



Marine Corps  
Military Justice Report  
Fiscal Year 2016



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

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

## I. INTRODUCTION

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

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



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

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

The role of the VLC continued to expand as the FY16 NDAA increased the rights and protections afforded to victims, particularly victims of sexual assault. The FY16 NDAA expanded the scope of those eligible to receive VLC services to include DoD civilian employees, required trial counsel and investigators to inform sexual assault victims of their right to consult with VLC before interviewing or requesting statements from victims, and provided for enforcement of certain crime victim rights by the Court of Criminal Appeals. The legislation also mandated development of a strategy to prevent retaliation against those who report as victims or assist victims of sexual assault. To ensure proper implementation of these requirements, the Marine Corps drafted new policy relating to military justice, modified its



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training for military justice practitioners, and conducted extensive coordination with the Navy Office of the Judge Advocate General and the Navy Marine Corps Trial Judiciary.

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

Through creation of the Marine Corps Judge Advocate Board in FY16, the Marine Corps formed counsels of colonels to serve as a bridge between JAD and the fleet and designed a process through which task-organized Operational Advisory Groups (OAGs) of subject matter experts analyze issues confronting the judge advocate community and initiatives to improve the community and develop and evaluate potential courses of action. After the SJA to CMC determines the course of action that will be followed, appropriate stakeholders are tasked to take the steps necessary to implement the changes. In FY16, OAGs addressed a number of military justice topics, including: appropriate requirements for accession to the General Court-Martial Trial Counsel and Special Victim Trial Counsel designations; qualifications for service as a Victim's Legal Counsel; baseline requirements for trial leadership billets such as Senior Trial Counsel (STC) or Regional Trial Counsel (RTC); effectiveness of trial counsel training conducted at the regional and local levels; effectiveness and scope of the Prosecution Merits Memorandum (PMM); optimization and standardization of Article 32 Officer support; courtroom



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and trial security; use of technology in the courtroom; various issues relating to court reporters; and changes to the post-trial process, specifically in anticipation of the implementation of the Military Justice Act of 2016.

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

### II. MILITARY JUSTICE BY THE NUMBERS – TRENDS & ANALYSIS

In FY16, the Marine Corps litigated 149 general courts-martial and 208 special courts-martial to findings. At any given time during the year, the Marine Corps had approximately 200 courts-martial and 40 Article 32 preliminary hearings pending, with an additional 40 pending post-Article 32 referral/disposition decisions, 80 pending prosecutorial merits memoranda (PMM), and 180 pending requests for legal services (RLS). Of the 200 pending courts-martial about 155 were special courts-martial and 45 general courts-martial. These numbers are higher than in FY15 primarily because, in FY16, the Marine Corps began reporting all SVIP investigations in the Case Management System (CMS), regardless of whether the cognizant commander had submitted a Request for Legal Services (RLS). Additionally, the numbers of cases pending referral/disposition decision and PMM were not included in previous reports. FY16 was the first full year where prosecutors were required to prepare a PMM in every special victim case before the SJA provides initial disposition advice to the convening authority.

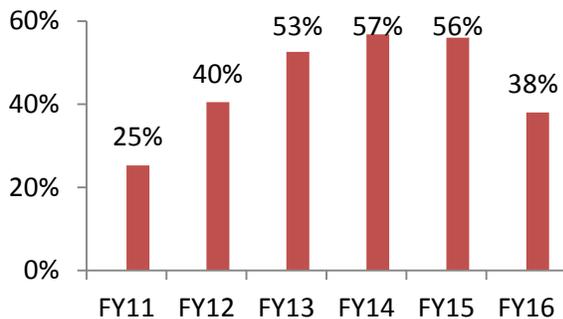


Figure A. Percentage GCMs Contested FY11 – FY16

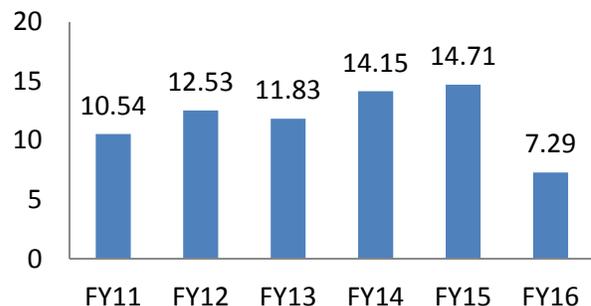


Figure B. GCM Average Hours FY11 – FY16



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

The growth in sexual assault prosecutions, often among the most difficult cases we try, illustrates a continued trend toward cases that are more complex and intensely litigated. Between FY12 and FY14, the number of contested sexual assault prosecutions more than tripled (see Figure C). Though the number of contested sexual assault cases has declined since FY14, it is still almost twice as high as FY12. The number of guilty pleas increased significantly in FY16, producing a higher overall number of sexual assault prosecutions than any prior FY.

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

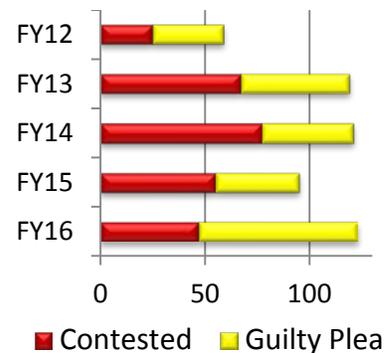


Figure C. Sexual Assault Prosecutions FY12 – FY16

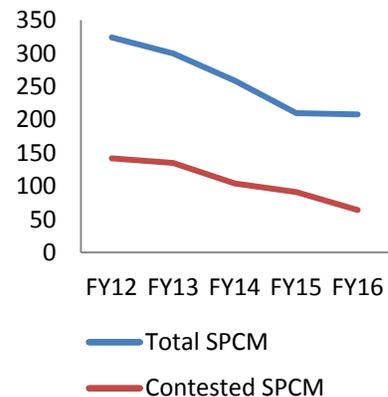


Figure D. Total and Contested SPCM FY12 – FY16

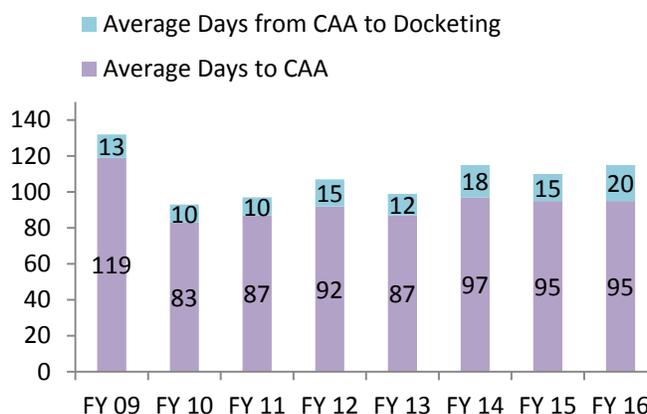


**III. POST-TRIAL REVIEW AND APPELLATE DECISIONS**

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

*A. Processing Time Goals*

In FY16 the Marine Corps had 415 general, special, and summary courts-martial that warranted post-trial review. For cases warranting appellate review, the Marine Corps averaged ninety-five days from the date of trial to convening authority’s action (CAA), which remains unchanged from FY15’s average (see Figure E). The Marine Corps averaged twenty days from CAA to docketing of the case with the Navy-Marine Corps Court of Criminal Appeals.



**Figure E. Post-Trial Processing Times  
FY09 – FY16**

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

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



#### IV. MILITARY JUSTICE PRACTITIONERS, TRAINING AND RESOURCES

##### *A. Trial Counsel*

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

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



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

### *B. Defense Services Organization*

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



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attorneys maintain the knowledge and experience necessary to provide high quality representation in the most complex cases, including sexual assault cases.

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

### *C. Victims' Legal Counsel Organization*

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

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

In FY16, the VLCO moved forward in establishing standard practices and procedures. Most significantly, the Marine Corps published its first VLC Manual signed by the Staff Judge Advocate to the Commandant of the Marine Corps. The Manual establishes standard operating procedures for the delivery of victims' legal services throughout the Marine Corps. Additionally, in FY16, the OIC of VLCO published the organization's first inspection checklist



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for all offices to use in preparation for the OIC's annual inspections. The annual inspections and site visits to every VLC office provide the OIC with information to assess the health of the organization and quality of representation provided.

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

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

### *D. Training Standards and Resources*

In addition to the training offered by Regional Trial/Defense/Victims' Legal Counsel and Senior Trial/Defense Counsel at the local level, Marine Corps trial, defense, and victims' legal counsel all had nationally recognized training available to them in FY16. Specifically, in FY16, every Marine assigned to a litigation billet was able to attend at least one of the following courses: Intermediate Trial Advocacy; Post-Trial Processing; Court Reporter Course; Basic Trial Advocacy; Military Judges Course; Advanced Trial Advocacy Course; Special Victims' Counsel Course; Legal Service Specialists - Military Justice Course; Defense Counsel Orientation; Cross Examination; Law Office Manager Course; Classified Info Litigation; Paralegal Litigation Support; Prosecuting Special Victims Cases; Defense Counsel Orientation; and a Child Advocacy Course. In these courses, the focus of training included working with victims, trial advocacy, digital exploitation of children, child abuse, gathering and analyzing evidence, and partnering with victim advocates and NCIS agents in investigating and prosecuting special victim cases. These courses were sponsored by a variety of institutions including: the Naval Justice School, the National District Attorney's Association, the Department of Justice,



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the National Advocacy Center, the Federal Law Enforcement Training Center, and the Army and Air Force JAG schools. Resources for counsel engaged in other complex litigation were also available both inside and outside the classroom. For example, the Navy National Security Litigation Division (OJAG Code 30) provides individualized training and advice to all trial counsel prosecuting national security cases.

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

### *E. Naval Justice Information System*

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



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Based Access Controls). NJIS will establish data standards to ensure interoperability with all of the required agencies for both information intake and reporting output. Once NJIS is launched, the system will provide the Department of the Navy (DON) a capability that improves incident reporting, modernizes the DON's criminal justice processes, increases information sharing across the NJIS communities, and provides leadership access to data for tracking and analysis to better inform decision-making.

### **V. VIEWS ON THE SUFFICIENCY OF RESOURCES**

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

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

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



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

### **VI. CONCLUSION**

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









