannink next informed the committee that in FY-15, the Navy VLC program assisted 1,377 sexual assault victims and participated in 441 military justice proceedings. Navy VLCs are selected by a screening process and they are supervised by a full-time O-6. Some of the VLCs are military justice career track officers. He also noted that the Navy is focused on ensuring the best appellate expertise possible and the Navy is using senior litigators with specialized training for SVC prosecution and investigation matters. Overall, there have been fewer courts-martial in the Navy, with a decrease in GCMs from 137 in FY-14 to 118 in FY-15; special courts-martial have gone down from 175 in FY-14 to 157 in FY-15. There has been an increase in post-trial review as records of trial for Article 66 cases increased in FY-15. This increase was primarily accounted for in the GCM area as there were 45 more cases for Article 66 review in FY-15 than in FY-14. Review of GCM cases went up from 150 to 195 in FY-15 while review of special courts-martial went down from 185 in FY-14 to 160 in FY-15. RADM Hannink emphasized that despite an overall decrease in the number of cases, the complexity of cases has increased. The percentage of GCM cases rose from 44% in FY-14 to 59% in FY-15. The Navy also saw an increase in the number of contested cases and appellate issues raised, and noticed an increase in the size of the average record of trial. RADM Hannink next discussed the Navy's strategic plan, released June 2015, that recognizes and prioritizes the need for transparency. The plan includes updated instructions to allow for automatic release of some court documents to victims through VLC and the review of FOIA procedures to determine if certain court martial documents can be proactively released after the required redaction. The Navy and Marine Corps judge advocate leadership continues to ensure effective administration and oversight within the military justice system through the use of the Military Justice Oversight Council. This council provides the Judge Advocate General

and Staff Judge Advocate for the Commandant visibility on issues, trends and challenges facing the system and practitioners.

Air Force

On behalf of the Lieutenant General Chris Burne, Mr. John Hartsell, Associate Director for the Military Justice Division, laid out three significant improvements within the Air Force: (1) additional manpower (2) additional training and (3) improved expertise. The Air Force has made significant investments in human capital and has provided 73 additional personnel to the Judge Advocate General's Corps, allowing the Air Force to make permanent and more significant investments in the SVC program and to facilitate the court-martial process. To allow for the increase in personnel, the Air Force is accelerating the training of individuals who are already within the system rather than merely recruiting new personnel, with the JAG School training about 2,400 personnel per year. Technology has assisted in the ability for advanced training at the JAG school by allowing for web-based training that can quickly and easily adapt to legislative changes. Additional expertise in the form of a Permanent Victim's Rights and Special Crimes Instructor has been established. This instructor is the course manager for special victim's courses at the JAG school. The instructor is also the individual who ensures that changes within the law are quickly incorporated into the JAG school curriculum. Mr. Hartsell concluded that the Air Force ended FY-15 with a better trained and better manned force. Lastly, the Air Force continues to work on completing the implementation of the next generation of its case management system, the Automated Military Justice Analysis and Management System.

Coast Guard

RADM Poulin began by stating that there has been good stability in the Coast Guard, with currently 41,000 active duty individuals. Of the 41,000, 194 are active duty judge advocates. Twenty percent of the judge advocates are working out of specialty at any given time. The Coast Guard also has 90 civilian attorneys who are part of the Coast Guard Judge Advocate General Service. Fifty percent of the Coast Guard's judge advocates come through the funded legal program while the other 50% are obtained through the direct commission program. The Coast Guard saw a drop in the number of courts-martial. In FY-14 there were 75 courts-martial and there was a drop in FY-15 to 55. FY-16 appears to be on track with the FY-15 numbers thus far. Additionally, about 40% of the cases involve at least one charge under Article 120 UCMJ and the number of nonjudicial punishment cases has dropped 25% from FY-14 to FY-15. Despite the drop in numbers, RADM Poulin noted the increased complexity of the cases and the need for a full-time trial judiciary. The Coast Guard has only one GCM military judge, and the special court-martial judges perform that duty as a collateral duty. He also stated that he has added a few additional defense counsels to the Navy to help manage case load and the Coast Guard is trying to build a core prosecution team. The Coast Guard is also planning to review enlisted support to the legal program. The Coast Guard SVC program is now at full operating capability which includes 6 full-time SVC and 12 collateral duty SVC. The use of collateral duty SVCs are necessary due to the geographical dispersion of the Coast Guard around the country. RADM Poulin concluded by noting that the Coast Guard continues to work on

improving training, and establishing a professional development program and professional quality standards, and expanding the number of LLM training opportunities to continue building career judge advocates. The Coast Guard also provided one officer to the Military Justice Review Group.

Marine Corps:

Lieutenant Colonel Wissman, representing the Staff Judge Advocate to the Commandant of the Marine Corps, began by noting that the Marine Corps has about 550 active duty judge advocates, with 80 trial counsel, 70 defense counsel, about 50 special victim qualified trial counsel, and 17 special victims legal counsel. In FY-15 The VLC program represented about 650 clients. Sixty percent involved victims of sexual assault, 27% were victims of domestic violence and the remaining 13% involved various other offenses. The number of GCMs was about the same as last year and there was a drop in the number of special courts-martial. Despite the drop in the number of special courts- martial, Lieutenant Colonel Wissman noted an increased number of contested and complex cases. To meet the challenges of the increased complexity of cases, the Marine Corps utilizes 6 highly qualified litigation experts and provides annual trial counsel training. This training incorporates civilian prosecutors who assist in the training and also provide insight. The Marine Corps initiative for this year is an operational advisory group that will look at military justice and other issue areas and provide guidance to foster improvement.

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

Charles E. "Chip" Erdmann
Chief Judge

Scott W. Stucky
Judge

Margaret A. Ryan
Judge

Kevin A. Ohlson
Judge

John E. Sparks, Jr.
Judge

Lieutenant General Flora D. Darpino, U.S. Army
Judge Advocate General of the Army

Vice Admiral James W. Crawford, III, JAGC, U.S. Navy
Judge Advocate General of the Navy

Lieutenant General Christopher F. Burne, U.S. Air Force
Judge Advocate General of the Air Force

Rear Admiral Steven D. Poulin, U.S. Coast Guard
Judge Advocate General of the Coast Guard

Major General John R. Ewers, U.S. Marine Corps
Staff Judge Advocate to the Commandant of the Marine Corps

Dean Lisa M. Schenck
Public Member

Mr. James E. McPherson
Public Member

SECTION 2

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

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

September 1, 2015 to September 30, 2016

The Judges of the United States Court of Appeals for the Armed Forces submit their annual report on the administration of the Court and military justice during the September 2015 Term of Court to the Committees on Armed Services of the United States Senate and the United States House of Representatives, and to the Secretaries of Defense, Homeland Security, Army, Navy, and Air Force in accordance with Article 146, Uniform Code of Military Justice, Title 10, United States Code, § 946.

After Chief Judge James E. Baker completed his 15-year term on July 31, 2015, the Court was reduced to four judges. Until a replacement was confirmed and appointed in April 2016, the Court called upon one of the Court's senior judges under Article 142(e) to sit with the court on some cases, and utilized the services of Article III judges sitting by designation under Article 142(f) in the other cases. Senior Judge Walter T. Cox, III, of the United States Court of Appeals for the Armed Forces sat on eight cases; Senior Judge David B. Sentelle of the United States Court of Appeals for the District of Columbia Circuit sat by designation on five cases; Senior Judge Royce C. Lamberth of the United States District Court for the District of Columbia sat by designation on seven cases; Judge Albert Diaz of the United States Court of Appeals for the Fourth Circuit sat by designation on four cases; and Chief Judge Frank D. Whitney of the United States District Court for the Western District of North Carolina sat by designation on two cases.

On April 19, 2016, Judge John E. Sparks, Jr., took his oath of office as a judge of the United States Court of Appeals for the Armed Forces, filling the vacancy left by the departure of Chief Judge Baker.

Two of the Court's Senior Judges passed away in 2016. Senior Judge William H. Darden died on June 12, 2016, and Senior Judge H.F. "Sparky" Gierke III passed away on August 7, 2016. Appropriate tributes will be published in the Military Justice Reporter.

THE BUSINESS OF THE COURT

The filing and disposition of cases are set forth in the attached statistical report and graphs for the period from September 1, 2015 to September 30, 2016. Additional information pertaining to specific opinions is available from the Court's published opinions and Daily Journal. Other dispositions may be found in the Court's official reports, the Military Justice Reporter, and on the Court's web site. The Court's web site also contains a consolidated digest of past opinions of the Court, information on the Court's history and jurisdiction, the Rules of Practice and Procedure, previous Annual Reports, a schedule of upcoming hearings, audio recordings of past hearings, and

information on clerkship opportunities, bar admission, electronic filing, and the Court's library.

On October 2, 2015, the Court modified the Term of the Court to begin on October 1 of each year and to end on September 30 of the following calendar year. For this year's report, this change resulted in a Term of Court spanning 13 months instead of 12 months.

During the September 2015 Term of Court, the Court met its goal of issuing opinions in all cases heard during the Term prior to the end of the Term. An informal summary of selected decisions prepared by the Court's staff is set forth in Appendix A.

RULES OF PRACTICE AND PROCEDURE

During the September 2015 Term, the Court approved changes to Rules 5, 21(b)(5)(F), and 26 of the Court's Rules of Practice and Procedure. The changes to Rules 5 and 21(b)(5)(F) were made to eliminate the broad references in the Rules to the Court's supervisory powers.

The changes to Rule 26 regarding *amicus curiae* briefs were approved to emphasize the importance of such briefs to the Court when they provide additional factors for consideration, to institute a requirement that movants under Rule 26(a)(3) state their interest in filing and to obtain the consent of the parties to the filing. An additional requirement mandates that only members of the Court's Bar or attorneys appearing *pro hac vice* are permitted to file *amicus curiae* briefs. Rule 26 was also amended to clarify that such briefs could be filed in support of petitions for grant of review, petitions for extraordinary relief, writ-appeal petitions, petitions for new trial, and the answers to such pleadings.

BAR OF THE COURT

During the September 2015 Term, 148 attorneys were admitted to practice before the Court, bringing the cumulative total of admissions to the Bar of the Court to 36,784.

JUDICIAL OUTREACH

In furtherance of a practice established in 1987, the Court scheduled special sessions and heard oral arguments outside its permanent courthouse in Washington, D.C., during the September 2015 Term of Court. This practice, known as "Project Outreach," was developed as part of a public awareness program to demonstrate the operation of a Federal Court of Appeals, and the military's criminal justice system. The Court conducted hearings during this period, with the consent of the parties, at Washington and Lee School of Law, Lexington, Virginia; the University of Virginia School of Law, Charlottesville, Virginia; the University of Alabama School of Law, Tuscaloosa, Alabama; and Maxwell Air Force Base, Montgomery, Alabama. In addition,

the Judges of the Court participated in a variety of professional training, speaking and educational endeavors on military installations, at law schools and before professional groups.

CONTINUING LEGAL EDUCATION AND TRAINING PROGRAM

On March 2 and 3, 2016, the Court held its Continuing Legal Education and Training Program at the Washington College of Law at American University, Washington, D.C. The program opened with welcoming remarks from the Honorable Charles E. “Chip” Erdmann, Chief Judge, United States Court of Appeals for the Armed Forces. He was followed by the following speakers: Colonel Frederic L. Borch, III, U.S. Army (Retired), Regimental Historian and Archivist at the Judge Advocate General’s Legal Center and School; a panel consisting of Senior Judge Andrew S. Effron, Director of the Military Justice Review Group, Dwight Sullivan, Esq., Senior Associate Deputy General Counsel, Department of Defense, and Major Harlye S. Carlton, U.S. Marine Corps, Executive Secretary of the Joint Service Committee on Military Justice; another panel consisting of Major General Thomas J. Romig, U.S. Army (Retired), Dean of Washburn University School of Law, Colonel Greg Maggs, U.S. Army Reserve, Professor of Law, George Washington University School of Law and Professor Stephen I. Vladeck of the American University Washington College of Law; John-Paul Schnapper-Casteras, Esq., Special Counsel for Appellate and Supreme Court Advocacy, NAACP Legal Defense Fund; the Honorable Margret G. Robb, Judge of the Indiana Court of Appeals; the Honorable David J. Waxse, Magistrate Judge, U.S. District Court, District of Kansas, Kansas City, Kansas; Colonel William Eckhardt, U.S. Army (Retired), Professor of Law, University of Missouri-Kansas City School of Law, Kansas City, Missouri; and Professor Susan Carle of the American University Washington College of Law.

Charles E. “Chip” Erdmann
Chief Judge

Scott W. Stucky
Judge

Margaret A. Ryan
Judge

Kevin A. Ohlson
Judge

John E. Sparks, Jr.
Judge

APPENDIX A – SELECTED DECISIONS

This appendix contains an informal staff summary of selected decisions of the September 2015 Term of Court. A full list and summary of the cases decided by the Court during the Term, including any related concurrences and dissents, can be found on the Court's website.

United States v. LaBella, 75 M.J. 52 (C.A.A.F. 2015), holding that the Air Force Court of Criminal Appeals lacked jurisdiction to grant the accused's petition for reconsideration out of time, and the Court of Appeals for the Armed Forces lacked jurisdiction to consider the accused's petition for review following denial of reconsideration.

United States v. Riggins, 75 M.J. 78 (C.A.A.F. 2016), holding that the offense of assault consummated by a battery is not a lesser included offense of sexual assault and abusive sexual contact.

United States v. Busch, 75 M.J. 87 (C.A.A.F. 2016), holding that the accused's sentencing on a specification of sexual abuse of a child did not violate the Ex Post Facto Clause, even though the military judge referenced the Executive Order that set the maximum punishment for the offense after the date of the accused's misconduct, where the military judge did not follow the Executive Order, but instead performed an analysis as to whether the offense of indecent exposure or the offense of indecent liberties with a child was the offense most closely related to the charged offense.

United States v. Hoffman, 75 M.J. 120 (C.A.A.F. 2016), holding that the accused's attempts to solicit young boys for sex did not give the government investigators probable cause to believe that child pornography would be found on his computer equipment, and the inevitable discovery doctrine did not support the admission of child pornography found on electronic media illegally seized from the accused's barracks room.

United States v. Wilder, 75 M.J. 135 (C.A.A.F. 2016), holding that the speedy trial article of the UCMJ and the speedy trial court-martial rule are distinct, each providing its own protection, and the fact that a prosecution meets the 120-day requirement of the rule does not directly or indirectly demonstrate that the government moved to trial with reasonable diligence for purposes of the UCMJ; similarly, the government might move with all reasonable diligence for purposes of the UCMJ but nonetheless violate the 120-day court-martial rule, and when analyzing a violation of the speedy trial rule, it is the earliest of the actions listed in the rule with respect to a particular charge that starts the speedy trial clock for that charge and not some other standard such as "substantial information" rule regarding when the government possessed information necessary to charge an accused.

United States v. Rapert, 75 M.J. 164 (C.A.A.F. 2016), holding that the offense of communication of a threat does not predicate criminal liability on mere negligence alone, but instead requires the government to also prove the mens rea of the accused. The accused's conviction for communicating a threat against the President of the United States did not violate his First Amendment free speech rights in light of the connection between the accused's speech and the military's interests in ensuring obedience to the chain of command and in maintaining an effective fighting force.

United States v. Pease, 75 M.J. 180 (C.A.A.F. 2016), holding that in a case involving charges of sexual assault and abusive sexual contact, the Court of Criminal Appeals appropriately defined the term "incapable of consenting" as lacking the cognitive ability to appreciate the sexual conduct in question or lacking the physical or mental ability to make and to communicate a decision about whether they agreed to the conduct.

United States v. Killion, 75 M.J. 209 (C.A.A.F. 2016), holding that violation of the article prohibiting the use of provoking speech depends not on the likely reaction of the hypothetical average person but rather on the likely reaction of an objectively reasonable person in the position of the persons to whom the words are addressed.

United States v. Chin, 75 M.J. 220 (C.A.A.F. 2016), holding that a provision in a pretrial agreement to "waive all waivable motions" did not preclude the Court of Criminal Appeals from considering whether certain specifications constituted an unreasonable multiplication of charges. An accused has no authority to waive the statutory authority of the Court of Criminal Appeals to conduct a complete review of an accused's conviction unless the accused waives the right to appellate review altogether.

United States v. Cooley, 75 M.J. 247 (C.A.A.F. 2016), holding that Article 10, UCMJ, speedy trial requirements did not apply to a charge against the accused where the accused was not arrested or placed into pretrial confinement for that charge, and that government accountability for the speedy trial clock begins to run as set forth in RCM 707, and not pursuant to the "substantial information" rule, overruling *United States v. Johnson*, 1 M.J. 101 (C.M.A. 1975).

United States v. Caldwell, 75 M.J. 276 (C.A.A.F. 2016), holding that a military superior may be held criminally responsible for maltreatment of a subordinate even if the prosecution does not prove that the superior possessed a specific intent to maltreat. No mens rea beyond a general intent is required.

United States v. Martin, 75 M.J. 321 (C.A.A.F. 2016), holding that although human lie detector evidence is inadmissible at trial, the court will not find reversible error from its introduction when the accused invites its admission.

EV v. United States and Martinez, 75 M.J. 331 (C.A.A.F. 2016), holding that the United States Court of Appeals for the Armed Forces lacked jurisdiction to decide the merits of the alleged victim's petition for a writ of mandamus to address the order of the

military judge to release her mental health records since Article 6(b), UCMJ, was a clear and unambiguous grant of jurisdiction to the Courts of Criminal Appeals and makes no mention of the Court of Appeals for the Armed Forces.

United States v. Hills, 75 M.J. 350 (C.A.A.F. 2016), holding that MRE 413, the military rule of evidence governing the use of evidence of similar crimes in a sexual assault case, did not permit the government to use the charged sexual misconduct to show the accused's alleged propensity to commit the charged sexual misconduct.

United States v. Harrell, 75 M.J. 359 (C.A.A.F. 2016), holding that during a traffic stop an officer may continue detention where he has reasonable suspicion of criminal activity sufficient to justify the detention, and conducting a dog sniff did not violate the Fourth Amendment where the military judge did not err in finding that the dog's nose did not extend into the passenger compartment of the vehicle.

United States v. Witt, 75 M.J. 380 (C.A.A.F. 2016), holding that the participation of disqualified appellate judges of the Court of Criminal Appeals in the reconsideration of its opinion produced a significant risk of undermining the public's confidence in the judicial process in a capital murder case, and the decision on reconsideration to affirm the death sentence would be vacated and the case remanded for a sentencing rehearing in accordance with the court's original decision to set aside the sentence.

United States v. Howell, 75 M.J. 386 (C.A.A.F. 2016), holding that the Government's action of paying the accused at a reduced rate pending his rehearing did not constitute illegal pretrial punishment in the absence of a showing of punitive intent and where the Government was acting in a good faith position supported by regulations, statutes, and case law.

United States v. Sterling, 75 M.J. 407 (C.A.A.F. 2016), holding that contrary to the holding of the Court of Criminal Appeals, the Religious Freedom Restoration Act applies in the military context, but that the accused failed to establish a prima facie case under the statute at trial because she did not identify a sincerely held religious belief in placing signs at her work space and how those signs were important to her exercise of religion or how their removal substantially burdened her exercise of religion in some other way.

**USCAAF STATISTICAL REPORT
SEPTEMBER 2015 TERM OF COURT**

CUMULATIVE SUMMARY

CUMULATIVE PENDING SEPTEMBER 1, 2015

Master Docket	17
Petition Docket	80
Miscellaneous Docket	<u>0</u>
TOTAL	97

CUMULATIVE FILINGS

Master Docket	70
Petition Docket	719
Miscellaneous Docket	<u>37</u>
TOTAL	826

CUMULATIVE DISPOSITIONS

Master Docket	57
Petition Docket	727
Miscellaneous Docket	<u>34</u>
TOTAL	818

CUMULATIVE PENDING OCTOBER 1, 2016

Master Docket	30
Petition Docket	72
Miscellaneous Docket	<u>3</u>
TOTAL	105

OPINION SUMMARY

<u>CATEGORY</u>	<u>SIGNED</u>	<u>PER CURIAM</u>	<u>MEM/ORDER</u>	<u>TOTAL</u>
Master Docket	27	0	30	57
Petition Docket	0	0	727	727
Miscellaneous Docket	<u>2</u>	<u>0</u>	<u>32</u>	<u>34</u>
TOTAL	29	0	789	818

MASTER DOCKET SUMMARY

PENDING AT BEGINNING OF TERM	17
FILINGS	
Petitions granted from the Petition Docket	61
Certificates filed	9
Mandatory appeals filed	0
Remanded/Returned cases	<u>0</u>
TOTAL	70
DISPOSITIONS	
Affirmed	16
Reversed in whole or in part	40
Certificates dismissed	<u>1</u>
TOTAL	57
PENDING AT END OF TERM	
Awaiting briefs	4
Awaiting oral argument	17
Awaiting lead case decision (trailer cases)	9
Awaiting final action	<u>0</u>
TOTAL	30

PETITION DOCKET SUMMARY

PENDING AT BEGINNING OF TERM	80
FILINGS	
Petitions for grant of review filed	719
Petitions for new trial filed	0
Returned cases	<u>0</u>
TOTAL	719
DISPOSITIONS	
Petitions for grant of review denied	655
Petitions for grant of review granted	66
Petitions for grant of review withdrawn	4
Petitions for grant of review dismissed	<u>2</u>
TOTAL	727

PENDING AT END OF TERM

Awaiting pleadings	19
Awaiting staff review	26
Awaiting final action	<u>27</u>
TOTAL	72

MISCELLANEOUS DOCKET SUMMARY

PENDING AT BEGINNING OF TERM 0

FILINGS

Writ appeals sought	17
Writs of habeas corpus sought	5
Writs of coram nobis sought	3
Other extraordinary relief sought	<u>12</u>
TOTAL	37

DISPOSITIONS

Petitions or appeals denied	29
Petitions or appeals granted	0
Petitions or appeals dismissed	5
Petitions or appeals withdrawn	<u>0</u>
TOTAL	34

PENDING AT END OF TERM

Awaiting briefs	0
Awaiting staff review	0
Awaiting final action	<u>3</u>
TOTAL	3

PETITIONS FOR RECONSIDERATION

ALL CASES

Begin pending	0
Filed	<u>14</u>
TOTAL	14

End Pending 4

DISPOSITIONS

Denied	10
Granted	0
Dismissed	<u>0</u>
TOTAL	10

MOTIONS

ALL MOTIONS

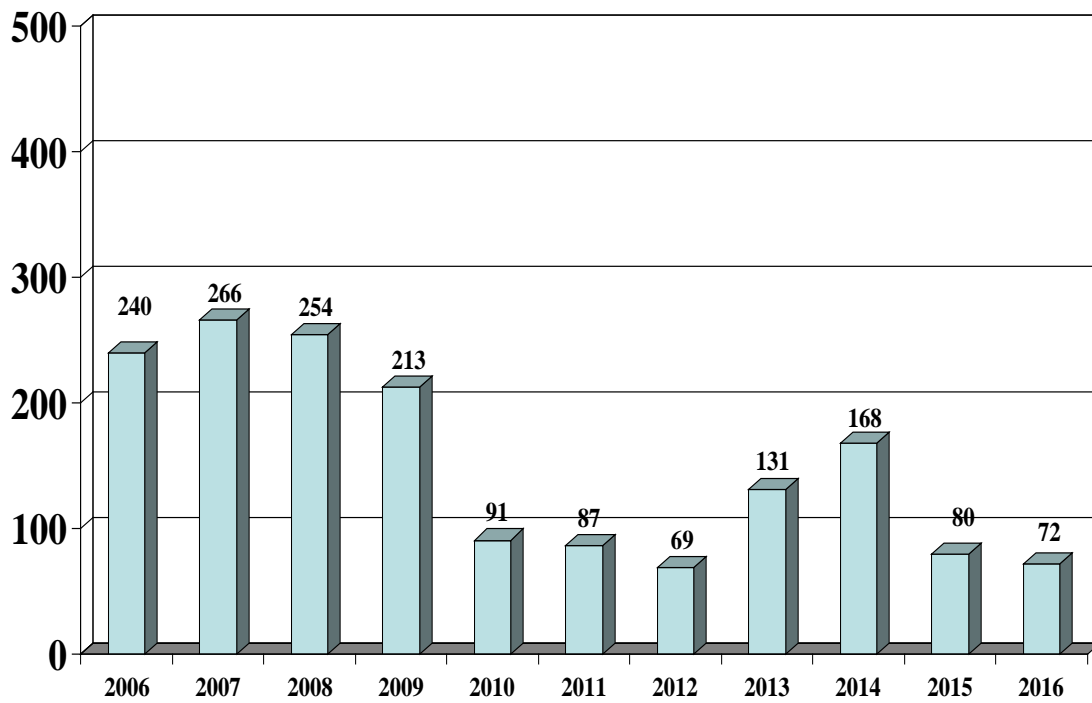
Begin Pending	6
Filed	<u>362</u>
TOTAL	368

End Pending 5

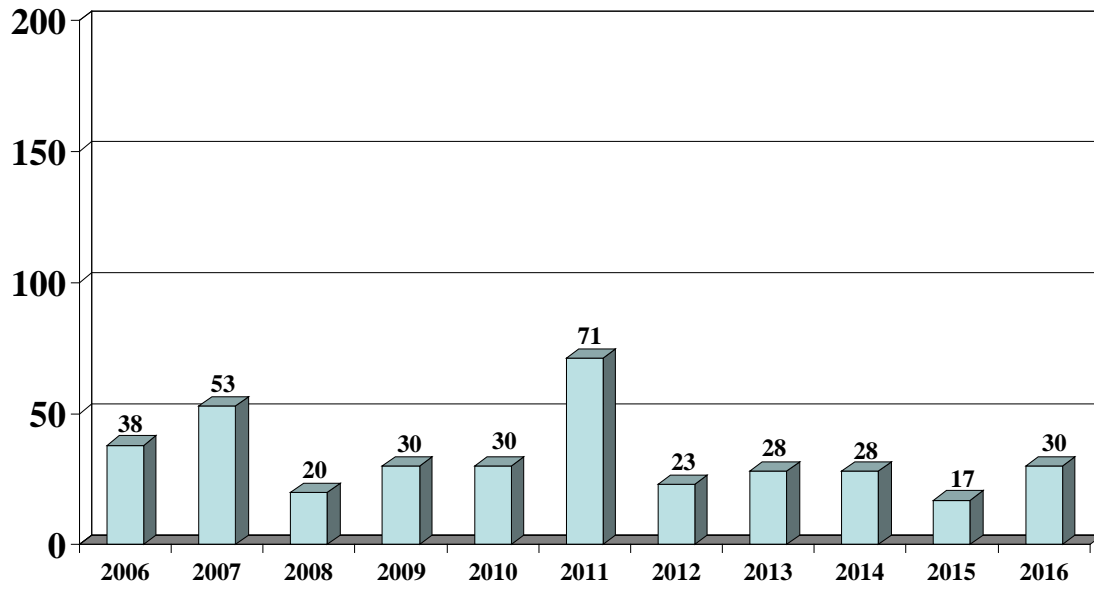
DISPOSITIONS

Granted	301
Denied	62
Dismissed	<u>0</u>
TOTAL	363

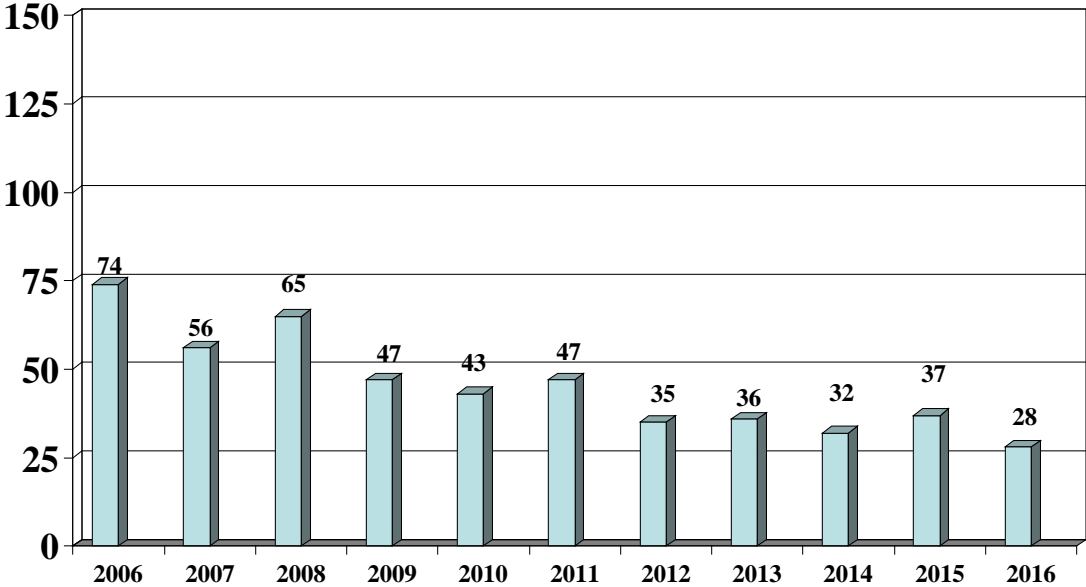
Petition Docket Term Pending



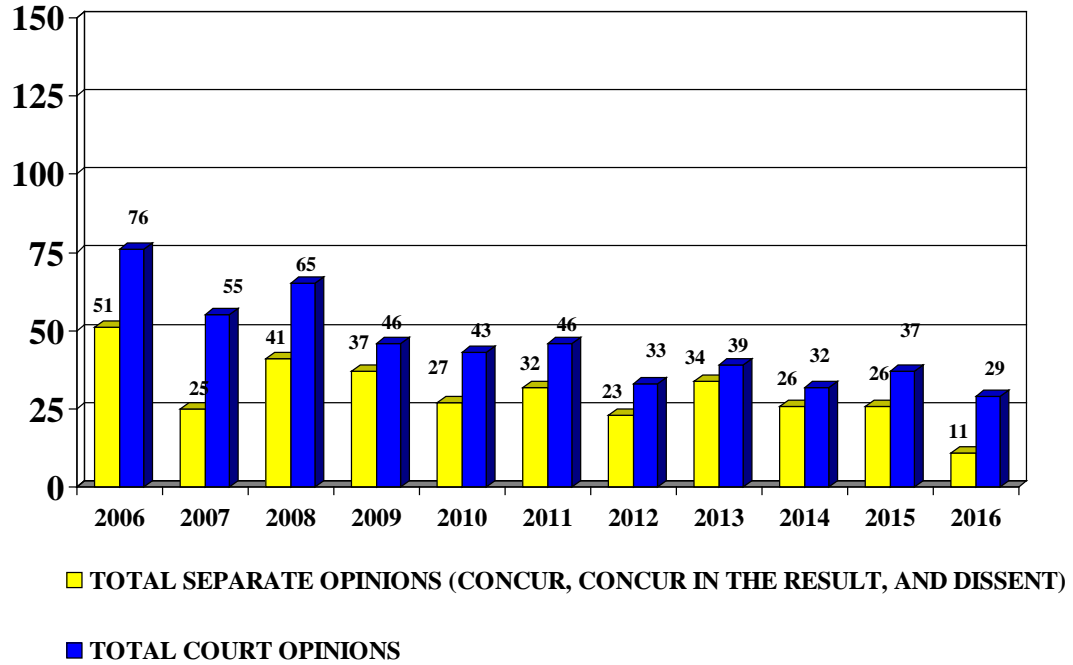
Master Docket Term End Pending



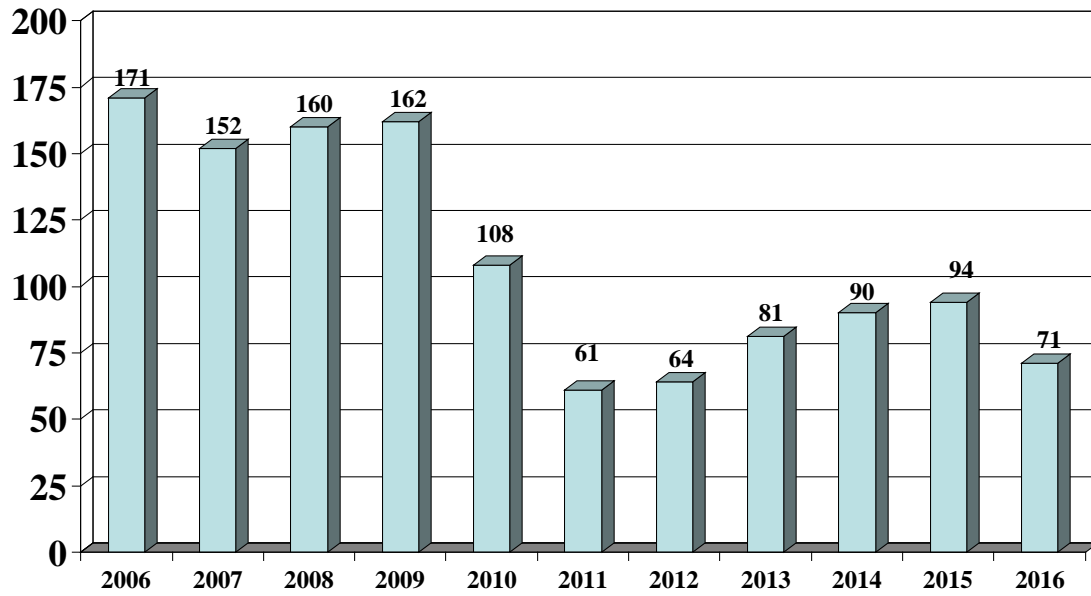
Oral Arguments



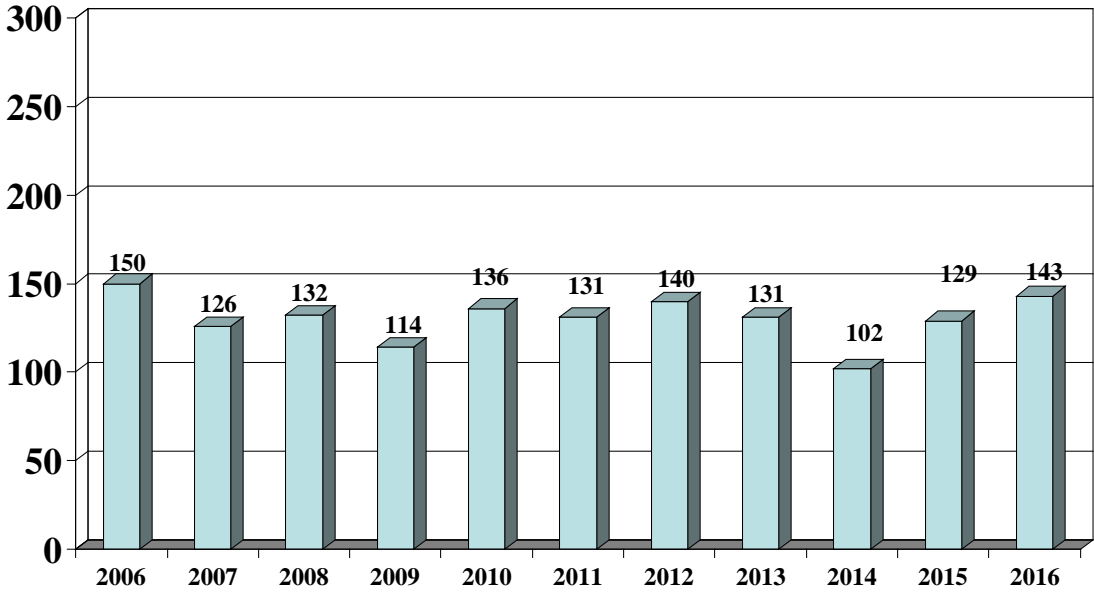
Total Opinions per Year



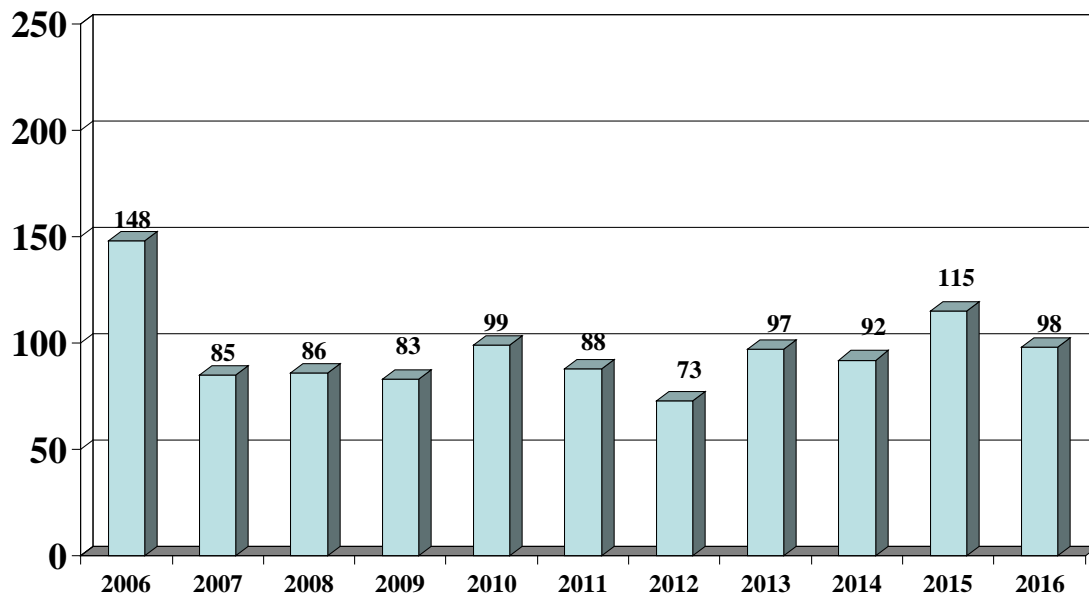
Days from Petition Filing to Grant



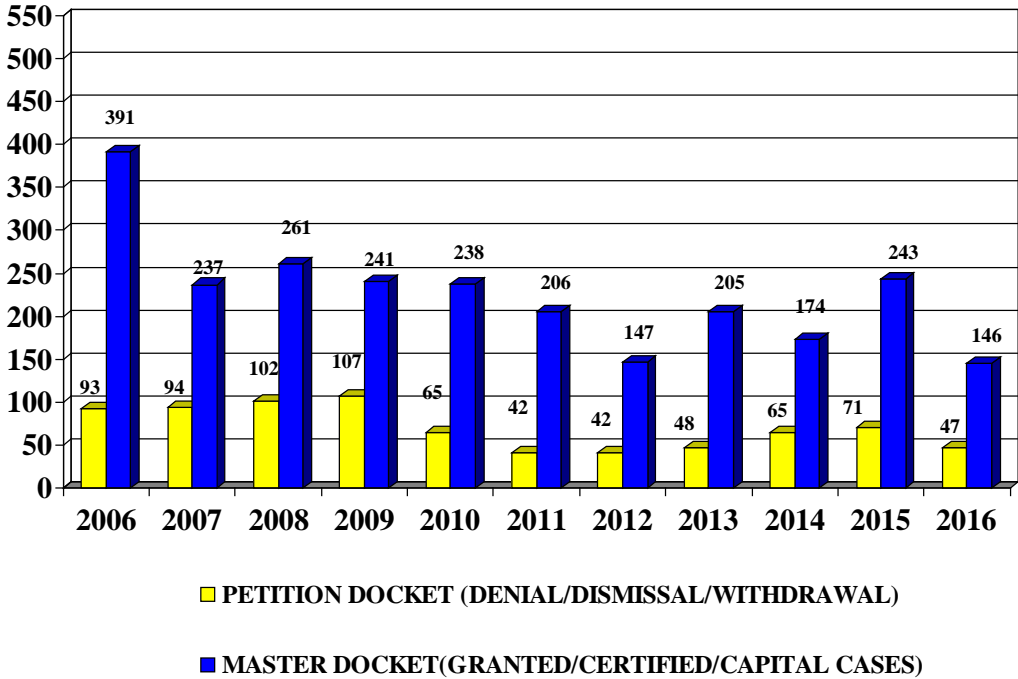
Days from Petition Filing to Oral Argument



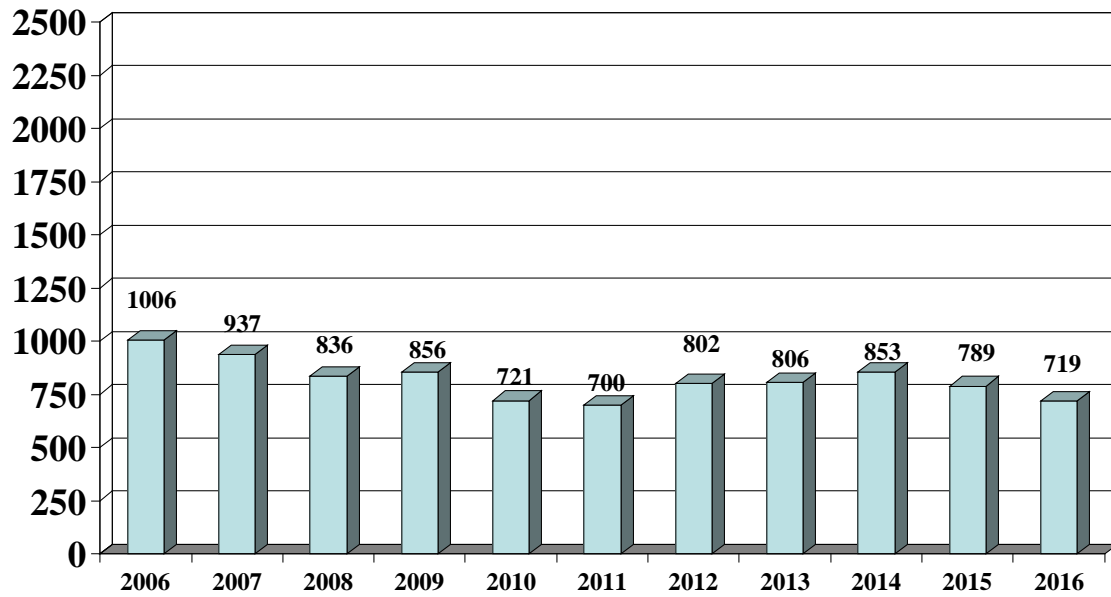
Days from Oral Argument to Final Decision



Days from Petition Filing to Final Decision



Total Petitions Filed per Year



SECTION 3

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY OCTOBER 1, 2015 TO SEPTEMBER 30, 2016

In fiscal year 2016 (FY16), The Judge Advocate General (TJAG) advised Army leadership on significant issues pertaining to military justice, to include high visibility cases and investigations. The Office of The Judge Advocate General (OTJAG) continued to implement programs improving both the administration of military justice and advocacy skills of military justice practitioners. In furtherance of TJAG's duties under Article 6(a), Uniform Code of Military Justice (UCMJ), TJAG and senior leaders in the Judge Advocate General's Corps (JAGC) conducted 17 visits to installations and commands in the United States and overseas to discuss military justice issues with commanders and their respective Staff Judge Advocates (SJAs). The JAGC remains committed to sustaining excellence in the practice of military justice through a variety of initiatives and programs.

OTJAG CRIMINAL LAW DIVISION

The OTJAG, Criminal Law Division (CLD) has two primary missions. First, the CLD advises TJAG on military justice policy, legislation, legal opinions, and related criminal law actions. Specific responsibilities include: promulgating military justice regulations; reviewing other Army Regulations for legal sufficiency; providing legal opinions to the Army Staff related to military justice matters; producing and updating military justice publications to include the Manual for Courts-Martial (MCM); conducting statistical analysis and evaluation of trends that affect military justice within the Army; providing legal advice on military corrections issues, the Army drug testing program, sexual assault and domestic violence victim assistance policies, and federal prosecutions; representing the Army on the Joint Service Committee (JSC) on Military Justice; responding to congressional inquiries from the President, Congress, Department of Defense (DoD) and the Army Staff; responding to congressional inquiries under the Freedom of Information Act (FOIA); and conducting reviews of court-martial cases under Article 69 of the UCMJ to ascertain legal sufficiency and sentence appropriateness and to identify issues that may require corrective action by TJAG.

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

Traditionally-reported CLD actions for the last three fiscal years are listed below.

	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>
Congressional and other inquiries	155	120	148
Officer Dismissals	26	18	32
Article 69 and other reviews	196	68	137
Freedom of Information/Privacy Act Requests	32	16	23

The CLD chairs regular meetings of the Military Justice Initiatives Council (MJIC), which consists of membership of key stakeholder organizations within the Army JAGC (such as TJAGLCS, TCAP, DCAP, Defense Appellate Division (DAD), Government Appellate Division (GAD), and the U.S. Army Trial Judiciary) that deal with military justice matters. The MJIC's purpose is to examine key military justice issues, to reconcile points of view regarding those issues, and as appropriate, to propose feasible and sustainable solutions. In FY16, some of the issues worked on, with solutions and ways ahead provided, included a complete update of the Special Victim Prosecutor (SVP) policy and the implementation within the Army JAGC of key provisions of the Military Justice Act of 2016 (MJA '16, see below for further discussion).

The CLD also chairs regular Criminal Law Synchronization Meetings with key criminal law stakeholders such as those in the MJIC above. These synchronization meetings were invaluable in bringing the JAGC criminal law leaders together, not only to coordinate criminal law training across the JAGC, but also to discuss new criminal law initiatives that could improve and sustain the practice of military justice in the Army. Synchronization provides unity of effort and situational awareness on all criminal law training across multiple venues, civilian and military, allowing trial advocates to more easily plan for their attendance at military justice training events. In FY16, a thorough review of all training was conducted. In addition, a model training calendar for use by military justice personnel in the field was developed and sent to practitioners; appropriate integration of special victims counsel training into training with trial and defense counsel was coordinated and accomplished; and a proposal to provide outside evaluation of military justice training by experts from civilian organizations was studied.

The Military Justice Additional Skill Identifier (ASI) program continues to grow. The purpose of the program is to help identify and sustain expertise, to provide incentives to attend training, and to assist in the selection of personnel for key military justice positions. To date, 1,445 judge advocates have been awarded skill identifiers: 759 basic, 501 senior, 200 expert, and 85 master military justice practitioners. Importantly during FY16, ASI applicants were instructed to ensure that any letters of recommendations had information that clearly indicated that applicants could demonstrate significant and substantial involvement in a number of courts-martial, with that involvement being detailed by the recommending official. This new requirement thus provides for a further qualitative dimension to the ASI program.

The CLD participates in inspections three times per year of the Forensic Drug Testing Laboratories at Fort Meade, MD and Tripler Army Medical Center, HI. These

inspections are intended to ensure that the laboratory results are forensically acceptable and that the laboratories are following DoD and Army policy guidance. The CLD attorney participation is intended to assist in ensuring not only that the laboratory results are forensically acceptable (which protects both the government and the Soldier), but also to ensure that the results may be used in administrative and judicial proceedings if required.

The CLD actively supports the JSC mission with the Chief, CLD (O6) serving as a voting group member and the Chief, Policy Branch, CLD (O5) serving as a working group member. The CLD participated in the JSC drafting of one Proposed Executive Order (PEO). The PEO contained recommended amendments to Rules for Court-Martial (RCM) 104, 601, 701, 704, and 1103 and amendments to Military Rules of Evidence (Mil. R. Evid.) 311, 505, 506, 513, and 514. It was a big year for EO's – the President signed three of them; EO 13696 on June 17, 2015; EO 13730 on May 20, 2016 and EO 13740 on September 16, 2016. Copies of PEOs and EOs are located on the JSC webpage at <http://jsc.defense.gov>. The JSC is currently reprinting the MCM. This 2016 MCM captures the new Articles 120, 120b, and 120c and all the related conforming changes as well as mandated changes in the FY12, FY13, FY14, FY15, and FY16 NDAA's.

The Military Justice Review Group (MJRG) continued to make recommended changes throughout this year. The JSC was intensely involved with reviewing, editing when necessary, and voting on those recommended changes. As a result of the MJRG and JSC efforts, the President enacted the Military Justice Act of 2016 (MJA '16) when he signed the FY17 NDAA.

The MJA '16 represents the most significant changes to the UCMJ in more than 30 years. Significant changes include limited pre-referral authority for military judges; creating a new military judge alone special court-martial; designating fixed number of panel members, 4 for special courts-martial, 8 for general courts-martial, and 12 for capital cases; an increased required number of votes for a guilty finding; provides a Soldier who was convicted by members to choose to be sentenced either by those members or by the military judge; a complete overhaul of the punitive articles; streamlining the post-trial process; increasing the military judges authority during post-trial; expanding an Accused's right for appellate review; and many others. Previously, the CLD provided three dedicated MJRG working group members to work through this expansive overhaul. Currently, we have one dedicated MJRG working group member (O5), who, along with members from the other Services, painstakingly worked through drafting changes and educated the JSC members on the changes and consequences of these changes.

In 2014, in accordance with FY13 NDAA Section 576(a)(1), the Secretary of Defense established the Judicial Proceedings Panel (JPP). The JPP's mandate is to conduct an independent review and assessment of judicial proceedings involving adult sexual assault and related offenses since the 2012 UCMJ amendments. The JPP began holding monthly public hearings in August 2014 and has sent the Services and the DoD

10 sets of Requests for Information. Numerous Army judge advocates and civilian attorneys have testified during JPP public hearings. The JPP released its initial report on February 4, 2015. In 2016, the JPP released four reports: Restitution and Compensation for Military Adult Sexual Assault Crimes; Article 120, UCMJ; Retaliation Related to Sexual Assault Offenses; and Statistical Data Regarding Military Adjudication of Sexual Assault Offenses. Finally, it released a subcommittee report on Article 120 of the UCMJ (December, 2015) and a subcommittee report on Military Defense Counsel Resources and Experience in Sexual Assault Cases (December, 2016). The CLD provided one judge advocate that served as the Army representative to the JPP and who was primarily responsible for gathering information and witnesses in response to the JPP's requests.

The CLD is responsible for the revision and publication of Army Regulation (AR) 27-10, Legal Services, Military Justice. In May, 2016, CLD published an updated AR 27-10, replacing the version from October, 2011. This revision incorporated major changes that had occurred to our military justice practice landscape over the past several years.

The CLD is continuously striving to improve its trial advocacy training programs. In conjunction with instructors from TJAGLCS, the CLD accomplished the first major update of its trial advocacy training manual in twenty years. With this update, *The Advocacy Trainer* will be fully digitized. It will also include material reflecting trial practice in the 21st Century: a chapter on trial visuals and instruction on evidentiary foundations for such things as e-mails, Facebook pages, and tweets.

Finally, the CLD's Strategic Priorities Branch has recently begun a major initiative involving establishing partnerships with large civilian prosecutors' offices and other training organizations with a national footprint. These partnerships, with organizations such as the Cook County State's Attorney's Office in Chicago, the National Advocacy Center, and the National District Attorneys Association, allows Army training officers to emulate best practices from those trial practice instructors.

THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER AND SCHOOL

The mission of the Criminal Law Department (CLD) of TJAGLCS in Charlottesville, Virginia, is to develop, improve and sustain excellence in the practice of military criminal law. The need to hone military justice skills in today's joint, expeditionary force is paramount and is the primary focus of our curriculum. From substantive criminal law and theory to technical and practical litigation skills, the CLD continues to provide training and education to develop new advocates and sharpen seasoned advocates in the practice of military justice. Criminal Law professors also provide limited off-site instruction and critical reach-back capability for military justice practitioners of all Services.

The CLD provides a variety of courses to a varied audience including commanders, Judge Advocates, Sister Service Judge Advocates, and international students. Courses are designed for: initial-entry Judge Advocates in the Basic Course; new Trial Counsel, Defense Counsel and Special Victim Counsel (SVC) in the Intermediate Trial Advocacy

Course (ITAC); mid-level Judge Advocates in the Graduate Course, the Military Justice Leaders Course, the Judge Advocate Officer Advanced Course, and the SVC Course; senior Judge Advocates in the Military Judge Course and the SJA Course; and commanders and senior non-commissioned officers in the Command Sergeant Major Legal Orientation, the Senior Officer Legal Orientation Course, and the General Officer Legal Orientation Course (GOLO). Except for the GOLO course, which is provided individually to General Officers in a single day, all courses are taught using a sexual assault fact pattern and are synchronized with other JAGC training agencies.

The ITAC is an advocacy-centered course modeled after the training conducted at the Department of Justice National Advocacy Center (NAC). Designed to be more challenging than the JAG Basic Course and serve as intermediate advocacy training, the ITAC builds on courses young advocates will have already received: the New Prosecutor Course (offered by TCAP), Defense Counsel 101 (offered by DCAP), and the SVC Course. Students learn how to conduct sophisticated case analysis of a sexual assault, conduct *voir dire*, prepare instructions, interview a sexual assault victim, interact with an SVC, conduct a direct and cross-examination of a sexual assault victim, interview and conduct direct examinations of expert witnesses, and use technology and demonstrative evidence in the opening statement and closing argument. This year the CLD further refined the course by continuing to develop the role and involvement of the SVC in the fact pattern and by attending an advocacy course at the NAC, incorporating more technology into the instruction and ensuring TJAGLCS instruction remains on the cutting edge of advocacy education. To add realism to the intensive training, students must interview and cross-examine Forensic Psychologists, Digital Forensic Analysts, Toxicologists, and Sexual Assault Medical Forensic Examiners. Also, Judge Advocates who are attending the Graduate Course role-play the victim to provide ITAC students with the challenge of interviewing and interacting with a live victim. This demanding course is provided twice annually.

The CLD continued to develop and improve the SVC Course, offering one child-SVC Course and two adult-SVC Courses last year. As part of that effort, the CLD sent one professor to attend the SVC Course taught by the Air Force JAG School in Montgomery, Alabama. Through the Army SVC Program Manager, the CLD coordinates with and draws best practices from Sister Services, which in turn enhances coordination and training among the services in this burgeoning area of law.

The adult-SVC Course is part of the certification process before Judge Advocates are authorized to serve as SVC. Students learn best practices for working with sexual assault victims, how crime impacts victims, how to work with law enforcement and multi-disciplinary victim-care professionals, how to manage professional responsibility and scope of representation issues, and how to most effectively advocate for victims' rights while working with commanders and other participants in the military justice system. Two capstone events in the adult-SVC course include a roundtable discussion where actual sexual assault victims discuss their experiences and the assistance they received from their SVC and a practical exercise where students interact with a client-victim role-player. The adult course is a prerequisite for the child-SVC Course which focuses on:

how to communicate with children; how children process and discuss traumatic events; which experts are best suited to assist child victims; and services available for child victims. As victim rights and policy continue to develop, the CLD assists in the implementation and education of those policies and makes recommendations for policy changes and improvements to the SVC Program Manager.

The CLD presented the Forty-Fourth Kenneth J. Hodson Lecture in Criminal Law, hosting the Honorable James E. Baker, former Chief Judge of the United States Court of Appeals for the Armed Forces. The CLD continued outreach to the field by teaching at: the Army's Sexual Harassment and Assault Response Program Academy; the Staff Judge Advocate Best Practices Course; the Army Trial Judge Sexual Assault Training; the Navy-Marine Military Judge Sexual Assault Training; and two Reserve Component off-sites. The CLD also continued its digital outreach by developing a computer application for SVCs to use with child victims, importing its school website to a new platform that is open to the public, and regularly updating and responding to questions from the field on the JAG milsuite site.

U.S. ARMY JUDICIARY

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

The Office of the Clerk of Court receives records of trial for review by the U.S. Army Court of Criminal Appeals (ACCA) under Article 66, UCMJ, appeals under Article 62, UCMJ, and Petitions for Extraordinary Relief. In FY16, 420 records of trial and over 1,500 motions and briefs were referred to one of the three judicial panels comprising ACCA for judicial review. The average processing times for those courts-martial from sentencing to convening authority action was 154 days. In 164 of those cases, initial action was completed by the convening authority within the 120 days prescribed by *United States v. Moreno*. Three hundred sixty-two of the records were received by ACCA within 30 days of convening authority action.

The Army's superior court rendered an initial decision in 595 cases in FY16, with an average processing time of 325 days from receipt of the record of trial by the clerk of court to decision by ACCA. Of the 595 decisions, 526 were rendered within the 18-month period prescribed by *United States v. Moreno*. There were no court-martial convictions reversed due to command influence, denial of the right to a speedy review, lost records, or other administrative deficiencies. No provision of the UCMJ or MCM was held unconstitutional by ACCA.

Working with the OTJAG CLD, the Office of the Clerk of Court also processed 65 additional cases for examination under Article 69, UCMJ. The Office of the Clerk of Court served ACCA decisions upon all personnel not in confinement and coordinated with military confinement facilities for service of confined Soldiers. The office closed 879 courts-martial cases during the past year prior to their retirement to the archives.

The court maintains a website at <https://www.jagcnet.army.mil/acca>. The court's published and unpublished memorandum opinions are publicly available on the website. In FY16, the office uploaded more than 213 opinions and decisions to the website. Additional publicly available information includes: application materials for admission to the bar at ACCA; Rules of Court; oral argument schedules; and the procedures for making a FOIA or Privacy Act (PA) request from ACCA. The website also includes a "FOIA Reading Room" containing frequently requested documents from some of the Army's higher-profile court-martial cases.

The Clerk of Court is the custodian of the Army's permanent court-martial records (general courts-martial and those special courts-martial resulting in an approved punitive discharge) dating from 1977. Inquiries about current and previous courts-martial are received from: federal and state investigative agencies; local law enforcement offices; sex offender registration databases; media and news organizations; military historians; veterans; and Soldiers previously convicted at court-martial. Additionally, because the Brady Bill requires the processing of handgun permit applications within three working days, ACCA receives many expedited requests from the Federal Bureau of Investigation's National Instant Background Check System.

Summary of information requests to ACCA for the last three fiscal years:

	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>
Freedom of Information Act	536	661	562
Privacy Act	217	210	251
Certified Copies of Convictions	72	75	108
Total Number of Requests:	804	946	921

During this time, the office's FOIA team provided assistance to the Department of Justice, through the Army Litigation Division, in both civil and criminal litigation.

The Office of the Clerk of Court also provides assistance to overseas court-martial jurisdictions in processing requests for non-DoD civilians to travel overseas to testify at trials. This includes making travel arrangements, assisting with requests for expedited passport processing, and issuing invitational travel orders.

The office's Management and Program Analyst continued to provide vital support to the Office of the Clerk of Court, OTJAG, and other organizations and individuals. Using the Army Court-Martial Information System, the office designed, developed, and released nearly 350 timely and accurate reports in response to requestors both inside and outside the DoD.

The office's two full-time civilian attorneys, in addition to supervising the office staff, provide daily guidance on post-trial processing matters to Army installations worldwide. This includes telephonic and email consultation on the contents of promulgating orders and convening authority actions following courts-martial.

The Office of the Clerk of Court is also responsible for processing applications for admission to ACCA bar both for military and civilian counsel. In FY16, the office admitted 34 new counsel. The office also maintains accurate records of attorney disciplinary actions.

Finally, the Office of the Clerk of Court provided instruction to legal NCOs, warrant officers, and those individuals attending military justice courses at TJAGLCS, as well as training for newly assigned SJAs.

The Army Court conducted five arguments through its outreach program. The cases were argued at the following locations: George Washington University, Washington, DC; Ohio State University, Columbus, OH; Michigan State University, Lansing, MI; Florida International University, Miami, FL; Boston University, Boston, MA. Additionally, as part of the CAAF outreach program, the Army's Government and Defense Appellate Divisions argued one case at the University of Virginia, Charlottesville VA. Outreach arguments are an exceptional tool to utilize which increases understanding and familiarity with the military justice system to civilians that may have very little experience with our system. These strategic communication efforts enhance the Army and JAGC throughout the civilian audiences.

Trial Judiciary

Military judges of the Trial Judiciary presided over 815 courts-martial in FY16, a 6.9% decrease from FY15. However, the percentage of contested cases and the complexity of these cases continued to rise, driven partially by the increased number of serious cases, including sexual assault and sex offense related prosecutions.

Army trial judges from Germany continue to provide judicial support in deployed environments, with eight courts-martial tried in Kuwait during this period, adding to a total of 981 cases tried in combat theaters of operation (Iraq, Kuwait, and Afghanistan) since May 2003.

The Trial Judiciary continued its ongoing effort to keep DA Pamphlet 27-9, Military Judges' Benchbook (Benchbook) current, which is used by all Services, approving changes that addressed: 1) Article 32 preliminary hearing waivers in pretrial agreements; 2) kidnapping in light of *U.S. v. Sneed*, 74 M.J. 612 (Army Ct. Crim. App. 2015); 3) reckless endangerment in light of *U.S. v. Gutierrez*, 74 M.J. 61 (C.A.A.F. 2015); 4) Mil. R. Evid. 413 and 414 instructions in light of *U.S. v. Hills*, 75 M.J. 350 (C.A.A.F 2016); and 5) grounds for challenge of court-martial members.

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

Military judges attended the Joint Military Judges' Annual Training at Maxwell Air Force, Alabama and the annual Trial Judiciary Sexual Assault Training at Fort Belvoir,

Virginia. The Trial Judiciary also continued its long-standing relationship with the National Judicial College, sending a select number of military judges to judicial education courses at this world-class institution.

Military judges continued playing an active role in their military and civilian communities, speaking to grade and high school audiences, local bar associations and civic organizations, law school classes and state bar continuing legal education courses. Members of the Trial Judiciary also served as guest lecturers at TJAGLCS and the Defense Institute of International Legal Studies. Other notable achievements by the Trial Judiciary included:

*Publication of an article on sentencing theories in The Army Lawyer, entitled "Punished as a Court-Martial May Direct: Making Meaningful Sentencing Requests."

*The 59th Military Judge Course, jointly conducted by the Trial Judiciary and TJAGLCS, graduated 43 Army, Navy, Marine Corps, Air Force and Coast Guard students (and two Pakistani judges) on April 29, 2016, and invested them as new military judges.

U.S. ARMY TRIAL DEFENSE SERVICE

In FY16, approximately 440 Active and Reserve Component (RC) judge advocates were serving in the U.S. Army Trial Defense Service (TDS) worldwide, including approximately 150 on active duty; 150 assigned to one of three Army Reserve (USAR) TDS Legal Operations Detachments (LOD) and 140 in the Army National Guard (ARNG). The TDS provides high quality, professional defense services to Soldiers across the Army. Counsel assigned to the TDS are stationed at 40 active duty installations worldwide and approximately 100 reserve component locations.

The TDS detailed one or more counsel to every Army special and general courts-martial referred in FY16. In addition, TDS counsel assisted Soldiers facing other military justice related adverse administrative actions. The FY16 active duty caseload was as follows:

General and Special Courts-Martial:	896
Administrative Boards:	1194
Nonjudicial Punishment:	24,686
Military Justice Consultations:	30,003

The TDS provided defense services to Army personnel deployed worldwide, including Iraq, Afghanistan, Kuwait, and Qatar. Personnel in these areas are supported out of field offices in Kuwait and Qatar, with defense counsel traveling from there into Afghanistan and Iraq, or elsewhere, as needed.

The USAR TDS personnel are divided among three separate units. The 22d LOD, headquartered in San Antonio, Texas, has an area of responsibility that includes the majority of states west of the Mississippi River along with Guam, Hawaii and Alaska. The 154th LOD, headquartered in Alexandria, Virginia, covers the U.S. Southeast, Lower Mississippi River Valley, and Puerto Rico. The 16th LOD, headquartered in Fort Hamilton, New York, covers the U.S. Northeast, Midwest, and Germany.

The ARNG TDS, headquartered in Arlington, Virginia, consists of approximately 140 judge advocates, one legal administrator, and 40 enlisted paralegals stationed in 50 states, the District of Columbia, and three territories.

The DCAP is the training branch of TDS. In FY16, DCAP was staffed with four judge advocates and two civilian Senior Counsel/Trainers, who provided training and advice to TDS counsel worldwide. This fiscal year's training events consisted of five iterations of Defense Counsel (DC) 101, a three-day course that provides critical instruction to newly-assigned DC and paralegals on all aspects of client representation with an emphasis on professional responsibility and complex issues arising in sexual assault cases. Furthermore, all DC and paralegals attended one of five DC 201 courses to receive training on current trends in military justice, with a focus on sexual assault litigation. Regional DC and senior DC from the Active, Reserve, and Guard also gather together annually to receive instruction on their duties as leaders in TDS. Additionally, DCAP and TCAP jointly organized and taught four Advanced Trial Communications Courses, the Sexual Assault Trial Advocacy Course, and the Expert Symposium.

In FY16, DCAP received over a thousand inquiries from DC via emails, phone calls, and in-person inquiries during training events. DCAP provided assistance to DC in the field that included researching case law, answering case specific questions, and providing sample motions, expert requests, and other trial documents that might be helpful in the defense of the case. Moreover, DCAP's website and the Knowledge Management milBook website allowed free flowing discussions and collaboration among counsel on critical issues. Finally, DCAP also worked with DAD to assist TDS counsel in the preparation and filing of extraordinary writs before ACCA and the Court of Appeals for the Armed Forces (CAAF).

Finally, in addition to providing training and advice, DCAP published the 6th Edition of DC 101 Deskbook and distributed it to all newly-assigned TDS counsel. The DCAP also published the 3rd Edition of DC 201 Deskbook. Counsel were further kept abreast of all major developments through email updates and a series of updates called "DCAP Sends."

GOVERNMENT APPELLATE DIVISION

The Government Appellate Division (GAD), with 16 active duty and 10 reserve component military appellate attorneys, represents the United States before ACCA,

CAAF, and the US Supreme Court in appeals by Soldiers convicted at courts-martial with an adjudged sentence of either a punitive discharge or confinement for one year or more. The GAD also represents the United States before those fora in government appeals from courts-martial and petitions for extraordinary relief. Additionally, GAD oversees the operations of the TCAP.

In FY16, GAD filed 622 briefs at ACCA, including 363 assignment of error responses, 13 specified issue briefs, 16 supplemental briefs, nine government appeals, and one extraordinary writ petition. It filed 430 responses to petitions for grant of review and 23 briefs at CAAF, including 14 final briefs, four extraordinary writs, and five petitions for reconsideration. The GAD appellate attorneys argued 30 cases before ACCA and six cases before CAAF.

In FY16, TCAP continued to perform its three primary missions. First, TCAP delivered continuing legal education and specialized training to Army trial counsel and government paralegals worldwide. Second, TCAP provided direct prosecutorial assistance to SJA offices on many of the Army's most complex and/or high-profile cases. Finally, TCAP also managed the operations of the Special Victim Prosecution (SVP), Special Victim Noncommissioned Officer (SVN), and Special Victim Witness Liaison (SVWL) programs.

The cadre of TCAP trainers, including seven military attorneys, three civilian Special Victim Litigation Experts, a senior paralegal noncommissioned officer, and a special victim witness liaison program manager, developed and delivered 40 training events for trial counsel and government paralegals worldwide. This year's training events consisted of 22 specialty courses, including: the New Prosecutors Course; Effective Strategies for Members Cases; the Military Institute for the Prosecution of Sexual Violence; Crime Lab Forensic Training; Child Forensic Interviewing; Prosecuting the Online Exploitation of Children; Expert Symposium; Child Abuse Prosecutor's Course; Senior Trial Counsel Course; Sexual Assault Trial Advocacy Course; Special Victim Prosecutor Course; Advanced Paralegal Course; and, the Special Victim Witness Liaison Course. The TCAP Team also traveled to 14 Army installations to conduct two to three day outreach training events, as well as two, week-long, regional training events overseas.

Many of this year's training events focused on trial advocacy skills and prosecuting sexual assault and domestic violence cases. Specifically, TCAP presented four iterations of the New Prosecutor Course (NPC) and two iterations of the Military Institute for the Prosecution of Sexual Violence Course (MIPSV). NPC is a five-day course focused on the fundamentals of military justice using a sexual assault fact pattern. MIPSV provides further specialty training on sexual assault and domestic violence. NPC and MIPSV together prepare new counsel for the ITAC taught at TJAGLCS. Following attendance at NPC, MIPSV, and ITAC, counsel with 18 months or more of court-martial practice are qualified to attend TCAP's capstone training event - the Sexual Assault Trial Advocacy Course (SATAC). The SATAC is a two-week trial advocacy course focusing on the fundamentals of trial advocacy in the context of litigating special victim

cases. This year's SATAC included lectures, break-out sessions, and numerous advocacy exercises; it was conducted jointly with both DCAP and the SVC program office.

In support of its mission to assist prosecutors in the field, TCAP also provided expert military counsel to prosecute many of the Army's most complex and/or high-profile cases, and provided direct expert assistance and consultation through its three civilian Special Victim Litigation Experts (SVLEs). The TCAP also continued its traditional information-sharing and collaboration activities such as publishing regular issues of its "TCAP Express" newsletter to inform and advise the field on new legal developments and issues, compiling and distributing a resource disk of useful templates, resources and tools, as well as responding in real time to hundreds of legal questions submitted by phone and email from prosecutors and paralegals worldwide.

Finally, TCAP continued to manage the Army's 23 SVPs, 23 SVNs, and 23 SVWLs located at the Army's 21 largest installations. Their primary mission is to ensure that every instance of sexual assault, child abuse, and intimate-partner violence within their geographic area of responsibility is properly investigated and, where appropriate, charged and prosecuted. The SVPs, SVNs, and SVWLs also work with the Criminal Investigation Command's specialized Sexual Assault Investigators and with the local SVC to ensure that survivors are treated respectfully, notified of all available support services, and kept abreast on the status of the investigation and prosecution. Our SVPs are also charged with creating local training programs for trial counsel and government paralegals in order to ensure that our trial practitioners receive relevant military justice and advocacy training on a regular basis.

DEFENSE APPELLATE DIVISION

The Defense Appellate Division (DAD), with 19 active duty and nine reserve component military appellate defense attorneys, provides appellate representation to eligible Soldiers and other individuals before ACCA, CAAF, and the Supreme Court of the United States. Eligible Soldiers include those convicted at courts-martial where the approved sentence includes a punitive discharge or confinement for one year or more. DAD attorneys also assist military and civilian trial defense counsel in the preparation and filing of extraordinary writs before the aforementioned courts.

The DAD currently represents Soldiers in approximately 700 cases. These cases are moving through the various stages of the appellate process, either recently received at DAD, pending action by ACCA or CAAF, or awaiting final action and discharge from the Army. Approximately 146 cases are pending review and submission to ACCA.

Last year, DAD filed 573 briefs with ACCA. The DAD also filed 474 briefs with CAAF. Appellate counsel raised assignments of error in approximately 45% of these cases. Counsel also argued 30 cases at ACCA and eight at CAAF.

Army DAD co-chaired, with Navy-Marine Corps Appellate Government Division, a joint training event at Joint Base Myer-Henderson Hall to organize and provide advanced appellate advocacy that included government and defense appellate attorneys as well as special victim attorneys and advocates from the Army, Navy, Air Force, Marine Corps and Coast Guard.

Some of the significant cases from this past year include:

United States v. Hennis, ARMY 20100304. Master Sergeant Hennis was tried at court-martial and sentenced to death after being tried twice and acquitted once in the State of North Carolina. Appellate defense counsel filed a reply brief over the 48 assignments of error, filed over 25 motions, and conducted a ninety-minute oral argument on May 6, 2016. The Army Court issued its opinion on October 6, 2016 affirming the findings and sentence. The appellate defense counsel has filed a motion to vacate the ACCA opinion due to an improperly constituted panel. In the alternative, appellate defense counsel is preparing a motion for reconsideration citing at least eight assignments of error.

United States v. Akbar, USCA Dkt. No. 13-7001/AR, ARMY 20050514. In one of two Army capital cases currently on direct appeal, the CAAF considered 59 assignments of error raised by Sergeant (SGT) Akbar. After CAAF affirmed the case on August 19, 2015, SGT Akbar filed a petition for a Writ of Certiorari with the US Supreme Court questioning whether the President, rather than Congress, had the statutory authority to prescribe the aggravating-factor elements that permit a court-martial to impose a death sentence on a member of the armed forces. The Court denied his petition on October 3, 2016.

United States v. Manning, ARMY 20130739. Private First Class (PFC) Manning was charged with 22 offenses pertaining to the wrongful release of classified documents. A military judge sitting as a general court-martial found PFC Manning guilty of theft of government property, conduct prejudicial to good order and discipline and of a nature to bring discredit upon the armed forces, violations of the Espionage Act, the Computer Fraud and Abuse Act, and other Army regulations. An appellate brief was filed with ACCA on May 18, 2016. The government's response was due to ACCA on December 14, 2016, but additional government filing extensions are possible. On January 17, 2017, President Obama commuted PFC Manning's sentence to time served plus 120 days.

United States v. Hills, USCA Dkt. 15-0767/AR, ARMY 20130833. Sergeant Kendell Hills was convicted of one specification of abusive sexual contact in violation of Article 120, UCMJ and acquitted of two specifications of sexual assault in violation of Article 120, UCMJ. The ACCA affirmed the findings and the sentence. The CAAF granted SGT Hills' petition to review the issue of whether the military judge abused his discretion by granting the Government's motion to use the charged sexual misconduct for Mil. R. Evid. 413 purposes to prove propensity to commit the charged sexual misconduct. The CAAF held that because the evidence of the charged sexual misconduct was already

admissible in order to prove the offenses at issue, the application of Mil. R. Evid. 413, a rule of admissibility for evidence that would otherwise not be admissible, was error. Neither the text of Mil. R. Evid. 413 nor the legislative history of its federal counterpart suggests that the rule was intended to permit the government to show propensity by relying on the very acts the government needs to prove beyond a reasonable doubt in the same case. The CAAF's holding has impacted multiple cases on appeal and at court-martial, as the use of charged misconduct to show propensity has been common practice in the Army.

United States v. Caldwell, USCA Dkt. 16-0091/AR, ARMY 20140425. Sergeant First Class Djoulou K. Caldwell was convicted of maltreatment in violation of Article 93, UCMJ. The CAAF granted review to determine whether the military judge's instructions were plainly erroneous in light of the Supreme Court's holding in *Elonis v. United States*, 135 S. Ct. 2001, 192 L. Ed. 2d 1 (2015). The CAAF found the judge's instructions were not plainly erroneous as a matter of law because of: (1) the unique nature of the offense of maltreatment in the military requires the government to prove general intent in order to obtain a conviction under Article 93, UCMJ, thereby satisfying the key principles enunciated by the Supreme Court in *Elonis*; and (2) the military judge's instructions sufficiently flagged for the panel the need to consider this general intent mens rea requirement when determining the guilt or innocence of the accused. Sergeant First Class Caldwell then filed a petition for a Writ of Certiorari with the US Supreme Court questioning whether *Elonis* and its reasoning applied to all similar federal criminal statutes or whether, as the court of appeals reasoned, *Carter v. United States*, 530 U.S. 255 (2000) creates a class of "general intent" crimes that fall outside the reach of *Elonis* and for which proof of negligence is sufficient to convict. The Court denied his petition on October 3, 2016.

LITIGATION DIVISION

Civil lawsuits involving military justice matters are relatively few but remain an important part of the Litigation Division's practice. Most suits are brought by former Soldiers seeking collateral review of military court-martial proceedings pursuant to a petition for writ of habeas corpus in federal district court, as opposed to habeas actions challenging Army decisions such as a denial of conscience objector status. Additionally, Soldiers can also seek review of a decision by the Army Board for Correction of Military Records denying clemency for a court-martial sentence pursuant to the Administrative Procedures Act, 5 U.S.C. § 701, et al. During FY16, the Military Personnel Litigation Branch was involved in 15 habeas corpus cases, with seven cases still active and eight having been successfully defended against collateral attacks on court-martial convictions or seeking federal court intervention related to other confinement issues such as confinement conditions, illegal detention, and transfer out of military confinement facilities. Additionally, the General Litigation Branch periodically handles civil lawsuits involving Constitutional challenges to the military justice system, such as allegations involving alleged violations of equal protection, due process, and the First Amendment.

The following cases highlight the types of issues handled by the Litigation Division:

Gray v. James W. Gray, Commandant, USDB (D. Kan.). In 1988, a general court-martial convicted Petitioner Ronald Gray of the premeditated murder of two women, the attempted premeditated murder of a third woman, the rape and sodomy of the women, burglary, and larceny. Two of the three women were Soldiers. The court-martial sentenced Gray to death. The military appellate courts affirmed the court-martial conviction. In 2001, the US Supreme Court denied Gray's petition for writ of certiorari, and his request for rehearing. In July 2008, the President approved the death sentence. In August 2008, the Secretary of the Army signed the execution order directing Gray's execution. In November 2008, Ronald Gray filed a motion in the United States District Court for the District of Kansas requesting an order staying his execution, originally scheduled for December 10, 2008, pending final resolution of federal habeas corpus proceedings. In November 2008, the District Court granted the stay of execution. In April 2009, Gray filed a petition for writ of habeas corpus. The government filed its answer. In December 2009, Gray filed a response which raised three additional claims concerning denial of access to materials the Army provided to the President, mental competence at trial and on appeal, and lack of military jurisdiction over a peacetime murder in the United States. In September 2010, the court ruled that Gray may present the additional claims. In February 2011, Gray filed a Petition for Extraordinary Relief in the Nature of a Writ of Coram Nobis with the ACCA. The ACCA denied relief noting that it lacked jurisdiction. The CAAF denied Gray's writ appeal, without prejudice, leaving the door open for Gray to again raise his issues after his habeas proceedings. Gray filed his reply on November 1, 2012, which completed the briefings in the case. In November 2014, a new district court judge was assigned to the case. On April 2, 2015, the Chief Judge for the District of Kansas heard oral argument regarding Gray's 21 asserted assignments of error raised in his habeas petition. On September 29, 2015, the District Court issued its memorandum and opinion addressing all counts of Gray's habeas petition. The Court denied 14 counts, finding that the military courts had provided Gray full and fair consideration on those issues. Additionally, the Court denied Gray's Eighth Amendment challenge to the method of his execution and Gray's jurisdictional challenge. Lastly, the Court dismissed Gray's five remaining arguments without prejudice. On September 27, 2015, Gray filed a Motion to Alter or Amend Judgement pursuant to Federal Rule of Civil Procedure 59. The Government filed its response on November 6, 2015. The Court denied Gray's motion on December 23, 2015, and he appealed to the Tenth Circuit Court of Appeals. Prior to briefing, the Court of Appeals noted the District Court may have improperly issued a hybrid dismissal of Gray's claims and ordered the parties to show cause why the Court should not vacate the District Court's judgment and remand the case for appropriate action. The parties filed a joint response on March 24, 2016 agreeing that the proper action was to return the case to the district court. On May 3, the District Court ordered Gray to show cause why the Court should not dismiss all of his claims without prejudice to allow him to exhaust his claims in the military appellate courts. Gray submitted his response on May 27 and the Government replied on June 24, which completed the briefings in the case. On October 26, the District Court dismissed Gray's habeas petition without prejudice to

allow him to exhaust his unexhausted claims in the military courts or to refile his petition without the unexhausted claims.

Andriozzi v. Kathryn Tracy (D. Ariz.) Petitioner, Armand Andriozzi, was convicted in two separate courts-martial in 1998 and sentenced to a total of 42 years confinement and a dishonorable discharge. Following his appeals, he was discharged from the Army and transferred to the Bureau of Prisons to serve the remainder of his sentence. Andriozzi filed a petition for habeas corpus, first with ACCA and then in United States District Court for the District of Arizona, alleging an Article 12 violation for being housed with foreign nationals and requesting 5 days credit for each day of a violation. The government briefed that Andriozzi received full and fair consideration and therefore the district court should not grant his petition. Alternatively, the government argued that Article 12 does not apply to Andriozzi since he is no longer a member of the Armed Forces. Lastly, even if, the Court considered petitioner's claims on the merits, he had failed to meet his burden to produce any evidence of an Article 12 violation. The magistrate judge's report found for the government based upon full and fair consideration. Petitioner filed an objection and request for assistance to gather evidence. The government objected and filed response. The district judge held that Andriozzi's petition was the improper form for relief because he was attacking a condition of his confinement and not the validity or duration. The district judge stated that challenging conditions of confinement cannot be brought as habeas petitions but rather should be filed as civil rights claim. Accordingly, the Court dismissed the petition without addressing the merits.

Baldwin, et al. v. Department of Defense, et al. (E.D.Va.) Plaintiffs are 1LT Celina Baldwin (Army, Active Duty), Jennifer Smith (Air Force), Alyssa Rodriguez (Air Force) and Carmelita Swain (Army, separated from service). Plaintiff 1LT Baldwin graduated from West Point and alleges that during her tenure at West Point, she was raped, sexually assaulted and subjected to a sexist and hostile environment. Plaintiff Smith served in the Air Force for 18 years. During her tenure, she alleges that she was sexually assaulted and now suffers from PTSD. Plaintiff Rodriguez was in the Air Force and alleges that she was raped and that the convening authority refused to prosecute her rapist. She further alleges that the military justice process gave her PTSD. Finally, Plaintiff Swain alleges that while she was deployed as an Army Sergeant in Afghanistan, an NCO raped her in her barracks. She further alleges that her rapist was set free with no consequences and that she became disabled from PTSD and separated after 15 years of service. In their civil lawsuit, plaintiffs alleged the DoD violated their substantive and procedural due process rights, equal protection, and First Amendment rights by allowing non-judicially trained convening authorities who are "involved in creating and fostering the sexually hostile environment to control the military judicial process." The plaintiffs requested injunctive relief to stop all of the alleged violations. Defendants filed a Motion to Dismiss for the plaintiffs' lack of standing, lack of jurisdiction, and failure to state any actual constitutional or statutory claim. The court granted the Motion to Dismiss for four reasons. First, the court found that plaintiffs lack standing to seek injunctive relief because they cannot demonstrate imminent harm. Second, the court cannot exercise jurisdiction over plaintiffs' claims because the political

question doctrine precludes the court from considering this complaint; specifically, it would be inappropriate for the court to rewrite the Uniform Code of Military Justice as plaintiffs sought. Third, the court found that this matter involves a nonjusticiable military controversy since plaintiffs could not demonstrate any violations of applicable military statutes or regulations by the relevant convening authorities. Fourth, the court found that plaintiffs failed to allege sufficient facts and plausible claims for relief under the statutes they cited, which were generally applicable to civilians and not servicemembers.

INTERNATIONAL AND OPERATIONAL LAW DIVISION

The International and Operational Law Division (IOLD), provides overarching legal advice and guidance on the Army's implementation of the DoD Law of War Program. In FY16, the mission and programs of the OTJAG IOLD continued to support the military justice system across three primary lines of effort: 1) preventing law of war violations; 2) preparing judge advocates and paralegals to administer military justice in deployed environments; and 3) strengthening partner nation military justice systems to produce highly disciplined, effective coalitions for future military operations.

First, IOLD aimed to prevent violations of the law of war by Army personnel through several proactive steps. IOLD evaluated all new weapons for compliance with international law. IOLD reviewed all HQDA operations and concept plans and rules of engagement for compliance with domestic and international law. IOLD further helped prepare directives, policies, instructions, and training materials to ensure that Army personnel understood the principles and rules of the law of war. Whenever Army personnel were alleged to have violated the law of war, IOLD supported the reporting, investigation, and prosecution of the allegations.

Second, IOLD prepared judge advocates and paralegals for upcoming operational deployments to Operational Inherent Resolve, Operation Spartan Shield, and Operation Freedom's Sentinel/Resolute Support missions. Specifically, IOLD conducted mission-tailored pre-deployment training programs using Mobile Teaching Teams (MTTs). The MTTs were comprised of subject matter experts and recently re-deployed Judge Advocates and paralegals. The instruction covered all core legal disciplines, with a particular focus on the law of war and military justice. The law of war discussions examined the lessons learned from the tragic military strike on the Doctors Without Borders trauma center in Kunduz, Afghanistan. Those talks centered on the post-strike investigation and its findings that certain principles of the law of war were violated. With respect to the military justice portions of the MTT, the instructors explored the unique aspects and logistical challenges of administering military justice in a deployed environment.

Third, IOLD worked to build strong, disciplined coalitions for future military operations in part through a revamped strategic engagements policy. In FY16, the JAGC focused much of its strategic engagements efforts on how best to improve legal interoperability

with our coalition partners. To that end, TJAG tasked IOLD to organize the first ever Multinational Judge Advocate General Interoperability Symposium which was held in Charlottesville in August, 2016. This major event brought together TJAGs and/or Senior Legal Advisors from 24 nations and from NATO's military and political entities. The two-day gathering of nearly 80 leaders focused on a wide range of legal topics of interest, including lessons learned on the most effective practices for the administration of military justice and the manner in which military justice contributes to strengthening the rule of law in society.

In addition to the Symposium, TJAG and other JAGC senior leaders participated in numerous other legal engagements with their counterparts from partner nations around the world. Partner nation visitors to OTJAG participated in substantive discussions and conducted additional site visits to TJAGLCS, the United States Army Legal Services Agency, and ACCA at Fort Belvoir. These programs demonstrated the importance of organizational structure and resourcing to provide commanders with the highest quality legal support. The programs also provided a comprehensive overview of the military justice system throughout all pre-trial, trial, and appellate stages. Additionally, IOLD, in partnership with the Defense Institute of International Legal Studies and the International Institute of Humanitarian Law, provided human rights and military justice training for foreign legal officers from various countries including Iraq, Guatemala, Saudi Arabia, Colombia, and others.

PERSONNEL, PLANS, AND TRAINING

On September 30, 2016, the Army's end-strength was 475,400 Army Soldiers on Active Duty compared to 491,365 at the end of FY15. The attorney strength of the JAGC Active Component (AC) at the end of FY 16 was 1,803 (including general officers). This does not include 69 officers attending law school while participating in the Army's Funded Legal Education Program. The FY16 end-strength of 1,803 compares with an end-strength of 1,819 in FY15. The diverse composition of the FY16 AC attorney population included 117 African-Americans, 57 Hispanics, 104 Asians and Native Americans, and 504 female Soldiers.

The grade distribution of the JAGC AC attorneys for FY16 was seven general officers authorized (five filling JAGC authorizations, one serving in a Military Occupational Specialty (MOS) coded position (Chief Prosecutor for the Commissions), and a seventh general officer (mobilized reservist) serving in a branch immaterial billet - Commander, Rule of Law Field Force - Afghanistan); 117 colonels; 254 lieutenant colonels; 521 majors; and 904 captains. An additional 99 warrant officers, 667 Civilian attorneys, 796 Civilian paraprofessionals and 1,644 enlisted paralegals from the AC supported legal operations worldwide.

The attorney strength of the JAGC USAR at the end of FY16 was 1,814 (which includes officers serving in Troop Program Units, the Drilling Individual Mobilization Augmentee (DIMA) Program, the Individual Ready Reserve, and the Active Guard & Reserves), and the attorney strength of the ARNG at the end of FY16 was 891. At the

end of FY16, over 267 Army JAGC personnel (officer and enlisted, AC and Reserve Component) were deployed in operations in Afghanistan, Guantanamo Bay, Kosovo, Egypt, Jordan, Honduras, Israel, Iraq, Kuwait, Qatar, Djibouti and other locations around the world.

CONCLUSION

In FY16, the JAGC continued its efforts to improve the quality of practice in complex cases, to include capital cases, national security cases, sexual assault cases, and military commission's proceedings. As discussed above, many of these efforts involved TCAP and DCAP, which provided personnel and expert advice to assist with numerous high profile trials. Along with TJAGLCS, TCAP and DCAP were instrumental in capturing and disseminating lessons learned from these cases throughout the Corps. In addition, the SVP program continued to build the Army's capability to prosecute sexual assault and family abuse offenses and our SVC program continues to grow and provides a holistic approach to victim care. We have also made significant progress establishing partnerships with local, State, and Federal practitioners in our ongoing and constant effort to improve our practice.

In a year filled with significant change, the JAGC continued to provide superior legal advice to senior commanders and leaders. The JAGC continued to perform its military justice functions in a just and effective manner. The JAGC also continues to monitor newly emerging military justice requirements, including all proposed legislation which affects both the UCMJ and the MCM, to help to ensure a gold-standard military justice system that the Army demands and that its Soldiers deserve.

FLORA D. DARPINO
Lieutenant General, US Army
The Judge Advocate General

APPENDIX - U.S. ARMY MILITARY JUSTICE STATISTICS

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)				
TYPE COURT	TRIED	CONVICTE D	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL	558	486	72	-12.3%
BCD SPECIAL [A]	236	224	12	+4.9%
NON-BCD SPECIAL	1	1	0	+0.0%
SUMMARY	161	[G]	[G]	+8.8%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-5.3%

Report Period: FISCAL YEAR 2014

PART 2 – DISCHARGES APPROVED [B]

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	135 (+27)	
NUMBER OF BAD-CONDUCT DISCHARGES	161	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	91	

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS- MARTIAL	328	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	92	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	65	

PART 4 – WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEAL

TOTAL ON HAND BEGINNING OF PERIOD		97 [C]	
GENERAL COURTS- MARTIAL	[D]		
BCD SPECIAL COURTS- MARTIAL	[D]		
REFERRED FOR REVIEW		646 [C]	
GENERAL COURTS- MARTIAL			
BCD SPECIAL COURTS- MARTIAL			
TOTAL CASES REVIEWED		655 [E]	
GENERAL COURTS- MARTIAL			
BCD SPECIAL COURTS-			

MARTIAL		
TOTAL PENDING AT CLOSE OF PERIOD		88 [C]
GENERAL COURTS-MARTIAL		
BCD SPECIAL COURTS-MARTIAL		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+11.6%

**PART 5 – APPELLATE COUNSEL REQUESTS BEFORE
U.S. ARMY COURT OF CRIMINAL APPEALS (CCA)**

NUMBER	586	
PERCENTAGE	90.71%	

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

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF 438 of 655	66.87%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-10.39%
PERCENTAGE OF TOTAL PETITIONS GRANTED 33 of 455	7.25%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+46.46%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY USACCA	5.04%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+9.57%

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD			
RECEIVED			
DISPOSED OF			
GRANTED			
DENIED			
NO JURISDICTION			
WITHDRAWN			
TOTAL PENDING AT END OF PERIOD			

PART 8 – ORGANIZATION OF COURTS

TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL	458	
SPECIAL COURTS-MARTIAL	203	

TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL	99	
SPECIAL COURTS-MARTIAL	34	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ		
NUMBER OF COMPLAINTS		
PART 10 – STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	475400 [F]	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	29707	
RATE PER 1,000	62.49	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-8.91%	

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

EXPLANATORY NOTES

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

SECTION 4

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

ANNUAL REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY

OCTOBER 1, 2015 TO SEPTEMBER 30, 2016

SUPERVISION OF THE ADMINISTRATION OF MILITARY JUSTICE

JUDGE ADVOCATE GENERAL

The Judge Advocate General (JAG) co-chairs the Military Justice Oversight Council (MJOC) with the Staff Judge Advocate to the Commandant of the Marine Corps pursuant to SECNAVINST 5430.27D. The MJOC meets quarterly to evaluate the practice and effectiveness of military justice, assess any potential impediments, and facilitate such action as is necessary to ensure a fair, effective, efficient, and responsive system of military justice. The following members have been appointed members of the MJOC: Commander, Naval Legal Service Command (CNLSC); Deputy Judge Advocate General for Reserve Affairs and Operations; Deputy Staff Judge Advocate to the Commandant of the Marine Corps; Chief Judge of the Department of the Navy; Assistant Judge Advocate General for Military Justice; Assistant Judge Advocate General for Operations and Management; and, Deputy Director, Judge Advocate Division, Military Justice and Community Development.

During the reporting period, and in accordance with their duties to supervise the administration of military justice under Article 6(a), Uniform Code of Military Justice (UCMJ), JAG and CNLSC regularly inspected U.S. Navy legal offices in the United States, Europe, and the Pacific. These inspections were conducted under the supervision of the Office of Judge Advocate General (OJAG) Inspector General by subject matter experts and examined the full range of military justice processes.

ASSISTANT JUDGE ADVOCATE GENERAL, MILITARY JUSTICE

The Assistant Judge Advocate General for Military Justice (AJAG-MJ) advises JAG in the performance of statutory military justice duties; serves as a member of the OJAG Professional Ethics Committee, the Judicial Screening Board, and MJOC; and oversees OJAG's Military Justice Division (Code 20) and National Security Litigation Division (Code 30). AJAG-MJ is also the Officer-in-Charge of the Navy-Marine Corps Appellate Review Activity (OIC, NAMARA - Code 04) overseeing the Administrative Support Division (Code 40), Appellate Defense Division (Code 45), and Appellate Government Division (Code 46). OIC, NAMARA is responsible for disposition of all records of trial in accordance with statutory and regulatory requirements, as well as applicable appellate court rules of practice and procedure.

CRIMINAL LAW DIVISION (CODE 20)

Organization. During the reporting period, Code 20 was staffed by seven active duty judge advocates, one civilian Highly Qualified Expert, two civilian staff members, and an eight-member reserve unit.

Mission. Code 20 coordinates, reviews, and drafts military justice and sexual assault policy, including all legislative and regulatory proposals affecting military justice and sexual assault prevention and response (SAPR) within the Department of the Navy (DON). Code 20 directly engages with members of Congress and their staffs on proposed amendments to the Uniform Code of Military Justice (UCMJ), Manual for Courts-Martial (MCM), Manual of the Judge Advocate General, and other statutory and regulatory proposals affecting the military justice system. Code 20 monitors all decisions of military appellate courts, tracks the status of military justice cases, provides legal and policy opinions, staffs requests for JAG certification of cases for U.S. Court of Appeals for the Armed Forces (CAAF) review, and facilitates Department of Justice (DoJ) processing of executive pardon requests involving military convictions. Code 20 staffs requests for Secretarial designation of general, special, and summary court-martial convening authorities, coordinates court orders and warrants of attachment, and coordinates with the DoJ regarding approval for grants of immunity and orders for civilian witnesses to testify at trial by court-martial. Further, Code 20 provides a representative to the Naval Clemency and Parole Board, supplies legal opinions to the Board for Correction of Naval Records, delivers informal advice for Navy and Marine Corps judge advocates regarding military justice, processes all Article 69, 73, and 74(b) UCMJ reviews and requests, and acts as the release and initial denial authority on all Freedom of Information Act (FOIA)/Privacy Act (PA) requests for information pertaining to courts-martial.

The Code 20 Division Director is a member of the Judicial Screening Board and serves as Commander, Naval Legal Service Command's Special Assistant for Military Justice, advising on policies, plans, resources, and procedures affecting Naval Legal Service Command's military justice mission.

The Code 20 Division Director also serves as Navy's representative to the Joint Service Committee (JSC) for Military Justice and functions as Navy's voting group member at regular meetings of the JSC. The JSC is the principal vehicle for staffing amendments to the UCMJ and MCM. The JSC's 2016 Annual Review of the MCM was completed in accordance with the President's requirement. In 2016, two Executive Orders drafted by the JSC were signed by the President. These orders implemented National Defense Authorization Act (NDAA) and policy requirements, congressional panel recommendations, and case law updates. Additionally, the JSC drafted five Federal Register Notices announcing amendments to the Supplementary Materials accompanying the MCM. The JSC proposed, and published for public and Service comment, additional amendments to the MCM implementing congressional panel recommendations, case law updates, and prior public and Service comments. The JSC

also published the 2016 MCM and responded to other research tasks as directed by Department of Defense (DoD) Office of General Counsel.

The Military Justice Act of 2016, consisting of the Military Justice Review Group's (MJRG) recommended changes to the UCMJ, was forwarded to Congress for consideration in FY16. Code 20 continues to support the entirety of the MJRG process, ensuring proper preparations are made for any upcoming changes to the UCMJ. This support includes Code 20 staff participation in weekly MJRG working group meetings to draft a new MCM in anticipation of the new law.

The Director of Code 20 serves as the Navy's point of contact for all Navy and Departmental requests for information and testimony before the congressionally-mandated Judicial Proceedings Panel (JPP), the successor panel to the Response Systems Panel (RSP). Like the RSP, the JPP was created by section 576 of the FY13 NDAA. The JPP's mandate is to conduct an independent review and assessment of judicial proceedings conducted under the UCMJ involving adult sexual assault and related offenses that have occurred since the amendments made to the UCMJ by section 541 of the FY12 NDAA. The purpose of this review is to formulate recommendations for improvements to such proceedings. Code 20 personnel engaged with JPP staff members providing substantive guidance to support their mandate to include coordinating the participation of subject-matter experts to testify at JPP hearings as well as researching and presenting historic information as requested by the panel.

OJAG's Criminal Law Division plays an active role in numerous multi-disciplinary working groups, including groups tasked with developing responses to retaliation, bullying and hazing, and fraternization.

In FY16, Code 20 continued to advance the Navy's Special Victims Investigation and Prosecution (SVIP) capability, as required by section 573 of the FY13 NDAA. In August, Code 20 and the Naval Justice School co-sponsored a two-day course on sexual assault policy for staff judge advocates (SJAs). The course is highly encouraged for SJAs currently providing advice to General Court-Martial Convening Authorities (GCMCAs), sexual assault-initial disposition authorities (SA-IDAs), those serving as Region Legal Service Office (RLSO) Command Services Department Heads, and SJAs for Type Commanders or other commands that frequently convene courts-martial. The course provides instruction on, and encourages discussion of, current legal issues involving sexual assault policy and dispositions facing SJAs advising GCMCAs and SA-IDAs. Among the key topics reviewed were the FY16 NDAA, the status of its implementation, the requirements recent policies and legislation place on SJAs and commanders, and the corollary impact on the military justice process. The August 2016 course was attended by judge advocates from paygrades O-2 through O-6.

The Criminal Law Division creates guides for commanders and SJAs on various topics, such as an overview of Military Rule of Evidence 514 and a checklist for SJAs on sexual assault response that incorporates all requirements and references. These references are posted on the Criminal Law Division's online Sharepoint site and

updated as necessary. OJAG's Criminal Law Division also participated in a cross-functional training symposium on victims' rights that included Victims' Legal Counsel (VLC), disability evaluation attorneys, legal assistance attorneys, trial counsel, and SJAs. The Criminal Law Division conducts tailored trainings for various providers within the SAPR program, such as a May 2016 course geared towards senior SJAs and a July 2016 course for Sexual Assault Response Coordinators.

OJAG's Criminal Law Division has a strong relationship with the Department of the Navy Sexual Assault Prevention and Response Office (DON SAPRO), N17, and the Naval Education Training Command (NETC), and provides legal review of all SAPR training projects before they are released to the fleet. The Criminal Law Division provided in-depth review of a multi-chapter graphic novel that addresses challenges faced by sailors when allegations of sexual assault have been made within their peer group. Additionally, Code 20 is advising DON SAPRO and other stakeholders on the potential development of a smartphone application designed to provide resources and assistance with sexual assault reporting. The Criminal Law Division is currently working closely with NETC on NETC's new sexual assault prevention training: Full Speed Ahead (FSA). FSA builds on the foundational elements of personal accountability, peer engagement and intervention, values-based decision-making, resilience, and leadership. FSA uses video vignettes and facilitated discussions to engage all service members, across rank, in a dynamic conversation about fundamental values like integrity, accountability, initiative, and strength of conviction.

Code 20 also participates in the Navy SAPR Cross-Functional Team, which is comprised of SAPR stakeholders representing all lines of effort. The Cross-Functional team discusses prevention initiatives, response and support, training, and policy legislation. The SAPR Cross-Functional team meets monthly to provide updates, synchronize actions, discuss best practices and concerns in the SAPR field, and ensure standardization of messaging.

Code 20 is responsible for compiling the Navy's data for the Annual Report to Congress on Sexual Assault in the Military. To accomplish that objective, Code 20 Legal Officers relied exclusively on the Defense Sexual Assault Incident Database (DSAID), the comprehensive database launched in 2013 that tracks and reports sexual assault incidents. In 2016, Code 20 provided one fully-qualified DSAID Legal Officer who personally reviewed and entered over 1,000 Sexual Assault Disposition Reports and dispositions of Unrestricted Reports of sexual assaults. Code 20 continues to participate in monthly DSAID Change Control Board meetings whose purpose is to improve and enhance DSAID capabilities.

Finally, during the reporting period, Code 20 reviewed forty-two records of trial under Article 69(a), UCMJ; five records under Article 69(b), UCMJ; and three petitions under Article 73, UCMJ.

NATIONAL SECURITY LITIGATION DIVISION (CODE 30)

Organization. During most of the reporting period, Code 30 was staffed with two officers.

Mission. Code 30 serves as the JAG's central point of contact for matters involving classified information and national security cases. The Division works closely with other agencies in the intelligence and law enforcement communities, other Services, and the Department of Justice (DoJ) to refine the Navy's classified litigation practice, facilitate the use of Navy classified information, and coordinate the litigation of high-visibility cases while protecting Navy information. Code 30 also reviews proposed legislation and regulations pertaining to national security matters and interacts with Original Classification Authorities (OCAs) and Special Security Officers.

Code 30 provided extensive investigation, litigation support and guidance on national security matters to commanders, SJAs, trial counsel, and defense counsel from all Services. Litigation support included reviewing and cataloging classified material for trial, coordinating with high-level OCAs about the protection and use of their classified information, processing security clearance requests for courts-martial personnel and requests for classification reviews of evidence, and advising on the assertion of the classified information privilege under Military Rule of Evidence 505, the Classified Information Procedures Act (CIPA), and the State Secrets Protection Act (SSPA). This support extended to the DoJ National Security Division, where Code 30 facilitated the use of Navy classified materials vital to trial and to communication between the intelligence community, the federal law enforcement community, and Department of the Navy.

During the reporting period, Code 30 worked on twenty-four complex espionage and mishandling cases, including the long-term, high-profile case against the first Naval Officer accused of espionage in decades. Code 30 continued to be involved in the case against Army Sergeant Bowe Bergdahl and provided additional support to DoD, DoJ and Naval Special Warfare equities in the inquiry against a former Navy SEAL believed to have leaked classified information about the Bin Laden operation in his book "No Easy Day." Code 30 participated in the investigation into the detention of US sailors following their Navy patrol craft straying into Iranian waters, and assisted in the reinvestigation of SEALs accused of detainee abuse in Afghanistan.

Code 30 presented an updated Classified Information Litigation Course in July 2016 and provided several blocks of instruction to counterintelligence officers at the Joint Counterintelligence Training Academy, and to officers from all services at the Army's Judge Advocate Legal Center and School. Code 30 continues to foster relationships within the intelligence community, the other Services, the Naval Criminal Investigative Service, the Federal Bureau of Investigation and the DoJ.

Code 30 maintains an extensive library of resources and templates. Improvements to the Code 30 SharePoint site have ensured that this information is

available to all Judge Advocates facing such challenging cases. Additionally, Code 30 retains a hard-copy library of significant Navy classified information cases.

Finally, Code 30 continues to publish and update a National Security Litigation primer. Significant revisions to the primer were completed in 2016. The primer serves as a starting point for attorneys across all services litigating cases involving classified information.

ADMINISTRATIVE SUPPORT DIVISION (CODE 40)

Organization. During the reporting period, Code 40 was staffed with one officer, two civilians, and eight enlisted Marine Corps staff members.

Mission. Code 40 provides administrative and logistical support services to the Navy-Marine Corps Appellate Review Activity (NAMARA) and the Navy-Marine Corps Court of Criminal Appeals (NMCCA). Code 40 personnel review all records of trial forwarded to NAMARA for appellate review pursuant to Articles 66 and 69, UCMJ for completeness; promulgate decisions of the NMCCA in accordance with the JAG Manual and the MCM; manage the OJAG court-martial central filing system, which includes original records of trial maintained at NAMARA; manage and retrieve archived records of trial stored at the Washington National Records Center in Suitland, Maryland; and return all NMCCA and Court of Appeals for the Armed Forces (CAAF) mandates and judgments on remand to commands worldwide for corrective action.

During FY16, Code 40 examined 375 records of trial for completeness prior to forwarding the records for appellate review pursuant to Articles 66 and 69, UCMJ. Also during FY16, Code 40 promulgated 289 NMCCA decisions to appellants and transferred all 2013 records of trial (485) to the Washington National Records Center. FY16 also saw Code 40 coordinate the execution of 297 punitive discharges awarded to appellants at courts-martial. Code 40 oversaw 21 NMCCA mandates and 6 mandates ordered by CAAF. Code 40 finish filed 444 court-martial records.

APPELLATE DEFENSE DIVISION (CODE 45)

Organization. During this reporting period, Code 45 was staffed with eleven active-duty Navy and Marine Corps judge advocates, one civilian attorney, and two civilian support personnel. Sixteen Navy and Marine Corps reserve judge advocates supported Code 45.

Mission. Code 45 represents Navy and Marine Corps appellants before the NMCCA, the CAAF, and the U.S. Supreme Court. Code 45 coordinates with the Navy and Marine Corps Defense Counsel Assistance Programs (DCAP) to assist trial defense counsel filing extraordinary writs before the NMCCA and the CAAF, and preserve trial issues for appeal. Additionally, Code 45 provides advice on specific cases in litigation, and delivers formal training blocks on recent appellate rulings.

As reflected in the chart below, a total of 383 new cases were docketed at the NMCCA in FY16. Code 45 filed 349 initial NMCCA pleadings, consisting of 123 briefs, 223 merit submissions, and 3 summary assignment of error pleadings. Reservists filed 69% of these initial pleadings. In addition, Code 45 filed 323 substantive pleadings, including 41 reply briefs, 22 responses to government motions, 14 supplemental briefs, 14 responses to court orders, 228 motions (other than motions for enlargement) and 4 petitions for extraordinary relief at the NMCCA. Counsel presented oral argument in 11 cases before the NMCCA.

Code 45 filed 49 supplemental briefs to petitions and two extraordinary writ appeal petitions at the CAAF. The Navy's Judge Advocate General certified two cases (*United States v. Clark*, 75 M.J. 298 (C.A.A.F. 2016) and *United States v. Sterling*, 75 M.J. 407 (C.A.A.F. 2016)), and cross-certified two cases to the CAAF (*United States v. Martin* 75 M.J. 321 (C.A.A.F. 2016) and *United States v. Howell*, 75 M.J. 386 (C.A.A.F. 2016)). This resulted in 8 full briefs and 11 oral arguments.

NMCCA	FY09	FY10	FY11	FY12	FY13	FY14	FY15	FY16
Cases Docketed	694	678	598	514	437	373	348	383
Briefs Filed	149	159	161	191	143	161	118	123
Other Substantive Pleadings	410	847	693	632	522	587	326	326
Total Cases Filed	679	744	531	488	374	387	311	349
Oral Arguments	14	15	20	19	15	15	14	11
CAAF								
Petitions with Supplemental Briefs Filed	120	69	81	117	90	79	96	49
Briefs Filed	36	21	20	19	13	7	12	8
Oral Arguments	20	11	7	12	9	2	7	11
U.S. Supreme Court Petitions	3	6	2	3	2	4	0	0

While the number of cases docketed at the NMCCA has declined since FY09, the average case size has increased significantly. In FY09, the average case size for records in which appeals were filed was 340 transcribed pages. In FY16, case size averaged 484 pages, a 42% increase. The percentage of cases in which appellate issues were raised has also increased from 22% in FY09 to 36% in FY16. These changes correlate with an overall increase in appellate complexity.

Significant cases this term include:

- *United States v. Bess*, 75 M.J. 70 (C.A.A.F. 2016) (whether the military judge abused his discretion when he allowed the admission of additional evidence during deliberations but also denied Appellant the opportunity attack the accuracy of that evidence before the factfinder).
- *United States v. Hoffman*, 75 M.J. 120 (C.A.A.F. 2016) (whether the military judge erred in refusing to suppress the fruit of a search of seized media made pursuant to a commander's authorization that was based on information relating to a separate alleged offense and that was issued four months after Appellant revoked his consent to search and seize).
- *EV v. Martinez*, 75 M.J. 331 (C.A.A.F. 2016) (whether the CAAF has statutory authority to exercise jurisdiction over decisions of the Courts of Criminal Appeals rendered pursuant to Article 6b, UCMJ).
- *Howell v. United States*, 75 M.J. 386 (C.A.A.F. 2016), petition for cert. filed, ___ U.S.L.W. ___ (U.S. Oct. 17, 2016) (No. 16-536) (whether: (1) the CCAs have jurisdiction to consider a Government petition for extraordinary relief under the All Writs Act to challenge a military judge's awarding of confinement credit pursuant to Article 13; (2) an accused facing rehearing in a full-duty status should be paid at their pretrial rank; (3) a set-aside sentence is no longer enforceable while the accused is pending rehearing; and (4) the Government's action of paying the accused as an E-1 while he awaited rehearing is unlawful pretrial punishment in violation of Article 13, UCMJ) (certified case).
- *United States v. Sterling*, 75 M.J. 407 (C.A.A.F. 2016) (examined various issues relating to Appellant's claim of exercising her religion under the protection of the Religious Freedom Restoration Act and the Government's actions in response) (cross-certified case).
- *United States v. Johnston*, 75 M.J. 563 (N-M. Ct. Crim. App. 2016) (whether a conviction for indecent exposure is factually sufficient where Appellant texted a photo of his genitalia to a person he believed was a consenting adult and where the *Lawrence v. Texas*, 539 U.S. 558 (2003), factors of consent, age (or mistake of fact as to age) and privacy suggest he had a protected liberty interest).

- *United States v. Hackler*, 75 M.J. 648 (N-M. Ct. Crim. App. 2016) (whether specifying a heterosexual act as an element of criminal adultery constitutes a violation of equal protection in light of recent legal developments with respect to sodomy and homosexual marriage).
- *United States v. Uriostegui*, 75 M.J. 857 (N-M. Ct. Crim. App. 2016) (whether the terms “exposing” under Article 120b(h)(5)(B), UCMJ, and “exposes” under Article 120c(c), UCMJ, encompass the electronic transmission of a photograph or digital image of one’s genitalia to another person).
- *United States v. Neiman*, NMCCA No. 201500119, 2016 CCALEXIS 435 (N-M. Ct. Crim. App. July 26, 2016) (whether appellant’s statements to NCIS should have been suppressed as unwarned or involuntary after an NCIS agent solicited the unwarned statements following a nine-month death investigation).

APPELLATE GOVERNMENT DIVISION (CODE 46)

Organization. During the reporting period, Code 46 was staffed with eleven active duty judge advocates (including one activated reservist), one civilian attorney, and two civilian administrative employees. In FY16, Code 46 was supported by nine reserve judge advocates in addition to the one activated reservist mentioned above.

Mission. Under Article 70, UCMJ, the primary mission of Code 46 is to represent the United States before the NMCCA and the CAAF. Code 46 also provides interlocutory appeal and prophylactic appellate support and advice to Navy and Marine Corps trial counsel, SJAs, and post-trial review officers throughout the Navy and Marine Corps for all types of pretrial, court-martial, and post-trial matters.

A summary of FY16 appellate activity is provided in the following chart. These calculations are based on input from the Court-Martial Tracking and Information System (CMTIS) database. The calculations in CMTIS for “Briefs Filed” include Government briefs, answers to supplements, and supplemental briefs; Code 46 also filed two *amicus* briefs, which are not tracked by CMTIS. “Other Pleadings” includes responses to extraordinary writs, motion responses, responses to Court Orders, and Petitions for Reconsideration. The number of CAAF and CCA briefs filed remained relatively constant from FY15, as did the number of oral arguments at both courts.

	FY11	FY12	FY13	FY14	FY15	FY16
NMCCA						
Briefs Filed	188	198	152	159	140	131
Other Pleadings	144	439	439	479	435	434
Oral Arguments	20	19	15	16	11	11
CAAF						
Briefs Filed	22	24	9	12	23	26

Other Pleadings	70	111	98	72	97	84
Oral Arguments	7	12	11	3	7	11

Significant issues this term include:

- *United States v. Dalmazzi*, U.S.C.A. Dkt. No. 16-0651/AF) (Whether a United States Court of Military Commission Review judge is statutorily authorized to sit as a Court of Criminal Appeals judge)(*Amicus* brief);
- *United States v. Uriostegui*, 75 M.J. 857 (N-M. Ct. Crim. App. 2016) (Whether the terms “exposing” under Article 120b(h)(5)(B) and “exposes” under Article 120c(c) encompass the electronic transmission of a photograph or digital image of one’s genitalia to another person);
- *Howell v. United States*, 75 M.J. 386 (C.A.A.F. 2016), petition for cert. filed, ___ U.S.L.W. ___ (U.S. Oct. 17, 2016) (No. 16-536) (Whether a military judge, in finding an Article 13, UCMJ, violation, exceeded his authority by rejecting applicable holdings of the U.S. Court of Appeals for the Federal Circuit and the Court of Federal Claims, in order to conclude that [Appellant] was entitled to pay at the E-6 rate pending his rehearing);
- *United States v. Pease*, 75 M.J. 180 (C.A.A.F. 2016) (Whether the Court of Criminal Appeals, in the course of conducting its Article 66(c), UCMJ factual sufficiency review, have the authority to define statutory terms that were not defined at trial (*Pease*);
- *United States v. Wilder*, 75 M.J. 135 (C.A.A.F. 2016) (Whether the promulgation of R.C.M. 707 abrogated the “substantial information” rule originated in *United States v. Johnson*, 23 C.M.A. 91, 48 C.M.R. 599 (1974));
- *United States v. Roberts*, 75 M.J. 696 (N-M. Ct. Crim. App. 2016) (Whether a military judge exceeded her authority and evinced a clear misapplication of the law in finding “general military character” evidence admissible to show the probability of innocence of an offense under Article 120, UCMJ, referred to court-martial after June 17, 2015);
- *United States v. Clark*, 75 M.J. 298 (C.A.A.F. 2016) (Whether the NMCCA failed to conduct a complete review under Article 66(c) when it reversed convictions for factual insufficiency without acknowledging the military judge’s non-guilt special findings); and
- *EV v. Martinez*, 75 M.J. 331 (C.A.A.F. 2016) (Whether the CAAF has the jurisdiction to hear a victim’s writ-appeal under Article 6(b)).

Code 46 coordinates with Navy and Marine Corps Trial Counsel Assistance Programs (TCAPs) to advise and respond to questions from the field on pending litigation and appellate matters. Code 46 maximizes its reach electronically, operating a discussion board, a Military Justice Wiki, and a routinely updated Military Justice Blog. Trial counsel and appellate government counsel from other Services are also able to participate and contribute to the blog, the discussion board, and the Military Justice Wiki. In addition, Code 46 emails newsletters and memoranda to practitioners as necessary.

To best represent the United States before appellate courts, Code 46 coordinates with sister services to maintain consistent United States positions, and moots cases with other services to maximize the efficacy and competence of appellate practice.

Code 46 works with the TCAPs and the Naval Justice School, to provide formal trial counsel training. Code 46 training routinely covers: handling interlocutory appeals, extraordinary writs, *DuBay* hearings and remands; protecting the record to withstand appellate scrutiny; and explaining the fundamental areas of intersection between trial and post-trial processing and appellate review. In FY16, Code 46 counsel also provided training to the Navy-Marine Corps Victim Legal Counsel (VLC) responsible for appellate matters.

Code 46 organized the highly successful Fourth Annual Joint Government Appellate Training, held at Joint Base Myer-Henderson Hall from September 13-15, 2016. It was attended by nearly 100 judge advocates from across the globe and from every military branch. Speakers included: Judge Scott W. Stucky, CAAF; Mr. Curtis Gannon, Assistant to the Solicitor General, Department of Justice (DoJ); Mr. Russell Butler, Executive Director, Maryland Crime Victim's Resource Center; Mr. Nathan Freed Wessler, Staff Attorney, Speech, Privacy and Technology Project, American Civil Liberties Union; Nathan Judish, Senior Counsel, Computer Crime and Intellectual Property Section, DoJ; Mr. Jerrold J. Ganzfried, Partner, Holland & Knight; Ms. Elizabeth Francis, Legal Advisor, Professional Responsibility Advisory Office, and a panel of organizations with experience in working with Amici including Sidley Austin LLP and Americans United for Separation of Church and State. Code 46 counsel also attended advanced appellate training at the annual Appellate Judges' Education Institute, and CAAF's Continuing Legal Education and Training Program.

As in previous years, Code 46's community outreach efforts included sending counsel to serve as appellate moot court judges and brief graders at the American Bar Association's National Appellate Advocacy Competition and the National Black Law Students Association's Frederick Douglass Moot Court Competition. In FY16, the Director and Code 46 counsel also served as moot court judges for student competitors at the George Mason Law School Upper Class Appellate Competition.

During FY16, Code 46 continued the DON's electronic record of trial program, which at year's end included approximately 95% of the trial records docketed at NAMARA.

ASSISTANT JUDGE ADVOCATE GENERAL, CHIEF JUDGE, DEPARTMENT OF THE NAVY

The Assistant Judge Advocate General, Chief Judge, Department of the Navy (CJDON) (AJAG 05) is the senior supervisory jurist in the DON, overseeing the trial and appellate judiciaries. The CJDON serves as the Rules Counsel for the judiciaries and the community sponsor for the Navy JAG Corps' Military Justice Litigation Career Track (MJLCT). The CJDON is selected by a competitive flag selection board and serves for three years, with appointment as the Assistant Judge Advocate General of the Navy in the third year of service.

THE NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (CODE 51)

Organization. During FY16, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) included both active duty Navy and Marine Corps appellate judges. The number of judges varied between a high of nine and a low of six over the course of the year. The NMCCA was also supported by six Navy reserve and three Marine Corps reserve appellate judges, a mid-grade officer senior law clerk, four Navy and Marine Corps junior officer law clerks, three part-time spring semester student law clerks, four summer student law clerks, and three part-time fall semester student law clerks.

Mission. The NMCCA is responsible for all cases referred under Articles 62(b), 66(b), 69(d), and 73, UCMJ. The Court may also entertain petitions for extraordinary relief.

Legal issues addressed in FY16 included (case names in parenthesis):

- Whether the wife of an appellant who at trial invoked her privilege (spousal incapacity) under Military Rule of Evidence 504(a) could be compelled to testify under the exception found in Military Rule of Evidence 504(c)(2)(D) (both parties were substantial participants in illegal activity) (*Rios*);
- Whether the convening authority's instruction restricting eligibility for court-martial membership frustrated an appellant's right to a properly convened court-martial (*Hoyes*);
- Whether the petitioner's continued confinement after this court set aside the findings and sentence from his court-martial and dismissed the charges with prejudice pending the Judge Advocate General of the Navy's decision to accept or to challenge this court's decision is consistent with the procedures established within the UCMJ and sanctioned by binding precedent (*Clark*);

- Whether the appellant was properly convicted of receiving stolen property and larceny of the same property (*Michelena*);
- Whether a military judge abused his discretion by giving a curative instruction vice declaring a mistrial after he excluded the entire testimony of a Government witness heard by the members (*Sager*);
- Whether a military judge's ruling directing the convening authority to provide sentencing credit for illegal pretrial punishment from the date of the appellant's initial conviction was set-aside until his retrial was an abuse of discretion (*Howell*);
- Whether a military judge applied an erroneous view of the law that relaxation of the rules of evidence in sentencing only pertains to documentary evidence and erred by excluding relevant mitigation evidence (*Beaumont*);
- Whether there was prosecutorial misconduct where a government search of defense counsel spaces was conducted onboard Camp Pendleton and two government counsel who were disqualified from serving as trial counsel after becoming witnesses to certain charges engaged in activities in the case outside of the courtroom (*Nauta*);
- Whether erroneous post-trial advice to the convening authority that he could only act on the findings and sentence within the confines of the appellant's pretrial agreement where some of the offenses predated the FY14 NDAA and FY15 NDAA required new post-trial processing (*Roller*);
- Whether the appellant used physical strength sufficient to overcome his victim where the force used to commit the sexual act was limited to rolling the victim over onto his back and exposing his genitals (*Parker*);
- Whether the lesser included offense of battery was reasonably raised by the evidence where the accused was charged with committing a sexual assault and abusive sexual contact (*Hackler*);
- Whether an accused can be convicted of larceny where without permission he used other people's credit cards to purchase electronic media without corporeal form (*Stevens*);
- Whether it was proper to convict the appellant of non-forcible sodomy when such a conviction required proof beyond a reasonable doubt of facts not necessary for a forcible sodomy conviction and not pleaded in the specifications (*Bass*);
- Whether the Government had proven that, at the time of the sexual conduct in question, the victim was incapable of consenting to the conduct due to

impairment by an intoxicant where it did not prove that the victim did not possess the cognitive ability to appreciate the nature of the conduct in question or the mental and physical ability to make and to communicate a decision regarding that conduct to the other person (*Pease*);

- Whether a military judge abused his discretion in refusing to order the use of an interpreter throughout the cross-examination of the foreign national victim (*Berger*);
- Whether a military judge abused his discretion in refusing to order the deposition of a minor victim whose mother refused to allow defense counsel to interview her prior to her testimony at trial (*Yazzie*);
- Whether evidence of general military character was admissible during the merits phase of a trial where the trial occurred after the amendment to Military Rule of Evidence 402 but the offense occurred before the amendment (*Roberts*);
- Whether an accused's statement outside an interrogation context is admissible as a statement by a party-opponent pursuant to Military Rule of Evidence 801(d)(2)(A) and thus specifically excepted from the corroboration requirement in Military Rule of Evidence 304(c)(1)(*Latour*);
- Whether 911 calls made by a victim who would not testify at trial were admissible as non-testimonial hearsay (*Perkins*);
- Whether Article 120(b)(3) is unconstitutional on its face since a person of common intelligence cannot determine when another person is impaired by alcohol such that they are incapable of consenting to a sexual act (*Solis*); and
- Whether a dishonorable discharge is mandatory for an Article 80, UCMJ, conviction for the attempted violation of Article 120b(b), UCMJ (*Henegar*).

The Court will host its seventh annual NMCCA Judicial Training course in early FY17. As in other years of this top-rated training session, the Court is engaging a mix of Department of Defense (DoD) and external speakers, to include: an expert in judicial ethics, a military forensic psychiatrist to speak about mental capacity of accused who are drunk, on drugs, or mentally ill, a panel discussion on the potential changes to the UCMJ in the FY16 NDAA, a brief by a senior DoD Office of General Counsel representative on sexual assault, briefs on Navy Clemency and Parole Board and the Board of Correction of Naval Records, and an update of the new legal search features in Lexis. The Court will also attend the 2017 William S. Fulton, Jr. Military Appellate Judges' Training Conference. The Conference program contains a Year in Review of the most recent Supreme Court decisions.

The NMCCA continues to maintain a website at <http://www.jag.navy.mil>. All NMCCA opinions are available for download at the website. In addition, the Court

maintains audio files from oral arguments heard before it as well as a docket for upcoming oral arguments. Applications for admission to the NMCCA bar and rules of the court are also maintained on the website.

NAVY-MARINE CORPS TRIAL JUDICIARY (CODE 52)

Organization. The Navy-Marine Corps Trial Judiciary (NMCTJ) is organized into eight geographic judicial circuits, with twelve active duty Marine Corps judges and twelve active duty Navy judges. Trial judges are stationed throughout the world in fleet and Marine force concentration areas and travel to other locations, as required, to conduct trials. The active duty judiciary is supported by reserve units from both Services, with a total of sixteen reserve trial judges.

Mission. The core mission of the NMCTJ is to preside over all Navy and Marine Corps general and special courts-martial. In recent years, trial judges have presided over cases directly impacted by the significant statutory changes enacted by Congress and executive orders issued by the President. They have directly implemented and addressed such topics as defining the evolving role of the Victims' Legal Counsel and the parameters of their representation, particularly in the area of production and discovery of victims' mental health records under Military Rule Of Evidence (M.R.E.) 513, guardianship of victims, victim participation in sentencing hearings, and defining the parameters of admissible propensity evidence under M.R.E. 404b.

The caseload at the trial level is generally consistent with the previous year, and continues to reflect an especially high percentage of contested cases, particularly general courts-martial (GCMs). In FY16, the NMCTJ presided over 681 initial arraignments, 633 of which ultimately went to trial (276 GCMs and 357 special courts-martial (SPCMs)). Of the GCMs that went to trial, 42% (115) were contested, as were 26% (93) of the SPCMs. The 208 contested cases resulted in 120 convictions and 88 acquittals.

In addition to their primary military justice mission, our trial judges continue to support the Office of Military Commissions (OMC) Trial Judiciary. At the close of the fiscal year, the Circuit Judge for EURAFSWA was relieved of duties on the OMC case of *United States v. al Iraqi* due to his pending retirement. The Circuit Judge of the Eastern Judicial Circuit was then detailed to the case.

NMCTJ continues to support the training of new judge advocates by providing evaluators for the mock trial program at the Naval Justice School. Our reserve trial judges are a vital part of that program as well. In February 2016, the NMCTJ attended the Joint Military Judges Annual Training (JMJAT) at Maxwell Air Force Base near Montgomery, Alabama. This training included instruction from active duty judges from all Services.

In August 2016, the NMCTJ held a Special Victims' Training symposium for all Navy and Marine Corps trial judges at the Washington Navy Yard. Funded by the DoD

Sexual Assault Prevention and Response Office, the symposium focused on complex issues that frequently arise in contested sexual assault cases. Training topics included pretrial case management, child abuse issues, child pornography, forensic evidence and judicial ethics. Instructors from the Department of Justice, the Army JAG School, and the Walter Reed Medical Center provided lectures.

NAVAL LEGAL SERVICE COMMAND (NLSC)

Organization. The Deputy Judge Advocate General of the Navy also serves as Commander, Naval Legal Service Command (CNLSC). At the conclusion of FY16, NLSC was comprised of 438 judge advocates, 1 Civil Engineer Corps officer, 1 Limited Duty (Law) officer, 217 legally trained enlisted members, 11 administratively trained enlisted members, 209 civilians, and 37 foreign nationals.

Mission. Naval Legal Service Command provides a wide range of legal services to afloat and ashore commands, active-duty naval personnel, family members, retirees, and eligible beneficiaries from the other Services at 99 offices worldwide. In FY16, NLSC provided legal advice, services, and training to the Fleet through 13 commands and their associated branch offices and detachments: four Defense Service Offices (DSOs) provided defense and personal representation and nine Region Legal Services Offices (RLSOs) provided prosecution, command services, and legal assistance. Counsel from these commands handled courts-martial prosecution and defense, administrative boards, and physical evaluation boards; advised local commanders and their staffs; and provided legal assistance to active duty members, retirees, and their family members.

NLSC continues to track all military justice cases using the Case Management System (CMS). Tracked cases include all special victims' cases, as required by DoD Directive-Type Memorandum 14-003; all cases where an accused is placed in pretrial restraint, restriction, or confinement; and when the RLSO has substantial involvement in a case in anticipation of a possible court-martial. CMS is also used to track each officer Board of Inquiry. RLSOs have found CMS to be highly effective in tracking all cases and providing accurate information to local convening authorities and NLSC headquarters.

Over the past year, NLSC has been heavily involved in the development of the DON Naval Justice Information System (NJIS). NJIS is a web-based comprehensive case management system designed to track Navy and Marine Corps unclassified criminal incidents from initial report through adjudication. It is designed to be an information system in which users collaborate rather than simply populating a database. This is DON's attempt to achieve end-to-end Defense Incident-Based Reporting System (DIBRS) compliance. NJIS, when deployed, will replace CMS as the NLSC case tracking system.

In FY16, NLSC completed 123 general courts-martial, 135 special courts-martial, and 145 Article 32 investigations. While the number of courts-martial has declined in

recent years, the proportion of contested trials, the complexity of litigation, and the scope of out-of-court responsibilities shouldered by trial and defense counsel have all increased substantially. Further, the addition of VLC into the trial process and the expansion of victims' rights have added new layers of complexity to trial and appellate practices. As a result, demand on judge advocates involved in the administration of military justice is increasing.

DEFENSE COUNSEL ASSISTANCE PROGRAM (DCAP)

Organization. DCAP is aligned under NLSC and reports to the Chief of Staff, Defense Service Offices (COS-DSO). DCAP's current Director fletted up from the deputy position this spring. He is an O-5 select qualified as "Specialist II" in the Military Justice Litigation Career Track (MJLCT) and received his LL.M. in Litigation and Dispute Resolution from the George Washington University School of Law. He previously served as a trial counsel, defense counsel, Officer in Charge, deployed Staff Judge Advocate, and as the Deputy Director of DCAP.

The Deputy Director is an O-4 select qualified as a "Specialist I." Previously he served as a defense counsel in Norfolk and Washington DC and he was an individual augmentee at Combined Joint Interagency Task Force 435. This spring DCAP will get an O-5 director that is qualified as a "Specialist II" and an O-4 Deputy Director that is qualified as a "Specialist I."

DCAP is currently in the process of hiring a Highly Qualified Expert (HQE) and expects to have this position filled by Spring 2017.

DCAP personnel are currently stationed in the fleet concentration area of Norfolk, Virginia and in Washington, District of Columbia. The incoming HQE will be stationed in San Diego, California. Although normally acting in an advisory capacity for defense counsel, DCAP personnel are also to assigned cases as needed. When regular supervisory counsel was unavailable, DCAP's Deputy Director filled in as behind-the-bar supervisory counsel for a junior counsel trying a contested case in a remote courtroom.

Mission. DCAP's primary mission is to support the Navy trial defense bar. During FY16, DCAP assisted detailed defense counsel across the spectrum of trial practice including trial strategy, motions practice, argument development, investigations, discovery, requests for witnesses and expert assistants, voir dire strategies and questions, complex legal research, and preparing clients and witnesses for testimony. DCAP was available for on-site visits during trial preparation and were often in court to assist "behind the bar." DCAP also provided advice on post-trial matters and frequently consulted with defense counsel concerning professional responsibility and ethics issues.

DCAP was responsible for a wide array of training for defense counsel. DCAP spearheaded training in San Diego that brought together all core defense counsel and leadership to share ideas and develop best practices. The defense counsel heard from experts in sexual assault defense, technology in the court room, medical discharges, and investigations. In addition, DCAP brought together military and civilian experts to provide comprehensive training on defending service members accused of sexual assault at the Defending Sexual Assault Cases (DSAC) course. Together with NJS and the Marine Corps defense bar, DCAP organized and presented at the semi-annual Defense Counsel Orientation course which is designed to prepare new defense counsel to represent court-martial and administrative separation clients. The Director served as an instructor at both the Basic Trial Advocacy Course and DSAC, and the Deputy Director served as a small group instructor at DSAC. DCAP also worked with the Trial Counsel Assistance Program on the Senior Managers' Course for military justice supervisors. Finally, DCAP conducted three individual week-long mobile training visits around the world, providing training to Defense Service Offices and their detachment offices.

DCAP aided in the effort to ensure that Defense Litigation Support Specialist positions were staffed with quality applicants, resulting in all eight defense investigator positions being filled. As the positions were filled, DCAP provided standardized training and assisted in establishing uniform policy and protocols for the newly created Defense Litigation Support Specialist program.

DCAP continues to develop salient resources and provides written advisories on recent case law and changes to the UCMJ. DCAP maintains a centralized defense database on its Microsoft SharePoint site which allows for the real-time exchange and dissemination of information and serves as a central repository of documents and resources developed by DCAP and counterpart offices in our fellow Services, Code 20, and NJS. SharePoint allows offices to collaborate across vast geographical boundaries, promoting a "world-wide defense firm" mentality.

TRIAL COUNSEL ASSISTANCE PROGRAM (TCAP)

Organization. TCAP is aligned under NLSC and reports to the Chief of Staff, Region Legal Service Offices (COS-RLSO). TCAP's current Director is a Navy O-5, a Military Justice Litigation Career Track (MJLCT) designated "Expert." The current Director, an O-6 select, received his LL.M. in Litigation from George Washington University School of Law. He previously served as Military Judge, Region Legal Service Office (RLSO) Executive Officer, Senior Defense Counsel, Senior Trial Counsel, and Staff Judge Advocate (SJA).

The Deputy Director was a GS-15 civilian who specializes in prosecuting special victim crimes (SVCs) and advocating for victims' rights. Due to her passing in 2016, an acting Deputy Director was appointed during the ongoing hiring process. The Acting

Deputy Director is an O-5, MJLCT-designated "Specialist II" who previously served as a Senior Trial Counsel, Senior Defense Counsel, Deputy Region SJA, and as Branch Head for Military Justice Policy at Code 20. He received his LL.M. in Litigation from the Beasley School of Law at Temple University.

TCAP's Highly Qualified Expert (HQE) is a former civilian prosecutor with 18 years of experience, most notably as a prosecutor specializing in crimes against children and as a senior attorney, instructor, and course coordinator for the National District Attorneys Association.

The Assistant Director is a senior O-4 MJLCT-designated "Specialist I" who has extensive prosecution experience, served as an installation SJA, legal assistance attorney, defense counsel, and deployed SJA on a joint staff.

Mission. TCAP provides advice, assistance, support, resources, and training for Navy trial counsel worldwide. TCAP regularly assists and advises trial counsel on all aspects of prosecution, including pre-trial investigation, drafting charges, trial preparation and motions practice, discovery, securing and preparing expert witnesses, devising trial strategy, and professional responsibility issues. TCAP engages trial counsel in the field via regular case review conferences and coordinates with Code 46 to ensure court-martial prosecutions are postured to withstand appellate review.

TCAP provides more in-depth case assistance upon request. A TCAP counsel is detailed as trial counsel or assistant trial counsel when case complexity demands special proficiency. For example, the TCAP Director is currently detailed as the lead trial counsel on a high profile national security case; the Assistant Director served as trial counsel in a premeditated murder case; the Acting Deputy Director is assisting with an attempted child solicitation case; and, the HQE has provided on-scene expert assistance in several complex sexual assault and child exploitation cases.

TCAP is also responsible for monitoring all high-visibility cases and the relative experience levels of trial counsel through on-site, periodic observations of Navy judge advocates in the performance of their prosecution functions. TCAP regularly provides recommendations for improvement, as well as resource recommendations to COS-RLSO as necessary.

TCAP maintains an online repository of useful resources such as sample motions and responses, foundation questions, articles and manuals on prosecution, case disposition tracking, and an expert witness database. TCAP's SharePoint discussion board enables real-time responses to inquiries from the field leveraging enterprise knowledge for the benefit of the more remote offices. The discussion board facilitates a closer prosecution bar by enabling discussions between trial counsel worldwide.

Finally, TCAP plays a vital role in training trial counsel, partnering with the Naval Justice School (NJS) and Code 20 in the development of litigation training. TCAP personnel routinely serve as instructors at a variety of courses at the NJS schoolhouse,

online, and in-person at offices worldwide. Together with NJS, TCAP conducted the Prosecuting Special Victims Crimes course: an advanced domestic violence and child abuse prosecution course providing focused training sessions to Navy, Marine and Air Force prosecutors and paralegals. This year, TCAP focused on coordinating training with the Marine Corps to standardize baseline, intermediate, and advanced training in the dynamics of special victim crimes as well as trial advocacy. Additionally, TCAP conducted on-site training for all RLSOs focusing on trial advocacy and prosecution of special victim offenses. Using DON Sexual Assault Prevention and Response Office funding, TCAP ensured prosecutors' attendance at special victim crimes training including courses with the National District Attorney's Association (training on sexual assault and child abuse), the San Diego Sexual Assault Response Team, the Conference of Crimes Against Women, and the End Violence Against Women International Annual Conference.

TCAP supplemented its training outreach with a number of webinars focusing on prosecuting special victim offenses and other evidentiary topics. These webinars allowed Navy prosecutors and paralegals to attend educational programs online presented by our own and nationally recognized experts at little to no cost.

VICTIMS' LEGAL COUNSEL (VLC) PROGRAM

Organization. The VLC program is led by a senior O-6 Chief of Staff and a civilian (GS-14) Deputy Chief of Staff and operates independently of both trial and defense organizations. The program consists of 32 specially trained and certified Navy judge advocates, two of whom are reservists, and 10 administrative personnel. VLC are assigned to 24 naval installations around the world, including Annapolis, Maryland; Washington, District of Columbia; Oceana, Virginia; Little Creek, Virginia; Norfolk, Virginia; Groton, Connecticut; Mayport, Florida; Jacksonville, Florida; Pensacola, Florida; Gulfport, Mississippi; Great Lakes, Illinois; San Antonio, Texas; Coronado, California; San Diego, California; Lemoore, California; Ventura, California; Bremerton, Washington; Everett, Washington; Pearl Harbor, Hawaii; Guam; Bahrain; Naples, Italy; Rota, Spain; and Yokosuka, Japan.

In FY16, a local Bahraini counsel was retained by the VLC Program to assist eligible victims of sexual offenses committed by foreign nationals whose cases are being prosecuted within the Bahraini court system. Although the Bahraini courts recognize the rights of victims, the language barrier and the prohibition against VLC appearing before the Bahraini bench created a need for specific local counsel services to ensure the rights of victims are preserved.

Mission. In August 2013, the Navy established the VLC Program to provide independent legal counsel to eligible sexual offense victims. VLC advise victims of their reporting options, work with victims through the investigation and military justice process, advocate for victims' rights and interests, and help victims obtain access to other support resources. VLC complement the care and support victims receive through other organizations such as the Sexual Assault Prevention and Response

Program, the Family Advocacy Program, the Victim Witness Assistance Program, and services offered by victim advocates, chaplains, and healthcare providers.

In accordance with federal law, eligibility for VLC services extends to victims of sexual offenses who would otherwise be eligible for legal assistance services from a military attorney. Generally this includes Navy active-duty and reserve personnel, other service personnel and retirees when assaulted by an active-duty Navy perpetrator, adult and minor dependents of active-duty Navy members when assaulted by an active-duty member, and Department of Defense civilians. VLC began providing services to minor dependents assaulted by active duty perpetrators on June 24, 2014 as directed by the FY14 NDAA. VLC services are available to victims filing Restricted Reports, Unrestricted Reports, or declining to file an official report of sexual assault.

All communications between VLC and their clients, including minors, are confidential and privileged. VLC assess all minor client's capacity separately and continuously to determine if the client has the considered judgment and capacity to direct VLC representation. No victim is required to contact or consult with a VLC, and declining VLC services initially does not preclude a victim from representation later. VLC support is available in-person and via remote means if necessary, by telephone, email, text, video-teleconferencing, and FaceTime.

All VLC are required to successfully complete the Special Victims' Counsel Certification (SVCC) Course offered by either the Army or the Air Force in order to be certified by the Judge Advocate General to practice as a VLC. VLC also attend specialized courses and symposia such as Prosecuting Special Victims Cases (NJS), Representing Child Victims (Army), Ending Violence Against Women International, and the National Crime Victims Law Institute. In addition to outside training, in April 2016, the VLC Program held its first Training Symposium, bringing together almost all of the VLC and support staff from around the globe to receive instruction from experienced VLC within the program as well as from outside experts on topics such as vicarious trauma, military justice, and leadership development. Further, VLC participate in internal monthly training which include topics such as retaliation, federal labor and employment law, the Freedom of Information Act, civilian victims' rights, and ethics.

In FY16, VLC provided training at the SVCC Course as well as the Representing Child Victims training, provided regular training to victim advocates, and attended and presented at the VLC program symposium. VLC also provided training at the Federal Law Enforcement Training Centers and at Sexual Assault Medical Forensic Examiner trainings conducted around the country and worldwide. Several VLC appeared before or were interviewed by the Judicial Proceedings Panel Federal Advisory Committee offering their insight on victim-specific issues related to the VLC Program.

VLC provide personal representation and advice to victims involved in collateral misconduct connected with a report of sexual assault, although collateral misconduct resulting in administrative processing or court-martial necessitates assignment of a separate military defense counsel. VLC also provide basic legal assistance services

directly connected to a report of sexual assault. Assistance with more substantive matters are referred to the nearest military legal assistance office.

In FY16, the Navy VLC Program initiated an appellate practice team consisting of four VLC who were specially trained by the Navy Appellate Government division and who attended the Joint Appellate Advocacy Training held at Henderson Hall in September 2016. The members of the appellate team are tasked with remaining current on appellate cases involving victims' rights, supporting any VLC with imminent trial-level appellate issues, and taking on post-trial appellate cases, as necessary.

During FY16, Navy VLC provided legal support to 1,520 sexual offense victims (780 of whom were new clients for VLC during FY16), participated on behalf of victims at 892 military justice and administrative proceedings, and conducted 543 outreach briefs on VLC services to 28,586 personnel.

NAVAL JUSTICE SCHOOL

Organization. Naval Justice School (NJS) reports to CNLSC for administrative and operational control. The main NJS facility is located in Newport, Rhode Island, consisting of a staff of approximately 30 officers, enlisted members, and civilians. Teaching detachments are based in San Diego, California, and Norfolk, Virginia, each consisting of a staff of 3 officers, 2 enlisted members, and 1 civilian. A two-person branch office is located at the U.S. Army's Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Fifteen reserve personnel supported NJS in FY16. Training curriculum for Military Justice is controlled by the Military Justice Cross-Functional Team (CFT), consisting of 11 experienced Judge Advocate and paralegal instructors and led by an O4 Military Justice Litigation Qualification (MJLQ) member.

In FY16, Naval Justice School hired a GS-15 Educational Program Specialist to provide expert advice on the science of education, to assist in the formulation of the school's educational and training curriculum, and to advise leadership and mentor instructors. She has established guidelines for curriculum planning, reviewed plans and instructional programs, and continues to assess and ensure that NJS is meeting fleet training needs.

Mission. The mission of NJS is to oversee and provide formal training to Sea Service judge advocates and paralegals to ensure their career-long professional development and readiness to deliver quality legal services to the fleet. NJS also trains commanders and senior officers in the practical aspects of military law to enable them to perform their command and staff duties and to administer military justice.

In FY16, NJS provided instruction to more than 4,000 students worldwide at more than 1,300 in-resident courses ranging in length from one day to 13 weeks. NJS instructors also provided off-site teaching in military justice, administrative law, and operational law to commands on board Naval Station Newport, including the Naval War College, Naval Leadership and Ethics Center, the Defense Institute of International

Legal Studies, Officer Development School, Senior Enlisted Academy, Surface Warfare Officers School, Officer Candidate School, and Limited Duty/Chief Warrant Officer Indoctrination School.

NJS has eight “core” courses that include training in military justice:

1. Basic Lawyer Course. This ten-week course, offered three times annually, provides accession training for all judge advocates in the Navy, Marine Corps, and Coast Guard. The course includes training in military justice and court-martial advocacy, as well as training in legal assistance, administrative law, standards of conduct, and operational law. Teaching methods include lecture, seminar, and practical exercises. Upon graduation, judge advocates are certified per Article 27(b), UCMJ. In FY16, NJS graduated 165 students.

2. Legalman Accession Course. This 11-week course, offered three times in FY16, trains Navy enlisted personnel selected for conversion to the Legalman rating. The course provides ten ABA-approved credits towards a paralegal degree or certificate in partnership with an accredited educational service provider. In addition to training in military justice, court reporting, administrative investigations, and administrative separations, the course includes four paralegal studies courses taught by NJS officer instructors: Ethics, Legal Research and Writing I, Introduction to Law, and Emerging Legal Technologies. Five weeks of military-specific training within the course doubles as the reserve Legalman Accession Course. In FY16, there were 70 active duty graduates and 20 reservists.

3. Basic Legal Services Specialist Course. This 11-week course, offered three times annually, provides accession-level training to junior enlisted Marines seeking the Military Occupational Specialty of Marine Corps Legal Services Specialist. Curriculum consists of training in military justice, post-trial review, and legal administration. In FY16 75 Marines completed this program.

4. Legal Services Court Reporter Course. This 13-week course, offered twice annually, provides court reporter training to Marine Legal Services Specialists, grades E-3 to E-7, seeking the Military Occupational Specialty of Marine Corps Legal Services Court Reporter. The curriculum consists of court reporter training in closed-mask capture of legal proceedings at 225 words per minute, court-reporting grammar and punctuation, speech–recognition technology, digital recording software, and the production of verbatim and summarized courts-martial records of proceedings. In FY16, 29 Marines graduated from this course.

5. Senior Officer Course in Military Justice and Civil Law (SOC). This scenario-based three-day course is designed for commanding officers, executive officers, and officers-in-charge and is open to other officers in grades O-4 and above with NJS approval. The SOC trains officers in the execution of the legal responsibilities of command with instruction in military justice (including sexual assault case disposition), administrative law, and civil law. In FY16, NJS provided 33 offerings

of the SOC in Newport, San Diego, Norfolk, Camp Pendleton, Camp Lejeune, Parris Island, Quantico, Pensacola, Okinawa, and Rota. Per NAVADMIN 302/12, this course is mandatory for O-6s en route to command. In FY16, 1118 graduated this program.

6. Legal Officer Course (LOC). This three-week course prepares non-lawyer Legal Officers to perform a host of military law functions in commands not large enough to warrant assignment of a dedicated judge advocate. In FY16, NJS provided 16 offerings of the LOC in San Diego and Norfolk to 571 students.

7. Legal Clerk Course (LCC). Legal Clerks are typically assigned to assist non-lawyer Legal Officers within a command as a collateral duty. This two-week course provides training in the preparation of legal forms and reports, service record entries, non-judicial punishment, and courts-martial procedures. In FY16, NJS provided 17 offerings of the LCC in San Diego and Norfolk with 461 students graduating.

8. Senior Enlisted Leadership Course in Military Justice and Civil Law (SELC). This three-day course provides senior enlisted leaders of all Services training focusing on military justice matters. In FY16, NJS provided 14 offerings of the SELC in San Diego and Norfolk and had 584 graduates.

In addition to the “core” courses, NJS provided 20 resident specialty courses, many of which are pre-approved for continuing legal education (CLE) credit from state bar associations. Many of these courses focus on military justice. In FY16, these resident courses reached more than 560 legal professionals.

1. Defense Counsel Orientation (DCO). This bi-annual course teaches Navy and Marine Corps defense counsel how to effectively prepare, manage, and try cases from the investigation stage through sentencing with a particular focus on the practical aspects of defense.

2. Basic Trial Advocacy (BTA). This course is designed to develop important trial advocacy skills in judge advocates in their first trial billets and in judge advocates transitioning to litigation billets from non-trial billets.

3. Prosecuting Special Victim’s Cases (PSVC). This week-long course is taught in conjunction with Navy and Marine Corps TCAP. It focuses on substantive aspects of prosecuting special victim’s cases and includes small-group practical exercises to hone skills such as conducting direct and cross examinations of child abuse and domestic violence experts, as well as the accused.

4. Defending Sexual Assault Cases (DSAC). This is a week-long course, coordinated with DCAP, that brings together military and civilian expertise to provide training on sexual assault litigation for defense counsel.

NJS also continues to provide Basic and Advanced SJA Courses. The SJA courses incorporate military justice training topics relevant to SJAs including search and

seizure, investigations, charging, preferral, convening courts, referral, Victim Witness Assistance Program, Sexual Assault Initial Disposition Authority, and post-trial processing.

The Legalman Paralegal Education Program (LPEP) is a government-funded education program leading to an Associates of Science degree in Paralegal Studies. This program, established in 2010, is mandatory for all Legalmen (NOS B630) to meet minimum occupational standards for the Legalman rating. Following completion of the Legalman Accession course, students normally complete a semester of in-resident courses with an accredited educational service provider before checking into their first permanent duty station as a Legalman. Upon checking in, they normally participate in distance learning with the accredited educational service provider until completing the degree requirements. In FY16, 49 students attended LPEP as in-resident students, and more than 300 students were enrolled in the distance learning option.

The Online Legal Education department at NJS offers a wide variety of training and education courses through the Blackboard learning management system and the Naval Justice School SharePoint portal. These systems are accessible 24/7 and offer on-demand training with opportunities for feedback and instructor interaction. The online courses cover specific topics on large practice areas such as post-trial processing, ethics, and law of the sea. Additionally, the Trial Counsel Orientation online course is an entry-level training for first time trial counsel and is required for all incoming Marine Corps and Navy trial counsel. Teaching tools include assigned readings, recorded videos, discussion boards, practical assignments, and knowledge checks. Each fiscal year, NJS Online provides more than 10,000 hours of instruction to more than 2,000 students worldwide.

In addition to publishing the annual Naval Law Review, NJS publishes an online course catalog, the USN/USMC Commander's Quick Reference Handbook for Legal Issues, and various study guides in support of its academic programs.

Through the Interservice Legal Education Review Committee, Commanding Officer, NJS, the Dean of Students for the U.S. Army's Judge Advocate General's Legal Center and School, and the Commandant, Air Force Judge Advocate General's School meet annually to discuss new initiatives and opportunities for cross-training.

NAVY ACTIVITIES

1. Military Justice Litigation Career Track (MJLCT)

In 2007, the JAG Corps established the MJLCT to improve the overall quality of Navy court-martial litigation. The MJLCT is a career track for judge advocates with demonstrated military justice knowledge and advocacy skills. Entry into the MJLCT is through a competitive board. The track combines continued training, education, and courtroom experience with oversight by and access to senior, seasoned litigation

mentors to help judge advocates develop the skills needed to become preeminent trial lawyers and judges. Military Justice Litigation Qualified (MJLQ) officers are detailed to lead trial departments at each of our nine Region Legal Service Offices (RLSOs) and defense departments at our four Defense Service Offices (DSOs). These officers provide proven experience in the courtroom, personally conducting, adjudicating, or overseeing litigation in sexual assault and other complex cases.

At the close of FY16, there were 77 Navy MJLCT officers, of whom 63 were filling MJLCT designated billets. The “billet-fill rate” has held relatively stable for the last two years. MJLCT officers are serving in billets at the Office of Military Commissions, on board aircraft carriers, at NJS, and in VLC positions. Three MJLCT officers are currently attending post-graduate school to obtain LL.M. degrees in Trial Advocacy.

The promotion rate for MJLCT officers continues to be monitored. The FY16 promotion selection boards selected MJLCT officers at a similar rate to the overall in-zone selection rate. The FY16 O-6 promotion selection board selected three of five MJLCT officers in-zone, the O-5 selection board selected five of seven MJLCT officers in zone and one above zone, and the O-4 selection board selected all ten MJLCT officers in-zone as well as two officers above zone for promotion.

Designations within the MJLCT are as follows:

a. SPECIALIST I. This is the entry point for the MJLCT. A judge advocate may be qualified as SPECIALIST I after demonstrating military justice litigation proficiency and MJLCT potential. Candidates will normally be eligible for SPECIALIST I after their fourth year of active duty.

b. SPECIALIST II. Following SPECIALIST I qualification, a judge advocate may qualify as SPECIALIST II after obtaining sufficient additional qualitative and quantitative military justice litigation experience as well as professional development as a naval officer. Candidates will normally be eligible for SPECIALIST II after their tenth year of active duty.

c. EXPERT. Following SPECIALIST II qualification, a judge advocate may qualify as EXPERT after obtaining significant additional military justice litigation experience as well as demonstrated leadership of junior judge advocates. For this reason, EXPERT is ordinarily reserved for those judge advocates who have reached the senior-most MJLCT positions. Candidates will normally be eligible for EXPERT after their sixteenth year of active duty.

SPECIALIST II and EXPERT MJLQ are community management tools to guide the detailing, training, and professional development needs of MJLQ judge advocates and to ensure the community maintains its ability to execute this core function across the community billet structure. Senior MJLQ judge advocates, in coordination with the AJAG 05, who serves as the MJLCT community sponsor, seek to provide all MJLQ

judge advocates with training and duty assignment opportunities that facilitate their professional development within the MJLCT, the JAG Corps, and the Navy.

As judge advocates seek MJLCT advancement, they will be required to demonstrate increased courtroom experience, continued growth in litigation leadership, and familiarity with the broader mission of the Navy. MJLQ judge advocates are encouraged to explore the wide variety of naval experiences that contribute to the development of a broad understanding of the duties of judge advocates and to seek out non-litigation billets even after MJLQ designation. Accordingly, applicants for EXPERT MJLQ should generally have served at least two years in a non-litigation billet prior to their application for qualification.

2. Sexual Assault Prevention and Response (SAPR) Initiatives

In FY16, the Navy continued to execute a multifaceted approach to address sexual assault awareness and training, prevention, victim response, investigation, and accountability. Navy judge advocates were integral in all levels of ongoing SAPR initiatives, including reviewing numerous SAPR training products intended for Sailors, SAPR victim advocates (SAPR VAs), and Sexual Assault Response Coordinators (SARCs). OJAG Code 20 (Criminal Law Division) works hand-in-hand with Naval Education and Training Command (NETC), Department of the Navy Sexual Assault Prevention Response Office (DON SAPRO) and N17 to review these products. For example, in coordination with Victim Legal Counsel (VLC) Program, the Criminal Law Division provided in-depth review of a multi-chapter graphic novel that addresses challenges Sailors may face arising from allegations of sexual assault within their peer group. Code 20 is also working with DON SAPRO and other stakeholders on the potential development of a smartphone application to assist with sexual assault reporting.

Naval Justice School (NJS) provides SAPR training in each of its JAG officer accessions courses consisting of in-depth instruction on Article 120, UCMJ, as well as detailed exploration of the roles and responsibilities of SAPR stakeholders, the meaning of current statistics, the mechanics of sexual assault reporting systems, and the role and responsibilities of the Sexual Assault Initial Disposition Authority. In addition, NJS instructs Sea Service legal professionals (e.g., judge advocates, Navy paralegals, Marine Corps Legal Specialists, and Coast Guard Legal Technicians) on all aspects of sexual assault disciplinary proceedings, including the role of VLC and the Navy's commitment to facilitating victim participation in the criminal justice system.

Navy VLC regularly support command training events and base programs focusing on sexual assault issues to ensure Sailors are aware of legal resources available to sexual assault victims. Moreover, Navy VLC routinely provide training to investigators at the Federal Law Enforcement Training Centers and information regarding victims' rights and program services through base and Armed Forces newspaper articles and radio programs, as well as through briefings to first responders such as healthcare personnel, SAPR VAs, SARCs, and law enforcement personnel.

The Navy continues to publish all court-martial results of trial to increase transparency and to serve as a deterrent to other potential offenders. In August 2016, publishing expanded to include the first public posting of appellate briefs online. The VLC Program, Code 20, and the appellate litigation divisions coordinated to ensure compliance with the FOIA, Privacy Act, and NMCCA Rules of Practice and Procedure.

The Trial Counsel Assistance Program continues to provide robust training as part of the Naval Criminal Investigative Service (NCIS) Advanced Adult Sexual Assault Investigations Training Program, a course for investigators and prosecutors that is focused on improving multi-disciplinary coordination of sexual assault investigations. In practice, this translates to early and regular coordination between Regional Senior Trial Counsel and NCIS on investigation and prosecution of cases.

3. Additional Information

a. Compliance With Processing Time Goals

In FY16, no Navy case was dismissed on speedy trial grounds. Six Navy cases exceeded 120 days from sentencing to convening authority's (CA) action (*Moreno 1* guideline). Delay in these cases was primarily due to voluminous records of trial although one was delayed due to a defense request for an extension in submitting matters in clemency and another for a defense post-trial 39(a) session. No Navy cases exceeded 30 days from date of CA's action to docketing at NMCCA (*Moreno 2* guideline) No Navy cases exceeded the *Moreno 3* guideline of 18 months from docketing to decision.

b. Measures Implemented by the Navy to Ensure the Ability of Judge Advocates to Competently Participate as Trial and Defense Counsel in, and Preside as Military Judges Over, Capital Cases, National Security Cases, Sexual Assault Cases, and Proceedings of Military Commissions

Litigation Expertise

Our MJLCT attorneys rotate among prosecution, defense, and judicial assignments. Many MJLCT officers serve as military and appellate judges, giving them a unique perspective on how to formulate and articulate well-reasoned arguments when advising junior litigators. Likewise, having served as both trial and defense attorneys, our career litigators have a better understanding of the strengths and weaknesses of their cases. They are also detailed to other assignments, such as operational and SJA billets, to round out their experience in the fleet. As a result, our litigators understand the importance of each role in our military justice system - insight which serves our community well as these attorneys move into senior litigation positions and provide training and mentorship to junior officers.

MJLCT officers have reached the highest levels of leadership within the JAG Corps, to include positions as commanding officers, division directors, and Assistant

Judge Advocate General. MJLCT officers are heavily involved in the daily prosecution, defense, and judgment of cases throughout the Service, and are serving at the Office of Military Commissions and as VLC as well. These officers continue to be detailed into repeated tours of litigation-intensive billets that will improve the effectiveness and efficiency of the court-martial process. Several MJLCT officers have extensive contested case experience in all three areas of practice - prosecution, defense, and the judiciary. Some also have extensive appellate experience.

Almost a quarter of the MJLCT community has experience in areas of capital litigation, national security/classified information cases, or military commissions, and nearly every MJLCT officer has experience in litigating sexual assault cases. Each area of practice (prosecution, defense, and judiciary) currently includes MJLCT members who have extensive experience in sexual assault, capital, classified, and commissions cases, and every practice area has ready access to these experts for support if the need arises.

Training and Education

NJS provides judge advocates with tiered military justice instruction from active component judge advocates supplemented by reserve judge advocates employed as local, state, and federal prosecutors. Training is centrally-managed under the oversight of a Litigation Training Coordination Council comprised of two Assistant Judge Advocates General, military justice experts from the prosecution and defense, policy advisors, instructors, and senior judges. Course requirements are established by a board of advisors from the Navy, Marine Corps, and Coast Guard who have extensive experience in litigation and training.

In addition to basic and intermediate level trial advocacy courses, NJS, Code 20, TCAP, and DCAP coordinate specialized training for Navy trial and defense counsel on litigating complex sexual assault crimes using resources such as the National District Attorneys Association; the National Institute of Justice (a Department of Justice (DoJ) agency established to help foster science-based criminal justice practice); Aequitas: The Prosecutor's Resource on Violence Against Women (a DoJ funded resource created to provide prosecutors with support, training, mentorship, and resources to improve the quality of justice in sexual violence cases); the Center for American and International Law; and the National Criminal Defense College.

Every year the JAG Corps sends mid-level career litigators to civilian post-graduate schools to earn a Master of Laws (LL.M.) in litigation. Of the 77 career litigators in the MJLCT at the end of FY16, approximately one-third have earned an LL.M. in litigation.

Trial Counsel

Senior Trial Counsel (O-4 or above) are the nucleus of the Navy's SVIP capability and are prepared to prosecute complex cases including capital and national

security cases. Each is hand-selected by the JAG to fill one of nine Senior Trial Counsel billets. All Senior Trial Counsel are MJLCT officers. Upon reporting, all Senior Trial Counsel complete a one-week special victims investigation course and participate in additional specialized training such as litigating complex cases, TCAP targeted mobile training, and monthly online special victims offenses or litigation training. All Senior Trial Counsel regularly report to TCAP on all pending felony-level investigations and prosecutions. Additionally, uniformed members of TCAP may also be detailed to high-profile and complex cases as necessary.

Sexual assault cases are typically detailed to “core attorneys” assigned to each Region Legal Service Office (RLSO). A RLSO core attorney is a judge advocate (O-3 or above), certified to practice by the JAG in accordance with Article 27b, UCMJ, and a member in good standing with a State bar, who has completed a two-year tour as a First Tour Judge Advocate prior to assuming the duties of a prosecutor. All trial counsel are supervised by a Senior Trial Counsel, an Executive Officer (O-5 judge advocate), and a Commanding Officer (O-6 judge advocate). Detailing of counsel is within the discretion of the RLSO Commanding Officer who takes into consideration such matters as competence, experience, training, existing caseload, and availability of counsel, as well as case specifics. A Commanding Officer may detail a second, more experienced counsel to a particular case to provide the opportunity for practical mentoring. Additionally, uniformed members of TCAP may also be detailed to cases. All trial counsel have access to 24/7 support from TCAP.

Trial counsel receive military commission training from the Office of the Military Commissions when assigned to that office.

Defense Counsel

Navy defense counsel attend NJS’s Basic Lawyer course, Basic Trial Advocacy training, and Defense Counsel Orientation prior to or shortly after arriving at a Defense Service Office (DSO) to serve as a core defense counsel. Within their first year as a core counsel, defense counsel attend Defending Sexual Assault Cases, the week-long course designed to provide judge advocates specific training on how to handle the legal issues and complexities involved in a sexual assault case. The course includes both practical exercises and lectures from experienced civilian and military defense attorneys and experts. The course allows for extensive discussion of existing case issues and students frequently use this time to consult with peers and faculty. Defense counsel also may attend Intermediate Trial Advocacy and Litigating Complex Cases trainings.

DCAP sends Defense Mobile Training Teams to each DSO at least once each year. During these visits, DCAP works closely with the command and individual counsel with a focus on practical issues in defense work, including trial advocacy training based on current or recent case scenarios.

Resources permitting, Navy defense counsel have attended advanced legal seminars aimed at the criminal defense attorney. The Navy sends defense counsel to the National Child Abuse Defense and Resource Center's International Conference and the National Association of Criminal Defense Lawyers' Zealous Advocacy in Sexual Assault and Child Victim Cases course to ensure that trained counsel are available for child abuse cases. Advanced defense advocacy courses from the National Criminal Defense College and the Bronx Defenders are also available to Navy defense counsel.

Sexual assault cases are typically detailed to "core attorneys" assigned to a DSO. A DSO core attorney is a judge advocate (O-3 or above), certified to practice by the JAG in accordance with Article 27b, UCMJ, and a member in good standing with a state bar, who has completed at least one full tour prior to assuming the duties of a defense counsel. Detailing of counsel is within the discretion of the DSO Commanding Officer (O-6 judge advocate), who takes into consideration such matters as competence, experience, training, existing caseload and availability of counsel, and case specifics. A Commanding Officer may detail a second, more experienced counsel to a particular case to provide the opportunity for practical mentoring. Additionally, uniformed members of DCAP may also be detailed to cases.

Defense counsel receive military commission training from the Office of the Military Commissions when assigned to that office.

Military Judges

The required courses for a trial judge's judicial education begin with the three-week Military Judge Course, provided by the U.S. Army's Judge Advocate General's Legal Center and School in Charlottesville, Virginia. This course meets the requirements to be JAG-certified as a military trial judge by providing incoming military judges the fundamentals of judicial practice. The course covers court-martial process, evidence, procedure, constitutional rights, judicial problem solving, and judicial methodology. It includes demonstrations and practical exercises. Appellate judges attend the same school for certification as a trial military judge.

All trial-level military judges, active and reserve, attend the Joint Military Judges Annual Training (JMJAT). JMJAT is the venue for continuing education for all trial judges and for discussing current and evolving practice issues, such as the new Article 120, presiding over cases involving third party representatives such as VLC, advanced evidence, sentencing methodology, and judicial ethics.

Responsibility for hosting JMJAT alternates between the Navy-Marine Corps Trial Judiciary (NMCTJ) and the Air Force Trial Judiciary (USAFTJ). In February 2016, the USAFTJ hosted JMJAT at Maxwell Air Force Base, and the NMCTJ will host JMJAT 2017 onboard Tampa Air Force Base in February 2017. At Maxwell, instructors from within Department of Defense (DoD) and the services' trial judiciaries provided three days of training on challenging evidentiary issues, including presentations on new standards for ordering the production and disclosure of victims' mental health records.

Additionally, the trial judiciary sends judges to the National Judicial College (NJC) for individual courses. The NJC is the only fully-accredited University that presents an average of 30 to 40 judicially-oriented courses annually. These courses serve to broaden judicial experiences by exposing our judges to perspectives from around the country. The NJC's courses cover everything from judicial writing and advanced evidence to handling capital cases and general jurisdiction.

The judiciary currently includes several judges who have handled classified information and national security cases as litigators and as military judges, as well as officers with extensive experience in military commissions. Specialized training in classified information cases is available to judges and litigants.

In FY16, all Navy and Marine Corps trial judges gathered for three days of training funded by DoD SAPRO related to special victims. Training topics included Military Rules of Evidence (M.R.E.) 412, 413, 414 (policy, cases, methods, and foundational requirements); M.R.E. 513 (the threshold for ordering production of victims' psychotherapy records and the process for reviewing and protecting those records); the use of experts in sexual assault cases; the role of VLC in the court-martial process; and compliance with recent National Defense Authorization Act provisions.

Appellate judges also receive extensive and ongoing training. In 2011, the NMCCA instituted a two-day, in-house annual course to provide initial training to newly assigned judges and continuing education for active and reserve appellate judges. The course focuses on court processes, opinion writing, ethics, appellate burdens of proof and persuasion, and advanced evidence. The FY16 course focused on appellate writing and advanced research training in Lexis. Appellate judges also attend the annual William S. Fulton, Jr. Military Appellate Judges' Training Conference, which is an inter-service, one-day event with the host rotating among the services. In 2016, the Army Court of Criminal Appeals hosted the conference. Finally, two appellate judges attended the New Appellate Judges Seminar hosted by New York University School of Law.

e. The Independent Views of The Judge Advocates General on the Sufficiency of Resources Available, Including Total Workforce, Funding, Training, and Officer and Enlisted Grade Structure, to Capably Perform Military Justice Functions

As of the date this report was submitted, significant strides have been made to ensure that the Navy Judge Advocate, enlisted, and civilian communities were properly resourced to fulfill increasingly complex litigation obligations. The Navy has provided additional billets to defense, trial, and victims' legal counsel commands and has invested significant resources in training litigants and providing expert supervision at the trial level. Expertise in civilian paralegals and long-term HQEs continues to be a need. However, budget reductions and contracting constraints continue to cause challenges in hiring personnel and funding training and could further impact operational readiness. With respect to the VLC program, reserve support ended in September 2016 as most

definite recall billets reverted to active duty billets. This loss, together with the addition of new litigation billets, strains JAG Corps manpower despite overall personnel growth.

The sufficiency of mid and long-term resources largely depends on new legislation and directive policies, most of which place significant demands on strained judge advocate resources. The anticipated FY17 loss of approximately one million dollars in SAPRO funds significantly impacts training opportunities for litigators dealing with sexual assault cases and special victims. JAG will continue to work with the Navy to ensure that the JAG Corps can meet these challenges as they emerge, including maintaining sufficient manning to fulfill mission objectives.

CONCLUSION

In FY16, the Navy continued to strive to provide the highest caliber of military justice advice and representation to service members, commanders, and the Fleet. Although the number of special courts-martial has decreased significantly over the past decade, the decline of general courts-martial numbers has been less dramatic. In recent years, the number of general courts-martial has remained relatively constant, as have other measures of demand, such as the number of pages of records of trial received at Navy and Marine Corps Appellate Review Activity and the number of appellate briefs filed at the Navy-Marine Corps Court of Appeals. These metrics reflect the complexity and visibility of the modern docket, which demands the best from our attorneys, paralegals, and support personnel.

Through efforts such as the continued development and refinement of our Military Justice Litigation Career Track, our highest level oversight in the detailing and utilization of Victims' Legal Counsel personnel, and our continued monitoring of our First Tour Judge Advocate Program, the Navy has proven its commitment to excellence in this critical mission. Recognizing the substantial number of changes coming to the military justice system with the implementation of the Military Justice Improvement Act of 2016, we are confidently poised to continue to prioritize military justice in the future.

MARINE CORPS ACTIVITIES

The Marine Corps will submit a separate CAAF report for FY16.

MARINE CORPS ACTIVITIES

STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS



U.S. MARINE CORPS ANNUAL MILITARY JUSTICE REPORT FOR FISCAL YEAR 2016

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I. INTRODUCTION

In fiscal year 2016 (FY16) the Marine Corps military justice community—trial counsel, defense counsel, Victims’ Legal Counsel (VLC), and command advice judge advocates—continued to leverage the experience of its senior leaders and highly qualified experts combined with the strength of its organization and training programs to accomplish the military justice mission. With a focus on special victim and other complex military justice cases, we placed a premium on ensuring that in each military justice case, we detailed the right judge advocates with the right supervision and training to litigate each case on “every side of the aisle” and to provide advice to commanders. Our Legal Service Support Sections (LSSs) in the East, National Capital, West, and Pacific regions continued to represent the main effort, becoming Regional Centers of Excellence where senior uniformed counsel, highly qualified civilian experts, and support staff combined with junior counsel to create effective litigation and advocacy teams.

This year again brought statutory changes to military justice that required implementation. The FY16 National Defense Authorization Act (NDAA) expanded victims’ appellate rights, required investigators and trial counsel to notify victims of the right to VLC prior to any interview, and required development of a DoD strategy to prevent retaliation against victims of sexual assault as well as sexual assault witnesses and first responders. In addition, Executive Order 13730, signed by the President on 20 May 2016, and Executive Order 13740, signed by the President on 16 September 2016, promulgated numerous and widespread changes to the Manual for Courts-Martial by amending the Manual’s Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, and the Punitive Articles. These changes implemented multiple National Defense Authorization Act requirements, Department of Defense policy, congressional panel recommendations, and updated the Manual for Courts-Martial to conform with updates to civilian federal practice and case law. Practice Advisories issued by the Military Justice Branch, posts from the Trial Counsel Assistance Program (TCAP), community-wide updates from the Marine Corps Judge Advocate Division, and training



by each LSSS informed military justice practitioners of these and other changes to practice.

The Marine Corps supported numerous formal efforts to evaluate change to the military justice system in FY16 by working closely with the Judicial Proceedings Panel (JPP) to respond to five requests for information. Topics addressed included implementation of the policy to withhold initial disposition authority, implementation of Special Victim Investigation and Prosecution (SVIP) capability, assessment and trends of training and experience of prosecutors and defense counsel; victims' access to information, Victims' Legal Counsel, retaliation against victims of sexual assault; defense investigators, resources, and experience; and appellate counsel review of materials sealed at trial. The Marine Corps also provided documents for all FY15 adult-victim sexual assault courts-martial charges, reported the disposition data for all FY16 sexual assault cases tried, and provided and prepared numerous judge advocates to testify at JPP hearings. Finally, the Marine Corps continued to implement reforms recommended by the Response Systems to Adult Sexual Assault Crimes Panel (RSP).

This fiscal year represented the culmination of efforts to enact the most significant set of changes yet made to the UCMJ. Throughout FY16, judge advocates' sustained efforts at Headquarters Marine Corps ensured that Congress could adopt the Department of Defense's proposals to adopt the Military Justice Review Group's (MJRG) recommended comprehensive amendments to the Uniform Code of Military Justice (UCMJ). As these changes were under consideration by Congress, the Marine Corps, in its capacity as Chair of the Joint Services Committee on Military Justice, worked with the other Services to prepare for full implementation of these historic UCMJ amendments within the anticipated statutory and regulatory timelines.

The role of the VLC continued to expand as the FY16 NDAA increased the rights and protections afforded to victims, particularly victims of sexual assault. The FY16 NDAA expanded the scope of those eligible to receive VLC services to include DoD civilian employees, required trial counsel and investigators to inform sexual assault



victims of their right to consult with VLC before interviewing or requesting statements from victims, and provided for enforcement of certain crime victim rights by the Court of Criminal Appeals. The legislation also mandated development of a strategy to prevent retaliation against those who report as victims or assist victims of sexual assault. To ensure proper implementation of these requirements, the Marine Corps drafted new policy relating to military justice, modified its training for military justice practitioners, and conducted extensive coordination with the Navy Office of the Judge Advocate General and the Navy Marine Corps Trial Judiciary.

The SJA to CMC's Legal Support Inspection program ensured timely implementation of these new initiatives and requirements. Consistent with Article 6, UCMJ, senior members of the SJA to CMC's staff inspected each of the four LSSSs and thirty-five staff judge advocate offices. In conjunction with these inspections, the SJA to CMC visited each LSSS and most operational and supporting establishment commands in FY16. During these visits, the SJA to CMC conducted town hall meetings with the Marines while also taking the opportunity to meet with commanders and staff judge advocates and other senior leaders as part of his Article 6, UCMJ, mandated "frequent inspection in the field in supervision of the administration of military justice" within the Marine Corps. The Judge Advocate Division (JAD) has refined the annual inspection process in order to assess and improve the practices within those legal offices and to ensure the operational and material readiness, effectiveness, and efficiency of the Marine Corps legal community. The inspection process principally serves to identify best practices and emphasizes continuous improvement as a philosophy and standard of practice within the legal community.

Through creation of the Marine Corps Judge Advocate Board in FY16, the Marine Corps formed counsels of colonels to serve as a bridge between JAD and the fleet and designed a process through which task-organized Operational Advisory Groups (OAGs) of subject matter experts analyze issues confronting the judge advocate community and initiatives to improve the community and develop and evaluate potential courses of action. After the SJA to CMC determines the course of action that will be



followed, appropriate stakeholders are tasked to take the steps necessary to implement the changes. In FY16, OAGs addressed a number of military justice topics, including: appropriate requirements for accession to the General Court-Martial Trial Counsel and Special Victim Trial Counsel designations; qualifications for service as a Victim's Legal Counsel; baseline requirements for trial leadership billets such as Senior Trial Counsel (STC) or Regional Trial Counsel (RTC); effectiveness of trial counsel training conducted at the regional and local levels; effectiveness and scope of the Prosecution Merits Memorandum (PMM); optimization and standardization of Article 32 Officer support; courtroom and trial security; use of technology in the courtroom; various issues relating to court reporters; and changes to the post-trial process, specifically in anticipation of the implementation of the Military Justice Act of 2016.

Through a continuous feedback loop—a process of inspection, evaluation, adaptation and standardization—the Marine Corps legal community met its mission of successfully and expeditiously providing competent and capable military justice services to address the most complex and demanding court-martial cases and elevating the practice of military justice within the Marine Corps.

II. MILITARY JUSTICE BY THE NUMBERS – TRENDS & ANALYSIS

In FY16, the Marine Corps litigated 149 general courts-martial and 208 special courts-martial to findings. At any given time during the year, the Marine Corps had approximately 200 courts-martial and 40 Article 32 preliminary hearings pending, with an additional 40 pending post-Article 32 referral/disposition decisions, 80 pending

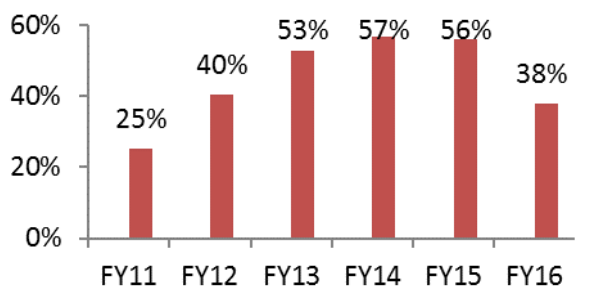


Figure A. Percentage GCMs Contested FY11 – FY16

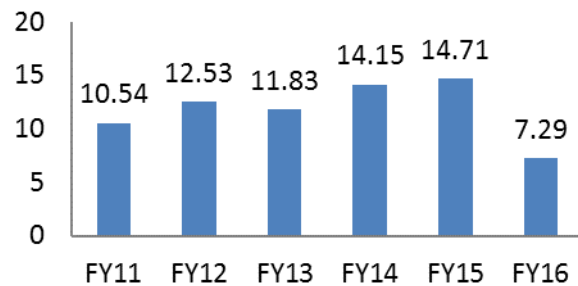


Figure B. GCM Average Hours FY11 – FY16



prosecutorial merits memoranda (PMM), and 180 pending requests for legal services (RLS). Of the 200 pending courts-martial about 155 were special courts-martial and 45 general courts-martial. These numbers are higher than in FY15 primarily because, in FY16, the Marine Corps began reporting all SVIP investigations in the Case Management System (CMS), regardless of whether the cognizant commander had submitted a Request for Legal Services (RLS). Additionally, the numbers of cases pending referral/disposition decision and PMM were not included in previous reports. FY16 was the first full year where prosecutors were required to prepare a PMM in every special victim case before the SJA provides initial disposition advice to the convening authority.

The percentage of contested general courts-martial dropped sharply from the last three FYs (see Figure A). In part due to the smaller number of contested cases, the amount of time spent on the record dropped significantly in FY16 (see Figure B). Several factors explain these large reductions in contested GCMs and time spent on the record. Contributing factors include stronger investigations with better evidence, closer coordination between all members of the Special Victim Investigation and Prosecution (SVIP) capability on each installation, better trained and prepared investigators and trial counsel, strong leadership from carefully selected senior trial counsel, and more informed SJA advice to convening authorities as a result of prosecutorial merits memoranda from trial counsel in every special victim case. These trends show the efficiencies created by experienced and well-trained litigators, qualified support staff, and effective SVIP capabilities.

The growth in sexual assault prosecutions, often among the most difficult cases we try, illustrates a continued trend toward cases that are more complex and intensely litigated. Between FY12 and FY14, the number of contested sexual assault prosecutions more than tripled (see Figure C). Though the number of contested sexual assault cases has declined since FY14, it is still

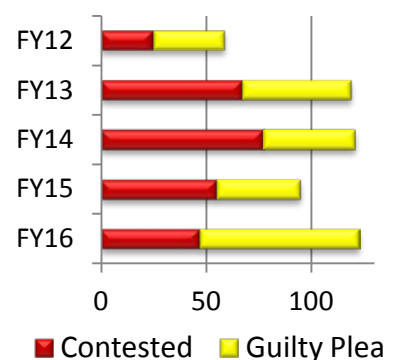


Figure C. Sexual Assault Prosecutions FY12 – FY16



almost twice as high as FY12. The number of guilty pleas increased significantly in FY16, producing a higher overall number of sexual assault prosecutions than any prior FY.

Special courts-martial litigation continues to decrease (see Figure D). The Marine Corps prosecuted 208 special courts-martial in FY16, only 2 fewer than in FY15. The number of contested special courts-martial also continued to decrease. In FY16, contested special courts-martial declined both as a total number and as a percentage of all special courts-martial.

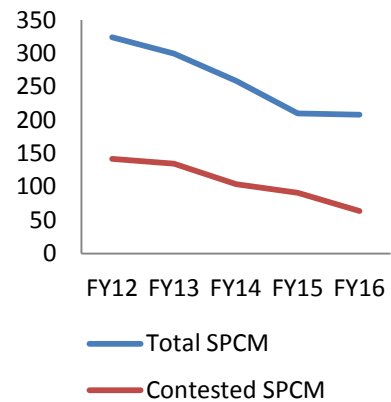


Figure D. Total and Contested SPCM FY12 – FY16

III. POST-TRIAL REVIEW AND APPELLATE DECISIONS

As a result of the mandatory Marine Corps-wide use of the Case Management System (CMS) and other case tracking mechanisms used by judge advocates and legal services specialists, including the JAG-SJA to CMC chaired Military Justice Oversight Committee, the Marine Corps complied with post-trial processing goals. The Marine Corps maintained an unblemished processing record, with no convictions reversed because of a denial of the right to speedy post-trial review or otherwise remitted due to loss of records of trial.

A. Processing Time Goals

In FY16 the Marine Corps had 415 general, special, and summary courts-martial that warranted post-trial review. For cases warranting appellate review, the Marine Corps averaged

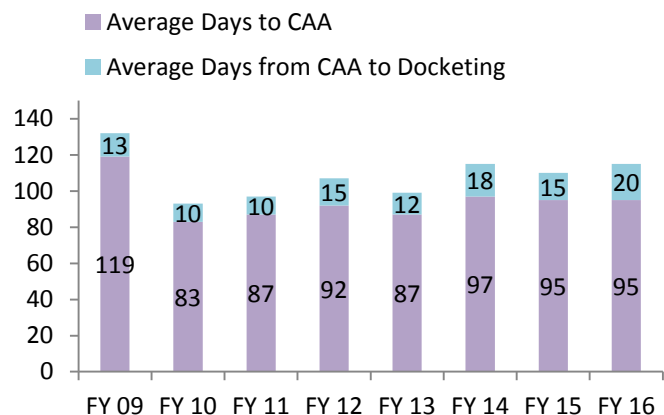


Figure E. Post-Trial Processing Times FY09 – FY16

ninety-five days from the date of trial to convening authority's action (CAA), which remains unchanged from FY15's average (see Figure E). The Marine Corps averaged twenty days from CAA to docketing of the case with the Navy-Marine Corps Court of Criminal Appeals.

B. Reversal of Convictions for Denial of Speedy Post-Trial Review, UCI, or Other Administrative Deficiencies and Cases in Which Provisions Were Held Unconstitutional

In FY16, the Marine Corps had no cases in which a provision of the UCMJ was held unconstitutional, and no convictions were reversed for violation of the right to speedy trial, speedy post-trial review, unlawful command influence or other administrative deficiencies.

IV. MILITARY JUSTICE PRACTITIONERS, TRAINING AND RESOURCES

A. Trial Counsel

The Marine Corps has implemented career progression, training, experience requirements, and detailing criteria to ensure well-qualified judge advocates prosecute sexual assault cases. Our detailing criteria ensure that only those attorneys who have experience trying contested cases, who have demonstrated an aptitude for the courtroom, and who have received recommendations from supervisors may try Special Victim Investigation Prosecution (SVIP) cases. SVIP cases include those cases involving sexual assault or domestic violence. SVIP prosecutors also require additional sexual assault training that they normally receive by attending a Trial Counsel Assistance Program (TCAP) one-week annual training seminar. The Marine Corps maintains approximately 80 prosecutors throughout our LSSSs. At any given time, slightly more than 50% of these are qualified to prosecute special victim cases.



The Marine Corps continues to provide its trial counsel with formal training and trial preparation advice in addition to the mentorship and on-the-job training offered by the Regional Trial Counsel and other experienced judge advocates within the LSSS. With the exception of the West Region, each of the regional LSSSs has a civilian Highly Qualified Expert (HQE), hired based on their experience and expertise with complex special victim cases. The West Region HQE billet is temporarily vacant. These HQEs consult with counsel on every SVIP case. Our HQEs collectively possess more than 60 years of collective litigation experience. HQEs participate in all areas of trial preparation, including collaboration on prosecutorial merits memos, preparing charging documents, interviewing witnesses, preparing affirmative and responsive government motions, identifying expert witnesses, and organizing evidence to improve case presentation to the members. HQEs provide consistent guidance to trial counsel and assure continuity throughout the Marine Corps in the disposition of sexual assault cases. HQEs also help retain institutional knowledge in prosecution sections that otherwise experience regular turnover.

In FY16, TCAP continued to support trial counsel throughout the Marine Corps through training, sharing of resources, and creation of offense-specific “playbooks.” TCAP also sustained its recently-created SVIP training course for trial counsel and support Marines from across the Marine Corps. The week-long course focused on the prosecution of sexual assault cases and included training in building case theory, charging under Article 120, UCMJ, general trial advocacy skills, use of expert witnesses, victim support, and prosecutorial ethics. A mix of experienced practitioners, including senior judge advocates, district attorneys, and expert witnesses who testify in sexual assault cases provided the instruction. To enhance community development, TCAP continued near-daily publication on its blog that provides a forum to discuss recent case law and legislative developments, results of and lessons-learned from recent courts-martial, and suggested forms and sample motions. In FY16 TCAP also published “playbooks” for hazing and child pornography offenses. The playbooks dissect these UCMJ offenses from investigation to findings and combine resources a trial counsel will need to prosecute successfully a case from charging, discovery issues,



defenses, and draft motions. TCAP also created and sponsored the first Marine Corps Litigator of the Year competition in collaboration with faculty from the nationally recognized trial advocacy program at the American University Washington College of Law.

B. Defense Services Organization

The Marine Corps Defense Services Organization (DSO) is dedicated to providing criminal defense services to Marines worldwide. The DSO is a global organization of more than 70 attorneys geographically assigned within the four Regional Legal Services Support Sections. A Colonel (O-6) heads the organization as Chief Defense Counsel of the Marine Corps and Officer in Charge of the DSO. That officer reports directly to the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC), and exercises functional supervision over all DSO personnel on the SJA to CMC's behalf. The DSO also runs a Defense Counsel Assistance Program (DCAP), which currently has one active duty officer dedicated to it. In FY16, DCAP also employed two civilian HQEs (one located in the eastern region and one located in the western region). DCAP responds to queries from counsel in the field, and, since 2011, has aggressively sought out and sent defense counsel to training courses designed to ensure DSO attorneys maintain the knowledge and experience necessary to provide high quality representation in the most complex cases, including sexual assault cases.

The DSO utilizes training at the Naval Justice School as well as civilian training events sponsored by organizations such as the National Association for Criminal Defense Lawyers, Federal Public Defenders Association, Bronx Defenders Academy, and the National Criminal Defense College. Training that is more specific is provided internally and through consultation with the Marine Corps criminal defense HQEs. In FY16, the DSO provided zealous detailed representation to 1,580 Marines and Sailors.

C. Victims' Legal Counsel Organization



In FY16, the USMC Victims' Legal Counsel Organization (VLCO) continued to grow in size and in the development of the practice. The VLCO is comprised of 15 full-time active-duty VLC, 3 auxiliary counsel (legal assistance attorneys who also provide VLC services), 8 civilian support personnel, two enlisted support personnel, three reserve VLCs and the Officer-in-Charge and Deputy Officer-in-Charge at Headquarters Marine Corps. The VLCO has 11 total VLC offices, including the four regional offices, one at each major Marine Corps installation.

In FY16, the VLCO provided services to approximately 655 victims of crime. Of these victims, approximately 70% were victims of sexual assault, 25% of domestic violence and the remaining 5% of other crimes such as simple assault or larceny. Individual VLCs maintained an average of twenty-five cases at any given time. By contrast, in FY15 the VLCO assisted approximately 650 crime victims - where approximately 60% were sexual assault victims, 27% were victims of domestic violence, and 13% were victims of other crimes.

In FY16, the VLCO moved forward in establishing standard practices and procedures. Most significantly, the Marine Corps published its first VLC Manual signed by the Staff Judge Advocate to the Commandant of the Marine Corps. The Manual establishes standard operating procedures for the delivery of victims' legal services throughout the Marine Corps. Additionally, in FY16, the OIC of VLCO published the organization's first inspection checklist for all offices to use in preparation for the OIC's annual inspections. The annual inspections and site visits to every VLC office provide the OIC with information to assess the health of the organization and quality of representation provided.

Throughout the fiscal year, Marines and commanders developed a better understanding of the VLC program. All of the regional offices engage in outreach activities with commanders, staff judge advocates, victim service providers and professional military education classes. The outreach efforts include providing welcome aboard briefs to new personnel, one-on-one briefs to incoming commanders, courses to



new uniform victim advocates, and instruction in conjunction with other military justice counsel.

All VLCs and support personnel attend certification training, the annual VLCO training symposium, and have the opportunity to attend other military and civilian training courses throughout the year.

D. Training Standards and Resources

In addition to the training offered by Regional Trial/Defense/Victims' Legal Counsel and Senior Trial/Defense Counsel at the local level, Marine Corps trial, defense, and victims' legal counsel all had nationally recognized training available to them in FY16. Specifically, in FY16, every Marine assigned to a litigation billet was able to attend at least one of the following courses: Intermediate Trial Advocacy; Post-Trial Processing; Court Reporter Course; Basic Trial Advocacy; Military Judges Course; Advanced Trial Advocacy Course; Special Victims' Counsel Course; Legal Service Specialists - Military Justice Course; Defense Counsel Orientation; Cross Examination; Law Office Manager Course; Classified Info Litigation; Paralegal Litigation Support; Prosecuting Special Victims Cases; Defense Counsel Orientation; and a Child Advocacy Course. In these courses, the focus of training included working with victims, trial advocacy, digital exploitation of children, child abuse, gathering and analyzing evidence, and partnering with victim advocates and NCIS agents in investigating and prosecuting special victim cases. These courses were sponsored by a variety of institutions including: the Naval Justice School, the National District Attorney's Association, the Department of Justice, the National Advocacy Center, the Federal Law Enforcement Training Center, and the Army and Air Force JAG schools. Resources for counsel engaged in other complex litigation were also available both inside and outside the classroom. For example, the Navy National Security Litigation Division (OJAG Code 30) provides individualized training and advice to all trial counsel prosecuting national security cases.



The Marine Corps also continued its partnership with the United States Department of Justice's Office for Victims of Crime (OVC), which has provided valuable financial support and information on current victims' rights laws and trends. In FY16, the Marine Corps formed a new interagency agreement with OVC to provide \$40,000 per year from FY16 to FY19. This funding allows the Marine Corps to conduct training relating to victims' rights and victim assistance. In FY16, the Marine Corps used OVC funding to train 66 Victim-Witness Liaison Officers (VWLO) and Victim-Witness Assistance Coordinators (VWAC) at its Victim Witness Assistance Program (VWAP) Annual Training. This training taught VWAP officials their duties, helped them understand the rights and needs of victims and witnesses, and prepared them to assist commanders as they fulfill their VWAP responsibilities throughout the military justice process. This VWAP training also equipped VWLOs to work in conjunction with investigators, trial counsel, and other SVIP capability members who interact with and support crime victims.

E. Naval Justice Information System

In an effort to streamline the administrative burden of administering military justice, the Marine Corps, along with the Navy, continued their ongoing efforts to develop the Naval Justice Information System (NJIS). Although the system was expected to launch in FY16, it experienced delays that pushed the expected launch to FY17. Once released, NJIS will provide a common reference system for the data required for enterprise case management that will integrate information from law enforcement, criminal investigations, command actions, judicial actions, and corrections. NJIS is a web-based system that will provide access to 50,000 Navy and Marine Corps users worldwide and can support 5,000 concurrent users. The system will also provide data management from an enterprise perspective. Departmental policy will address governance issues and appropriate data/information will be visible to authorized users (i.e. Role Based Access Controls). NJIS will establish data standards to ensure interoperability with all of the required agencies for both information intake and reporting output. Once NJIS is launched, the system will provide the Department of



the Navy (DON) a capability that improves incident reporting, modernizes the DON's criminal justice processes, increases information sharing across the NJIS communities, and provides leadership access to data for tracking and analysis to better inform decision-making.

V. VIEWS ON THE SUFFICIENCY OF RESOURCES

The potential for any tactical military justice issue quickly to become a strategic issue has been the norm for the Marine Corps for over a decade. Within the Marine Corps legal community this reality results in two requirements: (1) retaining our most qualified judge advocates and legal service specialists; and (2) producing judge advocates with Masters of Law Degrees in Criminal Law.

In an effort to retain our best judge advocates, Judge Advocate Division is working with Marine Corps Manpower and Reserve Affairs to resume the Law School Education Debt Subsidy (LSEDS) program. LSEDS gives money to qualified judge advocates to offset significant law school debt that officers in other Military Occupational Specialties do not share, and helps first-tour judge advocates afford to remain on active duty. The LSEDS program was most recently implemented in FY14. The program utilized a board selection process to select the ten best and most fully qualified judge advocates on active duty. Continued funding of LSEDS assists judge advocate community leaders in the essential areas of talent management and recruiting and retaining our best and brightest against the backdrop of the ever-increasing challenges of military law.

In addition, Masters of Law degree (LL.M.) in criminal law provide judge advocates specialized understanding in technical and constitutional areas of criminal law and the Uniform Code of Military Justice. Judge advocates with this LL.M. serve in challenging military justice billets requiring expertise in military and criminal law issues. In particular, majors serve as senior trial or defense counsel in LSSSSs or joint law centers. Similarly, majors and lieutenant colonels with this specialty may be assigned



as regional trial or defense counsel. For FY16, thirteen judge advocates received LL.M.s in criminal law from an American Bar Association accredited program at a civilian institution or the Army Judge Advocate General's Legal Center and School. This program ensures judge advocates have the required knowledge to handle the systemic changes to military justice, increased operational demands, and other statutory or policy priorities. Ultimately, this LL.M. program enables the Marine Corps judge advocate community to provide legal support, consistent with the Marine Corps ethos, using Marine judge advocates, who are both MAGTF officers and lawyers.

VI. CONCLUSION

In FY16, the Marine Corps legal community accomplished its military justice mission in the face of tremendous challenges posed by scrutiny of and changes to our military justice practice. We will maintain our systematic efforts to improve the practice of law within the Marine Corps, with a focus on military justice, through continuous evaluation, adaptation, capture of best practices and standardization. As Judge Advocate Division works to implement the decisions from the FY16 MCJABs, the FY17 MCJABs will continue to analyze and recommend appropriate action on a wide array of military justice issues, to include the changes that must be made to fully implement the many military justice provisions of the FY 17 National Defense Authorization Act. By a continuous process of proposal, debate, and decision, we will advance more aggressively, responsively and responsibly the collective quality of the Marine Corps' legal practice, including its military justice practice.



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

Report Period: FY 2016[A]

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)							
TYPE COURT	TRIED		CONVICTED		ACQUITTALS		RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
	USN	USMC	USN	USMC	USN	USMC	
GENERAL	123	151	96	128	27	23	10%
BCD SPECIAL	135	208	123	184	12	24	-6.8%
NON-BCD SPECIAL	0	0	0	0	0	0	0
SUMMARY	30	302	29	298	1	4	-9.3%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT							-3.5%

PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES	96	
NUMBER OF BAD-CONDUCT DISCHARGES	82	
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	167	

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	197	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	184	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	22 [B]	

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

TOTAL ON HAND BEGINNING OF PERIOD		154	
GENERAL COURTS-MARTIAL	104		
BCD SPECIAL COURTS- MARTIAL	50		
REFERRED FOR REVIEW		386	
GENERAL COURTS-MARTIAL	202		
BCD SPECIAL COURTS- MARTIAL	184		
TOTAL CASES REVIEWED		369	



GENERAL COURTS-MARTIAL	199	
BCD SPECIAL COURTS-MARTIAL	170	
TOTAL PENDING AT CLOSE OF PERIOD		171
GENERAL COURTS-MARTIAL	108	
BCD SPECIAL COURTS-MARTIAL	63	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		2.79%

PART 5 – APPELLATE COUNSEL REQUESTS BEFORE U.S. NAVY-MARINE CORPS

COURT OF CRIMINAL APPEALS

NUMBER	369	
PERCENTAGE	100%	

PART 6 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (76)	20.6%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-20.8%
PERCENTAGE OF TOTAL PETITIONS GRANTED (8)	10.5%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-40.6%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA	2.2%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-54.2%

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD		4 [C]	
RECEIVED		3	
DISPOSED OF		4	
GRANTED	2		
DENIED	0		
NO JURISDICTION	2		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		3	

PART 8 – ORGANIZATION OF COURTS

TRIALS BY MILITARY JUDGE ALONE	451	
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GENERAL COURTS-MARTIAL	174	
SPECIAL COURTS-MARTIAL	277	
TRIALS BY MILITARY JUDGE WITH MEMBERS	165	
GENERAL COURTS-MARTIAL	100	
SPECIAL COURTS-MARTIAL	65	

PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ

NUMBER OF COMPLAINTS	31	
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PART 10 – STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	511,856	
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PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	8921 [D]	
RATE PER 1,000	17.4	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-31.6%	

Explanatory Notes

[A] Report Period. Case statistics were derived from the Navy and Marine Corps Case Management System.

[B] Part 3, Article 69. This figure represents only cases reviewed under Article 69(a)

[C] Part 7. This figure represents only cases reviewed under Article 69(b).

[D] Part 11. This figure was derived from Navy’s Quarterly Criminal Activity Report whereby Navy commanders report all known instances of criminal activity pursuant to JAGINST 5800.9C and from the Marine Corps Total Force System



SECTION 5

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE

**REPORT OF
THE JUDGE ADVOCATE GENERAL
OF THE UNITED STATES AIR FORCE**

OCTOBER 1, 2015 TO SEPTEMBER 30, 2016

INTRODUCTION

The United States Air Force Judge Advocate General's Corps (JAG Corps) continued to enhance the effectiveness of the military justice system, successfully integrating the increase in manpower authorizations to establish the right level of resources to prosecute criminal actions, vigorously defend Airmen, and provide legal representation to victims of sexual assault. This expansion helped address the increased workload in the prosecution and defense of sexual assault crimes, the rising caseload in the provision of legal counsel to victims of sexual assault, and the expansion of the SVC Program to include more classes of victims. The JAG Corps added an additional 6 Senior Trial Counsel positions (STC), from 18 to 24, and an additional 2 Senior Defense Counsel (SDC) positions, from 19 to 21. The Air Force also added 21 new funded paralegal billets to the Special Victims' Counsel (SVC) Program. These additional billets will ensure a Special Victims' Paralegal (SVP) is located at each SVC office. SVPs provide regular assistance to clients and continuity of operations (e.g., status updates to clients, case updates, referrals, and maintaining an office presence when the SVC is traveling). SVPs frequently attend child client meetings and witness interviews to protect both the client and the attorney. SVP support to SVCs is paramount as the complexity of representation continues to increase and the scope of representation expands.

In addition to the increased manpower, the reestablished judicial circuit structure in five locations around the world came into its own, with efficient assignment of counsel and court scheduling. Harnessing the institutional knowledge of our military judges and STCs also provided huge mentoring benefits to our wing legal offices -- STCs provided over 2,000 hours of training to Wing-level judge advocates, an achievement that the circuits made possible. In August, the Trial Judiciary, along with the STCs, SDCs and SVCs, also held its first Air Force Circuit Annual Training (AFCAT) at Joint Base Andrews, Maryland. This training event capitalized on the synergy of the circuits, fostering professionalism and collegiality.

THE AIR FORCE COURT OF CRIMINAL APPEALS

The Air Force Court of Criminal Appeals issued opinions in 192 cases in Fiscal Year (FY) 2016. At the end of FY 2015, the court had seven active duty judges assigned, three commissioners, two paralegals, and a clerk of court. At the end of FY 2016, the court had nine active duty judges, two commissioners, two paralegals, and a clerk of court—although the clerk of court position was vacant until near the end of the fiscal year, at which time it was upgraded and filled as a supervisory attorney position. At the end of FY 2015, the court had 226 cases docketed, 74 of which were pending the court's decision. Six cases were pending the court's decision for more than 180 days, with one case exceeding the *Moreno* standard. At the end of FY 2016, the court had 269 cases docketed, 70 of which were pending the court's decision. There were 32 cases pending the court's decision for more than 180 days, with five cases exceeding the *Moreno* standard.

The court issued three published opinions during this fiscal year and held oral argument in six cases, to include hearing oral argument at Fordham University School of Law School pursuant to its "Project Outreach" program.

During FY 2016, one of the court's appellate judges served on the United States Court of Military Commission Review (USCMCR), and three additional appellate judges have been nominated to serve on USCMCR. The USCMCR hears appeals of cases convened under the Military Commissions Act of 2009. The USCMCR not only hears cases with a finding of guilty from military tribunals at Guantanamo Bay, but also hears appeals on issues taken prior to and during trial.

Two of the court's appellate judges served as hearing officers for eight Air Force Environmental Impact Statement (EIS) hearings. An EIS hearing is conducted for actions that have the potential for significant environmental impact with a goal of providing the public and the decision makers with adequate information about the potential impact of military actions on the environment.

TRIAL JUDICIARY

The Air Force Trial Judiciary Directorate (JAT) is responsible for docketing and presiding over all Air Force general and special courts-martial, as well as an array of federal hearings. The Directorate is staffed by 23 active-duty trial judges, four reserve trial judges, two noncommissioned officers, one civilian employee, and six enlisted court reporters. The office of the Chief Trial Judge is co-located with the Central Docketing Office and the Court Reporter Manager at Joint Base Andrews, Maryland.

The Directorate is divided into five geographical judicial circuits, each led by a Chief Circuit Military Judge. The judges are headquartered at Ramstein Air Base, Germany, Joint Base Langley-Eustis, Virginia, Joint Base San Antonio-Randolph, Texas, Travis Air Force Base, California, and Kadena Air Base, Japan and serve the European, Eastern, Central, Western, and Pacific Circuits, respectively.

In October, the Directorate expanded to include the enlisted court reporters. Each circuit office has at least one enlisted court reporter assigned, with central tasking authority from the directorate. This marked the first step in transitioning all court reporters to the trial judiciary to further support timely transcription assistance worldwide.

In FY 2016, Air Force judges presided over 475 general and special courts-martial. Judges also served as preliminary hearing officers in 48 Article 32 hearings involving sexual offenses or complex allegations. Additionally, judges served as legal advisors for officer discharge boards and in post-trial hearings, contempt proceedings, and EIS public hearings.

In August, the Directorate, along with the senior trial, defense and special victims' counsel, held its first AFCAT at Joint Base Andrews. All Air Force trial judges attended the 5-day event, which provided the opportunity for the newly reestablished circuits to foster professionalism while also offering instruction on such areas as new statutes and rules related to sexual offenses, sentencing considerations, digital evidence, and recent appellate cases.

Air Force trial judges taught military justice in classrooms and courtrooms worldwide. The Chief Trial Judge and Deputy Chief Trial Judge instructed new military judges at The Army Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Air Force trial judges trained new judge advocates, trial and defense counsel, special victims' counsel, and staff judge advocates at the Air Force Judge Advocate General's School (AFJAGS), Maxwell Air Force Base, Alabama. Air Force trial judges also provided practical instruction at more than a dozen trial advocacy courses held throughout the world to enhance current and future practitioners' litigation skills. Judges continued their partnership with AFJAGS to create several web-based training series on impeachment, discovery, and evidentiary foundations.

Currently, there are three active duty judges detailed to support the military commissions. The Chief Judge continues to preside over the commission proceeding for the alleged USS Cole bombing, as well as a capital trial at Robins AFB, Georgia.

AIR FORCE JUDICIARY

The Air Force Judiciary Directorate (JAJ) is responsible for the administration of military justice across the Air Force. JAJ advises The Judge Advocate General (TJAG), the Chief of Staff of the Air Force (CSAF), and the Secretary of the Air Force (SecAF) on military justice matters, works with the other uniformed services to propose legislation and modifications to executive orders pertaining to military justice, assists convening authorities and staff judge advocates in the field, and provides the highest quality defense services to Airmen worldwide.

The Directorate performs its mission through five divisions: the Government Trial and Appellate Counsel Division (JAJG); the Appellate Defense Division (JAJA); the Trial

Defense Division (JAJD); the Military Justice Division (JAJM); and the Clemency, Corrections and Officer Review Division (JAJR).

GOVERNMENT TRIAL & APPELLATE COUNSEL DIVISION

APPELLATE GOVERNMENT COUNSEL

During this past year, nine active duty judge advocates, nine reserve judge advocates, and one civilian attorney vigorously represented the government in Article 66 and Article 67 appeals of Air Force courts-martial convictions. The Division also sought and obtained certification from TJAG in four cases for review by the United States Court of Appeals for the Armed Forces (CAAF), and filed government appeals in four cases under Article 62, UCMJ, at the Air Force Court of Criminal Appeals (AFCCA). When appropriate, the Division responded to petitions for extraordinary relief under the All Writs Act. The Division continued to vigorously defend the death sentence adjudged and approved in United States v. Witt, the Air Force's first death penalty case in nearly two decades. Following CAAF's order for a sentence rehearing in Witt, JAJG's senior trial and appellate government counsel traveled to the victims' families to prepare them for the additional capital sentencing litigation and delivered continued and appropriate victim and witness support.

Appellate Government Counsel zealously represented the government in 202 written briefs and 20 oral arguments before CAAF and AFCCA. Their advocacy resulted in notable appellate rulings during the year. In United States v. Slape, ___ M.J. ___ (A.F. Ct. Crim. App. 2016), a case of first impression, AFCCA agreed with JAJG in a published decision concerning the definition of temporary child custody for purposes of applying the spousal privilege contained in M.R.E. 504 in child sexual abuse cases. In Slape, the child victim was not related to either the appellant or the appellant's wife, but the facts of the case demonstrated the couple had sufficient temporary child custody to invoke the exception to the general rule permitting a spouse to refuse to testify against her husband. AFCCA established factors military judges should consider when determining if the spousal privilege exception applies. Following notable appellate jurisdiction rulings in favor of JAJG from CAAF in United States v. Arness, 74 M.J. 441 (C.A.A.F. 2015) and United States v. Labella, 75 M.J. 52 (C.A.A.F. 2015), CAAF and AFCCA granted multiple JAJG motions to dismiss for lack of jurisdiction. For example, in United States v. Refre, 75 M.J. 461 (C.A.A.F. 2016), CAAF granted JAJG's motion to dismiss for lack of appellate jurisdiction for a court-martial completed in 1978.

Appellate Government Counsel provided trial litigation support and training to the field throughout the year. Division counsel educated judge advocates and paralegals at Air Force training events such as the Military Justice Administration Course, The Dougherty-Nelson Continuing Legal Education Course, the Trial and Defense Advocacy Course, the Annual Survey of the Law course and the various sexual assault

prosecution courses hosted by the Air Force. In addition, counsel participated in training special agents of the Air Force Office of Special Investigations at the Federal Law Enforcement Training Center at Glynco, Georgia, and provided instruction to Drug Enforcement Agency analysts on providing effective courtroom testimony. Appellate counsel were also assigned to serve as lead trial counsel in several complex cases sent back by appellate courts for rehearing.

The Division receives crucial appellate counsel support from nine assigned reserve judge advocates, especially during manning shortages and caseload surges. They continue to provide superb support, greatly assisting the Division in carrying out its mission.

A summary of Air Force Appellate Government practice follows:

AFCCA	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>
Briefs Filed	233	188	175	193	168
Cases Argued	14	14	18	10	11

CAAF	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>
Briefs Filed	36	30	40	18	34
Cases Argued	9	9	14	13	9

SUPREME COURT	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY15</u>	<u>FY16</u>
Petition/Waivers Filed	1	1	1	0	1
Briefs Filed	0	0	0	0	0

SENIOR TRIAL COUNSEL

Senior Trial Counsel (STCs) are detailed to prosecute cases by the Division headquarters at Joint Base Andrews, Maryland. Their primary responsibility is to represent the government in the most complex general courts-martial. STCs prosecute approximately 85 percent of all Air Force general courts-martial and were detailed to over 90 percent of the Air Force's sexual-assault cases. Additionally, in FY16, STCs prosecuted over 65 special courts-martial. During the fiscal year, STCs also worked on discharge boards and other proceedings, as resources allowed.

Personnel authorizations for Fiscal Year 2015 grew from 18 STC positions to 24 positions. This expansion resulted from the addition manpower authorizations directed by SecAF to address the increased workload in the prosecution and defense of sexual assault crimes, the rising caseload in the provision of legal counsel to victims of sexual assault, and the expansion of the Special Victims' Counsel Program to include more classes of victims. This increase in manpower provided for the creation of 5 new Chief Senior Trial Counsel (CSTC) positions to serve as field grade leadership over the circuit counsel. During FY16, these five O-4 CSTCs, working in conjunction with the O-5 Chief Senior Trial Counsel of the Air Force, worked to support the military justice needs of legal offices within their circuits.

In FY 16, the STC program continued to leverage the experience and skill of its Special Victims Unit (SVU) prosecutors. The SVU prosecutors handle the most serious, most complicated, and highest-visibility sexual-assault cases in the Air Force. The SVU prosecutors, along with the rest of the STCs, are supported by the SVU's Chief of Policy & Coordination, who is the Division's focal point for issues related to sexual assault. One STC also acts as liaison to the Defense Computer Forensics Laboratory and is the Air Force's legal expert on issues related to digital evidence. At the close of FY 16, 11 STCs were qualified as SVU prosecutors.

In FY 16, STCs spent in excess of 3,000 days on temporary duty away from their home stations, and represented the government in more than 420 courts-martial and related hearings and proceedings. Again this year, in addition to other Air Force courses designed to enhance advocacy, STCs took part in both the Intermediate and Advanced Sexual Assault Litigation Courses along with members of the Division's leadership who attended as faculty. This year, as part of the first AFCAT at Joint Base Andrews, Maryland, the STCs received intensive training specially tailored to the high-profile cases they prosecute and enhanced peer-to-peer education in a variety of subject areas. In addition to training conducted within the Government Trial and Appellate Counsel Division, AFCAT also allowed the entire STC corps to train in plenary sessions alongside JAGs assigned to the Trial Judiciary, Trial Defense Division and Special Victims Counsel Division. This opportunity enhanced knowledge of the missions of the other divisions.

Additionally, STCs attended a variety of training offered by sister service and non-DoD sources. These trainings, such as the Navy's Prosecuting Complex Cases course and the National District Attorneys Association's Prosecuting Homicides course, add to the perspective of STCs and allows for the cross-feed of information from outside of the Air Force.

In total during FY 16, STCs provided approximately 2,300 man hours of training to the field in a combination of formal settings such as the courses named here, and informal office trainings conducted in conjunction with temporary duty. As a corps, STCs attended almost 1,300 man hours of training to improve advocacy and prosecution skills.

APPELLATE DEFENSE DIVISION

The Appellate Defense Division is responsible for delivering appellate defense services to airmen on appeal. In FY 2016, 10 active duty judge advocates, 9 reserve judge advocates, one civilian attorney and two paralegals served as champions on appeal for 348 airmen. Timely appellate review remained a priority, despite the number of enlarged cases with the AFCCA increasing from 41 enlarged cases on 1 Oct 15 to 79 enlarged cases on 1 Oct 16.

As in past years, reserve component judge advocates continued to provide significant support to JAJA. In FY 2016, reservists at JAJA submitted 42 Assignments of Error, filed 15 Petitions for Review at CAAF, and presented 2 oral arguments to CAAF. An O-5 reservist even acted as Division Chief from 17 May 2016 and 15 June 2016.

In the 2016 CAAF term, JAJ was the number one appellate defense division in the Department of Defense (DoD) with a 67 percent winning percentage at CAAF. In addition, Appellate Defense Counsel participated in Project Outreach arguments before AFCCA at Fordham University School of Law in New York City, and before CAAF at the University of Alabama Law School in Tuscaloosa, the University of Colorado School of Law in Boulder, and Peterson Air Force Base, Colorado.

In 2016, JAJA advocacy contributed to several notable rulings from appellate courts which helped clarify the rights of appellants and impacted the practice of military justice at the trial level. In United States v. Witt, CAAF set aside a death sentence and ordered a rehearing. In United States v. Chin, CAAF affirmed the authority of the CCAs to grant relief pursuant to Article 66c, regardless of the accused's pretrial waiver. In United States v. Gay, CAAF affirmed the statutory right of airmen to receive relief from the appellate courts when their post-trial conditions of confinement are harsher than their fellow civilian detainees without justification under civilian regulations. In United States v. Atchak, division attorneys persuaded CAAF that a court of criminal appeals need not authorize a rehearing when it disapproves a finding of guilty. CAAF held unanimously that AFCCA did not abuse its discretion by not authorizing a rehearing in this certified case. In United States v. Killion, division attorneys persuaded CAAF to dismiss a charge of provoking speech where the military judge failed to properly instruct the members because he directed the members to consider the speech from the perspective of a hypothetical average person rather than from the perspective of the actual audience. Finally, in United States v. Fetrow, AFCCA overturned a conviction and 25-year sentence in a sexual assault case based upon a published decision interpreting M.R.E. 414.

In FY 16, attorneys from the Appellate Defense Division supported and attended multiple training events outside the Air Force. JAJA counsel attended joint military Appellate Advocacy Training in the National Capital Region with the Army, Navy/Marine Corps and the Coast Guard, civilian Appellate Advocacy Training at University of North Carolina – Chapel Hill School of Government, and training provided by the Council of Appellate Lawyers in Philadelphia, Pennsylvania. Additionally, Division attorneys

continued to brief at various training to include the AFCAT at Joint Base Andrews, where it trained 25 Air Force Circuit Senior Defense Counsel (CSDCs) and Senior Defense Counsel (SDCs), and the Defense Orientation Course (DOC) at AFJAGS, where it taught two courses of 25 new Area Defense Counsel (ADCs), including an expanded, half-day block of instruction in the fall of 2016. Finally, six Appellate Defense Counsel conducted mock trial training at the Drug Enforcement Agency's Basic Intelligence Research Specialist course and the division participated in its first JAG Corps-wide appellate update with JAJG.

The following figures reflect the Division's workload over the past six fiscal years:

AFCCA

	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>
Briefs Filed	299	295	221	205	195	175
Cases Argued	9	12	10	8	10	14

USCAAF

	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY 14</u>	<u>FY 15</u>	<u>FY 16</u>
Supplements to Petitions	160	220	257	222	171	126
Grant Briefs	11	12	5	17	6	6
Cases Argued	17	9	10	13	13	11

SUPREME COURT

	<u>FY11</u>	<u>FY12</u>	<u>FY13</u>	<u>FY14</u>	<u>FY 15</u>	<u>FY 16</u>
Petitions	1	1	1	1	2	2
Briefs in Opposition	0	0	0	0	0	0
Briefs on the Merits	0	0	0	0	0	0

TRIAL DEFENSE DIVISION

The Trial Defense Division is responsible for providing all defense services throughout the Air Force through its worldwide team of ADCs, Defense Paralegals (DPs), SDCs, CSDCs, and Defense Paralegal Managers (DPMs). The Chief, JAJD, is assisted by a Deputy Chief, Policy and Training, and an Office Superintendent at Joint Base Andrews, MD.

During FY 16, the Division was staffed with 84 ADCs and 74 DPs. These ADC-DP teams were stationed at 69 operating locations worldwide. They were, in turn, supervised by the Division's 19 SDCs and 3 CSDCs. Each SDC supervised 4 to 5 ADC-DP teams and each CSDC in turn supervised 6 to 7 SDCs. Each of the 3 CSDCs was assisted by a DPM to help manage enlisted issues.

Personnel authorizations for FY 15 grew from 19 SDC positions to 21 positions. This expansion resulted from the addition of manpower authorizations directed by SecAF to address the increased workload in the prosecution and defense of sexual assault crimes, the rising caseload in the provision of legal counsel to victims of sexual assault, and the expansion of the SVC Program to include more classes of victims. During FY 16, the SDCs were consolidated from 19 operating sites down to the five circuit locations described above. Together, these 186 professionals provided defense services to Airmen around the world.

The continuing success of the Air Force's ADC program is largely attributable to its independence and the effective and zealous advocacy of its personnel. To ensure the best representation for Air Force clients, training remains JAJD's top priority. Each SDC provided on-the-job training and mentoring to the ADCs in his or her charge on a continuing basis. CSDCs likewise mentored the SDCs in their areas of responsibility. Newly appointed ADCs and DPs attend formal training at the Defense Orientation Course held at AFJAGS. All SDCs—new and old alike--attended a Division-run Leadership Course at Joint Base Andrews, Maryland. Defense personnel also attended Trial Advocacy Courses conducted at both AFJAGS and various civilian-sponsored courses.

MILITARY JUSTICE DIVISION

The Military Justice Division provides counsel and prepares positions on military justice law and policy for SecAF, CSAF, and TJAG. The Division represents the Air Force on the DoD Joint Service Committee on Military Justice. JAJM also assembles reports and responds to requests for information on military justice issues and cases from Congress, the White House, DoD, Headquarters Air Force, the media, and general public. In addition, JAJM conducts appellate review and processing of courts-martial on behalf of TJAG; prepares advisory opinions on military justice issues raised in applications submitted to the Air Force Board for Correction of Military Records (AFBCMR); and processes military justice actions for decision by SecAF and CSAF. The Division promulgates Air Force regulations and directives for the administration of military justice and provides guidance to more than 150 convening authorities and their supporting legal offices as well as training on the same.

During the past fiscal year, JAJM examined 33 records of trial for review under Article 69a, UCMJ, and five records under Article 69b, UCMJ; provided 103 advisory opinions concerning AFBCMR applications; and responded to 50 inquiries in specific cases requiring formal written replies to senior officials, including the President and members of Congress. Additionally, the Division reviewed and released over 19,500

pages of court records in response to more than 500 requests by members of Congress, the media, law enforcement entities, and individuals under the Freedom of Information Act. In its oversight role for the Air Force's Victim Witness Assistance Program (VWAP), JAJM supported legal offices as they provided assistance to 6,943 victims and 6,365 witnesses of crime in calendar year 2015.

JAJM twice presented the Military Justice Administration Course, a "back to basics" weeklong course attended by more than 120 judge advocates and paralegals. Division personnel also taught at additional courses, including the Staff Judge Advocate (SJA) Course (a required leadership course for judge advocates assigned to SJA positions); Gateway (an intermediate developmental leadership course for judge advocates in the grade of major); Annual Survey of the Law (continuing education for Air Reserve Component judge advocates and paralegals); and the Joint Military Judges Annual Training for military judges of all Services.

JAJM continued to expand the functionality of the Automated Military Justice Analysis and Management System (AMJAMS), which remained the premier military justice database among the Services, providing comprehensive case data for over three decades. AMJAMS had already been linked to the public website of The Air Force Judge Advocate General in order to make available the trial docket for general and special courts-martial across the Air Force. The Air Force had previously initiated website publication of trial results. In 2016, the two efforts were synchronized: AMJAMS now delivers directly to the public website information about scheduled trials and the results of completed trials. Meanwhile, JAJM continued to deliver new and updated military justice products of immediate utility to Air Force legal offices worldwide via the *Virtual Military Justice Deskbook*, which transitioned to a new platform in 2016.

Throughout 2016, JAJM supported the Judicial Proceedings Panel (JPP) in its study of adult sexual assault and UCMJ proceedings. JAJM organized presentations and testimony by more than 15 Air Force witnesses, facilitated site visits to six Air Force installations, and responded to requests for over 100,000 pages of documents from 200-plus courts-martial. In 2016, the JPP published four reports, and JAJM coordinated the Air Force comments and developed the implementation plan for JPP recommendations.

Finally, JAJM led the Air Force effort to produce the *Military Justice Act of 2016* (MJA), which was signed by the President on December 23, 2016. The MJA was the culmination of a multi-year effort that began when the Chairman of the Joint Chiefs of Staff requested and the Secretary of Defense directed a comprehensive review of the military justice system, which was conducted by the Military Justice Review Group (MJRG). The MJA encompasses the most sweeping changes to the UCMJ in over 30 years. JAJM drafted Air Force positions on the legislative proposal and obtained SecAF coordination after fully informing Air Force senior leaders about the proposed changes and their impacts. Through its role on the Joint Service Committee on Military Justice (JSC), JAJM is proud to have contributed -- directly, substantively, and significantly -- to the overhaul of the UCMJ.

CLEMENCY, CORRECTIONS AND OFFICER REVIEW DIVISION

At the end of FY 16, 352 Air Force personnel were in confinement. Of those, 100 inmates were in long-term confinement at the United States Disciplinary Barracks, Fort Leavenworth, Kansas, and 43 were serving their sentences in the Federal Bureau of Prisons system. The number of Air Force members and former members on parole or Mandatory Supervised Release at the end of fiscal year 2016 was 53.

During the reporting period, JAJR reviewed 15 Article 71, UCMJ, officer dismissal cases. SecAF approved the dismissals in each of those cases. The division reviewed two enlisted cases for Secretarial clemency under Article 74, UCMJ. SecAF declined to grant clemency in either case. The division also reviewed three cases for Presidential Pardon consideration. Of those, one was granted a Presidential Pardon. That case involved an Air Force physician convicted of conduct unbecoming of an officer for stealing merchandise valued at about \$11.95.

THE JUDGE ADVOCATE GENERAL'S SCHOOL

The Air Force Judge Advocate General's School (AFJAGS) is the educational arm of the JAG Corps. Located at Maxwell AFB, Alabama, AFJAGS provided education and training in all aspects of military legal practice to attorneys and paralegals from all military services, other federal agencies, and several foreign countries. Military justice instruction topics included advocacy, administration, the rules of evidence, the rules of procedure, and sexual assault policy and response. AFJAGS faculty members also provided instruction on military justice for several schools and colleges throughout Air University, the Air Force's center for professional military education. During FY 2016, AFJAGS faculty members instructed more than 16,000 students at these military institutions.

Additionally, AFJAGS published 10 articles concerning military justice and other criminal justice issues in *The Reporter* and *The Air Force Law Review*. With the assistance of subject matter experts from the Administrative Law Directorate (HAF/JAA); Air Force Legal Operations Agency's Civil Law & Litigation Directorate (AFLOA/JAC); and the AF Judiciary, AFJAGS significantly revised the School's flagship publication, *Military Commander and the Law*, to include significant revisions to the military justice portions of this vital commanders' resource guide which incorporated new law and policy in the sexual assault and prevention arena. *Military Commander and the Law* was published online in July 2016, and is currently being distributed in hard copy to Air Force legal offices and commanders worldwide. In addition, AFJAGS produced webcasts where subject-matter experts taught current military justice topics to personnel assigned to all base legal offices, ADC offices, and SVC offices. In FY 16, there were several live webcasts on military justice topics including significant changes following the passage of the *2016 National Defense Authorization Act* and the *Manual for Courts-Martial Update*. These webcasts were seen live by over 700 JAGs and paralegals and are now available "on demand" on Campus, is a web-based

collaborative learning and management system administered by AFJAGS and accessible to all members of the JAG Corps.

More than 2,400 students attended in-residence and distance education courses in FY 16. With nearly 60 JAG School course offerings, the following courses devoted substantial resources to military justice-related topics:

Advanced Sexual Assault Litigation Course
Advanced Trial Advocacy Course
Annual Survey of the Law
Article 32 Pretrial Hearing Officer Course (Distance Education)
Defense Orientation Course (for new Area Defense Counsel and Defense Paralegals)
Gateway (the JAG Corps' advanced leadership course for field grade officers)
Intermediate Sexual Assault Litigation Course (held regionally in the United States and overseas)
Joint Military Judges' Annual Training
Judge Advocate Staff Officer Course
Law Office Manager Course
Military Justice Administration Course
Paralegal Apprentice Course
Paralegal Craftsman Course
Senior Enlisted Legal Orientation Course
Senior Officer Legal Orientation Course
Special Victims' Counsel Course
Staff Judge Advocate Course
Trial and Defense Advocacy Course
Victim/Witness Assistance Program Course (Distance Education)

In addition to the above courses, AFJAGS continued to lead the way in the development of a "full spectrum" military justice curriculum, expanding the Special Victims' Counsel Course from 5 to 8 duty days, as well as creating 6 new blocks of instruction for SVCs attending the Intermediate Sexual Assault Litigation Course. To further enhance military justice advocacy training, AFJAGS continued administering the TRIALS program – "Training by Reservists in Advocacy and Litigation Skills" – where teams of JAG School faculty, augmented by Reserve judge advocates, conduct regional courses in foundational advocacy skills. In FY 16, TRIALS programs were conducted at 8 locations: Charleston AFB, South Carolina; Travis AFB, California; Maxwell AFB, Alabama; Nellis AFB, Nevada; Ramstein AB, Germany; Joint Base San Antonio-Lackland, Texas; Ellsworth AFB, South Dakota; and Peterson AFB, Colorado.

To complete the circuit of senior leader military justice training already provided by AFJAGS to rising group and wing commanders in the Senior Officer Legal Orientation Course (SOLO), AFJAGS developed and deployed the *General Court-Martial Convening Authority (GCMCA) Training and Resource Guide*. These training materials are designed to facilitate in person, "table top" refresher training to GCMCAs, administered by their respective SJAs. The training materials consist of a compact,

comprehensive set of PowerPoint slides with detailed instructor notes for the SJAs briefing their GCMCAs and a stand-alone *Resource Guide*. This guide has bullet background papers on topics of particular interest to the successful administration of GCMCA duties, ranging from administrative discharges; nonjudicial punishment, courts-martial; and sexual assault prevention and response. AFJAGS will annually review, update and redistribute these materials to all Major Command (MAJCOM) SJAs .

Finally, under the direction of the Professional Development Directorate (JAX) and in conjunction with the Air Force Legal Operations Agency (AFLOA) and MAJCOM SJAs, AFJAGS prepared the JAG Corps' first *Career Field Education and Training Plan (CFETP)* for judge advocates. The plan identifies key learning areas and levels of learning within those areas to establish a "life cycle" for legal training over the course of a judge advocate's career. Review and finalization of the CFETP is an ongoing project, but its preliminary draft sets military justice training standards at three AFJAGS courses. Those include the Judge Advocate Staff Officer Course (initial training for new Judge Advocates), Gateway and the Staff Judge Advocate Course.

LEGAL INFORMATION SERVICES

The Legal Information Services Directorate (JAS) acquires and develops new legal information technology (IT) tools and improves existing ones to better support military justice business processes throughout the Air Force.

The JAG Corps continued development planning and requirements validation efforts in pursuit of capabilities for a Disciplinary Case Management System (DCMS) that will replace the Automated Military Justice Analysis and Management System (AMJAMS) as well as the Web-based Airman Separation Program (WASP), Judicial Docketing System (JDS), and other disciplinary-related applications hosted by JAS. Working with the Air Force's Deputy Chief Management Officer and its consulting contractors, JAS and the JAG Corps military justice subject matter experts compiled a contextual model and data reference model, in addition to performing course of action analysis, which are Step 3 deliverables pursuant to the Air Force's Service Development and Delivery Process (SDDP). The Step 3 requirements are complete and the Bounded User Requirements (BUR) document has been approved. JAS is working with the Air Force Life Cycle Management Center's (AFLCMC) Business and Enterprise Systems Directorate (PEO-BES) on preparing the requirements for solicitation and acquisition as well as working with JAX on funding.

As reported last year, when the Air Force initiated the SVC program in January 2013, JAS deployed a SharePoint site for use by SVCs to track cases; the SharePoint site was designed as a temporary solution until a more robust case manager could be acquired and developed. After learning of a commercial case management software (OpenText Cordys) hosted by the Defense Logistics Agency (DLA), in September 2015 JAS contracted through DLA for the development of an SVC Case Manager System. The design phase was completed in late December 2015 and initial program testing began in October 2016. Although testing was initially successful, DLA has experienced

difficulty deploying the program to its production environment, delaying the release into 2017. While addressing SVCs' need for a case management system, the project also serves as a pilot program for assessing whether the Cordys software is scalable for the JAG Corps' larger Disciplinary Case Management System requirements.

While planning to replace AMJAMS, JAS continued to coordinate with JAJM on needed upgrades to AMJAMS to maintain its usefulness pending funding and acquisition of a replacement DCMS. Two upgrade releases to AMJAMS in early 2015 implemented security upgrades. Two additional releases in December 2015 and January 2016 included, respectively, the ability to generate the new *Report of Result of Trial Memorandum* and verification of adjudged findings and sentences in courts-martial by NAF/MAJCOM legal offices. Additionally, AMJAMS was modified to allow automatic publication of court-martial results to the JAG Corps "Public Docket" webpage, increasing transparency of military justice processes.

SPECIAL VICTIMS' COUNSEL DIVISION

The SVC Division delivers victim-centered advice and advocacy through comprehensive, independent representation to sexual assault victims worldwide, assists them in obtaining support and recovery resources, and promotes greater confidence in the military justice process and the United States Air Force. SVCs and SVPs provide exceptional representation and advocacy for RegAF members and reservists, regardless of the accused's status, and for dependents, retirees, Cadets and DoD civilians, when the accused is subject to the UCMJ.

During FY 16, 10 new SVC offices opened, increasing from 33 SVCs in 32 locations to 45 SVCs in 42 locations. At end of the fiscal year, all 6 SSVCs billets, 45 of 50 SVCs billets and 25 of 46 SVPs billets were filled. This gap in SVPs reflects the additional 21 billets funded in FY 16, which we anticipate filling in FY 17. The headquarters staff continues to include a Colonel (O-6) SVC Program Chief, Lieutenant Colonel (O-5) Deputy Chief, GS-14 Associate Chief and Master Sergeant (E-7) Paralegal Manager. This spring, the O-5 Senior SVC (SSVC) responsible for appellate practice and outreach received the Harmon Award as the Air Force Judge Advocate General's Corps' Reserve Field Grade Officer of the Year. Her exceptional leadership, superior dedication and outstanding service, particularly to the Program's provision of service to victims during the appellate process, earned her this prestigious award.

As mentioned previously, the program's 21 additional SVP billets will expand the capability and capacity of the SVC program. Currently, the SVC Program has 25 SVPs. The additional 21 SVPs will ensure direct paralegal support at each SVC office world-wide. SVPs play a vital role by increasing accessibility to information for clients and assisting the SVC with interviews, particular with child victims. SVPs significantly expand program outreach by essentially doubling the number of available briefers. Finally, SVPs assisted with the procurement of equipment and establishment of new SVC offices world-wide.

The SVC Division continuously educates airmen and promotes SVC services. Division personnel provide briefings at formal training courses conducted at Maxwell AFB including Commissioned Officer Training, Air Command and Staff College, Air War College, the Senior Enlisted Legal Orientation Course, the Senior Officer Legal Orientation Course and many of the JAG Corps courses held at AFJAGS. Locally, SVCs and SVPs brief new airmen at the First Term Airman Course and Newcomers Briefings as well as senior base leaders at Wing Staff meetings and First Sergeants Symposia and Breakfasts. SVCs instructed other JAG Corps members in venues such as the Annual Survey of the Law and the AFCAT, and through innovative means such as webcasts and video teleconferences. Because SVCs represent victims only upon their request, SVCs continue to educate referring agencies at Sexual Assault Response Coordinators courses and Air Force Office of Special Investigations Sexual Crimes Intermediate Training programs.

SVCs continue to broaden their scope of representation beyond the courtroom. Victims frequently support alternative dispositions in their cases. As such, SVCs have represented clients in administrative discharge boards when accuseds have been subject to discharge, as well as advocated to commanders during the nonjudicial punishment process by providing Victim Impact Statements. Victims may also be the subject of an administrative hearing based upon perceived poor performance or collateral misconduct. One SVC has served as co-defense counsel at a client's Credentialing Board where the client successfully retained her medical license. Another SVC represented a client in a Merit Systems Protection Board hearing where her witness testimony was key to the offender's termination. In the development of DoD civilian employee representation, an SVC advised her client in an Equal Opportunity informal mediation hearing. In a different case, the same SVC actively worked on her civilian client's behalf to obtain a Permanent Change of Station and convinced the GCMCA to impose non-judicial punishment on an O-6 offender.

The Air Force SVC Program Chief led the coordination for the DoD's response to the FY 16 *National Defense Authorization Act* requirement to establish SVC program oversight, guiding principles, and standardization of training and performance measures. Subsequently, the Program Chief was appointed by the DoD General Counsel as the inaugural Chairperson of the SVC/VLC Inter-service Coordination Committee, which is charged with ensuring program coordination among the Services and collaboration of best practices and lessons learned as the programs continue to develop. SVC Program leadership also worked closely with the DoD Sexual Assault Prevention and Response Retaliation Working Group. The SVC program submitted exceptional examples of the support and advocacy they provide clients as part of the required quarterly reports regarding incidents and resolution.

At the end of FY 16, SVCs had represented 2,692 victims over the life of the program, of which 79 were children. As the year closed, the SVC program was actively representing 1,333 clients, of which 61 were children. During the fiscal year, SVCs participated in 124 preliminary hearings and represented clients in 124 courts-martial, of which 12 involved child victims. SVCs advocated to ensure their clients' rights and

privileges were protected through 97 motions. Further, SVCs represented clients in 406 interviews with investigators, defense counsel, and trial counsel. Outside the military justice process, SVCs maximized the opportunity to ensure client safety and well-being through expedited transfers, including assisting a client who was the victim of the Article 120c, UCMJ, offense of broadcasting or distributing explicit images and facilitating the transfer of an accused at the request of a RegAF member's dependent victims.

SVC client feedback about their experience with the SVC Program continues to be overwhelmingly positive. An impressive 86% of clients surveyed indicated they were "extremely satisfied" with their SVC's representation and 13% were "satisfied," resulting in an overall 99% satisfaction rate. Importantly, 99% of those surveyed would recommend other victims request an SVC and extraordinarily, that percentage has remained the same in 2014, 2015 and 2016.

PERSONNEL

As of 30 September 2016, the Air Force Judge Advocate General's Corps had 1,278 judge advocates on active duty. Company grade officers (lieutenants and captains) made up 47% (601) of that number. Approximately 25% (318) were majors and approximately 19% (237) were lieutenant colonels. Colonels and above, including one lieutenant general, one major general, and one brigadier general, comprised approximately 10% (123) of the Corps. As of 30 September 2016, there were 829 paralegals on active duty. Senior airmen and below made up approximately 27% (226) of that number. Staff sergeants made up approximately 23% (188), while 28% (232) were technical sergeants, and master sergeants made up approximately 16% (137). Senior master and chief master sergeants made up 4% (32) and 2% (14) respectively. In addition, there were 906 DAF full-time civilians, of which 59% (536) were attorneys and 41% (370) were non-attorneys. Grade breakdown includes 317 GS-11s and below, 67 GS-12s, 133 GS-13s, 192 GS-14s and 197 GS-15s. The Air Reserve Component (ARC) of the JAG Corps included 971 Air Reserve Individual Mobilization Augmentee (IMA), Air Force Traditional Reserve unit-assigned, and Air National Guard judge advocates, of which 26% (252) were company grade officers (lieutenants and captains) and 62% (599) were field grade officers (majors and lieutenant colonels). The remaining 12% consisted of 113 colonels, three brigadier generals, and two major generals. The ARC also includes 389 paralegals, of which 5% (21) were airmen or airmen first class, 11% (44) were senior airmen, 25% (98) were staff sergeants, 28% (109) were technical sergeants, 28% (110) were master sergeants, 4% (15) were senior master sergeants, and 3% (13) were chief master sergeants.

CHRISTOPHER F. BURNE
Lieutenant General, USAF
The Judge Advocate General

Period: Fiscal Year 2016

PART 1 - BASIC COURTS-MARTIAL STATUS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE(+)/ DECREASE (-) OVER LAST REPORT
GENERAL	245	159	74	21.89%
BCD SPECIAL	230	82	29	1.77%
NON-BCD SPECIAL [A]		118		3.51%
SUMMARY	94	89	5	-3.09%
OVERALL RATE OF INCREASE (+) / DECREASE (-) OVER LAST REPORT				8.59%

PART 2 - DISCHARGE APPROVED

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES [B]		97
NUMBER OF BAD CONDUCT DISCHARGES		53
SPECIAL COURT-MARTIAL (CA LEVEL)		
NUMBER OF BAD CONDUCT DISCHARGES		82

PART 3 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 - GENERAL COURTS-MARTIAL	139
FOR REVIEW UNDER ARTICLE 66 - BCD SPECIAL COURTS-MARTIAL	82
FOR EXAMINATION UNDER ARTICLE 69 - GENERAL COURTS-MARTIAL	16

PART 4 - WORKLOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		226	
GENERAL COURTS-MARTIAL	158		
BCD SPECIAL COURTS-MARTIAL	68		
REFERRED FOR REVIEW		221	
GENERAL COURTS-MARTIAL	139		
BCD SPECIAL COURTS-MARTIAL	82		
TOTAL CASES REVIEWED		192	
GENERAL COURTS-MARTIAL	135		
BCD SPECIAL COURTS-MARTIAL	57		
TOTAL PENDING AT CLOSE OF PERIOD		255	
GENERAL COURTS-MARTIAL	162		
BCD SPECIAL COURTS-MARTIAL	93		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD (192/199)			-3.52%

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

NUMBER	220
PERCENTAGE	99.55%

PART 6 - U.S. COURT OF APPEALS FOR THE ARMED FORCES

PERCENTAGE OF AFCCA REVIEWED CASES FORWARDED TO USCAAF (139/192)	72.40%	
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-9.12%	
PERCENTAGE OF TOTAL PETITIONS GRANTED (11/139)	7.91%	
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-6.76%	
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY AFCCA (11/139)	5.73%	
RATE OF INCREASE (+) / DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-6.23%

PART 7 - APPLICATIONS FOR RELIEF, ARTICLE 69(b)			
PENDING AT BEGINNING OF PERIOD		0	
RECEIVED		5	
DISPOSED OF		5	
GRANTED	0		
DENIED	3		
NO JURISDICTION	2		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	
PART 8 - ORGANIZATION OF COURT			
TRIALS BY MILITARY JUDGE ALONE		284	
GENERAL COURTS-MARTIAL	132		
SPECIAL COURTS-MARTIAL	152		
TRIALS BY MILITARY JUDGE WITH MEMBERS		178	
GENERAL COURTS-MARTIAL	101		
SPECIAL COURTS-MARTIAL	77		
PART 9 - COMPLAINTS UNDER ARTICLE 138			
NUMBER OF COMPLAINTS	47		
PART 10 - STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH	308,190		
PART 11 - NONJUDICIAL PUNISHMENT (ARTICLE 15)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		3,954	
RATE PER 1,000		12.83%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-1.86%	
EXPLANATORY NOTES			
[A] Of the 229 SPCMs tried and acted upon, there were 82 convictions with a BCD adjudged and approved, 118 convictions without a BCD adjudged and approved, and 29 acquittals.			
[B] This includes 23 officer dismissals and 74 enlisted dishonorable discharges.			

SECTION 6

REPORT OF THE JUDGE ADVOCATE GENERAL OF THE COAST GUARD

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

October 1, 2015 to September 30, 2016

PERSONNEL AND TRAINING

The Coast Guard has 210 officers designated as judge advocates serving on active duty in both legal and non-legal assignments. Coast Guard lawyers also serve in legal billets outside the Coast Guard including the Staff Judge Advocate to Joint Interagency Task Force South and senior staff attorneys (O-4 and O-5) assigned to NORTHCOM, AFRICOM, SOUTHCOM, PACOM, the Naval War College, the Defense Institute of International Legal Studies, and the Naval Justice School. The Coast Guard also has several active duty judge advocates detailed to the Department of Justice, Department of State, and Department of Homeland Security.

Fifty-three judge advocates are currently assigned in non-legal “out-of-specialty” billets. They include a Rear Admiral who serves as the First District Commander; a Rear Admiral who serves as Assistant Commandant for Command, Control, Communications, Computers, and Information Technology (C4IT) and Commander, Coast Guard Cyber Command; a Rear Admiral who serves as Deputy Director of Operations at U. S. Northern Command (NORTHCOM); and, most notably, an Admiral who serves as the Vice Commandant of the Coast Guard and is the first career Judge Advocate from any service to be promoted to the rank of Admiral and receive a fourth star. Other judge advocates in out-of-specialty assignments include command cadre of Coast Guard cutters, sectors, training centers, and support commands. The Coast Guard employs 102 civilian attorneys ranging from GS-13 to SES.

In fiscal year 2016, twenty-two Coast Guard officers completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified under Article 27(b), UCMJ. In addition, the Coast Guard sent attorneys to forty different courses of instruction during fiscal year 2016, primarily at the various service JAG schools. Nineteen Coast Guard officers are currently undergoing postgraduate studies to complete a JD degree and will be certified as judge advocates at the successful completion of their studies. Two judge advocates are attending the Graduate Course at the United States Army Judge Advocate General’s Legal Center and School (TJAGLCS) and another is a fellow at the Center for Law and Military Operations at TJAGLCS. Two judge advocates are pursuing Masters of Law (LLM) in Cyber Law and International Law.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

The judges on the U.S. Coast Guard Court of Criminal Appeals at the end of fiscal year 2016 were:

Chief Judge Lane I. McClelland
Judge John F. Havranek
Judge Brian M. Judge
Judge Peter J. Clemens
Judge Scott C. Herman
Judge Robert W. Bruce
Judge Laurina M. Spolidoro

MILITARY JUSTICE ORGANIZATION

Fourteen Staff Judge Advocates (SJA) advise eighteen officers exercising general court-martial jurisdiction. Those fourteen SJAs as well as three additional independent duty SJAs at training centers advise approximately 350 officers exercising special court-martial jurisdiction. Responsibility for detailing trial defense counsel to general and special courts-martial rests with the Chief, Defense Services Division, Office of Member Advocacy and Legal Assistance, which is a staff office reporting to the Deputy Judge Advocate General. Pursuant to an inter-service memorandum of understanding, the U.S. Navy provides trial defense counsel for Coast Guard courts-martial. In return, seven Coast Guard attorneys are assigned to full time duty, typically for two-year assignments, at six Navy Defense Service Offices.

The Coast Guard had two general court-martial trial judges and eight collateral-duty special court-martial trial judges at the end of fiscal year 2016. The chief trial judge details all military judges to Coast Guard courts-martial.

The Office of Military Justice at Coast Guard Headquarters is responsible for representing the United States in all court-martial appeals and providing support to staff judge advocates and trial counsel throughout the Coast Guard. The office is also responsible for developing military justice policy for the Coast Guard, including participation on the Joint Service Committee on Military Justice. A Captain(O-6) serves as the Chief of Military Justice. A GS-15 Highly Qualified Expert is also assigned to this office and also serves as Chief Prosecutor. Three judge advocates are assigned primary duty as appellate government counsel.

Additionally, the Coast Guard's Special Victims' Counsel (SVC) is staffed by three full-time SVCs stationed in Washington, DC, and three full-time SVCs, including the Program Deputy, stationed in Alameda, California. Fourteen additional Coast Guard judge advocates serve as special duty SVCs. This composition and assignment of SVCs helps to ensure all sexual assault victims receive timely and effective representation and advice. Prior to representing their first client, all Coast Guard SVCs attend specialized certification training and serve in an assistant/apprentice role.

MILITARY JUSTICE STATISTICS

Fiscal Year	16	15	14	13	12	11	10
General Courts-Martial	17*	19	23	09	14	06	12
Special Courts-Martial	15	13	22	14	14	32	20
Summary Courts-Martial	22	23	30	20	17	19	09
Total	54	55	75	43	45	57	41

* This number does not include the case of *United States v. Sullivan*, which was deemed a mistrial after the general court-martial concluded. It is currently referred for re-trial in FY2017.

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains the Coast Guard, fiscal year 2016 military justice statistics.

APPELLATE REVIEW PROCESS

The Coast Guard Court of Criminal Appeals met its goal of issuing an opinion within eighteen months or less of the date the case was referred in 21 of the 28 cases decided in fiscal year 2016. In *United States v. Gomez* and *United States v. Mattingly*, the court issued its decision twenty months after referral. In *United States v. Ortega* and *United States v. Newmans*, the court issued its decision twenty-one months after referral. In *United States v. Sylvester*, *United States v. McCoy*, and *United States v. Bush*, the court issued its decision nineteen months after referral.

In fiscal year 2016, there were no court-martial convictions that were reversed as a result of command influence or denial of the right to a speedy review. There were no cases this fiscal year in which the Coast Guard Court of Criminal Appeals found a provision of the UCMJ unconstitutional.

MEASURES TO ENSURE COMPETENCY OF MILITARY JUSTICE PRACTICE

The Coast Guard has taken several steps to increase trial and defense capabilities, and to provide additional exposure to trial work for our judge advocates.

The Coast Guard has also started augmenting trial capabilities at the Legal Service Command (LSC). The LSC is the only legal office that has judge advocates serving full-time as trial counsel (a total of nine, including two dedicated senior trial counsel serving as “branch chiefs”). The LSC has also hired one full time civilian paralegal to work exclusively on military justice matters, and is in the process of hiring

another. As part of a 2017 resource proposal, the LSC is expecting the addition of an additional four O4s and four O3s in dedicated trial counsel positions. After the LSC receives these positions, it will be responsible for providing trial counsel services on all District and Area cases involving serious misconduct and all cases arising out of the DCMS field enterprise, which accounts for the vast majority of Coast Guard military justice prosecutions.

Also, the Office of Military Justice provides technical support to staff judge advocates and trial counsel and has periodically participated in cases at the trial level. The GS-15, an experienced retired judge advocate, has served alongside judge advocates as trial counsel in a highly complex courts-martial. Additionally, the office publishes practices guides and training resources on a Coast-Guard wide information sharing website.

In addition to military justice experience, many field legal offices maintain active Special Assistant U.S. Attorney (SAUSA) relationships with one or more U.S. Attorney offices. These assignments also develop judge advocates' trial and advocacy skills. Coast Guard SAUSAs generally prosecute felony cases arising out of Coast Guard operations. Five full-time SAUSAs in the Southern and Middle Districts of Florida, District of Puerto Rico, and the Central and Southern Districts of California focus on prosecution of drug and migrant smuggling cases. There are also many collateral duty SAUSA relationships around the country with Coast Guard judge advocates assisting in prosecution of not only drug and migrant smuggling cases, but other issues ranging from environmental crimes to seaman's manslaughter.

Coast Guard judge advocates are trained initially with the Navy and Marine Corps at the Naval Justice School, and regularly participate in trial advocacy courses offered by the Army, Navy, and Air Force, to include specialized courses, most particularly those dealing with sexual assault. The Coast Guard has also sent judge advocates to courses sponsored by the Department of Justice National Advocacy Center and those offered by the National District Attorneys Association. The other armed forces permit the Coast Guard to make use of their Trial Counsel Assistance Program and Highly Qualified Experts, which significantly add to the depth of knowledge and expertise available to Coast Guard trial counsel. In Fiscal Year 2016, Coast Guard counsel also attended the American University Advanced Trial Advocacy training program and the Marine Corps Trial Counsel Assistance Program annual training.

The Coast Guard had two full time general court-martial judges, along with eight collateral duty judges who hear only special courts-martial, this fiscal year. Starting in the summer of 2017, the Coast Guard will have three full time court-martial judges (1 CAPT, as the Chief Trial Judge, and 2 CDRs) who will hear all court-martial cases. Coast Guard judges are selected based on trial and staff judge advocate experience and attend initial training with all of the other services at the Military Judge Course at the Army's Judge Advocate General's Legal Center and School in Charlottesville, Virginia. Coast Guard judges also attend the Joint Annual Military Judges Training (JMJAT). Several Coast Guard judges have also pursued individual courses as well as successful

completion of certificates from the National Judicial College in Reno, Nevada, and are members of the National Conference of Specialized Court Judges of the ABA Judicial Division.

To date the Coast Guard has not tried a national security case. As a matter of policy, the Coast Guard does not try capital cases. If it were necessary for the Coast Guard to try of a case of such seriousness that it could be referred as capital under the UCMJ, the Coast Guard would refer the case as a non-capital general court-martial and rely on the assistance of the other services to ensure proficient prosecution and defense.

The Coast Guard also provides training for civilian and enlisted legal support personnel to assist them in meeting legal technician and paralegal performance qualification standards prescribed by the Judge Advocate General. Enlisted personnel also receive training through the Naval Justice School's courses and programs.

VIEWS OF THE JUDGE ADVOCATE GENERAL ON RESOURCES

The Coast Guard consistently provides adequate resources to its legal program to perform its military justice functions. Its experienced Judge Advocates are proficient in their performance of military justice responsibilities. The Judge Advocate General chartered a working group that studied the Coast Guard's military justice system and proposed ways to increase the proficiency of its practice. We are continuing to implement, in phases, the various recommendations as to ensure continuity of service. The service Attorneys are supported by civilians and enlisted personnel in the yeoman rating sufficient in number to support the mission. In addition, the Coast Guard is still examining the feasibility of creating a separate enlisted legalman rate to provide both increased support and professional development of the enlisted workforce.

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

APPENDIX A: U.S. COAST GUARD MILITARY JUSTICE STATISTICS

Report Period: 1 OCTOBER 2015 - 30 SEPTEMBER 2016

PART 1 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTE D	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
GENERAL [A]	17	15	02	6.25%
BCD SPECIAL	15	13	02	-6.25%
NON-BCD SPECIAL [B]	0	0	00	0%
SUMMARY	22	22	00	-4.35%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-4.35%

PART 2 – DISCHARGES APPROVED

GENERAL COURTS-MARTIAL				
NUMBER OF DISHONORABLE DISCHARGES			04	
NUMBER OF BAD-CONDUCT DISCHARGES			03	
NUMBER OF DISMISSALS			02	
SPECIAL COURTS-MARTIAL				
NUMBER OF BAD-CONDUCT DISCHARGES			05	

PART 3 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL			10	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL			5	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL			8	

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

TOTAL ON HAND BEGINNING OF PERIOD			36	
GENERAL COURTS-MARTIAL	20			
BCD SPECIAL COURTS-MARTIAL	16			
REFERRED FOR REVIEW			16	
GENERAL COURTS-MARTIAL	11			
BCD SPECIAL COURTS-MARTIAL	05			
TOTAL CASES REVIEWED			28	
GENERAL COURTS-MARTIAL	19			
BCD SPECIAL COURTS-MARTIAL	09			

TOTAL PENDING AT CLOSE OF PERIOD		24	
GENERAL COURTS-MARTIAL	16		
BCD SPECIAL COURTS-MARTIAL	08		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+75%	

PART 5 – APPELLATE COUNSEL REQUESTS BEFORE U.S. COAST GUARD COURT OF CRIMINAL APPEALS (CCA)

NUMBER	16	
PERCENTAGE	100%	

PART 6 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES

PERCENTAGE OF CCA-REVIEWED CASES IN WHICH THE ACCUSED PETITIONED CAAF FOR REVIEW 16/28	57.1%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+71.5%
PERCENTAGE OF TOTAL PETITIONS GRANTED 4/16	25%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-58.3%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CGCCA 4/28	14.3%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-23.9%

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

PART 7 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		105	
RECEIVED		26	
DISPOSED OF		39	
GRANTED	02		
DENIED	37		
NO JURISDICTION	00		
WITHDRAWN	00		
TOTAL PENDING AT END OF PERIOD		92	
PART 8 – ORGANIZATION OF COURTS			
TRIALS BY MILITARY JUDGE ALONE		20	
GENERAL COURTS-MARTIAL		11	
SPECIAL COURTS-MARTIAL		09	
TRIALS BY MILITARY JUDGE WITH MEMBERS		12	
GENERAL COURTS-MARTIAL		06	
SPECIAL COURTS-MARTIAL		06	
PART 9 – COMPLAINTS UNDER ARTICLE 138, UCMJ			
NUMBER OF COMPLAINTS		03	
PART 10 – STRENGTH			
AVERAGE ACTIVE DUTY STRENGTH		40,992	
PART 11 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		450	
RATE PER 1,000		11%	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-17%	

Explanatory Notes

[A] As above, this number does not include the case of *United States v. Sullivan*, which was deemed a mistrial after the general court-martial concluded. It is currently referred for re-trial in FY2017.

[B] As a matter of practice, the Coast Guard does not try non-BCD special courts-martial.