2017 ANNUAL REPORT
From the Judge Advocate General of the Navy to the American Bar Association
Report of the Judge Advocate General of the Navy to the American Bar Association
Annual Meeting 2017

Navy JAG Community:
Dedicated to Service, Committed to Excellence

The Navy Judge Advocate General’s (JAG) community provides legal support for the full spectrum of naval activities – from operations at sea and ashore, to military justice and legal assistance for the Navy and its personnel. Four principles – integrity, fortitude, ethics, and respect – guide every aspect of our work.

Our mission is simple: We provide commanders, Sailors, and Navy families with targeted legal solutions, wherever and whenever required. Our ability to execute that mission – both today and tomorrow – depends upon our ability to anticipate the future, and our willingness to evolve accordingly.

Our world is dominated by speed, and change is happening rapidly. In response to this dynamic operating environment, the Navy JAG community is pursuing improvement in four areas – capabilities alignment, knowledge management, community health, and partnerships. Work continues on JAG Strategic Plan 2025, which is being updated to align more closely with broader Navy priorities. Additionally, we are encouraging the development and implementation of innovative practices that increase collaboration and accelerate output.

The Navy JAG community’s three areas of practice remain constant – military justice, operational law and command advice, and legal assistance. The worldwide Navy community – from senior leaders to new Sailors and their families – trust and depend upon our expertise in those fields. As you will read in the pages that follow, we work hard to honor that trust, every day, and to emulate the new JAG community identity statement – dedicated to service, committed to excellence.

Like any law practice, our people are essential to our success. The JAG community is comprised of nearly 2,300 active-duty, Reserve component, and civilian members, with diverse backgrounds and talents. These men and women are deeply dedicated to the Navy mission and our nation. The legal profession can take great pride in their commitment and many noteworthy achievements.

J.W. CRAWFORD III
Vice Admiral, JAGC, U.S. Navy
Judge Advocate General
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I. INTRODUCTION

A. Judge Advocate General (JAG)

The 43rd Judge Advocate General (JAG) of the Navy, Vice Admiral James W. Crawford III, provides legal and policy advice to the Secretary of the Navy and the Chief of Naval Operations (CNO) on legal matters related to military justice, administrative law, environmental law, ethics, claims, admiralty, operational and international law, national security litigation and intelligence law, general litigation, and legal assistance. The JAG also serves as the Department of Defense (DOD) Representative for Ocean Policy Affairs (REPOPA). The Office of the Judge Advocate General (OJAG) supports the JAG in exercising his responsibility to formulate and implement policies and initiatives pertaining to the provision of legal services within the Navy. The JAG directs a worldwide organization of 2,297 personnel including 884 officers, 500 enlisted personnel, 356 civilian personnel, 409 Reserve judge advocates, and 139 Reserve enlisted Legalmen.

B. Deputy Judge Advocate General for Reserve Affairs and Operations (DJAG (RA&O))

The Deputy Judge Advocate General of the Navy for Reserve Affairs and Operations (DJAG (RA&O)), Rear Admiral Carol Lynch, leads the Navy Reserve Law Program, which is comprised of 29 Navy Reserve JAG units. Those units include two Defense Service Office (DSO) Units, nine Region Legal Service Office (RLSO) Units, six Military Justice Units, three OJAG/Civil Law units, and nine Legal Service Command units assigned to the fleet. The program’s judge advocates and Legalmen deliver veteran military skills and unique talents developed through civilian employment.

C. Naval Legal Service Command (NLSC)

The Deputy Judge Advocate General of the Navy (DJAG), Rear Admiral John G. Hannink commands Naval Legal Service Command (NLSC). As DJAG, he serves as the Deputy DOD REPOPA. As Commander, Naval Legal Service Command (CNLSC), he leads the attorneys, enlisted Legalmen, and civilian employees of 14 commands, providing prosecution and defense services, legal services to individuals, and legal support to commands around the world.

1. Chief of Staff, Region Legal Service Office and Trial Counsel Assistance Program (COS-RLSO)

The Chief of Staff, Region Legal Service Office (COS-RLSO) oversees the Navy’s nine RLSOs and supervises the Trial Counsel Assistance Program (TCAP). TCAP provides advice to trial counsel, serving as a resource through every phase of pretrial investigation and court-martial litigation, including charging decisions, theme and theory, motions practice, discovery, securing and preparing expert witnesses, trial strategy, post-trial matters, compliance with the Victim Witness Assistance Program (VWAP), and professional responsibility.

TCAP is led by a Director, a qualified “Expert” in the Navy’s Military Justice Litigation Career Track (MJLCT), who previously served as a military judge and RLSO executive officer.
The Deputy Director, a senior civilian employee, specializes in sexual assault and domestic violence prosecution and victims’ rights, and formerly served as a program director at the National District Attorneys Association, and as a prosecutor at the DC Office of the Attorney General and the Scott County, MN, Attorney’s Office. TCAP’s staff also includes one civilian highly-qualified expert (HQE) with significant experience in special victims’ crimes, including child exploitation and computer crimes. Finally, the TCAP team is rounded out with a senior Lieutenant Commander (O-4) MJLCT Specialist officer with extensive military justice experience in the fleet and the courtroom.

In the past year, TCAP collaboratively engaged trial counsel in the fleet with regular case review conferences and reach-back consultation, and made eight on-site assistance visits to RLSOs, delivering trial advocacy training and trial process assessments. Further, TCAP personnel conducted outreach training to improve collaboration between trial counsel, Naval Criminal Investigative Service (NCIS) agents, military investigators, and other military justice stakeholders. Outreach included adult sexual assault training, and family and sexual violence training at the Federal Law Enforcement Training Center in Glynco, GA; participation in the End Violence Against Women’s international conference in Orlando, FL; coordination with the International Association of Prosecutors; and participation in the National Children’s Advocacy Center’s national symposium on child abuse in Huntsville, AL. TCAP personnel were detailed to a number of cases involving rape, sexual assault, sexual child abuse, and national security.

TCAP personnel routinely served as instructors at Naval Justice School (NJS), including the Basic Trial Advocacy and the Prosecuting Special Victim’s Crimes Courses. TCAP personnel leveraged the JAG community online portal to communicate updates in practice and case law to the field and provide real-time training to the widest audience.

2. Chief of Staff, Defense Service Office and Defense Counsel Assistance Program (COS-DSO)

The Chief of Staff, Defense Service Office (COS-DSO) oversees the Navy’s four DSOs and supervises the Defense Counsel Assistance Program (DCAP).

The DSO mission is to represent Sailors, Marines and Coast Guardsmen before courts-martial, preliminary hearings (Article 32, U.S. Uniform Code of Military Justice (UCMJ)), pretrial confinement proceedings, custodial interrogations, boards of inquiry, administrative boards, and other similar proceedings. In locations where defense counsel is not physically present, physical infrastructure and business rules are in place to provide clients with confidential access to a defense attorney by information technology capability (remote technology).

DCAP is led by a Director who is qualified as a “Specialist II” in the MJLCT and who recently served as the Senior Defense Counsel at one of our largest DSOs. The Deputy Director is qualified as a “Specialist I” in the MJLCT. DCAP staff also includes a civilian HQE. The HQE aids in training and curriculum development and is available to assist defense counsel on complex litigation and sexual assault cases. That position currently is vacant; however, DCAP is in the process of hiring a new HQE.
DCAP’s mission is to support and enhance the proficiency of the Navy criminal defense bar; provide experienced reach-back and technical expertise for case collaboration; and to develop, consolidate, and standardize resources for defense counsel. DCAP serves as a resource through every phase of pretrial investigation and court-martial litigation.

In addition to advising defense counsel in the field, DCAP personnel may be assigned to cases at the discretion of the DCAP Director. During this reporting period, DCAP personnel assisted detailed defense counsel across the spectrum of trial practice including trial strategy, motions practice, argument development, investigations, discovery, witness and expert assistant requests, voir dire strategies and questions, complex legal research, client and witness testimony preparation, and trial preparation. DCAP personnel were available for on-site visits during trial preparation and were often in the courtroom to assist during trial. The Deputy Director served as an assistant defense counsel on three separate general courts-martial, including charges of sexual assault of a minor, aggravated assault of a minor, and a Sailor accused of distributing drugs as part of an on-base drug ring. DCAP also provided advice on post-trial matters and frequently consulted with defense counsel concerning professional responsibility and ethics issues.

DCAP planned and executed a wide array of training for defense counsel. In coordination with the Marine Corps DCAP and the NJS, DCAP planned Defense Counsel Orientation, Basic Trial Advocacy, and Defending Sexual Assault Cases Courses. These courses ensured that defense counsel had comprehensive training opportunities and access to military and civilian experts. DCAP was instrumental in the development and execution of a Senior Military Justice Manager’s Course to train senior litigators on the management, mentorship, and leadership aspects of their positions. The Deputy and the Director instructed at the Basic Trial Advocacy Course. Also, the Director provided instruction at the Defending Sexual Assault Cases and Prospective Commanding Officer and Executive Officer Courses offered by NJS.

DCAP also was responsible for the budgeting and training for the Navy’s Defense Litigation Support Specialist (DLSS) program. DCAP conducted specialized on-site training for defense counsel and DLSS, and ensured all core counsel were trained on the best practices and ethics of utilizing the DLSS in defense investigations. The DLSS program is the first of its kind in DOD and has proven essential in locating and interviewing witnesses, and in evaluating and preparing for cases.

To ensure counsel are well-trained and supported, DCAP conducted six on-site trainings across various offices around the world, provided written advisories, and maintained a presence on the JAG community online portal for the dissemination and exchange of information between members of the Navy defense bar.
3. Chief of Staff, Navy Victims' Legal Counsel (VLC) Program

Victims' Legal Counsel (VLC) assist victims in understanding and exercising their reporting options; guiding victims through administrative, investigative, and military justice processes; advocating for victims' rights and interests; and helping clients obtain access to other support services. VLC complement the care and support victims receive through other resources, to include the Sexual Assault Prevention and Response (SAPR) Program, the Family Advocacy Program (FAP), VVAP, and other services offered by victim advocates, chaplains, and health care providers.

VLC report independently to CNLSC through a senior Navy Captain (O-6) VLC COS and a civilian Deputy COS.

Thirty-three Navy judge advocates are assigned as VLC at 25 naval installations around the world, including Annapolis, MD; Washington, DC; Oceana, VA; Norfolk, VA; Little Creek, VA; Groton, CT; Mayport, FL; Jacksonville, FL; Pensacola, FL; Gulfport, MS; San Antonio, TX; Great Lakes, IL; Coronado, CA; San Diego, CA; Lemoore, CA; Ventura, CA; Bremerton, WA; Everett, WA; Pearl Harbor, HI; Guam; Bahrain; Naples, Italy; Sigonella, Italy; Rota, Spain; and Yokosuka, Japan. During Fiscal Year (FY) 2016, three new Navy VLC billets were added to the program including one in Norfolk, one in San Diego and one in Yokosuka. During FY17, an additional Navy VLC billet was filled in Sigonella, Italy. Ten Navy yeomen provide administrative support for the VLC Program.

All yeomen are required to attend victim advocate training, although their duties preclude them from acting as victim advocates in the field. Also, all VLC attend a required Special Victims' Counsel Certification Course before being certified to practice as VLC by the JAG. Additionally, all VLC receive specialized training in the representation of minor victims. Whenever possible, VLC attend critical education related to victim rights and advocacy from recognized experts in the field. During FY17, a number of Navy VLC were present at the annual training conferences of the National Crime Victim Law Institute and End Violence Against Women International, where they attended sessions presented by preeminent victims' rights scholars and practitioners.

Eligible victims entitled to VLC services include Navy active-duty and Reserve personnel; other service personnel and retirees when assaulted by an active-duty service member; adult and minor dependents of active-duty Navy members when assaulted by an active-duty member; and DOD civilians not eligible for legal assistance who are victims of a sex-related offense as authorized by the Secretary of the Navy or the Secretary of Defense. When the offender is non-military, eligible victims also may receive limited VLC services. Eligible victims may seek assistance from a VLC at any point following a sexual offense. Victims may contact a VLC directly or through other support personnel including Sexual Assault Response Coordinators (SARC), victim advocates, trial counsel, NCIS, staff judge advocates (SJAs), chaplains, FAP and medical providers. VLC services are available to victims filing restricted reports, unrestricted reports, or declining to file an official report of a sexual offense.
VLC form an attorney-client relationship with eligible victims and must comply with the rules of professional responsibility. All communications between VLC and clients are confidential and privileged. Victims are not required to contact or consult with a VLC – the choice remains with the victim. Declining VLC services at the outset does not preclude a victim from requesting VLC services at a later time. VLC support is available in-person and via remote means if necessary, including by telephone, mobile phone, email, text, and video communications such as FaceTime and Video Teleconferencing.

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

VLC provide basic legal assistance services directly connected to a report of a sexual offense, including notarizations and powers of attorney. Assistance with more complex substantive matters will be referred to the nearest military legal assistance office.

Since the program’s inception in 2013, and as of June 2017, Navy VLC have aided more than 2,900 victims of sexual offenses, participated in more than 2,060 military justice and administrative proceedings, and conducted 2,520 educational outreach activities for 104,660 personnel. On July 5, 2017, Captain Karen Fischer-Anderson was relieved by Captain Lisa Sullivan as the VLC Program COS.

II. Progress and Achievements: July 2015 – June 2016

A. Civil Law (Code 01)

The Assistant Judge Advocate General (AJAG) for Civil Law also serves as Commanding Officer, Naval Civil Law Support Activity. This organization is responsible for administrative law matters involving DON; air, sea, space and environmental laws; government ethics; military personnel law; Privacy and Freedom of Information Act (FOIA) programs, including FOIA and Privacy Act (PA) appeals under the cognizance of the JAG; domestic and international laws and regulations; and special programs involving cyber operations, intelligence law, and information operations. The AJAG (Civil Law) also is primarily responsible for affirmative and defensive admiralty claims and litigation, civil affairs, investigations, general and military personnel litigation, torts and claims under various federal claims statutes, and legal assistance matters to include legal support to disabled and wounded Sailors and Marines. The AJAG (Civil Law) also serves as one of three Navy Rules Counsel directly supporting the JAG in the implementation and enforcement of the JAG’s Rules of Professional Conduct.

Naval Civil Law Support Activity is actively supporting the investigations related to the June 2017 USS Fitzgerald (DDG 62) collision. It also supported the investigation into the shooting at the Naval Operational Support Center Chattanooga, TN; the investigation into the Iranian seizure of two U.S. Navy Riverine command boats; and continued its support to several other significant investigations of high-level interest in DON.
Further, Naval Civil Law Support Activity finalized the merger of the Navy and Marine Corps disability legal programs into a single DON effort that helped to greatly expand the quality and quantity of legal services provided to our wounded, ill, and injured Sailors and Marines navigating the complex physical evaluation and disability program. The addition of nine new full-time disability evaluation system (DES) attorneys and 11 contract support personnel stationed throughout the U.S. significantly broadened the scope and quality of DES counsel services, enabling Naval Civil Law Support Activity to meet Navy leadership’s direction that all Sailors and Marines in the DES process consult with counsel.

The AJAG (Civil Law) organization continues to embrace the JAG’s vision to use Knowledge Management (KM) as a tool to improve the organization’s ability to deliver effective legal solutions wherever and whenever required. Each division now has a robust presence on the JAG community online portal, where resources are posted for access by the worldwide DON community. Additional examples of innovation include an online ethics gram database developed by the Administrative Law Division (Code 13); a customer evaluation application used by customers to give feedback on services provided by DES counsel; and a remote legal assistance services initiative and application. The remote legal assistance services application developed by the Legal Assistance Division (Code 16) will make powers of attorney available 24/7 on an as-needed basis and save thousands of work hours in the drafting documents.

1. International and Operational Law (Code 10)

The International and Operational Law Division (Code 10) continued to provide exceptional legal and policy advice and training on international and operational law issues to the DON, DOD, and the national security establishment. Code 10 also played a leading role in supporting the DOD General Counsel, the Chairman of the Joint Chiefs of Staff Legal Counsel, the SJAs assigned to combatant commanders and maritime component commanders, and the legal staffs at the National Security Council, the State Department and other federal agencies, on complex, sensitive, and often urgent issues of vital importance to the Navy and the nation.

Code 10 conducted mandatory legal reviews, in compliance with the law of armed conflict and domestic law, for all weapons and weapons systems acquired by the Navy and Marine Corps. Code 10 attorneys also represented the Navy at meetings of the DOD Law of War Working Group and contributed to an update of the DOD Law of War Manual to maintain its currency as the authoritative guide for judge advocates and line officers throughout DOD. The Law of War Manual is available online at: http://www.DOD.mil/DODgc/images/law_war_manual15.pdf.

Code 10 attorneys supported the JAG in the role of DOD REPOPA by advocating on behalf of the DOD and Navy in interagency meetings and in support of U.S. delegations to the International Maritime Organization, ensuring U.S. national security equities were well represented. In support of the REPOPA, Code 10 continued to maintain and update the DOD Maritime Claims Reference Manual (MCRM) to provide current and accurate information. The MCRM is a compendium of the maritime claims of more than 150 coastal nations. It is available for public access at: http://www.jag.navy.mil/organization/code_10_mcrm.htm. Code 10 supported senior leaders regarding activities in the South China Sea in public engagements, including the Secretary of Defense’s participation in the Shangri-La Dialogue in
Singapore by the International Institute for Strategic Studies, and the CNO’s meetings with senior Chinese leaders.

Code 10 continued its support to fleet operations around the world and its contributions to fleetwide knowledge of international and operational law issues. Code 10 attorneys made presentations on subjects that included the law of armed conflict, the law of the sea, remotely piloted aircraft, and autonomous weapons systems. Education and training presentations for events and organizations included the National Defense University, Naval War College, NJS, Army JAG School, and Walter Reed National Military Medical Center. Code 10 attorneys also supported information exchanges and training initiatives with legal counterparts from more than 40 international partner nations, strengthening relationships to foster greater interoperability with a common understanding of international law. A Code 10 attorney participated in a first-of-its-kind legal workshop organized by the NATO Center of Excellence in Confined and Shallow Waters that focused on the topic of “human rights at sea,” which included an analysis of the unique speedy trial issues arising from the detention of individuals onboard naval vessels in open ocean hundreds of miles from the nearest magistrate.

During this reporting period, Code 10 attorneys taught the law of the sea for the Naval Small Craft Instruction and Technical School at the Stennis Space Center, MS, for senior military officers from the Philippines, Malaysia, and Bangladesh. They covered topics like excessive maritime claims, coastal law enforcement, and legal issues in maritime security and boarding operations. Code 10 attorneys also provided presentations on Law of the Sea and Maritime Security Operations at various engagements to military and civilian participants from Australia, Brunei, Burma, Colombia, Egypt, Fiji, Indonesia, Korea, Malaysia, Marshall Islands, Mexico, New Zealand, the Philippines, Samoa, Taiwan, Thailand, Timor-Leste, the United Kingdom, and Vietnam.

A Code 10 attorney served as a moderator and speaker at the Fugh Symposium at the U.S. Army JAG’s Legal Center and School focused on Crimea, the Ukraine, and the Russian Hybrid Conflict. A Code 10 attorney also supported U.S. Southern Command’s multinational military exercise on regional security and disaster relief operations including over 200 military and civilian participants from 18 partner nations of the Caribbean, Central and South America, and several non-governmental organizations.

Additionally, a Code 10 attorney supported the second annual U.S. Forces-Korea legal symposium by teaching the law of the sea and maritime security within the Korean Theater of Operations to approximately 100 military and civilian participants from the U.S., Korea, U.K., Australia, and the International Committee of the Red Cross. Code 10 attorneys also supported the Asian Regional International Visitor Leadership Program hosted by the U.S. Department of State with presentations on law of the sea and maritime security operations and led discussions on legal and policy considerations in the South China Sea, which was particularly timely given this year’s international arbitration decision.

Code 10 attorneys provided advice on the drafting, negotiation, interpretation, and implementation of various international agreements. Code 10 worked closely with its DOD and State Department counterparts regarding agreements on foreign basing and mutual support
matters, personnel exchanges, the status of forces, and information exchanges. This international agreement support enabled U.S. naval forces to work more effectively with forces from other nations, and increased maritime domain awareness through the sharing of information, personnel, equipment, and facilities with friendly and allied nations abroad. Code 10 also served as the Navy’s representative to the State Department (DOS) for international agreements and transmitted copies of completed agreements as required by the Case-Zablocki Act (1 U.S.C. § 112b). Code 10 also oversaw monitoring of host nation adherence to foreign criminal jurisdiction procedures and gathered all required inputs from Navy and Marine Corps commands on the exercise of criminal jurisdiction by foreign tribunals over U.S. personnel.

2. Admiralty and Maritime Law (Code 11)

The Admiralty and Maritime Law Division (Code 11) continued to advise the fleet and Navy leadership on admiralty and maritime law issues. Code 11 also processed Navy’s admiralty affirmative and defensive tort claims, while serving as the central litigation support liaison for the DOJ. Code 11 is responsible for admiralty and maritime law matters, including claims and litigation related to maritime torts, contract, salvage, international law, and maritime legislation and regulations. Of note, Code 11 provided extensive specialized support in response to the USS Fitzgerald (DDG 62) collision with the motor vessel ACX Crystal in Japanese territorial seas. This support followed three principal lines of effort: investigation support; legal analysis and advice; and inter/intra-agency decision-making and planning.

Code 11 provided various levels of support to three U.S. investigations convened after the collision: the National Transportation Safety Board (NSTB) Marine Casualty Investigation, being conducted for NSTB by the U.S. Coast Guard, a Navy Admiralty Dual-Purpose Investigation in preparation to defend the legal interests of the DON and the U.S., and a Navy Line of Duty investigation. Additionally, Code 11 was the agency lead for developing the Marine Surveys within days of the collision. Marine Surveys are not investigations. Marine Surveys are a routine practice for the resolution of maritime claims and provide an opportunity for parties in a maritime incident to get an objective, independent assessment of physical damages contemporaneous with the incident.

Collaborating with Fleet SJAs and other agency counsel, Code 11 identified key issues of admiralty and maritime law and resolved legal questions of jurisdiction, apportioned fault, accountability, liability, damages calculations, and sovereign immunity. Code 11 was an integral member of the Navy’s operational planning team, coordinating daily activity in response to the collision. In addition, Code 11 coordinated communications with the U.S. Coast Guard, general public, primary next of kin, Congressional delegations, and foreign governments.

Code 11 is focused on continual process improvement; and leveraging KM, internally, with data management and electronic case filing, and, externally, by expanding outreach and the scope of services provided to the fleet.

Code 11 administrative claims and litigation practice carried 533 cases during this reporting period, up from 522 the previous year. Affirmative cases included resolving property damage from collisions and allisions with Navy vessels, piers, and other property. Defensive cases included personal injury, death, and property damage occurring on board or allegedly caused by
Navy vessels. In the past year, Code 11 recovered more than $1,137,600 in affirmative administrative claims and litigation for damage to Navy vessels and other Navy property. Notably, Code 11 spearheaded efforts with Naval Supply Systems Command to refine processes and coordinate lines of effort to recover in contract and tort against service providers under contract with the U.S. government that caused damage to Navy property. Additionally, Code 11 reviewed or adjudicated more than $38 million in defensive admiralty claims or suits involving Navy, paying $6,000 to compensate qualified claimants submitting substantiated claims.

Code 11 continued to support the Aviation/Admiralty Torts Branch of DOJ’s Civil Division, by providing direct litigation support and by assigning a judge advocate as a full-time trial attorney in that office. Among the significant cases successfully resolved in the last year are a settlement of a multi-million dollar suit involving a Navy ship allision with a freeway bridge in Jacksonville, FL and dismissal of a million dollar suit against the Navy for damage caused to a privately owned helicopter onboard a Navy warship. Significant pending cases include a multi-million dollar suit against the Navy for damage to commercial property at Philadelphia Naval Shipyard, and two lawsuits against the Navy involving personal injury aboard Navy Morale, Welfare, and Recreation recreational craft.

In addition to its claims and civil litigation support mission, Code 11 provided legal support and analysis to the Tactical Technology Office at the Defense Advanced Research Projects Agency and Office of Naval Research in support of cutting-edge Navy and DOD missions to develop unmanned vehicles. This support consisted primarily of legal analysis on application of the International Regulations for Preventing Collisions at Sea and other navigational considerations for the design, implementation, and use of unmanned vessels in the maritime domain. Going forward, Code 11 seeks to significantly increase engagement with Navy and non-Navy stakeholders for this effort and future operational undertakings involving maritime law.

During this reporting period, Code 11 attorneys continued to interact with fleet, component, and joint commands, advising on liability, maritime personal injury, property damage, cargo, salvage, underwater cultural resources, counter-piracy, sovereign immunity, and unique risks involving civilian personnel on board Navy vessels. Code 11 also provided advice and analysis on ownership and application of the Sunken Military Craft Act (SMCA) regarding UC-97, a World War I-era German submarine at the bottom of Lake Michigan. Code 11 is coordinating with the Naval Heritage and History Command (NHHC) and other U.S. government, state government, and international stakeholders in these efforts.

Code 11 also continued actively supporting the legislative and regulatory missions of the Navy. It recommended a legislative proposal to amend Title 10, U.S. Code § 7623,

Code 11 authorized funds recovered from affirmative claims to be returned to the Navy accounts that pay for ship repair; supported NHHC in responding to public and federal agency comments on the Navy regulations implementing the SMCA; provided briefings and information to members of Congress, congressional staff members, and industry representatives; and assisted in the publication of the final rule and establishment of interagency agreements on joint administration of Navy sunken vessels.
3. Environmental Law (Code 12)

The Environmental Law Division (Code 12) provided legal advice and training on environmental laws to the DON, specifically senior attorneys and decision-makers in Navy headquarters, and uniformed environmental judge advocates.

Code 12 continued supporting the JAG in the role of Joint Staff deputy-level committee representation to the White House’s National Oceans Council (NOC) and actively supported the DOD and Joint Staff members on the Northeast and Mid-Atlantic Regional Planning Bodies as their organizations completed the first two Regional Ocean Action Plans under Executive Order 13547. Code 12 participated in the Marine Spatial Planning Working Group as it supported Regional Planning Bodies’ efforts and the NOC Steering Committee. During this period, Code 12 also worked with DOD and Joint Staff members on the Northeast and Mid-Atlantic Regional Planning Bodies in developing their final regional ocean action plans. Code 12 worked across the NOC federal agency participants to ensure that Federal Register Notices captured the Policy’s intent to create and implement a framework for coordination between the federal government, states, local governments, and federally recognized tribes. In December 2016, the Principal-level Committee certified that the Northeast and Mid-Atlantic Regional Ocean Action Plans are consistent with the National Ocean Policy.

Code 12 attorneys continued participating and supporting training for judge advocates across the services through participation in environmental law courses conducted by the Civil Engineer Corps Officer School and Air Force JAG’s School. These courses provided judge advocates and environmental resource managers expertise in specialized areas of practice with a focus on U.S. federal environmental laws protecting endangered species, marine mammals, and the planning of federal agency actions within the U.S. coastal zone.

Code 12 attorneys also coordinated closely with officials in the Council on Environmental Quality, Department of Interior, and National Oceanic and Atmospheric Administration as they evaluated proposals to create new national monuments, including the first marine national monument in the Northeast.

4. Administrative Law (Code 13)

The Administrative Law Division (Code 13) provided critical legal advice to the DON’s most senior leadership, to include Secretary of the Navy and CNO, senior uniformed and civilian counsel and other key policy decision-makers in DON, as well as Navy commands at sea and ashore.

The Personnel Law Branch (Branch 131) worked to ensure the accuracy and legal sufficiency of virtually all aspects of the officer promotion process within the Navy and the Marine Corps. Branch 131’s work spanned the planning phase of the annual promotion board season and continued to support related personnel actions long after the promotion season concluded. Branch 131 processed and reviewed more than 750 Navy and Marine Corps officer promotion board plans, briefs, convening orders, reports, and other military personnel law matters. Branch 131 collaborated with attorneys at Marine Corps headquarters and the offices of the CNO, and the Secretary of the Navy on the broad spectrum of personnel law issues. Working closely with
stakeholders within the DON and DOD, the branch prepared legal opinions to help defend against litigation, began a comprehensive re-write of DON regulations governing commissioning officer promotion selection board procedures, reviewed legislative proposals, advised on DOD Force of the Future talent management initiatives, and advised the Board of Corrections for Naval Records on complex petitions for relief.

The Standards of Conduct and Government Ethics Branch (Branch 132) responded to more than 1,450 field calls and provided opinions to headquarters and field attorneys on a range of subjects including gift acceptance; public and confidential financial disclosure; outside employment; political activities; post-government employment restrictions; support to non-federal entities; government-funded travel; use of government property, personnel, and assets; and the trademark registration and lawful use of military seals, logos, and insignia. The branch managed the Public Financial Disclosure System for more than 300 active-duty and Reserve Navy flag officers, and provided a legal review of all flag officers nominated for promotion to three- and four-star rank.

Branch 132 developed and provided standards of conduct training programs to the JAG, judge advocates in the fleet, and other ethics counselors. The branch also provided training to non-legal professionals attending career transition seminars, flag officer staffs, and Legalmen. To keep ethics counselors informed of current issues related to standards of conduct, the branch authored and distributed information via email “Ethics-grams” and emails. The branch also managed the Confidential Financial Disclosure System for personnel assigned to OJAG. The branch continued to remain closely aligned with the Navy General Counsel Ethics Program and monitored compliance with the Joint Ethics Counselor Certification and Training Program.

The Legislation, Regulations, FOIA/PA, and Disability Law Branch (Branch 133) coordinated the legal review and comment on 524 pieces of legislation and draft legislative testimony and 17 DOD and DON regulations, directives, and instructions. Acting as the OJAG FOIA/PA Coordinator, Branch 133 reviewed, forwarded, or responded to 26 high-visibility FOIA/PA requests, and argued successfully for the agency’s position on administrative appeals. Of note, Branch 133 analyzed a number of FOIA requests related to the DON’s actions in response to allegations of misconduct and criminality related to DOJ’s investigation of Glenn Defense Marine (Asia). Branch 133 also tracked, reviewed, and promulgated DOD and DON guidance about recent legislative amendments to the FOIA that greatly affected the management of FOIA programs across the fleet. The branch processed 19 Reserve disability appeals, 23 combat-related disability certifications, and 65 Federal Register publications. As the branch charged with managing the JAG community’s professional responsibility program, Branch 133 oversaw 1,500 active-duty, Reserve, and civilian attorneys practicing under the cognizance of the JAG.

The Command Authority and Investigations/Military Rights and Benefits/Military Affairs Branch (Branch 134) reviewed and analyzed more than 150 legislative items and regulations affecting military members’ rights and benefits. Branch 134 drafted detailed policy reviews on issues ranging from transgender service, women in combat, religious accommodation, the free exercise of religion, the Navy’s equal opportunity program, military whistle blower protection, and bullying and hazing. The branch served as the legal advisor to both the Navy Chief of Information and Chief of Chaplains. Branch 134 also provided advice to judge advocates in the
field on various administrative investigations, including the investigations following the January 2016 capture of U.S. Sailors by the Islamic Republic of Iran.

For the Secretary of the Navy, Branch 134 also reviews, processes, and provides advice on complaints-of-wrong filings – which service members make pursuant to Article 138, UCMJ, or Article 1150, U.S. Navy Regulations – and appeals of formal equal-opportunity complaints. The branch briefed 70 complaints to the ASN M&RA or the Deputy AJAG (Administrative Law) for final action.

The Navy Reserve Law Program Administrative Law Unit continued to provide critical support to Code 13. In an important Total Force initiative, the Personnel Law Branch trained Reservists to review records of proceedings from the FY17 board season, which provided valuable support to the review of more than 10 records of proceedings.

5. General Litigation (Code 14)

The General Litigation Division (Code 14) provided litigation support to the DOJ for all civil cases except those involving admiralty, common-law torts, and matters reserved to the Navy General Counsel. During the reporting period, Code 14 defended constitutional challenges to federal statutes; attempts to overturn Navy personnel and other policies and programs; attacks on the legality of Navy/Marine Corps personnel decisions; assorted personnel claims to correct records or obtain pay; and FOIA/PA appeals. Code 14 also assisted service members and civilian employees in obtaining official government representation when they were sued for monetary damages in their personal capacity for official actions that allegedly violated another person’s constitutional rights – so-called “Bivens” lawsuits or constitutional torts. Code 14 has developed a partnership with its Reserve unit that fully integrates the unit into the entire spectrum of Code 14’s workload.

Code 14 attorneys located evidence and witnesses; drafted motions, memoranda, and other court pleadings; conducted discovery and depositions; and assisted with oral arguments in federal district and appellate courts throughout the country. They successfully defended the Navy and Marine Corps in the vast majority of cases, frequently setting favorable precedent benefitting all of the military departments and the DOD.

Code 14 attorneys provided litigation support to more than 100 lawsuits in federal district courts, courts of appeal, and the U.S. Court of Federal Claims – with potential liability in the tens of millions of dollars. The past year was dominated by high-visibility, complex cases and pre-litigation support, including a lawsuit challenging the DOD policy of gender integration into combat positions, a continuing series of individual and class-action suits by Navy chaplains alleging violations of the establishment and free exercise clauses of the First Amendment; a continuing class-action suit for additional disability benefits for service members discharged for post-traumatic stress disorder; and a class-action suit on behalf of disabled Navy and Marine Corps veterans seeking to have their records corrected to reflect that their disabilities are combat zone- or combat-related.

In addition to litigation in which the U.S. is a party, Code 14’s attorneys and paralegals responded to more than 200 requests for official Navy and Marine Corps information for
litigation purposes. These include subpoenas or other written requests seeking the Navy to release documents or approve witnesses in litigation.

Code 14 adjudicated nearly 300 FOIA/PA appeals in the past year, constituting about two-thirds of all departmental FOIA/PA appeals. If the FOIA/PA requester seeks relief in federal court, Code 14 provides litigation support to DOJ.

Code 14 also reviewed proposed regulations and legislation related to litigation, and when requested, proposed departmental actions to address litigation risk.

6. Claims and Tort Litigation (Code 15)

The Claims and Tort Litigation Division (Code 15) adjudicates tort claims under the Federal Tort Claims Act (FTCA), the Military Claims Act, the Foreign Claims Act, the International Agreement Claims Act, and the Non-Scope Claims Act. Code 15 also is responsible for actions under the Federal Claims Collection Act, the Medical Care Recovery Act, and the Third Party Payers Act, which allow for the pursuit of affirmative claims on behalf of the U.S. against third-party tortfeasors and insurers for damage to government property and for the recovery of medical costs paid on behalf of active-duty members, dependents, and retirees. Code 15 further administers payments under the Military Personnel and Civilian Employees’ Claims Act, which compensates military and civilian employees for loss, damage, or destruction of personal property occurring “incident to service.” Code 15 also provides litigation support to the U.S. Attorneys for claims that result in litigation.

In the past year, Code 15 processed nearly 4,000 claims against the U.S. and more than 17,000 affirmative claims against liable parties on behalf of the U.S. Collections on affirmative claims for this period totaled approximately $22 million dollars. Additionally, at any given time during this reporting period, Code 15 managed approximately 130 tort cases in litigation.

Code 15 continues to process claims resulting from the Washington Navy Yard shootings in 2013. A total of 13 administrative claims have been filed for wrongful death and personal injury. The total damages demand in all claims to date is near $140 million. One claim proceeded to litigation against the U.S. and two corporate defendants, resulting in the dismissal of the U.S. case. Seven additional claimants have filed lawsuits against those corporate defendants, but not against the U.S. All cases are pending in the DC District Court. At the recommendation of DOJ, adjudication of the 12 remaining administrative claims is being held in abeyance because defenses likely to be raised by the U.S. in subsequent litigation have been presented to the court through the corporate defendants’ pending Motions to Dismiss.

Code 15 continues to process claims pertaining to the contamination of groundwater at Marine Corps Base Camp Lejeune, NC. Since 2000, more than 4,250 administrative claims have been filed under the FTCA, seeking in excess of $62 billion (not including one claim filed for $900 billion). Since 2004, a total of 24 federal lawsuits have been filed. Four have been dismissed, and one is being handled by the U.S. Attorney’s Office since it does not allege FTCA claims. The remaining 19 cases were transferred by the Judicial Panel on Multidistrict Litigation (MDL) to the U.S. District Court for the Northern District of Georgia (MDL Court) for pretrial proceedings. On Dec. 5, 2016, the MDL Court dismissed those cases and, four days later, the
Judicial Panel on MDL closed the Camp Lejeune MDL Court. Several of the plaintiffs have appealed the MDL Court’s ruling to the 11th Circuit Court of Appeals. The 11th Circuit will establish a briefing schedule and rule on any request for oral argument by the parties.

Additionally, Code 15 is processing claims related to two high-visibility incidents. In April 2015, a Union Pacific Railroad freight train collided with a U.S. Marine Corps M970 trailer carrying JP8 traveling outside of Yuma, AZ. Union Pacific seeks $590,000 for damage to two locomotives as well as track/signal damage and the cost of train delays, hazmat remediation, and fire department response. There was no loss of life, but three Union Pacific employees sustained smoke inhalation and minor injuries. In the second, a Blue Angels aircraft crashed in Smyrna, TN in June 2016. In addition to providing guidance to local judge advocates immediately after the crash, the Division Director made a personal visit to the crash site in order to inspect the damage and make contact with local government agencies that provided support.

Code 15 also provided litigation support to DOJ attorneys, including support in federal district courts, courts of appeal, and the U.S. Supreme Court. Significant pending litigation includes a claim in excess of $58 million for a destroyed experimental airship. Code 15 provided litigation support in an important case that was appealed by a former Guantanamo Bay detainee all the way to the U.S. Supreme Court, where certiorari was denied on May 15, 2017. As a result, a judgment in favor of several high-profile government officials, including current and former Secretaries of the Army, Navy and Defense, and other high-ranking Army and Navy commanders, is now final.

Code 15 also executed the OJAG Disaster Response Plan at various times throughout the year in response to a wide range of natural and man-made disasters, including Hurricane Matthew; power outages at Stuart Mesa housing Marine Corps Base Camp Pendleton; fire damage at Al Asad Air Base in Iraq; and the collision at sea of the USS Fitzgerald (DDG 62). In each instance, Code 15 prepared local judge advocate assets to assist individuals with claims to ensure a coordinated effort to meet the needs of impacted Navy personnel and their families.

Finally, over the past year, Code 15 continued to evaluate and improve its processes to further collection efforts for the cost of government-provided health care from third-party tortfeasors and insurers. As part of this endeavor, Code 15’s Medical Care Recovery Units have worked to increase coordination with Navy medical treatment facilities, the Defense Health Agency, and other services’ claims headquarters in order to identify and prioritize cases with a greater likelihood of collection, resulting in a more efficient and productive claims process.

7. Legal Assistance (Code 16)

The Legal Assistance Division (Code 16) provided policy guidance for field and fleet commands providing personal legal services to active and Reserve members of all services, eligible family members and dependents, military retirees, and eligible DOD civilians. Code 16 continues to execute two distinct missions: a legal assistance and research function focusing on legal aid and advice in personal civil legal matters for Sailors, their families, and retired personnel; and a DES assistance function focusing on advice and assistance to wounded, ill, and injured Sailors and Marines navigating the system.
Navy legal assistance (LA) providers assisted customers and clients in a variety of personal legal matters, including estate planning (wills, powers of attorney, health care directives, living wills, and advice on beneficiary designations); family law/domestic relations; consumer law; landlord/tenant law; home ownership and foreclosure; immigration and naturalization; military rights and benefits (including Service Members Civil Relief Act and Uniformed Services Employment and Reemployment Rights Act rights); and legal support for military crime victims.

Code 16 significantly improved efficiency and effectiveness through the development and implementation of a standardized inspection process to evaluate and improve the operation and management of the Navy LA Program. These efforts resulted in a uniform approach to the delivery of the highest quality of services across the enterprise. LA services were available everywhere the Navy has a presence - at sea and ashore, at home and abroad, in-person, and via remote delivery mechanisms. Navy LA providers continued to provide comprehensive preventative law and deployment-related outreach briefs to educate service members on their legal rights, responsibilities, and duties, thus enhancing individual and operational readiness. Navy LA offices provided 120,916 customers and clients with 202,021 legal services during the reporting period.

In coordination with KM, and after testing and feedback from the field, Special Powers of Attorney (SPOAs) became available on the Navy JAG community public website. Users can now draft their own SPOAs, alleviating the workload at RLSOs. The new SPOAs also have a password-protected “Practitioner” button at the bottom of the page, which allows practitioners to generate SPOAs that can be edited, as needed, in RLSOs. In March 2017, DJAG also approved notary public content information for the Navy JAG community public website so users can better understand the notary process and eligibility for serving as a notary public.

DES support was targeted at 10 major Navy/Marine Corps Medical Treatment Facilities (MTF) around the U.S. and at the Washington Navy Yard in Washington, DC. Through May 31, 2017, 15 Informal Physical Evaluation Board Counsel stationed at major MTFs provided worldwide outreach and personalized disability legal advice and support to more than 7,174 wounded, ill, and injured Sailors and Marines. Additionally, six active and Reserve Navy and Marine Corps judge advocates and DON Civilian Counsel assigned as Formal Phase counsel aided more than 837 wounded Sailors and Marines in cases under final review by the Formal Physical Evaluation Board in Washington, DC. The development of online resources, working groups, collaborative exchanges, and an inaugural DON DES Counsel Training Symposium to promote best practices further enhanced the provision of DES support.

In September 2016, Code 16 hosted the second annual joint services Integrated Legal Services for Victims Conference. Approximately 200 attorneys and paralegals from every service, including the Coast Guard and the National Guard, and representing every legal community of practice, including LA, DES, Victims’ Legal Counsel, and military justice, attended the conference. The keynote speaker was Vice Admiral Crawford. The purpose of the conference was to enhance the military’s ability to provide comprehensive, integrated legal services to victims of sexual offenses and other crimes across legal communities of practice.

In March 2017, Code 16 hosted the inaugural LA Subject Matter Expert (SME) Symposium on board Naval Base Kitsap-Bangor, Silverdale, WA. The symposium brought together 14
SMEs from across NLSC to train on current LA issues, ensure standardization of practice in LA offices and collaborate in working groups on various LA topics. The work product from this symposium will be incorporated into JAGINST 5801.2B, the instruction controlling the Navy-Marine Corps LA Program (Legal Assistance Manual) which is due for revision in 2017.

Code 16 managed and executed a Tax Assistance Program to aid service members and their families with free electronic filing of 8,603 state and federal tax returns at 32 tax assistance centers worldwide. Tax center managers and staff, composed of Sailors and civilians, educated and assisted active-duty service members and their families on preparing their own taxes using free online software via Military OneSource. The Navy Tax Assistance Program is a part of NLSC and supported by Code 16 via individual RLSOs and their LA offices. Code 16 launched its first-ever Volunteer Income Tax Assistance (VITA) presence on the JAG community portal, making online training centralized, easy to update and user-friendly. Code 16 also provided support and toolkits to fleet tax centers so that commands can run their own tax centers.

Fleet-operated tax centers may provide either full-service or self-service tax preparation. Navy tax centers operated by JAG community personnel have completely converted to self-service tax preparation. If a person eligible for LA under 10 U.S.C. §1044 needs tax assistance beyond the scope of a self-service tax center’s capabilities, that person may schedule an appointment with a LA attorney. Code 16 continued its cooperation with the Internal Revenue Service and Armed Forces Tax Council in executing the Tax Assistance Program. Additionally, the Navy Reserve Law Program Administrative Law Unit completely revised the All States Tax Guide for Tax Year 2016. This widely used guide is a state-by-state reference for U.S. military VITA/Electronic Filing programs that provides basic information and contact points for each income tax levying state agency.

Finally, Code 16 maintained a close relationship with the American Bar Association’s (ABA) Standing Committee on Legal Assistance for Military Personnel (LAMP) throughout the year. Navy LA providers enthusiastically engaged the ABA Military Pro Bono Project and Operation Stand-By to secure additional support for clients and to advance understanding of various civil law matters. Both programs allow Navy LA providers around the globe to partner with civilian attorney volunteers to assist service members requiring LA services beyond the traditional scope of the Navy LA program. We are particularly appreciative of this outstanding support by the ABA.

8. Cyber, Information Operations and Intelligence Law (Code 18)

The Cyber, Information Operations and Intelligence Law Division (Code 18) provided legal and policy advice in the areas of cyber, information operations, and intelligence law matters to the JAG, leadership within DON’s Information Warfare Community, the DOD, and the greater national security establishment.

Code 18 collaborated with NCIS on the development of counterintelligence operations and with the Navy Office of the General Counsel for Intelligence to provide legal advice and oversight of special programs and sensitive activities. Substantive legal issues examined included the implications of international agreements and customary international law on the development of sophisticated technical capabilities and operations.
Responding to an increasing demand for legal support from the DON Information Warfare Community, Code 18 improved the Navy JAG community’s ability to support commanders with qualified legal advisors. These efforts included monitoring security clearance issuance and renewal and providing recommendations for attorney assignments to positions within the Information Warfare Community. With support from the Office of Naval Intelligence, Code 18 created a series of professional development events for junior judge advocates that explain the U.S. Navy’s information warfare community and the expanding roles of legal advisors.

Recognizing that many judge advocates may not have the training to effectively advise information warfare commanders, Code 18 continues to develop and execute training products. NJS is a key partner in publishing a self-paced, online Basic Intelligence Law Course designed as an accessible introduction to intelligence law. A similar Basic Cyber Operational Law course is being developed. The existing Advanced Cyber Operational Law and Information Operations Legal Training Courses have been combined into a single week-long course, facilitating greater collaboration between practitioners and scholars from these two different, yet interrelated, legal disciplines. The course covers U.S. cyber operations, classified capabilities, intelligence, and information operations and oversight. Taught by seasoned judge advocates and civilians, course briefings also included presentations from interagency partners involved in cyberspace, intelligence, and information operations, as well as military agencies.

Code 18 continues its efforts to produce written works that expand the availability of information and guidance for new and seasoned cyber and intelligence law practitioners. It has been asked to contribute to The Stockton Handbook on Methods and Means of Cyber Operations, the first-ever manual designed to inform military practitioners in the technical details that underpin development and deployment of cyber capabilities. Additionally, Code 18 continued its work on the creation of the Cyber Law Primer, which is designed to be an unclassified quick-reference sourcebook on cyber law issues. Code 18 also reissued the Navy JAG Corps Intelligence Law Reference Guide for the first time in several years, taking into account changes in the DOD regulation governing the collection, retention, and dissemination of U.S. Person Information. The DOD regulation was issued in August 2016, and significantly revised DOD intelligence oversight procedures that have remained largely unchanged since 1982.

B. Military Justice (Code 02)

1. Criminal Law (Code 20)

The Criminal Law Division (Code 20) continued to provide military justice policy and SAPR Program advice to DON, JAG community leadership, and individual judge advocates around the world. Code 20 facilitated the formulation and administration of military justice, criminal law, and SAPR policy and procedures, and staffed all amendments to DON, OJAG, and NLSC regulations implementing the UCMJ.

Code 20 assisted the DON, Navy and JAG community leadership, and members of Congress and their staffs, as legislators considered changes to the military justice system in response to continued concern over sexual assaults in the military. It also addressed concerns related to the
role of the commander in the military justice process, retaliation against victims and witnesses, and compliance with sex offender registration requirements for military members convicted of qualifying offenses at courts-martial. Code 20 responded to dozens of congressional requests for information, and the Division Director provided informational briefings to Senate and House professional staff members. These efforts ensured congressional awareness and understanding of the Navy’s position on matters of congressional concern. Code 20 also reviewed and revised numerous military justice and sexual assault legislative and regulatory proposals, as well as DON policies and instructions.

The Division Director continued to serve as the Navy representative and voting group member to the Joint Service Committee on Military Justice (JSC), which is the principal vehicle for staffing amendments to the UCMJ and the Manual for Courts-Martial (MCM). In January 2017, the Navy assumed the chairmanship of the JSC. Code 20 also provided two Navy representatives for the joint-service working group supporting the JSC. The JSC drafts an annual executive order for Presidential signature based on changes mandated by case law, legislation, and other necessary revisions. Following the passage of the FY17 National Defense Authorization Act (NDAA) which included the Military Justice Act of 2016, the JSC drafted implementing Rules for Courts-Martial, updated Military Rules of Evidence (MRE), and overhauled the punitive articles in the largest revision to military justice since 1983.

Code 20 personnel supported the JSC as it responded to requests from DOD and Congress on a variety of topics such as mental health regulations, protecting patient confidentiality, victim protection and support, retaliation, and the Navy’s Special Victims Investigation and Prosecution capabilities.

In December 2016 the President signed the FY17 NDAA that included the Military Justice Act of 2016. The legislation included 37 statutory additions to the UCMJ, and substantive amendments to 68 provisions of the UCMJ. Code 20, working with the JSC, drafted a revised MCM incorporating the statutory changes that will be published for public comment before being submitted for the President’s signature by the end of the year.

Code 20 served as Navy’s representative to the Judicial Proceedings Panel (JPP). The JPP, established in accordance with section 576 of the FY13 NDAA, is a federal advisory committee charged with leading an independent assessment of judicial proceedings conducted under the UCMJ involving adult sexual assault and related offenses. The review will result in the development of recommendations for improvements to the military justice system. The JPP issued two reports in 2017 that addressed military defense counsel resources and experience in sexual assault cases and victim appellate rights. The two reports contained five recommendations to Congress and the DOD, and Code 20 is actively involved in the review and implementation of those recommendations.
Code 20 also served as the Navy representative to the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD). The DAC-IPAD – established by the Secretary of Defense in February 2016 as required by section 546 of the FY15 NDAA and section 537 of the FY16 NDAA – is a federal advisory committee that has three statutory requirements: (1) To advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct; (2) To review, on an ongoing basis, cases involving allegations of sexual misconduct, for the purpose of advising the Secretary of Defense; and (3) To submit to the Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives an annual report of the activities of the committee during the preceding year. The DAC-IPAD issued its first report to Congress in March 2017 and plans to meet at least quarterly.

Code 20 also participated in an Operational Planning Team established in response to social media misconduct. Code 20 attorneys assisted in the development of Navy Regulation 1168, which prohibits nonconsensual distribution or broadcasting of intimate images. Code 20 provided a review of facilitators’ guides and other training materials aimed at preventing and responding to social media misconduct. Code 20 published a commanders’ toolkit in coordination with the Code 13, explaining the legal issues underlying social media, and providing options and considerations for appropriate actions, including counseling, nonjudicial punishment, and judicial action.

Code 20 assisted in the development of Navywide training initiatives on SAPR, to include DON Sexual Assault Prevention and Response Office’s graphic novel on SAPR issues and FY17 interactive annual training, as well as Navy’s SAPR standard core training and the “Full Speed Ahead” intervention-focused training. Full Speed Ahead is the successor training to 2016’s “Chart the Course,” and builds upon concepts first taught in enlisted advanced skill training (“A” School) and instills the need for intervention and prevention of a spectrum of destructive behaviors by utilizing video vignettes and facilitated discussions to engage all service members in educational, face-to-face conversations about many topics, such as alcohol, fraternization, hazing, sexual harassment, and sexual assault. Code 20 also provided legal review of training for SAPR VAs and SARC units, ensuring that SAPR VAs and SARC units understand the legal landscape in which they operate, enabling them to provide accurate support and advice to victims.

As part of the SAPR cross-functional team, Code 20 met monthly with Navy’s major stakeholders to discuss SAPR-related policy, training, military justice, and victim services developments across the fleet.

Code 20 continued to lead data input and review for the Defense Sexual Assault Incident Database (DSAID), a comprehensive database launched in 2013 that tracks and reports sexual assault incidents for the Annual Report to Congress on Sexual Assault in the Military. In 2016, Code 20 provided one fully-qualified DSAID legal officer, who personally reviewed and entered over 1,300 Sexual Assault Disposition Reports (SADR) and dispositions of sexual assault cases for FY16. Code 20 continues to participate in the monthly DSAID Change Control Board meetings, which improves and enhances DSAID capabilities.
In 2016, Code 20 sponsored the Sexual Assault Policy for the SJA Course, which was held at Joint Base Anacostia-Bolling in Washington, DC. This two-day course, attended by more than 40 SJs for general court-martial convening authorities and sexual assault initial disposition authorities, Code 20 will hold this training again in 2017. Code 20 also participated in other courses – such as the Advanced SJA Course, VLC training, and SARC and SAPR VA training – to provide instruction on current legal issues involving military justice, including sexual assault issues.

Code 20 assisted in an ongoing initiative to develop a DOD-wide memorandum and strategic plan to address retaliation, reprisal, and ostracism within the military. The new memorandum provides definitions of those issues, and directs the development of service-specific instructions to prohibit retaliation, reprisal, and ostracism.

As a member of the Navy’s Fraternization working group, Code 20 conducted a holistic review of Navy’s fraternization policy. The working group examined the current policy to determine whether it properly addressed pre-existing relationships and the needs of modern Sailors, and whether it was an effective tool for commanders to ensure good order and discipline. The working group forwarded a legal assessment of three potential courses of action for modifying the Navy’s fraternization policy and identified the specific legal mechanisms to effectuate the changes.

Code 20 reviewed all decisions of the Navy-Marine Corps Court of Criminal Appeals (NMCCA) and staffed requests for JAG certification of cases for review by the U.S. Court of Appeals for the Armed Forces (CAAF). Code 20 also staffed command requests for Secretarial designation of general and special court-martial convening authorities, requests to recall Reservists for court-martial, and Presidential pardon requests. Code 20 coordinated requests to immunize civilian witnesses testifying at courts-martial, staffed requests to recall Reservists for trial and to assert court-martial jurisdiction over retirees, and provided written opinions to the Board for Correction of Naval Records. Representatives of Code 20 also served as voting members of the Naval Clemency and Parole Board.

Supported by its Navy Reserve Law unit, Code 20 completed post-trial reviews of 32 courts-martial under Articles 69(a) and (b), UCMJ, and reviewed two petitions for a new trial forwarded under Article 73, UCMJ. Additionally, Code 20 reviewed a petition for substitution of administrative discharge in accordance with Article 74(b), UCMJ. Code 20 also consolidated Quarterly Criminal Activity Reports from all Navy commands for use in numerous statistical reports and annual reports to various organizations and agencies.

Code 20 provided considerable support in the development of domestic violence policy, guidance, and initiatives. Code 20 continued to support the DOD Prevention of and Coordinated Community Response to Child Abuse and Neglect and Domestic Abuse Integrated Project Team (CAN&DA IPT). The CAN&DA IPT is a DOD-led, all service, multi-subject project team tasked with improving DOD’s prevention and coordinated community response to child abuse and neglect and domestic abuse. Code 20 coordinated with the multi-service legal working group and developed plans to implement 16 legal area initiatives recommended by the CANA&DA IPT Executive Steering Committee. The CAN&DA IPT held its last in-person
meeting on Jan. 12, 2017, and adjourned to wait for the new administration to determine whether it would continue the policy initiatives.

Code 20 continued its efforts to ensure DON compliance with the Sexual Assault Registration and Notification Act (SORNA). SORNA requires military members convicted of qualifying offenses at courts-martial to register as sex offenders in civilian communities in which they reside. To ensure compliance, military authorities are required to notify offenders of registration requirements. In 2014, the U.S. Marshall Service and DOD Inspector General determined that some military sex offenders had not been sentenced to confinement had not been properly notified of their duty to register as sex offenders in their civilian jurisdictions. Code 20 reviewed internal databases and courts-martial records, determined which individuals had not been properly notified, and worked closely with U.S. Marshall’s service and NCIS to ensure that they were properly registered. Furthermore, Code 20 worked closely with NCIS and ASN (M&RA) on DODI 5525.20, which details responsibility for monitoring and notifying military sex offenders and offenders working for DOD or living on military bases. Code 20 currently is working to update instructions from the Secretary of the Navy and the CNO in light of the release of DODI 5525.20.

In accordance with SECNAVINST 5430.27D, Code 20 provided numerous briefing and informational products to the Military Justice Oversight Council, co-chaired by the JAG and the SJA to the CMC, and authored the Report on the State of Military Justice for FY16, which was issued in May 2017. The report included the FY16 annual report of the Navy JAG (CAAF report), which comprises the Navy’s input to the annual report of the Code Committee on Military Justice for the Chief Judge of the CAAF. It also included discussions of Navy-Marine Corps functions overseen by the JAG (Trial Judiciary, Appellate Review Activity, Court of Criminal Appeals, and NJS) and Navy JAG Corps matters, including the performance of NLSC and its subordinate commands, detachments, and branch offices. The report included analysis of current trends and challenges to assist the Secretary of the Navy in his exercise of responsibility for oversight of the military justice system.

With cooperation from Appellate Government Division (Code 46), Code 20 stood up an appellate VWAP position. This VWAP program is modeled after the Army’s Appellate Victim Liaison program. The appellate VWAP program is responsible for monitoring and tracking cases that are under appellate review and notifying victims throughout the process, including providing victims with the final decision of any appellate court or judge advocate review. Victims are given the opportunity to attend hearings and read briefs submitted by the government and defense appellate counsel.

Code 20 provided guidance to the fleet on many of the issues discussed above through the dissemination of numerous Code 20 newsletters and “Sidebars.” Sidebars are timely notices to the entire JAG community that provide critical information on emergent issues for immediate use by military justice attorneys, military judges, SJAs, and legal support staff. The use of these Sidebars has proved especially useful during this period of multiple changes to military justice.

Code 20 also continued to process a significant number of requests for records under FOIA and PA. Code 20 began the period with 32 FOIA requests pending, received 291 new requests,
provided final responses to 319, and finished the period with four pending. Code 20 received 243 PA requests, processed 239, and finished the period with four pending.

2. National Security Litigation (Code 30)

The National Security Litigation Division (Code 30) continued to serve as the JAG’s central point of contact for matters involving classified information and national security cases. Code 30 worked closely with other agencies in the intelligence community, other services, and the DOJ to refine the Navy’s classified litigation practice, facilitate the use of Navy classified information, and coordinate the litigation of high-visibility cases while protecting Navy information. Code 30 also reviewed proposed legislation and regulations pertaining to national security matters and continues to interact with other agencies in the intelligence community on these issues. Code 30 provided extensive investigation and litigation support to commanders, SJAs, trial counsel, and defense counsel. Attorneys from all services sought guidance from Code 30 on classified litigation and national security matters. Litigation support included processing security clearance requests for courts-martial personnel, coordinating requests for classification reviews of evidence, and coordinating the assertion of the classified information privilege under Military Rules of Evidence (MRE) 505, Classified Information Procedures Act, and State Secrets Protection Act. Additionally, Code 30 assisted the DOJ National Security Division on numerous cases involving Navy classified information, often facilitating the use of materials vital to trial, and coordinating contact between the intelligence community, the federal law enforcement community, and DON.

During the reporting period, Code 30 worked on five high-profile cases involving highly classified Navy and defense information. Code 30 drafted State Secret and MRE 505 Declarations for both the Secretary of the Navy and the Secretary of Defense to protect classified information in support of the first national security court-martial in years, a high-profile officer espionage case, and also assisted the Army on numerous occasions in its significant motions practice preparing for United States v. Bergdahl. Code 30 also worked closely with DOD, DOJ, and DOS to address the Federal Republic of Germany’s skepticism about the U.S. court-martial system following a high-level request for assistance in finding a missing witness for a sensitive court-martial. Code 30 also worked closely with NCIS and the FBI to investigate and assess the likelihood of prosecution for a senior Navy Captain accused of passing national command intelligence to members of the Gaddafi family during the Libyan revolution, and of a Sailor accused of passing information to someone he thought was a woman he met online, but actually was a unit of the Iranian Republican Guard Corps. It also supported the DOJ prosecution of Benghazi terror suspect Abu Khattalah.
Code 30 continues to identify and contact owners of classified information, and to draft high-level declarations and affidavits in furtherance of preventing the disclosure of classified information in courts-martial.

Code 30 continued to refine its specialized training on classified information litigation and national security crimes, streamlining the course and updating it to reflect lessons learned from recent espionage cases and to respond to real-world insider threats. Code 30 is preparing to present the latest iteration of its Classified Information Litigation Course in July 2017. Code 30 continued to expand its reach, strengthening ties with the FBI, the DOJ National Security Division, and NCIS, as well as teaching numerous blocks of instruction to counter intelligence Agents at the Joint Counter Intelligence Training Academy and to intelligence lawyers at the Army Intelligence Law Course. Code 30 continues to foster relationships within the intelligence community, the other services, NCIS, and DOJ. This outreach paid significant dividends during the reporting period, bringing awareness of Code 30 mission and capabilities to more clients, who have in turn sought Code 30’s advice and assistance.

Finally, Code 30 maintains an extensive library of resources and templates, including an electronic database, which enhances research capabilities, and a hard-copy library of significant Navy cases containing classified information. These resources informed revisions to the Primer for Litigating Classified Information Cases – the seminal DOD manual for handling such cases, which was updated for the first time since 2008. This document remains a valuable resource for attorneys involved in litigating cases involving classified information.

3. Appellate Defense (Code 45)

The Appellate Defense Division (Code 45) represents Sailors and Marines before the NMCCA, CAAF, and the U.S. Supreme Court. All counsel in Code 45 research and draft briefs, file various pleadings, and present oral argument before the aforementioned courts. Counsel also sometimes represent clients before the Naval Clemency and Parole Board.

During the reporting period, Code 45 filed initial pleadings in 322 cases, including 114 briefs, and orally argued seven cases at NMCCA. Code 45 petitioned 52 cases to CAAF, obtaining 17 grants of review. It orally argued five of these cases before CAAF this term. Code 45 filed two petitions for writs of certiorari with the U.S. Supreme Court.

In addition to providing appellate representation, Code 45 provides training and assistance to trial defense counsel to improve the quality of defense representation throughout the Navy and Marine Corps. Code 45’s experienced appellate defense attorneys trained trial defense attorneys during region-wide and unit-level training on a variety of topics, including the effective preservation of issues, use of extraordinary writs, and recent case law. This interaction improved the quality of practice and strengthened the link between trial defense and appellate defense counsel.

Code 45 continued its internal training program for appellate attorneys, including inviting an expert in appellate advocacy to conduct in-house training for Code 45 personnel. Code 45 also
maintained a rigorous three-tiered moot court program that leveraged the expertise of Code 45’s attorneys to enhance performance at oral argument.

Code 45 successfully litigated many notable issues this year. Some of these included the legality of a government search of defense counsel spaces, alleged unlawful command influence by senior Navy and Marine Corps leadership, the recusal of appellate court judges based on apparent conflict of interest, and the scope of military jurisdiction that may be applied to a retired service member.

Code 45 also litigated significant cases on military justice procedure. These included multiple cases related to improper instructions by the military judge regarding the reasonable doubt standard, the scope and effect of Article 25, UCMJ, in selecting courts-martial members, the negative implications of prosecutorial misconduct, the necessity of allowing defense counsel access to and comment on all evidence introduced against a defendant, and the ability of victims and VLC to seek redress via the appellate process. This successful litigation resulted in overturned convictions and sentences in a number of cases, and had wide-ranging implications for the future administration of military justice.

4. Appellate Government (Code 46)

The Appellate Government Division (Code 46) represents the U.S. before the NMCCA and the CAAF. Code 46 determines which courts-martial rulings merit interlocutory appeal to NMCCA, requests JAG certification of cases for appeal on behalf of the U.S. to CAAF, and works with DOJ on appeals before the U.S. Supreme Court. Code 46 attorneys, the Deputy Director, and Director prepare briefs, answers, appeals, and other government filings, and represent the U.S. in oral arguments before these courts.

Code 46 filed approximately 163 briefs, answers, and extraordinary writs before the NMCCA and CAAF, conducted 14 oral arguments, and filed approximately 648 pleadings. The increasing complexity of military justice legal issues continues to impact appellate litigation, with increasing use of extraordinary writ practice to resolve issues in an interlocutory setting rather than at direct review. Litigated issues included: conflicts of interest and the Strickland test; incorrect staff judge advocate advice linked to changes in Article 60, UCMJ; ambiguous findings, inconsistent verdicts, facts underlying “not guilty” findings, and the Double Jeopardy Clause; whether Article 120(b)(2), UCMJ, creates three theories of liability; prosecutorial misconduct; what constitutes “systematic exclusion of court-martial members” under Article 25, UCMJ; erroneous vacation hearings; the scope of search authorizations; jurisdiction over retirees; pretrial confinement credit; probable cause to apprehend; whether sending a digital image to an adult constitutes indecent exposure; unlawful command influence; and, whether CAAF had jurisdiction over Article 6b, UCMJ, victim writ-appeals. Additionally, Code 46 contributed heavily to the Solicitor General’s answer to two U.S. Supreme Court petitions.

In addition to its standard caseload, Code 46 pursued initiatives to: (1) ensure victims are apprised of the status of appeals; (2) facilitate communication between trial and appellate counsel; (3) promote consistency and streamlining of appellate litigation by collaborating with
other services’ appellate divisions; and (4) encourage the appellate-proofing of courts-martial convictions and professionalism of the appellate bar through training and outreach initiatives.

Code 46 worked with Code 20 to formalize victim notification procedures and ensure victims are given timely notification of case resolution after appeal in Navy and Marine cases. Additionally, record protection, in the interests of victim-witness privacy and institutional security, continues to be a practice priority. Through motions practice, Code 46 limited the publication and use of personally identifiable information, privileged mental health information, and other sensitive victim-witness information as the Navy began its pilot program to publish appellate pleadings on the Navy JAG community public website.

Improved communication with trial practitioners enhanced the practice of law at all levels, and continues to be a priority. In coordination with both Navy and Marine TCAPs, Code 46 responds to frequent trial and appellate questions from Navy and Marine Corps judge advocates worldwide. Code 46 has conducted outreach, appellate updates, and appellate-proofing training to Marine and Navy trial counsel on several occasions. Code 46 sent practice advisories to trial counsel with practice points and key case updates, and supplemented these efforts to promote real-time, worldwide collaboration between counsel – trial and appellate, active and Reserve – through an in-depth military justice blog, discussion board, and military justice wiki. Code 46 published a new Article 62, UCMJ, appeals packet to assist trial counsel in timely recognition of and preparation for possible government appeals. It provides direct support to trial counsel in cases that are remanded to ensure continuity of the U.S. position through appeal and remand, as appropriate.

Over the past four years, Code 46 has directly shared its litigation efforts, including searchable pleadings, with Navy and Marine Corps trial counsel. This collaborative online project, ongoing since 2009, allows for instant, worldwide collaboration on interlocutory appeals, petitions for extraordinary relief, and remands. Additionally, this tool facilitates trial counsel motion practice by use of appellate-proof pre-written pleadings from Code 46’s searchable online office.

Code 46 continued coordination with other service’s appellate divisions to enhance the practice of appellate litigation through collaborative practices, including shared case and brief documents, on its SharePoint site. Code 46 continued to participate in the Joint Appellate Government Directors’ Meetings with other services, fostering discussions on common concerns and encouraging consistent government positions before military appellate courts, as well as identifying matters of mutual interest such as victim-witness issues. Frequently, these interactions resulted in amicus briefs in support of other services’ appellate litigation, and amicus briefs filed in support of the Navy-Marine litigation position. Additionally, Code 46 was asked to assist the Coast Guard Appellate Government Division in brief and oral argument preparation, further enhancing the relationship between other services’ appellate divisions.

Code 46 organized the highly successful Fourth Annual Joint Appellate Advocacy Training (JAAT), held at Joint Base Myer-Henderson Hall Sept. 13-15, 2016. A Joint Services Steering Committee was created to guide the training. The Steering Committee was chaired by the Deputy Director at Code 46, with a seat for each services’ appellate defense, government, and
victims counsel communities, and a seat for the Appellate Judges' Education Institute. JAAT was attended by nearly 100 judge advocates from across the globe and from every military branch. Speakers included: Judge Scott W. Stucky of the CAAF; Mr. Curtis Gannon, assistant to the Solicitor General, DOJ; Mr. Russell Butler, executive director, Maryland Crime Victim's Resource Center; Mr. Nathan Freed Wessler, staff attorney, Speech, Privacy and Technology Project, American Civil Liberties Union; Nathan Judish, senior counsel, Computer Crime and Intellectual Property Section, DOJ; Mr. Jerrold J. Ganzfried, partner, Holland & Knight; Ms. Elizabeth Francis, legal advisor, Professional Responsibility Advisory Office; a panel of organizations with experience in working with Amici including Sidley Austin LLP and Americans United for Separation of Church and State; as well as breakout sessions led by senior appellate counsel from Code 46 and other appellate divisions. Code 46 counsel also attended advanced appellate training at the annual Appellate Judges' Education Institute, and CAAF's Continuing Legal Education and Training Program.

Finally, Code 46 improved transparency in the military justice system. Working with the NMCCA, appellate pleadings relevant to oral arguments were redacted in cooperation with Code 20 and Code 45, and published online for public access. Code 46 conducted the first VLC Appellate Training for Navy and Marine Corps victims counsel in 2016, and has continued communication with VLC counsel to help bring the VLC quickly into the appellate litigation community. Code 46 also worked to finalize a Manual for the JAG with a section that formalizes records retention and handling during and after appellate review. Code 46 counsel instructed at the following events and courses: Sexual Assault Policy for SJAs, Prosecuting Alcohol-facilitated Sexual Assault and Special Victim Cases; Special Victim Capability; Marine Defense Services Organization annual conference; Reserve Appellate Training; and the Navy TCAP/NJS’s Senior Managers’ Course. Code 46 also was invited to and participated as appellate judges in civilian moot court competitions including the ABA’s National Appellate Advocacy Competition in DC and attended civilian-sponsored training.

C. Judiciary (Code 05)

1. Navy-Marine Corps Court of Criminal Appeals (Code 51)

The NMCCA (Code 51) entered the year staffed with seven active-duty judges, currently sits at seven and is expected to increase to eight for the remainder of the calendar year. The current billet structure calls for five active-duty Navy appellate judges and three active-duty Marine Corps appellate judges. The active-duty judges are augmented by nine Reserve appellate judges: six Navy officers and three Marine Corps officers. Throughout the year, the court steadily kept pace with docketing.

The NMCCA’s formal law clerk program was initiated as a pilot program in 2006. In the past, two law clerks were assigned to each panel of the court, and typically stayed six to 12 months. Due to manning challenges, that number was reduced to one law clerk per panel this year. The program has graduated 38 Navy and three Marine Corps judge advocates who were then reassigned as appellate government or appellate defense counsel. A number of them have subsequently rotated back to field and fleet billets. As the court transitions to one clerk per panel,
the court anticipates that those clerks will remain at NMCCA as judicial clerks for a full two years.

The NMCCA decided 351 cases during the reporting period. Those decisions addressed a wide array of complex and interesting legal issues, including:

- Whether the military judge’s instruction on aggravated assault that “the risk of death or grievous bodily harm must be more than merely a fanciful, speculative, or remote possibility” was a prejudicial error since, weeks before trial in United States v. Gutierrez, 74 M.J. 61, 68 (C.A.A.F. 2015), CAAF expressly overruled United States v. Joseph, 37 M.J. 392 (C.M.A. 1993), which formed much of the basis for the subject instruction. (Rodriguez)

- Whether the appellant received the effective assistance of counsel in his post-trial representation where detailed defense counsel specifically limited the appellant’s requested clemency request due to a misunderstanding of the convening authority’s clemency powers. (Giacinti)

- Whether the appellant received the effective assistance of counsel in his post-trial representation where detailed defense counsel requested relief outside the authority of the convening authority to grant. (Johnson)

- Whether for the offense of indecent exposure under Article 120c(c), UCMJ, the term “exposes” encompasses the electronic transmission of a photograph or digital image of one’s genitalia to another person. (Uriostegui)

- Whether where members, without explanation, found the appellant guilty of larceny of an amount less than the amount charged by the government violated the Double Jeopardy Clause, render impossible our ability to determine which incident the appellant was found guilty or not guilty of, and the vague verdict precludes the court’s ability to conduct a factual sufficiency review. (Peterson)

- Whether adultery under the UCMJ unconstitutionally imposes criminal liability and punishment for only heterosexual service members. (Williams)

- Whether pursuant to a petition for extraordinary relief in the nature of a writ of error coram nobis, the court should retroactively apply United States v. Jones, 68 M.J. 465 (C.A.A.F. 2010), which requires the use of the elements test to determine whether one offense is a lesser included offense (LIO) of another, to a 2001 conviction for indecent assault as an LIO of rape, setting it aside and substituting the permissible LIO of assault consummated by a battery. (Diggs)

- Whether Congress’ statement in 10 U.S.C. § 6332 that the transfer of a member of the naval service to a retired status “is conclusive for all purposes” precludes the issuance of a punitive discharge to a retiree. (Dinger)
• Whether a dishonorable discharge is a mandatory sentence for an Article 80, UCMJ, conviction involving an attempted violation of Article 120b(b), UCMJ. (Henegar)

• Whether an accused’s representation was adversely affected by an actual conflict of interest and his convictions should be set aside under Cuyler v. Sullivan, 446 U.S. 335 (1980), where, inter alia, the lead defense counsel failed to inform her client that the prosecutor was the rating officer of her active-duty husband and that she anticipated that she would become a trial counsel within the region soon after the accused’s trial. (Hale)

• Whether the convening authority violated Article 60, UCMJ, by disapproving the appellant’s adjudged bad-conduct discharge when a pretrial agreement required only that he suspend and remit any adjudged discharge. (Kruse)

• Whether a military judge erroneously suppressed the appellee’s wife’s statements within 911 recordings where all the circumstances objectively indicate that the primary purpose of was not to create a substitute for trial testimony and therefore, as non-testimonial hearsay for which the military judge has already determined an evidentiary hearsay exception applied, the 911 recordings were admissible. (Perkins; Art. 62 Appeal)

• Whether a command-authorized search of the defense counsel offices amounted to unlawful command influence and prosecutorial misconduct, and whether the military judge violated the appellant’s right to counsel under the Sixth Amendment to the Constitution by disqualifying his original trial defense counsel and compelling them to testify against him at trial. (Betancourt)

• Whether the military judge abused his discretion in failing to eradicate apparent unlawful command influence from the appellant’s trial in view of (1) the Commandant of the Marine Corps having made comments regarding the guilt of those accused of sexual assault during a series of lectures known as the Heritage Brief; (2) President Obama’s comments regarding holding people accused of sexual assault accountable; (3) the Secretary of the Navy’s comments regarding the Naval Academy failing to hold persons who commit sexual assault accountable; (4) the Superintendent of the Naval Academy’s comment that he felt a “call to action” in dealing with sexual assault cases; and (5) the substantial pretrial publicity surrounding the appellant’s case. (Thompson; Art. 69 Review)

• Whether the convening authority abused his discretion in denying a request for rehearing despite his doubts about the fairness and integrity of the court-martial and whether the military judge committed reversible error by restricting the appellant’s allocution rights. (Barry)

The NMCCA currently has pending a number of petitions for Extraordinary Relief filed by counsel representing victims at ongoing courts-martial related to rulings by military judges on the application of Military Rules of Evidence 412 (victim’s sexual behavior or predisposition) and 513 (psychotherapist-patient privilege). The NMCCA’s processing times for docketed cases
remain within the guidelines established by United States v. Moreno, 63 M.J. 129 (C.A.A.F. 2006).

The following chart indicates the total cases pending appellate review:

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<tr>
<th>Total Number of Cases Pending Appellate Review</th>
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<tr>
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<tr>
<td><strong>Appellate Defense – Brief not yet filed</strong></td>
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<tr>
<td>89 84 56 87 68</td>
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<tr>
<td><strong>Appellate Government - Answer not yet filed</strong></td>
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<tr>
<td>27 20 27 17 21</td>
</tr>
<tr>
<td><strong>NMCCA - All pleadings filed</strong></td>
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<tr>
<td>32 95 63 58 60</td>
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<tr>
<td><strong>Total Pending Review</strong></td>
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<td>148 199 146 162 149</td>
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The NMCCA heard seven oral arguments and posted audio from those oral arguments on the Navy JAG community public website.

The court submits all published, authored, and per curiam decisions to West Publishing and LEXIS. These decisions also are posted on the Navy JAG community public website.

The court hosted its six annual NMCCA Judicial Training Course in October 2016. The training focused on changes to the UCMJ proposed in the FY17 NDAA. Featured speakers included a member of the Office of General Counsel of the DOD, a forensic psychiatrist at the Walter Reed National Military Medical Center, and a representative of the Office of Bar Counsel of DC. The NMCCA also attended the annual Fulton Appellate Judges’ Conference, which was attended by the judges and legal staffs from all four service courts and hosted by the Army JAG. Presentations included a year in review of the U.S. Supreme Court’s criminal law decisions, the contributions of the Nuremberg Trials to international law, and how to operationalize lessons from Nuremberg to teach the Law of Armed Conflict to non-attorney service members.

2. Navy and Marine Corps Trial Judiciary (Code 52)

The Navy-Marine Corps Trial Judiciary (NMCTJ) (Code 52) is organized into eight regional judicial circuits, with 12 active-duty Marine Corps judges and 12 active-duty Navy judges. Active-duty trial judges are stationed around the world, typically in fleet and Marine force concentration areas, and travel as required to conduct trials. The active-duty judiciary is supported by both Navy and Marine Corps Reserve trial judge units.

The trial judiciary continues to preside over a docket increasingly composed of complex contested cases. In particular, contested sexual assault cases make up a large percentage of the NMCTJ’s case load. Managing such cases requires the trial judiciary to routinely preside over a
robust and challenging motions practice. The number of motions filed by VLC also continues to increase.

The number of misdemeanor-level cases (SPCMs) continues to make up a smaller percentage of total cases. While trial judges now preside over somewhat fewer cases in the aggregate, they spend roughly as much time in court in lengthy pretrial motions sessions and in fully contested trials as they did in previous years, when the docket was composed largely of uncontested SPCMs.

In August 2016, the NMCTJ hosted a Special Victims Seminar in Washington, DC, at the Washington Navy Yard attended by more than 40 active-duty and Reserve trial judges. The seminar focus included child sexual assaults.

In February 2017, the NMCTJ hosted the Joint Military Judges’ Annual Training at MacDill Air Force Base in Tampa, FL. More than 110 military judges from the five uniformed services attended the three-day seminar, which included lectures from civilian and government legal experts in evidence, discovery, emerging issues in criminal and procedural law, and changes to the law enacted by the Military Justice Act of 2016.

Finally, three judges are assigned to serve the Office of Military Commissions Trial Judiciary, as needed, to preside over cases at Guantanamo Bay, Cuba. Of those three judges, one is currently detailed to a case and occasionally travels to Guantanamo Bay for ongoing pretrial motions.

3. Military Justice Litigation Career Track (MJLCT)

The Military Justice Litigation Career Track (MJLCT), instituted in May 2007, was designed to identify, develop, and retain judge advocates with significant military justice knowledge and litigation skills. In 2016, the Navy is reaping the benefits of this 10-year-old initiative. By instruction, 63 positions within NLSC and OJAG are designated as “track billets.” Currently, 59 of those 63 billets are filled by designated track officers.

A key aspect of the litigation career track is cultivating senior litigators who can assume leadership positions and then supervise and mentor junior officers. Officers selected for the track in 2007 and 2008 as junior officers have matured into senior officers, providing an extraordinary nucleus of litigation expertise. Currently, track officers fill these critical assignments, among others:

- **TCAP Director/Deputy Director and DCAP Director/Deputy Director**: Created in 2010, TCAP and DCAP provide training to trial and defense counsel worldwide, both in established courses and in mobile-targeted training that responds to emergent issues in a particular circuit. Equally important, TCAP and DCAP provide real-time assistance in individual trials and vital reach-back resources for litigators throughout the enterprise. A critical aspect of the MJLCT, both TCAP and DCAP are staffed by officers recognized as the best and brightest among MJLCT officers.
• **Senior Trial Counsel (STC)/Assistant Senior Trial Counsel/Officers-in-Charge (OIC):** At all nine prosecution commands, the senior trial counsel is a track officer. At the three largest commands, there are at least two other MJLCT officers as well, serving as assistant senior trial counsel or officers-in-charge.

• **Senior Defense Counsel (SDC):** At all four defense commands, the senior defense counsel is an MJLCT officer. Each command has at least one other track officer as well.

• **VLC:** MJLCT officers serve in leadership positions on the East and West Coast, assisting VLC on the growing appellate practice.

• **Military Judge:** Of the Navy's 13 military judges, 12 are MJLCT officers. Those 12 judges all have extensive experience in the courtroom, both as litigators themselves and as supervisory counsel (e.g., STC, SDC, OIC, executive officer, and commanding officer of defense and prosecution commands).

**D. Operations and Management (Code 06)**

1. **Personnel Support and Program Administration (Code 60)**

   The Personnel Support and Program Administration Division (Code 60) provided administrative support and oversight to 14 Echelon Three commands in a variety of areas, including command indoctrination and sponsorship, disaster preparedness and family accountability, medical and dental readiness, Command Individual Augmentee Coordinator reporting, and safety readiness reporting.

   Code 60 is responsible for reporting the status of Service Treatment Records (STR) to the Bureau of Medicine (BUMED) for OJAG and NLSC military personnel who are retiring or separating. The STR report is submitted quarterly and captures the status of OJAG headquarters’ and NLSC’s 14 Echelon Three commands’ medical and dental records. Code 60 also provided guidance, coordination, and oversight to the ombudsman program for OJAG and NLSC.

   Code 60 was responsible for OJAG’s internal mail program. The command pass coordinator, also located in Code 60, liaised with the Military Personnel Division and was responsible for submission of personnel packages, which includes retirement packages, overseas screening packages, page two updates, and transfer packages. The Division Director continued to be the command climate specialist for NLSC and provided Military Equal Opportunity Program oversight to and accountability for 14 Echelon Three commands and one Echelon Two command (NLSC). Code 60’s Division Director was also the OJAG Records Manager, implementing and supporting the OJAG records management program.

   The Division Director continued to act as the security manager for OJAG and NLSC, managing the command security program, providing oversight and guidance to JAG Consolidated Administrative Business Office’s (JCAB) security staff and 14 Echelon Three commands. The Division Director coordinated clearing of all civilian defense counsel and civilian witnesses participating in legal proceedings that include classified material.
The Division Director provided security guidance on legal proceedings that involve classified material to include areas such as the closing of courtrooms for classified hearings, handling and storage of classified material during proceedings, and confirming all personnel involved in proceedings are cleared at the appropriate level.

2. Military Personnel (Code 61)

The Military Personnel Division (Code 61) continued to manage the recruitment of Navy judge advocates, implementing the JAG’s inclusion and diversity initiatives, and conducting military manpower management and planning.

During the reporting period, Code 61 managed the recruiting program for Navy JAG community headquarters and NLSC commands. Navy JAG Corps recruiting personnel made contact with every ABA-accredited law school and attended regional and national diversity legal job fairs, conferences, and conventions, including events sponsored by the National Bar Association, the National Black Law Students Association, the Hispanic National Bar Association, the National Latino/a Law Students Association, the National Asian Pacific American Bar Association, the National Asian Pacific American Law Students Association, the South Asian Bar Association of North America, the Federal Bar Association’s Indian Law Section, the National Native American Law Students Association, the National Conference of Women’s Bar Associations, and the National LGBT Bar Association. Additionally, the Navy JAG community launched the innovative Diversity Liaison Program, in which exceptional Navy judge advocates are assigned to act as sustained partners with national and student diversity organizations in an effort to encourage increased, substantive, and more open communication between the Navy JAG community and these organizations, and increased and more valuable interactions with community leaders and potential applicants. Recruiting focus areas included the highly successful Navy JAG community internship/externship program, pre-law and pipeline programs, and student loan repayment initiatives.

The Navy JAG Corps’ Student Program (for second- and third-year law students at ABA-accredited schools) and Direct Appointment Program (for licensed attorneys with a Juris Doctor from an ABA-accredited school) continued to be the primary sources of officer accessions in the Navy JAG Corps. The JAG Corps received 702 applications in FY17.

Candidates’ online applications and in-person interviews are evaluated using a whole-person standard, and selected through a process designed to foster thoughtful consideration of individual circumstances and ensure selection of a diverse team of highly qualified applicants.

The remaining officers accessed into the community were selected through the Law Education Program (LEP) and the In-Service Procurement Program (JAGC IPP). The LEP provides the Navy JAG Corps with a cadre of lawyers who already possess experience as naval officers. Officers who transition to the JAG Corps via LEP are chosen by a competitive selection board and receive a fully-funded law school education. The JAGC IPP provides a similar opportunity for a fully-funded law school education with follow-on service as a Navy judge advocate to active-duty Navy enlisted personnel, who possess a bachelor’s degree. The
first fully-funded IPP selectee will graduate from law school in 2017 and is expected to commission as a judge advocate in October 2017.

The chart below reflects the number of officers who were selected for accession into the Navy JAG Corps in FY17.

![Selections for Accession into the Navy JAG Corps](image)

Internal studies show that while Navy Judge Advocate Continuation Pay (JACP) remains a powerful incentive program to address high student loan debt, and the only Navy JAG Corps incentive pay program, Navy judge advocates are increasingly taking advantage of the debt management options under the College Cost Reduction Act and are relying heavily on Public Service Loan Forgiveness student loan relief after 10 years of qualifying payments while serving on active duty. The average student loan debt for new accessions to the JAG Corps is more than $150,000. Student loan debt for all junior officers (generally within their first six years of practice) in the JAG Corps averages nearly $130,000.

The Navy JAG community also continued to provide opportunities for eligible officers to pursue fully funded, mid-career post-graduate education to support specific Navy requirements. In the 2016-17 academic year, 17 officers obtained Masters of Law degrees in critical practice areas, including environmental law, international and national security law (including cyber law), and advanced trial advocacy. This was possible only through agreements with over 15 ABA-accredited civilian institutions throughout the country, as well as the Army JAG’s Legal Center and School co-located with the University of Virginia School of Law in Charlottesville, VA, and the Naval War College in Newport, RI.

Code 61, in its other primary capacity, assisted JAG community leadership in evaluating the manpower necessary to meet current and future mission requirements. The following chart illustrates the military rank distribution of active-duty judge advocates as of April 2017.
In addition to Navy JAG’s three core lines of operation – military justice, operational law and command advice, and legal assistance – active-duty judge advocates supported multiple other congressionally mandated missions. Four active-duty judge advocates remain deployed in direct support of operational forces, including Afghanistan, Guantanamo Bay, the Horn of Africa, and Bahrain. Twelve active-duty judge advocates and 22 active-duty Legalmen, in addition to Navy Reserve personnel, support the Office of Military Commissions (OMC) as trial counsel, defense counsel, commission clerks, or paralegal support. During the past year, 24 judge advocates were specially trained and certified to serve as VLC in support of sexual assault victims during court proceedings. Two active-duty judge advocates and one Marine Reservist provide direct support to wounded warriors through DES proceedings.

3. Reserve and Retired Affairs (Code 62/001R)

The Navy Reserve Law Program (NRLP) (Code 62/001R) continued to be a force multiplier in support of our legal mission. Each Reservist provided a minimum of 38 days of support per year, but many serve for longer periods in order to support contingency operations, national emergencies, and additional requirements.

Leadership of NRLP changed hands in October 2016. Rear Admiral Janet Donovan retired after nearly 31 years of service, leaving the program with Rear Admiral Carol Lynch. Since taking the helm of NRLP, Rear Admiral Lynch has conducted a listening tour by visiting five of the six Reserve Component Command regions within the U.S., including a visit to Naval Station Guantanamo Bay, where she engaged with judge advocates and Legalmen at each location. Additionally, in her role as Deputy CNLSC, Rear Admiral Lynch made time to visit each of the
active component Naval Legal Service Command field offices in each region. She also visited Navy Operational Support Centers at Pensacola, FL, and Green Bay, WI, for whom she serves as flag mentor. Rear Admiral Lynch also conducted Military Law Training Symposia on both east and west coasts of the U.S., a Legalman Training Symposium, as well as training for new Reserve JAG Corps accessions.

The change of designator program implemented by the NRLP in FY14 continues to pay dividends, with numerous experienced attorneys joining the ranks of the Reserve JAG Corps. The goal of the program is to leverage the unique expertise and civilian skills of our Reservists to enhance future mission readiness. These officers have brought a wealth of military experience and civilian legal expertise to the Reserve JAG Corps. The NRLP also implemented an Enlisted Direct Commission Officer program in FY17 and is just beginning to screen its first applicants. This program seeks to recruit Navy enlisted personnel who are licensed attorneys to serve as Reserve judge advocates. The goal of both these accessions programs is to grow the ranks of the NRLP as the demand for flexible operational support and a ready mobilization pool of uniformed attorneys has not waned.

Since September 11, 2001, Reserve judge advocates and Legalmen have performed more than 550 deployments as individual augmentees to military operations in Afghanistan, Iraq, Kuwait, Guanánamo Bay, the Horn of Africa, and Bahrain. Currently, 13 Reserve judge advocates and 11 Reserve Legalmen are deployed, and another 35 Reserve judge advocates and Legalmen are on long-term active-duty “Recall” or “Active-Duty for Special Work” assignments.

Members of the Navy Reserve judge advocate community provide significant support to the OMC, working in both the defense and prosecution organizations. The NRLP continues to provide 13 officers and Legalmen to OMC, many of whom are mobilized on long-term active-duty. The depth of litigation experience resident in the Reserve legal community lends itself to these high-visibility cases.

Additional highlights of contributions the NRLP provided throughout the fleet during this past year:

- Navy Reserve RLSO Japan legal unit received the 2016 Rear Admiral Hugh H. Howell Jr. Award for Excellence for Best Unit, West Coast, for providing maximum contributory support to the RLSO Japan area of responsibility across the entire spectrum of the RLSO mission-set including command services, military justice, and legal assistance.

- Navy Reserve U.S. Fifth Fleet legal unit received the 2016 Rear Admiral Hugh H. Howell Jr. Award for Best Unit, East Coast for providing maximum contributory support to the Fifth Fleet area of responsibility and the continuing excellent partnership with the active component judge advocates providing legal advice to these busy commanders.

- Captain Charles Passaglia was awarded the Judge Advocates Association’s 2017 Outstanding Career Armed Service Attorney for his nearly 28 years of dedicated active-duty and Reserve service, outstanding professionalism and mentorship as a senior leader in the Reserve Law Program and providing legal services within the U.S. armed forces.
• Senior Reserve judge advocates provided continuity of legal support to the Board for Correction of Naval Records, an administrative board charged to ensure active-duty and veteran Navy service members have a forum in which any discrepancies in naval service records can be formally addressed.

• The Preliminary Hearing Officer unit stood up by NRLP in 2016 to provide qualified officers to active-duty and Reserve units in the fleet for hearings under Article 32, UCMJ, was met with overwhelming demand. The unit consisted of five senior officers who have decades of experience in military justice and are also qualified to serve or have served as military judges. Hearing officers take evidence and witness testimony and then make recommendations to convening authorities for whether a case should be referred to a court-martial or other disciplinary forum. Given the clear demand signal, NRLP may look to expanding the available number of hearing officers in the future.

• A senior Reserve judge advocate was nominated to be the next General Counsel of the Navy.

4. Fiscal and Resource Services Support (Code 64)

The Fiscal and Resource Services Support Division (Code 64) continued to formulate and execute the budget and provide management support for the procurement of equipment, supplies, training, and services. The Comptroller serves as a special assistant to the JAG, and it maintained responsibility for financial management and related operations.

FY17 has been a challenging year as budget cuts impacted mission lines of operation. The command operated most of the fiscal year under a continuing resolution for more than seven months. A hiring freeze also impacted the staffing of critical new positions for FY17. All aspects of the NLSC organization were affected: a significant slowdown in providing required facility security upgrades; a reduction in professional training; and decreased mission-essential travel. Throughout the year, travel and training were significantly reduced in an attempt to conserve funds. NLSC continues to maintain essential travel associated with the provision of legal assistance services to Sailors and their families. Travel for courts-martial continues to be funded by convening authorities. Congress authorized supplemental SAPR funding for NLSC training and equipment upgrades; however, the allocation coming late in the fiscal year led to executability challenges.

Finally, the DOD’s Financial Improvement and Audit Readiness (FIAR) initiative is ongoing, and the Comptroller Division continues to expend significant time and effort on FIAR. DOD first issued FIAR guidance in 2005. FY10 NDAA implemented the DOD-wide plan for achieving FIAR objectives. NLSC is prepared to support DOD’s submission of a clean audit opinion in FY18.
5. Civilian Personnel Management Services (Code 66)

The Civilian Personnel Management Services Division (Code 66) continued to provide advisory and technical guidance in the areas of position classifications, recruitment actions, managed civilian tuition reimbursement and assistance requests, managed numerous civilian recognition awards, administered civilian training, and worked with Code 64 to disburse the allocations for incentive award monies throughout OJAG and NLSC. The past year has been successful, but not without minor challenges. While the Division Director was vacant from March to October 2016, two new civilian employees were hired between August and October 2016, along with the reporting of the new Division Director.

Even after additional shifts in manning, Code 66 oversaw the migration to the new DOD Performance Management Appraisal Program (DPMAP) to include ensuring DPMAP training was coordinated for all civilians and supervisors (including military who supervise civilians).

Code 66 played an integral role in command initiatives, such as the Indoctrination process and planning board for training. A continued involvement in these efforts allotted the opportunity to rebuild, reintroduce, and re-engage civilian-focused programs.


The Technology, Operations, and Plans Division (Code 67) is working to unify the three systems in JAG Case Management Tracking Information System; Claims and FOIA Management System; and the JAG Personnel System into a single system named the JAG Enterprise System (JES). This merger will streamline system oversight and provide more transparency under DOD system reporting requirements. Code 67 is working with our parent agency, DON Assistant for Administration, to integrate smaller databases into the newly merged JES system as new modules. Code 67 also is working with the DON Chief of Information Office to migrate the NJS’s educational network away from Training Network managed by the Naval Education & Training Command to a cloud-based solution that includes supporting wireless bring-your-own-device capabilities internally managed by the NJS.

Code 67 is involved in the critical effort to transition the Navy and Marine Corps to a new incident-based tracking system, the Naval Justice Information System (NJIS). The development of NJIS was announced to the field in August 2014. By transitioning to NJIS, the DON is creating a system to track incidents from initial report to final disposition. OJAG is responsible for creating the Victim Legal Counsel (VLC), the Legal Assistance (LA), and Judicial Action (JA) sections of NJIS, and for assisting in the development of the Command Action (CMDA) section. The CMDA section will track the incident through the command of an accused resulting in either no action, administrative action, or judicial action. If a judicial action is the outcome, the incident will become a military justice case within the JA section with charges preferred and potentially referred to courts-martial. At the completion of a court-martial, cases will be tracked until final disposition either at the local level or through the appellate review process. The VLC section will allow all Victim Legal Counsel to track support provided to qualified victims of
certain crimes. The LA section will track legal assistance services provided to service members and their families. The JA module will meet the congressionally-mandated requirement to implement a common military justice case tracking system for both the Navy and Marine Corps.

As a new software program, NJIS has suffered delays, first in development and most recently, in implementation. The causes for these delays are many, they generally derive from adapting the technology to the law enforcement and military justice data requirements of the services. System testing continues to date, with a phased roll-out tentatively scheduled during the fall of 2017.

Section 5504 of the FY17 NDAA adds Article 140a to the UCMJ, and directs the Services to adopt uniform military justice data collection standards and to increase military justice transparency. Article 140a directs the following timelines: (a) DoD shall execute the requirements of Article 140a no later than 2 years after enactment of the FY17 NDAA, i.e. December 2018; and uniform standards and criteria for military justice reporting shall take effect no later than 4 years after enactment, i.e. December 2020. In an effort to meet these deadlines, the Acting DoD General Counsel directed the JSC to develop a plan for the implementation of Article 140a, in consultation with Defense Digital Services.

7. JAG Consolidated Administrative Business Office (JCAB)

The JAG Consolidated Business (JCAB) Office is located in Bremerton, WA. JCAB continued to provide centralized administrative services to OJAG and NLSC worldwide. That includes administering the government travel program, including Defense Travel System, government travel credit card, and foreign travel clearance. JCAB also provided micro purchases for supplies and services; contract administration; and anti-terrorism program and personnel security to 85 commands, detachments, and branch offices. JCAB continued to employ a small, highly experienced cadre of subject matter experts to provide services to the enterprise.

E. Naval Justice School (NJS)

NJS is headquartered in Newport, RI, with teaching detachments in San Diego, CA, and Norfolk, VA, and a branch office in Charlottesville, VA. NJS maintains responsibility for the formal training and education of Navy, Marine Corps, and Coast Guard judge advocates, enlisted, and civilian legal personnel to ensure career-long professional development and readiness. Additionally, NJS executed formal legal training and education for commanding and executive officers, senior officers, legal clerks and legal officers, and senior enlisted leaders on the administration of military justice, administrative law, standards of conduct, and operational law.

The NJS Education Program specialist continued to oversee all aspects of curriculum and instructor development, to include shifting from instructor-centered training to learner-centric facilitation and emphasizing self-directed learning and accountability for class preparation. This shift allows for deeper learning through increased small group instruction and practical application and scheduled time for cognitive processing of complex material. NJS introduced a required three-week instructor training course prior to all detailed personnel assuming instructor duties in the classroom. Instructor professional development was furthered by a two-day Law
Teaching and Learning Workshop run by Dean Michael Schwartz of the University of the Pacific, McGeorge School of Law and Professor Lindsey Gustafson of the University of Arkansas, William H. Bowen School of Law. In this workshop, officer, enlisted, and civilian instructors specifically applied the science of adult learning to effectively teaching legal concepts. The 2016 addition of the Education Program specialist has enabled NJS to streamline establishment of the fleet’s legal training requirement and develop a curriculum and course material to meet that need and ensure the best training for legal professionals and line officers across that Navy, Marine Corps, and Coast Guard.

All Navy, Marine Corps, and Coast Guard judge advocate accession students received instruction and practice on the fundamentals of military law at the Basic Lawyer Course (BLC). During the reporting period, NJS executed three BLC classes, graduating 150 new Navy, Marine Corps, and Coast Guard judge advocates. The 10-week BLC included training in legal assistance, administrative law, military justice, trial advocacy skills, and international and operational law. The capstone exercise of the BLC continues to be a mock sexual assault trial that students prosecute or defend from investigation through a fully contested court-martial. This model of experiential learning serves to provide judge advocates with the foundational skills to support the military commander’s good order and discipline mission.

NJS delivered foundational training for all Navy paralegals in the Legalman Accession Course (LNA), executing three courses with 56 Legalman graduates in the reporting period and another 21 students scheduled to graduate in August 2017. The LNA is taught by enlisted paralegal instructors and officer judge advocate instructors that Roger Williams University recognizes as fulfilling the role of adjunct faculty. The first five weeks of the LNA curriculum cover military-specific topics to prepare students for their first tour as Legalman. LNA students receive 10 ABA-approved credit hours toward a paralegal degree for four courses completed in the last six weeks of accession training, to include Legal Ethics, Introduction to Law, Emerging Technologies, and Legal Research and Writing I. Additionally, NJS provides foundational training for all legal service specialists in the Marine Corps with the 11-week Legal Services Specialist Course (LSSC). The LSSC delivered accession-level training to 86 junior enlisted Marines seeking the Military Occupational Specialty of Marine Corps Legal Services Specialist in this reporting period. The LSSC curriculum is taught by officer and enlisted instructors and
consists of training in military justice, post-trial review, and legal administration. NJS also executed one offering of the Coast Guard Legal Tech Course to 12 Coast Guard personnel in the yeoman rating selected to perform legal tech duties at a Coast Guard legal office. This two-week in-resident course provided training in the preparation of legal forms, reports, claims, service-record entries, nonjudicial punishment, administrative separations, Westlaw, drafting charges, FOIA, and court-martial procedures. The course incorporates an additional prerequisite module to ensure basic knowledge and establish a baseline among the students for the in-resident portion.

NJS training responsibilities include professional development courses for sea service judge advocates, enlisted personnel, and civilian legal professionals to maintain competency in the core capability areas for legal services. In this reporting period, NJS provided in-person instruction to 1174 officer, enlisted and civilian legal personnel in the JAG Corps community. NJS training included 849.5 hours of legal education meriting continuing legal education credit to 322 judge advocates around the world.

Continuing Legal Education courses offered during the reporting period included:

- Basic Trial Advocacy Course
- Naval Legal Service Command Prospective Commanding/Executive Officer Course
- Advanced Staff Judge Advocate Course
- Advanced Cyber Operational Law Course
- Law of Naval Operations Course
- Information Operations Law Training
- Trial Counsel/Defense Counsel Orientation Course (two offerings)
- Coalition Operational Law Course
- Staff Judge Advocate Course (two offerings)
- Legal Assistance Refresher Course
- Legal Assistance for Paralegals Course
- Senior Legalman Leadership Course
- Paralegal Research and Writing Course (two offerings)
- Legal Ethics for Paralegals Course (two offerings)
- Defending Sexual Assault Cases
- Coast Guard Legal Technician Course
- Professional Development Officer Course
- Rules of Engagement (Distance Learning)
- Post-Trial Procedures (Distance Learning)
- Ethics for the SJA (Distance Learning)
- Law of the Sea (Distance Learning)
- Law of Armed Conflict (Distance Learning)
- Introduction to Cyberspace Operations (Distance Learning)
- Ethics for the Trial and Defense Counsel (Distance Learning)
- Legal Services Court Reporter Course (two offerings)
- Legal Services Military Justice Course
- Legal Services Administrative Law Course
- Legal Services Board Recorder Course
- Navy Reserve Law Program Judge Advocate Training (two offerings)
- Mid-Level Legalman (Distance Learning, two offerings)
- Advanced Operational Law Course
- Advanced Courtroom Communications
- Classified Information Litigation Course

Continuing legal education courses offered by NJS are open to Reserve component members, many of whom attended not only as students but also as instructors and mentors to active-duty students. This active-duty-Reserve component partnership draws on the combined military and civilian experience of the Reserve component to enhance training for all. Similarly, active-duty NJS instructors supported two offerings of the Reserve Judge Advocate Career Training. Furthermore, the Navy Reserve NJS unit also planned and executed the third National Military Law Training Symposium (MLTS) for the Reserve Law Program, which united both East Coast and West Coast Reserve judge advocates and Legalman to participate in break-out sessions for specialized in-depth professional development, including joint officer and enlisted plenary sessions, junior officer mentorship events, and several Flag Officer speakers.

NJS continues to develop its online legal education program. The Blackboard platform is accessible on any network and enables NJS to deliver web-based, on-demand, legal education remotely for all members of the community to access regardless of geographic location, deployment schedule, and cost constraints of attending in-person training. Utilizing this web-based system, "NJS Online" offered courses range from one-hour, self-executed refreshers to multi-week, instructor-led education and training. Course offerings included topics in military justice, operational law, fiscal law, trial advocacy, legal assistance, and ethics. NJS Online maintains approximately 50 online course offerings that were accessed by 1,299 legal professionals in this reporting period from locations around the world. NJS Online allowed NJS to deliver timely, relevant, and cost-effective training across the JAG community. Furthermore, NJS continues its 21st Century Schoolhouse Project, to upgrade and modernize schoolhouse technology infrastructure in Newport, Norfolk, and San Diego. The installment of Wi-Fi in the school house that can be accessed by students using personal media devices has allowed instructors to leverage online training resources and course information as part of the training methodology. The new capabilities improve methods for high velocity learning through collaboration with the entire Navy, Marine Corps, and Coast Guard legal community. Virtual face-to-face communication from the office or conference room can be used to discuss changes in military laws, analyze legal issues and solutions, and revise course materials. Additionally, the NJS Reserve unit is now able to deliver even more direct support by sharing data storage and utilizing virtual communication methods.

In addition to substantive legal training, NJS offered four courses with a leadership focus for Navy judge advocates and enlisted personnel. NJS partnered with the Navy Leadership and Ethics Center to deliver the one-week Intermediate Leader Course for officers selected for promotion to Lieutenant Commander. The course combined presentations from senior JAG Corps leaders with specialized leadership development training in areas such as ethical decision-making and the Myers-Briggs Type Indicator. NJS hosted the one-week Naval Legal Service Command Prospective Commanding and Executive Officers, which was comprised of briefs from subject matter experts on leadership and management issues, as well as discrete areas of
substantive law. This year’s course will be the first iteration to include enlisted leaders with officer leadership in an effort to develop and train integrated officer/enlisted legal teams who develop legal solutions together. That effort is furthered by the execution of the Senior Legalman Course, required for all Legalman selected to the rank of chief petty officer. This course ran concurrently with the Intermediate Leader Course to capitalize on training resources and promote legal teams. The Professional Development Officer Course similarly emphasized cultivating legal teams in managing the professional progression of judge advocates and enlisted paralegals.

In execution of its fleet training mission, NJS provided legal instruction to non-legal personnel who hold positions with legal duties or good order and discipline obligations. NJS executed 26 Senior Officer Courses to train 1,193 Navy and Marine Corps senior officers in the execution of the legal responsibilities of command. As a required course for Navy commanding officers with the rank of Captain, the three days of scenario based instruction is led by two judge advocate facilitators who play the role of SJA. The instructors provide risk-assessed legal advice in the context of the scenario and based on the legal rules of topics such as military justice, administrative law and ethics. During the reporting period, NJS also delivered legal instruction to approximately 1,389 officer and enlisted non-legal professionals in the Legal Officer Course, Senior Enlisted Legal Course, and Legal Clerk Course. Additionally, NJS instructors also provided approximately 200 hours of legal instruction to thousands of students attending courses at other Naval Station Newport school houses, such as the Defense Institute for International Legal Studies, Naval War College, Naval Leadership and Ethics Center, Surface Warfare Officers School, Officer Development School, Officer Candidate School, Supply Officer School, and the Senior Enlisted Academy.

To increase the fleet’s access to legal training, NJS continued to grow its mobile training teams (MTT) in response to the fleet’s request for on-site legal training. The Senior Officer Course, Legal Officer and Legal Clerk Course were delivered for Navy fleet participants in Naples, Italy and Yokosuka, Japan. MTTs were also offered to train Marines and Sailors in Kaneohe Bay, HI; Camp Lejeune, NC; Parris Island, SC; Quantico, VA; and Camp Pendleton, CA.

F. Legalmen

In September 2010, the first class of Sailors serving in the Legalman job field began the Legalman Paralegal Education Program (LPEP). LPEP offers Legalmen a government-funded, full-time paralegal education through in-residence or distance-learning studies in partnership with Roger Williams University. Nearly 80 percent of Legalmen have received their associate’s degree in paralegal studies. The remaining 20 percent are either enrolled in the program or ineligible due to high-year tenure constraints. Projections show these percentages remain consistent as the JAG community accesses new Legalmen each year. LPEP educated Legalmen are expected to perform work at a higher complexity and receive a Navy Enlisted Classification Code (NEC) to identify that skill set upon completion of their degree. To date, 435 Legalmen have received their NEC.
Through LPEP, Legalmen develop professional skills to help them meet the demands of increased responsibility, expanding missions, and more complex legal services. Increased paralegal competency improved support to fleet commanders and non-attorney legal officers by providing them skilled Legalmen able to perform specialized paralegal functions.

The Navy JAG community continued to make other professional development options available to Legalmen. In 2014, a military-specific Training and Utilization Instruction was promulgated, improving integration between attorneys and Legalmen and ensuring that every Legalman receives adequate training to perform their assigned duties. Every RL/SO and DSO is using this instruction to ensure Legalmen are qualified and can provide integral support to meet mission requirements while being fully utilized as a paralegal. To gauge effectiveness and oversight of the program, the JAG’s Article 6 inspection team interviews attorneys and Legalmen to evaluate utilization and integration. They are able to provide immediate feedback for improvement and collect best practices to share across the entire enterprise.

To further increase paralegal skills, a Paralegal Litigation Support Course was developed and has been offered twice a year since 2015. The students in this course take a case through the entire court-martial process, focusing on both administrative and paralegal functions that they are expected to manage in support of their Trial/Defense attorneys.

Finally, in 2014, the Navy JAG community implemented an In-Service Procurement Program (IPP) that created a pathway for enlisted Sailors to become judge advocates. The Navy JAG community IPP is open to qualified and career-motivated enlisted personnel of all ratings. Sailors who have earned a Bachelor of Science or Bachelor of Arts degree may apply for funded legal education; Sailors who have already earned a Juris Doctor degree from an ABA-accredited law school and a bar license from any state may apply for direct appointment. This is the fourth year for the program, and the JAG community selected the fourth accessions via the IPP process. The very first JAG Corps IPP accession graduated from George Mason University School of Law this spring and will receive his commission upon passing the bar exam.

G. Special Assistant for Strategic Planning (SASP)

The Special Assistant for Strategic Planning (SASP) provides guidance and oversight for the JAG community’s strategic planning efforts and is responsible for the development, modification, and oversight of the JAG Community strategic plan and other major initiatives that require coordination across the Navy and joint legal communities.

In April 2015, SASP published the JAG community’s most recent 10-year strategic plan—Navy JAG Strategic Plan 2025— which defines the JAG community mission and its long-range vision to meet legal requirements in an increasingly complex, specialized, and interconnected operating environment. Published online, the strategic plan is designed to adapt to changes in the operating environment and higher headquarters guidance. In January 2016, CNO published his strategic plan, entitled A Design for Maintaining Maritime Superiority, which provides new higher headquarters guidance that frames and informs our strategic planning efforts. To ensure continued alignment with the Navy’s strategic goals and objectives, the SASP collaborated with CNO’s strategic planning team and JAG community SMEs to draft revisions to key sections of
Navy JAG Strategic Plan 2025. The first revision, Navy JAG Strategic Plan 2025.1, will be released in the coming months and will articulate how the JAG community’s evolution will be influenced by the CNO’s vision for our Navy.

As part of the Navy JAG Strategic Plan 2025, SASP oversaw the development and execution of the JAG community’s strategic initiatives in coordination with KM, NJS, OJAG and NLSC leadership. The strategic initiatives are designed to actualize the three objectives of the strategic plan – Capabilities Alignment, KM, and Community Health – by:

- Assessing and adjusting practice areas and the delivery of legal services to meet the fleet’s evolving mission requirements;

- Developing and sustaining an interactive process to identify, capture, evaluate, retrieve, and share the right information and expertise at the right time in ways that improve our community’s ability to deliver legal solutions whenever and wherever required; and

- Maintaining a strong, resilient JAG community to meet future challenges.

SASP continues to collaborate with various offices throughout the OJAG and NLSC organizations in executing the following initiatives:

- **Operational Law Capability**: The JAG community operates in high visibility areas of increasing contention and it must be ready at all times to respond to emerging threats. In order to ensure that our practitioners have the tools necessary, Code 10 transferred many years’ worth of documents and resources from its local share drives to its unclassified and classified pages on the JAG community online portal sites, and these resources are now available to practitioners throughout the fleet. Additionally, in order to ensure the training evolves, Code 10 launched an in-depth survey of judge advocates serving in, or having previously served in, operational assignments. The survey assesses the effectiveness of current operational law training to identify areas for improvement. Finally, Code 10 is working with the NJS to develop new training products for deployable attorneys in areas like operational fiscal law. These new and ongoing efforts ensure that the JAG community successfully supports its clients in this stressed and contested environment.

- **Cyber Law Capability**: Cyber law is a rapidly expanding discipline for uniformed practitioners. To remain on the cutting edge and keep attorneys aware of developments in this field, Code 18 created an electronically available intel and cyber law resources and training repository. The establishment of the Code 18 SIPRnet and Joint Worldwide Intelligence Communications System SharePoint sites enables the free flow of information and resources across classification levels. These efforts enhance practitioners’ access to training and resources that were not previously available. Moving forward, Code 18 is reviewing information operations legal training and advanced cyber legal training, expanding the content to meet new developments in cyberspace and information operations law and policy.
• **Military Justice Training Standards**: The military justice practice continues to evolve and educated litigators are in demand. To refine the practice and foster collaboration between the schoolhouse and the fleet, NJS sought to focus its military justice training on those skill sets that SMEs identified as critical. To meet this end, military justice training standards for BLC students and intermediate and advanced litigators were developed by the AJAG (Chief Judge) and the TCAP and DCAP Directors. NJS has implemented the new standards for the BLC. The standards for intermediate and advanced litigators are now used in all TCAP and DCAP mobile training evolutions and in-resident courses.

• **Remote LA**: Technology continues to evolve at a rapid pace, and the JAG community is using this evolution to provide expanded services to our clients. Currently, it has created and posted standardized self-help SPOA forms on the Navy JAG community public website (“Legal Assistance” tab) and the JAG community online portal (“Code 16” page). Now in a mobile-friendly, HTML-5 format, these forms are available to Sailors and their family members, and help LA practitioners streamline their delivery of services. Additionally, KM, working with Code 16 and NJS, has placed notary resources on the Navy JAG community public website. The feedback from these efforts has been extremely positive, and the JAG community will continue to explore ways to provide greater access to services across the fleet.

• **OJAG/NLSC Management Desk Guide**: There are many civilian personnel in the Navy JAG community, and civilian administrative actions can be complicated and confusing. To aid in these procedures, the JAG community created the *OJAG/NLSC Management Desk Guide* which details civilian hiring procedures as well as other topics. Topics include: how to initiate a request for personnel action, how to navigate the hiring process, and position descriptions. Additionally, the guide contains policies and procedures for time and attendance, telework, awards, performance management, professional development, and points of contact for Labor Relations and Equal Employment Opportunity information.

**H. Knowledge Management (KM)**

In *Navy JAG Strategic Plan 2025*, KM was identified as one of three strategic objectives that will enable the JAG community to transform into a 21st Century law firm. KM’s goal is to develop and sustain a comprehensive capability to identify, capture, evaluate, retrieve, and share the right information in ways that improve the organization’s ability to deliver legal solutions wherever and whenever required. The KM core team of five personnel work across the organization and through a network of more than 70 designated knowledge managers to develop and implement solutions focused on people, process, and technology. The team was recognized this year as a recipient of the prestigious Department of the Navy IM/IT Excellence Award. Accomplishments include:

• **Courtroom Technology and Collaboration Project**: KM launched a new project to infuse cutting-edge technology into the military justice practice, including in the courtroom. Piloting the effort at three locations (NJS, Naval District Washington’s Courtroom, and OJAG headquarters), KM deployed wireless support; Microsoft Surface
Hubs, Books, and Pros; and robust software and other technologies for all military justice stakeholders. KM also is leveraging the ongoing efforts of flexible standardization of case preparation by TCAP, DCAP, and the trial judiciary. The KM core team continues its collaboration with Code 67 to support the Courtroom Modernization Program, successfully integrating additional Microsoft Surface equipment into the technology refreshes in Japan, Hawaii, the Northwest, Southwest, and Southeast. Already proving successful, the effort is positioned to be rapidly expanded to these locations in 2017, and eventually throughout the entire enterprise.

- **Joint Legal Knowledge Management and Information Management Summit**: OJAG hosted the first Joint Legal KM and Information Management Summit for KM leaders and representatives from the Army, Air Force, Navy, Marine Corps, Coast Guard, and Office of the General Counsel at the Washington Navy Yard in Washington, DC. The four-day summit provided a forum for joint collaboration and sharing of best practices for every service in the DOD, as well as hands-on KM training for judge advocates from across the fleet. It also provided a mechanism for key leaders to work together on solutions to major challenges and identify opportunities for ongoing coordination and resource sharing.

- **JAG Community Online Portal**: KM has achieved full and steady-state operational capacity of the JAG community online portal, with more than 2,600 registered users across the Navy JAG community. This rapidly growing cloud-based resource now provides JAG personnel 24/7 access to more than 91,000 documents across more than 600 internal sites and receives more than 13,000 unique visits each month – making it one of the most active and robust portal environments across the Navy. In addition to static content and information, the portal is increasingly being used for team collaboration, discussion, process automation, e-filing, and case management.