

JUDICIAL PROCEEDINGS PANEL

REPORT ON
STATISTICAL DATA REGARDING
MILITARY ADJUDICATION OF
SEXUAL ASSAULT OFFENSES
FOR FISCAL YEAR 2015



September 2017

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*Report of the Judicial Proceedings
Since Fiscal Year 2012 Amendments Panel*

**Statistical Data Regarding Military
Adjudication of Sexual Assault Offenses
for Fiscal Year 2015**

September 2017



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September 15, 2017

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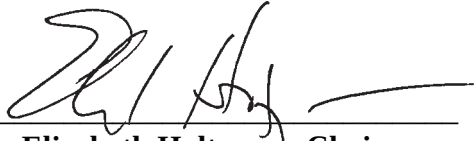
The Honorable James Mattis
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Chairs, Ranking Members, and Mr. Secretary:

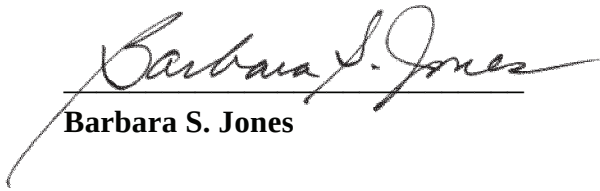
We are pleased to submit this report of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (JPP) on statistical data regarding military adjudication of sexual assault offenses for fiscal year 2015. This report builds upon the JPP's previous analysis and report, issued in April 2016, of cases tried in fiscal years 2012 through 2014. The JPP makes three recommendations addressing best practices for the collection of adjudication data for sexual assault cases; the implementation of the new Article 140a, Uniform Code of Military Justice; and the need to continue analyzing sexual assault court-martial data after the JPP concludes in September 2017.

To gather information for this report, the JPP obtained court-martial documents for sexual assault cases that were completed in fiscal year 2015. The JPP analyzed the adjudication information contained in these documents with the assistance of an independent criminologist and statistician. The JPP also reviewed the Department of Defense's annual reports to Congress and appellate opinions issued by the Service Criminal Courts of Appeals and the Court of Appeals for the Armed Forces. The JPP held public meetings to hear from the Department of Defense regarding its data collection and reporting methods. The JPP expresses its sincere appreciation to everyone who contributed to this report.

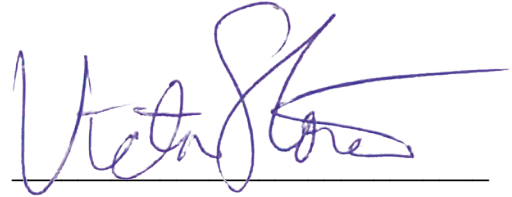
Respectfully submitted,

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Elizabeth Holtzman, Chair

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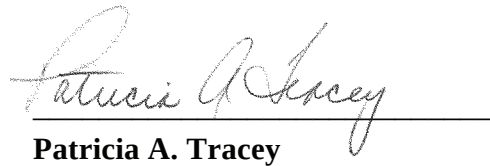
Barbara S. Jones

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Victor Stone

A handwritten signature in black ink, appearing to read "Thomas W. Taylor", written over a horizontal line.

Thomas W. Taylor

A handwritten signature in black ink, appearing to read "Patricia A. Tracey", written over a horizontal line.

Patricia A. Tracey

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Executive Summary

Congress tasked the Judicial Proceedings Panel (JPP, or the Panel) with reviewing trends in the adjudication of adult sexual assault crimes in the military. Congress asked the JPP to review trends in sexual assault case dispositions, court-martial convictions and sentences, and appellate decisions. In April 2016, the JPP issued a report in response to this congressional tasking: the Judicial Proceedings Panel Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses. This report builds on the data and information from the April 2016 JPP report.

To conduct its analysis, the JPP sought information from court records, case documents, and other publicly available resources. Members of the JPP staff reviewed court-martial documents from the military Services for 738 sexual assault cases resolved in fiscal year 2015 in which at least one sexual assault charge was preferred. Just as it did with the 2016 data report, the JPP coordinated with a distinguished criminologist, Dr. Cassia Spohn, Foundation Professor and Director, School of Criminology and Criminal Justice, Arizona State University, to analyze the fiscal year 2015 data and provide descriptive statistics concerning court-martial case characteristics, case dispositions, and case outcomes. Dr. Spohn's complete report can be found at Appendix A. Cases in which the victim was the spouse or intimate partner of the accused account for 130 of the 738 cases reviewed by the JPP for fiscal year 2015, but these cases were not provided to the JPP for analysis of cases from fiscal years 2012 through 2014. Therefore, the statistical data for fiscal years 2012 through 2014 are not directly comparable with the statistical data for fiscal year 2015.

To review appellate relief in military sexual assault cases, the JPP reviewed the opinions archived on the public websites of the Service Courts of Criminal Appeals and the United States Court of Appeals for the Armed Forces (CAAF) for fiscal year 2015. The JPP also separately obtained cases not available on the courts' public websites that were summarily affirmed without an opinion from the military Services.

This report revisits the statutory tasks mentioned above and the JPP's previous recommendations, drawing on the JPP's review of new court-martial data, recent military appellate court decisions, and changes in military law contained in the National Defense Authorization Act (NDAA) for Fiscal Year 2017.¹ This report does not address data concerning military disciplinary actions that take place outside the judicial process, or the available federal and state sentencing data on sexual assault crimes that were discussed in the JPP's 2016 Report on Statistical Data. From the JPP's review of the information available on those topics, and as noted in its initial report, the JPP lacked sufficient information to address certain aspects of its statutory tasks. This subsequent report therefore focuses on the JPP's review of military sexual assault adjudication data for fiscal year 2015, which supplements its findings regarding adjudication data for fiscal years 2012 through 2014.

The JPP analyzed the procedural outcomes of sexual assault adjudications from fiscal year 2015. Statistical data obtained by the JPP effectively describe certain objective aspects of military cases in the aggregate, including the number of prosecutions conducted in the fiscal year, the procedural history of cases, and the punishments imposed. However, individual case outcomes are the result of unique

1 National Defense Authorization Act for Fiscal Year 2017, Pub. L. 114–328, [hereinafter FY17 NDAA], 130 Stat. 2000 (2016).

combinations of facts and evidence, and the appropriateness or consistency of disposition decisions or punishments cannot be evaluated solely by considering procedural data. For these reasons, the JPP provides the information gathered without offering specific recommendations.

The JPP does, however, make three recommendations regarding the collection of court-martial data. First, that the Secretary of Defense and the military Services should use a standardized, document-based collection model for collecting and analyzing case adjudication data in order to implement Article 140a, Uniform Code of Military Justice (*Case Management; Data Collection and Accessibility*). Article 140a, which was enacted in the National Defense Authorization Act for Fiscal Year 2017, requires the establishment within four years of uniform standards and criteria for collecting military justice data across all of the military Services. This recommendation builds upon a recommendation from the JPP's 2016 data report that the Department of Defense (DoD) collect and analyze case adjudication data using a standardized, document-based collection model similar to the systems used by the JPP or the U.S. Sentencing Commission.

Second, the new military justice data collection system should be designed so as to become the exclusive source of sexual assault case adjudication data for the DoD Sexual Assault Prevention and Response Office (DoD SAPRO) annual report to Congress. DoD SAPRO's data collection and reporting on the legal disposition of adult-victim sexual assault cases do not describe the results of sexual assault reports made within DoD with sufficient clarity or thoroughness for Congress or DoD to understand how these cases are handled within the military justice system. The JPP believes that military justice personnel should be involved in providing the information collected pursuant to Article 140a, and that DoD SAPRO should rely solely on the Article 140a data in preparing its reports to Congress. This change would improve the accuracy and level of detail currently contained in DoD's reports on sexual assault cases.

Finally, the JPP's successor panel, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, and should consider analyzing the patterns detailed in this report that the JPP discovered in its analysis of fiscal year 2015 court-martial data.

Recommendations on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015*

Recommendation 52: The Secretary of Defense and the military Services use a standardized, document-based collection model for collecting and analyzing case adjudication data in order to implement Article 140a, Uniform Code of Military Justice (*Case Management; Data Collection and Accessibility*).

- Document-based case adjudication data collection is a best practice utilized and recommended by the U.S. Sentencing Commission. The JPP's document-based approach to data collection involves obtaining relevant case documents from the military Services (e.g. charge sheet, report of result of trial) and recording the relevant case history data into a centralized database for analysis.
- In its April 2016 report, the JPP recommended that the Department of Defense collect and analyze case adjudication data using a standardized, document-based collection model similar to the systems used by the JPP or the U.S. Sentencing Commission.
- Article 140a, enacted in the National Defense Authorization Act for Fiscal Year 2017, requires the establishment within four years of uniform standards and criteria for collecting military justice data across all of the military Services.

Recommendation 53: The new military justice data collection system required to be developed pursuant to Article 140a, Uniform Code of Military Justice (*Case Management; Data Collection and Accessibility*), should be designed so as to become the exclusive source of sexual assault case adjudication data for DoD's annual report to Congress on DoD's sexual assault prevention and response initiatives.

- DoD SAPRO's data collection and reporting on the legal disposition of adult-victim sexual assault cases do not describe the results of sexual assault reports made within DoD with sufficient clarity or thoroughness for Congress or DoD to understand how these cases are handled within the military justice system.

* JPP Recommendations 1–11 are included in the JUDICIAL PROCEEDINGS PANEL INITIAL REPORT 11 (Feb. 2015), *available at* http://jpp.whs.mil/public/docs/08-Panel_Reports/JPP_InitialReport_Final_20150204.pdf. JPP Recommendations 12–17 are included in the JUDICIAL PROCEEDINGS PANEL REPORT ON RESTITUTION AND COMPENSATION FOR MILITARY ADULT SEXUAL ASSAULT CRIMES 5 (Feb. 2016), *available at* jpp.whs.mil/Public/docs/08-Panel_Reports/JPP_Rest_Comp_Report_Final_20160201_Web.pdf. JPP Recommendations 18–23 are included in the JUDICIAL PROCEEDINGS PANEL REPORT ON ARTICLE 120 OF THE UNIFORM CODE OF MILITARY JUSTICE 5–7 (Feb. 2016), *available at* jpp.whs.mil/Public/docs/08-Panel_Reports/JPP_Art120_Report_Final_20160204_Web.pdf. JPP Recommendations 24–36 are included in the JUDICIAL PROCEEDINGS PANEL REPORT ON RETALIATION RELATED TO SEXUAL ASSAULT OFFENSES 5–10 (Feb. 2016), *available at* jpp.whs.mil/Public/docs/08-Panel_Reports/04_JPP_Retaliation_Report_Final_20160211.pdf. JPP Recommendations 37–38 are included in the JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES 5–6 (Apr. 2016), *available at* http://jpp.whs.mil/Public/docs/08-Panel_Reports/05_JPP_StatData_MilAdjud_SexAsslt_Report_Final_20160419.pdf. JPP Recommendations 39–42 are included in the JUDICIAL PROCEEDINGS PANEL REPORT ON MILITARY DEFENSE COUNSEL RESOURCES AND EXPERIENCE IN SEXUAL ASSAULT CASES 3–4 (Apr. 2017), *available at* http://jpp.whs.mil/Public/docs/08-Panel_Reports/06_JPP_Defense_Resources_Experience_Report_Final_20170424.pdf. JPP Recommendations 43–46 are included in the JUDICIAL PROCEEDINGS PANEL REPORT ON VICTIMS' APPELLATE RIGHTS (June 2017), *available at* http://jpp.whs.mil/Public/docs/08-Panel_Reports/07_JPP_VictimsAppRights_Report_Final_20170602.pdf. JPP Recommendations 47–51 are included in the JUDICIAL PROCEEDINGS PANEL REPORT ON SEXUAL ASSAULT INVESTIGATIONS IN THE MILITARY 3–6 (Sep. 2017).

- Military justice personnel should be involved in providing the information collected pursuant to Article 140a, which would improve the accuracy and level of detail currently contained in DoD's reports on sexual assault cases.
- DOD SAPRO should rely solely on the Article 140a data for its sexual assault case adjudication data when developing the DoD SAPRO annual report to Congress.
- To the extent possible, DoD should avoid developing a source of data under Article 140a that does not communicate with other sources of data within DoD, such as DoD SAPRO's sexual assault incident database.

Recommendation 54: The successor federal advisory committee to the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, and should consider analyzing the following patterns that the JPP discovered in its analysis of fiscal year 2015 court-martial data:

- a. Cases involving military victims tend to have less punitive outcomes than cases involving civilian victims; and
- b. The conviction and acquittal rates for sexual assault offenses vary significantly among the military Services.
- c. If a Service member is charged with a sexual assault offense, and pleads not guilty, the probability that he or she will be convicted of a sexual assault offense is 36%, and the probability that he or she will be convicted of any offense (i.e., either a sex or a non-sex offense) is 59%.

- Because the data required to meet the JPP's congressional tasks were not available or collected by any entity within DoD, including the annual DoD SAPRO report, the JPP independently collected the needed information directly from case files maintained by the military Services.
- The JPP heard testimony from civilian experts from the Bureau of Justice Statistics and the U.S. Sentencing Commission on best practices for collecting accurate and reliable information about case adjudication.
- In 2014, the JPP, in collaboration with the Washington Headquarters Service, developed a document-based database containing information on more than 2,500 military sexual assault cases adjudicated in fiscal years 2012 to 2015.
- In order to understand the data collected, the JPP retained a nationally recognized criminologist who was not affiliated with DoD or any military Service to perform an in-depth statistical analysis of the data.
- The JPP's charter ends on September 30, 2017, and no similar project or method currently exists to continue this in-depth study of sexual assault cases in the military justice system once the JPP concludes.

I. Introduction

A. CONGRESSIONAL TASKS

In the Fiscal Year 2013 National Defense Authorization Act, Congress directed the Judicial Proceedings Panel (JPP, or the Panel) “to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses” since 2012, when Article 120 was amended, “for the purpose of developing recommendations for improvements to such proceedings.” As part of this review and assessment, Congress tasked the JPP to examine how the military Services adjudicate sex offenses under the UCMJ and to compare punishments rendered in military courts with those in federal and state courts. Specifically, Congress tasked the JPP to

- Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, nonjudicial punishments, or administrative actions, including the number of punishments by type and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.
- Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by federal and state criminal courts.
- Review and evaluate court-martial convictions for sexual assault in the year covered by the most recent report of the Judicial Proceedings Panel and the number and description of instances when punishments were reduced or set aside upon appeal and the instances when the defendant appealed following a plea agreement, if such information is available.

The JPP initially addressed these issues in its April 2016 Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses (hereinafter the “2016 Report on Statistical Data”).² For its initial report, the JPP drew on information gathered at seven JPP public meetings from August 2015 to April 2016, testimony from 16 witnesses at these meetings, and information from JPP staff members on statistical data gathered in response to the congressional tasks. The JPP also requested and analyzed information from DoD, the military Services, and non-DoD governmental agencies. In addition, the JPP reviewed publicly available information and conducted legal research and analysis of relevant topics, in accordance with the Federal Advisory Committee Act of 1972. The JPP issued Recommendations 37 and 38, recommending that

The Department of Defense collect and analyze case adjudication data using a standardized, document-based collection model, similar to systems used by the Judicial Proceedings Panel or U.S. Sentencing Commission, that incorporates uniform definitions and categories across all of the military Services; and

2 THE JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES (Apr. 2016) [*hereinafter* APRIL 2016 JPP REPORT ON STATISTICAL DATA], available at http://jpp.whs.mil/Public/docs/08-Panel_Reports/05_JPP_StatData_MilAdjud_SexAsslt_Report_Final_20160419.pdf.

The Department of Defense include legal disposition information related to all adult sexual assault complaints in one annual DoD report, changing its policy that excludes adult-victim cases that are handled by the Family Advocacy Program from Sexual Assault Prevention and Response Office reports.³

In order to supplement its April 2016 Report on Statistical Data with additional information and analysis, the JPP enhanced its previous research with additional information gathered from DoD and the military Services, as well as expert testimony and deliberation at JPP public meetings from April 2017 to June 2017. The information received and considered by the JPP is available on its website at <http://jpp.whs.mil>. The JPP is grateful to all presenters and to others who provided information and assistance as part of this review and assessment.

This report revisits the statutory tasks above and the JPP's previous recommendations, drawing on the JPP's review of new court-martial data, recent military appellate court decisions, and changes in military law contained in the National Defense Authorization Act for Fiscal Year 2017.⁴ This report does not address data concerning military disciplinary actions that take place outside the judicial process, or the available federal and state sentencing data on sexual assault crimes that were discussed in the JPP's 2016 Report on Statistical Data. From the JPP's review of the information available on those topics, and as noted in its initial report, the JPP lacked sufficient information to address certain aspects of its statutory tasks. This subsequent report therefore focuses on the JPP's review of military sexual assault adjudication data for fiscal year 2015, which supplements its findings regarding adjudication data for fiscal years 2012 through 2014.

B. THE MILITARY JUSTICE SYSTEM

Evaluating trends in the military's judicial response to sexual assault crimes requires a basic understanding of the military justice system and its similarities to and differences from civilian court systems. The military justice system is designed to "promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States."⁵ All Service members (including National Guard in federal service and Reserve Component members on inactive-duty training) are subject to the UCMJ, which sets forth both substantive military criminal law and procedures for disposing of criminal offenses.

Historically, the military commander has been at the center of the military justice system. In order to achieve good order and discipline, commanders have different military justice tools at their disposal, and they respond to misconduct with the advice and counsel of judge advocates. A salient difference between military and civilian judicial systems is the range of options available to each. Civilian prosecutors are often limited either to taking no action on a case or to pursuing a conviction at trial;

3 *Id.* at 5–6.

4 FY17 NDAA, *supra* note 1.

5 MANUAL FOR COURTS-MARTIAL, UNITED STATES (2016 ed.), Preamble ¶ 3 [hereinafter MCM].

in contrast, if a military convening authority determines that court-martial is not the appropriate disposition in a case, he or she has other ways to address the misconduct, such as nonjudicial punishment, administrative discharge, or other adverse administrative action.⁶

Determinations regarding the appropriate disposition for an offense under the UCMJ may change in response to each case's circumstances and evidence. A case that is initially considered appropriate for low-level disciplinary action may later be elevated to court-martial; conversely, a criminal charge preferred with a view toward court-martial may instead be resolved by alternate (i.e., nonjudicial or administrative) means.

The military justice system and its components are explained and discussed more thoroughly in section III of this report.

⁶ MCM, *supra* note 5, Rule for Courts-Martial [hereinafter R.C.M.] 306(c) (Updated Rules for Courts-Martial, June 2016, are available at <http://jsc.defense.gov/Portals/99/Documents/RCMsUpdatedJune2016.pdf?ver=2016-07-05-111946-407>); National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66 [hereinafter FY14 NDAA], § 1705, 127 Stat. 672 (2013), limits court-martial jurisdiction over the offenses of rape, sexual assault, forcible sodomy, and attempts to commit these offenses to trial by general court-martial.

II. Obtaining Information Regarding Adjudication of Sexual Assault Offenses

A. MILITARY JUSTICE INFORMATION FOR SEXUAL ASSAULT CASES COLLECTED BY THE DEPARTMENT OF DEFENSE

1. Adjudication Information Collected by the DoD Sexual Assault Prevention and Response Office (SAPRO)

Section 563 of the National Defense Authorization Act (NDAA) for Fiscal Year 2009 required the Secretary of Defense to “implement a centralized, case-level database for the collection . . . and maintenance of information regarding sexual assaults involving a member of the Armed Forces, including information, if available, about the nature of the assault, the victim, the offender, and the outcome of any legal proceedings in connection with the assault.”⁷ The Department of Defense was required by January 14, 2010, to implement the database, which was to “be used to develop and implement congressional reports.”⁸

To meet this requirement, DoD developed the Defense Sexual Assault Incident Database (DSAID).⁹ DSAID contains data for each unrestricted and restricted report of sexual assault covered by DoD’s sexual assault prevention and response policy. DSAID is administered by the DoD Sexual Assault Prevention and Response Office (SAPRO), which is responsible for establishing policy and evaluating DoD’s efforts to address sexual assault in the military. DoD SAPRO officials coordinate with sexual assault response coordinators and Sexual Assault Prevention and Response (SAPR) Program Managers from the military Services in order to provide information for DSAID. DSAID has three primary functions: (1) to serve as a case management system to maintain data on sexual assault cases and to track support for victims in each case, (2) to facilitate program administration and management for SAPR programs, and (3) to develop congressional reports, respond to ad hoc queries, and assist in trend analysis. Information about a sexual assault case’s legal disposition and outcome that is required for congressional reporting is entered into DSAID by legal officers from the military Services.¹⁰

DoD began using DSAID to produce detailed statistics for DoD’s annual reports to Congress in 2014. Before 2014, DoD relied on the Services’ separate case management systems to provide information on sexual assault cases. In testimony to the JPP, SAPRO’s Deputy Director explained how DSAID improved the consistency and reliability of the information that DoD reports to Congress: “In the years 2013 and before . . . we didn’t have any way to kind of dig into the data, and clean it, and make sure that it was being reported in a standardized way across all four Services.”¹¹

7 National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110–417 [hereinafter FY09 NDAA], § 563, 122 Stat. 4356 (2009).

8 *Id.*

9 See *Transcript of JPP Public Meeting* 106 (Oct. 9, 2015) (testimony of Ms. Darlene Sullivan, DSAID Program Manager, DoD SAPRO) (explaining that Service SAPR officials began using DSAID in fiscal year 2012). All transcripts of JPP public meetings are available on the JPP’s website at <http://jpp.whs.mil/>.

10 *Transcript of JPP Public Meeting* 108 (Oct. 9, 2015) (testimony of Ms. Darlene Sullivan).

11 *Transcript of JPP Public Meeting* 223–24 (Apr. 7, 2017) (testimony of Dr. Nathan Galbreath, Deputy Director, DoD Sexual Assault Prevention and Response Office).

The JPP found that SAPRO information on case adjudication is deficient because it cannot be used to thoroughly assess how sexual assault crimes are resolved through the military justice system.¹² Despite recent improvements in the amount of case information collected, DSAID omits several important case characteristics. It does not include details on all sexual assault offenses alleged and charged, the outcome of each charge, the pleas of the accused, whether the accused was tried by a military judge or jury, the specific findings and sentence adjudged, and the convening authority action taken on the case in accordance with plea agreement terms or clemency requests.

2. Cases Not Included in DoD SAPRO's Data

Another difficulty the JPP encountered in examining DoD's data on sexual assault is that intimate partner sexual assault cases that fall outside SAPR's data collection policy are not included in DSAID or reported by DoD in its annual or other reports.¹³ Spouse and intimate partner cases are the responsibility of the DoD Family Advocacy Program (FAP).¹⁴ FAP provides important social work services to military families and informs law enforcement of all unrestricted sexual assault allegations it receives against Service members.¹⁵ However, FAP does not collect case adjudication information for the cases covered by its policies.

Because DSAID and DoD SAPRO reports exclude spouse and intimate partner sexual assaults that are the responsibility of FAP, DoD's annual reports do not fully account for all sexual assault cases in the military. The JPP noted in its April 2016 Report on Statistical Data that DSAID should include sexual assault case disposition and adjudication information for all adult victim sexual assault cases, regardless of whether the DoD SAPR program or the Family Advocacy Program claims responsibility for monitoring the case and providing victim services. Specifically, in April 2016 the JPP issued Recommendation 38, that

The Department of Defense include legal disposition information related to all adult sexual assault complaints in one annual DoD report, changing its policy that excludes adult-victim cases that are handled by the Family Advocacy Program from Sexual Assault Prevention and Response Office reports.¹⁶

On April 5, 2017, DoD responded to the JPP's recommendation that legal disposition information for all sexual assault cases should be included in one annual report to Congress. DoD said that cases covered by FAP policy would not be included in DoD SAPRO's reports, and provided the following explanation: "Given that FAP's mission is clinical in nature with a mission towards rehabilitation, FAP is not required to collect data on legal disposition of its case and does not monitor such information.

12 See APRIL 2016 JPP REPORT ON STATISTICAL DATA, *supra* note 2, at 12.

13 This was noted by the Response Systems Panel in its report and was the subject of RSP's Recommendation 66. REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL [hereinafter RSP REPORT] 33 (June 2014), *available at* http://responsesystemspanel.whs.mil/Public/docs/Reports/00_Final/RSP_Report_Final_20140627.pdf. The Response Systems to Adult Sexual Assault Crimes Panel was established to "conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses . . . for the purpose of developing recommendations regarding how to improve the effectiveness of such systems." National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 576(a)(1), 126 Stat. 1632 (2013).

14 DEP'T OF DEF. INSTR. [hereinafter DoDI] 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES ¶2.b (Mar. 28, 2013) (Incorporating Change 3, Effective May 24, 2017).

15 *Transcript of JPP Public Meeting* 117 (Oct. 9, 2015) (testimony of Ms. Katherine Robertson, Family Advocacy Program Manager, DoD Office of Family Readiness Policy).

16 JPP Recommendation 38, APRIL 2016 JPP REPORT ON STATISTICAL DATA, *supra* note 2, at 6.

Responsibility for collecting information on alleged offender accountability and associated outcomes (including legal disposition, if appropriate) remains with the Office of the Judge Advocate General within each military Department.”¹⁷

DoD further explained that Section 544 of the NDAA for Fiscal Year 2017¹⁸ requires that the DoD SAPRO and FAP annual reports be released simultaneously to Congress; however, DoD also noted that neither report would include information on the legal or disciplinary outcome of sexual assault cases covered by FAP policy.¹⁹ Finally, DoD indicated it has been considering ways to include this information in future reports; it declined to elaborate further on the means or time frame for doing so, explaining “the means for collecting and reporting legal disposition information pertaining to these allegations in the future remains pre-decisional.”²⁰

Both the JPP and its predecessor, the Response Systems to Adult Sexual Assault Crimes Panel, recognize that the exclusion of FAP cases data from DoD’s case data management system presents a systemic and fundamental problem in DoD’s collection and reporting of sexual assault data that has not been fully addressed. The JPP urges DoD to implement JPP Recommendation 38 mentioned above in order to account for the number of sexual assault cases actually processed in the military justice system.

Notably, the Services collect and manage information on all sexual assault cases regardless of whether SAPR or FAP policies apply, but in accordance with DoD policy, they provide DoD with disposition information on cases only covered by SAPR policy. Unfortunately, the information collected by each Service varies. As the JPP observed in its April 2016 Report on Statistical Data, neither DoD’s nor the Services’ systems could provide the JPP with sufficient information or detail to fulfill the JPP’s congressional tasks to examine how sexual assault crimes are resolved in the military justice system.

B. MILITARY JUSTICE INFORMATION FOR SEXUAL ASSAULT CASES COLLECTED BY THE JUDICIAL PROCEEDINGS PANEL

To conduct the analysis necessary to fulfill the tasks assigned by Congress, the JPP sought information from individual court records and case documents that the military’s existing electronic management systems do not contain.²¹ The JPP modeled its approach to data collection on the work of the U.S.

17 DoD Response to JPP Request for Information 164B (Apr. 5, 2017), *available at* http://jpp.whs.mil/Public/docs/03_Topic-Areas/07CM_Trends_Analysis/20170407/20170407_JPP_RFI_164_165_DoD.pdf.

18 FY17 NDAA, *supra* note 1, § 544.

19 DoD Response to JPP Request for Information 164B (Apr. 5, 2017), *available at* http://jpp.whs.mil/Public/docs/03_Topic-Areas/07CM_Trends_Analysis/20170407/20170407_JPP_RFI_164_165_DoD.pdf.

20 *Id.* See also *Transcript of JPP Public Meeting* 211–17 (Apr. 7, 2017) (testimony of Dr. Nathan Galbreath) (acknowledging that this issue of combining SAPRO and FAP case data in one report has been under review since the Response Systems Panel issued its report in June 2014). See *supra* note 13.

21 See *Transcript of JPP Public Meeting* 212 (Sept. 18, 2015) (testimony of Dr. Howard Snyder, Deputy Director, Bureau of Justice Statistics, U.S. Department of Justice) (“So, we talked about collecting data by hand, it’s great if you have the money. We talked about harvesting data, it’s great except when you harvest data, you have to extract what they have on their systems already and it may not be just what you need.”). See *Transcript of JPP Public Meeting* 262 (Sept. 18, 2015) (testimony of Mr. Glenn Schmitt, Director of the Office of Research and Data, U.S. Sentencing Commission) (“The issue is when you take data from a system that isn’t designed to be a statistical system, then there are miscodes and things that are missing, and people just make mistakes because they’re not using it for your purpose. They’re using it for their other purpose—managing the flow of people in the office and whatever that might be. And so when you do that, then sometimes things are wrong or missing, and then that affects the reliability of your data.”).

Sentencing Commission (hereinafter “Sentencing Commission”), which conducts large-scale case document data collection, entry, and analysis for federal criminal convictions. The Sentencing Commission, which is an independent agency of the judicial branch, is responsible for establishing sentencing policies and practices for the federal courts, advising Congress about the impact of federal criminal laws and policies, and collecting information on, analyzing, and researching a wide array of federal crime and sentencing issues.²²

From the court documents it receives in every case, the Sentencing Commission extracts information about sentences imposed on felony defendants. Statisticians record the data in a sophisticated database that is controlled, managed, and operated by the Sentencing Commission, and they perform the analysis necessary for the Commission’s work. Document-based data collection enables the Sentencing Commission to accurately analyze federal criminal convictions and sentences.²³ For the JPP to examine the adjudication of sexual assault crimes in the military, the Panel determined that a similar approach to obtain information directly from military justice case records was necessary.

The JPP requested access to specified court documents in order to obtain information about the judicial processing and resolution of all sexual assault cases completed in fiscal year 2015. In total, the JPP received access to case documents in 738 cases.²⁴ The JPP then screened case records provided by the Services to identify duplicate cases, cases with incomplete documentation, cases of sexual assault that did not involve an adult victim, cases that did not involve a sex offense, and cases whose reported year of case completion was not correct.

After screening, case information was entered into an electronic database that an independent criminologist, Dr. Cassia Spohn, Foundation Professor and Director, School of Criminology and Criminal Justice, Arizona State University, then analyzed. Dr. Spohn’s complete statistical report concerning military sexual assault adjudication is provided at Appendix A.

Finally, in order to assess how sexual assault convictions are handled on appeal, the JPP collected and reviewed publicly available decisions from the Service Courts of Criminal Appeals and the U.S. Court of Appeals for the Armed Forces. From the public records of the Service Courts of Criminal Appeals, the JPP identified opinions issued by the courts in fiscal year 2015 regarding adult sexual assault cases. Most often, appellate opinions are issued well after conviction at courts-martial. Therefore, the decisions obtained were for cases tried in fiscal years 2012, 2013, and 2014, and they do not correspond to the courts-martial completed in fiscal year 2015.

C. FUTURE SEXUAL ASSAULT DATA COLLECTION AND ANALYSIS

The NDAA for Fiscal Year 2017 established Article 140a, Uniform Code of Military Justice (*Case Management; Data Collection and Accessibility*). Article 140a requires the establishment within four years of uniform standards and criteria for collecting military justice data across all of the military Services. The data collection is intended to serve four distinct purposes:

22 *Transcript of JPP Public Meeting* 184–85 (Sept. 18, 2015) (testimony of Mr. Glenn Schmitt). *See also* the U.S. Sentencing Commission website at <http://www.ussc.gov/about>.

23 *Transcript of JPP Public Meeting* 186–87 (Sept. 18, 2015) (testimony of Mr. Glenn Schmitt).

24 *See* Appendix B, Methodology, for an accounting of the cases initially requested from the military Services.

- (1) Collection and analysis of data concerning substantive offenses and procedural matters in a manner that facilitates case management and decision making within the military justice system, and that enhances the quality of periodic reviews under section 946 of this title (article 146).
- (2) Case processing and management.
- (3) Timely, efficient, and accurate production and distribution of records of trial within the military justice system.
- (4) Facilitation of access to docket information, filings, and records, taking into consideration restrictions appropriate to judicial proceedings and military records.²⁵

One reason for creating Article 140a is that in practice, the separate case management, data access, and data collection practices currently in use by the Services make it difficult to collect and analyze military justice data on a system-wide basis.²⁶ The system created pursuant to Article 140a would thus eliminate the current disparities in the information and level of detail that the Services collect on all cases brought under the UCMJ, including cases involving sexual assault crimes.

The statute requires that case data collection methods rely on the best practices in use in federal and state courts.²⁷ As the JPP has found through its review of the U.S. Sentencing Commission's best practices and its own data collection efforts, a document-based method for collecting case adjudication information produces the kind of accurate and comprehensive data needed to properly analyze case dispositions and outcomes.

The JPP has also made a specific recommendation to DoD regarding best practices for case data collection. In the April 2016 JPP Report on Statistical Data, JPP Recommendation 37 provides that

The Department of Defense (DoD) collect and analyze case adjudication data using a standardized, document-based collection model similar to the systems used by the JPP or the U.S. Sentencing Commission.

DoD has not implemented this recommendation, and explained to the JPP that “new requirements set forth in the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 pertaining to the collection and analysis of military justice data will influence our way forward on these recommendations.”²⁸

D. JUDICIAL PROCEEDINGS PANEL ASSESSMENT AND RECOMMENDATIONS

As DoD has not yet developed the contours of Article 140a, the JPP believes that this statute provides the means to remedy deficiencies in DoD's sexual assault data collection and reporting. DoD has already responded to JPP Recommendation 37 by recognizing that the system that will be developed

25 FY17 NDAA, *supra* note 1, § 5504.

26 REPORT OF THE MILITARY JUSTICE REVIEW GROUP 1011 (Dec. 22, 2105), *available at* http://ogc.osd.mil/images/report_part1.pdf.

27 FY17 NDAA, *supra* note 1, § 5504.

28 DoD Response to JPP Request for Information 164A (Apr. 5, 2017), *available at* http://jpp.whs.mil/Public/docs/03_Topic-Areas/07-CM_Trends_Analysis/20170407/20170407_JPP_RFI_164_165_DoD.pdf.

pursuant to Article 140a will influence how and whether to implement the JPP's recommendations regarding sexual assault data collection. Therefore, the JPP builds upon the conclusions in its April 2016 Report on Statistical Data in recommending that the Secretary of Defense and the military Services use a standardized, document-based collection model for collecting and analyzing case adjudication data in order to implement Article 140a, Uniform Code of Military Justice (*Case Management; Data Collection and Accessibility*).

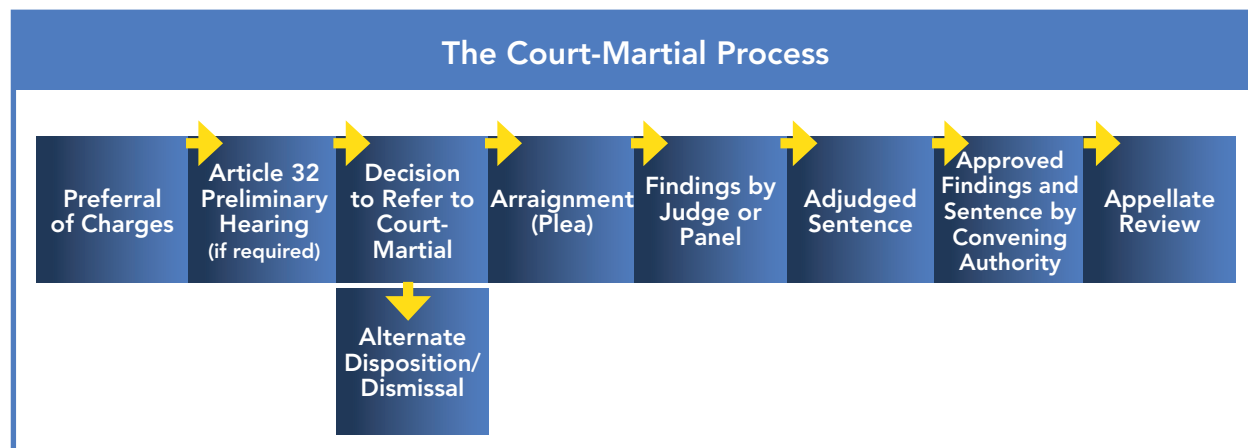
DoD SAPRO is charged with making important policies for DoD, but its data collection and reporting on the legal disposition of adult-victim sexual assault cases do not describe the outcomes of sexual assault reports made within the military with sufficient clarity or thoroughness for Congress or DoD to understand how these cases are handled within the military justice system. The JPP believes that military justice personnel should be involved in providing the information collected pursuant to Article 140a, and that this new system should collect information on all sexual assault cases in the military Services. Using Article 140a would thus end the exclusion of spouse and intimate partner cases from Service and DoD-level data analysis, thereby improving the reliability and clarity of DoD's reports on sexual assault cases. In sum, the JPP recommends that the new military justice data collection system should be designed so as to become the exclusive source of sexual assault case adjudication data for the DoD SAPRO annual report to Congress.

III. Sexual Assault Cases Resolved Through Courts-Martial

The JPP examined the judicial response to sexual assault crimes in 738 cases that were completed in fiscal year 2015 in which one or more sexual assault charges were preferred.²⁹ These cases represent a substantial portion, but not all, of the sexual assault courts-martial tried by the military Services.³⁰ The JPP asked Dr. Cassia Spohn to analyze the procedural history and outcomes for all cases. Her statistical report, provided in Appendix A, informs the JPP's presentation of data about military judicial proceedings.

A. THE COURT-MARTIAL PROCESS

Once an investigation of a sexual assault report is brought to a commander for review, he or she determines whether and how the case will be resolved through judicial proceedings in accordance with the UCMJ. The following chart illustrates the process by which a criminal offense is resolved by court-martial.



29 Most (93%) of the cases analyzed involve offenses charged under the current sexual assault statute, Article 120, UCMJ, which covers offenses committed on or after June 28, 2012. In general, the sexual assault offenses analyzed span three versions of Article 120, UCMJ, and other statutes. They include:

Pre-Oct. 2007	Article 120(1) – Rape
Pre-Oct. 2007	Article 134 – Assault - Indecent
Oct. 1, 2007–June 27, 2012	Article 120(a) – Rape Article 120(c) – Aggravated Sexual Assault Article 120(e) – Aggravated Sexual Contact Article 120(h) – Abusive Sexual Contact Article 120(m) – Wrongful Sexual Contact
June 28, 2012–Present	Article 120(a) – Rape Article 120(b) – Sexual Assault Article 120(c) – Aggravated Sexual Contact Article 120(d) – Abusive Sexual Contact
Article 125(1)	Forcible Sodomy
Article 80	Attempts to commit the above offenses

30 The JPP did not receive the complete universe of cases throughout the military in which a sexual assault charge was filed. The data were also limited to cases in which a complete set of disposition records could be identified and retrieved for analysis.

By DoD policy, all unrestricted reports of adult sexual assault offenses must be taken to a special court-martial convening authority (SPCMCA) for the initial decision on disposition.³¹ Should the commander decide, after consulting with a judge advocate, that a court-martial is warranted, the commander initiates the court-martial process with the preferral, or swearing, of charges. Once charges are preferred, the initial disposition authority may refer the charges to a form of court-martial that he or she is authorized under the UCMJ to convene, forward the charges to a higher convening authority, dismiss the charges, or choose an alternate disposition for the case.

Certain commanders who are designated as convening authorities may convene courts-martial, provided that they have appropriate authority under the UCMJ to do so.³² The UCMJ provides for three types of courts-martial: (1) summary court-martial, (2) special court-martial, and (3) general court-martial.³³

Summary courts-martial are a unique hybrid between nonjudicial punishment and a criminal trial, and they typically adjudicate minor misconduct or offenses that are less serious than those referred to special or general court-martial. A summary court-martial may try only enlisted members. Sentences are limited to no more than one month of confinement and do not allow for separation from service.³⁴ In addition, a finding of guilt at a summary court-martial does not result in a federal conviction. A member may object to trial by summary court-martial, in which case the member may be tried by special or general court-martial.³⁵

Special and general courts-martial are more like civilian criminal trials in appearance and function. A guilty verdict at a special or general court-martial results in a federal conviction. Defendants may elect to be tried by a military judge alone or by a panel of military members (jury). Unlike in civilian criminal trials, which hold a separate sentencing hearing weeks or months after a guilty verdict, once a member is found guilty at a court-martial the court immediately moves into the sentencing proceedings. Another difference in military courts-martial is the wide range of available punishments if a member is found guilty. In addition to or as an alternative to confinement in prison, a military member may receive a punitive discharge, forfeiture of pay, a fine, reduction in pay grade, hard labor without confinement, restriction to specified limits, or a reprimand.³⁶

A special court-martial is functionally equivalent to a civilian misdemeanor court because confinement is limited to no more than one year, even if the maximum punishment authorized for the crime is greater than one year.³⁷ In addition, because a dismissal is not an authorized punishment, officers are generally not tried by special court-martial.³⁸

31 See U.S. DEP'T OF DEFENSE, MEMORANDUM FROM THE SECRETARY OF DEFENSE ON WITHHOLDING INITIAL DISPOSITION AUTHORITY UNDER THE UNIFORM CODE OF MILITARY JUSTICE IN CERTAIN SEXUAL ASSAULT CASES (Apr. 20, 2012). The SPCMCA is a senior commander, typically in the grade of O-6, and generally has at least 20 years of military service.

32 See MCM, *supra* note 5, R.C.M. 504.

33 10 U.S.C. § 816 (UCMJ, art. 16).

34 10 U.S.C. § 820 (UCMJ, art. 20). The limits of a summary court-martial sentence are confinement for one month, hard labor without confinement for 45 days, restriction to specified limits for two months, and forfeiture of two-thirds of one month's pay.

35 *Id.*

36 MCM, *supra* note 5, R.C.M. 1003(b).

37 10 U.S.C. § 819 (UCMJ, art. 19). The limits of a special court-martial are a bad conduct discharge, confinement for one year, hard labor without confinement for three months, and forfeiture of pay for one year.

38 *Id.*

A general court-martial is analogous to a civilian felony court, since the only limitations on punishment are the maximum sentences authorized for the offenses of which the member is convicted.³⁹ Congress, in the FY14 NDAA, limited referral for penetrative sexual assault offenses (rape, sexual assault, forcible sodomy, or attempts to commit these acts) to trial by general court-martial.⁴⁰

If referral to a general court-martial is contemplated, the commander must first order that a preliminary hearing be conducted, pursuant to Article 32 of the UCMJ. The Article 32 preliminary hearing has evolved in form and function in recent years. Traditionally, it was a “thorough and impartial investigation” of the case in which an investigating officer, who was not necessarily a lawyer, investigated “the truth and form of the charges.”⁴¹ In sexual assault cases the victim, if he or she was a military member, was typically required to appear and give testimony and was subject to cross-examination by the defense counsel.⁴²

Recent statutory changes have significantly altered the Article 32 process from a pretrial investigation into a preliminary hearing, and removed the requirement that a victim appear and testify at the hearing.⁴³ Under the new process, the Article 32 preliminary hearing is limited to determining whether there is probable cause to believe that an offense has been committed and that the accused committed the offense, determining whether the convening authority has court-martial jurisdiction over the offense and the accused, considering the form of the charges, and recommending the disposition that should be made of the case.⁴⁴ At the completion of the Article 32 hearing, the hearing officer, who is a judge advocate, prepares a report of the proceedings and forwards the report, along with his or her recommendation as to disposition, through command channels, to the general court-martial convening authority (GCMCA).

In determining whether to refer charges to a general court-martial, the GCMCA considers the Article 32 report containing the preliminary hearing officer’s recommendations as to disposition and the written pretrial advice of the GCMCA’s staff judge advocate.⁴⁵

When a court-martial convening authority refers a case to trial, a military judge arraigns the accused on the charges and presides over the court-martial proceedings.⁴⁶ The trial process that follows largely resembles that of civilian criminal courts and uses many of the same rules of procedure and evidence. However, there are meaningful differences between military and civilian criminal proceedings,

39 10 U.S.C. § 818 (UCMJ, art. 18).

40 FY14 NDAA, *supra* note 6, § 1705. The NDAA provision applies to offenses committed on or after June 24, 2014. A commander may still dispose of offenses by alternate means or dismiss charges, but if a court-martial is warranted the only type authorized for these offenses is a general court-martial.

41 10 U.S.C. § 832 (UCMJ, art. 32); MCM, *supra* note 5, R.C.M. 405(a) and (e).

42 MCM, *supra* note 5, R.C.M. 405(g)(2)(A) and (h)(1)(A).

43 FY14 NDAA, *supra* note 6, § 1702(a). National Defense Authorization Act for Fiscal Year 2015, Pub. L. 113–291, [hereinafter FY15 NDAA] § 531(g), 128 Stat. 3292 (2014) makes this change effective for all preliminary hearings conducted on or after December 26, 2014.

44 FY14 NDAA, *supra* note 6, § 1702(a).

45 *Id.*; 10 U.S.C. §§ 833, 834 (UCMJ, art. 33 and art. 34).

46 10 U.S.C. § 936 (UCMJ art. 36) (rules prescribed by the President “shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which may not be contrary to or inconsistent with this chapter.”). *See also* MCM, *supra* note 5, R.C.M. 904; Military Rule of Evidence (M.R.E.) 1102.

including the military's procedures for plea agreements and sentencing and the convening authority's role in approving the results of a court-martial.

In civilian courts, a plea agreement involves a process in which the prosecutor and defendant arrive at an agreement whereby the defendant pleads guilty to some or all of the charges in exchange for a lower sentence recommendation or some other concession, such as a reduction in the number or severity of the charges, from the prosecutor to the judge.⁴⁷ The judge is not bound by this recommendation, however, and can choose to sentence the defendant to a longer term of confinement, though in such circumstances the judge may be required to release the defendant from the plea agreement.⁴⁸

In the military, a plea agreement is between the defendant and the convening authority, and its terms, including any specific limits on confinement, are binding on the convening authority.⁴⁹ Unlike civilian court judges, a military judge is not made aware of the sentence cap agreed to by the defendant and convening authority before deciding on a sentence.⁵⁰ The defendant in a military court ultimately receives the benefit of the lower of the two sentences (the one determined at the court-martial and the other contained in the plea agreement).⁵¹

Another key difference between civilian and military courts is that the conviction and sentence announced in civilian court by the judge or jury are final, pending appeal. In the military, the findings of guilt and sentence announced by the court-martial panel or judge are not final and must be forwarded to the convening authority for approval. Historically, convening authorities had broad powers under Article 60 of the UCMJ to set aside or modify findings of guilt or provide clemency with regard to the sentence.⁵² However, in the FY14 NDAA, Congress significantly restricted the post-conviction authority of convening authorities in serious sexual assault offenses by precluding them from setting aside or commuting findings of guilt.⁵³ The NDAA also significantly curtailed the ability of convening authorities to provide clemency from the adjudged sentence.⁵⁴

47 Fed. R. Crim. P. 11(c) and (d).

48 *Id.*

49 MCM, *supra* note 5, R.C.M. 705(a) and (b). *See also id.* R.C.M. 705(d)(4) “*Withdrawal.*” (A) *By accused.* The accused may withdraw from a pretrial agreement at any time; however, the accused may withdraw a plea of guilty or a confessional stipulation entered pursuant to a pretrial agreement only as provided in R.C.M. 910(h) or 811(d), respectively. *See id.*, R.C.M. 705(d)(4)(B) “*By convening authority.* The convening authority may withdraw from a pretrial agreement at any time before the accused begins performance of promises contained in the agreement, upon the failure by the accused to fulfill any material promise or condition in the agreement, when inquiry by the military judge discloses a disagreement as to a material term in the agreement, or if findings are set aside because a plea of guilty entered pursuant to the agreement is held improvident on appellate review.”

50 MCM, *supra* note 5, R.C.M. 910(f)(3).

51 MCM, *supra* note 5, R.C.M. 705(b)(2).

52 *See* 10 U.S.C. § 960 (UCMJ, art. 60).

53 FY14 NDAA, *supra* note 6, § 1702(b). This provision applies to offenses committed on or after June 24, 2014, and states that the convening authority may affect findings only for “qualifying offenses,” defined as those for which the maximum sentence of confinement that may be adjudged does not exceed two years, and the sentence adjudged does not include dismissal or a punitive discharge, or confinement for more than six months. *Id.* In effect, this provision prevents convening authorities from modifying the findings or sentence for adult-victim sexual assault convictions under Articles 120 or 125, except where the accused enters into a pretrial agreement with the government that addresses certain offenses or provides for a limitation on sentence.

54 *Id.* The convening authority may not disapprove, commute, or suspend an adjudged sentence that is more than six months or that includes a punitive discharge, unless (1) upon recommendation from the trial counsel, in recognition of “substantial assistance” by the accused in the investigation or prosecution of another person, including for offenses with mandatory minimum sentences; or (2) in order to honor a pretrial agreement. However, the convening authority may not commute a mandatory minimum sentence except to reduce a dishonorable discharge to a bad conduct discharge.

B. MILITARY JUSTICE DATA

1. Court-Martial Case Characteristics

The JPP received 738 court-martial records from the Services for cases that involved the preferral of an adult-victim sexual assault offense and were completed in fiscal year 2015. Among the Services, the Army generated the most cases. Courts-martial records indicated that the accused was usually male and the victims were most often female. In addition, the vast majority of the courts-martial involved one military victim; however, there were several that involved multiple victims. In 72% of cases, the most serious charge that was preferred was a penetrative offense. Almost all cases involved an offense charged under the most current version of Article 120, UCMJ, the military's sexual assault statute, which covers offenses committed on or after June 28, 2012. Specific details regarding the characteristics of the data retrieved from court-martial records for fiscal year 2015 are described below in sections (a) through (d).⁵⁵

The JPP notes that a number of characteristics are similar across the groups of cases analyzed for this JPP report and the April 2016 Report on Statistical Data involving cases completed in fiscal years 2012 through 2014:⁵⁶

- the proportion of cases from each Service,
- the characteristics of the accused and the victim,
- the proportion of cases involving a penetrative offense,
- the proportion of cases tried by court-martial, and
- the proportion of general courts-martial are nearly the same for fiscal year 2015 as for fiscal years 2012 through 2014 (combined).

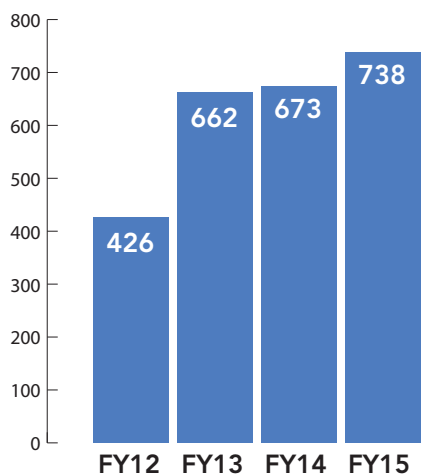
a. Overview of Total Cases Received

The JPP reviewed case data for 738 cases that were completed in fiscal year 2015. The data include certain cases that were not contained in the JPP's review of cases for years 2012 through 2014. Cases in which the victim was the spouse or intimate partner of the accused account for 130 cases (18%) of the 738 cases reviewed by the JPP for fiscal year 2015, but these cases were not provided to the JPP for analysis of cases fiscal years 2012 through 2014. DoD does not collect information on the legal outcome of cases in which the victim is the spouse or intimate partner of the accused; those cases are handled by the DoD Family Advocacy Program (FAP). Therefore, the statistical data for fiscal years 2012 through 2014 are not directly comparable with the statistics for fiscal year 2015. Of the total number of cases reviewed for the JPP's April 2016 Report on Statistical Data, 426 (24%) were from fiscal year 2012, 662 (38%) were from fiscal year 2013, and 673 (38%) were from fiscal year 2014.

55 Throughout this report, percentages have been rounded to the nearest whole number based on the figures contained in Appendix A, ADJUDICATION OF SEXUAL OFFENSES REPORTED TO THE MILITARY SERVICES IN 2015 by Dr. Cassia Spohn, Professor and Director, School of Criminology and Criminal Justice, Arizona State University.

56 In its APRIL 2016 REPORT ON STATISTICAL DATA, *supra* note 2, the JPP reviewed 1,761 sexual assault cases completed in fiscal years 2012 through 2014. The JPP did not receive the complete universe of cases in which a sexual assault charge was filed throughout the military for this report. The data were also limited to cases in which a complete set of disposition records could be identified and retrieved for analysis.

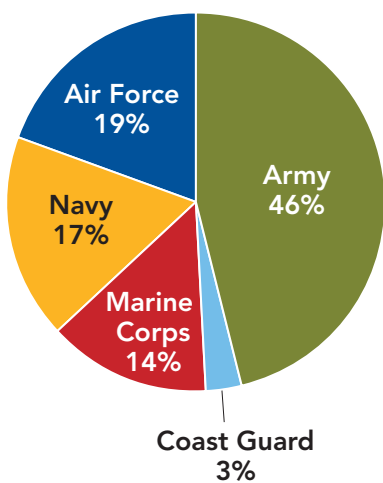
Cases Reviewed by the JPP (FY 2012–2015)



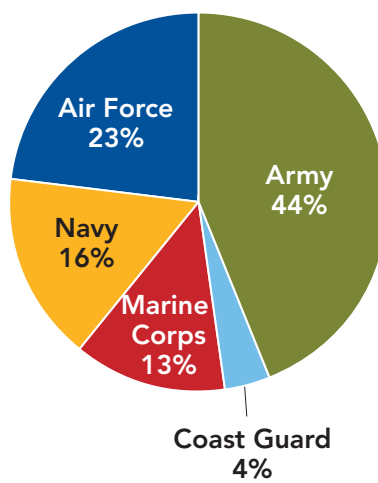
Of the 738 cases reviewed by the JPP for fiscal year 2015, the Army generated the most cases (44%), followed by the Air Force (23%), Navy (16%), Marine Corps (13%), and Coast Guard (4%).

Military Service of the Accused (FY 2012–2015)

Fiscal Years 2012–2014



Fiscal Year 2015



To provide additional context for the number of cases analyzed by the JPP from each military Service, the table below shows the active duty population in each military Service in fiscal year 2015, and the proportion each military Service constitutes of the overall active duty military population.

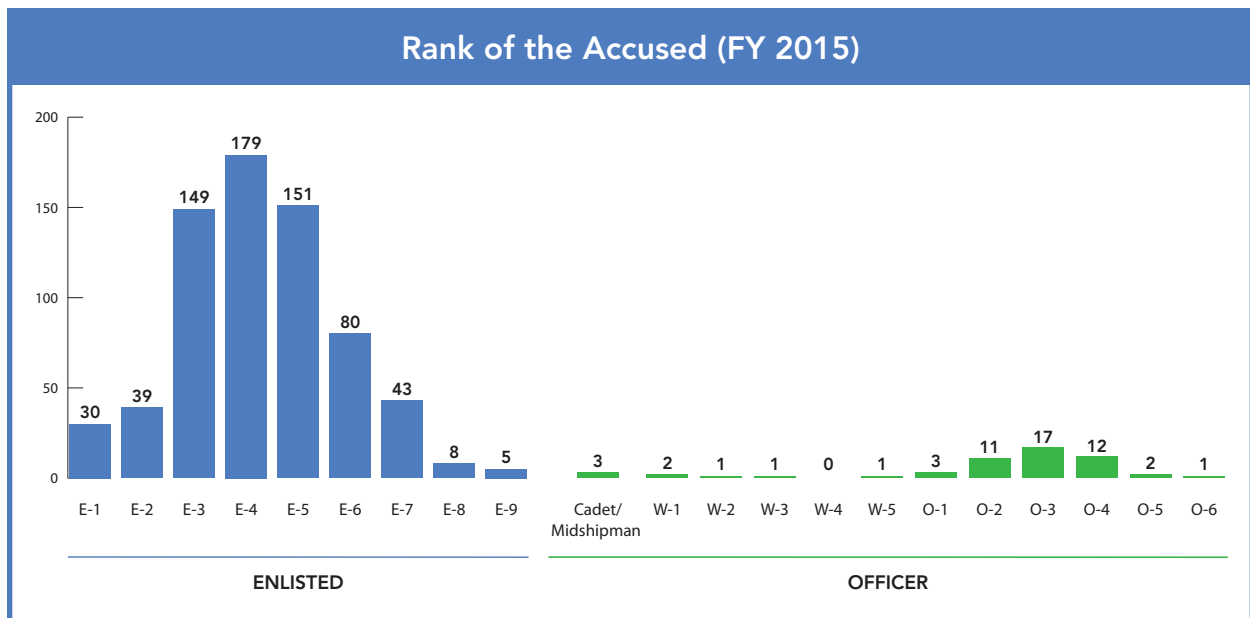
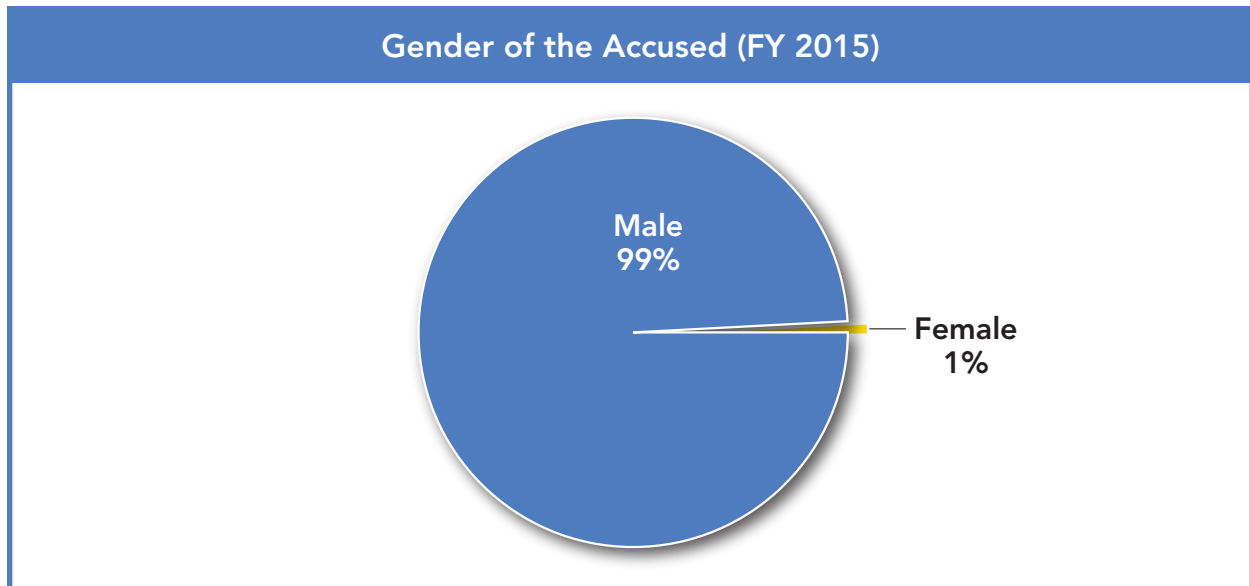
Table 1. Fiscal Year 2015 Active Duty Population by Military Service with Number of Sexual Assault Cases Analyzed by the JPP

	Size of the Active Duty Population*	Percentage of Total Active Duty Population	Number of FY15 Cases Analyzed by the JPP	Percentage of Cases Analyzed by the JPP
Army	491,300	36.4%	322	43.6%
Air Force	311,300	23.1%	170	23.1%
Navy	327,900	24.2%	121	16.4%
Marine Corps	183,500	13.6%	94	12.7%
Coast Guard	36,000	2.7%	31	4.2%
Total	1,350,000	100%	738	100%

*Figures obtained from the DoD Defense Manpower Data Center website, https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp, and the Defense Manpower Requirements Report for Fiscal Year 2017. These figures do not include the number of Guard and Reserve Component members who were on active duty and were also subject to the UCMJ in fiscal year 2015. Therefore, these figures should not be used to compare the proportion of courts-martial in the Army relative to the other Services.

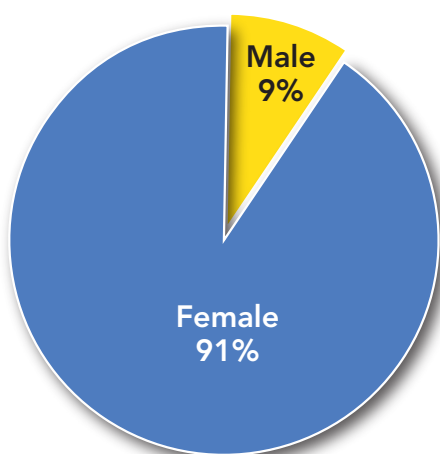
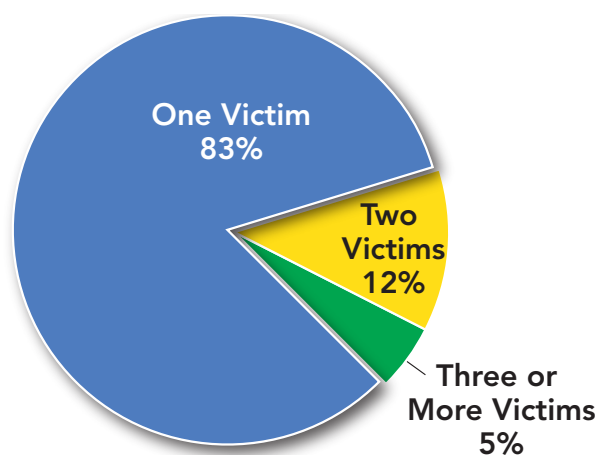
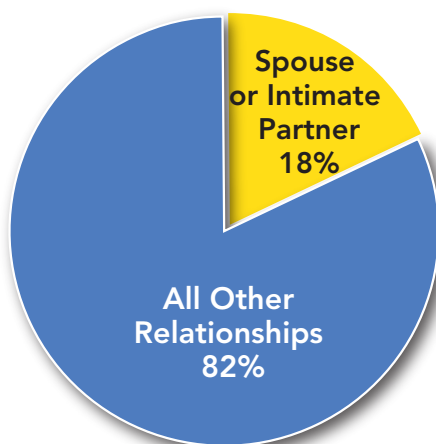
b. Accused Characteristics

The accused in nearly all cases (99%) was male. Only 5 cases involved a female accused. Most of the accused were enlisted Service members (93%) rather than officers (7%).



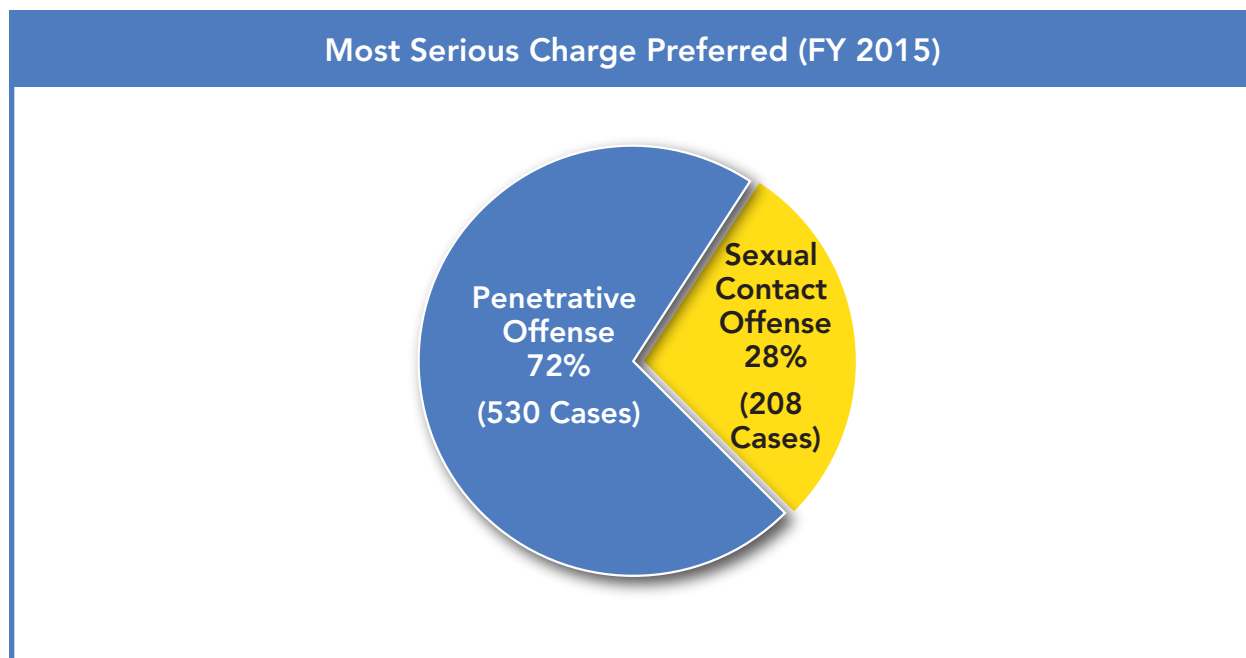
c. Victim Characteristics

In 91% of the cases reviewed by the JPP, the victim was female. Sixty-eight percent of the cases involved victims who were in the military. Most cases reviewed involved one (83%) or two (12%) victims. In 18% of the cases, the victim was the spouse or intimate partner of the accused.

Victim Characteristics (FY 2015)*Gender of the Victim(s)**Number of Victims per Case**Victim's Relationship with the Accused*

d. Characteristics Regarding the Nature of the Charges

A penetrative offense,⁵⁷ as opposed to a contact offense, was the most serious charge preferred in 530 of 738 cases (72%). Just 9% of the cases involved only a single charge, but more than half of the cases (56%) involved four or fewer charges.



2. Disposition Decisions

Using case data from fiscal year 2015, the JPP staff examined whether trial disposition decisions varied by the type of offense charged, or the military Service of the accused.

In the JPP's data for fiscal year 2015, convening authorities referred a total of 526 cases to trial by general, special, or summary court-martial; thus, 71% of all preferred cases were referred to trial by court-martial. In contrast, convening authorities dismissed or resolved through alternate administrative means 212 cases, or 29% of preferred cases.⁵⁸ Overall, 79% of referred cases in fiscal year 2015 were referred to trial by a general court-martial.

⁵⁷ The phrase "penetrative" offenses" refers to offenses under Article 120 and 125, UCMJ, involving rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit these offenses.

⁵⁸ The JPP notes that these statistics are very similar to the case disposition statistics for cases completed in fiscal years 2012 through 2014. On average, 72% of cases were referred to court-martial in FY 2012–2014. See APRIL 2016 REPORT ON STATISTICAL DATA, *supra* note 2, at 25.

Case Disposition by Court-Martial Type (FY 2015)

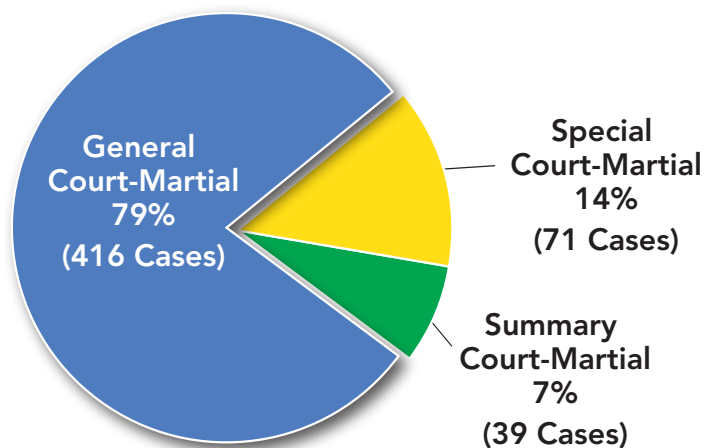


Table 2 below illustrates case dispositions by military Service of the accused and by the most serious offense sent to trial.

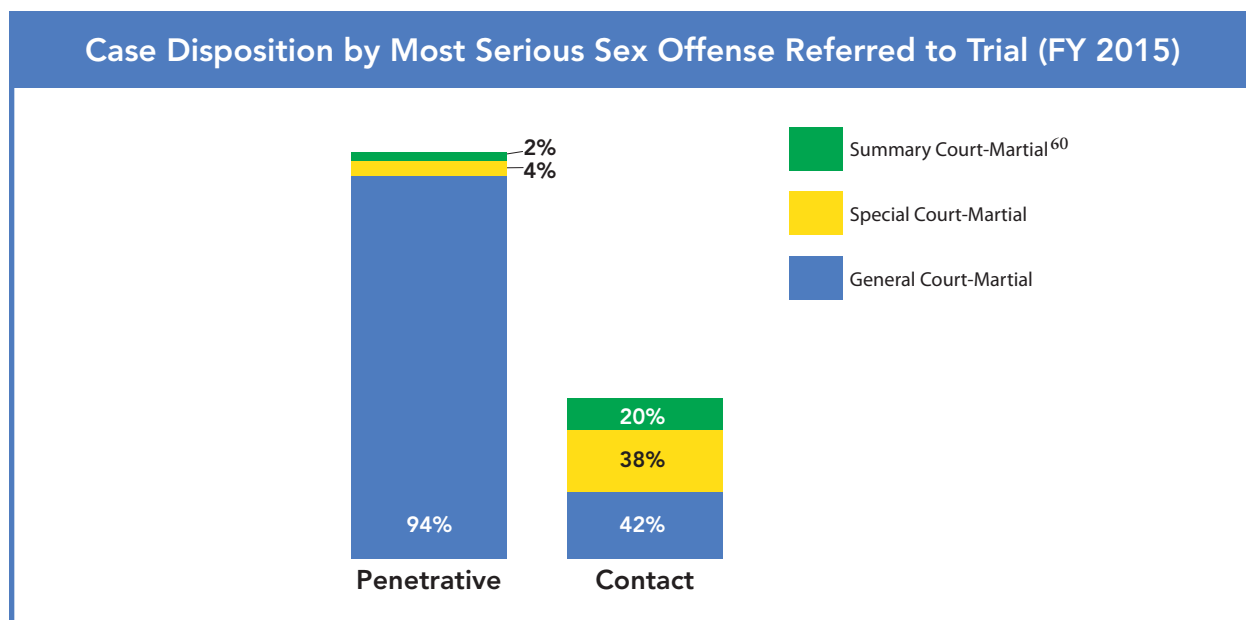
Table 2a. Case Disposition by Military Service of the Accused

Case Disposition by Military Service of the Accused (FY 2015)

Military Service	General Court-Martial		Special Court-Martial		Summary Court-Martial	
Army	199	88%	16	7%	11	5%
Air Force	102	89%	11	10%	2	2%
Navy	59	63%	27	29%	7	8%
Marine Corps	46	69%	10	15%	11	16%
Coast Guard	10	40%	7	28%	8	32%
TOTAL	416		71		39	

The severity of offense charged influences the type of court-martial to which a charge is referred. Among cases completed in fiscal year 2015, 94% of penetrative offenses were referred to trial by general court-martial,⁵⁹ while sexual contact offenses were referred more evenly among the three types of court-martial. The graph below illustrates case dispositions by court-martial type according to the most serious charged sexual assault offense.

Table 2b. Case disposition by Most Serious Sex Offense Referred (Sent) to Trial (FY 2015)



3. Adjudication Outcomes

Conviction, acquittal, and dismissal rates summarize how sexual assault prosecutions are ultimately resolved through the military justice system. The JPP examined case outcomes according to the most serious sex offense charged and the procedural point at which the military justice process concluded. The JPP considered case outcomes for all cases in which a sexual assault charge was preferred, and for all cases sent to trial by court-martial.⁶⁰

59 The FY14 NDAA established that penetrative sexual assault offenses may be tried only at a general court-martial. This provision applies to offenses committed on or after June 24, 2014. *See supra* note 40 and accompanying text. The JPP noted in its APRIL 2016 REPORT ON STATISTICAL DATA, *supra* note 1, that in practice, penetrative sexual assault cases were almost uniformly tried at a general court-martial before this statute was enacted. In fact, case data obtained by the JPP for fiscal years 2012 through 2014 indicate that the vast majority (92%) of penetrative offenses tried in fiscal years 2012 through 2014 were referred to general court-martial.

60 *See* DAVID A. SCHLUETER, *MILITARY CRIMINAL JUSTICE: PRACTICE AND PROCEDURE* § 6-1 (9th ed. 2015) (“The first formal step in prosecuting a military criminal case is preferring sworn charges against an accused. . . . As a practical matter, before preferring charges, the immediate commander has already decided that a court-martial is probably the most appropriate course to take. However the final decision as to whether the charges will be tried and what level of court will try the case [i.e., referral] is left to the convening authority who ultimately exercises prosecutorial discretion.”).

Table 3 and the accompanying figure illustrate case outcomes for those cases in which a sexual assault charge was preferred. The analysis of the 738 cases reviewed by the JPP is divided according to whether the most serious initial charge was either a penetrative offense or a contact offense. For each offense category, the table indicates whether cases resulted in conviction for a sexual offense or other offenses, acquittal, alternate disposition, or dismissal prior to trial.

The JPP considered a case to be resolved by alternate disposition when a Service member was discharged or allowed to resign in lieu of facing court-martial. Discharge or resignation in lieu of trial is possible only in cases in which charges have been preferred, at least one of those charges authorizes a punitive separation as punishment, and the Service member requests to be discharged or to resign. Enlisted Service members submit a request to be discharged in lieu of trial to the convening authority, while an officer's request to resign from the Service must be approved by the Service Secretary. The Services document the approval or disapproval of these requests in each court-martial case file, and the JPP obtained these documents in order to analyze these case data. The JPP found that in cases completed in fiscal year 2015, almost all alternate dispositions (97%) involved enlisted Service members, while only 3% of alternate dispositions involved officers. Most of the enlisted Service members (75%) who were discharged in lieu of court-martial held the pay grades of E-3, E-4, or E-5.

Commanders may also seek to resolve less severe sexual assault complaints through disciplinary action outside the judicial process. Disciplinary action may include nonjudicial punishment proceedings under Article 15, UCMJ,⁶¹ initiating the process to involuntarily separate a military member from the Service for misconduct, or taking other adverse administrative action.⁶² These disciplinary actions most often occur in cases in which a commander determines that preferral of charges is inappropriate; however, a commander who has preferred charges against a Service member with a view toward court-martial may later decide that any of these lower-level disciplinary actions are more appropriate than court-martial, and dismiss all charges in order to take other disciplinary action at some point in the future. The JPP did not collect information on disciplinary or separation actions taken in cases in which all charges were dismissed, but recognizes that these cases could have involved disciplinary action after charges were dismissed.⁶³ Unlike data for courts-martial, which can be compiled from public documents, records of disciplinary actions are maintained as personnel records within each Service and protected under the Privacy Act, and, as a result, could not be reviewed by the JPP.⁶⁴ Therefore, the JPP did not document disciplinary actions taken in cases that were not selected for prosecution.

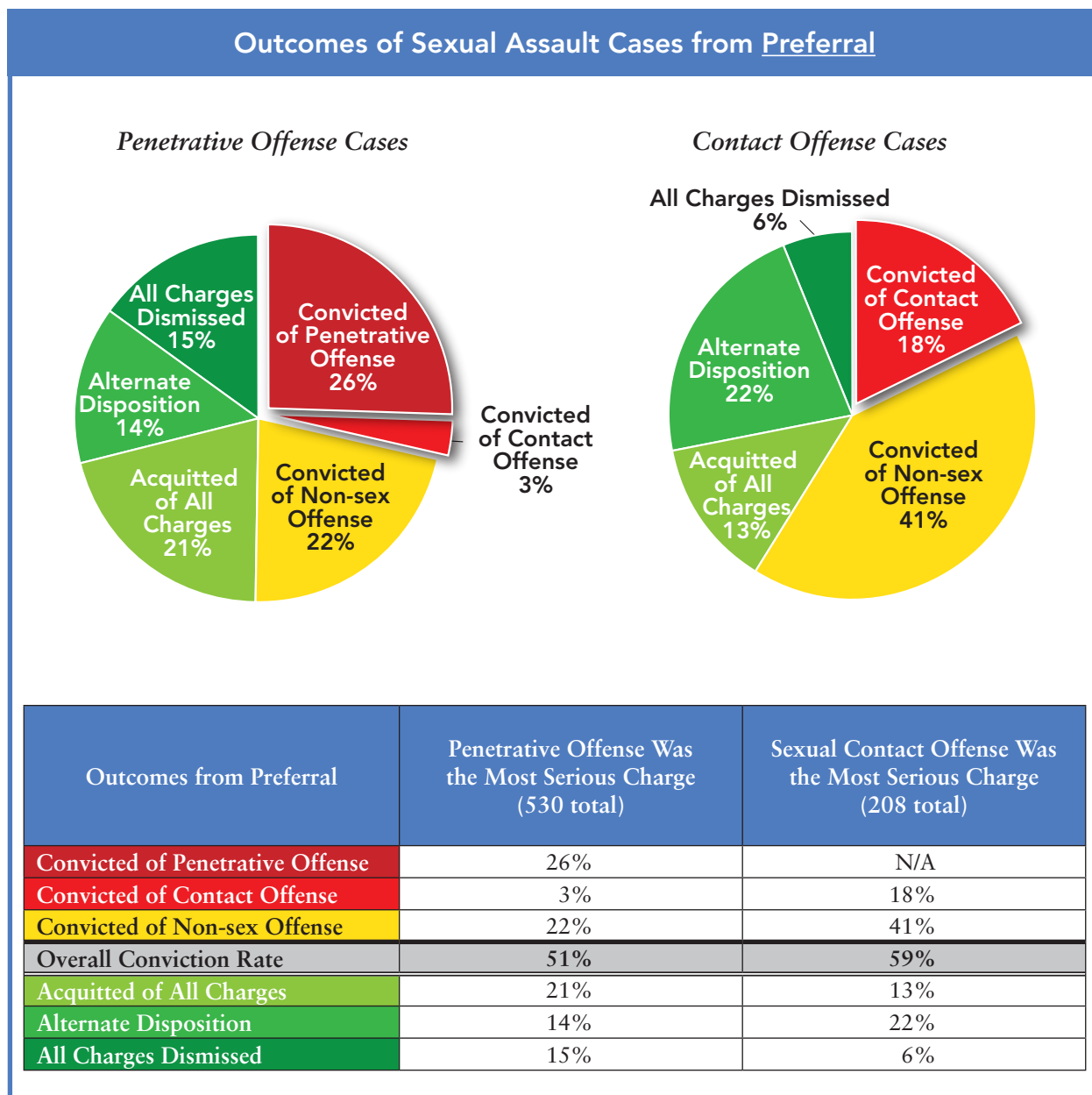
61 10 U.S.C. § 815.

62 See MCM, *supra* note 5, R.C.M. 306(c)(2) ("Administrative actions include corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or the administrative withholding of privileges, or any combination of the above.").

63 See generally Latisha Irwin, Major, U.S. Army, *Justice in Enlisted Administrative Separations*, 225 MIL. LAW REV. 35, 36–37 (2017) (noting that "administrative separations often occur as an alternative to courts-martial because administrative separation boards have a lower standard of proof and afford the respondent less due process than a trial by court-martial."). Disciplinary action may be based on sex-related or non-sex-related violations of the UCMJ, and these UCMJ violations may be unrelated to the original allegation of sexual misconduct.

64 APRIL 2016 REPORT ON STATISTICAL DATA, *supra* note 2, at 36. See also Service responses to JPP RFI Question 89 (Oct. 1, 2015). The Services explained that disciplinary records are maintained according to Service-specific regulations, often at the installation level, and typically are destroyed within two to three years.

Table 3. Cases from Preferral (Initiation of Charges) by Most Serious Sex Offense Charged (FY 2015)⁶⁵

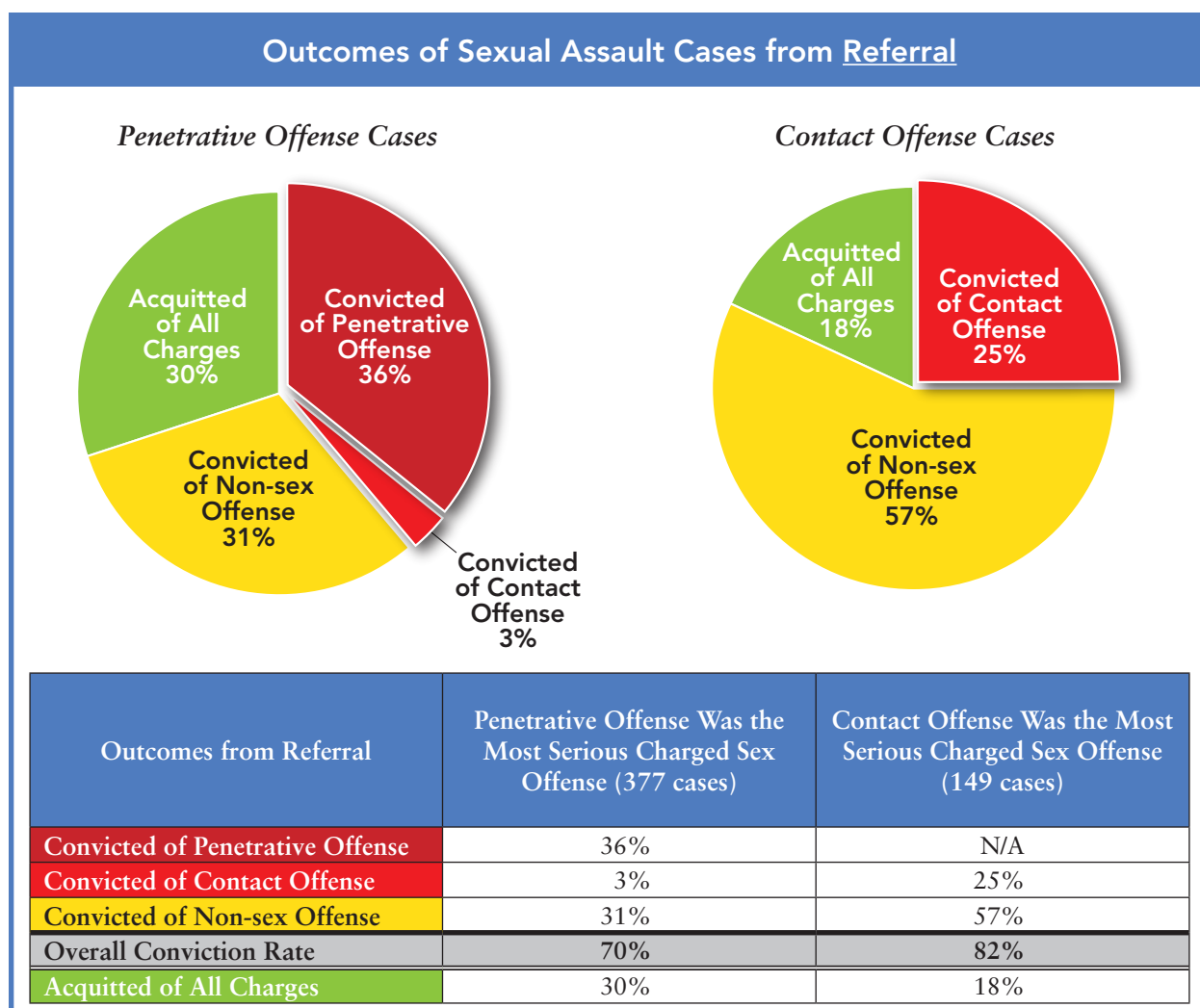


⁶⁵ In cases in which all charges were dismissed prior to trial, the accused might have faced other disciplinary action such as nonjudicial punishment proceedings under Article 15, UCMJ, separation from Service, or other adverse administrative action for misconduct (whether related or unrelated to the original accusation of sexual assault).

Table 4 and the accompanying figure illustrate case outcomes for those cases in which a commander directed a trial by court-martial, also known as “referral” to court-martial. A referral decision signifies a convening authority’s decision to prosecute a case in a specified court-martial forum. The JPP analyzed the outcomes in 526 cases in which convening authorities referred one or more sexual assault charges to trial by general, special, or summary courts-martial in fiscal year 2015. These cases were resolved in one of two ways: by an accused’s plea of guilty to one or more offenses, or by a contested trial in which the accused plead not guilty to all charges.

An examination of the trials in which a conviction resulted from a Service member’s plea of guilty to either a sex or non-sex related offense, as opposed to a finding of guilt at a contested trial, reveals that 17% of the convictions obtained in penetrative cases were based on a Service member’s plea of guilty to a penetrative offense, and another 25% of convictions were based on a Service member’s plea of guilty to a non-sex offense. In comparison, 11% of the convictions obtained in contact offense cases were based on a plea of guilty to a contact offense, and 50% of the convictions were based on a plea of guilty to a non-sex offense.⁶⁶

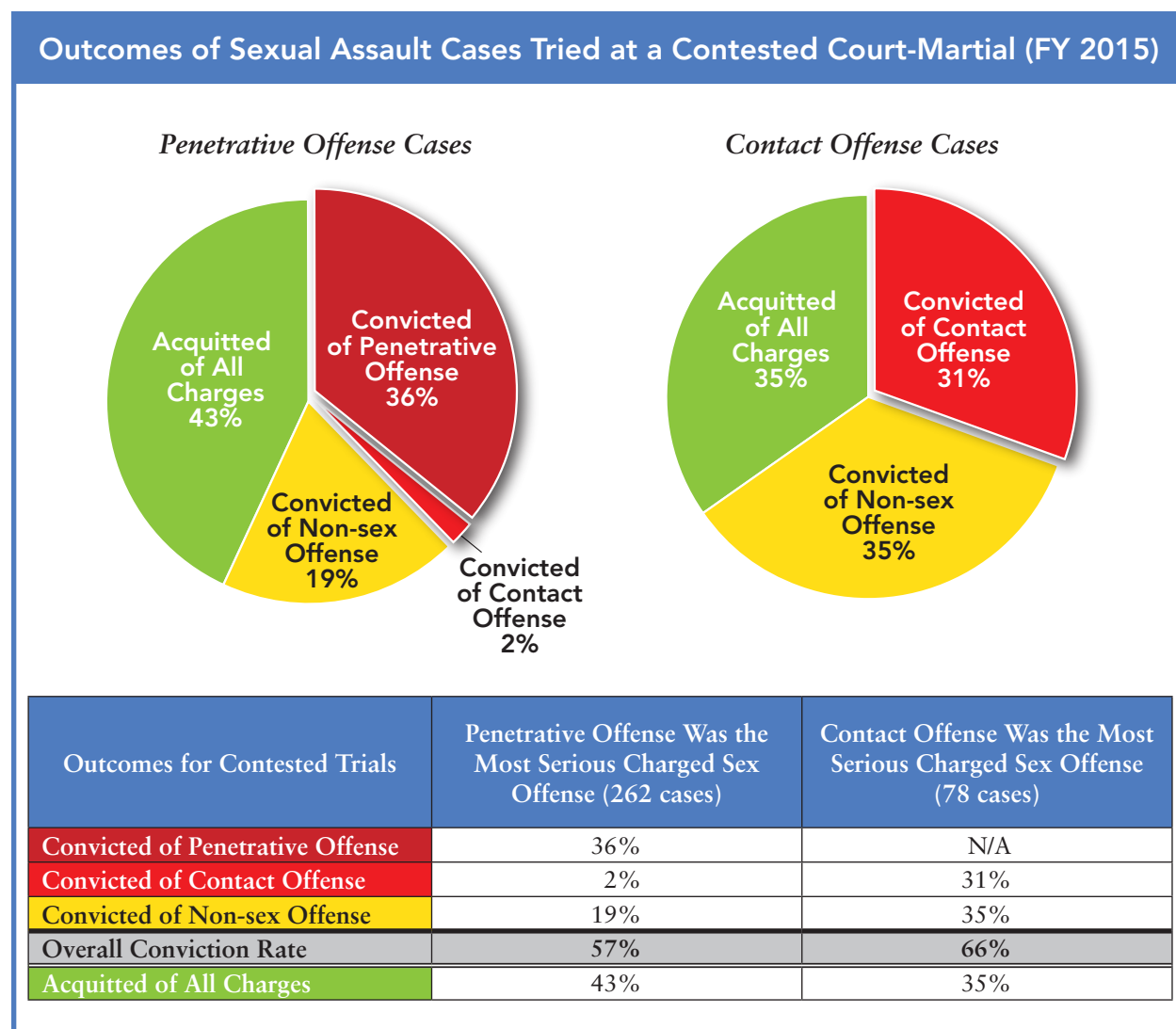
Table 4. Cases from Referral (Charges Sent to Trial) to Court-Martial by Most Serious Sex Offense Charged (FY 2015)



66 See *infra* Appendix A at 8–9.

Table 5 and the accompanying figure illustrate case outcomes for only those cases in which the accused pled not guilty to all charges at trial.⁶⁷ By excluding those cases from Table 4 above that involved guilty pleas, the data provide conviction and acquittal rates for contested trials.

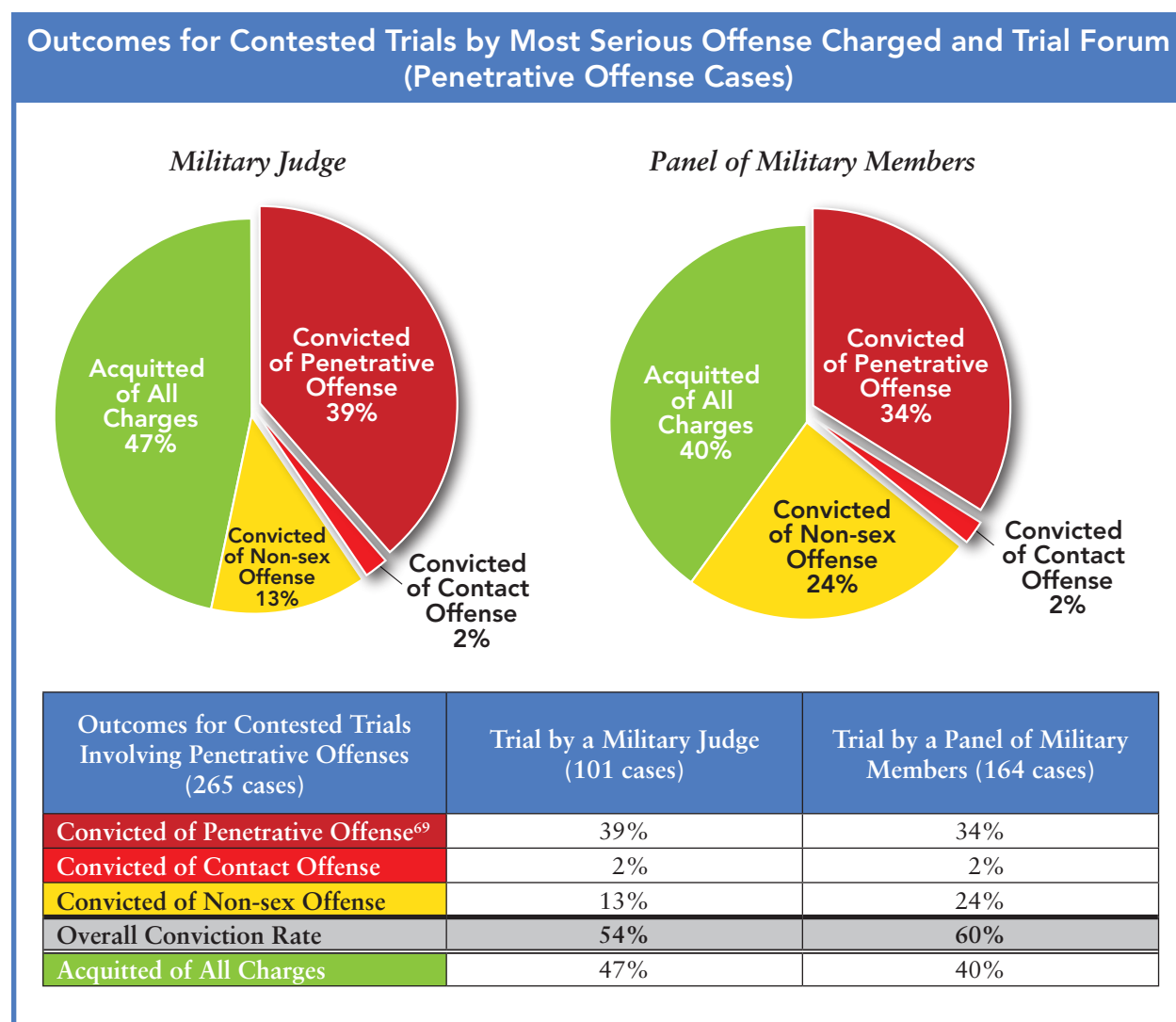
Table 5. Cases Tried at a Contested Court-Martial (FY 2015)



⁶⁷ This analysis excludes the outcomes for mixed plea cases in which a Service member pled guilty to some charges and contested other charges.

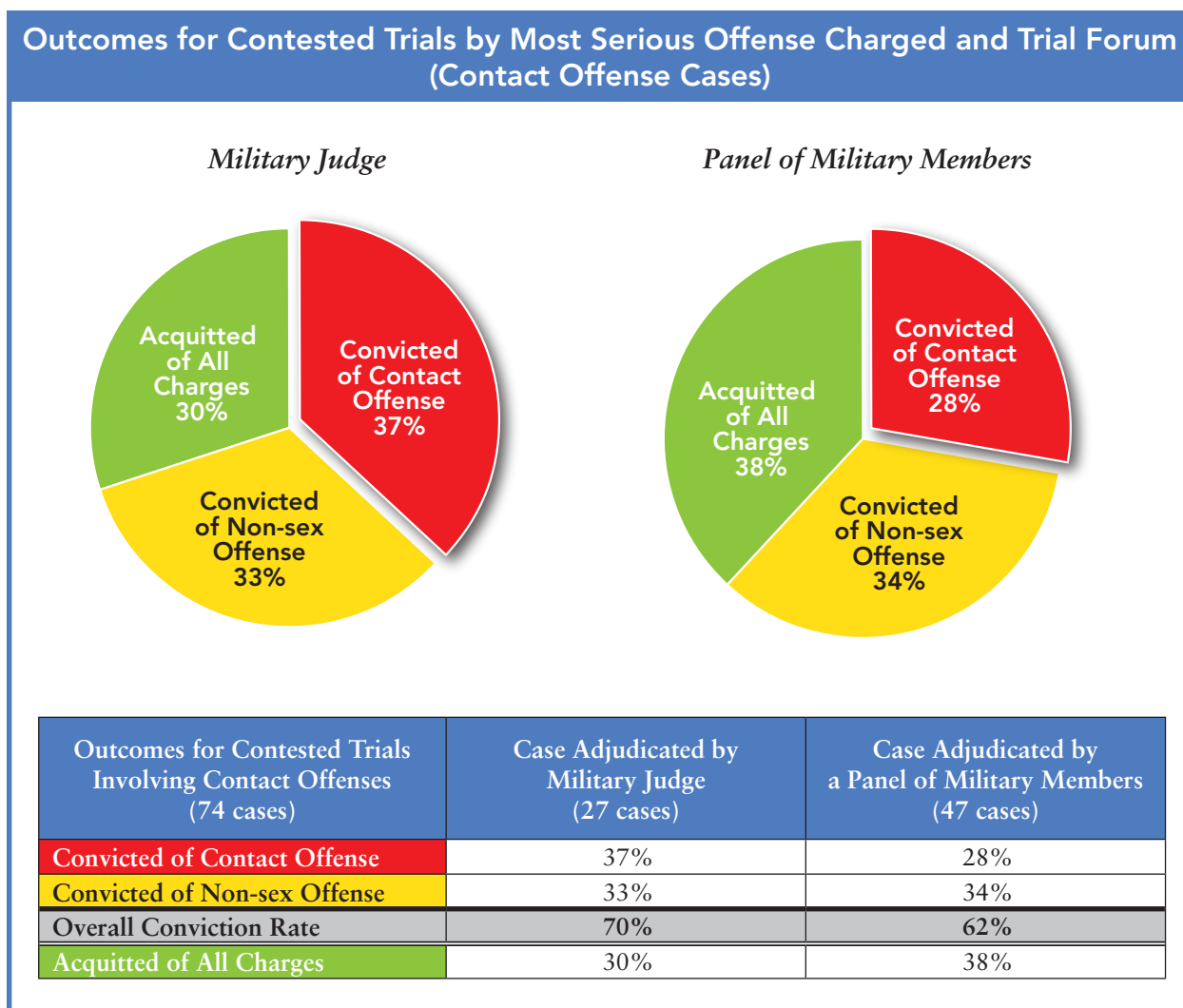
Tables 6a and 6b and the accompanying figures illustrate case outcomes for cases adjudicated by a military judge or a panel of military members. This analysis includes cases that were tried at either a special or a general court-martial, but does not include cases in which a Service member pled guilty to any offense. In military courts, guilty pleas are received by a military judge, and thus the conviction rate would naturally be higher in cases tried by a military judge than in cases tried before members if guilty pleas were included in this analysis. The results indicate that overall, 38% of contested cases were tried by a military judge, and 62% were tried by a panel of military members.

Table 6a. Contested Trials for Penetrative Offense Cases by Trial Forum (FY 2015)



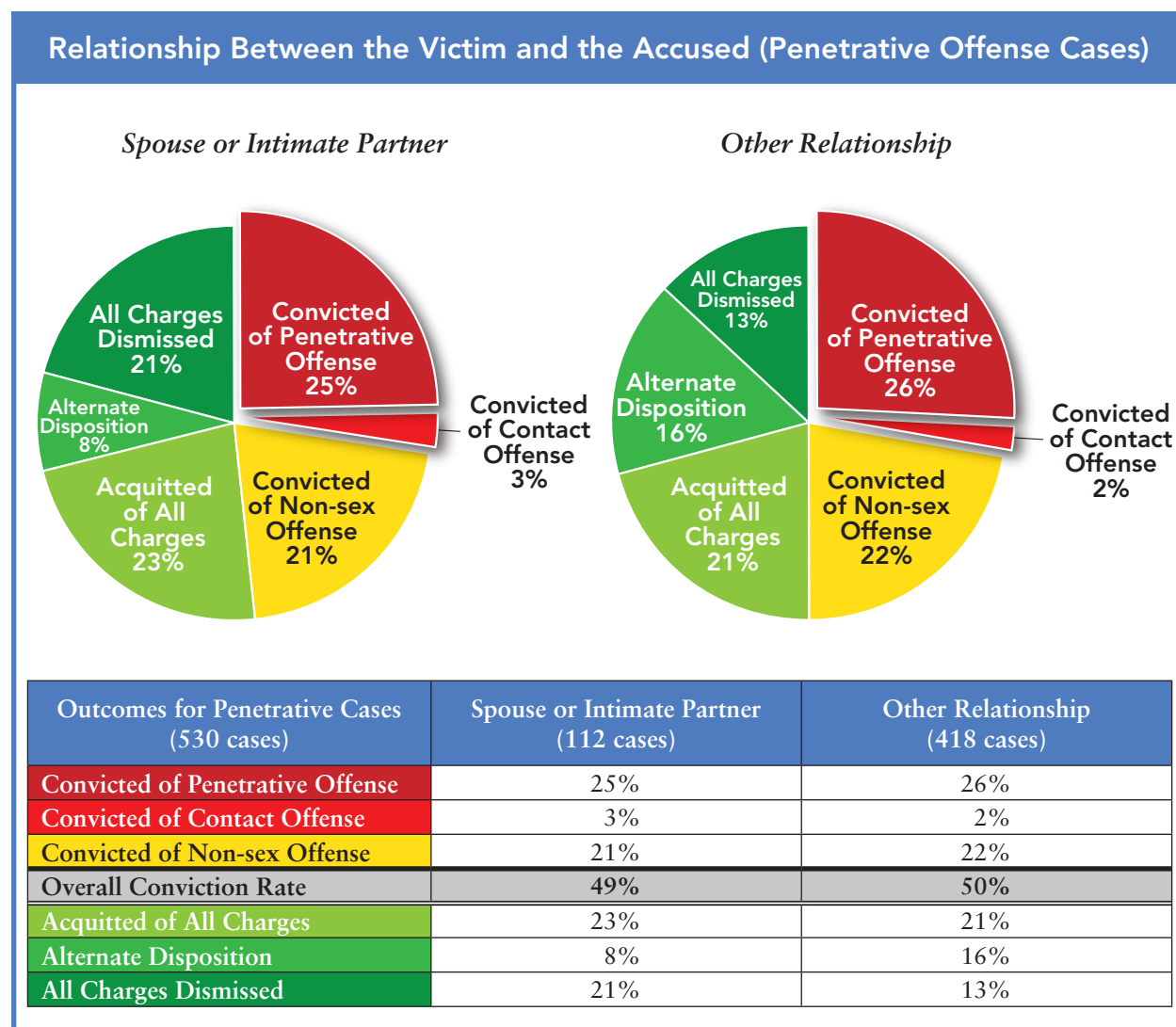
68 See *infra* Appendix A at 20. Dr. Spohn found that the difference in conviction rates for penetrative offenses was not statistically significant.

Table 6b. Contested Trials for Contact Offense Cases by Trial Forum (FY 2015)



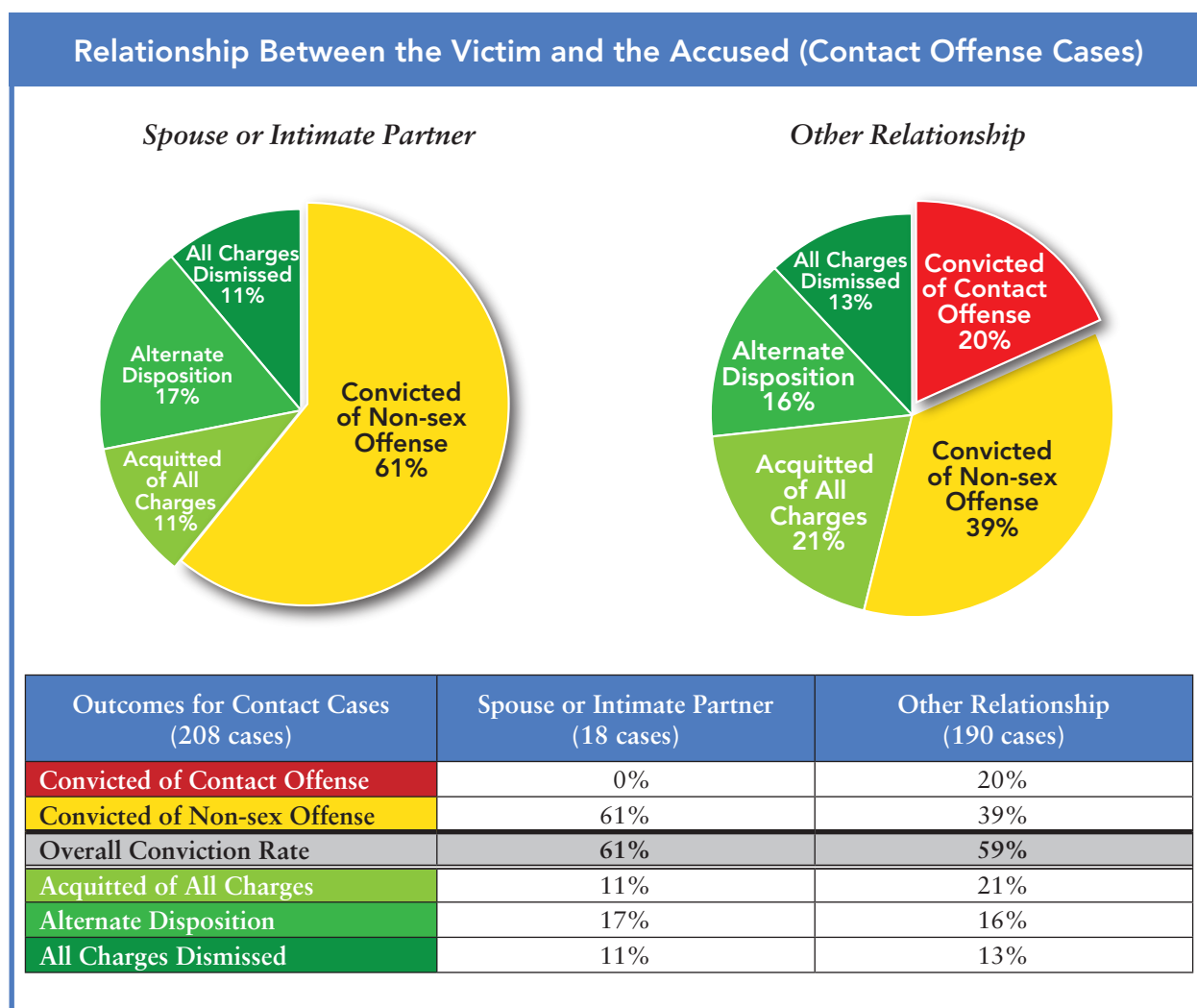
The case data collected for fiscal year 2015 included 130 cases (out of 738 total) in which the victim was the spouse or intimate partner of the accused.⁶⁹ In all other cases, the relationship between the victim and the accused fell into some other category, such as acquaintances, strangers, friends, co-workers, or a dating relationship. Tables 7a and 7b and the accompanying figures present the outcomes for these two groups of cases—spouses/intimate partners and all other relationships. Among cases involving penetrative offenses, the overall conviction rate for cases in which the accused and victim were spouses or intimate partners was almost equal to the conviction rate for cases involving other types of relationships (49% vs. 50%).

Table 7a. Penetrative Offense Cases According to the Relationship Between the Victim and the Accused (FY 2015)



⁶⁹ DoD defines “intimate partner” as “a person with whom the victim shares a child in common, or a person with whom the victim shares or has shared a common domicile.” DEP’T OF DEF. MANUAL 6400.01-V2, DoD MANUAL FOR CHILD MALTREATMENT AND DOMESTIC ABUSE INCIDENT REPORTING SYSTEM, GLOSSARY (Aug. 11, 2016).

Table 7b. Contact Offense Cases According to the Relationship Between the Victim and the Accused (FY 2015)



Tables 8a and 8b and the accompanying figures illustrate the outcomes for all cases analyzed by the JPP according to the military Service of the accused. The results indicate that the conviction rate for penetrative offenses varied among the Services. There were not enough contact offense cases among the Services to assess the differences in the conviction rates for contact offenses. For penetrative offense cases, the Army had the highest conviction rate (33%) and the Marine Corps had the lowest (14%). In addition, the Air Force had the highest acquittal rate (30%) for penetrative offense cases and the Coast Guard had the lowest (5%).

Table 8a. Cases by Military Service of the Accused from Preferral of Charges (FY 2015)

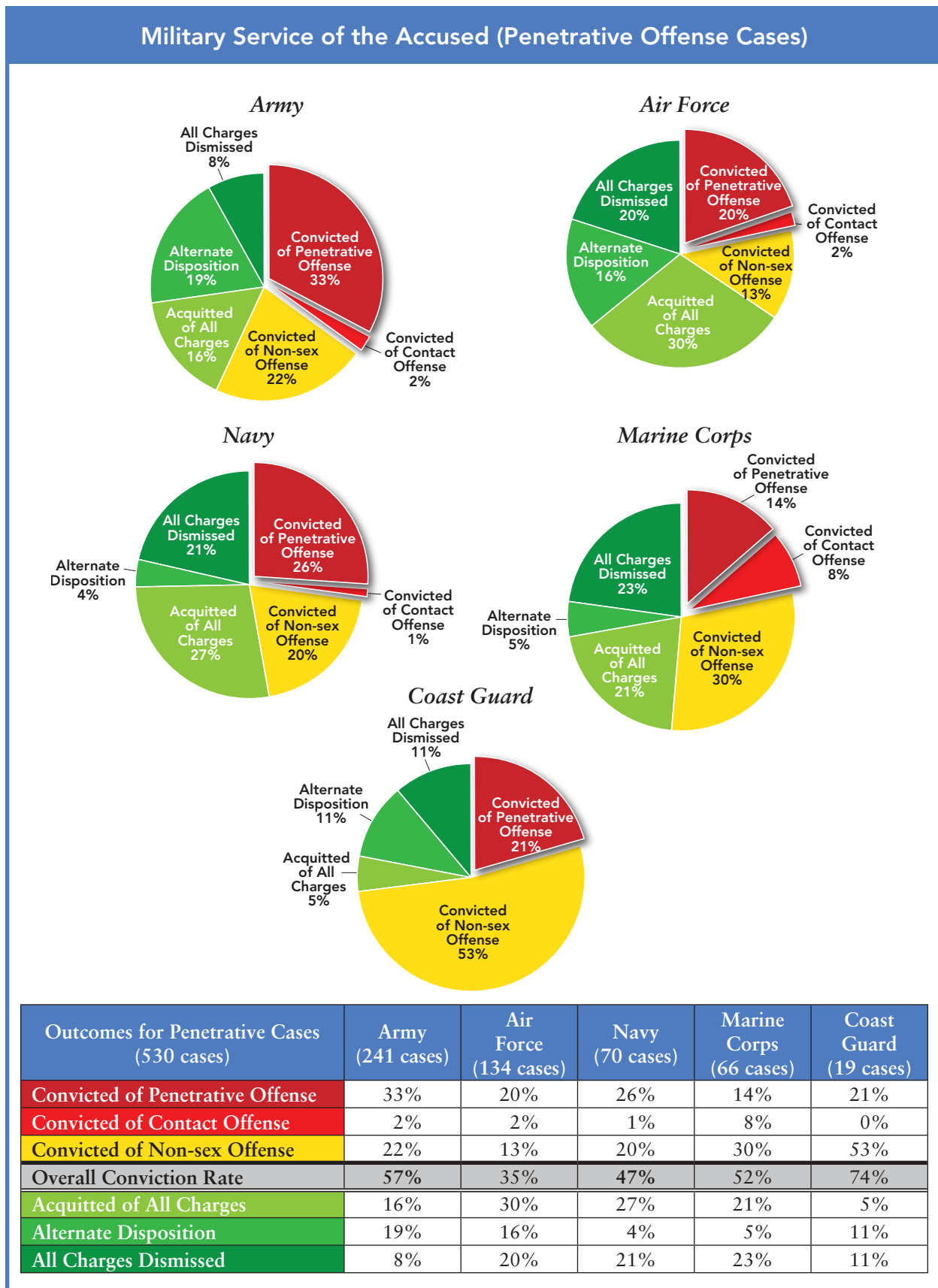
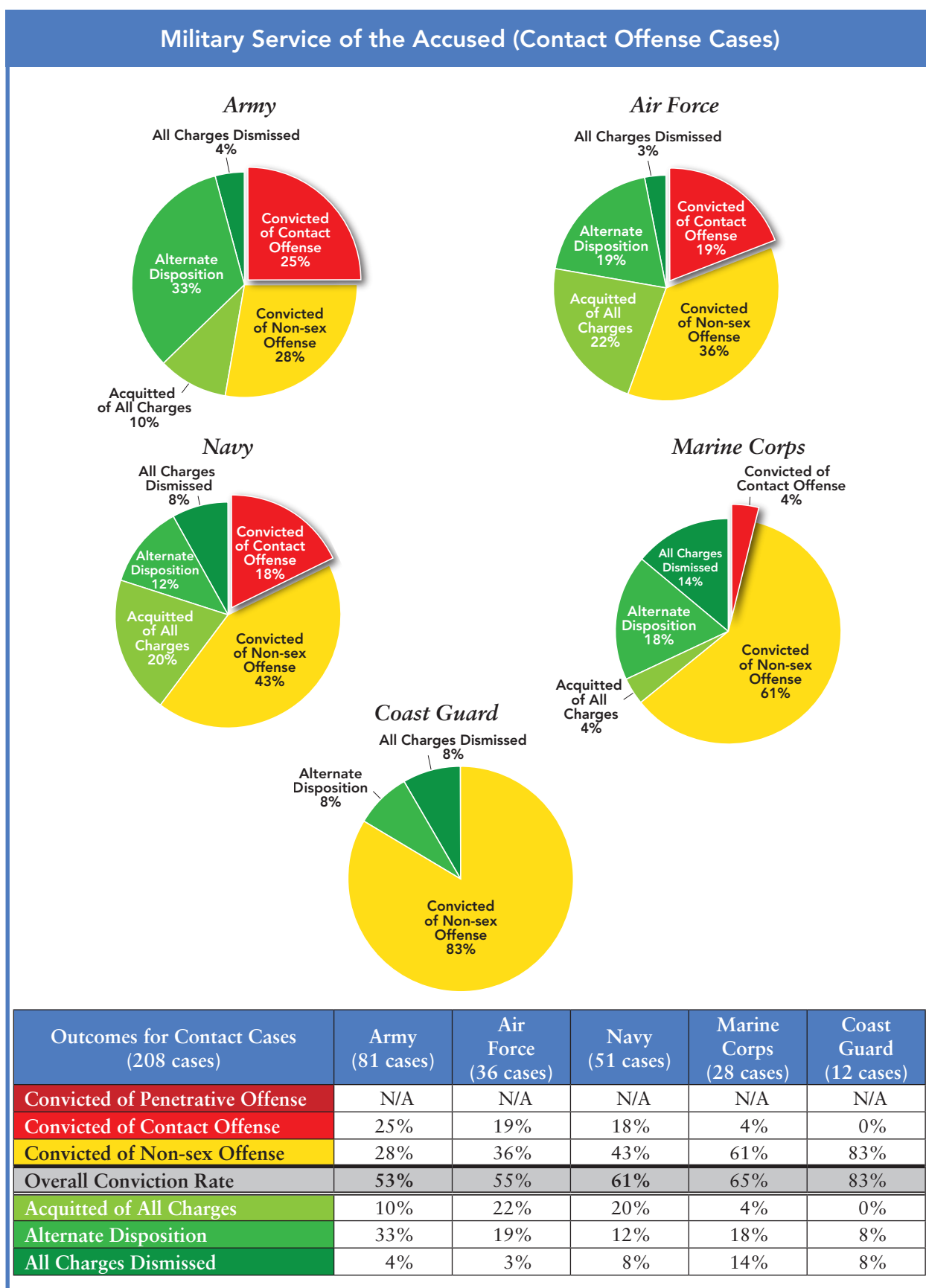


Table 8b. Cases by Military Service of the Accused from Preferral of Charges (FY 2015)



Multivariate statistical analysis of case data identifies case characteristics that are associated with particular case outcomes. The multivariate research performed by Dr. Spohn used combined courts-martial data for all Services in fiscal year 2015 in order to highlight the most influential factors associated with convictions, acquittals, or case dismissal.

Cases involving multiple victims and multiple charges tended to have higher conviction rates than cases involving one victim or very few charges. When examining outcomes based on the military Service of the accused, conviction of a penetrative offense was more likely in the Army than in the Air Force or the Marine Corps. However, the overall conviction rate for any offense did not vary significantly among the military Services.

Notably, cases involving a military victim had a lower conviction rate than cases involving a civilian victim, and cases in which the victim was the spouse or intimate partner of the accused had a lower conviction rate than all other cases. Finally, penetrative offense cases were two and a half times more likely than contact offense cases to be dismissed before trial.

In testimony to the JPP, victims' rights advocates and career prosecutors suggested that case outcomes are not a fair or effective means of gauging the effectiveness of the justice system.⁷⁰ Likewise, DoD SAPRO Reports explain that conviction rates do not assist DoD in evaluating its efforts to tackle the occurrence of sexual assault in the military.⁷¹ The JPP agrees that without knowing more about the facts of individual cases and the judicial proceedings involved, it is not possible to assess the appropriateness of the outcome of case adjudications. Moreover, this information reflects adjudication outcomes for cases resolved in fiscal year 2015. The JPP has also collected case data combining information for fiscal years 2012 through 2014 in its initial report, but cannot identify significant trends in outcomes with data for four years.

70 See *Transcript of JPP Public Meeting* 28–30 (Nov. 14, 2014) (testimony of Ms. Meg Garvin, National Crime Victims Law Institute) (“I, to be very blunt, would not be assessing outcomes of cases. I think that is irrelevant to an analysis of whether the system is achieving procedural justice.”); see also *Transcript of JPP Public Meeting* 63 (Oct. 9, 2015) (testimony of Mr. Thomas Fichter, Assistant Prosecutor and Director, Special Victim’s Unit, Monmouth County Prosecutor’s Office, New Jersey) (“It’s very difficult, you know, I found in my practice of 25 years in dealing with a lot of survivors of sexual assault, both adult and juvenile, to actually come up with a metric. I would love to be able to say I judge my success by how long someone goes to prison, but I can’t necessarily do that. There are too many variables when we’re dealing with actual live victims.”).

71 DEP’T OF DEF. FISCAL YEAR 2016 REPORT ON SEXUAL ASSAULT IN THE MILITARY (May 1, 2017), Appendix C at 4, *available at* http://www.sapr.mil/public/docs/reports/FY16_Annual/Appendix_C_Metrics_Section.pdf.

4. Punishments Rendered at Courts-Martial

The JPP examined the type and severity of punishments rendered at military courts-martial. Several factors that are unique to the military justice system influence courts-martial sentences. First, for each punitive article of the UCMJ, the President of the United States establishes whether a punitive discharge may be imposed for an offense, what type of punitive discharge may be imposed, and the maximum confinement that may be imposed.⁷² Second, convening authorities must review convictions and sentences adjudged at trial, and they may modify an adjudged sentence in some circumstances, within certain limits. When a convening authority makes a final decision on sentence, he or she takes into account sentence limitations contained in a pretrial agreement and any clemency requested by the convicted Service member. The convening authority's decision is known as the "approved" sentence. The JPP reviewed both adjudged and approved sentencing information in court-martial data. Punishment data reviewed by the JPP comprised sentences issued collectively by all types of courts-martial, but the jurisdictional limits of special and summary courts-martial also may affect sentences. Many offenses under the UCMJ authorize more than 12 months of confinement as punishment,⁷³ but the maximum confinement that may be imposed by a special court-martial is 12 months, regardless of the offense(s) charged. Summary courts-martial, which are quasi-judicial proceedings, can assess no more than one month of confinement and may not punitively discharge a Service member from the military. Given these jurisdictional limits, a convening authority's decision to refer a case to a particular type of court-martial functionally expresses a judgment as to the severity of an offense and the scope of appropriate punishment.

Statistical analysis indicated that the severity of the offense for which a person is convicted affects the punishment in the case. Those who were convicted of penetrative offenses were significantly more likely than those convicted of contact offenses to receive a sentence that included confinement—90% versus 60%. A Service member convicted of a penetrative offense was also more likely to receive a punitive separation than one convicted of a contact offense—90% versus 62%. The average confinement sentence imposed on someone convicted of at least one penetrative offense was 66 months, which was considerably longer than the average confinement sentence of 9 months imposed on one convicted of a contact offense.⁷⁴

The number of victims, number of charges in a case, and the victim's status—civilian versus military—and relationship to the accused influenced sentence severity. Cases with military victims were less likely to have confinement adjudged, and tended to have much shorter sentences than cases with civilian

72 MCM, *supra* note 5, R.C.M. 1003 and 1004. Additional punishment options include reduction in rank, forfeitures of pay and allowances, fines, restriction, hard labor with or without confinement, and death.

73 UCMJ, Appendix 12. The maximum punishments for sexual assault offenses, which were established by Executive Order 13643, May 15, 2013, are as follows:

Rape	Dishonorable discharge, confinement for life without eligibility for parole, forfeiture of all pay and allowances
Sexual Assault	Dishonorable discharge, confinement for 30 years, forfeiture of all pay and allowances
Forcible Sodomy (UCMJ, art. 125)	Dishonorable discharge, confinement for life without eligibility for parole, forfeiture of all pay and allowances
Aggravated Sexual Contact	Dishonorable discharge, confinement for 20 years, forfeiture of all pay and allowances
Abusive Sexual Contact	Dishonorable discharge, confinement for 7 years, forfeiture of all pay and allowances

74 See *infra* Appendix A at 25.

victims (an average of 22 months of confinement versus 48 months of confinement). Cases involving victims who were the spouses or intimate partners of the accused had confinement sentences that were 31 months longer than cases involving all other types of relationships. Cases sentenced by a panel of military members had an average confinement sentence length of 53 months, compared with an average length of 31 months in cases sentenced by a military judge. However, the JPP notes that the military Service and rank of the accused did not influence the length of the confinement sentence.

a. Reviewing Adjudged and Approved Sentences for Sexual Assault Cases

Following a court-martial conviction, a convening authority must review the conviction and sentence adjudged at trial, and the convening authority may modify an adjudged sentence in some circumstances, within certain limits. A sentence modification approved by a convening authority in a sexual assault case most frequently reflects the sentence limitations contained in a pretrial agreement. The following bar graph depicts the combined average length of confinement of adjudged sentences and the actual length of confinement according to the approved sentence for all cases reviewed by the JPP for fiscal year 2015.

Average Length of Confinement Sentence [Approved and Adjudged]



While the average length of approved sentences was 7 months less than the average length of adjudged sentences, the JPP's review indicated that in most cases, convening authorities made no changes or made relatively minor modifications to adjudged confinement based on plea agreement terms, clemency requests, or other reasons pursuant to their Article 60 powers of review over courts-martial. The majority of the JPP's fiscal year 2015 case data involves offenses that occurred before Congress substantially restricted the discretion of convening authorities to grant clemency in sexual assault cases.⁷⁵ Therefore the convening authority could have taken action in most of the fiscal year 2015 cases, and the JPP cannot assess the affect that modifications to Article 60 will have on sentences in sexual assault cases.

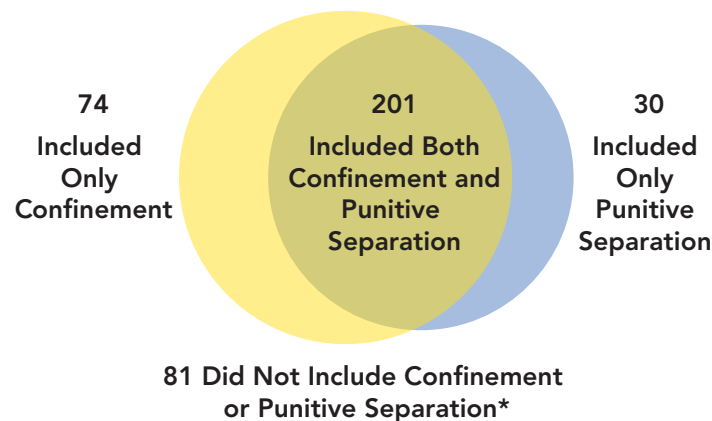
b. Approved Sentences with Confinement and/or a Punitive Discharge

Congress modified the UCMJ in the FY14 NDAA to require imposition of a dismissal or dishonorable discharge for any Service member convicted of a rape or sexual assault that occurred on or after

⁷⁵ FY14 NDAA, *supra* note 6, § 1702.

June 24, 2014. Prior to this modification, there was no mandatory minimum sentencing requirement for sexual assault cases. The majority of the case data from fiscal year 2015 reviewed by the JPP involves offenses that occurred before this change. The JPP reviewed 386 sexual assault cases with approved sentences. Of these cases, 275 defendants (71%) received confinement, and 201 defendants (52%) received both confinement and a punitive separation. In cases in which a Service member did not receive a punitive discharge as part of the court-martial sentence, the accused may have been subsequently separated from his or her Service, on the basis of the conviction at court-martial, through an administrative disciplinary process.

Types of Punishment Imposed According to the Approved Sentence (386 Total Cases)



*Includes data from summary courts-martial, which are not authorized to impose a punitive separation.

Because the sentencing scheme under the UCMJ is unitary, it is not possible to assess how a particular sentence is apportioned when an accused is convicted of more than one offense. In addition, without more knowledge about the facts of individual cases and the circumstances in aggravation, mitigation, or extenuation that may have arisen in individualized sentencing proceedings, it is not possible to assess the appropriateness or consistency of punishments rendered at courts-martial.

C. JUDICIAL PROCEEDINGS PANEL ASSESSMENT AND RECOMMENDATION

The JPP has collected procedural data for cases adjudicated in fiscal year 2015 as well as previously gathered procedural case data for fiscal years 2012 through 2014. While the JPP's task calls for an analysis of trends, the data analyzed for fiscal years 2012 through 2015 do not provide a sufficient basis to broadly assess trends or patterns in decisions and punishments in sexual assault cases. Moreover, the information from courts-martial and disciplinary actions reviewed by the JPP in this report cannot be compared directly with the case adjudication data that the JPP examined previously because the case data for fiscal years 2012 through 2014 were aggregated rather than analyzed by year.⁷⁶

⁷⁶ The JPP aggregated the data for fiscal years 2012 through 2014 for two reasons: (1) this approach maximizes the number of cases analyzed at one time, which improves both the clarity and the quality of the analysis, and (2) the JPP received cases according to the year they were reported in the SAPRO report, and a review of case documents revealed that many of the cases that DoD SAPRO reports to Congress did not actually conclude (in a trial, dismissal, etc.) in the year in which they were reported; therefore, aggregating the fiscal years 2012 through 2014 data mitigates the effect of the inaccurate labeling of cases during the time frame of our study. For its fiscal year 2015 data, the JPP did not categorize cases according to the year a case was reported by SAPRO; it instead used only the date of trial, case dismissal, or approval of an alternate disposition as recorded in case documents to determine whether a case should be included in the fiscal year 2015 data analysis.

The JPP's analysis of fiscal year 2015 adjudication data has improved on the previous case data analysis in two important respects. First, the JPP examined additional case characteristics for this report that it did not examine for its first Report on Statistical Data; second, the JPP included certain cases in its fiscal year 2015 analysis that have not been collected or analyzed by DoD. The JPP found that the additional, more detailed information on case characteristics enhanced its description of how cases are resolved in the military justice system. Specifically, the JPP's analysis describes the precise pay grade of each accused, analyzes whether the accused was tried and/or sentenced by a military judge or panel of military members, and further dissects the conviction and acquittal rates by identifying both the proportion of guilty pleas and the outcomes for contested trials in sexual assault cases. Finally, the JPP's criminologist used a complex, multivariate analysis to examine whether notable differences exist among the Services in how they dispose of sexual assault cases. The other enhancement to the JPP's case analysis is the incorporation of cases involving victims who were the spouse and intimate partner of the accused into the JPP's statistical data. Spouse and intimate partner cases tend to share a common set of characteristics that make them different from cases involving other types of relationships.⁷⁷ These cases are also distinctive because DoD does not collect or report information on them; they therefore represent a subset of information—nearly 20% of all cases—that is routinely missing from DoD's annual review of sexual assault cases in the military.

The Panel is mindful that statistics may provide valuable information about the judicial process. Statistical data obtained by the JPP effectively describe certain objective aspects of military cases in the aggregate, including the number of annual prosecutions, the procedural history of cases, and the punishments imposed. However, individual case outcomes are the result of unique combinations of facts and evidence, and the appropriateness or consistency of disposition decisions or punishments cannot be evaluated solely by considering procedural data. For these reasons, the JPP provides the information gathered without assessing the underlying causes of or influences on these outcomes.

While the JPP does not wish to speculate on their causes, certain patterns in the fiscal year 2015 data warrant discussion and further study. First, the JPP's data indicate that cases involving military victims tend to have less punitive outcomes than cases involving civilian victims. The accused in military-victim cases faced lower odds of conviction and greater likelihood of acquittal on all charges, and the sentences were less likely to include confinement or a punitive separation than in civilian victim cases. The same results were found for military-victim cases when all other variables, such as the number and type of charges, were taken into account. The data do not suggest why these patterns are present, and the criminologist who analyzed the data for the JPP recommended that additional research into this issue should involve both quantitative and qualitative data, such as surveys or interviews with practitioners, to determine what specific facts, case characteristics, or evidentiary issues might be influencing these outcomes.⁷⁸

Second, the conviction rate for sexual assault offenses varies markedly among the military Services. Conviction of a penetrative offense is much more likely in the Army than in the Air Force or the Marine Corps. However, the overall conviction rate for any offense did not vary significantly among the Services. Because the laws and procedures applicable to courts-martial are consistent across the Services, further research is needed to explain these differences. Additional quantitative data gathered

77 Most spouse and intimate partner cases analyzed by the JPP were penetrative offense cases, had higher rates of case attrition, and involved civilian victims. Dr. Spohn noted in testimony to the JPP that spouse and intimate partner cases are more likely than cases involving other types of relationships to have additional domestic abuse or child-victim offenses that are not present in a typical adult-victim sexual assault involving a single incident. *See infra* Appendix A at 16–17; *Transcript of JPP Public Meeting* 126–27 (Apr. 7, 2017) (testimony of Dr. Cassia Spohn).

78 *See infra* Appendix A at 36; *Transcript of JPP Public Meeting*, 153–57 (Apr. 7, 2017) (testimony of Dr. Cassia Spohn).

in future years would help explain whether these patterns remain consistent over time. Qualitative data, such as field interviews with practitioners and an analysis of Service-specific policies and practices, may also explain why these patterns exist.

Finally, the JPP notes that when a Service member is charged with a sexual assault offense, the probability that he or she will be convicted of a sexual assault offense is 36%, and the probability that he or she will be convicted of any offense (i.e., either a sex or a non-sex offense) is 59%. The case adjudication data for fiscal years 2012 through 2014 produced conviction rate figures similar to those in the fiscal year 2015 data, indicating that the pattern has persisted for at least a few years. Given that nearly 30% of preferred cases are dismissed before trial or resolved by alternate disposition, further research is needed to understand why, in the remaining cases, the success rate in proving that a sexual assault offense occurred is low. The JPP cannot assess this finding as conclusively positive or negative, but believes it important to understand the systemic causes of these results so that they can be appropriately considered as one indicator of the health of the military justice system as a whole.

The JPP's charter ends on September 30, 2017, and no similar project or method currently exists to continue this in-depth study of sexual assault cases in the military justice system once the JPP concludes. The JPP therefore recommends that the successor federal advisory committee to the JPP, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, should consider continuing to analyze adult-victim sexual assault court-martial data on an annual basis as the JPP has done, and should consider analyzing the foregoing patterns that the JPP discovered in its analysis of fiscal year 2015 court-martial data, using additional quantitative and qualitative data as it finds appropriate.

IV. Appellate Review of Sexual Assault Convictions

The JPP was also tasked with reviewing and evaluating court-martial convictions for adult sexual assault offenses in the year covered by the most recent report of the Judicial Proceedings Panel and with examining the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.

For this report, the JPP reviewed the opinions archived on the public websites of the Service Courts of Criminal Appeals and the United States Court of Appeals for the Armed Forces (CAAF) for fiscal year 2015. The JPP also separately obtained cases not available on the the courts' public websites that were summarily affirmed without an opinion from the military Services.

A. OVERVIEW OF THE MILITARY APPELLATE PROCESS

Under the UCMJ, an accused convicted by a court-martial is entitled to an automatic review of his or her trial. Because there is no common law right to appeal, the accused's right must derive from statutory or regulatory sources.⁸⁰ In the military, the statutory provisions are contained in UCMJ Articles 64 through 76.⁸¹

Following a court-martial conviction, the case is first reviewed by the convening authority—that is, the commander who referred the accused's case to trial.⁸² Until recently, the convening authority had broad clemency powers under Article 60 of the UCMJ to act on a case after trial, powers not always shared with military appellate courts. For example, the convening authority could, subject to some limitations, suspend all or a portion of the adjudged sentence, a power not possessed by either the Service Courts of Criminal Appeals or CAAF. However, as discussed in section III of this report, in the FY14 NDAA, Congress substantially restricted the convening authority's powers and thus limited the ability of a convicted Service member to obtain relief from the convening authority.⁸³

The military justice system features three levels of appellate review to which an accused may appeal a court-martial conviction. The first level consists of the four military Service Courts of Criminal Appeals (Army, Air Force, Navy-Marine Corps, and Coast Guard). The Courts of Criminal Appeals, which are located in the Washington, DC, area, consist of senior judge advocates, who are usually active duty officers or reserve officers on active duty.⁸⁴ Under Article 66 of the UCMJ, all cases in which

⁸⁰ SCHLUETER, *supra* note 61, at § 17–1.

⁸¹ See *generally* 10 U.S.C. §§ 864–76 (UCMJ, arts. 64–76).

⁸² See 10 U.S.C. § 860 (UCMJ, art. 60).

⁸³ The convening authority may not disapprove, commute, or suspend an adjudged sentence that is more than six months or that includes a punitive discharge, unless (1) upon recommendation from the trial counsel, in recognition of “substantial assistance” by the accused in the investigation or prosecution of another person, including for offenses with mandatory minimum sentences; or (2) in order to honor a pretrial agreement; however, the convening authority may not commute a mandatory minimum sentence except to reduce a dishonorable discharge to a bad conduct discharge. FY14 NDAA § 1702(b). Congress clarified these limitations on the convening authority's post-trial actions in the FY17 NDAA. See FY17 NDAA, *supra* note 1, at §§ 5322 and 5323.

⁸⁴ SCHLUETER, *supra* note 61, at § 17–15.

the approved sentence includes death, a punitive discharge, or confinement for one year or more are forwarded to the Service Courts of Criminal Appeals for appellate review.⁸⁵ The FY17 NDAA revised Article 66 so that automatic appellate review extends only to cases in which the approved sentence includes death, a punitive discharge, or confinement for two years or more.⁸⁶ However, the revised Article 66 also includes an affirmative right to appeal an approved sentence to confinement of more than six months.⁸⁷

The second level of appellate review is CAAF, which sits as a civilian appellate forum in Washington, DC, and is composed of five judges appointed by the President.⁸⁸ CAAF reviews all cases involving a sentence to death and cases reviewed by the Service Courts of Criminal Appeals that are forwarded to CAAF by the Judge Advocates General. In all other cases reviewed by the Service Courts, CAAF review is discretionary.⁸⁹ The third level of review is petition to the United States Supreme Court, though this review is subject to statutory limitations.⁹⁰

Not all military members who receive a court-martial conviction are entitled to appellate review at the Service Courts of Criminal Appeals. For courts-martial convictions that don't meet criteria for appellate review at the Service appellate courts under Article 66, the UCMJ provides for lesser forms of post-trial review.

Article 69(a) of the UCMJ provides for review by the Service Judge Advocate General for general courts-martial convictions that don't meet the criteria for review by the Service appellate courts under Article 66.⁹¹ For these cases, the Judge Advocate General has the power to modify or set aside the findings, sentence, or both.⁹² In addition, the UCMJ also grants to the Service Judge Advocates General the power to modify or set aside the findings or sentence for summary, special, or general courts-martial convictions not reviewed by the Service appellate courts on grounds of newly discovered evidence, fraud on the court, lack of jurisdiction over the accused or offense, error prejudicial to the substantial rights of the accused, or the appropriateness of the sentence.⁹³

Article 64 of the UCMJ provides for automatic review by a judge advocate in all summary courts-martial convictions and special courts-martial convictions in which the approved sentence includes confinement for less than one year and does not include a bad conduct discharge.⁹⁴ The judge advocate, in the written review, provides conclusions as to whether the court had jurisdiction over the accused and the offense, whether the charges and specifications stated an offense, and whether the sentence was

85 10 U.S.C. § 866 (UCMJ, art. 66).

86 FY17 NDAA, *supra* note 1, § 5330. These changes will take effect not later than January 1, 2019.

87 *Id.*

88 SCHLUETER, *supra* note 61, at § 17–16.

89 See 10 U.S.C. § 867 (UCMJ, art. 67).

90 See 10 U.S.C. § 867a (UCMJ, art. 67a).

91 See 10 U.S.C. § 869(a) (UCMJ, art. 69(a)).

92 *Id.*

93 See 10 U.S.C. § 869(b) (UCMJ, art. 69(b)). *But see* FY17 NDAA, *supra* note 1, § 5333, which revises some aspects of Article 69.

94 See 10 U.S.C. § 864(a) (UCMJ, art. 64(a)). The FY17 NDAA amends Article 64 to apply only to the initial review of summary courts-martial. FY17 NDAA, *supra* note 1, § 5328. Article 65, as amended, would provide for review of general and special courts-martial that do not qualify for direct review by the Service appellate courts. FY17 NDAA, *supra* note 1, § 5329.

within the limits prescribed by law, and responds to each allegation of error made by the accused.⁹⁵ If the judge advocate determines that corrective action should be taken, he or she then forwards the review to the general court-martial convening authority, who may disapprove the findings or sentence; remit, commute, or suspend the sentence; or order a rehearing on the findings or sentence.⁹⁶

Finally, exhaustion of review through these channels does not necessarily end the review of a court-martial. There are additional avenues of review available to the convicted Service member, including internal military administrative review of the proceedings and external collateral review by the federal courts.⁹⁷

B. APPELLATE ACTION ON COURTS-MARTIAL CONVICTIONS FOR SEXUAL ASSAULT OFFENSES

In fiscal year 2015, the Service Courts of Criminal Appeals reviewed 213 cases that included conviction on one or more charges of adult sexual assault offenses.⁹⁸ Of these cases, the Service Courts of Criminal Appeals set aside an adult sexual assault charge or specification, or granted relief on the sentence of a case involving an adult sexual assault offense, in 26 cases.⁹⁹ Table 9 shows these cases by military Service.

*Table 9. Cases Reviewed by the Service Courts of Criminal Appeals (FY 2015)*¹⁰⁰

Military Service	Relief Granted (Conviction Set Aside or Sentence Reduced)	No Relief Granted	Total Sexual Assault Convictions Reviewed	Percentage of Cases in Which Relief Was Granted
Army	14	93	107	13%
Air Force	4	39	43	9%
Navy	5	33	38	13%
Marine Corps	3	20	23	13%
Coast Guard	0	2	2	0%
TOTAL	26	187	213	

⁹⁵ See 10 U.S.C. § 864(a) (UCMJ, art. 64(a)).

⁹⁶ See 10 U.S.C. § 864 (UCMJ, art. 64).

⁹⁷ SCHLUETER, *supra* note 61, at § 17–18.

⁹⁸ This number includes the published and unpublished opinions that are publicly available on each of the military appellate court websites and the cases that are summarily affirmed without an opinion, which were requested separately by the JPP and are not available on the military appellate court websites. Service appellate court opinions can be accessed at the following websites: Army Court of Criminal Appeals, at <https://www.jagcnet.army.mil/ACCA#>; Air Force Court of Criminal Appeals, at <http://afcca.law.af.mil/content/opinions.html>; Navy-Marine Corps Court of Criminal Appeals, at http://www.jag.navy.mil/courts/opinion_archive.htm; and Coast Guard Court of Criminal Appeals, at http://www.uscg.mil/legal/cca/Court_of_Criminal_Appeals_Opinions/Court_of_Criminal_Appeals_Opinions.asp.

⁹⁹ This number includes cases in which the appellate court overturned a conviction for a sexual assault charge or reduced the sentence imposed for all offenses, including a sexual assault offense; however, where the appellate courts reduced a sentence or authorized a rehearing on sentence solely based on its decision to set aside a conviction for a non-sexual assault offense, then the case was not counted as granting relief on a sexual assault offense.

¹⁰⁰ The numbers in the “No Relief Granted” column include the following number of summary affirmances in each Service: Army – 69; Air Force – 4; Navy – 13; Marine Corps – 7; Coast Guard – 0.

Of the cases in which relief was granted, most involved the courts setting aside a charge or specification of a sexual assault offense. The appellate courts' reasons for granting relief in these cases varied. The most common justifications were unreasonable multiplication of charges (e.g., the court determined on appeal that an accused had unreasonably been charged in multiple ways for the same offense), factual insufficiency, a remedy available in military courts of criminal appeal, significant post-trial case processing delays, apparent unlawful command influence in trial counsel's closing argument, and the improper admission of evidence under Military Rule of Evidence 413. There were only two cases—both from the Army—in which the appellate courts granted relief following a guilty plea at trial, and in both cases relief was granted owing to post-trial processing delays.

Table 10 shows the number of cases in which the Service appellate courts set aside an adult sexual assault charge or specification, or granted relief on the sentence of a case involving an adult sexual assault offense in fiscal years 2012 through 2015.¹⁰¹

Table 10. Cases on Appeal: Conviction Set Aside or Sentence Reduced at Service Courts of Criminal Appeals (FY 2012–2015)

Military Service	FY12	FY13	FY14	FY15	Total
Army	3	3	14	14	34
Air Force	0	2	3	4	9
Navy	1	1	0	5	7
Marine Corps	1	2	2	3	8
Coast Guard	0	2	0	0	2
TOTAL	5	10	19	26	60

The Service Courts of Criminal Appeals set aside convictions for adult sexual assault offenses, or reduced sentences in cases involving an adult sexual assault offense, in 26 cases in fiscal year 2015. Only 2 of these 26 cases in which relief was granted involved a guilty plea at trial. While the JPP was tasked with determining the number of times a defendant appealed following a plea agreement, it is important to note that under Article 66 of the UCMJ, appeal is automatic in cases in which the approved sentence includes a punitive discharge or one year or more of confinement: no action on the part of the Service member is required.

¹⁰¹ The total number of sexual assault convictions reviewed by the Service appellate courts for fiscal years 2012 through 2014 does not include summary affirmances.

Finally, Table 11 shows the number of cases from fiscal years 2012 through 2015 involving adult sexual assault offenses in which CAAF granted relief to the appellant. The relief granted by CAAF in the fiscal year 2015 case was based on the implied bias of a court-martial panel member. CAAF's reasons for granting relief in the fiscal year 2012 through 2014 cases varied: two cases involved errors by the military judge in admitting witness testimony, one case involved multiplicity of charges, one case involved improper admission of prior misconduct by the defendant, and one case involved improper jury instructions. In each of these published opinions, relief consisted of setting aside a charge or specification.

*Table 11. Relief Granted by United States Court of Appeals for the Armed Forces (CAAF)
(FY 2012–2015)*

Military Service	FY12	FY13	FY14	FY15	Total
Army	0	0	1	0	1
Air Force	0	0	2	0	2
Navy	0	0	0	1	1
Marine Corps	1	1	0	0	2
Coast Guard	0	0	0	0	0
TOTAL	1	1	3	1	6

APPENDIX A: Adjudication of Sexual Offenses Reported to the Military Services in 2015

Judicial Proceedings Panel

Federal Advisory Committee



Adjudication of Sexual Offenses Reported to the Military Services in 2015

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The Judicial Proceedings Panel (JPP) is tasked with reviewing and evaluating the response to sexual assault cases in the military. In 2016, JPP staff requested that the military services provide documents for cases involving a preferred charge of sexual assault that were completed in fiscal year 2015. The database includes 738 cases, all of which involve at least one charge of a penetrative (i.e., rape, aggravated sexual assault, sexual assault, forcible sodomy and attempts to commit these offenses) or contact (i.e., aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit these offenses) sexual offense. There were 530 cases in which at least one charge for a penetrative offense was preferred; there were 208 cases in which the most serious charge was a contact offense.

Case Characteristics, Case Dispositions, and Case Outcomes

Case Characteristics

The characteristics of the sexual assault cases, their dispositions, and outcomes are presented in Tables 1 and 2. As shown in Table 1, almost half (43.6%) of the cases were from the Army, 23% were from the Air Force, 16.4% were from the Navy, 12.7% were from the Marine Corps, and 4.2% were from the Coast Guard. Most of the accused were enlisted service members (92.7%) rather than officers (7.3%) and all but 5 (735 or 99.3%) were male. In terms of pay grade, more than two thirds of the accuseds who were enlisted service members were E-3, E-4 or E-5; 40 of the 54 (74.9%) of the accuseds who were officers were O-2, O-3, or O-4. Most of the accused were assigned to units in the United States or its territories (81.3%) rather than units outside the United States (18.7%) when charges were preferred.

The number of victims in the case ranged from 1 to 15; most cases involved either one (614 or 83.2%) or two (88 or 11.9%) victims, and, reflecting this, the mean number of victims was 1.28. Although most victims (90.9%) were female, there were 64 cases (8.7%) in which the victim(s) were male and 3 cases (0.4%) in which there were both female and male victims. About two-thirds (67.6%) of the cases involved victims who were members of military services; there were 211 cases in which the victim(s) were civilians (28.6%) and 28 cases involving both members of the military services and civilians (3.8%). Most cases (82.4%) did not involve victims who were the spouse or intimate partner of the accused. In a majority of the cases that did involve spouses or intimate partners the victim was a civilian (63.1%) rather than a member of the military services (32.3%).

The number of charges and specifications per case ranged from 1 to 43; very few cases (69 or 9.3%) involved only a single charge but more than half of the cases (55.6%) involved four or fewer charges. The mean number of charges and specifications was 5.7. In 71.8% (N = 530) of the cases the most serious charge was a penetrative offense and in 28.2% (N = 208) of the cases the most serious charge was a contact offense. Of the 530 individuals charged with a penetrative offense, 137 (25.8%) were convicted of a penetrative offense. Of the 208 individuals charged with a contact offense, 37 (17.8%) were convicted of a contact offense.

TABLE 1
CASE CHARACTERISTICS: 2015 DATA

	N	%
Military Service of the Accused		
Air Force	170	23.0
Army	322	43.6
Coast Guard	31	4.2
Marine Corps	94	12.7
Navy	121	16.4
Rank of Accused		
Enlisted	684	92.7
Officer	54	7.3
Pay Grade of Accused		
Enlisted		
E-1	30	4.4
E-2	39	5.7
E-3	149	21.8
E-4	179	26.2
E-5	151	22.1
E-6	80	11.7
E-7	43	6.3
E-8	8	1.2
E-9	5	0.7
Officer		
Cadet/Midshipman	3	5.6
O-1	3	5.6
O-2	11	20.4
O-3	17	31.5
O-4	12	22.2
O-5	2	3.7
O-6	1	1.9
W-1	2	3.7
W-2	1	1.9
W-3	1	1.9
W-5	1	1.9
Sex of Accused		
Male	733	99.3
Female	5	0.7
Location of Unit to which Accused Assigned when Charges Preferred		
United States or Its Territories	600	81.3
Outside of the United States	138	18.7
Number of Victims (mean) [range: 1 – 15]	1.28	
Sex of Victim(s)		
All Female	671	90.9
All Male	64	8.7
Female and Male	3	0.4
Status of Victim(s)		
All Military	499	67.6
All Civilian	211	28.6
Military and Civilian	28	3.8

Table 1, continued		
Victim Spouse or Intimate Partner		
Yes	130	17.6
No	608	82.4
<i>Victim Was Spouse or Intimate Partner</i>		
<i>Military Victim</i>	42	32.3
<i>Civilian Victim</i>	82	63.1
<i>Both Military and Civilian Victims</i>	6	4.6
Number of Charges and Specifications (mean) [range: 1 – 43]	5.70	
Accused Charged with Penetrative Offense ^a		
Yes	530	71.8
No	208	28.2
Accused Convicted of Penetrative Offense		
Yes	137	25.8
No	393	74.2
[Not Charged with Penetrative Offense]	[208]	
Accused Charged with Contact Offense ^b		
Yes	208	28.2
No	530	71.8
Accused Convicted of Contact Offense		
Yes	37	17.8
No	171	82.2
[Not Charged with Contact Offense]	[530]	

^aAccused was charged with at least one count of rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit these offenses.

^bThe most serious offense with which the accused was charged was aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit these offenses.

Case Dispositions and Outcomes

Descriptive data on the dispositions and outcomes of the sexual offense cases are presented in Table 2. Most (79.1%) of the cases that went to a court martial proceeding were disposed as a result of a general court martial; 13.5% were disposed as a result of a special court martial and 7.4% were disposed as a result of a summary court martial. In terms of the type of trial forum, 52.5% of the cases were adjudicated by a military judge, 40.1% were handled by a panel of military members, and 7.4 percent were adjudicated by a summary court martial officer. Article 32 hearings were held in most (69.7%) of the cases; the accused waived the hearing in 7.2% of the cases and an Article 32 hearing was not required in 23.1% of the cases.

For each type of case (i.e., penetrative and contact offenses) we determined whether the accused was convicted of at least one charge of that type, was convicted of another charge, received an alternative disposition of some type, was acquitted of all charges, or whether all charges were dismissed without further action.

TABLE 2
CASE DISPOSITIONS AND CASE OUTCOMES: 2015 DATA

	N	%
Type of Court Martial		
General Court Martial	416	79.1
Special Court Martial	71	13.5
Summary Court Martial	39	7.4
Not Applicable	[212]	
Type of Trial Forum		
Military Judge	276	52.5
Panel of Military Members	211	40.1
Summary Court Martial Officer	39	7.4
Not Applicable	[212]	
Article 32 Hearing Held		
Yes	513	69.7
Waived	53	7.2
No/Not Applicable	170	23.1
[Unknown]	[2]	
Accused Charged with Penetrative Offense (N = 530)		
Convicted of Penetrative Offense	137	25.8
Convicted of Sexual Contact Offense	13	2.5
Convicted of Non-Sex Offense	114	21.5
Alternative Disposition	75	14.2
Acquitted of All Charges	113	21.3
All Charges Dismissed Without Further Action	78	14.7
<i>(After Article 32 Hearing)</i>	63	
Accused Charged with Sexual Contact Offense (N = 208)		
Convicted of Sexual Contact Offense	37	17.8
Convicted of Non-Sex Offense	85	40.9
Alternative Disposition	46	22.1
Acquitted of All Charges	27	13.0
All Charges Dismissed Without Further Action	13	6.3
<i>(After Article 32 Hearing)</i>	8	
Outcomes for Cases Referred to Trial		
Accused Charged with Penetrative Offense (N = 377)		
Convicted of Penetrative Offense	137	36.3
Convicted of Sexual Contact Offense	13	3.4
Convicted of Non-Sex Offense	114	31.2
Acquitted of All Charges	113	30.0
Accused Charged with Sexual Contact Offense (N = 149)		
Convicted of Sexual Contact Offense	37	24.8
Convicted of Non-Sex Offense	85	57.0
Acquitted of All Charges	27	18.1
Outcomes for Contested Trials		
Accused Charged with Penetrative Offense (N = 262)		
Convicted of Penetrative Offense	94	35.9
Convicted of Sexual Contact Offense	5	1.9
Convicted of Non-Sex Offense	50	19.1
Acquitted of All Charges	113	43.1
Accused Charged with Sexual Contact Offense (N = 78)		
Convicted of Sexual Contact Offense	24	30.8
Convicted of Non-Sex Offense	27	34.6
Acquitted of All Charges	27	34.6

Table 2, continued		
Adjudicated Sentence Included Confinement		
Yes	293	75.9
No	93	24.1
[Not convicted, dismissed, alternative disposition]	[352]	
Approved Sentence Included Confinement		
Yes	275	71.2
No	111	28.8
[Not convicted, dismissed, alternative disposition]	[352]	
Approved Sentence Included Punitive Separation		
Yes	231	59.8
No	155	40.2
[Not convicted, dismissed, alternative disposition]	[352]	
Approved Sentence Included Confinement + Punitive Separation		
Yes	201	52.1
No	185	47.9
[Not convicted, dismissed, alternative disposition]	[352]	
Length of Adjudged Confinement Sentence, in Months (mean) [range = .057 to 1000.00 (i.e., life in prison, with parole)]	43.04	
Length of Approved Confinement Sentence, in Months (mean) [range = 0.57 to 1000.00 (i.e., life in prison with parole)]	36.08	

Among individuals charged with **penetrative offenses**, 25.8% were convicted of at least one penetrative offense, 2.5% were convicted of at least one count of a sexual contact offense, and 21.5% were convicted of a non-sex offense only. The overall conviction rate for those charged with at least one penetrative offense was therefore 49.8% (25.8% + 2.5% + 21.5%). Among those charged with a penetrative offense who were not convicted, 14.2% received an alternative disposition, 21.3% were acquitted of all charges, and 14.7% had all charges dismissed without further action. The case outcomes for those charged with **contact offenses** were somewhat different. For example, 58.6% of these individuals were convicted of a sexual contact offense (17.8%) or a non-sex offense (40.9%). Of those who were not convicted, 22.1% received an alternative disposition, 13.0% were acquitted of all charges, and 6.3% had all charges dismissed without further action. For both penetrative and contact offenses, the most common types of alternative dispositions were nonjudicial punishment and either a resignation or discharge in lieu of a trial.

Comparing the two types of cases, the conviction and alternative disposition rates were higher for cases involving contact offenses, but the likelihoods of acquittal and case dismissal were higher for cases involving penetrative offenses.

We also calculated conviction and acquittal rates for cases that were **referred to trial** (these calculations did not include cases that resulted in alternative dispositions or dismissal of all charges). Among individuals referred to trial for penetrative offenses (N = 377), 36.3% were convicted of penetrative offenses, 3.4% were convicted of sexual contact offenses, 30.2% were convicted of non-sex offenses, and 30% were acquitted of all charges. Among those referred to trial for sexual contact offenses

(N = 149), 24.8% were convicted of sexual contact offenses, 57% were convicted of non-sex offenses, and 18.1% were acquitted of all charges. The overall conviction rates for cases referred to trial were therefore 70% for penetrative offenses and 81.9% for contact offenses. These rates include both individuals who were found guilty at contested trials and those who pled guilty to all charges. Finally, we calculated conviction and acquittal rates for **cases that involved contested trials** (these calculations did not include cases that resulted in alternative dispositions or dismissal of all charges or cases that involved guilty pleas). There were 262 contested trials in which the most serious charge was a penetrative offense; 35.9% of these cases resulted in a conviction for a penetrative offense, 1.9% resulted in a conviction for a contact offense, 19.1% resulted in a conviction for a non-sex offense, and 43.1% resulted in an acquittal on all contested charges. Thus, the overall conviction rate for contested trials involving penetrative offenses was 56.9%. There were 78 contested trials in which the most serious charge was a contact offense; 30.8% of these cases resulted in conviction for a contact offense, 34.6% resulted in conviction for a non-sex offense, and 34.6% resulted in an acquittal on all contested charges. For contact offenses, the overall conviction rate for contested trials was therefore 65.4%.

Table 2 also presents data on the type and length of the sentence imposed on those who were convicted. Focusing on the approved sentence, 71.2% were sentenced to confinement, 59.8% received a punitive separation, and 52.1% received both confinement and a punitive separation. The mean sentence (approved sentence) of confinement was 30.56 months; the range was from less than one month to 1000 months (i.e., life in prison).

Case Disposition Type and Type of Conviction Charge

To further assess the outcomes of sexual assault cases, we focus on the type of disposition and the conviction charge **for individuals in cases that were referred to trial and that resulted in a conviction**. Table 3 presents, for these cases only, data on whether the accused pled guilty or pled not guilty but was found guilty at a contested trial. There also were some cases where the accused pled guilty to some counts and pled not guilty to other counts but was found guilty of these counts at trial. Among those for whom the most serious conviction charge was a penetrative offense and who were convicted of at least one count (N = 264), 42.4% pled guilty, 51.9% pled not guilty but were found guilty at trial, and 5.6% pled guilty to some counts and were found guilty of other counts at trial. Among those for whom the most serious conviction charge was a sexual contact offense and who were convicted of at least one count (N = 122), 58.2% pled guilty, 36.1% pled not guilty but were found guilty at trial, and 5.7% pled guilty to some counts and were convicted of other counts at trial.

Guilty pleas, then, were somewhat more common in cases involving individuals charged with contact offenses than in cases involving individuals charged with penetrative offenses; by contrast, the case was more likely to be resolved via a

contested trial if the accused was charged with a penetrative rather than a contact offense.

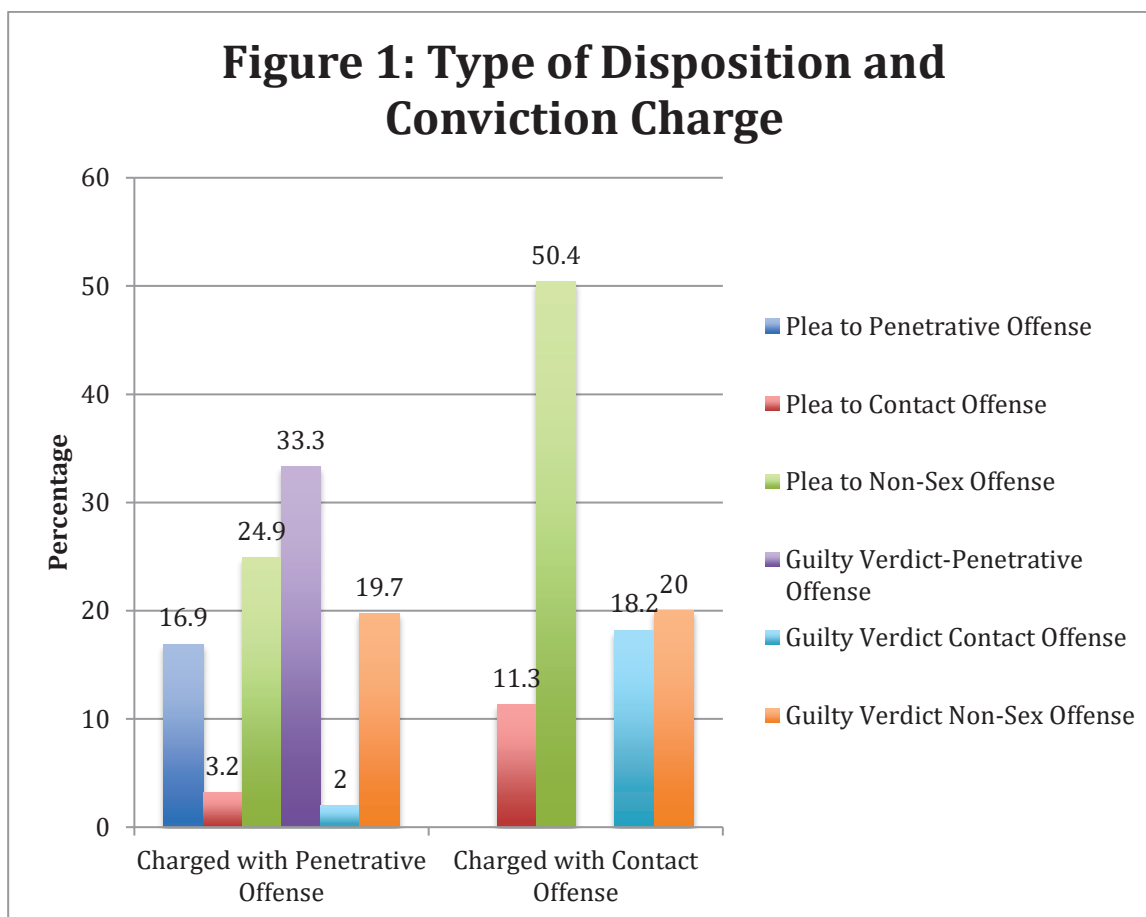
TABLE 3
Case Dispositions: Individuals Referred to Trial and Convicted

	N	%
Charged with Penetrative Offense and Convicted of At Least One Count (N = 264)		
Guilty Plea	112	42.4
Not Guilty Plea but Found Guilty at Trial	137	51.9
Pled to some counts, found guilty at trial on others	15	5.7
Charged with Contact Offense and Convicted of At Least One Count (N = 122)		
Guilty Plea	71	58.2
Not Guilty Plea but Found Guilty at Trial	44	36.1
Pled to some counts, found guilty at trial on others	7	5.7

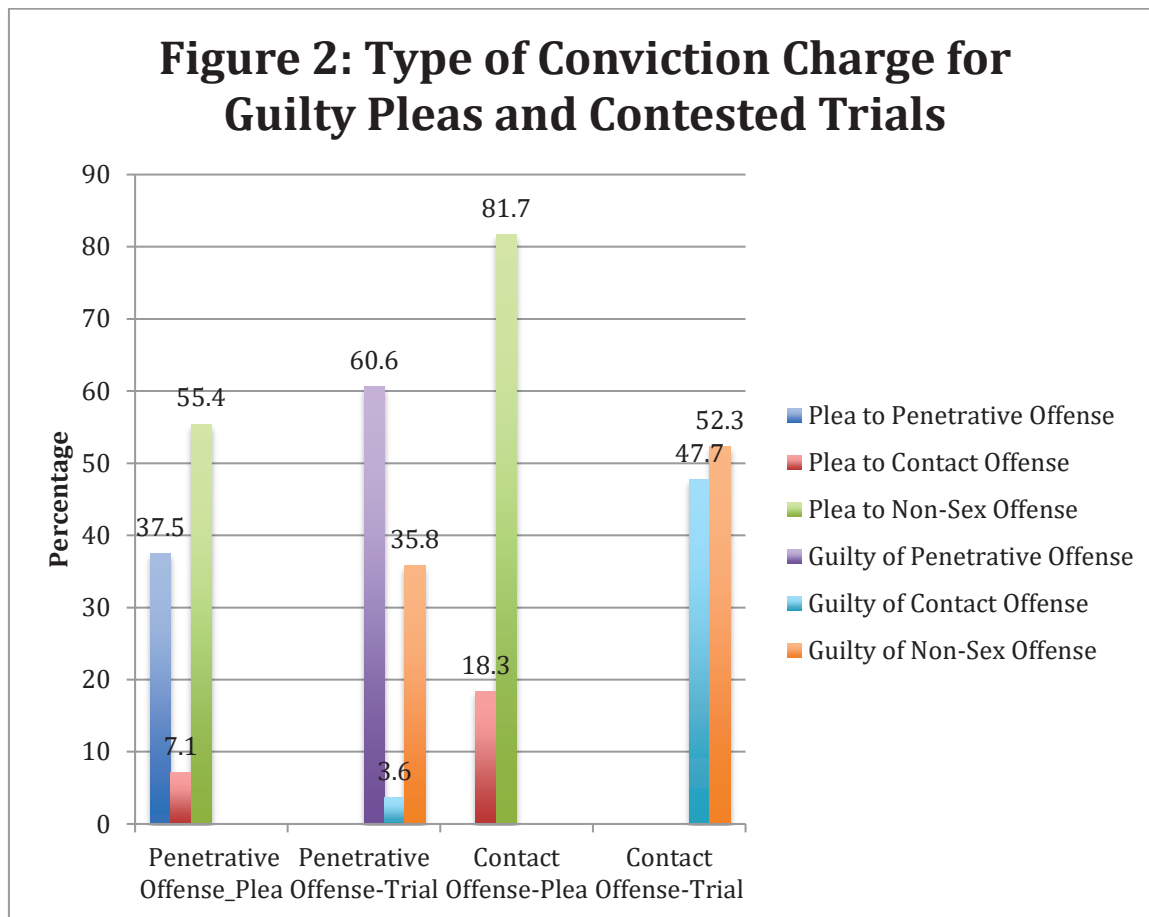
A more detailed breakdown of the type of disposition and the type of conviction charge for those who either entered a guilty plea or a not guilty plea to all charges is presented in Figure 1 (this excludes the 15 individuals who pled guilty to some counts and were found guilty at trial of other counts). Of the 249 individuals who were initially charged with a penetrative offense and who were convicted of at least one count, 42 (16.9%) pled guilty to a penetrative offense, 8 (3.2%) pled guilty to a contact offense, 62 (24.9%) pled guilty to a non-sex offense, 83 (33.3%) were found guilty at a contested trial of a penetrative offense, 5 (2.0%) were found guilty at a contested trial of a contact offense, and 49 (19.7%) were found guilty at a contested trial of a non-sex offense.

Of the 115 individuals for whom the most serious initial charge was a contact offense, 13 (11.3%) pled guilty to a contact offense, 58 (50.4%) pled guilty to a non-sex offense, 21 (18.2%) were found guilty at contested trials of a contact offense, and 23 (20.0%) were found guilty at contested trials of a non-sex offense.

As these data illustrate, over half of the referred cases involving individuals charged with penetrative offenses resulted in either a guilty verdict for a penetrative offense following a contested trial (33.3%) or a guilty plea to a non-sex offense (24.9%). By contrast, half (50.4%) of the referred cases involving individuals charged with contact offenses resulted in a guilty plea to a non-sex offense.



Another way to conceptualize these data is to calculate the percentage of guilty pleas and the percentage of contested trials that resulted in convictions for penetrative offenses, contact offenses, and non-sex offenses (these data are shown in Figure 2). There were 112 individuals who were initially charged with penetrative offenses who pled guilty; of these 112 individuals, 42 (37.5%) pled guilty to a penetrative offense, 8 (7.1%) pled guilty to a contact offense, and 62 (55.4%) pled guilty to a non-sex offense. There were 137 individuals who were initially charged with penetrative offenses who were found guilty at contested trials; of these 137 individuals, 83 (60.6%) were found guilty of a penetrative offense, 5 (3.6%) were found guilty of a contact offense, and 49 (35.8%) were found guilty of a non-sex offense. Individuals charged with penetrative offenses, in other words, were substantially more likely to be convicted of a penetrative offense following a contested trial than as a result of a guilty plea (60.6% versus 37.5%).



The pattern is very similar for individuals for whom the most serious initial charge was a contact offense. There were 71 individuals charged with contact offenses who pled guilty; of these 71 individuals, 13 (18.3%) pled guilty to a contact offense and 58 (81.7%) pled guilty to a non-sex offense. There were 44 individuals charged with contact offenses who were found guilty at contested trials; of these 44, 21 (47.7%) were found guilty of a contact offense and 23 (52.3%) were found guilty of a non-sex offense.

Combining cases involving individuals charged with penetrative and contact offenses, there were 183 cases in which the accused pled guilty; of these, 63 (34.4%) pled guilty to a sex offense and 120 (65.6%) pled guilty to a non-sex offense. There were 181 cases in which the accused pled not guilty but was found guilty after a contested trial; of these, 109 (60.2%) were found guilty of a sex offense and 72 (39.8%) were found guilty of a non-sex offense. Thus, individuals whose cases were resolved via a contested trial were substantially more likely than those whose cases were resolved via a guilty plea to be convicted of a sex offense.

Analyzing Dispositions, Outcomes, and Sentences

Descriptive data on case dispositions and case outcomes provide information regarding what happened in these sexual assault cases. In order to understand why cases were disposed as they were, it is necessary to conduct bivariate and multivariate analyses of the factors associated with case dispositions and case outcomes. Bivariate analysis is designed to determine if two variables are related (or correlated); it attempts to determine if one variable (the independent variable—for example, the accused's military service) is a statistically significant predictor of another variable (the dependent variable—for example, whether the accused was convicted). If there is a statistically significant relationship between the variables, we can conclude that the independent variable is related to, associated with, or predictive of the dependent variable. In multivariate analysis, one controls for several independent variables simultaneously. With this type of analysis, one can isolate the effect of one variable (e.g., the military service of the accused) while controlling for or holding constant other theoretically relevant variables (e.g., the, the seriousness of the offense, and the characteristics of the case, the accused, and the victim).

In that sections that follow, we examine bivariate relationships between relevant independent variables and the type of case disposition and several indicators of case outcomes.

Factors Associated with Case Dispositions and Case Outcomes: Results of the Bivariate Analyses

Type of Disposition

We begin by focusing on the disposition of Art. 120 sexual offenses, asking whether the type of disposition (i.e., the type of court martial) varied by the type of offense charged, the accused's military service, or the rank of the accused. As shown in Table 4, there are statistically significant differences in dispositions based on all three of these factors. Cases in which the accused was charged with a penetrative offense were more than twice as likely as those in which the accused was charged with a contact offense to be disposed at a general court martial; by contrast, cases involving contact offenses were substantially more likely than those involving penetrative offenses to be disposed at a special or summary court martial. Cases from the Army and Air Force were more likely than cases from the Coast Guard, Marine Corps or Navy to be disposed at a general court martial. There also were differences across the military services in the use of special and summary courts-martial. All 43 cases involving officers were disposed via a general court martial; by contrast, the type of disposition was more varied for cases involving enlisted members of the services, with 77.2% of the cases disposed at a general court martial, 14.7% at a special court martial, and 8.1% at a summary court martial.

TABLE 4
TYPE OF TRIAL BY OFFENSE TYPE, SERVICE AND RANK OF ACCUSED: 2015 DATA

	General Court Martial		Special Court Martial		Summary Court Martial	
Most Serious Type of Offense Charged	N	%	N	%	N	%
Accused charged with penetrative offense	354	94	14	4	9	2
Accused charged with contact offense only	62	42	57	38	30	20

Differences in trial type by type of offense statistically significant; $P \leq .05$

	General Court Martial		Special Court Martial		Summary Court Martial	
Military Service	N	%	N	%	N	%
Air Force	102	88.7	11	9.6	2	1.7
Army	199	88.1	16	7.1	11	4.9
Coast Guard	10	40.0	7	28.0	8	32.0
Marine Corps	46	68.7	10	14.9	11	16.4
Navy	59	63.4	27	29.0	7	7.5

Differences in trial type by military service statistically significant; $P \leq .05$.

	General Court Martial		Special Court Martial		Summary Court Martial	
Rank of Accused	N	%	N	%	N	%
Officer	43	100.0	0	0.0	0	0.0
Enlisted	373	77.2	71	14.7	39	8.1

Differences in trial type by rank of accused statistically significant; $P \leq .05$.

The next issue addressed is whether there were differences in the outcomes of sexual offenses based on the military service of the accused, whether the accused was an enlisted member or an officer, the gender and status of the victim, the relationship between the accused and the victim, and the accused's location. Because preliminary analyses revealed that outcomes varied depending on whether the accused was charged with a penetrative or contact offense, we conducted separate bivariate analyses for each type of offense.

Military Service of the Accused

The results of the analysis of the relationship between case outcomes and the military service of the accused are presented in Table 5. As these results show, there were significant differences in outcomes by military service for penetrative offenses (because of small cell sizes, we could not calculate statistical significance for cases involving contact offenses). For cases in which the most serious charge was a penetrative offense, the overall conviction rate (i.e., convicted of a penetrative offense + convicted of a contact offense + convicted of a non-sex offense) was 73.7% for the Coast Guard, 56.5% for the Army, 51.5% for the Marine Corps, 47.1% for the Navy and 35% for the Air Force. The odds of being convicted of a *penetrative offense* were

highest for the Army (32.8%) and lowest for the Marine Corps (13.6%). The likelihood that the accused would be acquitted of all charges was lowest for the Coast Guard (5.3%) and highest for the Air Force (29.9%) and Navy (27.1%); by contrast, the likelihood that the case would be dismissed without further action was lowest for the Army (8.3%) and highest for the Marine Corps (22.7%) and Navy (21.4%). The services also differed in their use of alternative dispositions; these dispositions were more common in the Army and Air Force than in the Coast Guard, Marine Corps, or Navy.

TABLE 5
OUTCOMES OF SEXUAL OFFENSES BY MILITARY SERVICE OF ACCUSED: 2015
DATA

Accused Charged with Penetrative Offense(s) (N = 530)

	Convicted of Penetrative Offense	Convicted of Sexual Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
Army (N = 241)	32.8% (79)	1.7% (4)	22.0% (53)	16.2% (39)	19.1% (46)	8.3% (20)
Air Force (N = 134)	20.1% (27)	2.2% (3)	12.7% (17)	29.9% (40)	15.7% (21)	19.4% (26)
Coast Guard (N = 19)	21.1% (4)	0.0% (0)	52.6% (10)	5.3% (1)	10.5% (2)	10.5% (2)
Marine Corps (N = 66)	13.6% (9)	7.6% (5)	30.3% (20)	21.2% (14)	4.5% (3)	22.7% (15)
Navy (N = 70)	25.7% (18)	1.4% (1)	20.0% (14)	27.1% (19)	4.3% (3)	21.4% (15)

Differences in outcomes by military service statistically significant; $P \leq .05$

Accused Charged with Contact Offense(s) Only (N = 208)

	Convicted of Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
Army (N = 81)	24.7% (20)	28.4% (23)	9.9% (8)	33.3% (27)	3.7% (3)
Air Force (N = 36)	19.4% (7)	36.1% (13)	22.2% (8)	19.4% (7)	2.8% (1)
Coast Guard (N = 12)	0.0% (0)	83.3% (10)	0.0% (0)	8.3% (1)	8.3% (1)
Marine Corps (N = 28)	3.6% (1)	60.7% (17)	3.6% (1)	17.9% (5)	14.3% (4)
Navy (N = 51)	17.6% (9)	43.1% (22)	19.6% (10)	11.8% (6)	7.8% (4)

Cannot calculate statistical significance due to cells with counts less than 5. The outcomes for cases in which the most serious charge was a contact offense were somewhat different. The overall conviction rates for these cases ranged from 53.1% (Army) to 55.5% (Air Force) to 60.7% (Navy) to 64.3% (Marine Corps) to 83.3% (Coast Guard, but note that there were only 12 contact cases from the Coast Guard). The use of alternative dispositions was more common and acquittals and dismissals were less common in cases involving contact offenses, regardless of the service of the accused.

Rank of the Accused

The results of the analysis of case outcomes by the rank of the accused are presented in Table 6. Although the results are not identical for either type of offense, the differences by the rank of the accused are not statistically significant. (This may reflect the relatively small number of cases involving accused individuals who were officers, especially for contact offenses.) For offenders charged with penetrative offenses, the overall conviction rates were 69.2% for officers and 48.3% for enlisted members; acquittals and alternative dispositions were more common in cases involving enlisted members than in cases involving officers, but the dismissal rates were similar.

TABLE 6
OUTCOMES OF SEXUAL OFFENSES BY RANK OF ACCUSED: 2015 DATA

Accused Charged with Penetrative Offense(s) (N = 530)

	Convicted of Penetrative Offense	Convicted of Sexual Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
Officer (N = 39)	33.3 % (13)	5.1% (2)	30.8% (12)	12.8% (5)	0.0% (0)	17.9% (7)
Enlisted (N = 491)	25.3% (124)	2.2% (11)	20.8% (102)	22.0% (108)	15.3% (75)	14.5% (71)

Differences in outcomes by status of accused not statistically significant

Accused Charged with Contact Offense(s) only (N = 208)

	Convicted of Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
Officer (N = 15)	33.3% (5)	13.3% (2)	6.7% (1)	20.0% (3)	6.7% (1)
Enlisted (N = 193)	16.6% (32)	27.5% (53)	13.5% (26)	22.3% (43)	6.2% (12)

Differences in outcomes by status of accused not statistically significant

Gender and Status of the Victim

Table 6 reports the results of the analysis of the relationship between outcomes of sexual offenses and the gender and status of the victim. Because many cases involved more than one victim, there were some cases in which the victims were both females and males and both members of the military services and civilian. However, there were too few cases involving both female and male victims to analyze.

As shown in Table 7, there were no significant differences based on the gender or status of the victim for either penetrative or contact offenses. For cases in which the accused was charged with a penetrative offense, the overall conviction rate was somewhat higher for cases involving male victims (57.1%) than for cases involving female victims (49.1%). For these more serious cases, the overall conviction rate was substantially higher for cases involving both military and civilian victims (80%) than for cases involving only civilian victims (55.2%) or only military victims (45.2%); this may be a reflection of the fact that cases with military and civilian victims by definition involved more than one victim.

TABLE 7
OUTCOMES OF SEXUAL OFFENSES BY GENDER AND STATUS OF VICTIM: 2015
DATA

Accused Charged with Penetrative Offense(s) (N = 530)

	Convicted of Penetrative Offense	Convicted of Sexual Contact Offense	Convicted of Non- Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
Victim Gender						
All Females (N = 493)	25.2 (124)	2.2 (11)	21.7 (107)	21.3 (105)	14.2 (70)	15.4 (76)
All Males (N = 35)	37.1 (13)	5.7 (2)	14.3 (5)	22.9 (8)	14.3 (5)	5.7 (2)
Victim Status						
All Military (N = 336)	23.5 (79)	1.5 (5)	20.2 (68)	22.6 (76)	15.8 (53)	16.4 (55)
All Civilian (N = 174)	28.2 (49)	4.0 (7)	23.0 (40)	20.1 (35)	12.1 (21)	12.6 (22)
Military and Civilian (N = 20)	45.0 (9)	5.0 (1)	30.0 (6)	10.0 (2)	5.0 (1)	5.0 (1)

Differences in outcomes by gender and status of victim not statistically significant

Table 7, continued

Accused Charged with Contact Offense(s) only (N = 208)

	Convicted of Contact Offense	Convicted of Non- Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
Victim Gender					
All Females (N = 178)	16.9 (30)	41.0 (73)	12.9 (23)	22.5 (40)	6.7 (12)
All Males (N = 29)	24.1 (7)	41.4 (12)	10.3 (3)	20.7 (6)	3.4 (1)
Victim Status					
All Military (N = 163)	16.6 (27)	40.5 (66)	14.7 (24)	23.9 (39)	4.3 (7)
All Civilian (N = 37)	18.9 (7)	37.8 (14)	8.1 (3)	18.9 (7)	16.2 (6)
Military and Civilian (N = 8)	37.5 (3)	62.5 (5)	0.0 (0)	0.0 (0)	0.0 (0)

Differences in outcomes by gender and status of victim not statistically significant

Relationship between Accused and Victim

The results of the bivariate analysis of case outcomes and the relationship between the accused and the victim are shown in Table 8. There were no statistically significant differences in case outcomes based on this factor for either penetrative or contact offenses (however, there were only 18 contact offense cases in which the victim was the spouse or intimate partner of the accused). Among cases in which the accused was charged with a penetrative offense, the overall conviction rate was 48.2% for cases in which the accused and victim were spouses or intimate partners and 50.3% for cases involving other types of relationships (or no prior relationship).

TABLE 8
OUTCOMES OF SEXUAL OFFENSES BY RELATIONSHIP BETWEEN ACCUSED AND VICTIM:
2015 DATA

Accused Charged with Penetrative Offense(s) (N = 530)

	Convicted of Penetrative Offense	Convicted of Sexual Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
Spouse or Intimate Partner (N = 112)	25.0% (28)	2.7% (3)	20.5% (23)	23.2% (26)	8.0% (9)	20.5% (23)
Other Relationship (N = 418)	26.1% (109)	2.4% (10)	21.8% (91)	20.8% (87)	15.8% (66)	13.2% (55)

Differences in outcomes by accused/victim relationship not statistically significant

Accused Charged with Contact Offense(s) only (N = 208)

	Convicted of Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
Spouse or Intimate Partner (N = 18)	0.0% (0)	61.1% (11)	11.1% (2)	16.7% (3)	11.1% (2)
Other Relationship (N = 190)	19.5% (37)	38.9% (74)	13.2% (25)	22.6% (43)	5.8% (11)

Differences in outcomes by accused/victim relationship not statistically significant

Accused's Location

The next factor examined with respect to its relationship to case outcomes is the accused's location at the time that charges were preferred. We differentiated between cases in which the accused was in the United States or its territories and cases in which the accused was on a base outside of the United States. As shown in Table 9, the accused's location did not affect case outcomes for either penetrative or contact offenses.

TABLE 9
OUTCOMES OF SEXUAL OFFENSES BY ACCUSED'S LOCATION: 2015 DATA

Accused Charged with Penetrative Offense(s) (N = 530)

	Convicted of Penetrative Offense	Convicted of Sexual Contact Offense	Convicted of Non- Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
United States or Territories (N = 432)	27.3% (118)	1.9% (8)	20.8% (90)	21.8% (94)	13.2% (57)	15.0% (65)
Outside of United States (N = 98)	19.4% (19)	5.1% (5)	24.5% (24)	19.4% (19)	18.4% (18)	13.3% (13)

Differences in outcomes by accused's location not statistically significant

Accused Charged with Contact Offense(s) only (N = 208)

	Convicted of Contact Offense	Convicted of Non- Sex Offense	Acquitted of all Charges	Alternative Disposition	Case Dismissed without Further Action
United States or Territories (N = 168)	17.3% (29)	43.5% (73)	13.1% (22)	20.2% (34)	6.0% (10)
Outside of United States (N = 40)	20.0% (8)	30.0% (12)	12.5% (5)	30.0% (12)	7.5% (3)

Differences in outcomes by accused's location not statistically significant

Trial Forum

The final factor examined with respect to its relationship to case outcomes is the type of trial forum—that is, whether the case was adjudicated by a military judge or a panel of military members. For this analysis, we included only cases that were referred to trial and we excluded cases that were decided by a summary court martial officer.

TABLE 10
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM: 2015 DATA

Accused Charged with Penetrative Offense(s) and Case Referred to Trial (N = 368)

	Convicted of Penetrative Offense	Convicted of Sexual Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges
Case Adjudicated by Military Judge (N = 204)	39.2% (80)	4.9% (10)	32.8% (67)	23.0% (47)
Case Adjudicated by Panel of Members (N = 164)	34.1% (56)	1.8% (3)	23.8% (39)	40.2% (66)

Differences in outcomes by type of trial forum statistically significant ($P \leq .05$)

Accused Charged with Contact Offense(s) and Case Referred to Trial (N = 129)

	Convicted of Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges
Case Adjudicated by Military Judge (N = 72)	20.8% (15)	68.1% (49)	11.1% (8)
Case Adjudicated by Panel of Members (N = 47)	27.7% (13)	34.0% (16)	38.3% (18)

Differences in outcomes by type of trial forum statistically significant ($P \leq .05$)

As shown in Table 10, the type of trial forum had a significant effect on case outcomes for both penetrative and contact offenses. Although there was only a small difference in the percentages of individuals who were convicted of a penetrative offense, penetrative offense cases adjudicated by military judges were much less likely than those adjudicated by a panel of military members to result in an acquittal on all charges. Combining the three types of conviction charges, penetrative offense cases

adjudicated by military judges had a conviction rate of 77%, compared to a rate of 59.8% for cases adjudicated by a panel of military members. There was a similar pattern for contact offenses: cases adjudicated by panel members were substantially more likely than those adjudicated by military judges to result in an acquittal on all charges (38.3% versus 11.1%). The conviction rates for contact offenses were 88.9% for cases handled by military judges and 61.7% for cases adjudicated by a panel of military members.

TABLE 11
OUTCOMES OF SEXUAL OFFENSES BY TYPE OF TRIAL FORUM FOR CASES IN WHICH THE ACCUSED PLED NOT GUILTY: 2015 DATA

Charged with Penetrative Offense(s), Referred to Trial and Pled Not Guilty (N = 265)

	Convicted of Penetrative Offense	Convicted of Sexual Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges
Case Adjudicated by Military Judge (N = 101)	38.6% (39)	2.0% (2)	12.9% (13)	46.5% (47)
Case Adjudicated by Panel of Members (N = 164)	34.1% (56)	1.8% (3)	23.8% (39)	40.2% (66)

Differences in outcomes by type of trial forum not statistically significant

Charged with Contact Offense(s), Referred to Trial and Pled Not Guilty (N = 74)

	Convicted of Contact Offense	Convicted of Non-Sex Offense	Acquitted of all Charges
Case Adjudicated by Military Judge (N = 27)	37.0% (10)	33.3% (9)	29.6% (8)
Case Adjudicated by Panel of Members (N = 47)	27.7% (13)	34.0% (16)	38.3% (18)

Differences in outcomes by type of trial forum not statistically significant

We also ran the analysis excluding cases in which the accused pled guilty; thus, we include only those cases in which the accused pled not guilty and the case was adjudicated either by a military judge or a panel of military members at a contested trial. The results of this analysis, shown in Table 11, reveal that the type of trial forum did not affect case outcomes for either penetrative offenses or contact offenses in

which the accused pled not guilty and there was a contested trial. (The data presented in Tables 10 and 11 also reveal that all of the cases involving penetrative offenses that were adjudicated by a panel of military members were cases in which the offender pled not guilty (164 in Table 10 and 164 in Table 11) and that all of the cases involving contact offenses that were adjudicated by a panel of military members were cases in which the offender pled not guilty (47 in Table 10 and 47 in Table 11). Stated another way, none of the penetrative or contact offenses handled by a panel of military members were guilty pleas to all charges. This reflects the fact that when an accused pleads guilty to an offense, only a military judge can hear and accept the plea.)

Factors Associated with Sentences: Results of the Bivariate Analyses

The results of the bivariate analyses of sentences are presented in Tables 9 through 14. The dependent variables analyzed are whether the offender was sentenced to a term of confinement, whether the offender received a punitive separation, and the length of the confinement sentence.

Beginning with the factors associated with an approved sentence of confinement (Table 9), the likelihood of confinement was not affected by the military service of the accused, the rank of the accused, the gender of the victim, the relationship between the victim and the offender, the number of counts preferred, or the number of victims. By contrast, the likelihood of confinement was affected by the status of the victim, the type of conviction charge, the type of court martial, and the type of trial forum. A sentence that included confinement was more likely in cases involving civilian (82.1%) and military and civilian (79.2%) victims than in cases involving military victims only (65.3%). Not surprisingly, confinement sentences also varied by the type of conviction charge. Those who were convicted of penetrative offenses were significantly more likely than those convicted of contact or other offenses to receive a confinement sentence (90.4%, 60% and 61.5%, respectively). Finally, confinement sentences were more likely following general (76.6%) or special (73.7%) than summary court martials (26.3%) and following procedures involving military judges (83.7%) or a panel of military members (64%) than summary court martial officers (26.3%).

TABLE 12
FACTORS ASSOCIATED WITH APPROVED SENTENCE OF CONFINEMENT:
2015 DATA

	No Confinement		Confinement	
	N	%	N	%
Military Service of Accused (NS)				
Army	46	25.7	133	74.3
Air Force	14	20.9	53	79.1
Coast Guard	10	41.7	14	58.3
Marine Corps	22	42.3	30	57.7
Navy	19	29.7	45	70.3
Rank of Accused (NS)				
Officer	12	32.4	25	67.6
Enlisted	99	28.4	250	71.6
Gender of Victim(s) (NS)				
All Females	98	28.4	247	71.6
All Males	13	33.3	26	66.7
Status of Victim(s) ($P \leq .05$)				
All Military	85	34.7	160	65.3
All Civilian	21	17.9	96	82.1
Military and Civilian	5	20.8	19	79.2
Relationship between Accused and Victim(NS)				
Spouse or Intimate Partner	18	27.3	48	72.7
Other Relationship	93	29.1	227	70.9
Type of Conviction Charge ($P \leq .05$)				
Penetrative Offense	13	9.6	122	90.4
Contact Offense	20	40.0	30	60.0
Other Offense	77	38.5	123	61.5
Number of Counts Preferred (mean) [NS]	6.79		7.80	
Number of Victims (mean) [NS]	1.29		1.45	
Type of Court Martial ($P \leq .05$)				
General Court Martial	68	23.4	223	76.6
Special Court Martial	15	26.3	42	73.7
Summary Court Martial	28	73.7	10	26.3
Type of Trial Forum ($P \leq .05$)				
Military Judge	36	16.3	185	83.7
Panel of Military Members	47	37.0	80	63.0
Summary Court Martial Officer	28	73.7	10	26.3

TABLE 13
FACTORS ASSOCIATED WITH APPROVED SENTENCE
OF PUNITIVE SEPARATION: 2015 DATA

	No Separation		Separation	
	N	%	N	%
Military Service of Accused ($P \leq .05$)				
Army	53	29.6	126	70.4
Air Force	28	41.8	39	58.2
Coast Guard	17	70.8	7	29.2
Marine Corps	27	41.9	25	48.1
Navy	30	46.9	34	53.1
Rank of Accused (NS)				
Officer	12	32.4	25	67.6
Enlisted	143	41.0	206	59.0
Gender of Victim(s) (NS)				
All Females	138	40.0	207	60.0
All Males	17	43.6	22	56.4
Status of Victim(s) ($P \leq .05$)				
All Military	112	45.7	133	54.3
All Civilian	35	29.9	82	70.1
Military and Civilian	8	33.3	16	66.7
Relationship between Accused and Victim (NS)				
Spouse or Intimate Partner	25	37.9	41	62.1
Other Relationship	130	40.6	190	59.4
Type of Conviction Charge ($P \leq .05$)				
Penetrative Offense	13	9.6	122	90.4
Contact Offense	19	38.0	31	62.0
Other Offense	122	61.0	78	39.0
Number of Counts Preferred (mean) [NS]	6.67		8.08	
Number of Victims (mean) [NS]	1.23		1.52	
Type of Court Martial ($P \leq .05$)				
General Court Martial	80	27.5	211	72.5
Special Court Martial	37	64.9	20	35.1
Summary Court Martial	38	100.0	0	0.0
Type of Trial Forum ($P \leq .05$)				
Military Judge	69	31.2	152	68.8
Panel of Military Members	48	37.8	79	62.2
Summary Court Martial Officer	38	100.0	0	0.0

The results of the analysis of punitive separations (see Table 13) are, with one exception, very similar. In contrast to the results for confinement, the likelihood of a punitive separation was affected by the military service of the accused. The percentages of sentences involving punitive separations ranged from 70.4% for the Army to 58.2% for the Air Force to 53.1% for the Navy to 48.1% for the Marine Corps

to 29.2% for the Coast Guard. A sentence involving punitive separation was much more likely if the accused was convicted of a penetrative (90.4%) rather than a contact (62%) or other (39.1%) offense, if the case was resolved via a general court martial (72.5%, compared to 35.1% for cases resolved via a special court martial and 0% for cases resolved via a summary court martial), and if the sentence was imposed by a military judge (68.8% versus 62.2% for sentences imposed by a panel of military members and 0% for sentences imposed by a summary court martial officer). The likelihood of punitive separation also was greater if at least one of the victims was a civilian (70.1% for cases involving all civilians and 66.7% for cases involving civilian and military victims) than if all victims were members of the military (54.3%)

The results of the analysis of the length of the confinement sentence, which are shown in Table 14, reveal a very similar pattern. Sentence length was not affected by the military service of the accused, the rank of the accused, or the gender of the victim; it was affected by the status of the victim, the relationship between the accused and the victim, the type of conviction charge, the type of court martial, and the type of trial forum. Mean sentences varied significantly in the following types of cases:

- There were both military and civilian victims (89.46 months) rather than only civilian (48.25 months) or only military (22.44 months) victims
- The victim was the accused's spouse or intimate partner (78.44 months) versus some other relationship or no prior relationship (27.13 months)
- The accused was convicted of a penetrative offense (65.96 months) rather than a contact offense (9.45 months) or a non-sex offense (12.94 months)
- The case was resolved via a general court martial (43.69 months) rather than through a special court martial (4.06 months) or a summary court martial (0.72 months)
- The sentence was imposed by a panel of military members (52.8 months) rather than a military judge (30.77 months) or a summary court martial officer (0.72 months).

TABLE 14
FACTORS ASSOCIATED WITH LENGTH OF CONFINEMENT SENTENCE:
2015 DATA

	Mean Sentence
Military Service of Accused (NS)	
Army	42.37
Air Force	48.43
Coast Guard	22.52
Marine Corps	22.30
Navy	16.36
Rank of Accused (NS)	
Officer	47.42
Enlisted	34.95
Gender of Victim(s) (NS)	
All Females	36.99
All Males	29.90
Status of Victim(s) ($P \leq .05$)	
All Military	22.44
All Civilian	48.25
Military and Civilian	89.46
Relationship between Accused and Victim ($P \leq .05$)	
Spouse or Intimate Partner	78.44
Other Relationship	27.13
Type of Conviction Charge ($P \leq .05$)	
Penetrative Offense	65.96
Contact Offense	9.45
Other Offense	12.94
Type of Court Martial ($P \leq .05$)	
General Court Martial	43.69
Special Court Martial	4.06
Summary Court Martial	0.72
Type of Trial Forum ($P \leq .05$)	
Military Judge	30.77
Panel of Military Members	52.80
Summary Court Martial Officer	0.72

Factors Associated with Case Outcomes: Results of the Multivariate Analysis

We used logistic regression to analyze several binary outcome variables (that is, variables, such as whether the accused was convicted of a penetrative offense (coded 1) or not (coded 0)), that are coded 1 or 0. We used ordinary least squares (OLS) regression to analyze the length of the confinement sentence, which is an interval variable. These types of analysis are used to identify the statistically significant predictors of the outcomes. The analysis simultaneously controls for all of the variables in the analysis; therefore, if a particular variable affects the outcome, it does so while holding all of the other variables in the model constant.¹ For example, the number of victims is a significant predictor of whether an offender who was charged with a penetrative offense was convicted of a penetrative offense; this is net of the effects of the military service of the accused, the accused's rank, the relationship between the victim and the accused, whether all victims were female, whether all victims were military, and the number of charges.²

For the categorical variable (military service of the accused), the values for the included categories are compared to the reference category (Army). The *negative coefficient* for "Air Force" in Table 15 indicates that offenders who were in the Air Force were significantly *less likely* than those from the Army to be convicted of a penetrative offense. As a further test for service-related differences in outcomes, we ran the analyses with each of the services as the reference category.

Analysis of the Likelihood of Conviction

The results of the analysis of two indicators of the likelihood of conviction—whether the accused was convicted of a penetrative offense and whether the accused was convicted of at least one charge (i.e., a penetrative offense, a contact offense, or a non-sex offense) are presented in Table 15. Only those who were charged with a penetrative offense are included in the analysis of conviction for a penetrative offense;

¹ Variables that are statistically significant predictors of outcomes are indicated with an asterisk. In the tables presenting the results of the logistic regression analyses, B is the logistic regression coefficient, SE is the standard error, and Exp(B) is the odds ratio. In the table (Table 14) presenting the results of the OLS regression, B is the unstandardized regression coefficient and can be interpreted as the change in the length of sentence due to a change in the independent variable. For example, the B-value for victim was a spouse or intimate partner is 31.42, which indicates that sentences averaged 31.42 months longer if the victim was a spouse or intimate partner than if the victim was not a spouse or intimate partner. Beta is the standardized regression coefficient and indicates the strength of the relationship between the length of the sentence and the independent variable. The T-value indicates whether the relationship is statistically significant.

²At the request of the Judicial Proceedings Panel, we also ran the analysis with cases in which the victim was the spouse or intimate partner of the accused excluded from the analysis. The results of the analyses were essentially unchanged when these cases were excluded.

the analysis of conviction for any charge includes those charged with both penetrative and contact offenses.

The statistically significant predictors of conviction for a penetrative offense are the military service of the accused, the number of victims and the number of counts. Conviction for a penetrative offense was less likely if the accused was in the Air Force or the Marine Corps rather than the Army. There were no differences in the likelihood of conviction for a penetrative offense between accused in the Army and those in the other military services. When we ran the analysis with the other services as the reference category, we found that (1) there were no differences between those in the Coast Guard and those in the other services, (2) there were no differences between those in the Navy and those in the other services, and (3) the only differences between those in the Air Force and the other services and those in the Marine Corps and the other services were the differences with the Army that were discussed above. To summarize, the only significant effect based on the military service of the accused was that conviction for a penetrative offense was more likely if the accused was in the Army rather than the Air Force or the Marine Corps.

The number of victims and the number of charges also affected the likelihood of conviction for a penetrative offense; as the number of victims and the number of charges increased, the likelihood of conviction increased. Variables that did not affect the likelihood of conviction for a penetrative offense were the rank of the accused, the relationship between the accused and the victim, and the gender and status of the victim.

The statistically significant predictors of conviction for at least one charge are the military service of the accused, the relationship between the accused and the victim, the status of the victim, the number of charges, and whether the accused was charged with a penetrative offense. Compared to those in the Army, those in the Air Force were less likely to be convicted while those in the Coast Guard had a higher likelihood of conviction. When we ran the analysis with the other military services as the reference category we found:

- Compared to those in the Air Force, those in the Army and Coast Guard were more likely to be convicted
- Compared to those in the Coast Guard, those in the Army, Air Force, Marine Corps, and Navy were less likely to be convicted
- Compared to those in the Marine Corps those in the Coast Guard were more likely to be convicted
- Compared to those in the Navy, those in the Coast Guard were more likely to be convicted.

Overall, then, the likelihood of conviction was higher if the accused was in the Coast Guard rather than the other four military services; the likelihood of conviction also was higher if the accused was in the Army rather than the Air Force.

Conviction for at least one offense also was less likely if the victim was a spouse or intimate partner and if the victim was a member of the military services. In addition, conviction was less likely if the accused was charged with a penetrative rather than a

contact offense, and as the number of charges increased, the likelihood of conviction also increased. The likelihood of conviction for any charge was not affected by the rank of the accused, the gender of the victim(s), or the number of victims.

TABLE 15
LOGISTIC REGRESSION ANALYSIS: LIKELIHOOD OF CONVICTION

Accused Convicted of a Penetrative Offense			
	B	SE	Exp(B)
Military Service of the Accused			
Army (reference)			
Air Force	-.77	.28	0.46*
Coast Guard	-.86	.64	0.42
Marine Corps	-1.15	.39	0.32*
Navy	-.48	.33	0.62
Accused Rank (Enlisted)	-.14	.39	0.87
Victim was Spouse or Intimate Partner	-.13	.31	0.88
Female Victim(s)	-.54	.41	0.58
Military Victim(s)	-.34	.25	0.71
Number of Victims	.60	.18	1.82*
Number of Charges	.06	.02	1.06*
Accused Convicted of At Least One Charge			
	B	SE	Exp(B)
Military Service of the Accused			
Army (reference category)			
Air Force	-.48	.22	0.61*
Coast Guard	1.20	.51	3.32*
Marine Corps	-.12	.27	0.89
Navy	.003	.24	1.00
Accused Rank (Enlisted)	-.56	.34	0.57
Victim was Spouse or Intimate Partner	-.61	.26	0.55*
Female Victim(s)	-.39	.30	0.68
Military Victim(s)	-.44	.20	0.64*
Number of Victims	.04	.11	1.04
Number of Charges	.25	.03	1.28*
Accused Charged with Penetrative Offense	-.38	.19	0.68*

* $P \leq .05$

Analysis of Acquittals and Dismissals

Table 16 presents the results of two additional indicators of case outcomes: (1) whether the accused was acquitted of all charges at trial and (2) whether all charges were dismissed without further action. Recall from Table 2 that 21.3% (N = 113) of those charged with penetrative offenses and 13% (N = 27) of those charged with contact offenses were acquitted of all charges; 14.7% (N = 78) of those charged with penetrative offenses and 6.3% (N = 13) of those charged with contact offenses had all charges dismissed without further action.

TABLE 16
LOGISTIC REGRESSION ANALYSIS OF ACQUITTALS AND DISMISSALS

Accused Acquitted of All Charges			
	B	SE	Exp(B)
Military Service of the Accused			
Army (reference)			
Air Force	.94	.29	2.57*
Coast Guard	-1.81	1.07	0.16
Marine Corps	.30	.38	1.36
Navy	.71	.32	2.04*
Accused Rank (Enlisted)	.71	.49	2.03
Victim was Spouse or Intimate Partner	.62	.35	1.85
Female Victim(s)	.24	.42	1.28
Military Victim(s)	.45	.27	1.56
Number of Victims	-.36	.28	0.70
Number of Charges	-.27	.04	0.76*
Accused Charged with Penetrative Offense	.94	.28	2.56*
Case Dismissed Without Further Action			
	B	SE	Exp(B)
Military Service of the Accused			
Army (reference category)			
Air Force	.56	.33	1.74
Coast Guard	.34	.72	1.41
Marine Corps	1.41	.37	4.10*
Navy	.96	.36	2.62*
Accused Rank (Enlisted)	-.80	.46	0.45
Victim was Spouse or Intimate Partner	.74	.32	2.10*
Female Victim(s)	1.00	.63	2.73
Military Victim(s)	.13	.28	1.14
Number of Victims	-1.28	.70	0.28
Number of Charges	-.26	.06	0.77*
Accused Charged with Penetrative Offense	.94	.34	2.56*

* $P \leq .05$

As shown in Table 16, only three variables—the number of charges preferred, whether the accused was charged with a penetrative offense, and the military service of the accused affected the likelihood of acquittal at trial. Acquittal was less likely if there were more preferred charges but was more likely if the accused was charged with a penetrative rather than a contact offense. Acquittal was more likely if the accused was in the Air Force or the Navy than if the accused was in the Army. Running the analysis with the other services as the reference category revealed that:

- Compared to those in the Air Force, acquittal was less likely for those in the Army or the Coast Guard
- Compared to those in the Coast Guard, acquittal was more likely for those in the Air Force and the Navy
- There were no differences in the likelihood of acquittal between the Marine Corps and any of the other services
- Compared to those in the Navy, acquittal was less likely for those in the Army and the Coast Guard.

These results, then, reveal that the likelihood of acquittal was higher if the accused was in the Air Force or Navy than if the accused was in the Coast Guard; the likelihood of acquittal also was higher if the accused was in the Air Force or Navy than if the accused was in the Army.

By contrast, the likelihood that the case would be dismissed without further action was affected by the military service of the accused, whether the victim was a spouse or intimate partner (these cases had a higher likelihood of case dismissal), the number of charges (more preferred charges led to lower odds of case dismissal) and whether the most serious charge was a penetrative offense (these cases were two and half times more likely than cases involving contact offenses to result in dismissal of the case).

Compared with cases involving those who were in the Army, cases involving those in the Marine Corps and Navy had a higher likelihood of case dismissal. Running the analysis with the other services as the reference category revealed that:

- Compared to those in the Air Force, dismissal was more likely if the accused was in the Marine Corps
- There were no differences in the likelihood of dismissal between the Coast Guard and any of the other services
- Compared to those in the Marine Corps, dismissal was less likely if the accused was in the Air Force or Army
- Compared to those in the Navy, dismissal was less likely if the accused was in the Army.

These results reveal that the likelihood of case dismissal was higher if the accused was in the Marine Corps rather than the Army or Air Force; the likelihood of case dismissal also was higher if the accused was in the Navy rather than the Army.

Analysis of Sentences

The results of the logistic regression analysis of the likelihood that the approved sentence would include a period of confinement and the results of the ordinary least

square regression analysis of the length of the approved confinement sentence are presented in Table 17. Only three variables—whether the accused was in the Air Force rather than the Marine Corps, whether the accused was convicted of a penetrative offense and the status of the victim—affected the likelihood that the accused would be sentenced to a term of confinement. Those who were in the Air Force were more likely than those who were in the Marine Corps to be sentenced to confinement. (There were no statistically significant differences in the likelihood of confinement between any of the other services.) Those who were convicted of a penetrative offense were 5.3 times more likely ($\text{Exp}(B) = 5.31$) than those convicted of non-sex offenses (which is the reference category) to be sentenced to confinement. Individuals convicted of crimes involving military rather than civilian victims had lower odds of receiving a confinement sentence.

TABLE 17
LOGISTIC AND OLS REGRESSION ANALYSIS OF CONFINEMENT
AND LENGTH OF CONFINEMENT

Approved Sentence Included Confinement			
	B	SE	Exp(B)
Military Service of the Accused			
Army (reference)			
Air Force	.47	.38	1.60
Coast Guard	-.29	.51	0.74
Marine Corps	-.57	.36	0.56
Navy	.15	.35	1.16
Accused Rank (Enlisted)	.52	.42	1.67
Victim was Spouse or Intimate Partner	-.65	.41	0.52
Female Victim(s)	-.12	.41	0.88
Military Victim(s)	-1.01	.34	0.36*
Number of Victims	.13	.17	1.14
Number of Charges	.036	.025	1.04
Accused Convicted of Penetrative Offense	1.68	.34	5.37*
Accused Convicted of Contact Offense	-.20	.35	0.82
Length (in months) of Approved Confinement Sentence			
	B	Beta	T-value
Military Service of the Accused			
Army (reference)			
Air Force	1.16	.01	0.10
Coast Guard	-10.80	-.03	-0.53
Marine Corps	-7.16	-.03	-0.48
Navy	-15.01	-.07	-1.19
Accused Rank (Enlisted)	5.08	.02	0.32
Victim was Spouse or Intimate Partner	31.42	.15	2.22*
Female Victim(s)	-2.08	-.008	-0.13
Military Victim(s)	-4.42	-.03	-0.42

Number of Victims	7.78	.10	1.67
Number of Charges	2.26	.18	2.84*
Accused Convicted of Penetrative Offense	55.16	.34	5.85*
Accused Convicted of Contact Offense	5.98	.02	0.70

*P ≤ .05

The only variables affecting the length of the approved confinement sentence were the type of conviction charge, the number of charges filed against the accused, and whether the victim was a spouse or intimate partner. As the B values in the table indicate, those convicted of penetrative offenses received sentences that were more than 55 months (B = 55.16) longer than the sentences imposed on offenders convicted of non-sex offenses. Sentences averaged 31 months (B = 31.42) longer if the victim was a spouse or intimate partner and every additional charge resulted in approximately a two-month (B = 2.26) increase in sentence length. The military service of the accused did not significantly affect the length of the confinement sentence.

TABLE 18
LOGISTIC REGRESSION ANALYSIS OF PUNITIVE SEPARATION

Approved Sentence Included Punitive Separation			
	B	SE	Exp(B)
Military Service of the Accused			
Army (reference)			
Air Force	-.71	.36	0.49
Coast Guard	-1.46	.57	0.23*
Marine Corps	-.53	.37	0.59
Navy	-.45	.35	0.64
Accused Rank (Enlisted)	-.21	.44	0.81
Victim was Spouse or Intimate Partner	-.23	.42	0.79
Female Victim(s)	.08	.42	1.08
Military Victim(s)	-.70	.32	0.49*
Number of Victims	.38	.19	1.47*
Number of Charges	.04	.03	1.04
Accused Convicted of Penetrative Offense	2.64	.34	14.03*
Accused Convicted of Contact Offense	.83	.35	2.30*

*P ≤ .05

The final analysis focuses on the likelihood that the approved sentence would include punitive separation (Table 18). The strongest predictor of the odds of punitive separation (based on the odds ratio) is whether the accused was convicted of a penetrative offense; those who were convicted of a penetrative offense were 14 times more likely ($\text{Exp}(B) = 14.03$) than those convicted of non-sex offenses (which is the reference category) to receive a punitive separation. Those convicted of contact offenses also were more than twice as likely ($\text{Exp}(B) = 2.30$) than those convicted of non-sex offenses to receive punitive separation. In addition, individuals convicted of crimes involving military rather than civilian victims had lower odds of punitive separation, and the odds of a punitive separation sentence increased as the number of victims increased. Regarding the military service of the accused, individuals who were in the Coast Guard had lower odds of punitive separation than did individuals who were in the Army (there were no statistically significant differences in the likelihood of punitive separation between any of the other services.)

Summary of Descriptive Data and Results of the Analyses

Descriptive Data on Case Characteristics and Case Outcomes

The military service with the largest number of cases with preferred charges for sexual offenses during the 2015 fiscal year was the Army, followed by the Air Force, the Navy, the Marine Corps, and the Coast Guard. The typical accused was a male enlisted member who was located in the United States or its territories when charges were preferred, and the typical victim was a female member of the military services who was not the accused's spouse or intimate partner. Most cases involved multiple charges and in almost three fourths of the cases the most serious charge was a penetrative offense. More than three fourths of the cases that went to a court martial went to a general court martial.

The overall conviction rate for individuals charged with penetrative offenses was somewhat lower than the rate for individuals charged with contact offenses. Half of those charged with penetrative offenses and convicted of at least one count were convicted as a result of a guilty verdict at trial, compared to just over a third of those for whom the most serious charge was a contact offense. Those charged with contact offenses were more likely than those charged with penetrative offenses to be convicted as a result of a guilty plea. Moreover, individuals whose cases were resolved via a contested trial were substantially more likely than those whose cases were resolved via a guilty plea to be convicted of a sex offense.

Dismissal of the case without further action was more common for individuals charged with penetrative rather than contact offenses, but there were more alternative dispositions and acquittals in cases involving individuals charged with contact offenses. A large majority of those who were convicted received an approved sentence that included a term of confinement and the average approved confinement sentence was three years.

Results of the Bivariate Analyses

The results of the bivariate analyses, which addressed the relationships between case disposition and case outcomes and a single independent variable, revealed that the type of disposition (i.e., whether the case was disposed by general court martial, special court martial, or summary court martial) varied by the type of offense charged, and the military service and rank of the accused. Although there were some differences in case outcomes based on the military service of the accused (for penetrative offenses only), case outcomes did not vary by the status or location of the accused, the gender or status of the victim, or the relationship between the accused and the victim. Among cases that were referred to trial, the outcome of the case varied depending on the type of trial forum, with conviction more likely and acquittal less likely if the case was adjudicated by a military judge rather than a panel of military members. By contrast, the type of trial forum did not affect outcomes among cases in which the defendant pled not guilty and went to a contested trial. The type of conviction charge, the status of the victim, the type of court martial, and the type of trial forum consistently affected the type and length of the sentence. The relationship between the victim and the accused also affected the length (but not the type) of the sentence.

Results of the Multivariate Analyses

Because the multivariate analyses control simultaneously for relevant characteristics of the case, the accused, and the victim, the results of these analyses provide more nuanced findings regarding the factors that affect case outcomes. In most analyses, the strongest predictor of outcome was whether the accused was charged with or convicted of at least one count of a penetrative offense. Those who were charged with penetrative offenses were less likely than those charged with contact offenses to be convicted of at least one charge, were more likely to be acquitted of all charges, and were more likely to have the case dismissed without further action. On the other hand, if the accused was convicted of a penetrative offense, he/she was more likely to be sentenced to confinement, more likely to receive a punitive separation, and faced a substantially longer sentence than those convicted of non-sex offenses. By contrast, neither the rank of the accused nor the gender of the victim affected any of the outcomes examined.

Other variables that had statistically significant effects on outcomes were:

- the military service of the accused
 - conviction for a penetrative offense was more likely if the accused was in the Army than if the accused was in the Air Force or the Marine Corps
 - conviction for at least one charge was more likely if the accused was in the Coast Guard than if the accused was in any of the other four services and if the accused was in the Army rather than the Air Force
 - cases were less likely to result in an acquittal at trial if the accused was serving in the Army or Coast Guard than if the accused was serving in the Air Force or Navy

- cases were less likely to be dismissed without further action if the accused was in the Air Force rather than the Marine Corps and if the accused was in the Army rather than the Marine Corps or the Navy
 - individuals serving in the Army were more likely than those in the Coast Guard to receive a punitive separation
- the number of charges
 - the likelihood of conviction was higher for cases in which more charges were preferred
 - the likelihoods of acquittal and dismissal were lower for cases in which more charges were preferred
 - the length of the confinement sentence was longer for cases in which more charges were preferred
- the number of victims
 - the likelihood of conviction was higher for cases in which there were more victims
 - the likelihood of a confinement sentence was higher for cases in which there were more victims
- the status of the victim
 - the likelihood of conviction was lower for cases in which the victim was a member of the military rather than a civilian
 - the likelihood of acquittal was higher for cases in which the victim was a member of the military rather than a civilian
 - the likelihood that the accused would receive either a sentence of confinement or a punitive separation was lower if the victim was a member of the military rather than a civilian
- the relationship between the victim and the accused
 - the likelihood of conviction was lower if the victim was the accused's spouse or intimate partner
 - the likelihood that the case would be dismissed without further action was higher if the victim was the accused's spouse or intimate partner
 - the confinement sentence was almost three years longer if the victim was the accused's spouse or intimate partner

Considered together, the results of the multivariate analyses highlight the fact that outcomes vary depending upon whether the accused was charged with or convicted of a penetrative offense rather than a contact offense (or convicted of a non-sex offense). These results suggest that cases involving penetrative offenses have higher rates of attrition; that is, they are more likely to result in dismissal, more likely to result in acquittal at trial, and less likely to result in a conviction. However, conviction for a penetrative offense results in harsher punishment—a higher likelihood of a confinement sentence, a higher likelihood of punitive separation, and a longer confinement sentence.

The results also indicate that there are significant differences on many of the outcomes based on the military service of the accused. The most consistent difference is between cases involving those who were serving in the Army and cases involving those who were serving in the other services. If the accused was serving in the Army, the odds of conviction for a penetrative offense were higher (compared to those serving in the Air Force or Marine Corps), the odds of conviction for at least one charge were higher (compared to those serving in the Air Force), the odds of acquittal were lower (compared to those serving in the Air Force or Navy), the odds of dismissal were lower (compared to those serving in the Marine Corps or Navy), and the odds of a punitive separation were higher (compared to those in the Coast Guard). Future research should attempt to determine why these patterns exist and whether they can be traced to differences in policies and practices among the military services (and particularly between the Army and the other services).

Other intriguing findings relate to the status of the victim (military versus civilian) and the relationship between the accused and the victim (spouse or intimate partner versus some other relationship or no prior relationship). Compared to cases with civilian victims, those with victims who were serving in the military had lower odds of conviction, higher odds of acquittal, and were less likely to result in either confinement or punitive separation. Cases involving victims serving in the military, in other words, had higher rates of case attrition and those who were convicted of crimes against members of the military services were treated more leniently at sentencing than were those convicted of crimes against civilians. There was a somewhat different pattern of results based on the relationship between the accused and the victim. Cases in which the victim was the accused's spouse or intimate partner were less likely to result in a conviction and more likely to result in dismissal of all charges; however, these cases also resulted in substantially longer confinement sentences. Future research should attempt to tease out why cases involving military service victims are treated differently (i.e., more leniently) than those involving civilian victims and why cases involving spouses or intimate partners have higher rates of attrition but result in harsher punishment. Although additional quantitative data on the characteristics of these cases might be able to explain some of these differences, qualitative data from interviews with military justice personnel also is needed.

APPENDIX B: Methodology

This appendix discusses the methodology employed by the JPP to obtain and analyze court-martial data relating to sexual assault offense cases that were resolved in fiscal year 2015.

I. REVIEW OF DOD'S SEXUAL ASSAULT CASE TRACKING SYSTEMS

A. Overview of Existing DoD Systems for Managing Military Justice Information

When the JPP initially approached the task of analyzing court-martial data for its April 2016 Report on Statistical Data, it identified and reviewed the systems that currently exist within DoD and the military Services for tracking sexual assault offense case information. A detailed description of the systems used by each military Service to manage military justice cases can be found in that report.¹ The JPP determined that it could not rely on the existing military justice tracking systems to fulfill its tasks for two overarching reasons. First, the systems do not uniformly track information across all of the military Services. Second, not all of the systems allow the complex search queries required to retrieve the information needed to accurately and completely analyze sexual assault court-martial trends.

What follows is a summary of DoD's approach to collecting and reporting data on sexual assault cases in the military since 2012, provided here because that information influenced the findings and recommendations contained in this JPP report.

The JPP gathered information concerning the Defense Sexual Assault Incident Database (DSAID), which was implemented by DoD's Sexual Assault Prevention and Response Office (SAPRO) in February 2014. DSAID is a centralized, case-level database for collecting and managing information on sexual assault cases within DoD.² DSAID contains data for each restricted and unrestricted report of sexual assault covered by DoD's sexual assault prevention and response policy.³ However, it does not include data on sexual assault cases involving spouses, intimate partners, or dependents under the age of 18, as such cases are covered by the military's Family Advocacy Program (FAP).⁴

Legal officers at each military Service headquarters record in DSAID the legal action taken in response to every unrestricted report of sexual assault. The legal officers obtain the information documented in DSAID from the electronic military justice case management systems maintained separately by each military Service and from periodic updates provided by individual legal offices in the field. The data

1 THE JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES (Apr. 2016), *available at* http://jpp.whs.mil/Public/docs/08-Panel_Reports/05_JPP_StatData_MilAdjud_SexAsslt_Report_Final_20160419.pdf.

2 32 C.F.R. § 105.15.

3 U.S. DEP'T OF DEF. FISCAL YEAR 2015 ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, Appendix B, Statistical Data on Sexual Assault, 3 (May 2, 2016) [hereinafter FY15 SAPRO Report], *available at* http://www.sapr.mil/public/docs/reports/FY15_Annual/FY15_Annual_Report_on_Sexual_Assault_in_the_Military_Full_Report.pdf.

4 *Id.* The Coast Guard is not part of DoD, and its case adjudication data are not included in DSAID or in DoD SAPRO's reports to Congress.

include the results of cases for each victim who made an unrestricted report of sexual assault; thus, if one court case involves multiple victims, the case outcome is repeated for every victim associated with that case.

Since fiscal year 2014, DoD SAPRO has used the information entered in DSAID to generate data for its annual report to Congress. Each SAPRO Report contains case synopsis charts that provide general information on case disposition and adjudication for every unrestricted report of sexual assault made in the previous fiscal year.⁵ In addition, DoD SAPRO aggregates the information provided by each Service into “waterfall” charts that illustrate the number of cases initiated or completed within the previous fiscal year.

While the data contained in the fiscal years 2014 and 2015 DoD SAPRO reports are based on the information entered into DSAID, previous annual DoD reports were based on information collected directly from case lists or spreadsheets generated within each military Service. These lists were designed to fulfill specific DoD and congressional reporting requirements. The Services provided information using DoD’s reporting criteria, but the JPP staff observed differences from year to year in how each military Service interpreted or applied DoD’s reporting criteria.

B. Limitations of DoD Statistical Reports on Sexual Assault Cases

Although the annual SAPRO reports contain the most comprehensive compilation of sexual assault court-martial data available, the JPP staff identified limitations and inaccuracies in their data. The SAPRO reports do not provide a full chronology of the cases initiated by every sexual assault report. Instead, they present a snapshot of the number of allegations that fell under SAPR policy in the previous fiscal year, the number of investigations pending from the current or any prior years, and the number of cases resolved by court-martial or other disciplinary measures within the same reporting period.

The SAPRO reports also lack detailed information about case adjudications and dispositions.⁶ Among other things, the reports do not contain:

- information about all offenses prosecuted;
- information about the accused’s plea;
- information about the forum (i.e., whether the accused was tried before a military judge or before a panel);
- information about the terms of plea agreements or requests for clemency, even when they result in a modification of the adjudged sentence;⁷ or

5 The fiscal year is the accounting period for the federal government that begins on October 1 and ends on September 30.

6 FY15 SAPRO REPORT, *supra* note 3, Appendix B, at 3–4. The JPP reviewed the FY15 SAPRO Report because it contains data on sexual assault cases occurring in the same time frame as the cases that the JPP analyzed for fiscal year 2015, and because the DoD Fiscal Year 2016 Annual Report on Sexual Assault in the Military was not released until May 1, 2017—a date that left the JPP with insufficient time to assess any updates to the statistical data in DoD’s annual report. See DoD SAPRO’s website, <http://www.sapr.mil/index.php/reports/sapro-reports/fy16-annual-report>.

7 *But see Transcript of JPP Public Meeting* 161 (Nov. 6, 2015) (testimony of Dr. Nathan Galbreath, Senior Executive Advisor, DoD SAPR Office) (explaining that DoD considers a case “closed” when the convening authority takes action on the court-martial findings and sentence), available at http://jpp.whs.mil/Public/docs/05-Transcripts/20151106_Transcript_Final.pdf.

- statistical analysis of case sentences.

In addition, in the SAPRO reports for fiscal years 2014 and 2015, case adjudication data were aggregated differently than in previous years' reports. In the fiscal years 2012 and 2013 SAPRO reports, a court-martial case involving multiple victims was counted once. In the fiscal years 2014 and 2015 reports, however, a case involving multiple victims in a single court-martial was counted multiple times. The way in which cases are associated with a particular military Service has also changed with the implementation of DSAID. Previously, case dispositions were associated with a particular military Service on the basis of the Service affiliation of the subject or victim. However, beginning in fiscal year 2014, the Service affiliation of the sexual assault response coordinator who provides victim services determines which Service is associated with the case.⁸ It is unclear how this change affects the Services' reporting of adjudication data in their responses, called "enclosures," to the DoD report. Because of these changes, data from the fiscal years 2012 and 2013 SAPRO reports cannot be accurately compared with more recent SAPRO reports.⁹

Finally, while reviewing the underlying case records, the JPP staff identified numerous inaccuracies in the court-martial data contained in the SAPRO reports. Several cases included in the fiscal years 2012 through 2015 SAPRO reports involved only child-victim offenses, non-sexual assault offenses, cases pending trial or other disposition at the end of the fiscal year, or victims who were the spouses and intimate partners of the accused, which fall outside the scope of SAPR policy. Yet all of these cases were reported in the SAPRO reports as completed, adult-victim sexual assault cases; and in some instances, the final case results of pending trials were not included in subsequent years' reports. Separately, many completed cases that were reported in fiscal years 2012, 2013, and 2014 were repeated in the fiscal year 2015 report. The JPP also noted that more than 100 cases reported in fiscal year 2014 were actually completed in fiscal year 2015, according to the dates recorded in the case documents obtained by the JPP. Lastly, the JPP identified instances in which the SAPRO reports contained incorrect or inconsistent case information about the most serious sex offense charged, the disciplinary action received, or the number of victims involved in a case.

II. JPP METHODOLOGY FOR OBTAINING AND ANALYZING MILITARY JUSTICE CASE INFORMATION

A. Court-Martial Data

1. *Identifying Documents to Request from the Services*

Given the limitations of the existing systems and reports, the JPP concluded that it needed to collect sexual assault case records directly from the Services. The JPP drew on the work of the U.S. Sentencing Commission to help it determine what information it needed to request from the Services. Within 30 days of entry of judgment on a case, the U.S. Sentencing Commission receives the following documents from federal district courts:

8 DEP'T OF DEF. FISCAL YEAR 2014 REPORT ON SEXUAL ASSAULT IN THE MILITARY, Appendix A, at 7, Statistical Data on Sexual Assault (April 29, 2015) ("This shift provides valuable insight into the resources each Service expends to respond to reports of sexual assault.").

9 *Id.* at 6, 10–11 ("Unrestricted reports were previously recorded as the number of sexual assault cases, as organized by the MCIOs [military criminal investigative organizations]. Thus, one case did not necessarily correspond to one victim's report. Starting in FY 2014, DSAID accounts for each individual report of sexual assault, such that each report corresponds to one victim").

- judgment and commitment order;
- Statement of Reasons form explaining the judge's sentence;
- plea agreement, if any;
- indictment or other charging document;
- presentence investigation report; and
- any other information deemed helpful.¹⁰

The U.S. Sentencing Commission uses this information to conduct its analysis of federal criminal convictions and sentences.

The JPP decided to follow a similar approach to obtain information about military justice cases involving sexual assault offenses. Using the Sentencing Commission's procedures as guidance, the JPP identified 11 pieces of information necessary to conduct a thorough analysis of military justice cases, along with 10 relevant case documents containing this information. That information and the documents from which it is drawn are listed in the following table:

<u>Information Needed</u>	<u>Documents</u>
1. All offenses charged	1. DD Form 458, <i>Charge Sheet</i>
2. Article 32 investigating officer recommendation	2. DD Form 457, <i>Preliminary Hearing Officer's Report</i> (including all continuation pages, but not exhibits)
3. Staff judge advocate (SJA) pretrial advice	3. Article 34 pretrial advice and/or SJA recommendation on alternate disposition
4. Court-martial type (general, special, or summary)	4. If applicable, any document memorializing the convening authority's referral or non-referral decision
5. Pleas to each charge	5. DD Form 490, <i>Record of Trial</i>
6. Motions (Military Rules of Evidence 412 and 513)	6. DD Form 491, <i>Summarized Record of Trial</i>
7. Guilty and not guilty findings	7. Pretrial agreements
8. Forum (judge alone or panel members)	8. Master index of exhibits
9. Pretrial agreement (terms and sentence limitations)	9. SJA recommendation and addendum
10. Sentence	10. Convening authority action
11. Clemency	

The JPP also considered how the different trial processing requirements in different circumstances affect what information is available in trial records. First, there is no requirement to complete a verbatim court-martial transcript in cases in which the accused was acquitted or received a sentence

¹⁰ *Transcript of JPP Public Meeting 186* (Sept. 18, 2015) (testimony of Mr. Glenn Schmitt, Director of the Office of Research and Data, U.S. Sentencing Commission).

that did not include a punitive discharge or confinement for longer than 12 months at a general court-martial, or 6 months at a special court-martial.¹¹ Such cases often include a shortened, summarized transcript. Second, because records of proceedings related to M.R.E. 412 and M.R.E. 513 are sealed by military judges, access to certain relevant facts or evidence is limited. Third, not all cases will contain the same documents, because the different forums are not uniform in their procedures and thus are not uniform in the documentation that they require. For example, an Article 32 hearing and a staff judge advocate's written pretrial advice are not required in every case.

2. Requesting and Collecting Court-Martial Case Documents

The JPP requested that the military Services provide documentation for all cases involving at least one adult-victim sexual assault charge tried, dismissed, or otherwise resolved in fiscal year 2015. This request encompassed cases covered by both DoD SAPR and FAP policies, enabling the JPP to identify and review cases that were not included in DoD's annual SAPRO reports.

While the Services could not independently identify the cases listed in the annual SAPRO Report for fiscal year 2015, the DoD SAPRO office was able to provide each Service with specific case-identifying information for the cases listed in DoD's annual report. The Services also relied on information contained in their own military justice case management systems to identify additional cases not reported to SAPRO. Data for the U.S. Coast Guard are not included in annual DoD SAPRO reports, and therefore the JPP requested that the Coast Guard identify all cases with at least one preferred charge of sexual assault that were completed at the trial level, dismissed before trial, or resulted in an alternate disposition in fiscal year 2015.¹²

For all requested fiscal year 2015 cases, the JPP asked for access to several specified case documents.¹³ For cases whose record of trial was located at the installation, the military Services' headquarters or field offices provided the available requested case documents. For cases whose record of trial was stored or archived within the National Capital Region, including records located at the National Archives and Record Administration in Suitland, Maryland, and at the Service Criminal Courts of Appeals, the military Services provided the JPP staff with access to the record, and the JPP staff copied the relevant case records.

3. Documenting Information About Courts-Martial for Panel Analysis

The JPP staff reviewed each case file that it obtained to ensure that cases fell within the scope of the JPP's mandate and could be included in the JPP's analysis. The JPP eliminated cases that were tried in a previous fiscal year,¹⁴ cases that were duplicative of other cases already identified, cases in which

11 MANUAL FOR COURTS-MARTIAL, UNITED STATES (2016), R.C.M. 1103.

12 JPP Request for Information 156–58 (August 1, 2016).

13 The JPP sought the following information for every identified case, as applicable: (1) charge sheet; (2) Article 32 investigating officer's or preliminary hearing officer's report; (3) staff judge advocate's pretrial advice; (4) any document memorializing the convening authority's referral or non-referral decision; (5) documentation indicating a verbatim record of trial was prepared; (6) documentation indicating a summarized record of trial was prepared; (7) the terms of any pretrial agreement; (8) master index of exhibits; (9) post-trial submissions to the convening authority from the staff judge advocate and the accused; and (10) convening authority action on a court-martial.

14 The JPP verified the case completion date using standard case documents (rather than relying on the case completion date listed in the annual SAPRO report) as follows: the date of trial as indicated in the official report of result of trial, the date on which an alternate disposition was approved by the convening authority, or the date on which all charges were dismissed, as indicated on the copy of the original charge sheet.

the documents did not indicate a sexual assault offense was charged, and cases in which the needed documentation was missing or incomplete.

The JPP staff used an electronic database to record information for 738 cases from fiscal year 2015.¹⁵ The staff entered case information into the database for each case, including the Service, fiscal year, case number, case location, pay grade and gender of the accused, and status (civilian vs. military) and gender of all victims. The staff also entered specific procedural information, as applicable, including details about every charge preferred, the Article 32 proceeding, pretrial advice, pretrial agreement, referral of charges, the outcome for each offense, and forms of punishment that were imposed.

Using information contained in the JPP's database, Dr. Cassia Spohn, Foundation Professor and Director of the School of Criminology and Criminal Justice at Arizona State University, analyzed the procedural history and outcomes of all cases. Dr. Spohn's statistical report is provided as Appendix A. The JPP staff tabulated additional court-martial data to inform the JPP's analysis.

B. Appellate Cases

Congress also tasked the JPP to review and evaluate court-martial convictions for sexual assault cases whose appeal resulted in punishments being reduced or convictions being set aside. To address this task, the JPP reviewed the published and unpublished opinions on the public websites of the U.S. Court of Appeals for the Armed Forces and the Service Courts of Criminal Appeals. The JPP also requested that the Services provide the JPP with the number of sexual assault convictions affirmed by short form affirmances from the Army, merits opinions from the Air Force, and summary dispositions from the Navy, Marine Corps, and Coast Guard, in order to determine the total number of sexual assault cases reviewed by the appellate courts. This information provided additional context for the number of sexual assault cases in which appellate courts granted relief, and thus improved on the JPP's previous analysis of appellate decisions contained in its 2016 Statistical Data Report.

15 Because of limitations in DoD and Service-specific case management systems, the military Services could not identify with certainty the number of sexual assault cases completed in fiscal year 2015. Therefore, the 738 cases reviewed by the JPP represent a substantial sampling, but not all, of the cases tried in this time period.

APPENDIX C: Judicial Proceedings Panel Authorizing Statutes and Charter

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2013

SECTION 576. INDEPENDENT REVIEWS AND ASSESSMENTS OF UNIFORM CODE OF MILITARY JUSTICE AND JUDICIAL PROCEEDINGS OF SEXUAL ASSAULT CASES.

(a) INDEPENDENT REVIEWS AND ASSESSMENTS REQUIRED.—

- (2) JUDICIAL PROCEEDINGS SINCE FISCAL YEAR 2012 AMENDMENTS.—The Secretary of Defense shall establish a panel to conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81; 125 Stat. 1404) for the purpose of developing recommendations for improvements to such proceedings.

(b) ESTABLISHMENT OF INDEPENDENT REVIEW PANELS.

(1) COMPOSITION.

- (B) JUDICIAL PROCEEDINGS PANEL.—The panel required by subsection (a)(2) shall be appointed by the Secretary of Defense and consist of five members, two of whom must have also served on the panel established under subsection (a)(1).

- (2) QUALIFICATIONS.—The members of each panel shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Forces, and offenses relating to rape, sexual assault, and other adult sexual assault crimes.

- (3) CHAIR.—The chair of each panel shall be appointed by the Secretary of Defense from among the members of the panel.

- (4) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the panel. Any vacancy in a panel shall be filled in the same manner as the original appointment.

(5) DEADLINE FOR APPOINTMENTS.—

- (B) JUDICIAL PROCEEDINGS PANEL.—All original appointments to the panel required by subsection (a)(2) shall be made before the termination date of the panel established under subsection (a)(1), but no later than 30 days before the termination date.

(6) MEETINGS.—A panel shall meet at the call of the chair.

(7) FIRST MEETING.—The chair shall call the first meeting of a panel not later than 60 days after the date of the appointment of all the members of the panel.

(c) REPORTS AND DURATION.—

(2) JUDICIAL PROCEEDINGS PANEL.—

(A) FIRST REPORT.—The panel established under subsection (a)(2) shall submit a first report, including any proposals for legislative or administrative changes the panel considers appropriate, to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives not later than 180 days after the first meeting of the panel.

(B) SUBSEQUENT REPORTS.—The panel established under subsection (a)(2) shall submit subsequent reports during fiscal years 2014 through 2017.

(C) TERMINATION.—The panel established under subsection (a)(2) shall terminate on September 30, 2017.

(d) DUTIES OF PANELS.—

(2) JUDICIAL PROCEEDINGS PANEL.—The panel required by subsection (a)(2) shall perform the following duties:

(A) Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the Uniform Code of Military Justice that were enacted by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112– 81; 125 Stat. 1404).

(B) Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.

(C) Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts.

(D) Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report required by subsection (c)(2) and the number and

description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.

- (E) Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the Uniform Code of Military Justice), and any instances in which prior sexual conduct was determined to be inadmissible.
- (F) Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.
- (G) Building on the data compiled as a result of paragraph (1)(D), assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases.
- (H) Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by section 573 of this Act.
- (I) Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the Uniform Code of Military Justice in certain sexual assault cases.
- (J) Consider such other matters and materials as the panel considers appropriate for purposes of the reports.

(3) UTILIZATION OF OTHER STUDIES.—In conducting reviews and assessments and preparing reports, a panel may review, and incorporate as appropriate, the data and findings of applicable ongoing and completed studies.

(e) AUTHORITY OF PANELS.—

(1) HEARINGS.—A panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the panel considers appropriate to carry out its duties under this section.

(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request by the chair of a panel, a department or agency of the Federal Government shall provide information that the panel considers necessary to carry out its duties under this section.

(f) PERSONNEL MATTERS.—

(1) PAY OF MEMBERS.—Members of a panel shall serve without pay by reason of their work on the panel.

- (2) TRAVEL EXPENSES.—The members of a panel shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance or services for the panel.
- (3) STAFFING AND RESOURCES.—The Secretary of Defense shall provide staffing and resources to support the panels, except that the Secretary may not assign primary responsibility for such staffing and resources to the Sexual Assault Prevention and Response Office.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2014**SEC. 1731. INDEPENDENT REVIEWS AND ASSESSMENTS OF UNIFORM CODE OF MILITARY JUSTICE AND JUDICIAL PROCEEDINGS OF SEXUAL ASSAULT CASES.****(b) ADDITIONAL DUTIES FOR JUDICIAL PROCEEDINGS PANEL.—**

- (1) **ADDITIONAL ASSESSMENTS SPECIFIED.**—The independent panel established by the Secretary of Defense under subsection (a)(2) of section 576 of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1758), known as the “judicial proceedings panel”, shall conduct the following:
- (A) An assessment of the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the Uniform Code of Military Justice), to expressly cover a situation in which a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person.
 - (B) An assessment of the implementation and effect of section 1044e of title 10, United States Code, as added by section 1716, and make such recommendations for modification of such section 1044e as the judicial proceedings panel considers appropriate.
 - (C) An assessment of the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the Uniform Code of Military Justice), as added by section 1705, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).
 - (D) An assessment of the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:
 - (i) Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.
 - (ii) Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the Uniform Code of Military Justice).
 - (iii) Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.
- (2) **SUBMISSION OF RESULTS.**—The judicial proceedings panel shall include the results of the assessments required by paragraph (1) in one of the reports required by subsection (c)(2)(B) of section 576 of the National Defense Authorization Act for Fiscal Year 2013.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

SEC. 545. ADDITIONAL DUTIES FOR JUDICIAL PROCEEDINGS PANEL.

- (a) **ADDITIONAL DUTIES IMPOSED.**—The independent panel established by the Secretary of Defense under section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1758), known as the “judicial proceedings panel”, shall perform the following additional duties:
- (1) Conduct a review and assessment regarding the impact of the use of any mental health records of the victim of an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), by the accused during the preliminary hearing conducted under section 832 of such title (article 32 of the Uniform Code of Military Justice), and during court-martial proceedings, as compared to the use of similar records in civilian criminal legal proceedings.
 - (2) Conduct a review and assessment regarding the establishment of a privilege under the Military Rules of Evidence against the disclosure of communications between—
 - (A) users of and personnel staffing the Department of Defense Safe Helpline; and
 - (B) users of and personnel staffing of the 26 Department of Defense Safe Help Room.
- (b) **SUBMISSION OF RESULTS.**—The judicial proceedings panel shall include the results of the reviews and assessments conducted under subsection (a) in one of the reports required by section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1760).

SEC. 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES

- (f) **DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL** – Section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112–239; 126 Stat. 1760) is amended by inserting “annually thereafter” after “reports”.

CHARTER

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

1. Committee's Official Designation: The committee shall be known as the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel ("the Judicial Proceedings Panel").
2. Authority: The Secretary of Defense, as required by section 576(a)(2) of the National Defense Authorization Act for Fiscal Year 2013 ("the FY 2013 NDAA") (Public Law 112-239), as modified by section 1731(b) of the National Defense Authorization Act for Fiscal Year 2014 ("the FY 2014 NDAA") (Public Law 113-66), and in accordance with the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended) and 41 C.F.R. § 102-3.50(a), established the Judicial Proceedings Panel.
3. Objectives and Scope of Activities: The Judicial Proceedings Panel will conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice (UCMJ) involving adult sexual assault and related offenses since the amendments made to the UCMJ by section 541 of the National Defense Authorization Act for Fiscal Year 2012 ("the FY 2012 NDAA") (Public Law 112-81) for the purpose of developing recommendations for improvements to such proceedings.
4. Description of Duties: Section 576(d)(2) directs the Judicial Proceedings Panel to perform the following duties, with additional duties as added by section 1731(b)(1) of the FY 2014 NDAA:
 - a. Assess and make recommendations for improvements in the implementation of the reforms to the offenses relating to rape, sexual assault, and other sexual misconduct under the UCMJ that were enacted by section 541 of the FY 2012 NDAA.
 - b. Review and evaluate current trends in response to sexual assault crimes whether by courts-martial proceedings, non-judicial punishment and administrative actions, including the number of punishments by type, and the consistency and appropriateness of the decisions, punishments, and administrative actions based on the facts of individual cases.
 - c. Identify any trends in punishments rendered by military courts, including general, special, and summary courts-martial, in response to sexual assault, including the number of punishments by type, and the consistency of the punishments, based on the facts of each case compared with the punishments rendered by Federal and State criminal courts.
 - d. Review and evaluate court-martial convictions for sexual assault in the year covered by the most-recent report of the Judicial Proceedings Panel and the number and description of instances when punishments were reduced or set aside upon appeal and the instances in which the defendant appealed following a plea agreement, if such information is available.
 - e. Review and assess those instances in which prior sexual conduct of the alleged victim was considered in a proceeding under section 832 of title 10, United States Code (article 32 of the UCMJ), and any instances in which prior sexual conduct was determined to be inadmissible.

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Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

- f. Review and assess those instances in which evidence of prior sexual conduct of the alleged victim was introduced by the defense in a court-martial and what impact that evidence had on the case.
- g. Building on the data compiled as a result of the assessment conducted by the Response Systems to Adult Sexual Assault Crimes Panel (“the Response Systems Panel”), a Federal advisory committee established pursuant to section 576(a)(1) of the FY 2013 NDAA and in accordance with FACA, of the training level of military defense and trial counsel, assess the trends in the training and experience levels of military defense and trial counsel in adult sexual assault cases and the impact of those trends in the prosecution and adjudication of such cases.
- h. Monitor trends in the development, utilization and effectiveness of the special victims capabilities required by Section 573 of the FY 2013 NDAA.
- i. Monitor the implementation of the April 20, 2012, Secretary of Defense policy memorandum regarding withholding initial disposition authority under the UCMJ in certain sexual assault cases.
- j. Assess the likely consequences of amending the definition of rape and sexual assault under section 920 of title 10, United States Code (article 120 of the UCMJ), to expressly cover a situation in which a person subject to the UCMJ commits a sexual act upon another person by abusing one’s position in the chain of command of the other person to gain access to or coerce the other person.
- k. Assess the implementation and effect of the Special Victim’s Counsel for victims of sex-related offenses established by the Secretary of Defense on August 14, 2013 and codified in Section 1044e of title 10, United States Code, by the enactment of Section 1716 of the FY 2014 NDAA on December 26, 2013. The panel shall make such recommendations for modifications of section 1044e as the Judicial Proceedings Panel considers appropriate.
- l. Assess the implementation and effect of the mandatory minimum sentences established by section 856(b) of title 10, United States Code (article 56(b) of the UCMJ), as added by section 1705 of the FY 2014 NDAA, which requires at a minimum, that upon a finding of guilt for the offenses of rape, sexual assault, rape and sexual assault of a child, forcible sodomy, and attempts to commit such acts, the punishment include dismissal or dishonorable discharge, except as provided for by Article 60 of the UCMJ, and the appropriateness of statutorily mandated minimum sentencing provisions for additional offenses under chapter 47 of title 10, United States Code (the UCMJ).
- m. Assess the adequacy of the provision of compensation and restitution for victims of offenses under chapter 47 of title 10, United States Code (the UCMJ), and develop recommendations on expanding such compensation and restitution, including consideration of the options as follows:
 - i. Providing the forfeited wages of incarcerated members of the Armed Forces to victims of offenses as compensation.
 - ii. Including bodily harm among the injuries meriting compensation for redress under section 939 of title 10, United States Code (article 139 of the UCMJ).

CHARTER

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

- iii. Requiring restitution by members of the Armed Forces to victims of their offenses upon the direction of a court-martial.
- n. Consider such other matters and materials as the Judicial Proceedings Panel considers appropriate for purposes of the reports.

In conducting reviews and assessments and preparing reports, the Judicial Proceedings Panel may review, and incorporate as appropriate, the data and findings of applicable ongoing and completed studies. The Judicial Proceedings Panel may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as it considers appropriate to carry out its duties. Upon request by the Chair of the Judicial Proceedings Panel, a department or agency of the Federal Government shall provide information that the Judicial Proceedings Panel considers necessary to carry out its duties.

5. Agency or Official to Whom the Committee Reports: The Judicial Proceedings Panel shall provide its first report, including any proposals for legislative or administrative changes it considers appropriate, to the Secretary of Defense through the Department of Defense (DoD) General Counsel (GC), and the Committees on Armed Services of the Senate and the House of Representatives, not later than 180 days after its first meeting. The Judicial Proceedings Panel shall submit subsequent reports during fiscal years 2014 through 2017.
6. Support: The DoD, through the DoD Office of General Counsel (DoD OGC), the Washington Headquarters Services, and the Office of the Under Secretary of Defense for Personnel and Readiness, shall provide staffing and resources as deemed necessary for the performance of the Judicial Proceedings Panel's functions, and shall ensure compliance with the requirements of the FACA, the Government in the Sunshine Act of 1976 ("the Sunshine Act") (5 U.S.C. § 552b, as amended), governing federal statutes and regulations, and established DoD policies and procedures. Primary responsibility for such staffing and resourcing may not be assigned to the Sexual Assault Prevention and Response Office.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating cost, to include travel, meetings, and contract support, is approximately \$4,000,000 and 15 full-time equivalents.
8. Designated Federal Officer: The Designated Federal Officer (DFO), pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures.

In addition, the Judicial Proceedings Panel's DFO is required to be in attendance at all meetings of the Panel and its subcommittees for the entire duration of each and every meeting. However, in the absence of the DFO, the Alternate DFO, duly appointed to the Judicial Proceedings Panel according to DoD policies and procedures, shall attend the entire duration of the Judicial Proceedings Panel and any subcommittee meetings.

CHARTER

Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

The DFO, or the Alternate DFO, shall approve all of the meetings of the Judicial Proceedings Panel as called by the Chair; shall call all meetings of its subcommittees, in coordination with the Chair; prepare and approve all meeting agendas for the Judicial Proceedings Panel and any subcommittees; and adjourn any meeting when the DFO or the Alternate DFO determines adjournment to be in the public's interest or required by governing regulations or DoD policies and procedures.

9. Estimated Number and Frequency of Meetings: Consistent with sections 576(b)(6) and (7) of the FY 2013 NDAA, the Judicial Proceedings Panel shall meet at the call of the Chair, and the Chair shall call the first meeting of the Judicial Proceedings Panel not later than 60 days after the date of the appointment of all the members of the Judicial Proceedings Panel. The Judicial Proceedings Panel shall meet at a minimum once per year.
10. Duration: The Judicial Proceedings Panel shall remain in effect until terminated, as provided for and as required by section 576(c)(2)(C) of the FY 2013 NDAA; however, the charter is subject to renewal every two years.
11. Termination: According to section 576(c)(2)(C) of the FY 2013 NDAA, the Judicial Proceedings Panel shall terminate on September 30, 2017.
12. Membership and Designation: Pursuant to sections 576(b)(1)(B) and (b)(2), the Judicial Proceedings Panel shall be appointed by the Secretary of Defense and consist of five members, two of whom must have served on the Response Systems Panel.

The members shall be selected from among private United States citizens who collectively possess expertise in military law, civilian law, the investigation, prosecution, and adjudication of sexual assaults in State and Federal criminal courts, victim advocacy, treatment for victims, military justice, the organization and missions of the Armed Force, and offenses relating to rape, sexual assault, and other adult sexual assault crimes. The Chair shall be appointed by the Secretary of Defense from among the members of the Judicial Proceedings Panel.

Members shall be appointed for the life of the Judicial Proceedings Panel, subject to annual renewals. Any vacancy on the Judicial Proceedings Panel shall be filled in the same manner as the original appointment. Panel members shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. With the exception of reimbursement of official travel and per diem, Judicial Proceedings Panel members shall serve without compensation.

The DoD GC, according to DoD policies and procedures, may select experts and consultants as subject matter experts under the authority of 5 U.S.C. § 3109 to advise the Judicial Proceedings Panel or its subcommittees; these individuals do not count toward the Judicial Proceedings Panel's total membership nor do they have voting privileges. In addition, these subject matter experts shall not participate in any deliberations dealing with

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the substantive matters before the Judicial Proceedings Panel or its subcommittees nor shall they participate in any voting.

13. Subcommittees: The Department, when necessary and consistent with the Judicial Proceedings Panel's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Judicial Proceedings Panel. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the DoD GC.

These subcommittees shall not work independently of the Judicial Proceedings Panel and shall report all of their recommendations and advice to the Judicial Proceedings Panel for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the Judicial Proceedings Panel. No subcommittee or any of its members may update or report directly to the DoD or any Federal officers or employees.

The Secretary of Defense shall appoint subcommittee members even if the member in question is already a member of the Judicial Proceedings Panel. All subcommittee appointments shall be subject to annual renewal. Such individuals, if not full-time or part-time government personnel, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Those individuals who are full-time or permanent part-time Federal employees shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) as RGE members. Subcommittee members shall serve for the life of the subcommittee. With the exception of reimbursement of official travel and per diem, subcommittee members shall serve without compensation.

All subcommittees operate pursuant to the provisions of FACA, the Sunshine Act, governing Federal statutes and regulations, and established DoD policies and procedures.

14. Recordkeeping: The records of the Judicial Proceedings Panel and its subcommittees shall be handled according to section 2, General Records Schedule 26, and appropriate Department of Defense policies and procedures. These records shall be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).
15. Filing Date: June 24, 2014

APPENDIX D: Judicial Proceedings Panel Member Biographies

JUDICIAL PROCEEDINGS PANEL MEMBERS

THE HONORABLE ELIZABETH HOLTZMAN – CHAIR OF THE JPP

Elizabeth Holtzman is counsel with the law firm Herrick, Feinstein LLP. Ms. Holtzman served for eight years as a U.S. representative (D-NY, 1973–81). While in office, she authored the Rape Privacy Act. She then served for eight years as District Attorney of Kings County, New York (Brooklyn), the fourth-largest DA's office in the country, where she helped change rape laws, improve standards and methods for prosecution, and develop programs to train police and medical personnel. In 1989 Ms. Holtzman became the only woman ever elected Comptroller of New York City. Ms. Holtzman graduated from Radcliffe College, *magna cum laude*, and received her law degree from Harvard Law School.

THE HONORABLE BARBARA S. JONES

Barbara Jones is a partner at the law firm Bracewell, LLP. She served as a judge in the U.S. District Court for the Southern District of New York for 16 years and heard a wide range of cases relating to accounting and securities fraud, antitrust, fraud and corruption involving city contracts and federal loan programs, labor racketeering, and terrorism. Before being nominated to the bench in 1995, Judge Jones was the Chief Assistant to Robert M. Morgenthau, then the District Attorney of New York County (Manhattan). In that role she supervised community affairs, handled public information, and oversaw the work of the Homicide Investigation Unit. In addition to her judicial service, she spent more than two decades as a prosecutor. Judge Jones was a special attorney of the United States Department of Justice (DOJ) Organized Crime & Racketeering, Criminal Division, and the Manhattan Strike Force Against Organized Crime and Racketeering. Previously, Judge Jones served as an Assistant U.S. Attorney, as chief of the General Crimes Unit, and as chief of the Organized Crime Unit in the Southern District of New York.

MR. VICTOR STONE

Victor Stone represents crime victims at the Maryland Crime Victims Resource Center, Inc. Previously, Mr. Stone served as Special Counsel at the United States Department of Justice. He spent 40 years with the Department of Justice in numerous positions, including as Chief Counsel, FBI Foreign Terrorist Task Force, and as Assistant U.S. Attorney in Oregon and the District of Columbia. He has experience working on victims' and prisoners' rights, serving on committees that resulted in the enactment of the Crime Victims' Rights Act and updates to the ABA Standards for Prisoner Rights. After graduating from Harvard Law School, he clerked on the United States Court of Appeals for the Ninth Circuit.

PROFESSOR THOMAS W. TAYLOR

Tom Taylor teaches graduate courses at Duke University's Sanford School of Public Policy. Previously, he served as a decorated and distinguished Army officer, civil servant, and member of the Senior Executive Service. During a 27-year career in the Pentagon, he advised seven secretaries and seven Chiefs of Staff of the Army, and as the senior leader of the Army legal community he worked on a wide variety of operational, personnel, and intelligence issues. He graduated with high honors from Guilford College, Greensboro, N.C., and with honors from the University of North Carolina at Chapel Hill law school, where he was a Morehead Fellow, a member of the law review, and a member of the Order of the Coif.

VICE ADMIRAL PATRICIA A. TRACEY, U.S. NAVY (RETIRED)

Pat Tracey was most recently the Vice President of Homeland Security and Defense for Hewlett Packard Enterprise Services, U.S. Public Sector, developing dynamic strategies and providing support to various agencies including the U.S. Department of Homeland Security, U.S. Department of Justice, U.S. Department of State, and U.S. Department of Defense. She completed a distinguished 34-year naval career in 2004, retiring as a vice admiral and the most senior woman officer in the history of the U.S. Navy. As chief of the Navy's \$5 billion global education and training enterprise, Admiral Tracey led a successful revolution in training technology to improve the quality, access, effectiveness, and cost of Navy training. She graduated from the College of New Rochelle and the Naval Postgraduate School, with distinction, and completed a Fellowship with the Chief of Naval Operations' Strategic Studies Group.

APPENDIX E: Judicial Proceedings Panel Staff Members and Designated Federal Officials

JUDICIAL PROCEEDINGS PANEL STAFF

Captain Tammy P. Tideswell,
Judge Advocate General's Corps,
U.S. Navy, Staff Director

Lieutenant Colonel Patricia H. Lewis,
Judge Advocate General's Corps,
U.S. Army, Deputy Staff Director

Mr. Dale Trexler, Chief of Staff

Ms. Julie Carson, Attorney

Dr. Janice Chayt, Investigator

Dr. Alice Falk, Editor

Ms. Theresa Gallagher, Attorney

Ms. Nalini Gupta, Attorney

Ms. Amanda Hagy, Senior Paralegal

Ms. Laurel Prucha Moran,
Graphic Designer

Ms. Meghan Peters,
Attorney and Lead Report Writer

Ms. Stayce Rozell, Senior Paralegal

Ms. Terri A. Saunders, Attorney

Ms. Tiffany M. Williams,
Supervising Paralegal

DESIGNATED FEDERAL OFFICIALS

Ms. Maria Fried,
Associate Deputy General Counsel (Personnel
and Health Policy),
U.S. Department of Defense,
Designated Federal Official

Mr. William Sprance,
Associate Deputy General Counsel (Personnel
and Health Policy),
U.S. Department of Defense,
Alternate Designated Federal Official

Lieutenant Colonel Jacqueline M. Stingl,
Judge Advocate General's Corps,
U.S. Air Force, Associate Deputy General
Counsel (Personnel and Health Policy),
U.S. Department of Defense,
Alternate Designated Federal Official

Mr. Dwight Sullivan,
Senior Associate Deputy General Counsel
(Military Justice and Personnel Policy),
U.S. Department of Defense,
Alternate Designated Federal Official

APPENDIX F: Presenters on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses for Fiscal Year 2015 at Judicial Proceedings Panel Meetings

JUDICIAL PROCEEDINGS PANEL PUBLIC MEETINGS	PRESENTERS
April 7, 2017 Public Meeting of the JPP One Liberty Center Arlington, VA	• Dr. Cassia Spohn, Professor and Director, School of Criminology and Criminal Justice, Arizona State University • Ms. Meghan Peters, Staff Attorney, Judicial Proceedings Panel • Dr. Nathan Galbreath, Deputy Director, Department of Defense Sexual Assault Prevention and Response Office • Ms. Kathy Robertson, Licensed Clinical Social Worker, Family Advocacy Program Manager, Office of the Deputy Assistant Secretary, Military Community and Family Policy, Department of Defense
May 19, 2017 Public Meeting of the JPP Holiday Inn Arlington at Ballston Arlington, VA	• Ms. Meghan Peters, Staff Attorney, Judicial Proceedings Panel • Panel deliberations
June 16, 2017 Public Meeting of the JPP One Liberty Center Arlington, VA	• Panel deliberations and review of draft report
July 26-27, 2017 Public Meeting of the JPP One Liberty Center Arlington, VA	• Panel deliberations, review, and approval of final report

APPENDIX G: Acronyms and Abbreviations

CAAF	United States Court of Appeals for the Armed Forces
DoD	Department of Defense
DSAID	Defense Sexual Assault Incident Database
FAP	Family Advocacy Program
FY	fiscal year
GCMCA	general court-martial convening authority
INSTR	Instruction
JPP	Judicial Proceedings Since Fiscal Year 2012 Amendments Panel (Judicial Proceedings Panel)
MRE	Military Rule(s) of Evidence
NDAA	National Defense Authorization Act
RCM	Rule(s) for Court-Martial
RSP	Response Systems to Adult Sexual Assault Crimes Panel (Response Systems Panel)
SAPR	sexual assault prevention and response
SAPRO	Sexual Assault Prevention and Response Office
SPCMCA	special court-martial convening authority
UCMJ	Uniform Code of Military Justice

APPENDIX H: Sources Consulted

1. LEGISLATIVE SOURCES

a. Enacted Statutes

10 U.S.C. §§ 801-946 (Uniform Code of Military Justice)

National Defense Authorization Act for Fiscal Year 2009, Pub. L. No. 110-417, 122 Stat. 4356 (2009)

National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632 (2013)

National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013)

National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292 (2014)

National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, 129 Stat. 726 (2015)

National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016)

2. RULES AND REGULATIONS

a. Executive Orders

MANUAL FOR COURTS-MARTIAL, UNITED STATES (2016), *available at* <http://jsc.defense.gov/Portals/99/Documents/MCM2016.pdf?ver=2016-12-08-181411-957>

b. Code of Federal Regulations

32 C.F.R. § 105.15

c. Department of Defense

DEP'T OF DEF. INSTRUCTION 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES (March 28, 2013) (Incorporating Change 3, Effective May 24, 2017), *available at* <http://dtic.mil/whs/directives/corres/pdf/649502p.pdf>

DEP'T OF DEF. MANUAL 6400.01-V2, DoD MANUAL FOR CHILD MALTREATMENT AND DOMESTIC ABUSE INCIDENT REPORTING SYSTEM (August 11, 2016), *available at* http://www.dtic.mil/whs/directives/corres/pdf/640001m_vol2.pdf

d. Federal Rules of Criminal Procedure

Fed. R. Crim. P. 11(c) and (d)

3. MEETINGS

a. Public Meetings of the Judicial Proceedings Panel

Transcript of JPP Public Meeting (November 14, 2014), *available at* http://jpp.whs.mil/public/docs/05-Transcripts/20141114_Transcript_Final.pdf

Transcript of JPP Public Meeting (September 18, 2015), *available at* http://jpp.whs.mil/public/docs/05-Transcripts/20150918_Transcript_Final.pdf

Transcript of JPP Public Meeting (October 9, 2015), *available at* http://jpp.whs.mil/public/docs/05-Transcripts/20151009_Transcript_Final.pdf

Transcript of JPP Public Meeting (November 6, 2015), *available at* http://jpp.whs.mil/Public/docs/05-Transcripts/20151106_Transcript_Final.pdf

Transcript of JPP Public Meeting (April 7, 2017), *available at* http://jpp.whs.mil/Public/docs/05-Transcripts/20170407_Transcript_Final.pdf

4. OFFICIAL POLICY STATEMENTS

Secretary of Defense Memorandum re Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (April 20, 2012), *available at* http://jpp.whs.mil/Public/docs/03_Topic-Areas/09-Withholding_Authority/20160408/01_SecDef_Memo_WithholdingAuthority_20120420.pdf

5. OFFICIAL REPORTS

a. Report of the Response Systems to Adult Sexual Assault Crimes Panel

REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL (June 2014), *available at* http://responsesystemspanel.whs.mil/Public/docs/Reports/00_Final/RSP_Report_Final_20140627.pdf

b. Report of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel

JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES (April 2016), *available at* http://jpp.whs.mil/Public/docs/08-Panel_Reports/05_JPP_StatData_MilAdjud_SexAsslt_Report_Final_20160419.pdf

c. Department of Defense Reports

REPORT OF THE MILITARY JUSTICE REVIEW GROUP (December 22, 2015), *available at* http://logc.osd.mil/images/report_part1.pdf

DEPT OF DEF. FISCAL YEAR 2016 REPORT ON SEXUAL ASSAULT IN THE MILITARY (May 1, 2017), *available at* http://www.sapr.mil/public/docs/reports/FY16_Annual/Appendix_C_Metrics_Section.pdf

DEPT OF DEF. FISCAL YEAR 2015 REPORT ON SEXUAL ASSAULT IN THE MILITARY (May 2, 2016), *available at* http://www.sapr.mil/public/docs/reports/FY15_Annual/FY15_Annual_Report_on_Sexual_Assault_in_the_Military_Full_Report.pdf

DEP'T OF DEF. FISCAL YEAR 2014 REPORT ON SEXUAL ASSAULT IN THE MILITARY (April 29, 2015), *available at* http://www.sapr.mil/public/docs/reports/FY14_Annual/DoD_FY14_Annual_Report_on_Sexual_Assault_in_the_Military.pdf

DEP'T OF DEF. MANPOWER REQUIREMENTS REPORT FOR FISCAL YEAR 2017, *available at* <http://www.people.mil/Portals/56/Documents/tfprq/FY17%20DMRR%20Final.pdf>

6. OTHER REPORTS

Cassia Spohn, PhD, ADJUDICATION OF SEXUAL OFFENSES REPORTED TO THE MILITARY SERVICES IN 2015 (May 2017), *available at* http://jpp.whs.mil/Public/docs/10-Reading_Room/20170519.pdf

7. RESPONSES TO JUDICIAL PROCEEDINGS PANEL REQUESTS FOR INFORMATION

Department of Defense Response to JPP Request for Information 164A and B (April 5, 2017), *available at* http://jpp.whs.mil/Public/docs/10-Reading_Room/20170519.pdf

Combined Responses from the Military Services to JPP Request for Information 89 (October 1, 2015), *available at* http://jpp.whs.mil/Public/docs/07-RFI/Question_89/JPP_RFI_Q89_ServiceResponses.pdf

8. BOOKS

DAVID A. SCHLUETER, *MILITARY CRIMINAL JUSTICE: PRACTICE AND PROCEDURE* (9th ed. 2015)

9. JOURNAL ARTICLES

Major Latisha Irwin, *Justice in Enlisted Administrative Separations*, 225 MIL. LAW REV. 35 (2017)

