



DEPARTMENT OF DEFENSE  
JOINT SERVICE COMMITTEE ON MILITARY JUSTICE  
2200 ARMY PENTAGON  
WASHINGTON, DC 20350-2200

August 26, 2019

MEMORANDUM FOR Office of General Counsel of the Department of Defense, 1600 Defense Pentagon, Washington, DC 20301-1600

SUBJECT: Reports of the Services on Military Justice for Fiscal Year 2018

1. Pursuant to Article 146a, Uniform Code of Military Justice, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps provided the enclosed reports on military justice for Fiscal Year 2018 to the Committees on Armed Services of the Senate and House of Representatives.

2. Copies of these reports will be made publically available on the Joint Service Committee website at <https://jsc.defense.gov/Annual-Reports/>.

*Adam S. Kazin*  
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Lieutenant Colonel, U.S. Army  
Executive Secretary, Joint Service Committee  
on Military Justice

Attachments:  
As stated

## **CONTENTS**

- Section 1:**                    **Report of The Judge Advocate General of the Army**
- Section 2:**                    **Report of the Judge Advocate General of the Navy**
- Section 3:**                    **Report of The Staff Judge Advocate to the  
Commandant of the Marine Corps**
- Section 4:**                    **Report of The Judge Advocate General of the Air  
Force**
- Section 5:**                    **Report of the Judge Advocate General of the Coast  
Guard**

# **Report to Congress**

**U.S. Army Report on Military Justice for Fiscal Year 2018**

**31 December 2018**

**Prepared by:**

**THE OFFICE OF THE JUDGE ADVOCATE GENERAL, U.S. ARMY  
ARMY PENTAGON  
WASHINGTON DC 20310-2200**

**The estimated cost of this report or study for the Department of Defense is approximately \$5,000 for the 2018 Fiscal Year. This includes \$0 in expenses and \$5,000 in DoD labor.**

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## TABLE OF CONTENTS

<b>INTRODUCTION</b>	1
<b>1. DATA ON NUMBERS AND STATUS OF PENDING CASES</b>	1
<b>2. INFORMATION ON APPELLATE REVIEW PROCESS</b>	1
a. Compliance with Processing Time Goals	1
b. Circumstances surrounding cases involving the following issues	1
1) Unlawful command influence or denial of speedy review	2
2) Loss of records of trial or other administrative deficiencies	2
c. Cases where a provision of UCMJ held unconstitutional	2
<b>3. MEASURES IMPLEMENTED BY THE ARMY TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO PARTICIPATE COMPETENTLY AS TRIAL COUNSEL, DEFENSE COUNSEL, MILITARY JUDGES, AND SPECIAL VICTIMS' COUNSEL, WITH EMPHASIS ON CAPITAL CASES, NATIONAL SECURITY CASES, SEXUAL ASSAULT CASES, AND PROCEEDINGS OF MILITARY COMMISSIONS</b>	2
a. Institutional Programs for all Judge Advocates	2
b. Trial Counsel	4
c. Defense Counsel	6
d. Special Victim Counsel	7
e. The Judge Advocate General's Legal Center and School – Criminal Law Academic Department (ADC)	8
f. Trial and Appellate Judges	9
g. Commanders	10
<b>4. INDEPENDENT VIEWS OF THE JUDGE ADVOCATE GENERAL AS TO THE SUFFICIENCY OF RESOURCES, INCLUDING TOTAL WORKFORCE, FUNDING, TRAINING AND OFFICER AND ENLISTED GRADE STRUCTURE TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS</b>	11
<b>CONCLUSION</b>	12
<b>APPENDIX</b>	13



**DEPARTMENT OF THE ARMY**  
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**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY**  
**ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE**  
**OCTOBER 1, 2017 TO SEPTEMBER 30, 2018**

In fiscal year 2018 (FY18), The Judge Advocate General's Corps continued to relentlessly pursue improvement in the administration of military justice and the advocacy skills of military justice practitioners. A key effort for the Army JAG Corps was preparing for the implementation of the Military Justice Act of 2016 (MJA 2016), through an aggressive training program that involved all members of the JAGC, as well as coordination with law enforcement agencies, the Army Corrections Command, the Department of Justice, and other agencies within the Department of the Defense. 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 twenty visits to installations and commands in the United States and overseas to inspect the delivery of military justice support to commanders and Soldiers. These inspections underscore the vital role of commanders in our military justice system. Commanders, advised by experienced and trained judge advocates, are best situated to make decisions that fulfill the purposes of the military justice system. The Army JAGC remains committed to sustaining excellence in the practice of military justice through a variety of initiatives and programs.

1. Data on the number and status of pending courts-martial cases: The Army manages and tracks courts-martial and other Military Justice actions through its Military Justice Online (MJO) application. At the end of FY18, the Army had 545 pending courts-martial cases, 226 of which were referred for trial by courts-martial, with the remainder pending disposition decisions. Data on the number of cases pending, as well as cases completed in FY18, is provided in the Appendix.

2. Information on the appellate review process:

a. Compliance with processing time goals: In FY 2018, 313 records of trial and over 1,400 motions and briefs were referred to one of the three judicial panels comprising the U.S. Army Court of Criminal Appeals (ACCA) for judicial review. The average processing times for those courts-martial from sentencing to convening authority action was 136 days. In 149 of those cases, initial action was completed by the convening authority within the 120 days prescribed by United States v. Moreno. Two hundred seventy-eight of the records were received by ACCA within 30 days of convening authority action.

ACCA rendered an initial decision in 357 cases in FY18, with an average processing time of 302 days from receipt of the record of trial by the clerk of court to decision by ACCA. Of the 357 decisions, 327 were issued within the 18-month period prescribed by United States v Moreno.

b. Descriptions of the circumstances surrounding cases in which general or special court-martial convictions were:

1) Reversed because of command influence or denial of the right to speedy review: United States v. 1LT Christopher Schloff, Army 20150724: 1LT Schloff was convicted by an officer panel of one specification of abusive sexual contact by touching a stethoscope to the breasts of a noncommissioned officer, in violation of Article 120, UCMJ, 10 U.S.C. § 920 (2012). He was sentenced to a dismissal. On appeal, the defense submitted a sworn declaration from a panel member, claiming “two [panel] members argued that politically, the United States Army could not afford to seem weak on sexual harassment and assault” during the panel’s deliberations on findings. An evidentiary hearing was held, where the hearing judge determined that “the president and senior ranking member of the panel, [COL JW], made a statement to the effect that based on the political climate, the Army could not seem weak or soft in dealing with sexual harassment or assault. He also asked a question to the effect of, ‘How does the Chief of Staff of the Army’s current emphasis on sexual harassment affect the findings and our decision in this matter?’”

On 5 February 2018, ACCA determined that the defense met its initial burden of showing that the actions in the deliberation room constituted unlawful command influence under Article 37, UCMJ, and that the Government failed to rebut the presumption of prejudice beyond a reasonable doubt, as required by case precedent. ACCA set aside the findings and sentence and returned the case to the convening authority for a rehearing. 1LT Schloff was re-tried by General Court-Martial on 11 October 2018 at Ft. Sill, Oklahoma, and was acquitted of all charges.

2) Otherwise remitted because of loss of records of trial or other administrative deficiencies: None.

c. Analysis of each case in which a provision of the UCMJ was held unconstitutional: None.

3. Measures implemented by the Army to ensure the ability of judge advocates to participate competently as trial counsel, defense counsel, military judges, and Special Victims’ Counsel, with emphasis on capital cases, national security cases, sexual assault cases, and proceedings of military commissions:

a. Institutional Programs for all Judge Advocates: In FY18, the Army JAGC implemented a number of programs aimed at improving the competence and expertise of Judge Advocates litigating courts-martial cases.

1) In FY17, partially to comply with the requirements of FY17 NDAA Section 542, the Judge Advocate General approved a pilot program for deliberate professional development for judge advocates to develop military justice expertise, including Lines of Effort (LOEs) on assessing training needs, resourcing, Additional Skill Identifiers (ASIs), and coordination amongst military justice stakeholders. In December 2017, to further comply with the requirements of FY17 NDAA Section 542 and FY18 NDAA Section 532, TJAG approved the Military Justice Redesign Pilot Program. The MJRPP’s aim is to enhance pretrial investigations, trial preparation, and courtroom performance by restructuring assignments of trial counsel at four designated installations: Joint Base Lewis-McChord (JBLM), Joint Base San Antonio (JBSA), Fort Riley, KS, and Fort Leonard Wood, MO. This restructuring is designed to give certain

Judge Advocates within each Staff Judge Advocate (SJA) office the chance to specialize in criminal litigation, thereby gaining more focused pretrial and courtroom experience. The restructuring models from each installation are under review, and the pilot program will be expanded to additional locations in FY19.

2) The Chief of Advocacy and Training for the Office of The Judge Advocate General continued to implement a program that brings outside observers from the civilian legal community with expertise in litigation to observe and critique our training. In April, 2018, the JAG Corps published and distributed *The 2018 Advocacy Trainer*, an updated training manual for military justice practitioners. The manual was reorganized and simplified from previous iterations dating back to 1996, containing 12 stand-alone chapters with comprehensive legal instruction and ready-made training drills. The manual is fully digitized, with one-click navigation to chapters and embedded secondary materials. The instructional material is greatly expanded, including new chapters on *Theory and Theme, Hearsay, and Trial Visuals*. Approximately 40% of the instructional material were created especially for *The 2018 Advocacy Trainer*. This resource assists installation offices in building local training plans that complement and enhance the institutional programs provided throughout the year. Further, OTJAG drafted and distributed a monthly advocacy newsletter titled "The Advocate."

3) The Judge Advocate General's Legal Center and School (TJAGLCS), the JAGC organization tasked with development of institutional training for Judge Advocates and paralegals, improved the mock trial advocacy exercise related to sexual assault for the Officer Basic Course and added additional instruction related to retaliation and retaliation response. TJAGLCS also expanded participation in the Special Victim Counsel course to paralegals to improve support in the SVC offices.

4) The JAGC previously established a military justice experience skill identifier program and completed review of that program in FY18. The Military Justice Initiatives Council (MJIC), comprised of stakeholders from the prosecution, defense, trial judiciary, training branches, appellate court branches and personnel management, conducted a comprehensive review of the additional skill identifier program that allows personnel with military justice expertise to be identified and considered for critical military justice billets.

5) An essential aspect of military justice is that it is deployable. The National Security Law Division (NSLD) continued preparing judge advocates and paralegals for upcoming operational deployments to Operational Inherent Resolve, Operation Spartan Shield, and Operation Freedom's Sentinel/Resolute Support missions. Specifically, NSLD conducted mission-tailored pre-deployment training programs using Mobile Training 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 intersection of the law of war and military justice. The law of war discussions examined the lessons learned from the 17 March 2017 strike on a sniper position in Mosul which resulted in the death of over 100 civilians. Those talks explored the legal aspects of the targeting decisions and the investigations following the operations. 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. In September of 2018, The Judge Advocate General,

signed an updated version of the "Law of War Compliance: Administrative Investigations and Criminal Law Supplement" re-emphasizing the importance of conducting thorough and relevant investigations with respect to alleged LOAC violations. The publishing stressed that the UCMJ and the Law of War are complementary, and that thorough investigations, along with any necessary administrative or criminal action, demonstrates our commitment to the rule of law.

6) MJA16 Training: Throughout FY18, the Army's Military Justice Legislation Training Team, (MJLTT), traveled the world preparing the Army and the JAG Corps for the January 2019 implementation of MJA 16. During FY18, the MJLTT visited thirty-five installations and conducted in-person training courses for 2,790 personnel in 2.5 day training courses, 1,755 personnel in short-course training events, and 565 joint personnel throughout the various locations. The audience for the training included judge advocates, paralegals, legal administrators, law enforcement, civilians, and command teams. The MJLTT worked with OTJAG in reviewing how MJA 16 changes would be implemented in the field, and provided feedback to the Joint Services Committee on recommended statutory and regulatory changes to further improve the system.

7) The JAGC conducted a worldwide analysis of courtrooms across all Army installations, to ensure they meet the requirements for professional facilities. Additionally, the JAGC, the Office of The Provost Marshal, and the Criminal Investigation Division Command initiated a joint information technology project to better coordinate military justice and law enforcement databases. The initiative will transform the reporting of disposition data for all offenses, including sexual assault offenses, generating both efficiencies and quality assurance.

b. Trial Counsel:

1) The Army Trial Counsel Assistance Program (TCAP), the JAGC organization tasked with development of functional training for Judge Advocates, 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), Special Victim Witness Liaison (SVWL) programs, and newly created Complex Litigation Team.

2) In FY18, TCAP worked to enhance training provided to counsel, paralegals and victim-witness personnel. TCAP implemented a new one-week course to train prosecutors on the prosecution of domestic violence, which is particularly focused on the complexities of handling cases with service members and military dependents as victims. Additionally, in 2017 and 2018, the Army held a conference with Special Victim Prosecutors and Special Victim Investigators from the Criminal Investigative Division Command to facilitate better coordination between law enforcement and prosecutors in sexual assault cases. TCAP, and its counterpart Defense Counsel Assistance Program (DCAP), offered 64 advocacy courses and outreach programs in FY18, refining counsel expertise in litigating special victim and other offenses.

3) The cadre of TCAP trainers, including seven military attorneys, three civilian Special Victim Litigation Experts, a part-time senior paralegal noncommissioned officer, and a Special Victim Witness Liaison program manager, developed and delivered 31 training events for trial counsel and government paralegals worldwide. This year's training events consisted of 21 specialty courses, including: the Basic Trial Advocacy Course; the New Prosecutors Course; Prosecuting Domestic Violence; Prosecuting Sexual Assault; Expert Symposium; Child Forensic Interviewing; Special Victim Witness Liaison Course; Senior Trial Counsel Course; Sexual Assault Trial Advocacy Course; Special Victim Prosecutor Course; Special Victim Noncommissioned Officer Course; Prosecuting Child Abuse; Protecting Children Online; and the Special Victim Prosecutor/Special Victim Investigator Course. The TCAP Team also traveled to sixteen Army installations to conduct two to four day outreach training events, as well as three, week-long, regional training events overseas..

4) Many of this year's training events focused on trial advocacy skills and prosecuting sexual assault and domestic violence cases. Specifically, TCAP reconfigured the training program for new Army prosecutors, turning the one-week, lecture-focused Trial Counsel Course (TCC) into a two-week Basic Trial Advocacy Course (BTAC) that maintained the information from the TCC while incorporating trial advocacy classes and exercises using a sexual assault fact pattern. TCAP also conducted three iterations of the Prosecuting Sexual Assault Course (formerly known as the Military Institute for Prosecution of Sexual Violence Course), which provides further specialty training on sexual assault and domestic violence. Prosecutors who have attended BTAC, the Prosecution of Sexual Assault Course, as well as the Intermediate Trial Advocate Course taught at TJAGLCS, counsel with 18 months or more of court-martial practice are qualified to attend the joint TCAP/DCAP/SVP capstone training event – the Sexual Assault Trial Advocacy Course (SATAC). The SATAC is a two-week trial advocacy course focused 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, ensuring all participants in military justice system are highly skilled and fully trained.

5) 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), as well as through its newly created Complex Litigation Team. The Complex Litigation Team consists of three field-grade military justice practitioners and has been assisting with complex and capital litigation across the Army as well as providing support to cases involving classified evidence. In FY18 TCAP provided support to a number of classified cases in the investigative and trial stages. A TCAP Training Officer attended the Navy Classified Litigation Course and provided full time trial support to the prosecution team in United States v. Bergdahl, is detailed as counsel in a case involving mishandling of classified material, and advised five investigations involving national security offenses and classified leak cases. 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.

6) Finally, TCAP continued to manage the Army's 23 SVPs, 23 SVNs, and 23 SVWLs located at the Army's 21 busiest UCMJ jurisdictions. 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. This ensures that our trial practitioners receive relevant military justice and advocacy training on a regular basis, building sustained expertise and experience.

c. Defense Counsel.

1) The Trial Defense Service (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 Afghanistan and Kuwait, with defense counsel traveling into Iraq and other theaters as needed

2) The Defense Counsel Assistance Program (DCAP) is the training branch TDS. In FY18, 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 four 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 and received training on new developments in military justice and trial advocacy, with a focus on sexual assault litigation. Regional DC and senior DC from the Active, Reserve, and National Guard also gathered to receive instruction on their duties as leaders in TDS at Sexual Assault Leader Training (SALT). Additionally, DCAP and TCAP jointly organized and taught four Advanced Trial Communication Courses, the Sexual Assault Trial Advocacy Course, and the Expert Symposium. DCAP also organized a course at the USACIL Criminal Laboratory that gave DCs an opportunity to tour the lab and receive instruction from different areas of the lab.

3) In FY18, DCAP received over one thousand inquiries from DC via emails, phone calls, and in-person inquiries during training events. DCAP HQEs and counsel provided direct assistance to DC in the field that included researching case law, answering case specific questions, providing sample motions, expert requests, and other trial documents. Moreover, DCAP's website and the Knowledge Management Milbook website provided counsel with reference materials on critical issues. Finally, DCAP also worked with the Defense Appellate Division (DAD) to assist TDS counsel in the preparation and filing of extraordinary writs before the Army Court of Criminal Appeals (ACCA) and the Court of Appeals for the Armed Forces (CAAF).

4) In addition to providing training and advice, DCAP published the eighth Edition of the DC 101 Deskbook and distributed it to all newly-assigned DC. It also reissued the DC 201 Deskbook with an additional chapter and distributed it to all DCs. Both publications will receive a significant update in the coming FY in order to address new changes to the law effective 1 January 19. DCAP also prepared and disseminated 14 "DCAP Sends" information papers, which quickly explained important new developments in military justice to DC. DCAP encouraged the utilization of the new online advocacy trainer for use by all counsel. In coordination with the Office of the Judge Advocate General, Criminal Law Division TDS assisted in the review and comprehensive update of Army Regulation 27-10, Military Justice.

5) Army DAD, along with the Navy-Marine Corps Appellate Government Division, co-chaired the Joint Appellate Advocacy Training for government and defense appellate attorneys and special victim attorneys. The two and a half day training event provided advanced appellate advocacy training for over 100 advocates from the Army, Navy, Air Force, Marine Corps and Coast Guard.

6) Army DAD received authorization for the noncompetitive term appointment of a GS-15 civilian attorney-advisor to serve as the Senior Capital Litigation Counsel and Trainer, bringing expertise and continuity to the Army's capital appellate cases, effective 1 October 2018. TDS sent 14 counsel (detailed to capital cases or part of the TDS Capital Litigation training program) to nine different civilian capital training courses in FY18. TDS submitted a proposed pilot program for the hiring of four civilian defense investigators, which is pending review and decision.

d. Special Victim Counsel: The Special Victims' Counsel Office of the Program Manager (SVCOPM) provides technical and policy oversight of the SVC Program and to SVC serving in the field. In circumstances where the interests of sexual assault victims do not align with the interests of the Government, the Chiefs, Legal Assistance (or Client Services, if appropriate) and the SVCOPM provide technical advice and professional responsibility supervision.

1) The JAGC made important structural changes in the SVC program in FY18 to better assist victims of sexual assault. Specifically, TJAG approved the regionalization of the SVC program. The SVC program now has five geographic regions. There are three CONUS regions (Eastern, Central and Western managed from Fort Bragg, Fort Hood and Joint Base Lewis McChord respectively) and two OCONUS regions (Asia and Europe managed from Camp Humphries and the Kaiserslautern Military Community, respectively). Each region has an assigned SVC Regional Manager. Regional Managers are experienced judge advocates who have extensive SVC and/or military justice experience. Regional Managers serve as mid-level managers in the technical chain of command. SVC are able to turn to the Regional Managers for guidance and assistance. The Regional Managers monitor attorney caseloads within their respective regions and assist with maintaining balanced caseloads among the judge advocates serving in SVC authorizations. When a sexual assault victim moves to a location away from the site of the assault, Regional Managers assist with facilitating the detailing of a SVC at the new location should the victim request a local SVC to provide services. Regional Managers are trained and certified as SVC and are able to assume representation of sexual assault victims.

Regional Managers execute regional training, which supplements mandatory certification training held at The Judge Advocate General's Legal Center and School.

2) The Army standard is that every SVC must complete a certification course and be personally certified by TJAG prior to serving any SVC clients. We also require every SVC to complete a child representation course before representing child clients. The Air Force and the Army collaborated and sent attendees to each service's certification course to ensure consistency in training and course content. Each of the sister services provides experienced SVC/VLC facilitators and instructors for the Army SVC certification and child advocacy courses.

3) As of 1 October 2018, there were 71 SVC who are actively taking clients, with an additional 29 SVC who still hold attorney-client relationships, pending the outcome of their respective cases. During FY18, SVC assisted 2,027 clients, comprising of 1,492 Servicemembers, 378 adult dependents, 23 DoD Civilian employees, and 119 minors. SVC in the field conducted 17,857 counseling and 173 outreach/training events; and attended 2,439 interviews, 161 administrative separation proceedings, and 252 courts-martial. SVC provided services to wherever are Soldiers are deployed, to include Iraq, Afghanistan, Kuwait, Europe, and Korea.

e. The Judge Advocate General's Legal Center and School – Criminal Law Academic Department (ADC): The ADC provides a variety of courses to a number of diverse audiences to include judge advocates, sister service judge advocates, commanders, and international students. Courses are designed for: initial-entry judge advocates in the Officer Basic Course (OBC); 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 certification course; senior judge advocates in the Military Judge Course and the Staff Judge Advocate Course; and commanders in the Senior Officer Legal Orientation Course, Army Strategic Education Program (ASEP), and General Officer Legal Orientation Course (GOLO). Except for the ASEP and GOLO course, which is provided individually to general officers in a single day, all courses are taught utilizing a sexual assault fact pattern and are synchronized with other JAG Corps training agencies.

1) The ITAC is an advocacy-centered course designed to be more challenging than the OBC and serves as intermediate level advocacy training. The ITAC builds on courses junior advocates will have already received, to include: the New Prosecutor Course (offered by TCAP), Defense Counsel 101 (offered by DCAP), and the SVC Course (offered by ADC). Students learn how to conduct sophisticated case analysis of a sexual assault, conduct voir dire, prepare instructions, interview a sex assault victim, interact with an SVC, conduct a direct and cross-examination of a sex 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 ADC continued to refine the course by developing and implementing more live demonstrations of specific advocacy skills by faculty facilitators. To add realism to this intensive training, students had to interview and cross-examine forensic psychologist, digital forensic analysts, toxicologists, and sexual assault medical forensic examiners. Additionally, judge advocates who are attending the Graduate Course role-play the victim to provide ITAC

students with the challenge of interviewing and interacting with live victims. This demanding course is offered twice annually.

2) The ADC continued to develop and improve the SVC Certification Course, offering two certification courses and one SVC Child Victim Course. ADC instructors provided subject matter expertise instruction at TCAP training conferences and served as SMEs to various OCLL engagements with congressional staffers. Through the SVC Program Manager, the ADC coordinated with and provided best practices from sister services, which enhanced the experience of the students and cross-leveled instruction to each of the SVC/VLC programs throughout the DoD. In cooperation with the SVC Program Manager's Office, the ADC sent professors to provide training at each of the SVC's four geographic regions.

3) The SVC certification course is required prior to TJAG certifying an SVC to see clients. Students in this course learn best practices for working with sex assault victims, how trauma impacts crime victims, how to work with law enforcement and victim-care professionals, how to manage professional responsibility and scope of representation issues, and how to most effectively advocate for victim's rights while working with commanders, law enforcement, and other participants in the military justice system. The SVC certification course includes a roundtable discussion where actual sexual assault victims discuss their experiences and the assistance they received from their respective SVC/VLC. Students in the SVC certification course also participate in a practical exercise where the students learn to build rapport while performing an initial interview with a client-victim role player. The SVC certification course is a prerequisite for the SVC Child Victim Course which focuses on: how to effectively communicate with children; how children process and discuss traumatic events; which experts are best-suited to assist child victims; and the services available to child victims. As victim rights and policies continue to develop, the ADC assists in the implementation and education of those policies and makes recommendations for policy changes and improvements to the SVC Program, OCLL, and OTJAG Criminal Law Division.

f. Trial and Appellate Judges: There are 23 active duty and 21 reserve component military judges in the U.S. Army Trial Judiciary. The Chief Trial Judge, located at Fort Belvoir, Virginia, manages the Trial Judiciary, which consists of five circuits. Chief Circuit Judges supervise the circuit judges within each circuit. There are currently three judges stationed overseas, one in Korea and two in Germany.

1) Military judges primarily preside over trials by general and special court-martial. The percentage of contested cases and the complexity of these cases remains high, largely due to the increased number of sexual misconduct related prosecutions. In FY18, military judges of the U.S. Army Trial Judiciary presided over 647 courts-martial, a 3.6 percent decrease from FY17. Of the total cases tried in FY18, 178 were fully contested, 47 involved mixed pleas, 277 were guilty pleas, and the remainder were terminated prior to findings. Of the 502 cases in which findings were entered in FY18, 246 of them, or 51 percent, included sexual misconduct related offenses (Articles 120, 120b, and 120c).

2) The Trial Judiciary maintains and continuously updates DA Pamphlet 27-9, Military Judges' Benchbook (Benchbook), used by all Services, which contains trial scripts and pattern

instructions for members. Changes to the Benchbook are approved by the Chief Trial Judge following review and comment by the Benchbook Committee and other stakeholders in the military justice community. In FY18, the Trial Judiciary began a major revision of the Benchbook, focused on procedural guides for trials and instructions on elements of offenses, in order to account for the historic changes to the UCMJ resulting from the Military Justice Act of 2016. An electronic version of the Benchbook, containing all approved changes to date, can be found on the Trial Judiciary website at [www.jagcnet.army.mil/USATJ](http://www.jagcnet.army.mil/USATJ). In FY18, the Trial Judiciary transitioned from a word-based to a web-based version of the electronic Benchbook. Court dockets and other judiciary related documents and resource materials are also located on the Trial Judiciary website.

3) The Trial Judiciary conducts an annual Military Judges' Course at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia. The three-week course is a certification course for judge advocates of all Services – Army, Navy, Marine Corps, Air Force, and Coast Guard – prior to assignment as military judges. The course also typically includes select international students. In FY18, 40 judge advocates and one international student attended the 61st Military Judges' Course, which was held from 23 April to 11 May 2018. Seven active duty and reserve component Army judge advocates graduated and were invested as new military trial judges. Military judges gathered twice this year for training. All military judges attended the Joint Military Judges' Annual Training at Maxwell Air Force Base in Alabama and the Trial Judiciary Sexual Assault Training at Fort Belvoir, Virginia. The Trial Judiciary was also fortunate to be able to send several military judges to courses at the National Judicial College.

4) The Trial Judiciary continues to provide military judges to serve as judges with the Military Commissions Trial Judiciary. In FY18, there were three Army military judges serving on the Military Commissions Trial Judiciary, one of whom acted as the Chief Judge.

5) Judges in the Trial Judiciary presided over three capital trials in FY18. An Army judge was cross-service detailed to the capital sentence rehearing in United States v. Witt, an Air Force court-martial, which resulted in a sentence of life without the possibility of parole. Two other capital cases in the Army, one at Fort Stewart and the other at Fort Campbell, are ongoing.

g. Commanders: Commanders remain an absolutely vital part of the Army military justice system, ensuring good order and discipline, justice, and accountability. Brigade level commanders must attend the Senior Officer Leadership Orientation (SOLO) Course at TJAGLCS, and many Battalion commanders also attend on a space available basis. In FY18, the SOLO was offered seven times. At the SOLO, a faculty member from TJAGLCS ADC teaches commanders a specific block of instruction on sexual assault response and prevention. Every General Officer attends the General Officer Leadership Orientation (GOLO), a one-on-one desk side briefing covering victims' rights, convening authority responsibilities/duties, military justice updates to include MJA 16 and NDAA 2017 changes to the UCMJ, retaliation issues and prevention strategies. Company commanders receive onsite training from a trial counsel serving the jurisdiction on victims' rights, reporting and processing sexual assault cases. The JAGC Leadership also provides instruction at the Pre-Command Course in Ft. Leavenworth, Kansas,

where a JAGC General Officer conducts military justice training with future Battalion and Brigade Commanders, ensuring compliance with Article 137, UCMJ.

4. The independent view of The Judge Advocate General on the sufficiency of resources available within the Army, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions: The Army JAG Corps, through its Personnel, Plans, and Training Office (PPTO), continues to work with Army leadership to ensure sufficient legal support to the force, whether that force grows or shrinks.

a. On September 30, 2018, the Army's end-strength was 476,179 Soldiers on Active Duty compared to 476,245 at the end of FY17. The attorney strength of the JAGC Active Component (AC) at the end of FY18 was 1,830 (including general officers). This does not include 74 officers attending law school while participating in the Army's Funded Legal Education Program. The FY18 end-strength of 1,830 compares with an end-strength of 1,819 in FY17. The diverse composition of the FY18 AC attorney population included 118 African-Americans, 59 Hispanics, 101 Asians, 3 Native Americans, and 507 female Judge Advocates. At the end of FY18, 299 Army JAGC personnel (officer and enlisted, AC and Reserve Component) were deployed in operations in Afghanistan, Djibouti, Egypt, Guantanamo Bay, Honduras, Iraq, Jordan, Kosovo, Kuwait, Qatar, and other locations around the world.

b. The grade distribution of the JAGC AC attorneys for FY18 was: six general officers authorized (five filling JAGC authorizations, one serving in a Military Occupational Specialty (MOS) coded position (Chief Prosecutor for the Commissions)); 125 colonels; 272 lieutenant colonels; 523 majors; and 904 captains and first lieutenants. An additional 108 warrant officers, 716 Civilian attorneys, 764 Civilian paraprofessionals and 1,461 enlisted paralegals from the AC supported legal operations worldwide.

c. The attorney strength of the JAGC USAR at the end of FY18 was 1,795 (which includes officers serving in Troop Program Units, the Drilling Individual Mobilization Augmentee (DIMA) Program, the Individual Ready Reserve, and the Active Guard & Reserves). The attorney strength of the ARNG at the end of FY18 was 903.

d. The Army JAG Corps is currently reviewing the sufficiency of defense investigative resources. Specifically, we are exploring a proposal for independent defense investigation support specialists (DISS) who would directly support defense counsel under the supervision of TDS, and receive administrative support through the U.S. Army Legal Support Agency (USALSA). The proposal would require the hiring of twelve to twenty-eight civilian investigators (GS-13) assigned to USALSA for force management and administration, while working under direct TDS supervision for daily reporting, training, duties and responsibilities.

e. During FY18, the JAG Corps requested additional authorizations and requirements for three new military paralegal positions to support SVCs at Corps Headquarters locations. These paralegals will be vital to enhancement of victim services by providing much needed administrative and logistical support to SVC, which will allow them to focus efforts on the provision of legal advice and advocacy on behalf of clients. The SVC Program is coordinating with the JAG Corps' Personnel, Plans and Training Office to obtain the requested

authorizations via the Army's Emerging Growth personnel process. The Judge Advocate General authorized a request to HQDA for 12 new SVC authorizations to be distributed to installations and units that either currently do not have SVC authorizations or the current authorizations are no longer sufficient to effectively meet the demand for SVC services. These authorizations will prove to be essential to the Army SVC Program's ability to provide effective, zealous representation to sexual assault victims.

### **CONCLUSION**

The Army JAG Corps is well-positioned to usher in a new era of Military Justice. Our practitioners continue to display the highest levels of competence and professionalism, while pursuing justice in the most challenging areas of litigation. We will embrace the changes that represent healthy growth of our criminal justice system. The Army JAG Corps will continue to leverage its people, programs, and technology to deliver its Soldiers, Civilians, and Families the military justice system they deserve.

A handwritten signature in black ink, appearing to read 'C. Peede', with a long horizontal flourish extending to the right.

CHARLES N. PEDE  
Lieutenant General, US Army  
The Judge Advocate General

## APPENDIX

**Report Period: FISCAL YEAR 2018**

<b>PART 1 - PENDING COURTS-MARTIAL (As of 30 September 2018)</b>			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		184	
BCD SPECIAL		24	
NON-BCD SPECIAL		0	
SUMMARY		18	
TOTAL:	319	226	545

### **PART 2 - BASIC COURTS-MARTIAL STATISTICS (Persons)**

TYPE COURT	TRIED		CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
	Arraigned	Completion			
GENERAL	479	378	315	63	-3.8%
BCD SPECIAL [A]	168	124	116	8	-7.5%
NON-BCD SPECIAL	1	0	0	0	-100.00%
SUMMARY	116		109	7	+3.6%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT					-3.6%

### **PART 3 – DISCHARGES APPROVED [B]**

GENERAL COURTS-MARTIAL ( CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	105 (+10)
NUMBER OF BAD-CONDUCT DISCHARGES	131
SPECIAL COURTS-MARTIAL	
NUMBER OF BAD-CONDUCT DISCHARGES	66

### **PART 4 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG**

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	248
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	66
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	59

### **PART 5 – WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEALS**

TOTAL ON HAND BEGINNING OF PERIOD	45 [C]
TOTAL CASES THAT CAME AT ISSUE	442 [C]
TOTAL CASES DECIDED	412 [D]
TOTAL PENDING AT CLOSE OF PERIOD	75 [C]
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-21.2%

## APPENDIX

### PART 6 – APPELLATE COUNSEL REQUESTS BEFORE U.S. ARMY COURT OF CRIMINAL APPEALS (ACCA)

NUMBER	413
PERCENTAGE	93.44%

### PART 7 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)

TOTAL PETITIONS TO CAAF	227
-------------------------	-----

### PART 8 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD RECEIVED		71
DISPOSED OF		83
GRANTED	0	
DENIED	83	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		29

### PART 9 – ORGANIZATION OF COURTS [F]

TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		292
SPECIAL COURTS-MARTIAL		110
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		86
SPECIAL COURTS-MARTIAL		14

### PART 10 – COMPLAINTS UNDER ARTICLE 138, UCMJ

NUMBER OF COMPLAINTS		
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### PART 11 – STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	476179[E]
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### PART 12 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	23,806
RATE PER 1,000	49.99

## 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] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.
- [E] This number includes only Active Component Soldiers and does not include USAR, National Guard or AGR personnel.
- [F] Only includes cases that were tried to completion.



DEPARTMENT OF THE NAVY  
OFFICE OF THE JUDGE ADVOCATE GENERAL  
1322 PATTERSON AVENUE SE, SUITE 3000  
WASHINGTON NAVY YARD DC 20374-5086

December 26, 2018

The Honorable James M. Inhofe  
Chairman, Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

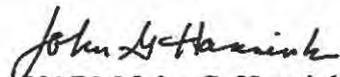
Division E of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-328), Section 5522, directs the Service Judge Advocates General to submit an annual report with respect to the previous fiscal year containing the following information:

- (1) Data on the number and status of pending cases.
- (2) Information on the appellate review process.
- (3) Analysis of any cases where a provision of the Manual for Courts-Martial was held unconstitutional.
- (4) Explanation of the measures implemented to ensure the ability of judge advocates to participate competently as trial counsel, defense counsel, military judges, and victims' counsel.
- (5) Independent views of the Judge Advocate General as to the sufficiency of resources available, including total workforce, funding, training, and officer and enlisted grade structure to perform military justice functions.

Enclosed is the Judge Advocate General of the Navy's report on the state of military justice during Fiscal Year 2018 in compliance with Article 146a, Uniform Code of Military Justice.

Please let me know if I can be of further assistance. A similar letter has been sent to Chairman Thornberry.

Sincerely,

  
VADM John G. Hannink  
Judge Advocate General  
U.S. Navy

Enclosure:  
As stated

Copy to:  
The Honorable Jack Reed  
Ranking Member



**DEPARTMENT OF THE NAVY**  
**OFFICE OF THE JUDGE ADVOCATE GENERAL**  
1322 PATTERSON AVENUE SE, SUITE 3000  
WASHINGTON NAVY YARD DC 20374-5066

December 26, 2018

The Honorable William M. "Mac" Thornberry  
Chairman, Committee on Armed Services  
House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

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Please let me know if I can be of further assistance. A similar letter has been sent to Chairman Inhofe.

Sincerely,

A handwritten signature in black ink that reads "John G. Hannink".

VADM John G. Hannink  
Judge Advocate General  
U.S. Navy

Enclosure:  
As stated

Copy to:  
The Honorable Adam Smith  
Ranking Member

# **Report to Congress**

**Navy Report on the State of Military Justice for Fiscal Year 2018**

**December 31, 2018**

**Prepared by:**

**JUDGE ADVOCATE GENERAL, U.S. NAVY  
NAVY PENTAGON  
WASHINGTON DC 20350-1000**

**The estimated cost of this report or study for the Department of Defense is approximately \$5,650 for the 2019 Fiscal Year. This includes \$0 in expenses and \$5,650 in DoD labor.**

**Generated on 2018Dec14 RefID: A-04BBCD8**



**DEPARTMENT OF THE NAVY**  
**OFFICE OF THE JUDGE ADVOCATE GENERAL**  
**WASHINGTON NAVY YARD**  
**1322 PATTERSON AVENUE SE SUITE 3000**  
**WASHINGTON DC 20374-5088**

December 31, 2018

**Navy Report on the State of Military Justice for Fiscal Year 2018**

**TABLE OF CONTENTS**

<b>I. INTRODUCTION</b>	<b>1</b>
<b>II. DATA ON NUMBERS AND STATUS OF PENDING CASES</b>	<b>1</b>
<b>III. INFORMATION ON APPELLATE REVIEW PROCESS</b>	<b>1</b>
a. Compliance with Processing Time Goals	1
b. Circumstances surrounding cases involving the following issues	2
(1) Unlawful command influence	2
(2) Denial of right to speedy review	2
(3) Loss of records of trial	2
(4) Other administrative deficiencies	2
(5) Provision of UCMJ held unconstitutional	2
<b>IV. MEASURES IMPLEMENTED BY THE NAVY TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO PARTICIPATE COMPETENTLY IN CAPITAL CASES, NATIONAL SECURITY CASES, SEXUAL ASSAULT CASES, AND MILITARY COMMISSIONS</b>	<b>2</b>
a. Military Justice Litigation Career Track (MJLCT)	3
b. National Security Litigation Division (Code 30)	4
c. Naval Justice School (NJS)	5
d. Trial Counsel	7
e. Defense Counsel	9
f. Victims' Legal Counsel (VLC)	11
g. Appellate Defense (Code 45)	12
h. Appellate Government (Code 46)	13
i. Trial and Appellate Judges	15

<b>V. INDEPENDENT VIEWS OF THE JUDGE ADVOCATE GENERAL AS TO THE SUFFICIENCY OF RESOURCES, INCLUDING TOTAL WORKFORCE, FUNDING, TRAINING AND OFFICER AND ENLISTED GRADE STRUCTURE TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS</b>	<b>16</b>
<b>VI. CONCLUSION</b>	<b>17</b>
<b>VII. APPENDIX</b>	<b>18</b>

**IN ACCORDANCE WITH PUBLIC LAW 114-328, THE NATIONAL DEFENSE AUTHORIZATION ACT OF FISCAL YEAR 2017, THE FOLLOWING INFORMATION IS PROVIDED.**

**I. INTRODUCTION**

Military Justice remained a principal line of effort for the Navy Judge Advocate General's Corps (JAG Corps) in Fiscal Year 2018 (FY18). In FY18, the Office of the Judge Advocate General (OJAG) was heavily involved in implementing the Military Justice Act of 2016 (MJA 2016) by working with the other Services on the Department of Defense (DoD) Joint Service Committee on Military Justice (JSC) to prepare the Manual for Courts-Martial and Service regulations for the January 1, 2019 effective date of these changes, while maintaining and improving on existing trial and appellate competencies. The Navy focused particular attention on meeting the trial-level demands, training counsel and enlisted support staff on the complexities of our litigation practice, and developing new policies and procedures necessary to fully implement MJA 2016. Many steps taken to ensure counsel and support staff are prepared to meet the demands of a complex litigation practice applies to both the Navy and Marine Corps. The following information is provided to illustrate the current state of Navy military justice practice.

**II. DATA ON NUMBERS AND STATUS OF PENDING CASES**

The Navy collects court-martial data in the Case Management System (CMS). This system tracks cases from the time they are received by a Region Legal Service Office (RLSO) to their final disposition. Data on pending cases in the Navy are provided in the Appendix.

**III. INFORMATION ON APPELLATE REVIEW PROCESS**

All appellate cases for the Navy and the Marine Corps are reviewed by the Navy-Marine Corps Court of Criminal Appeals (NMCCA). The NMCCA consists of six to nine active-duty Navy and Marine Corps appellate judges. In FY18, the NMCCA was also supported by five Navy reserve and two Marine Corps reserve appellate judges, a mid-grade officer senior law clerk, two Navy and Marine Corps junior officer law clerks, and one junior officer temporary assignment law clerk. Additionally, the NMCCA benefitted from its robust internship and externship programs, which provided three part-time spring semester student law clerks, five summer student law clerks, and two part-time fall semester student law clerks. The NMCCA is responsible for all cases referred under Articles 62(b), 66(b), 69(d), and 73, Uniform Code of Military Justice (UCMJ). The NMCCA may also entertain petitions for extraordinary relief, including petitions filed by crime victims pursuant to Article 6b, UCMJ. The following information is provided on specific Navy cases reviewed by the NMCCA during FY18. Any Marine Corps cases reviewed by NMCCA will be reported in the Marine Corps FY18 Article 146a Report:

**a. Compliance with Processing Time Goals.**

(1) In FY18, no Navy case was dismissed on speedy trial grounds.

(2) Four Navy cases exceeded 120 days from sentencing to Convening Authority's (CA) action (the "Moreno 1" guideline). Delay in three of these cases was primarily due to voluminous records of trial or transcription problems, while the other delay was due to a defense request for an extension in submitting matters in clemency.

(3) One Navy case exceeded the 30-day timeline from the date of CA's action to docketing at the NMCCA (the "Moreno 2" guideline) due to the loss of the record of trial in transit. While the record was ultimately recreated and processed, the additional work resulted in a 5-day delay.

(4) No Navy NMCCA case exceeded the "Moreno 3" guideline of 18 months from docketing to decision.

**b. Circumstances surrounding Navy cases involving the following issues:**

(1) Unlawful Command Influence:

(a) *U.S. v. Barry*, 78 M.J. 70 (C.A.A.F. 2018). The Court of Appeals for the Armed Forces (CAAF) found that a Deputy Judge Advocate General (DJAG) can commit unlawful influence under Article 37, UCMJ, and that unlawful command influence can be committed unintentionally. In this case, CAAF found that the general court-martial convening authority would have taken a different action in the service member's case but for external pressures including improper advice from the Navy DJAG. The CAAF dismissed the charge and its specification with prejudice.

(2) Denial of right to speedy review: None.

(3) Loss of records of trial: None.

(4) Other administrative deficiencies: None.

(5) Cases in which provisions of the UCMJ were found to be unconstitutional: None.

**IV. MEASURES IMPLEMENTED BY THE NAVY TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO PARTICIPATE COMPETENTLY IN CAPITAL CASES, NATIONAL SECURITY CASES, SEXUAL ASSAULT CASES, AND MILITARY COMMISSIONS**

The Navy has organized itself in such a way, and created programs to ensure, that judge advocates are highly qualified to fulfill their important roles and meet the most complex challenges of the military justice system. Training, qualification, and assignment policies are designed to ensure that only qualified and competent counsel are placed in litigation positions to ensure the integrity of the system and allow them to further develop the skills necessary to participate in increasingly complex cases as they progress in their careers. The Navy is successful in cultivating litigation skills among its judge advocates, enlisted support staff, and civilians through training, mentorship, and oversight provided across all levels of the

organization. The following details our organizational construct and assesses measures focused on preparing Navy military justice practitioners to handle capital cases, national security cases, sexual assault cases, and proceedings of Military Commissions.

**a. Military Justice Litigation Career Track (MJLCT)**

(1) The Navy established the MJLCT in 2007 to ensure the JAG Corps develops and retains experienced litigators to participate as trial counsel, defense counsel, victims' legal counsel, and military judges in the Navy's increasingly complex docket. At the close of FY18, there were 81 Navy MJLCT officers. 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 are normally 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 additional qualitative and quantitative military justice litigation experience, as well as professional development as a naval officer. Candidates are normally eligible for SPECIALIST II after five years as SPECIALIST I.

(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 are eligible for assignment to the most senior MJLCT positions. Candidates are normally eligible for EXPERT after five years as SPECIALIST II.

(2) SPECIALIST II and EXPERT Military Justice Litigation Qualifications (MJLQ) are community management tools to guide the detailing, training, and professional development needs of MJLCT judge advocates and to ensure the community maintains its ability to execute the core function of military justice across the community billet structure. JAG Corps leadership seeks to provide all MJLCT judge advocates with training and duty assignment opportunities that facilitate their professional development within the MJLCT, the JAG Corps, and the Navy.

(3) The Navy's MJLCT attorneys rotate among prosecution, defense, victims' legal counsel, and judicial assignments. Having served as both trial and defense attorneys, the Navy's career litigators have a better understanding of the strengths and weaknesses of cases. They are also detailed to assignments outside the career track, such as sea duty onboard aircraft carriers and Staff Judge Advocate (SJA) billets to further develop them as naval officers and to broaden their Fleet perspective. As a result, the Navy's litigators understand the importance of each role in the military justice system—insight that serves the Navy well as these attorneys move into senior litigation positions and provide training and mentorship to junior officers.

(4) MJLCT officers have reached high level of leadership within the JAG Corps, to include positions as commanding officers (COs), executive officers (XOs), division directors within OJAG, Chief Judges of the trial judiciary and the NMCCA, and the Chief Judge of the

Department of the Navy. MJLCT officers are immersed in the daily prosecution, defense, and judicial hearing of cases throughout the Service.

(5) The career track has positioned the Navy well to provide effective prosecution, defense, representation of victims, and judicial hearing of national security and sexual assault cases, as well as cases before the military commissions. Among O-5s and O-6s in the career track, the Navy has developed a cadre of officers with experience litigating national security/classified information cases. Similarly, we have numerous senior and mid-grade officers with experience on military commissions as trial counsel and defense counsel. MJLCT officers have robust experience in a wide range of sexual assault-related cases. Each area of practice (prosecution, defense, victims' legal counsel, and judiciary) currently includes MJLCT members who have significant experience and expertise in sexual assault cases, national security cases, and commissions cases, and every practice area has ready access to these experts for support. There are no MJLCT officers with significant capital experience, as the Navy has tried no capital cases in recent decades. Several MJLCT officers, however, have served in military commissions as trial or defense counsel on the two referred capital cases, both of which remain in pretrial litigation. We are working to enhance our capabilities in the area of capital litigation to ensure the Navy is prepared to prosecute, defend, and adjudicate cases of this magnitude.

**b. National Security Litigation Division (Code 30)**

(1) Code 30 serves as the JAG Corps' central point of contact for litigation and administrative matters involving classified information and national security cases (NSCs). Code 30 works closely with other federal 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 approved use of Navy classified information, and coordinate the litigation of high-visibility cases while protecting Navy information. During FY18, Code 30 was staffed with two officers – an O-5 Director and an O-3 Deputy Director.

(2) As part of this mission, Code 30 reviews proposed legislation and regulations pertaining to national security matters and interacts with Original Classification Authorities (OCAs) and Special Security Officers. As in past years, Code 30 provided extensive investigation and litigation support to commanders, SJAs, trial counsel, and defense counsel from all Services.

(3) 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). Code 30 extended support to the DOJ National Security Division by facilitating the use of Navy classified materials vital to trial and communicating between the intelligence and federal law enforcement communities and the Department of the Navy.

(4) During FY18, Code 30 supported 2 designated NSCs, 21 courts-martial and 4 boards of inquiry involving classified information, criminal and civil litigation related to Navy ship collisions, and ongoing investigations involving espionage. Code 30 co-sponsored the latest iteration of the Classified Information Litigation Course in July 2018 with the Navy's legal training center, the Naval Justice School, and taught numerous blocks of instruction to counter-intelligence officers at the Joint Counter Intelligence Training Academy. On special request, Code 30 personnel traveled to San Diego, California to provide a 2-day training event to both trial and defense counsel, Defense Counsel Assistance Program (DCAP) personnel, and area judge advocates handling two major classified information cases, including a designated NSC.

(5) Code 30 continues to foster relationships within the intelligence community, the other Services, the Naval Criminal Investigative Service (NCIS), the FBI, and DOJ. Code 30 maintains an extensive library of resources and templates to assist in litigation efforts. Improvements to the Code 30 SharePoint site have ensured that this information is available to all judge advocates. 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. The primer serves as a starting point for attorneys across all Services litigating cases involving classified information.

### **c. Naval Justice School (NJS)**

(1) The mission of NJS is to oversee and provide formal training to Sea Service judge advocates and enlisted and civilian legal professionals, ensuring career-long professional development. NJS also trains senior officers, senior enlisted leaders, and other legal support personnel (who are not judge advocates or Legalmen) in the practical aspects of military law to enable them to perform their command and staff duties and to administer military justice. Through the delivery of quality legal training, NJS enhances Sea Service readiness and the promotion of justice.

(2) 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 and defense attorneys. Continuing legal education training and advanced military justice training is centrally-managed under the oversight of a Litigation Training Coordination Council (LTCC) comprised of two Assistant Judge Advocates General, military justice experts from both prosecution and defense, policy advisors, instructors, and senior judges. Course requirements are established annually by a board of advisors from the Navy, Marine Corps, and Coast Guard who have extensive experience in litigation and training.

(3) In FY18, NJS provided instruction to more than 3,800 students worldwide at more than 130 in-resident courses ranging in length from one day to 13 weeks. NJS instructors also provided off-site teaching in military justice, civil and administrative law, ethics, 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, Supply Corps School, and Limited Duty/Chief Warrant Officer Indoctrination School.

(4) NJS has eight core courses that include training in military justice:

(a) Basic Lawyer Course. This 10-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 to be qualified to serve as trial or defense counsel in courts-martial under Article 27(b), UCMJ. In FY18, NJS graduated 150 students.

(b) Legalman Accession Course. This 11-week course, offered two times in FY18, 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. The five weeks of military-specific training within the course double as the reserve Legalman Accession Course. In FY18, there were 28 active-duty graduates and 10 reservists.

(c) 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 (MOS) of Marine Corps Legal Services Specialist. The course curriculum consists of training in military justice, post-trial review, and legal administration. In FY18, 112 Marines completed this program.

(d) Legal Services Court Reporter Course. This 13-week course, offered two times annually, provides court reporter training to Marine Legal Services Specialists, grades E-3 to E-7, seeking the MOS 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 FY18, 28 Marines graduated from this course.

(e) Senior Leader Legal Course (formerly Senior Officer Course). This scenario-based three-day course is designed for COs, XO's, and officers-in-charge and is open to other officers in grades O-4 and above with NJS approval. The course trains officers in the execution of the legal responsibilities of command with instruction in military justice (including sexual assault case disposition), administrative law, ethics, and civil law. In FY18, NJS provided 39 offerings of the Senior Leader Legal Course in Newport, San Diego, Norfolk, Quantico, Beaufort, Okinawa, and Cherry Point. Per NAVADMIN 302/12, this course is mandatory for Navy O-6s prior to assuming command. In FY18, 1,027 Navy officers and 416 Marine Corps officers graduated from this program.

(f) Legal Officer Course. This two-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 FY18, NJS provided 16 offerings of the course in San Diego and Norfolk to a total of 611 students.

(g) Legal Clerk Course. Legal Clerks are typically assigned to assist non-lawyer Legal Officers within a command as a collateral duty. This two-week course provides training in the preparation of legal forms and reports, service record entries, non-judicial punishment, and courts-martial procedures. In FY18, NJS provided 17 offerings of the course in San Diego and Norfolk with a total of 425 students graduating.

(h) Senior Enlisted Leadership Course. This three-day course provides senior enlisted leaders of all Services training focusing on military justice matters. In FY18, NJS provided 15 offerings of the course in San Diego and Norfolk and had a total of 453 graduates. This course has been combined with the Senior Leader Legal Course, starting in FY19.

(5) In addition to the core courses, NJS provided 27 resident specialty courses, including the Prosecuting Special Victims' Cases course and Defending Sexual Assault Cases course which offer specialized training to prosecutors and defense counsel litigating complex sexual assault, child abuse, and domestic violence cases. In FY18, the continuing legal education resident courses reached more than 750 legal professionals.

(6) In addition to basic and intermediate level trial advocacy courses, NJS, the Trial Counsel Assistance Program (TCAP), and the DCAP coordinated 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 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.

(7) 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 81 career litigators in the MJLCT at the end of FY18, approximately one-third have earned an LL.M. in litigation.

#### **d. Trial Counsel**

(1) All Navy judge advocates attend the NJS Basic Lawyer Course prior to arriving at their first command. All judge advocates take part in the First Tour Judge Advocate (FTJA) program, a two-year rotation among our core practices of legal assistance, command services, and military justice. Upon completion of this rotation, judge advocates are available to be detailed as core trial counsel at a RLSO. Within their first year or shortly thereafter, trial counsel are sent to other training courses to include Basic Trial Advocacy Training and Prosecuting Special Crimes Victims training. Each trial counsel receives oversight by a Senior Trial Counsel (STC) that is an O-4 or above, MJLCT officer. Each STC is selected by the Judge Advocate General (JAG) to fill one of nine STC billets. Upon reporting, all STCs complete a one-week special victim investigation course and participate in additional specialized training such as

litigating complex cases, TCAP's targeted mobile training, and online special victims offenses litigation training. STCs are the nucleus of the Navy's Special Victim Investigation and Prosecution (SVIP) capability and are prepared to prosecute complex cases, including sexual assault and national security cases. All STC regularly report to TCAP on pending felony-level investigations and prosecutions. Members of TCAP may also be detailed to high-profile and complex cases as explained more fully below. Junior trial counsel receive extensive training and supervision from more experienced judge advocates to ensure they are capable of performing their duties.

(2) Sexual assault cases are typically detailed to "core attorneys" assigned to each RLSO. A RLSO core attorney is a trial counsel (O-3 or above) who is certified to practice in accordance with Article 27b, UCMJ, is a member in good standing of a state bar, and has completed a two-year tour prior to assuming the duties of a core trial counsel. All trial counsel, including core attorneys, are supervised by an STC, an XO (O-5 judge advocate), and a CO (O-6 judge advocate). Detailing of counsel is within the discretion of the RLSO CO who takes into consideration such matters as competence, experience, training, existing caseload, and availability of counsel, as well as case specifics. A CO may detail a second, more experienced counsel to a particular case to provide the opportunity for practical mentoring.

(3) All trial counsel have access to 24/7 support from the TCAP. TCAP's primary mission is to assist and advise 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 reports to the Chief of Staff, Region Legal Service Offices (COS-RLSO). TCAP's current Director is an O-5, qualified as an "Expert" in the MJLCT. TCAP's Deputy Director is an O-4, qualified as a "Specialist I" in the MJLCT. In addition to the military personnel, TCAP also has two Highly Qualified Experts (HQEs) that assist in complex cases. TCAP engages trial counsel in the field via regular case review conferences and coordinates with Appellate Government (Code 46) to ensure court-martial prosecutions are postured to withstand appellate review.

(4) A TCAP counsel may be detailed as trial counsel or assistant trial counsel when case complexity demands special proficiency. For example, in FY18, the TCAP Director was detailed as the lead trial counsel on a high profile national security case and for a murder case in a foreign country. The TCAP Deputy Director served as trial counsel in a child molestation case and two ship collision cases. The civilian Deputy Director assisted with a complex domestic violence/strangulation case, and TCAP's other HQE provided on-scene expert assistance in several complex child sexual assault and child exploitation cases.

(5) 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 practitioners. The discussion board facilitates a closer prosecution bar by enabling discussions among trial counsel worldwide.

(6) TCAP also plays a vital role in training trial counsel, partnering with NJS and the OJAG Criminal Law Division in the development of litigation training including a special victim crimes course, which covers intermediate and advanced prosecution principles in domestic violence, adult sexual assault, and child abuse/exploitation crimes. The course provided focused training sessions to Navy, Marine, and Coast Guard prosecutors and paralegals. This year, TCAP gave training on 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 Department of the Navy Sexual Assault Prevention and Response funding, TCAP ensured prosecutors' attendance at special victim crimes training including courses with the National District Attorney's Association. TCAP has also given Military Justice Act of 2016 training specifically tailored for military prosecutors. TCAP supplements its training outreach with a number of webinars focusing on prosecuting special victim offenses and other evidentiary topics. These webinars enable Navy prosecutors and paralegals to attend educational programs online presented by our own and nationally recognized experts at little to no cost.

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

(8) As the Navy has not had a capital case in several decades, capital litigation training has not been a specific area of focus. Currently, the Navy does not have any trial counsel experienced in capital litigation.

#### **e. Defense Counsel**

(1) All Navy judge advocates attend the NJS Basic Lawyer Course prior to arriving at their first command. All judge advocates take part in the First Tour Judge Advocate (FTJA) program, a two-year rotation among our core practices of legal assistance, command services, and military justice. Upon completion of this rotation, judge advocates are available to be detailed as core defense counsel at a Defense Service Office (DSO). Within their first year or shortly thereafter, defense counsel are sent to other training courses to include Basic Trial Advocacy Training, Defense Counsel Orientation, and the week-long Defending Sexual Assault Cases course, designed to provide judge advocates specific training on how to handle the legal issues and complexities involved in a sexual assault case. The Defending Sexual Assault Cases course includes both practical exercises and lectures from experienced civilian and military defense attorneys and experts, and allows for extensive discussion of existing military justice 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 training, along with a variety of specialty courses in complex litigation hosted by expert civilian practitioners.

(2) DCAP's primary mission is to support and enhance the proficiency of the Navy military justice defense bar, provide experienced reach-back and technical expertise for case collaboration, and to develop, consolidate, and standardize resources for defense counsel. DCAP provides full-spectrum advice and serves as a resource through every phase of pre-trial investigation and court-martial litigation. DCAP reports to the Chief of Staff, Defense Service Offices (COS-DSO). DCAP's current Director is an O-5 qualified as a "Specialist II" in the

MJLCT. He previously served as a defense counsel, trial counsel, afloat SJA, NJS Evidence and Trial Advocacy Instructor, and most recently, as a Senior Defense Counsel (SDC). The DCAP Director is also a member of the UCMJ Article 6 inspection team. As the defense subject matter expert on the team, the Director participated in Article 6 inspections of two of the four DSOs and their detachments in FY18.

(3) During FY18, DCAP assisted detailed defense counsel across a wide spectrum of trial practice, including trial strategy, motions practice, argument development, investigations, discovery, requests for witnesses and expert assistance, voir dire strategies and questions, complex legal research, and preparing clients and witnesses to testify in courts-martial. DCAP personnel were 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.

(4) DCAP was responsible for a wide array of training for defense counsel. 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 course. Together with NJS and the Marine Corps defense bar, DCAP organized and presented at the semi-annual Defense Counsel Orientation course that is designed to prepare new defense counsel to represent court-martial and administrative separation clients. In addition, DCAP provided instruction at the Basic Trial Advocacy course and coordinated with TCAP to present at the Senior Managers’ Course for military justice supervisors. DCAP conducted five individual week-long mobile training visits around the world, providing training to DSOs and their detachments with a focus on practical issues in defense work, including trial advocacy training based on current or recent case scenarios. DCAP also hosted the biennial Defending Sexual Assault Cases Symposium, bringing together the entire Navy defense enterprise for intensive training on issues impacting the defense practice. The Symposium included 55 defense counsel, 6 Defense Litigation Support Specialists (DLSS), and 16 enlisted paralegals together in one location for a litigation team-focused training on sexual assault defense and the impacts of the MJA 2016.

(5) DCAP oversees the DLSS program to ensure that DLSS positions are staffed, trained, and resourced to support defense counsel across the enterprise. DCAP provided standardized training and assisted in establishing uniform policy and protocols for the DLSS program. DCAP also oversaw the procurement of Microsoft Surface Pro tablets to enhance the effectiveness and mobility of DLSS.

(6) 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 SharePoint site, which allows for the collection of metrics and real-time exchange and dissemination of information and serves as a central repository of documents and resources developed by DCAP and counterpart offices in fellow Services, Office of the Judge Advocate General Criminal Law Division, and NJS. SharePoint allows offices to collaborate across vast geographical boundaries, promoting a “world-wide defense firm” mentality.

(7) In FY18, Navy defense counsel attended the National Child Abuse Defense and Resource Center's International Conference, the National Association of Criminal Defense Lawyers' Zealous Advocacy in Sexual Assault course, and the Child Victim Cases course to ensure that they are competent to defend sexual assault and child abuse cases. Navy defense counsel also attended advanced defense advocacy courses offered by the National Criminal Defense College and the National Association of Criminal Defense Lawyers.

(8) Sexual assault cases are detailed to "core attorneys" assigned to a DSO who possess the background and experience appropriate for the level of complexity of the particular case. Each DSO has an MJLCT Senior Defense Counsel and all DSOs currently have an MJLCT CO or XO. Standard DSO procedure is to detail only experienced counsel or supervisory counsel to complex cases.

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

(10) At this time, we do not have any defense counsel that are considered "capital qualified" because the Navy has not tried a capital case in several decades. However, we are in the process of establishing qualifications for capital counsel to improve our readiness to provide effective representation in a capital case.

#### **f. Victims' Legal Counsel (VLC)**

(1) The Navy VLC Program is comprised of 33 uniformed judge advocates stationed at 23 locations around the world. These attorneys receive administrative support from ten Yeomen. The VLC Program is led by a senior O-6 in the position of Chief of Staff (COS), with the assistance of a civilian Deputy Chief of Staff (DCOS). The VLC Program is organized into five regions: Pacific; West; Southeast; East; and Europe, Africa, Southwest Asia (EURAFSWA), with an O-4 Officer in Charge (OIC) leading each region.

(2) The Navy ensures its judge advocates assigned as VLC are able to perform their duties through a rigorous selection process, extensive and continuous training, and regular oversight. All VLC candidates are vetted for requisite professional experience, maturity, and judgment. Following interviews with the COS and Commander, Naval Legal Service Command, all candidates are interviewed by the JAG, with 11 VLC nominees interviewed and approved during FY18. Approved officers serve for no less than two years as VLC, with many serving for three years, thereby developing extensive expertise.

(3) 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 JAG to practice as a VLC. During FY18, the 11 incoming VLC completed the SVCC course and were certified in writing by the JAG. VLC also attend specialized courses and symposia such as Prosecuting Special Victims Cases (NJS), Representing Child Victims (Army), and the National Crime Victim Law Institute (NCVLI). In addition to outside training, in August 2018, the VLC Program held its third annual Training Symposium, bringing together all administrative support staff and 28 of 33 VLC, including all newly reported personnel. This

training included: required annual vicarious trauma training, conducted by a Naval War College Associate Professor; child victim training conducted by a seasoned VLC and a civilian Navy psychologist; eight hours of training on MJA 2016; instruction on veterans' benefits for victims of sexual violence presented by the head of the William & Mary Law School Veterans' Clinic; and litigation strategies for victims' rights presented by NCVLI. Furthermore, at the 2018 triennial JAG Training Symposia, the VLCP conducted an extra day of training for VLC attendees on each coast including discussion panels with military judges, staff judge advocates, and subject matter experts. VLC also participate in internal monthly training which includes topics such as retaliation, the Freedom of Information Act, civilian victims' rights, and ethics.

(4) The Navy VLC Program's appellate practice team consists of five VLC that are specially trained by the Navy Appellate Government division. Team members attend the Joint Appellate Advocacy Training (JAAT), the standard training for Service government and defense appellate counsel. The members of the appellate team are tasked with remaining current on appellate cases involving victims' rights, supporting other VLC with imminent trial-level appellate issues, taking on post-trial appellate cases as they arise, and producing a quarterly appellate case law update for all VLC.

(5) During FY18, Navy VLC provided legal support to 1,890 sexual offense victims (930 of whom were new clients for VLC during FY18). With an average of 1,070 open cases at any given time across the program, VLC participated on behalf of victims at more than 490 military justice and administrative proceedings, and conducted 676 outreach briefs on VLC services to approximately 28,000 active duty and civilian personnel.

(6) This robust and ongoing training curriculum, coupled with the ability of Program leadership to observe VLC, provides the ability to continuously assess individual VLC competence and capability.

#### **g. Appellate Defense (Code 45)**

(1) Appellate defense counsel for the Navy and Marine Corps are consolidated within OJAG Code 45. Code 45 represents Navy and Marine Corps appellants before the NMCCA, the CAAF, and the U.S. Supreme Court. Code 45 provides assistance to trial defense counsel in the field by helping file extraordinary writs before the NMCCA and the CAAF, providing advice on individual cases in litigation, and providing instructors at formal training sessions on topics including recent appellate rulings and how to preserve issues for appeal. Code 45 also works closely with DCAP for both the Navy and Marine Corps to advance the skills and success of trial defense counsel.

(2) During FY18, Code 45 was staffed with ten active-duty Navy and Marine Corps judge advocates, one civilian attorney, and two civilian support personnel. Two U.S. Coast Guard judge advocates were also co-located with Code 45 to execute Coast Guard appellate defense services. Twenty-one Navy and Marine Corps Reserve judge advocates also supported Code 45.

(3) Training for new Navy and Marine Corps appellate defense counsel consists of an intensive, multi-day instructional program concentrating on appellate case law, appellate advocacy, and appellate courts rules/practices/procedures provided by a GS-15 Subject Matter Expert in a seminar format. This training is augmented by group participation in both an annual JAAT conference and attendance at the annual Appellate Judge's Education Institute (AJEI) training seminar. New counsel also attend a highly personalized appellate advocacy seminar focusing on the mechanics of case review and brief writing by one of the leading appellate defense advocates in the country, Mr. Ira Mickenberg. Through all of these training avenues, appellate defense counsel develop vital capabilities such as appellate advocacy skills including: litigation of extraordinary writs; appellate motion and brief writing; appellate oral argument; complex statutory and legal analysis; Fourth Amendment rights in the digital age; Supreme Court litigation and developing constitutional issues in military cases; strategic appellate development of service-favorable precedent; complex sexual assault litigation; and upcoming statutory and regulatory changes to the military appellate process.

(4) After arriving at Code 45, new counsel work with a more experienced appellate defense counsel identified as their Branch Head to provide on-the-job training. The Branch Head assists new counsel as they develop appellate litigation skills including brief writing and case review. Appellate defense counsel are assigned simpler cases in the beginning as they are refining their capabilities and learn how to identify issues and draft briefs. As their skills are developed, appellate defense counsel are given more complex cases.

(5) Our appellate defense counsel have sufficient litigation experience as either a trial or defense counsel to effectively represent an appellant in a national security case. Specialized training and resources are available to any counsel assigned to a national security case.

(6) Because the Navy has not tried a capital case in several decades, we do not have any appellate defense counsel qualified to represent an appellant in this area. We are in the process of establishing qualifications for these counsel to improve our readiness to provide effective representation in a capital case.

(7) Regarding sexual assault cases, experienced trial litigators arriving at Code 45 have typically received a breadth of training in either sexual assault prosecution or defense during their previous tours as trial or defense counsel. They have also attended numerous courses and training specifically designed to educate counsel on the intricacies of a sexual assault case. Thus, appellate defense counsel are well-positioned to effectively represent appellants in sexual assault cases.

#### **h. Appellate Government (Code 46)**

(1) The primary mission of Code 46 is to represent the United States before the NMCCA and the CAAF. The Division also provides interlocutory appeal and appellate support and advice to trial counsel, staff judge advocates, and post-trial review officers throughout the Navy and Marine Corps for all types of pretrial, court-martial, and post-trial matters.

(2) During FY18, Code 46 was staffed with ten active-duty judge advocates, one civilian supervisory appellate attorney, and two civilian administrative employees. In FY18, Code 46 was supported by seven Navy and two Marine Corps reserve judge advocates.

(3) Code 46 requires every counsel attend the yearly JAAT, where basic and intermediate appellate advocacy skills are taught, including: litigation of extraordinary writs; appellate motion and brief writing; appellate oral argument; protecting trial records against appellate reversal; complex statutory and legal analysis; Fourth Amendment rights in the digital age; litigating and protecting victim appellate rights; Supreme Court litigation and developing constitutional issues in military cases; strategic appellate development of service-favorable precedent; complex sexual assault litigation; and upcoming statutory and regulatory changes to the military appellate process. In addition to the annual JAAT, Code 46 counsel attend the annual CAAF Continuing Legal Education and Training Program.

(4) After arriving at Code 46, new counsel are paired with more experienced appellate counsel to ensure they learn basic appellate litigation skills on-the-job within six months of arrival. In turn, the more experienced counsel learn the editorial skills needed for military leadership, which further enhances litigation skills development. As competency grows, Code 46 counsel are assigned increasingly complex issues. Additionally, advanced appellate litigation skills are bolstered through attendance at the D.C. Bar's appellate advocacy course, and the annual AJEI summit. Skills are then reinforced through: serving as volunteer appellate moot court judges at regional and national appellate advocacy competitions; developing courses to teach appellate issues to trial counsel, victims' counsel, and staff judge advocates; and, when assigned, making policy, regulatory, and statutory recommendations to appropriate Departmental offices in light of new developments in appellate court precedents.

(5) Code 46 coordinates with Navy and Marine Corps TCAPs to advise and respond to questions from the field on pending litigation and appellate matters. The Duty Appellate Counsel (DAC) program provides trial counsel, victims' counsel, and staff judge advocates instant access to a Duty Counsel and supernumerary with a duty phone and official email address. This allows Code 46 the ability to provide professional appellate advice 24/7 to the field on all appellate matters, including interlocutory appeals in ongoing trials, extraordinary writs, and any other emergent matters. Code 46 expands its reach electronically through online media including a discussion board, a Military Justice Wiki, and a Military Justice Blog, all of which are also used by trial counsel and appellate government counsel from other Services. Code 46 periodically emails newsletters and memoranda to practitioners.

(6) Code 46 works through Navy and Marine Corps TCAPs and NJS to provide formal trial counsel and staff judge advocate training both on a scheduled and on-demand basis. Code 46 trains trial attorneys on handling interlocutory appeals; extraordinary writs; post-trial fact-finding hearings and remands; protecting the record to withstand appellate scrutiny; and, the intersections between trial and post-trial processing and appellate review. In FY18, Code 46 conducted the Third Annual VLC Appellate Training to Navy and Marine Corps VLC.

(7) Code 46 appellate government counsel have sufficient litigation experience as either a trial or defense counsel to effectively represent the government in a national security case. If a

complex appellate case were to arise, we would ensure that counsel received specialized training, as needed, to thoroughly understand the complexities of a national security case.

(8) Because the Navy has not tried a capital case in several decades, the Navy does not have any appellate counsel experienced in capital litigation.

(9) Code 46 appellate government counsel have sufficient experience and training to effectively address any appellate issues that may arise in a sexual assault case. All appellate government counsel have gained this experience as either trial or defense counsel and through numerous specialized training.

#### **i. Trial and Appellate Judges**

(1) All trial and appellate judges within the Navy and the Marine Corps are selected based on their qualifications and judicial temperament at an annual Judicial Screening Board. Upon selection, those individuals are eligible to fill a billet as a trial or appellate judge. Prior to taking the bench, a new judge must receive training and education. 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 for attendees to be JAG-certified as military trial judges by providing 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.

(2) All trial-level military judges, active and reserve, attend the annual 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 pending changes under the MJA 2016, the evolution of victims' rights in recent National Defense Authorization Acts, advanced evidence, sentencing methodology, and judicial ethics.

(3) Responsibility for hosting JMJAT alternates between the Navy-Marine Corps Trial Judiciary (NMCTJ) and the Air Force Trial Judiciary (USAFTJ). The USAFTJ hosted JMJAT 2018 at the U.S. Air Force's Judge Advocate General's School on board Maxwell Air Force Base in Montgomery, Alabama in February 2018. Instructors from the 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.

(4) Additionally, the trial judiciary sends judges to the National Judicial College (NJC) for individual courses. The NJC is a 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.

(5) 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.

(6) In September 2018, all Navy and Marine Corps trial judges gathered at the Washington Navy Yard in Washington, D.C. for three days of training funded by Department of Defense Sexual Assault Prevention and Response Office related to issues involving special victims. Training topics focused on implementation and execution of the MJA 2016, including discussion of new plea agreement rules, victims' rights, electronic warrant and subpoena powers, court-martial empanelment, and segmented sentencing procedures.

(7) Appellate judges also receive extensive and ongoing training. Since 2011, the NMCCA has hosted 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. 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 2018, the NMCCA hosted the conference, and expanded the conference to three days, which included a full day on judicial writing. Finally, one appellate judge attended the New Appellate Judges Seminar hosted by New York University School of Law; two appellate judges attended the Appellate Judges Education Institute Summit hosted by Duke Law School; and multiple appellate judges attended various week-long courses offered through the National Judicial College on a variety of evidentiary topics.

## **V. INDEPENDENT VIEWS OF THE JUDGE ADVOCATE GENERAL AS TO THE SUFFICIENCY OF RESOURCES, INCLUDING TOTAL WORKFORCE, FUNDING, TRAINING AND OFFICER AND ENLISTED GRADE STRUCTURE TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS**

a. In FY18, the Navy had sufficient resources to fulfill military justice functions at the trial and appellate level.

b. Our most pressing personnel challenge is at the trial level, where several core trial counsel and core defense counsel billets remain vacant. These were new billets provided by the Navy in the period FY15 to FY17. During this timeframe, the Judge Advocate General allocated 10 new billets for trial counsel, 9 new billets for defense counsel, and 4 new billets for VLC attorneys. However, some of the new trial counsel and defense counsel billets remained vacant in FY18. These billets will be filled as the number of judge advocates grows to match the number of authorized billets. At the end of FY18, the JAG Corps had 902 active duty judge advocates (an increase of 24 from FY17), with an authorized end strength of 929.

c. A second pressing challenge relates to information technology. In particular, we need a new case management and data collection system based on modern software, and a new court reporting system. These new systems are needed to replace outdated systems and processes, and

to comply with MJA 2016 requirements. We are working with the Marine Corps to assess available options, and will ensure Navy and Department of the Navy leadership remain apprised.

d. As we assess the Navy's military justice practice in light of the coming implementation of the MJA 2016, we will consider the potential need for additional resourcing, both personnel and funding. We will submit any resourcing requests within the appropriate Navy or Department of the Navy process.

e. In FY18, the Navy had an extensive training program supported by knowledgeable and qualified instructors at Naval Justice School. Added to the training portfolio this year was considerable work and collaboration that produced our online MJA 2016 training, which has received positive reviews. Finally, we are working with the Naval Postgraduate School's SPEAR workshop (Strategic Planning for Execution: Assessment and Risk) to assess whether and how aspects of our Military Justice Litigation Career Track might be reshaped to maximize effectiveness in the future.

## VI. CONCLUSION

In FY18, the Navy continued to focus on providing high quality military justice advice and representation to service members, commanders, and the Fleet. The complexity of our cases demands that the Navy continue to train attorneys, paralegals, and support staff to ensure they all have the resources necessary to provide the best representation possible. Implementation of MJA 2016 will pose challenges for every participant in the military justice system. However, through our efforts in creating the framework necessary to train and supervise our counsel, paralegals, and support staff, the Navy is committed to excellence in this critical mission.

  
JOHN G. HANNINK  
Vice Admiral, JAGC, U.S. Navy  
Judge Advocate General

**VII. APPENDIX**

**Report Period: FY 2018**

<b>NAVY PENDING COURTS-MARTIAL (As of 15 October 2018) [A]</b>			
<b>TYPE COURT</b>	<b>PREFERRED PENDING DISPOSITION DECISION</b>	<b>REFERRED</b>	<b>TOTAL</b>
GENERAL		58	
BCD SPECIAL		44	
NON-BCD SPECIAL		0	
SUMMARY		4	
<b>TOTAL:</b>	<b>74</b>	<b>106</b>	<b>180</b>

<b>NAVY COURTS-MARTIAL STATISTICS (Persons) [A]</b>				
<b>TYPE COURT</b>	<b>TRIED</b>	<b>CONVICTED</b>	<b>ACQUITTALS</b>	<b>RATE OF INCREASE (+)/ DECREASE (-) OVER FY17</b>
GENERAL	112	91	21	-9.7%
BCD SPECIAL	129	118	11	-3%
NON-BCD SPECIAL	0	0	0	0
SUMMARY	12	12	0	-52%
<b>OVERALL RATE OF INCREASE (+)/DECREASE (-) FROM FY17</b>				<b>-10.3%</b>

<b>DISCHARGES APPROVED (NAVY &amp; MARINES) [B]</b>		
<b>GENERAL COURTS-MARTIAL (CA LEVEL)</b>		
NUMBER OF DISHONORABLE DISCHARGES	90	
NUMBER OF BAD-CONDUCT DISCHARGES	63	
<b>SPECIAL COURTS-MARTIAL (CA LEVEL)</b>		
NUMBER OF BAD-CONDUCT DISCHARGES	113	

**RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG (NAVY & MARINES) [B]**

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	245	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	126	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL [C]	38	

**WORKLOAD OF THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (NAVY & MARINES) [B]**

TOTAL ON HAND BEGINNING OF PERIOD		160	
GENERAL COURTS-MARTIAL	124		
BCD SPECIAL COURTS-MARTIAL	36		
REFERRED FOR REVIEW		317	
GENERAL COURTS-MARTIAL	199		
BCD SPECIAL COURTS-MARTIAL	118		
TOTAL CASES REVIEWED		325	
GENERAL COURTS-MARTIAL	216		
BCD SPECIAL COURTS-MARTIAL	109		
TOTAL PENDING AT CLOSE OF PERIOD		152	
GENERAL COURTS-MARTIAL	107		
BCD SPECIAL COURTS-MARTIAL	45		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-9.97%	

**APPELLATE COUNSEL REQUESTS BEFORE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (NAVY & MARINES) [B]**

NUMBER	325	
PERCENTAGE	100%	

**ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (NAVY & MARINES) [B]**

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (53/325)	16.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-8.6%
PERCENTAGE OF TOTAL PETITIONS GRANTED (9/53)	16.98%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-38.44%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (9/325)	2.77%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-37.52%

**APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (NAVY & MARINES) [B & D]**

TOTAL PENDING BEGINNING OF PERIOD		6	
RECEIVED		2	
DISPOSED OF		7	
GRANTED	2		
DENIED	5		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		1	

<b>ORGANIZATION OF COURTS - NAVY</b>		
TRIALS BY MILITARY JUDGE ALONE	178	
GENERAL COURTS-MARTIAL	68	
SPECIAL COURTS-MARTIAL	110	
TRIALS BY MILITARY JUDGE WITH MEMBERS	63	
GENERAL COURTS-MARTIAL	44	
SPECIAL COURTS-MARTIAL	19	

<b>COMPLAINTS UNDER ARTICLE 138, UCMJ - NAVY</b>		
NUMBER OF COMPLAINTS	57	

<b>STRENGTH - NAVY</b>		
AVERAGE ACTIVE DUTY STRENGTH	329,867 [E]	

<b>NAVY NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ) [F]</b>		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	3,402	
RATE PER 1,000	10.31	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	-.53%	

#### **Explanatory Notes**

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

[B] Appellate data consolidated for both Navy and Marines because collected by single organization.

[C] This figure represents only cases reviewed under Article 69(a)

[D] This figure represents only cases reviewed under Article 69(b).

[E] This figure includes only Active-Duty Sailors and does not include Reservists.

[F] Non-Judicial Punishment. 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.



**DEPARTMENT OF THE NAVY**  
**HEADQUARTERS UNITED STATES MARINE CORPS**  
**3000 MARINE CORPS PENTAGON**  
**WASHINGTON, DC 20350-3000**

December 31, 2018

## **Report to Congress**

### **Marine Corps Report on the State of Military Justice for Fiscal Year 2018**

**31 December 2018**

**Prepared by:**

**HEADQUARTERS UNITED STATES MARINE CORPS**  
**JUDGE ADVOCATE DIVISION**  
**3000 MARINE CORPS PENTAGON**  
**WASHINGTON, D.C. 20350-3000**

The estimated cost of this report or study for the Department of Defense is approximately \$4,810 for the 2019 Fiscal Year. This includes \$50 in expenses and \$4,760 in DoD labor.  
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## TABLE OF CONTENTS

<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. DATA ON NUMBER AND STATUS OF PENDING CASES.....</b>	<b>1</b>
<b>III. INFORMATION ON THE APPELLATE REVIEW PROCESS</b>	<b>1</b>
<b>a. Compliance with Processing Time Goals.....</b>	<b>2</b>
<b>b. Circumstances surrounding cases involving:</b>	
<b>(1) Unlawful Command Influence.....</b>	<b>2</b>
<b>(2) Denial of right to speedy review.....</b>	<b>2</b>
<b>(3) Loss of records of trial.....</b>	<b>2</b>
<b>(4) Other administrative deficiencies.....</b>	<b>2</b>
<b>(5) Provisions of the UCMJ held unconstitutional.....</b>	<b>2</b>
<b>IV. MEASURES IMPLEMENTED BY THE MARINE CORPS TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO SERVE IN CERTAIN BILLETS OR TYPES OF CASES.....</b>	<b>2</b>
<b>a. Trial Counsel.....</b>	<b>3</b>
<b>b. Defense Counsel.....</b>	<b>5</b>
<b>c. Victims' Legal Counsel.....</b>	<b>6</b>
<b>d. Military judges.....</b>	<b>7</b>
<b>e. Additional Policy and regulatory efforts.....</b>	<b>8</b>
<b>V. INDEPENDENT VIEWS OF THE STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS ON THE SUFFICIENCY OF RESOURCES TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS.....</b>	<b>8</b>
<b>VI. APPENDIX.....</b>	<b>9</b>

## **I. INTRODUCTION**

The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) submits the following report pursuant to Public Law 114-328, the National Defense Authorization Act of Fiscal Year 2017. A core component of legal support, military justice occupies the majority of personnel and other assets within the Marine Corps legal community. The SJA to CMC closely coordinates the efforts of that community with our colleagues in the Navy.<sup>1</sup> In addition to many other legal efforts throughout Fiscal Year 2018 (FY18), the SJA to CMC focused in preparing counsel and commanders to implement the vast changes contained in the Military Justice Act of 2016 (MJA 2016). The details contained in this report are illustrative of those efforts, and provide additional insight on lines of effort in the years to come.

## **II. DATA ON NUMBER AND STATUS OF PENDING CASES**

The Marine Corps collects court-martial data in the Case Management System (CMS). Cases are entered into CMS when a law center receives a request for legal services from a supported command, and progress and outcomes are entered into that system as applicable. Data related to the number and status of those cases is included in the Appendix.

## **III. INFORMATION ON THE APPELLATE REVIEW PROCESS**

Both Navy and the Marine Corps cases which meet applicable jurisdictional requirements are reviewed by the Navy-Marine Corps Court of Criminal Appeals (NMCCA). The information provided on the cases below flows from cases convened by Marine Corps commanders, although appellate litigation of these cases is handled by personnel assigned to the Navy-Marine Corps Appellate Review Activity.

### **a. Information on Compliance with Processing Time Goals.**

(1) No Marine Corps case was dismissed on speedy trial grounds during FY18.

(2) The Marine Corps had seven cases exceed the 120 days from sentencing to Convening Authority (CA) action (“Moreno 1” guidelines). Delay in these cases was most closely associated with lengthy records of trial and defense requests for extension in submitting matters in clemency after trial. Under the circumstances all delay was considered reasonable.

(3) No Marine Corps case exceeded the 30-day window from the date of CA action to docketing at NMCCA (the “Moreno 2” guideline).

(4) One Marine Corps case docketed at NMCCA exceeded the “Moreno 3” guideline of 18 months from docketing to decision: *United States v. Hutchins*, No. 200800393, 2018 CCA LEXIS 31 (N-M. Ct. Crim. App. 29 Jan. 2018) (unpub. op.). The appellant was convicted of unpremeditated murder and other offenses. On this appeal (the third time this case was

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<sup>1</sup> The Marine Corps provides information throughout this report on cases convened by Marine Corps commanders, recognizing that some efforts within that continuum are undertaken by our colleagues working within various Code sections in the Office of the Judge Advocate General of the Navy.

reviewed), the appellant did not raise appellate delay in his case but did raise 13 other assignments of error, and was granted a total of seven enlargements of time to file his pleadings. Due to the number of errors raised by the appellant, the government was granted five enlargements to file its responsive briefs. After hearing oral argument and considering a supplemental filing by the appellant, the Court ultimately issued a 106-page opinion in the case. This was the third occasion on which the NMCCA reviewed this case, and the court found no basis to grant relief to the accused on any matter related to procedural delay.

**b. Circumstances surrounding cases involving the following issues:**

(1) Unlawful Command Influence: One special court-martial conviction was reversed on appeal due to unlawful command influence (*United States v. Chamblin*, No. 201500388, 2017 CCA LEXIS 694 (N-M. Ct. Crim. App. 8 Nov. 2017) (unpub. op.)). This case involved one of seven Marines photographed urinating on deceased enemy combatants in Afghanistan. The NMCCA dismissed the charges for apparent unlawful command influence.

(2) Denial of right to speedy review: None.

(3) Loss of records of trial: None.

(4) Other administrative deficiencies: None.

(5) Cases where provision of this chapter was found to be unconstitutional: None.

**IV. MEASURES IMPLEMENTED BY THE MARINE CORPS TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO SERVE IN CERTAIN BILLETS OR TYPES OF CASES**

The Marine Corps military justice community is comprised of trial counsel, defense counsel, victims' legal counsel, legal services specialists, legal administration officers, staff judge advocates, Litigation Assistance Attorneys (LAAs, formerly called "Highly Qualified Experts"), and military judges.<sup>2</sup> This community combines the experience of these professionals with organization and training programs to accomplish the military justice mission. Of the 567 active-duty judge advocates, 460 enlisted personnel in this community, and 20 Legal Administration Officers, all receive initial, regular, and specialized training suited to their billet and level of expertise. Those efforts are augmented by training programs offered at Naval Justice School, most of which are available to and attended by Marine Corps personnel. The measures implemented by the Marine Corps to ensure competence within this community are detailed below.

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<sup>2</sup> Marine judge advocates are selected for judicial duties by the Judge Advocate General of the Navy and, while sitting as judges, are supervised by an independent judiciary acting under the cognizance of the Navy JAG. However, the SJA to CMC determines which Marine judge advocates are available for assignment as military judges, and ensures their careful training and preparation for those duties accordingly.

## **a. Trial Counsel**

(1) The Marine Corps maintains approximately 80 Trial Counsel (TC), each of whom is assigned to a Legal Services Support Section (LSSS) in one of four regions: National Capital Region, Eastern Region, Western Region, or Pacific Region. These regions are served by a Legal Service Support Team (LSST) at various locations within each region. Each TC is supervised by a Senior Trial Counsel (STC), who in turn reports to a Regional Trial Counsel (RTC). Of these trial counsel, slightly more than 50% meet Marine Corps qualification requirements necessary to prosecute Special Victim Investigation Prosecution (SVIP) cases.<sup>3</sup> The Marine Corps provides TCs with formal training and trial preparation advice, in addition to the mentorship and on-the-job training offered by other experienced judge advocates within the LSSS. Additional resources for TC include a civilian LAA, who is selected based on experience and expertise with complex special victim cases.

(2) The Marine Corps hand selected judge advocates based upon their experience to receive a Master of Laws (LL.M.) degree in criminal law. The selected judge advocates receive their degrees from The Army's Judge Advocate General's Legal Center and School (TJAGLCS) or an American Bar Association accredited civilian law school. Upon completion, a judge advocate receives an Additional Military Occupational Specialty (MOS) which identifies them as uniquely qualified to serve in military justice billets. These officers serve in supervisory litigation billets and in prosecution shops tasked with handling particularly complex cases.

(3) The STC supervising trial counsel are judge advocates in the grade of O-4 or above, most of whom also hold a LL.M. degree in criminal law in addition to a Juris Doctor (J.D.). The STC reports to an RTC, an officer in the grade of O-5 who also normally holds an LL.M. in criminal law. The RTC is responsible for ensuring trial counsel are detailed appropriately depending on the complexity of the cases. Each STC and RTC is hand-selected by Judge Advocate Division. These supervisory counsel are among the 65 Marine judge advocates who currently possess an LL.M. in criminal law.

(4) All trial counsel are assigned to a regional LSSS and must complete a trial counsel orientation course before being detailed to any court-martial. Prior to being detailed to General Courts-Martial, the TC must also be certified by the RTC or LSSS Officer-In-Charge (OIC). The trial counsel must: (1) be certified as a TC under Article 27(b), UCMJ and sworn under Article 42(a), UCMJ; (2) have served as a trial counsel for six months or have a combined eighteen months experience as a trial and/or defense counsel or military judge; (3) have prosecuted a contested special court-martial as the lead TC or a contested general court-martial as an assistant trial counsel; (4) have completed the Naval Justice School Article 32 Officer Course; and (5) have received recommendations, in writing, from the cognizant STC and, when applicable, LSST OIC.

(5) In addition to supervision by experienced counsel with advanced qualifications, trial counsel also benefit from the Trial Counsel Assistance Program (TCAP). Established in 2012,

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<sup>3</sup> These requirements include trying a minimum number of cases as lead or co-counsel, training course attendance, recommendations of senior attorneys familiar with counsel, and education requirements for personnel in certain billets.

the TCAP mission is to assist and advise trial counsel on all aspects of prosecution, including pre-trial investigations, drafting charges, trial preparation, and professional responsibility. All trial counsel have 24/7 access to the TCAP, which provides support through training, sharing of resources, and the creation of offense-specific “playbooks.” To enhance community development, the TCAP also posts blogs on recent case law and legislative developments, results of and lessons-learned from recent courts-martial, and suggested forms and sample motions. The TCAP website also supports a discussion board which facilitates a more unified prosecution bar.

(6) Marine Corps LAAs further support TC by advising on all sexual assault cases, complex cases, and other cases that present unique legal issues. The four current Marine Corps LAAs collectively possess more than 80 years of litigation experience and participate in all areas of trial preparation, including collaboration on case analysis 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. The LAAs also help retain institutional knowledge in prosecution sections that experience regular turnover of military personnel.

(7) While the Marine Corps has not tried a capital case in several years, supervisory personnel and training resources are in place to ensure counsel are prepared to try such cases.

(8) The Marine Corps recently consolidated all national security cases to the LSSS located in the national capital region. This facilitates coordination with other federal agencies, enables access to courtrooms which support handling of classified material, and leverages the experience of reserve Marine Corps Judge Advocates in this type of litigation. The Marine Corps also sends counsel to the Navy Office of the Judge Advocate General (OJAG) Code 30, National Security Litigation Division, to receive training on litigating national security cases. Additional training on specific requirements in these cases is integrated in other training courses (such as the Military Judges’ Course), and in other courses open to personnel with a need for such training.

(9) Sexual assault cases are subject to specific detailing requirements related to career progression, training, experience, and other detailing criteria in order to ensure well-qualified judge advocates prosecute sexual assault cases. These measures ensure that attorneys who have the requisite experience, courtroom aptitude, and recommendations from supervisors be assigned to try SVIP cases. All sexual assault cases are tried by a Complex Trial Team (CTT) member. To be detailed to a sexual assault case, a trial counsel must: (1) be General Courts-Martial certified; (2) demonstrate to the satisfaction of the LSSS Officer in Charge (OIC) that the TC possesses the requisite expertise, experience, education, innate ability, and disposition to competently prosecute special victim cases; (3) prosecute a contested special or general court-martial in a special victim case as an assistant trial counsel; (4) attend an intermediate-level trial advocacy training course for the prosecution of special victims cases (such as the TCAP Prosecuting Special Victim Cases Course); and (5) receive recommendations, in writing, from the STC, RTC, and, when applicable, LSST OIC.

(10) Nearly every training event for the Marine Corps legal community includes some discussion of the unique and specific requirements associated with sexual assault cases. The TCAP also conducts a SVIP training course for trial counsel and support Marines from across

the Marine Corps. This is a 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. Instructors for this course include a mix of experienced practitioners, senior judge advocates, district attorneys, and expert witnesses who testify in sexual assault cases.

(11) All counsel assigned to the Office of Military Commissions (OMC) receive training from OMC to ensure competency in dealing with cases referred to the commissions. The Marine Corps had nine judge advocates assigned to OMC during FY 18.

#### **b. Defense Counsel**

(1) The Marine Corps Defense Services Organization (DSO) provides criminal defense services to Marines accused of offenses at courts-martial and adverse administrative proceedings. The DSO maintains approximately 70 attorneys who are assigned within the same regional LSSS and LSST as their TC counterparts. Every defense counsel serves in a DSO office led by a Senior Defense Counsel, normally a major (O-4) with an LL.M. in criminal law, who reports directly to the Regional Defense Counsel (RDC). The RDC is a lieutenant colonel (O-5) who reports directly to the Chief Defense Counsel of the Marine Corps (CDC). The CDC is a colonel (O-6) who reports directly to the Staff Judge Advocate to Commandant of the Marine Corps.

(2) The DSO maintains a Defense Counsel Assistance Program (DCAP), currently led by an active duty major (O-4) with a L.L.M. in criminal law. The DCAP also employs two civilian GS-15 LAAs (one located in the eastern region and one located in the western region). The DCAP responds to queries from counsel in the field; assists counsel with complex motions practice; shares best practices with counsel; and maintains a secure website available to all personnel assigned to the DSO. The website includes a discussion forum where counsel can post questions and provide feedback to discussions in real-time, a motions database, copies of judge's rulings, standard forms and advice, and various trial advocacy tools and samples.

(3) The DSO also maintains a training program which requires attendance formal week-long Defense Counsel Orientation, Basic Trial Advocacy, and Defending Sexual Assault Cases courses, monthly SDC training sessions, quarterly RDC training, and a week-long training event hosted by the DSO. In addition, Defense Counsel (DC) attend one of the DSO's recognized core civilian trial advocacy courses (the Trial Practice Institute hosted by National Criminal Defense College, the Bronx Defenders Academy, the Alternate Defense Counsel Trial Advocacy Course, or the Federal Criminal Justice Advocacy Trial Skills Academy). Defense counsel are frequently sent to various other civilian defense courses offered by the National Criminal Defense College, the Trial Lawyers College, and the National Association of Criminal Defense Lawyers. This training program ensures DSO attorneys maintain the knowledge and experience necessary to provide high quality representation in complex sexual assault cases.

(5) The DSO also has established internal safeguards to ensure the competency of counsel assigned to specific cases. For example, detailing authority for certain complex and high visibility cases is withheld to either the RDC or CDC, and a DSO Policy Memorandum directs supervisory counsel to consider case complexity, potential conflicts, anticipated rotation date of counsel, caseload of counsel, experience of counsel, and training and education requirements of

counsel prior to detailing their defense counsel to a case. In conjunction with the training program, these safeguards ensure that DSO defense counsel effectively, competently, and ethically represent their clients.

(6) Defense counsel receive military commission training from the OMC when assigned to that office.

### **c. Victims' Legal Counsel**

(1) The Marine Corps established its Victims' Legal Counsel Organization (VLCO) in 2014 to provide legal representation to victims during military legal proceedings. The VLCO is comprised of 18 active duty full-time judge advocates, and includes an OIC, a Deputy OIC, four supervisory Regional Victims' Legal Counsel (RVLC), and 12 Victims' Legal Counsel (VLC). These counsel are distributed across the same four LSSS regions as their TC and DC counterparts. Two active duty judge advocates serve as auxiliary VLCs detailed to cases when a conflict arises within a region, and five Marine Reserve officers also serve as VLCs, one of whom is the Reserve VLC Branch Head. The VLCO is currently supported with ten civilian paralegals (up from 7 in FY17), including two active duty Marine legal services specialists. The current VLCO OIC is an active duty lieutenant colonel (O-5) selected for promotion to colonel (O-6). The Deputy OIC, Regional VLCs, and the Reserve VLC Branch Head are all majors (O-4). All remaining VLCs, both active duty and reserve, are captains (O-3).

(2) Marine VLCs attend Special Victims' Counsel certification training at either The Army Judge Advocate General's Legal Center and School (TJAGLCS) or the Air Force The Judge Advocate General's School (TJAGS). Marine VLC also receive specialized training on representing child victims, and attend the annual VLCO training symposium, and participate in local quarterly training. In addition, VLC have the opportunity to attend other military and civilian training courses throughout the year, including courses at the National Advocacy Center, the National Computer Forensics Institute, and the Naval Justice School. The VLCO also provided victim-specific legal training during Judge Advocate Division directed MJA 16 training, including instruction on the changes in victims' rights, training on Article 6b of the UCMJ, the Privacy Act, and Military Rules of Evidence 412 and 513.

(3) Selection of Marine Corps VLCs includes a careful nomination, screening, interview, and vetting process. This requirement satisfies the Department of Defense requirement that individuals considered for VLC positions undergo an "enhanced screening" process before selection, including a review of the nominee's military records and background to ensure that the nominee does not have a disqualifying investigative or criminal record.

(4) These training efforts are aimed at measurable qualifications. Marine Corps policy establishes minimum qualifications for RVLC and VLC, including requirements related to experience and seniority. Pursuant to that policy, RVLC are Marine judge advocates serving in or selected to the grade of major (O-4) who normally have at least two years combined experience as a trial counsel, defense counsel, or military judge, to include experience in at least one contested general court-martial case. In addition, RVLC will normally hold an LL.M. in

criminal law. The same policy requires VLC to be serving in or selected to the grade of captain (O-3), with six months or more military justice experience and at least one contested case.

(5) These counsel provided legal services to approximately 713 victims during FY18, including intakes and initial counseling and guidance. Of these victims, approximately 85% were victims of sexual assault, including sexual assaults perpetrated by an intimate partner. Approximately 15% were victims of other crimes, including domestic violence. The Marine Corps is the only Service that details VLC to victims of domestic violence, and these cases comprise approximately 10% of all detailed cases.

(6) The client volume during FY18 represents a moderate increase in workload compared to FY16 and FY17, during which VLCO assisted approximately 655 and 661 victims, respectively. The FY18 client volume yielded an average caseload of 391 detailed cases across the VLCO, with individual VLC caseload averages varying between 25 (Pacific Region) and 35 cases (National Capital Region). Due to an increase in the number of victims seeking services, VLCO expects that the average caseload will continue to rise. After a detailed analysis of VLC caseloads, the Marine Corps added two VLC billets during FY18 in order both to ensure that VLCs in every region have sufficient time properly to represent their clients, and to plan for future increases in requests for VLC services.

(7) Increased caseload is a direct result of the Marine Corps commanders' recognition of the value of VLC in military justice and administrative processes. VLC are encouraged to interact with commanders at every opportunity in order to ensure that commanders are aware of the benefit they provide. All regional VLC offices engage in outreach activities with commanders, staff judge advocates, and victim service providers. These efforts included one-on-one briefs to incoming commanders, welcome aboard briefs to new personnel, courses to new uniformed victim advocates, and instruction in conjunction with other military justice counsel. Meetings between the OIC, VLCO and general officers indicate Marine Corps commanders understand the importance of providing victims with a voice in military justice and administrative proceedings, and appreciate the VLCOs role in this.

(8) Victims' legal counsel are not assigned to the OMC, but are eligible to attend all training offered to other Marine judge advocates.

#### **d. Trial and Appellate Military Judges**

(1) All Marine Corps military judges are competitively selected by a process established by the the Judge Advocate General (JAG) of the Navy. That process includes careful evaluation of the education, experience, accomplishments, temperament, and leadership capabilities of the candidates. Each candidate must apply to be screened for judicial duty, receive letters of recommendation from judges before whom they have tried cases, and provide a detailed summary of their qualifications and experience.

(2) The Marine Corps recently approved a modification to the MOS Manual which adds a specific MOS designator for military Judges. Among other things, this policy requires military judges to possess "a suitable background in military justice, sound judgment, an even

temperament, unquestioned maturity of character, and exemplary writing skills.” The new provision also requires a Master of Laws degree and a certificate issued on graduation from the Military Judges’ Course at TJAGLCS. This policy modification will enhance the Marine Corps’ ability to monitor the training and placement of military judges at both trial and appellate levels.

**e. Additional policy and regulatory efforts**

Throughout FY18, the Marine Corps legal community completed a phased training plan which included 24 hours of in-person instruction to prepare all personnel for the implementation of the Military Justice Act, which represents a sea change to the military justice system. In addition, the SJA to CMC published specific requirements for the analysis of sexual assault, special victim, and complex cases prior to forwarding those cases for a determination on disposition by the Convening Authority. Also at the direction of SJA to CMC, Judge Advocate Division established a centralized electronic process for monitoring the licensure, training, qualifications, and capabilities of counsel.

**V. INDEPENDENT VIEWS OF THE STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS ON THE SUFFICIENCY OF RESOURCES TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS**

a. The Marine Corps legal community currently possesses sufficient resources and personnel to capably perform military justice functions. To assess whether the Marine Corps legal community is best postured to address current and future requirements—including formal support of the recent statutory requirement to study the feasibility of a formal requirement to expand VLC services to victims of domestic violence—I am requesting the Marine Corps Studies System to conduct a comprehensive analysis of the provision of legal services throughout the Marine Corps. I am confident this analysis will identify constructive measures to optimize Marine Corps legal resources.

b. Meanwhile, my priorities remain:

(1) Development and retention of a motivated, trained, and diverse Marine Corps legal community postured to provide the highest caliber legal support to operating and garrison forces;

(2) Analysis, and if necessary modification, of the structure and personnel resources of Judge Advocate Division and the Marine Corps legal community to ensure we meet the requirements of that community, the Commandant, and the Marine Corps;

(3) Train, educate, and equip our Marines and civilian personnel to meet the needs of current and future operating environments, especially in the areas of court reporting, electronic records management, knowledge management, and data collection and analytics.

 19 Dec 2016  
D. J. ECCE  
Major General, U.S. Marine Corps

## Appendix

### U.S. MARINE CORPS MILITARY JUSTICE STATISTICS

Report Period: FY 2018

<b>PENDING COURTS-MARTIAL (Persons)[A&amp;B]</b>			
TYPE COURT	PREFERRED	REFERRED	NOTES
GENERAL		62	
BCD SPECIAL		241	
NON-BCD SPECIAL		0	
SUMMARY		4	
<b>TOTAL:</b>	<b>122</b>	<b>307</b>	

<b>BASIC COURTS-MARTIAL STATISTICS (Persons)</b>						
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT		
GENERAL	158	146	12	+25.4%	+29.2%	-7%
BCD SPECIAL	177	162	15	+13%	+17%	-21%
NON-BCD SPECIAL	0	0	0			
SUMMARY	123	123	0		-18.6%	
<b>OVERALL RATE OF INCREASE (+)/DECREASE (-) FROM FY17</b>				<b>+3.6%</b>	<b>+5.1%</b>	<b>-8.4%</b>

#### **DISCHARGES APPROVED**

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES	90	*9 dismissals for officer cases (not reflected in total number)
NUMBER OF BAD-CONDUCT DISCHARGES	59	
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	104	

#### **RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG (NAVY & MARINES) [B][C]**

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	245	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	126	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL	38	

**WORKLOAD OF THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS  
(NAVY & MARINES) [B][C]**

TOTAL ON HAND BEGINNING OF PERIOD		160	
GENERAL COURTS-MARTIAL	124		
BCD SPECIAL COURTS-MARTIAL	36		
REFERRED FOR REVIEW		317	
GENERAL COURTS-MARTIAL	199		
BCD SPECIAL COURTS-MARTIAL	118		
TOTAL CASES REVIEWED		325	
GENERAL COURTS-MARTIAL	216		
BCD SPECIAL COURTS-MARTIAL	109		
TOTAL PENDING AT CLOSE OF PERIOD		152	
GENERAL COURTS-MARTIAL	107		
BCD SPECIAL COURTS-MARTIAL	45		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-9.97%	

**APPELLATE COUNSEL REQUESTS BEFORE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (NAVY & MARINES) [B]**

NUMBER	325	
PERCENTAGE	100%	

**ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES**

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (53/325)	16.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-8.6%
PERCENTAGE OF TOTAL PETITIONS GRANTED (9/53)	16.98%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-38.44%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (9/325)	2.77%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-37.52%

<b>APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ</b>			
TOTAL PENDING BEGINNING OF PERIOD		6	
RECEIVED		2	
DISPOSED OF		7	
GRANTED	2		
DENIED	5		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		1	

<b>ORGANIZATION OF COURTS</b>			
TRIALS BY MILITARY JUDGE ALONE		270	
GENERAL COURTS-MARTIAL		121	
SPECIAL COURTS-MARTIAL		149	
TRIALS BY MILITARY JUDGE WITH MEMBERS		65	
GENERAL COURTS-MARTIAL		37	
SPECIAL COURTS-MARTIAL		28	

<b>COMPLAINTS UNDER ARTICLE 138, UCMJ</b>			
NUMBER OF COMPLAINTS		9	

<b>STRENGTH</b>			
AVERAGE ACTIVE DUTY STRENGTH		185,518	

<b>NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ) [E]</b>			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		5,714	
RATE PER 1,000		30.8	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD		-21.4%	

#### **Explanatory Notes**

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

[B] Appellate reviews have been consolidated for both Navy and Marines because this function is performed by single organization.

[C] Part 4, Article 69. This figure represents only cases reviewed under Article 69(a)

[D] Part 8. This figure represents only cases reviewed under Article 69(b).

[E] Non-Judicial Punishment. 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.



December 28, 2018

**Air Force Report on the State of Military Justice for Fiscal Year 2018**

**TABLE OF CONTENTS**

**I. INTRODUCTION**

**II. DATA ON NUMBERS AND STATUS OF PENDING CASES**

**III. INFORMATION ON APPELLATE REVIEW PROCESS**

- a. Compliance with Processing Time Goals
- b. Circumstances surrounding cases involving the following issues
  - (1) Unlawful command influence
  - (2) Denial of right to speedy review
  - (3) Loss of records of trial
  - (4) Other administrative deficiencies
  - (5) Provision of UCMJ held unconstitutional

**IV. MEASURES IMPLEMENTED BY THE AIR FORCE TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO PARTICIPATE COMPETENTLY IN CAPITAL CASES, NATIONAL SECURITY CASES, SEXUAL ASSAULT CASES, AND MILITARY COMMISSIONS**

- a. Professional Development Directorate
- b. Air Force Judge Advocate General's School
- c. Military Justice Division
- d. Trial Counsel
- e. Defense Counsel
- f. Special Victims' Counsel
- g. Appellate Defense Counsel
- h. Appellate Government Counsel
- i. Trial and Appellate Judges

**V. INDEPENDENT VIEWS OF THE JUDGE ADVOCATE GENERAL AS TO THE SUFFICIENCY OF RESOURCES, INCLUDING TOTAL WORKFORCE, FUNDING, TRAINING AND OFFICER AND ENLISTED GRADE STRUCTURE TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS**

- a. Total Workforce
- b. Funding

c. Training

d. Officer and Enlisted Grade Structure

**VI. CONCLUSION**

**VII. APPENDIX**

**IN ACCORDANCE WITH PUBLIC LAW 114-328, THE NATIONAL DEFENSE AUTHORIZATION ACT OF FISCAL YEAR 2017, THE FOLLOWING INFORMATION IS PROVIDED.**

**I. INTRODUCTION**

Military justice continued to be a principal focus for the Air Force Judge Advocate General's Corps (JAGC or Corps) in Fiscal Year 2018 (FY18). In FY18, the Air Force JAGC prioritized the implementation of the Military Justice Act of 2016 (MJA 2016 or Act) and improved existing trial and appellate competencies. Over the past year, the Air Force JAGC has engaged in a robust training effort to educate every total force judge advocate and paralegal on the changes contained in the Act. In addition to training our Corps, our military justice experts are building tools and updating publications. Installation commanders, convening authorities, chief master sergeants and first sergeants will continue to receive military justice training in formal courses and from their local installation legal offices. Our focus is to ensure a smooth and seamless transition for all Airmen.

The Air Force Court of Criminal Appeals (AFCCA) rendered decisions in 202 cases through opinions and orders in FY18, 12 of which were published opinions. The court held oral argument in five cases. Pursuant to the Court's "Project Outreach" program, one of these oral arguments was held at Florida International University, and another was held at The Pennsylvania State University, Penn State Law. At Penn State Law, it was the first time the court allowed oral argument by law students, supervised by certified attorneys, who submitted *amicus curiae* briefs. Outreach arguments are an exceptional tool that offer civilians the opportunity to observe and better understand the military justice system. This is especially critical for law students who may otherwise have very little experience with or exposure to the military justice system. Further, outreach arguments serve as a powerful recruiting tool for the Air Force and JAGC throughout the civilian community.

We provide the following information to illustrate the current state of Air Force military justice practice:

**II. DATA ON NUMBERS AND STATUS OF PENDING CASES**

The Air Force collects court-martial data in the Automated Military Justice Analysis and Management System (AMJAMS). This system tracks cases from initial legal office notification to final disposition. The Appendix provides data on pending Air Force cases.

**III. INFORMATION ON APPELLATE REVIEW PROCESS**

All appellate cases for the Air Force are reviewed by the Air Force Court of Criminal Appeals (AFCCA). The AFCCA has eight regular Air Force appellate judge billets.

**a. Compliance with Processing Time Goals.**

- (1) In FY 18, no Air Force cases were dismissed on speedy trial grounds at the appellate-court level.

- (2) Twelve cases exceeded 120 days from sentencing to Convening Authority's (CA) action (the "Moreno 1" guideline). No relief was granted by the appellate court.
- (3) Four cases exceeded the 30-day window from the date of CA's action to docketing at the AFCCA (the "Moreno 2" guideline). No relief was granted by the appellate court.
- (4) Eight cases exceeded the "Moreno 3" guideline of 18 months from docketing to decision. Of the eight cases, the appellate court granted relief in the following case: *United States v. Gusev*, No. ACM S32392, 2018 CCA LEXIS 396 (A.F. Ct. Crim. App. 21 Aug. 2018) (unpub. op.). More than 27 months passed between the date of docketing with the appellate court and the completion of appellate review. Based on the pleadings filed this Court returned the record of trial to The Judge Advocate General directing a *DuBay* hearing, and a specified issue. The court ultimately found Appellant did not demonstrate prejudice from the overall post-trial delay, and accordingly held there was no due process violation. However, the court found that even in the absence of a due process violation, exercising its authority under Article 66(c), UCMJ, relief pursuant to *United States v. Tardif*, 57 M.J. 219 (C.A.A.F. 2002), was warranted. The Court reduced the Appellant's reduction in grade from E-1 to E-2 as an appropriate remedy for the unreasonable post-trial delay.

**b. Cases reversed or remitted because of:**

- (1) Unlawful Command Influence: None; however, although *United States v. Vargas* did not specifically address unlawful command influence, the Air Force Court of Criminal Appeals did find that the military judge's impartiality could reasonably be questioned. Specifically, in *Vargas*, AFCCA unanimously held that the military judge abused his discretion by (1) failing to recuse himself and (2) ruling on a defense motion to dismiss due to unlawful command influence related to the detailing of military judges to Article 120 courts-martial. AFCCA did not address the unlawful command influence issue itself, but found that the military judge's impartiality could reasonably be questioned. AFCCA noted the record established that the presiding military judge had knowledge of the reasons why a different military judge was re-assigned from SrA Vargas' court-martial and, therefore, should have recused himself from the case. As a result, the court set aside SrA Vargas' conviction and authorized a rehearing.
- (2) Denial of right to speedy review: None.
- (3) Loss of records of trial: None.
- (4) Other administrative deficiencies: In *United States v. Honea III*, a unanimous CAAF concluded that the record of trial was "a tangled morass" that did "not establish with certainty what the findings were," and accordingly set aside the appellant's conviction and sentence. Further, because the record was "so irredeemably

muddled,” CAAF did not authorize a rehearing and instead dismissed the charge with prejudice.

- (5) Cases in which provisions of the UCMJ were found to be unconstitutional: In *United States v. Mangahas*, CAAF held that, based upon Supreme Court precedent, the offense of rape of an adult is not constitutionally punishable by death and that as a result, the statute of limitations for a court-martial prosecution for rape (prior to amendments enacted in 2006) is five years. Accordingly, CAAF reversed an AFCCA decision authorizing the prosecution of Lt Col Mangahas for rape allegations that were almost twenty years old. The ruling in *Mangahas* has impacted two other Air Force appeals currently pending before CAAF: *United States v. Collins* and *United States v. Briggs*.

#### **IV. MEASURES IMPLEMENTED BY THE AIR FORCE TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO PARTICIPATE COMPETENTLY IN CAPITAL CASES, NATIONAL SECURITY CASES, SEXUAL ASSAULT CASES, AND MILITARY COMMISSIONS**

##### **a. Professional Development Directorate**

Certification Process: A typical Air Force judge advocate begins his or her career with the opportunity to litigate as a prosecutor under the supervision of a Staff Judge Advocate (SJA) with well over a decade of experience. Before being certified by The Judge Advocate General (TJAG) as competent to perform the duties of trial and defense counsel, an Air Force judge advocate will generally serve as assistant trial counsel in a number of courts-martial directly under the supervision of a senior prosecutor. Before a judge advocate is qualified by TJAG to serve as independent trial counsel in a general court-martial, the judge advocate must graduate from the Judge Advocate Staff Officer Counsel (initial military attorney training), demonstrate competence to perform the duties of trial and defense counsel, and be recommended for certification by the supervising SJA and military judge. This pre-certification period typically lasts between 18-24 months before a judge advocate is certified to serve as trial counsel on a general court-martial. After a trial counsel becomes certified, they will still not serve as lead prosecutor in felony-level trials. These less experienced counsel sit second chair on complex cases, working the case and performing assigned duties (witness examinations, motions, opening statement, or argument); but these cases are led by experienced attorneys, often from the ranks of the Circuit Trial Counsel (CTC) community.

The Air Force has also begun the Deliberate Development of Litigators Pilot Program. In accordance with our program, junior counsel usually serve two tours in base legal offices before the best litigators, as identified by SJAs and military judges, are submitted for consideration as Area Defense Counsel (ADCs). Each ADC is responsible for an installation where they focus on the practice of military justice, to include court-martial litigation. Each ADC has demonstrated a heightened level of proficiency in litigation, has been nominated by a supervising attorney, and has been vetted through the functional chain of command, the Trial

Defense Division, and the Professional Development Directorate before being personally assigned by TJAG. ADCs begin their defense careers by trying misdemeanor-level cases. ADCs do not sit first chair on a felony trial, but instead the military accused will receive an experienced Circuit Defense Counsel (CDC) to work alongside and supervise their detailed ADC. ADCs are supervised by a CDC, who provides oversight and mentoring of the more junior ADC. The Corps currently maintains 21 CDC billets to serve as senior defense counsel on criminal cases across the Air Force. This carefully managed development process ensures the AFJAGC builds a core cadre of attorneys who have a strong foundation in managing a docket of criminal and administrative cases. This cadre of judge advocates is deliberately developed to progress into higher-level litigation positions, such as senior prosecutors, senior defense counsel, and senior special victims' counsel. The most capable ADCs are hand-picked to serve as CTCs or CDCs.

The prosecution function is managed with equal care. The Air Force maintains a cadre of specially trained and experienced prosecutors to assist junior prosecutors with complex cases in its CTC program. The AFJAGC currently maintains 25 CTC billets to serve as senior prosecutors on criminal cases across the Air Force. As noted by one Military Law Review article, "The [CTC] program has been 'integrated into the fabric of [AF] military justice' and is utilized by AF SJAs from the investigation stage all the way through trial to maximize the quality of the government's case. With an experienced litigator available to SJAs, cases are litigated and litigated well." See *The Secret to Military Justice Success: Maximizing Experience*, by Major Jeffrey Gilberg. These Air Force senior prosecutors usually have five or more years of experience as an Air Force litigator, and they travel to support more complex litigation where they sit as first-chair prosecutors.

The Air Force employs a "Special Victims Unit," (SVU) and began using the "SVU- CTC" designation to identify prosecutors who have specialized experience and who have shown specific aptitude in trying cases involving child victims, allegations of sexual assault, or allegations of domestic violence. These experienced prosecutors have spent over a year trying felony-level cases as CTCs, and make up the Air Force's prosecution arm of its Special Victim Investigation and Prosecution (SVIP) capability. In addition to consulting with bases during the development and charging of a case and serving as lead counsel, SVU-CTCs provide direct support and training to junior counsel on complex cases involving special victims. In CY 2015, CTCs were detailed to almost 90% of Air Force sexual assault cases referred to General Court-Martial. In the remaining cases, the trial team is often guided by a military justice chief, deputy SJA, or SJA who has amassed a great deal of military justice experience throughout their career.

After serving as CTCs and CDCs, opportunity exists for these senior prosecutors and senior defense counsel to serve as Chief CTCs or Chief CDCs. These Chiefs supervise subordinate prosecutors or defenders within their geographic circuits and personally try the highest profile cases in the Air Force. Generally, each Chief CTC or CDC has 10 to 14 years of experience as an Air Force JAG. Beyond those positions lie additional opportunities for promotion within the military justice system, with former Chiefs often competing favorably for military judge positions and, eventually, for the positions of the Air Force's Chief Prosecutor, Chief Defense Counsel, Chief Circuit Military Judge, or Chief Trial Judge.

The culmination of this deliberate development process is a cadre of O-6s who have spent the majority of their careers deeply involved in litigation and the practice of military justice

with the expertise to effectively handle capital, national security, sexual assault, and military commissions cases.

**b. The Air Force 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 Air Force Base, 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 2018, AFJAGS faculty members instructed more than 18,700 students at these military institutions.

Additionally, AFJAGS published 12 articles concerning military justice and other related criminal justice issues in *The Reporter* and *The Air Force Law Review*. Of note, during FY 2018 *The Reporter* was upgraded to be available online and dynamically viewable on mobile devices, thereby allowing AFJAGS to reach a larger audience—resulting in a large boost in readership. Further, with the assistance of subject matter experts from the Administrative Law Directorate (JAA), the Air Force Legal Operations Agency’s Civil Law & Litigation Directorate (JAC), and the Air Force Legal Operations Agency’s Judiciary Directorate (JAJ), AFJAGS significantly revised the School’s flagship publication, *The Military Commander and the Law*, to include major 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. *The Military Commander and the Law* is available online 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 FY18, there were several live webcasts on military justice topics. These webcasts are available “on demand” via the JAG School’s web-based learning management system AFJAGS and accessible to all members of the JAG Corps.

More than 3,000 students attended in-residence and distance education courses in FY18. With more than 60 AFJAGS 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
Chief’s Leadership Course
Defense Orientation Course (new Area Defense Counsel and Defense Paralegals)
First Sergeant’s Academy
Gateway (intermediate leadership course for Air Force JAG Corps majors)
Intermediate Sexual Assault Litigation Course (held regionally in United States and overseas)
Judge Advocate Staff Officer Course (initial training for new Judge Advocates)
Law Office Manager Course
Military Justice Administration Course
Paralegal Apprenticeship Course

Paralegal Craftsman Course
Senior Enlisted Legal Orientation Course
Senior Officer Legal Orientation Course
Special Victims' Counsel Course
Trial and Defense Advocacy Course
Victim/Witness Assistance Program Course (Distance Education and in-residence offerings)

In addition to the above resident and distance-learning courses, to further enhance military justice advocacy training, AFJAGS continued administering the Training by Reservists in Advocacy and Litigation Skills program (TRIALS), where teams of JAG School faculty, augmented by reserve judge advocates, conduct regional courses in foundational advocacy skills. In FY18, TRIALS programs were conducted at 8 locations: Kadena Air Base, Japan; Joint Base Langley-Eustis, Virginia; Barksdale AFB, Louisiana; Ramstein Air Base, Germany; Wright-Patterson AFB, Ohio; Travis AFB, California; Offutt AFB, Nebraska; and Joint Base San Antonio-Fort Sam Houston, Texas.

Of particular note, the Air Force Judiciary, in conjunction with the Community Legal Services Directorate and in concert with the Air Force Judge Advocate General's School, collaborate to provide individualized training in each of our five regional Circuits through the Intermediate Sexual Assault Litigation Course (ISALC). Circuit Trial Counsel (CTC) and Circuit Defense Counsel (CDC), the Air Force's most skilled litigators actively engaged in trying the Air Force's toughest cases, arm counsel with the skills they need to effectively try these cases for both the government and the defense perspectives. The training is primarily designed to train counsel on advocacy techniques in the most difficult and serious cases, educate counsel on the recent changes to military justice, and train counsel on new developments in the law driven by appellate decisions. All of the instruction is presented with an eye toward ensuring counsel understand the practical application of these areas to improve the level of advocacy in the courts that they are working now and to better prepare them for their future in military justice.

Finally, as previously described in the FY16 and FY 17 reports, AFJAGS continued implementation of 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. During FY17, AFJAGS faculty collaborated with the Professional Development Directorate in finalizing the CFETP's requirements. The faculty then incorporated all CFETP requirements into all lesson plans for the Judge Advocate Staff Officer Course, Gateway, and the Staff Judge Advocate Course.

### **c. The Military Justice Division**

The Military Justice Division, Air Force Legal Operations Agency (AFLOA/JAJM), conducted Corps-wide training leading up to the 1 January 2019 implementation of the Military Justice Act of 2016 (MJA16)—the most comprehensive UCMJ reform since 1984. Training was provided in three phases. Phase I consisted of 11 prerecorded webcasts that provided an overview of the major changes to the law. All total force judge advocates and paralegals were required to complete Phase I training as were civilian employees with military justice responsibilities. In Phase II, JAJM held three live Corps-wide webcasts to address questions from the field related to the Phase I training. In Phase III, JAJM held four live Corps-wide

webcasts covering the implementation of MJA16 into Air Force policy and practice. All of the prerecorded and live webcasts produced in Phases I-III are posted on a central website and available for repeat viewing. Also as part of Phase III training, members from JAJM traveled to training events to provide in-person training to military judges, senior litigators, senior special victims' counsel, staff judge advocates, chiefs of military justice, and the faculty at the Air Force Judge Advocate General's School.

#### **d. Trial Counsel**

TJAG assigns Circuit Trial Counsel (CTC) based on recommendations from the Chief of Government Trial and Appellate Division (AFLOA/JAJG) and the Professional Development Directorate. These recommendations are based on the experience and demonstrated merit in prosecuting and defending complex cases. Their ability in the courtroom is assessed by military judges, other senior trial counsel, and advocacy instructors who have worked with them. JAJG then is responsible for providing experienced trial counsel to prosecute courts-martial worldwide.

Under the O-6 Chief of JAJG, the CTC program consists of the O-5 Chief Trial Counsel of the Air Force, 5 Circuit Chief Trial Counsel, and 18 Circuit Trial Counsel strategically located throughout the world. Twelve CTCs have earned designation through training, knowledge and experience as Special Victims Unit (SVU) prosecutors. These 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 CTCs, are supported by the SVU's Chief of Policy & Coordination, who is the Division's focal point for issues related to the prosecution of sexual assault cases. One CTC also serves as liaison to the Department of Defense (DoD) Computer Forensics Laboratory (DCFL) and is the Air Force's legal expert on issues related to digital evidence.

All Circuit Trial Counsel attend the Advanced Sexual Assault Litigation Training Course and many attend both the Advanced Trial Advocacy Course at AFJAGS as well as the Prosecuting Complex Cases Course at the Naval JAG School. As needed, the most proficient CTCs are selected to attend the Capital Litigation Course presented by the Association of Government Attorneys in Capital Litigation in Pasadena, California. Special Victims Unit CTCs are identified after demonstrating enhanced proficiency in prosecuting sexual assault and other victim-involved cases. SVU CTCs tried an average of 71 courts-martial. The Chief Trial Counsel and the DCFL Liaison CTC both have Top Secret clearances ensuring the division has the capability to handle national security cases.

Further, as part of the second annual Air Force Circuit Annual Training at Joint Base Andrews, CTCs 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 JAJG, Air Force Circuit Annual Training also allowed the entire CTC corps to train in plenary sessions alongside judge advocates assigned to the Trial Judiciary, Trial Defense Division and SVC Division. In 2018, the Air Force Circuit Annual Training provided instruction on the Military Justice Act of 2016, as well as computer and digital evidence, the Electronic Communication Privacy Act, and recent appellate cases. This opportunity enhanced knowledge of the missions of the other divisions. CTCs also received a variety of training offered by sister service and non-DoD sources. These trainings, such as the Navy's Prosecuting Alcohol Facilitated Sexual Assault course and the Association of Government Attorneys in Capital Litigation's Annual Conference, add to the perspective of CTCs and allows for the cross-

feed of information from outside of the Air Force. In total, CTCs attended approximately 1,400 man-hours of training to improve advocacy and prosecution skills.

#### **e. Defense Counsel**

TJAG assigns all defense counsel based on recommendations from the Chief of Trial Defense Division (AFLOA/JAJD) and the Professional Development Directorate (AF/JAX). Those recommendations are based on the desires of the judge advocate together with the attorney's experience and demonstrated competence in prosecuting and defending complex cases. The attorney's ability in the courtroom is assessed by their staff judge advocate, military judges, and circuit trial and defense counsel who have worked with and observed them in court, as well as by advocacy instructors who have observed them in litigation courses. Only the best-qualified candidates are ultimately selected as ADCs.

JAJD is responsible for providing all defense services throughout the Air Force through its worldwide team of ADCs, defense paralegals (DP), circuit defense counsel (CDC), chief circuit defense counsel (CCDC), and defense paralegal managers (DPM). The Division Chief, together with an Office Superintendent, oversees trial defense services from Joint Base Andrews, MD. During FY18, the Division Chief implemented the Defense Counsel Assistance Program (DCAP), to develop and provide training and highly qualified expert assistance for defense counsel worldwide. A civilian at Joint Base Andrews manages the DCAP.

During FY18, the Division was staffed with 84 ADCs, 72 DPs, 19 CDCs, 3 DPMs and 5 CCDCs. Each CCDC leads the defense team falling within their respective judicial circuit, of which three are in the Continental United States (CONUS), one is in United States Air Forces Europe (USAFE) and one is in the Pacific Air Forces (PACAF). The DPMs are assigned to the three CONUS circuits and, in addition to leading their own circuit, assist in managing the PACAF and USAFE circuits. Together these 188 professionals provide defense services to service-members around the world.

JAJD continued in FY18 to demonstrate excellence in defending complex cases, including sexual assault cases. 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. Training remains the Division's top priority to ensure the best representation for Air Force clients and to maintain a team of defense counsel with the skill set to participate competently in capital, national security, and complex sexual assault cases. In FY18, the Division utilized a progressive training program where new defense counsel attend the Defense Orientation Course and the Trial and Defense Advocacy Course. All defense counsel were also required to attend the Intermediate Sexual Assault Litigation Course. CDCs, and ADCs who demonstrated an aptitude for trial defense work, also attended the Advanced Sexual Assault Course and the Advanced Trial Advocacy Course. All CDCs attended the Air Force Circuit Annual Training, which included substantive instruction on anticipated changes under the Military Justice Act of 2016 that will be implemented in FY19. CDCs also attended external civilian-sponsored courses and subsequently passed along the lessons learned to the defense counsel in their circuits. In addition to formal instruction, the CDCs provide on-the-job training and mentoring to the ADCs within their circuit on a continuing basis.

## **f. Special Victims' Counsel**

10 U.S.C. § 1044e(d)(1)(B) requires that a judge advocate be certified as competent by TJAG to be designated as an SVC. In order to perform SVC representation, judge advocates must be certified as a trial and defense counsel under Article 27(b), UCMJ, nominated and vetted through the "best qualified" selection process, and approved for assignment to the SVC position by TJAG.

Every SVC receives tailored training dedicated to preparing them to represent adult and child victims of sexual assault. To ensure that every SVC Division member is certified, incoming personnel attend an annual Air Force Judge Advocate General's School (AFJAGS) certification course for both adult and child clients. AFJAGS provides the Special Victims' Counsel Course (SVCC), which is a 10-day course at Maxwell AFB. At the 2018 SVCC, three incoming Senior Special Victims' Counsel (SSVCs – now designated as Chief Circuit Special Victims Counsel, or CCSVCs), 27 incoming SVCs and 11 incoming Special Victims' Paralegals (SVPs) received 52 blocks of instruction regarding representation of adult and child victims of sexual assault. The course also included 54 incoming SVCs/Victims' Legal Counsel (VLC) from our sister services. Student feedback included appreciation for joint service training, subject matter expert instructors, and training blocks on practical application of the law.

Air Force SVCs and SVPs who could not complete the Air Force SVCC, could attend the Army SVC Program's certification course at The Army Judge Advocate General's Legal Center and School (TJAGLCS). In 2018, eight SVCs and five SVPs attended the Army adult representation certification courses. One SVP attended the child portion of the course. Additionally, the Army SVC Program invited three Air Force SVC personnel to be instructors at the Army Adult certification courses.

In 2018, AFJAGS provided an Air Force certification course that included adult and child representation. The Army Judge Advocate General's Legal Center and School (JAGLCS) offered two Army certification courses for adult representation and one Army certification course for child representation.

Air Force SVCs both conducted and received advanced training at service courses and civilian organizational conferences. SVCs attend specialized litigation training at the Air Force Intermediate Sexual Assault Litigation Course (ISALC) and the Advanced Sexual Assault Litigation Course (ASALC). In December 2017, ISALC-Pacific Air Forces was held at Kadena AB in Okinawa. In April 2018, ISALC-United States Air Force-Europe was held at Ramstein AB, in Germany. In May 2018, ISALC-West was held at Travis AFB in California. In August 2018, ISALC-Central was held at Joint Base San-Antonio in Texas. Due to the budget impasse, the 2017 Eastern Circuit ISALC was canceled. ASALC was conducted at Maxwell Air Force Base in Montgomery, Alabama; six SVCs attended.

In August 2018, the Air Force Trial Judiciary presented the Air Force Circuit Advocacy Training (AFCAT). All the Air Force SVC leadership (Division Chief, Associate Chief, Deputy Chief, Chief of Appellate and Outreach and five then-designated SSVCs) attended AFCAT in order to maximize the available time between headquarters and the SSVCs assigned throughout the world. The SVC Division participated in the annual Judge Advocate Appellate Training (JAAT) by providing faculty and nine SVC attendees. The SVC Division provides training and networking opportunities by attending civilian conferences. In the reporting period, the Division sent 15 SVCs and 10 SVPs to the National Crime Victims Law Institute, 17 SVCs and 3 SVPs to

the National Sexual Assault Conference, and 8 SVCs and 5 SVPs to the Texas Association Against Sexual Assault.

In August 2018, the SVC Division initiated Character and Strength Summits designed to focus on assault-victim-specific mental health issues, wellness, and resiliency. Four summits were held between August-September 2018. Personnel received training on working with trauma victims and clients experiencing suicidal thoughts, in addition to secondary stress and vicarious trauma risks presented by representing sexual assault victims. The Summits also featured in-depth self-care training to include understanding risk factors and protective factors for secondary stress, vicarious trauma, and burnout. Other topics included establishing appropriate attorney/paralegal-client boundaries, mindfulness, and identifying and maximizing personal strengths.

#### **g. Appellate Defense Counsel**

Appellate Defense Division (AFLOA/JAJA) counsel are selected, through coordination with Professional Development Directorate (AF/JAX), based upon experience and capability in litigation and writing. In FY2018, JAJA was staffed by one O-6 Division Chief, an O-5 Deputy Chief, and nine active duty appellate attorneys. In addition, the Division was staffed by two active duty paralegals, and one GS-15. Nine reservists were also assigned to the Division. The Air Force Appellate Defense Division is responsible for delivering appellate defense services to Airmen on appeal.

In 2018, JAJA attorneys 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 other services. JAJA personnel typically attend civilian appellate advocacy training at the University of North Carolina – Chapel Hill School of Government. When JAJA learned the training would not be held this year, JAJA leadership arranged for one of the Chapel Hill trainers to come to Joint Base Andrews to hold in-person appellate advocacy training for the staff. The training focused on effective appellate advocacy, to include zealous representation of individuals convicted of sexual assault offenses. Additionally, Division attorneys continued to brief at various courses to include training senior defense counsel at Joint Base Andrews and new defense counsel at The Air Force Judge Advocate General's School.

#### **h. Appellate Government Counsel**

Trial and Appellate Government Division's (JAJG) appellate division is staffed by seven regular Air Force Appellate Counsel, five reservist appellate counsel and one civilian appellate counsel, as well as an O-6 Division Chief. Additionally, Appellate Operations has one civilian paralegal and two active duty paralegals. Appellate Counsel vigorously represented the government in Article 66 and Article 67 appeals of Air Force court-martial convictions. Appellate Government is located at Joint Base Andrews Maryland. The Division is led by an O-6, Chief and includes a GS-15, Associate Chief, an O-5, Deputy Chief for the Government Appellate Division, as well as the remaining counsel in the grade of O-3 and O-4 who represent the United States on all appeals before The Air Force Court of Criminal Appeals and the Court of Appeals of the Armed Forces.

TJAG, upon the recommendation of the Chief of JAJG, and in coordination with the Professional Development (AF/JAX), selects officers to be appellate government counsel based

upon their experience and capability with respect to litigation and writing. Typically appellate counsel are chosen from among officers serving as ADCs or circuit counsel recognized for their ability and desire to serve as appellate counsel. Their ability in the courtroom is assessed by military judges, other senior trial counsel, and advocacy instructors who have worked with them. Once Appellate Counsel arrive at JAJG they have an orientation with our division, the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces. During the year, Appellate Government Counsel attended two main courses to enhance their appellate advocacy. Counsel attend and participate as instructors at the Annual Joint Appellate Advocacy Training, which provides valuable instruction on appellate advocacy from plenary speakers and allowed cross-feed between government appellate counsel from all services. Counsel also attend the annual continuing legal education program sponsored by The United States Court of Appeals for the Armed Forces allowing for specific training on appellate advocacy run by and from the perspective of the appellate judges of our highest court. All of our counsel are trained on and have experience with litigating sexual assault cases. In addition, our Chief and Senior civilian attorney hold Top Secret clearances should classified matters arise on Appeal.

Appellate Government Counsel attended two main courses to enhance their appellate advocacy this year. Counsel attended and participated as instructors at the Annual Joint Appellate Advocacy Training, which provided valuable instruction on appellate advocacy from plenary speakers and allowed cross-feed between government appellate counsel from all services. Counsel also attended the annual continuing legal education program held by The United States Court of Appeals for the Armed Forces allowing for specific training on appellate advocacy run by and from the perspective of the appellate judges of our highest court.

#### **i. Trial and Appellate Judges.**

The Military Judges' Course prepares judge advocates, assigned to billets in Air Force Trial Judiciary (AF/JAT) and Air Force Court of Criminal Appeals (AF/JAH), for their roles as military judges. The course is designed to provide an overview on substantive and procedural criminal law, and judicial ethics and responsibilities. A portion of the curriculum focuses on sexual assault offenses, rules of evidence applicable thereto, and victims' rights. It also covers national security concerns and closed hearings. In addition, the Trial Judiciary trains twice annually: once with all trial judges in the Department of Defense and once with all Air Force senior litigators. In 2018, both the Joint Military Judges Annual Training and the Air Force Circuit Annual Training provided instruction on the Military Justice Act of 2016, as well as computer and digital evidence, the Electronic Communication Privacy Act, and recent appellate cases. The judiciary has one military judge who has attended the Capital Litigation Course in 2017. The Military Commissions Trial Judiciary provides training applicable to their work.

During FY18, four appellate judges were identified to serve on the United States Court of Military Commissions Review (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. Those nominations were not forwarded for Senate confirmation due to the pending case of *Ortiz v. United States* at the United States Supreme Court addressing the legality of military appellate judges serving on both service Courts of Criminal Appeals and the Court of Military Commission Review. The *Ortiz* decision was released in June 2018 but the nominations were not forwarded to the Senate for Confirmation by the end of FY 18.

According to The Joint Rules of Appellate Procedure for Courts of Criminal Appeals (JRAP), effective 1 January 2019, tenure for appellate military judges assigned to the court will be for a minimum of three years, except under certain circumstances identified in JRAP Rule 1(c).

Judge Advocates designated for assignment as military appellate judges are now required to attend the three week Military Judges' Course at The Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, VA, which occurs once a year in April. While a number of Regular Air Force judge advocates attended, two were assigned to AFCCA in July 2018 as appellate military judges. AFCCA also conducts in-house initial training for newly assigned appellate judges and refresher training for incumbent appellate judges, focusing on internal court processes, opinion writing, ethics, standards of review, and recurring motions. AFCCA judges also attend the annual Court of Appeals for the Armed Forces (CAAF) training, an inter-service, two-day event held at the Antonin Scalia School of Law, American University; and the William S. Fulton, Jr. Military Appellate Judges' Training Conference, another inter-service two-day event which included a full day on judicial writing. Finally, two appellate judges attended the New Appellate Judges Seminar hosted by New York University School of Law; and six appellate judges and one commissioner attended the Appellate Judges Education Institute Summit hosted by Duke Law School.

## **V. INDEPENDENT VIEWS OF THE JUDGE ADVOCATE GENERAL AS TO THE SUFFICIENCY OF RESOURCES, INCLUDING TOTAL WORKFORCE, FUNDING, TRAINING AND OFFICER AND ENLISTED GRADE STRUCTURE TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS**

The JAG Corps has approximately 1,311 judge advocates and 872 paralegals on active duty rotated on an annual basis in support of military justice functions. Company grade officers (lieutenants and captains) make up approximately 46% (590) of the JAG Corps. Approximately 26% (346) are majors and approximately 18% (240) are lieutenant colonels. Colonels and above, including one lieutenant general, one major general, and one brigadier general, comprise approximately 10% (135) of the Corps. As detailed in block IV, all judge advocates and paralegals begin their careers as trial counsel and military justice technicians in support military justice functions. AFJAGC personnel may specialize in Air Force Legal Operations Agency (AFLOA) military justice positions as they gain more experience. Examples of these positions include Area Defense Counsel, Special Victims' Counsel, Appellate Counsel, Circuit Trial Counsel, Military Judges, and paralegals who support these positions. Currently AFLOA has over 460 personnel dedicated to these specialized military justice positions. Opportunities in civil litigation across the JAGC also complement our military justice training.

Currently, there are no funding concerns for the Air Force JAGC. Our current information technology supports our litigation practice and will be able to support the statutorily-imposed requirements in accordance with MJA of 2016. The Air Force is currently in the midst of prototype testing and development of a follow-on program to the Automated Military Justice Analysis and Management System. The Disciplinary Case Management System (DCMS) will eventually replace AMJAMS through a phased-in plan. The Air Force is using Other Transaction Authority (OTA) for the acquisition of DCMS and changes to our current funding could affect our ability to purchase the program.

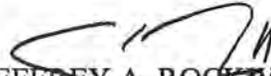
Legal professionals in the Corps are deliberately trained and developed throughout their careers. The Judge Advocate General's School (AFJAGS) is continuously reviewing and updating their curriculum to meet the needs of the Corps, in coordination with subject matter experts and the Professional Development Directorate. The School offers the following in-residence courses yearly to develop judge advocates and paralegals' military justice capabilities: Trial and Defense Advocacy Course (twice yearly), TRIALS (at least five times yearly), Defense Orientation Course (twice yearly), Military Justice Administration Course (twice yearly), and Advanced Trial Advocacy Course. AFJAGS also offers distance-learning courses such as Discovery Management twice yearly. Air Force judge advocates have additional training opportunities yearly in military justice at the TJAGLCS for courses like Intermediate Trial Advocacy Course and at Naval Justice School for courses like Prosecuting Complex Cases and Defending Complex Cases. There is additional military justice training offered among the circuits, such as the Intermediate Sexual Assault Litigation Course, as well as training offered by our Circuit Trial Counsel to the legal offices at all the bases. Finally, we trained O-6 commanders and E-9 senior enlisted leaders in our 2-day Senior Officer Legal Orientation (SOLO) and Senior Enlisted Legal Orientation (SELO) Courses. Each are offered five times a year.

## **VI. CONCLUSION**

In FY18, the AF JAGC continued to enhance the effectiveness of the military justice system, a system that exists to promote justice, maintain good order and discipline, promote efficiency and effectiveness in the military establishment, and thereby strengthen the national security of the United States. This tri-fold purpose is, by design, different than any other American criminal justice or disciplinary system. A disciplined force is the foundation of combat effectiveness. The military justice system operates to balance the interests of the military establishment and command with the rights of the individual Airman accused of a crime and with full consideration and respect for victims of crime. Commanders, advised by judge advocates, and armed with the relevant facts, including victim input, assess the quality and quantity of evidence in order to maintain that critical balance. All components of our military justice system continued to balance the interests of the military establishment and command with the rights of the individual Airman accused of a crime and with full consideration and respect for victims of crime.

In furtherance of TJAG's duties under Article 6(a), Uniform Code of Military Justice (UCMJ), "to make frequent inspection in the field in the supervision of the administration of military justice," TJAG and the Deputy Judge Advocate General, along with senior enlisted leaders, inspected legal offices at installations around the world, increasing readiness. This past year's focus has been on the Major Command legal offices to improve oversight, consistency and quality of legal services throughout the commands. The JAG Corps strives for timeliness in the delivery of a fair and equitable process that upholds justice and maintains good order and discipline, ensuring due process for the accused. To accomplish this mandate, we utilize a rigorous vetting process to select the very best practitioners as appellate and trial judges, area defense counsel, circuit trial and defense counsel, appellate counsel and special victims counsel. We also carefully screen paralegals and court reporters to ensure everyone who plays a part in the military justice process understands his or her role and is poised to execute such role with dedication and precision and a sense of urgency.

The implementation of the MJA 2016 will continue to be our focus in the upcoming year. While we do that, it will be vital for the Air Force to continue to train attorneys, paralegals, and support staff to ensure they are prepared. Despite the challenges ahead as we implement the most significant change to the military justice system since the Military Justice Act of 1983, the Air Force JAG Corps is poised to fully execute the military justice mission, in support of commanders around the world.



JEFFREY A. ROCKWELL  
Lieutenant General  
The Judge Advocate General

**VII. APPENDIX**

**U.S. AIR FORCE MILITARY JUSTICE STATISTICS**

Report Period: FY 2018

<b>AIR FORCE PENDING COURTS-MARTIAL (Persons) [A]</b>			
TYPE COURT	PREFERRED	REFERRED	
GENERAL		67	
BCD SPECIAL		23	
NON-BCD SPECIAL		N/A	
SUMMARY		1	
<b>TOTAL:</b>	<b>129</b>	<b>91</b>	<b>220</b>

<b>AIR FORCE COURTS-MARTIAL STATISTICS</b>				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) [B]
GENERAL	177	119	58	+11.4%
BCD SPECIAL	213	180	33	-7.8%
NON-BCD SPECIAL	N/A	N/A	N/A	N/A
SUMMARY	40	39	1	-47.4%
OVERALL RATE OF INCREASE (+)/DECREASE (-)				-7.7%

**DISCHARGES APPROVED AIR FORCE**

GENERAL COURTS-MARTIAL (CA LEVEL) [C]		
NUMBER OF DISHONORABLE DISCHARGES	72	
NUMBER OF BAD-CONDUCT DISCHARGES	37	
SPECIAL COURTS-MARTIAL (CA LEVEL)	68	
NUMBER OF BAD-CONDUCT DISCHARGES		

**RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG AIR FORCE**

FOR REVIEW UNDER ARTICLE 66 – GENERAL COURTS-MARTIAL	96	
FOR REVIEW UNDER ARTICLE 66 – BCD SPECIAL COURTS-MARTIAL	59	
FOR EXAMINATION UNDER ARTICLE 69 – GENERAL COURTS-MARTIAL [D]	18	

**WORKLOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS**

TOTAL ON HAND BEGINNING OF PERIOD		192	
GENERAL COURTS-MARTIAL	145		
BCD SPECIAL COURTS-MARTIAL	47		
REFERRED FOR REVIEW		186*	
GENERAL COURTS-MARTIAL	121		
BCD SPECIAL COURTS-MARTIAL	65		
TOTAL CASES REVIEWED		202*	
GENERAL COURTS-MARTIAL	140		
BCD SPECIAL COURTS-MARTIAL	62		
TOTAL PENDING AT CLOSE OF PERIOD		176	
GENERAL COURTS-MARTIAL	130		
BCD SPECIAL COURTS-MARTIAL	46		
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		- 43	

**\*Includes Article 62 Appeals, All Writs cases, and appeals withdrawn.**

**APPELLATE COUNSEL REQUESTS BEFORE AIR FORCE COURT OF CRIMINAL APPEALS**

NUMBER	202	
PERCENTAGE	100%	

**ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES**

PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (93/192)	48.4%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-4.7%
PERCENTAGE OF TOTAL PETITIONS GRANTED (8/72)	11.1%

PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-8.1%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (8/192)	4.2%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-6.0%

**APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ**

TOTAL PENDING BEGINNING OF PERIOD		0	
RECEIVED		18	
DISPOSED OF		18	
GRANTED	0		
DENIED	18		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	

**ORGANIZATION OF COURTS - AIR FORCE**

TRIALS BY MILITARY JUDGE ALONE		209	
GENERAL COURTS-MARTIAL		101	
SPECIAL COURTS-MARTIAL		108	
TRIALS BY MILITARY JUDGE WITH MEMBERS		181	
GENERAL COURTS-MARTIAL		76	
SPECIAL COURTS-MARTIAL		105	

**COMPLAINTS UNDER ARTICLE 138, UCMJ - AIR FORCE**

NUMBER OF COMPLAINTS		2	
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**STRENGTH - AIR FORCE**

AVERAGE ACTIVE DUTY STRENGTH		319346	
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**NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)**

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		4210	
RATE PER 1,000		13.18	
RATE OF INCREASE (+)/DECREASE (-) OVER FY17 [X]		+8.1%	

**Explanatory Notes**

- [A] Data for pending cases as of 30 September 2018.
- [B] Comparison of cases tried in FY17 and FY18.
- [C] Totals do not include 11 officer dismissals approved in FY18
- [D] Based on FY17 Air Force Nonjudicial Punishment total (3896).



# **Military Justice in the Coast Guard (FY 2018)**

Report to Congress  
*July 1, 2019*



*U. S. Coast Guard*

# Foreword

I am pleased to present the following report, *Military Justice in the Coast Guard (FY 2018)*, as prepared by the U.S. Coast Guard.

The *National Defense Authorization Act for Fiscal Year 2017*, codified in Section 946a of Title 10, United States Code (U.S.C.), directs the submission of an annual report on the number and status of pending cases; information on the appellate review process; an explanation of measures implemented to ensure the ability of judge advocates; and independent views of the sufficiency of resources available.

Pursuant to Congressional requirements, this report is being provided to the following members of Congress:

The Honorable James Inhofe  
Chairman, Senate Armed Services Committee

The Honorable Jack Reed  
Ranking Member, Senate Armed Services Committee

The Honorable Adam Smith  
Chairman, House Armed Services Committee

The Honorable Mac Thornberry  
Ranking Member, House Armed Services Committee.

I am happy to answer any further questions you may have, or your staff may contact my Senate Liaison Office at (202) 224-2913 or House Liaison Office at (202) 225-4775.

Sincerely,



Karl L. Schultz  
Admiral, U. S. Coast Guard  
Commandant





# **Military Justice in the Coast Guard**

## **Table of Contents**

I.	Legislative Language	1
II.	Report	2
	A. Number and Status of Pending Cases during Fiscal Year (FY) 2018	2
	B. Appellate Review Process Data	2
	C. Measures Implemented to Ensure the Ability of Judge Advocates	3
	D. Independent Views of the Sufficiency of Resources Available	4
	E. Other Matters	4

# I. Legislative Language

The *National Defense Authorization Act for Fiscal Year 2017* (Public Law 114-328 codified in 10 U.S.C. §946a) includes the following requirement:

## ART. 146A. ANNUAL REPORTS

(a) COURT OF APPEALS FOR THE ARMED FORCES.—Not later than December 31 each year, the Court of Appeals for the Armed Forces shall submit a report that, with respect to the previous fiscal year, provides information on the number and status of completed and pending cases before the Court, and such other matters as the Court considers appropriate regarding the operation of this chapter.

(b) SERVICE REPORTS.—Not later than December 31 each year, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall each submit a report, with respect to the preceding fiscal year, containing the following:

- (1) Data on the number and status of pending cases.
- (2) Information on the appellate review process, including—
  - (A) information on compliance with processing time goals;
  - (B) descriptions of the circumstances surrounding cases in which general or special court-martial convictions were (i) reversed because of command influence or denial of the right to speedy review or (ii) otherwise remitted because of loss of records of trial or other administrative deficiencies; and
  - (C) an analysis of each case in which a provision of this chapter was held unconstitutional.
- (3)(A) An explanation of measures implemented by the armed force concerned to ensure the ability of judge advocates—
  - (i) to participate competently as trial counsel and defense counsel in cases under this chapter;
  - (ii) to preside as military judges in cases under this chapter; and
  - (iii) to perform the duties of Special Victims' Counsel, when so designated under section 1044e of this title.

(B) The explanation under subparagraph (A) shall specifically identify the measures that focus on capital cases, national security cases, sexual assault cases, and proceedings of military commissions.
- (4) The independent views of each Judge Advocate General and of the Staff Judge Advocate to the Commandant of the Marine Corps as to the sufficiency of resources available within the respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions.
- (5) Such other matters regarding the operation of this chapter as may be appropriate.

(c) SUBMISSION.—Each report under this section shall be submitted—

- (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and
- (2) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy.

## II. Report

### A. Number and Status of Pending Cases during Fiscal Year (FY) 2018

#### Pending Courts-Martial (Persons)

Type Court	Preferred	Referred
General	3	10
Special	1	7
<b>Total</b>	<b>4</b>	<b>17</b>

#### Basic Courts-Martial Statistics (Persons)

Type Court	Tried	Convicted	Acquittals	Rate of Increase (+) / Decrease (-) Over Last FY
General	8	6	2	-38%
Bad Conduct Discharge Special	15	15	0	-25%
Non-Bad Conduct Discharge Special	0	0	0	+0%
Summary	23	21	2	-43%

### B. Appellate Review Process Data

#### Compliance with Appellate Time Goals

Decisions By Court Of Criminal Appeals (CCA) Reviewed under Article 66(c) in FY 2018	10
Cases Received By Judge Advocate General (JAG) within 120 Days of Sentencing	7 of 10
Cases Referred To CCA within 30 Days of JAG Receipt	7 of 10
CCA Decision within 18 Months of Referral	10 of 10

#### Circumstances in which General/Special Court Martial Convictions were Reversed or Remitted

Reversed Because of Command Influence or Denial of the Right to Speedy Review <sup>1</sup>	United States v. Riesbeck, 77 M.J. 154 (U.S. Court of Appeals for the Armed Forces 2018)
Remitted Due to Loss of Records or Administrative Deficiencies	0

#### Analysis of Cases Held Unconstitutional

Case Name:	Charges	Synopsis:
None to Report	---	---

<sup>1</sup> Conviction for sexual assault reversed for apparent unlawful command influence by Convening Authority when seven of ten panel members were female and five had some victim advocate experience.

## C. Measures Implemented to Ensure the Ability of Judge Advocates

Measures	Notes/Details:
To Participate As Trial And Defense Counsel	<p><u>Training:</u> To obtain initial Article 27(b) certification as a trial and defense counsel, Coast Guard judge advocates are required to attend the Basic Law Course at Naval Justice School. In addition, Coast Guard trial counsel, defense counsel, and Special Victims Counsel (SVC) attend advanced trial advocacy training offered at Naval Justice School, the Army JAG's Legal Center and School, and the Air Force JAG's School.</p> <p><u>Organization:</u> The Legal Service Command (LSC) has established nine full-time trial counsel assigned who participate in all general courts-martial throughout the Coast Guard and can assist other legal offices with other courts-martial.</p> <p><u>Defense Counsel:</u> Pursuant to a Memorandum of Understanding with the Navy, the Coast Guard has nine full-time judge advocates assigned to Navy Defense Service Offices for two year assignments. In exchange, the Navy provides defense counsel for Coast Guard members at Coast Guard courts-martial.</p>
To Preside As A Military Judge	<p>The Coast Guard currently has three General Court-martial Judges and five part-time special court-martial judges.</p> <p>All Coast Guard military judges attend the Army Joint Military Judges Course in order to be initially certified as a military judge and attend Joint Military Judges Annual Training to maintain Article 26(b) certification.</p>
To Perform Duties of SVC	<p>In addition to initial Article 27(b) training at the Naval Justice School, all SVC judge advocates must complete the Army or Air Force Certification Course.</p> <p>Coast Guard judge advocates are sent to the Air Force Intermediate Sexual Assault Litigation Course (parts one and two).</p> <p>Coast Guard SVC also attend the Crimes Victim Law Conference; End Violence Against Women International Conference; Crimes Against Women Conference; and Crimes Against Children Conference.</p>

### Special Focus of Military Training

Focus	Notice
Capital Cases	The Coast Guard has not tried a capital case. If a capital case was referred and tried, the Coast Guard would coordinate support from another service for trial counsel with capital case experience.
Military Commissions	The Coast Guard does not have counsel or judges assigned to the military commissions.

Focus	Notice
National Security	The Coast Guard has not tried a national security case. If a national security case was referred and tried, the Coast Guard would coordinate support from another service for trial counsel with national security case experience.
Sexual Assault	<p><u>Organization:</u> All sexual assault case prosecutions are led by full-time LSC trial counsel. The Navy provides experienced defense counsel to represent Coast Guard members in sexual assault cases.</p> <p><u>Training:</u> Trial counsel, those at the LSC and those performing part-time trial counsel responsibilities at other legal offices in the Coast Guard, attend the Special Victims Capability Course taught by the Army. Coast Guard judge advocates also have the opportunity to attend Prosecuting Sexual Assault training courses at the Naval Justice School, the Army JAG's Legal Center and School, and the Air Force JAG's School, as well as other trial advocacy courses offered at all three schools.</p>

### D. Independent Views of the Sufficiency of Resources Available

The Coast Guard has 232 active duty judge advocates and 33 reserve judge advocates, as well as 112 civilian attorneys and 92 support staff, both military and civilian. With nine full-time trial counsel at LSC (supplemented by other judge advocates assigned throughout the Coast Guard), nine judge advocates assigned to Navy Defense Service Offices, and ten full-time SVC, along with three general counsel-martial judges and five part-time special court-martial judges, the Coast Guard has adequate personnel to effectively carry out its military justice responsibilities. If Congress mandates expansion of the class of victims entitled to SVC services, such as expansion to domestic violence victims, additional SVC may be required. Maintaining an adequate number of trained and experienced enlisted members (e.g., administrative personnel with Naval Justice School training) or civilian paralegals to support military justice functions continues to be a challenge.

### E. Other Matters

Going forward, the Coast Guard is focused on implementing the statutory changes resulting from the *Military Justice Act of 2016*. In making these changes to the Uniform Code of Military Justice (UCMJ), Congress recognized that the military justice system serves the purpose of not just imposing justice, but also instilling discipline in the Armed Forces. The distinctive purpose of the military is embodied in the UCMJ, as reflected with unique military offenses, unique military procedures, and unique military punishments. The uniqueness of the UCMJ is also reflected in the role of the commander. Commanders are entrusted with absolute responsibility for mission execution and unit readiness. To accomplish their military missions, commanders are vested with the requisite UCMJ authority to impose punishment promptly and visibly when necessary to maintain unit discipline. Consequently, I continue to believe that maintaining the central role of the commander in our military justice system is indispensable to promoting justice, ensuring an effective military force, and strengthening the national security of our Nation.