

Summary: DoD Annual Report on Sexual Assault in the Military FY12 (Vol. I)

BACKGROUND and DEFINITIONS

- *WGRA* = Workplace and Gender Relations Survey of Active Duty
 - 2012 report based on a 2-year cycle
 - Designed to accurately represent the Active Duty force
- DoD sexual assault data captures the Unrestricted and Restricted Reports of sexual assault made to the Department that involves a military subject and/or a military victim.
 - Demographic information on victims and subjects is only drawn from *completed investigations* of Unrestricted Reports and from SARC records of victims in Restricted Reports.
- Not included in this report:
 - Other misconduct, such as indecent exposure and stalking, because it does not fall within the SAPR program as chartered in 2005.
 - Incidents of sexual harassment because they fall under the purview of the Office of the Secretary of Defense Office of Diversity Management and Equal Opportunity.
 - Sex crimes against children and spouses because they fall under the purview of DoD Family Advocacy Program (FAP).
- While most victims and subjects in the following data are aged 18 or older, DoD statistics also capture some victims and subjects aged 16 and 17.
 - Because the age of consent under the UCMJ is 16 years, military and civilian victims aged 16 and older who do not fall under FAP are included as well.
- In the *WGRA* data, when more than one disposition action is involved, only the most serious disciplinary action taken is reported
 - In descending order: preferral of court-martial charges, nonjudicial punishment, administrative discharge, and other adverse administrative action.
- Under the Department's SAPR policy, there is no time limit as to when someone can report a sexual assault to a SARC or MCIO (so some reports are for events that occurred prior to FY12)
- Reports are also sometimes made for sexual assaults that occurred prior to a Service member's enlistment or commissioning.
 - When this occurs, the Department provides care and services to the victim, but may not be able to punish the offender if he or she is not subject to military law.
- "Unwanted sexual contact" (USC) is the survey term for contact sexual crimes between adults prohibited by military law
 - Ranges from rape to abusive sexual contact
 - Intentional sexual contact against a person's will; OR
 - Occurred when the person did not or could not consent.
 - Completed and attempted oral, anal, and vaginal penetration with any body part or object, and unwanted touching of genitalia and other sexually-related areas of the body.
- Within DoD, "sexual assault" encompasses a range of sex crimes.

- *Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, forcible sodomy (oral or anal sex), and other unwanted sexual contact that is aggravated, abusive, or wrongful (including unwanted and inappropriate sexual contact), or attempts to commit these acts (DoDD 6495.01).*
- “Sexual assault” is also defined in the UCMJ.
 - Article 120, *Rape and Sexual Assault generally*
 - Includes the crimes of rape, sexual assault, aggravated sexual contact, and abusive sexual contact.
 - (a) Any person subject to this chapter who commits an act of sexual intercourse with a female not his wife, by force and without consent, is guilty of rape and shall be punished by death or such other punishment as a court-martial may direct.
 - (b) Any person subject to this chapter who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.
 - (c) Penetration, however slight, is sufficient to complete either of these offenses.
 - Article 125, *Sodomy*.
 - (a) Any person subject to this chapter who engages in unnatural carnal copulation with another person of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.
 - (b) Any person found guilty of sodomy shall be punished as a court-martial may direct.
 - Attempts to commit these crimes are under Article 80
- Note: Military law has changed several times
 - Prior to October 1, 2007: “sexual assault” referred to the crimes of rape, nonconsensual sodomy, indecent assault, and attempts to commit these acts.
 - Between October 1, 2007 and June 27, 2012: “sexual assault” referred to the crimes of rape, aggravated sexual assault, aggravated sexual contact, abusive sexual contact, wrongful sexual contact, nonconsensual sodomy, and attempts to commit these acts.
 - On or after June 28, 2012: “sexual assault” refers to the crimes of rape, sexual assault, aggravated sexual contact, abusive sexual contact, nonconsensual sodomy, and attempts to commit these acts.
- Consent is defined as:
 - *Words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused’s use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. There is no consent where the*

person is sleeping or incapacitated, such as due to age, alcohol or drugs, or mental incapacity.

- **Restricted Reporting:** *Reporting option that allows sexual assault victims to confidentially disclose the assault to specified individuals (i.e., SARC, SAPR VA, or healthcare personnel)...and receive medical treatment, including emergency care, counseling, and assignment of a SARC and SAPR VA, without triggering an official investigation. The victim's report provided to healthcare personnel (including the information acquired from a SAFE Kit, SARCs, or SAPR VAs will not be reported to law enforcement or to the command to initiate the official investigative process unless the victim consents or an established exception applies in accordance with [DoDI 6495.02]). (DoDD 6495.01)*
 - Confidential communication: *Oral, written, or electronic communications of personally identifiable information concerning a sexual assault victim and the sexual assault incident provided by the victim to the SARC, SAPR VA, or healthcare personnel in a Restricted Report. This confidential communication includes the victim's SAFE Kit and its information.*
 - Data on Restricted Reports is limited, because these are reports of sexual assault made to specified parties within the Department (that is, SARC, SAPR VA, or healthcare provider) that allow the report to remain confidential and the victim to seek care and services.
 - By policy, only involve one victim per reported incident.
 - These reports are not investigated and victims are not required to provide many details about these sexual assaults.
 - Only data about the victim and the offense is recorded (no subject data).
 - Restricted Report unavailable to those who seek medical care or SAFEs in California or Arizona if the nearest military treatment facility is in California
 - State laws mandate reporting by healthcare providers.
 - Recommended question: How many service members does this affect? How does it affect those service members?)
- **Unrestricted Reporting:** *A process that an individual covered by this policy uses to disclose, without requesting confidentiality or Restricted Reporting, that he or she is the victim of a sexual assault. Under these circumstances, the victim's report provided to healthcare personnel, the SARC, a SAPR VA, command authorities, or other persons is reported to law enforcement and may be used to initiate the official investigative process. (DoDD 6495.01)*
 - Unrestricted Report of sexual assault is an allegation by one or more victims against one or more suspects (referred to in the Department as "subjects") that will be referred to and investigated by an MCIO (CID, NCIS, or AFOSI).
 - When a victim reports an incident of sexual assault, the matter is referred for investigation, and victim's rights apply.
 - Details of the incident are provided to command and law enforcement for an official investigation.
- **Legal authority for DoD is limited to Service members who are subject to the UCMJ**
 - The subject's military commander is responsible for reviewing the investigation and taking appropriate action when supported by sufficient evidence.

- Military attorneys assist commanders in identifying the charges that can be made, the appropriate means of addressing such charges, and the punishments that can be administered if supported by the evidence.
- Disciplinary action may not be possible due to legal issues or evidentiary problems with a case.
- Each year, the Department lacks jurisdiction over several hundred subjects in its investigations.
 - These are the civilians, foreign nationals, and unidentified subjects who are reported to have sexually assaulted Service members.
 - Local civilian authorities in the United States and our host nations overseas hold primary responsibility for prosecuting U.S. civilians and foreign nationals, respectively, for allegedly perpetrating sexual assault against Service members.
- In a number of cases each year, a civilian authority or host nation will assert its legal authority over a Service member, usually when Service members are accused of sexually assaulting a civilian or foreign national.
 - A host nation's ability to prosecute a Service member is subject to the Status of Forces Agreement (SOFA) between the United States and the foreign government.
 - In some cases, the civilian authority may agree to let the military exercise its UCMJ jurisdiction to prosecute the Service member.

EXPERIENCING USC

- The Department's sexual assault data represents a 12-month snapshot to comply with Congressional reporting requirements.
- FY12 Service members:
 - **820,000** Reserve Component
 - **1.39 million** Active Duty
 - Experienced an incident of USC in the 12 months prior to survey:
 - **26,000** (estimated)
 - Computed using weighted population estimates of the Active Duty service members who indicated they experienced an incident of USC in conjunction with weighted counts of Military Service end strength on record with Defense Manpower Data Center.
 - Following the same methodology, there were an estimated 34,200 in CY06 and 19,300 in FY10.
 - The impact of the Department's most recent efforts is not reflected in the *2012 WGRA* results because those programs were implemented in FY13.
 - **6.1%** Active Duty women
 - Increase from 4.4% in FY10
 - Decrease from 6.8% in CY06
 - **33% reported it** to a military authority
 - 31% experienced social retaliation only;
 - 26% experienced a combination of professional retaliation, social retaliation, administrative action, and/or punishments;
 - 3% experienced professional retaliation only; and
 - 2% experienced administrative action.
 - **67% did not report it**
 - 47% indicated fear of retaliation or reprisal as the reason for not reporting,
 - 43% had heard about the negative experiences of other victims who reported their situation.
 - **1.2%** Active Duty men
 - Increase from 0.9% in FY10
 - Decrease from 1.8% in CY06
 - Further reporting data for men not available

REPORTS

- **3,374: FY12 reports of sexual assault involving Service members** (these reports may be about incidents that occurred in FY12 or in prior years)
 - 6% increase over FY11; 131% increase since SAPR implemented
 - Estimate **11%** of the sexual assaults that occur each year are reported to a DoD authority.
 - About the same as civilian society.
 - Top three reasons for not reporting to a military authority:
 - 70% did not want anyone to know;
 - 66% felt uncomfortable making a report; and
 - 51% did not think the report would be kept confidential.
 - **3,604 victims** (Restricted and Unrestricted Reports)
 - **2,949** Service member victims
 - **655** victims were U.S. civilians, foreign nationals, and others who were not Active Duty with the U.S. Armed Forces.
 - **2,558 Unrestricted Reports** total
 - 80% about incidents that occurred in FY12
 - 19% about incidents that occurred from FY08 to FY11
 - < 1% about incidents occurring in FY07 and prior
 - **1,590 (62%)** involved allegations of Service member-on-Service member sexual assault.
 - **1,985 (76%)** involved Service members as victims.
 - Because some incidents involved multiple victims, **2,166 Service member victims** were involved
 - **33 victims** for an incident occurring prior to enlistment or commissioning
 - **2,166** Unrestricted Reports total made by Service members
 - **2,001** made Unrestricted Reports directly
 - **165** converted from Restricted
 - Majority of offenses alleged were in three categories:
 - Rape
 - Aggravated sexual assault and sexual assault
 - Abusive and wrongful sexual contact
 - **816 Restricted Reports** total
 - **981** Restricted Reports involving Service members as either victims or subjects
 - 12% increase from FY11.
 - 165 (17%) of the initial Restricted Reports converted to Unrestricted Reports.
 - These 165 converted Restricted Reports are now counted with the Unrestricted Reports.
 - **783** Service members made and maintained Restricted Reports.
- Numbers of service member victims in Unrestricted and Restricted Reports:
 - CY06: **2,289** service members

- 7% of estimated service members experiencing USC (34,200)
- FY10: 2,617 service members
 - 14% of estimated service members experiencing USC (19,300)
- FY12: 2,949 service members
 - 11% of estimated service members experiencing USC (26,000)

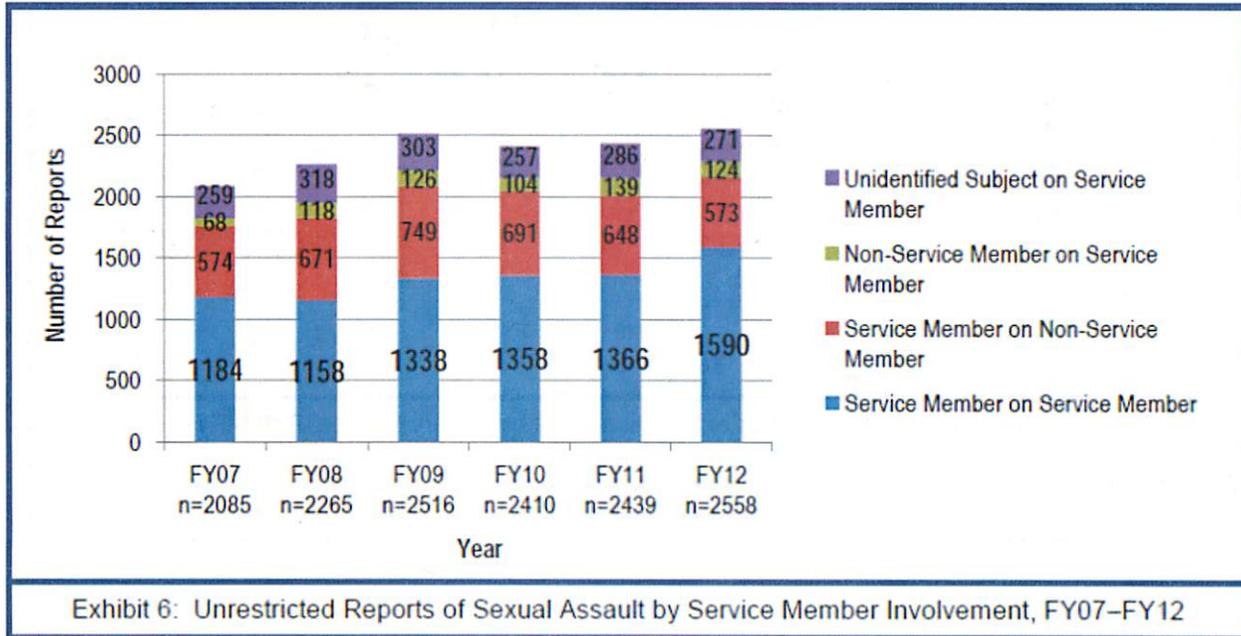


Table 1: Unrestricted Reports of Sexual Assault by Alleged Offense and Military Status, FY12

Most Serious Offense Alleged in Report	Total Unrestricted Reports	Number of Reports Involving Service Members as Victims	Number of Reports Involving Non-Service Members as Victims
Rape	676	467	209
Aggravated Sexual Assault and Sexual Assault	724	573	151
Aggravated Sexual Contact	92	70	22
Abusive Sexual Contact	308	252	56
Wrongful Sexual Contact	580	478	102
Indecent Assault	6	6	0
Nonconsensual Sodomy	162	129	33
Attempts to Commit Offenses	10	10	0
Total Unrestricted Reports in FY12	2,558	1,985	573

- 27% Rape
- 28% Aggravated Sexual Assault and Sexual Assault
- 4% Aggravated Sexual Contact
- 35% Abusive and Wrongful Sexual Contact
- < 1% Indecent Assault
- 6% Nonconsensual Sodomy
- 1% Attempt

Service-specific

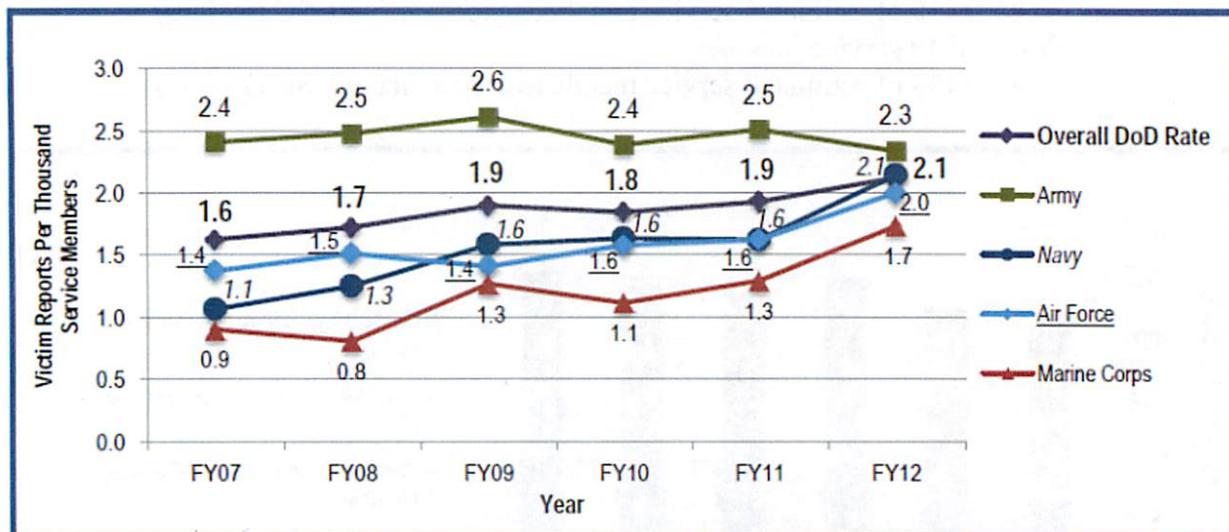


Exhibit 4: Victim Reporting Rates of Sexual Assault by Military Service, FY07–FY12

Note:

Victim reporting rates are calculated using the number of Service member victims in Unrestricted and Restricted Reports and Active Duty Military Service end strength for each year on record with DMDC.

Army

- **1,423 total reports of sexual assault** (16% decrease from FY11, 100% increase from CY04)
 - 1,249 Unrestricted Reports (10% decrease from FY11)
 - 174 Restricted Reports

Air Force

- **790 total reports of sexual assault**
 - 449 Unrestricted Reports (26% rise from FY11)
 - 341 Restricted Reports (36% rise from FY11)
 - 58 reports converted from Restricted to Unrestricted at the request of the victim
 - 24 Reports from CIAs
 - 10 Unrestricted Reports
 - 14 Restricted Reports

Victim Status by Assault Type (all unrestricted cases)	Service Member Victim	Non-Service Member Victim	Total Cases	Percent of Total
Rape	166	77	243	19%
Forcible Sodomy	71	17	88	7%
Aggravated Sexual Assault	233	71	304	24%
Sexual Assault	42	12	54	4%
Aggravated Sexual Contact	27	8	35	3%
Abusive Sexual Contact	145	29	174	14%
Wrongful Sexual Contact	287	63	350	28%
Indecent Assault	1	0	1	<1%
Total	972	277	1249	100%

Figure 2: Victim Status by Assault Type (FY12 Unrestricted Cases)

Offender Status by Assault Type (all unrestricted cases)	Service Member Offender	Non-Service Member Offender	Unidentified Offender	Total Cases	Percent of Total
Rape	189	3	51	243	19%
Forcible Sodomy	64	3	21	88	7%
Aggravated Sexual Assault	271	3	30	304	24%
Sexual Assault	46	0	8	54	4%
Aggravated Sexual Contact	30	3	2	35	3%
Abusive Sexual Contact	147	12	15	174	14%
Wrongful Sexual Contact	297	29	24	350	28%
Indecent Assault	1	0	0	1	<1%
Total	1045	53	151	1249	100%

Figure 3: Offender Status by Assault Type (FY12 Unrestricted Cases)

- Note: Army and Air Force do not seem to have a good handle on how to assess the nature and quantity of assaults that are not reported.
 - The Air Force hired Gallup to do a web based survey. But this is a limited effort, and they only had 18% responding of the 100,000 people polled.

SUBJECT DISPOSITION

- **3,288 military and civilian subjects** total receiving or waiting for a disposition for the allegations against them
 - [2,900 subjects from the investigations completed in FY12] + [388 subject whose investigations were complete, but disposition had not yet been reported to the Department at the end of FY11]
 - **2,661 subjects:** Military Services reported dispositions
 - For **947 subjects:**
 - **363 subjects:** military criminal investigative agency determined the allegations were unfounded (false or baseless)
 - When the allegations in an Unrestricted Report are investigated, one possible outcome is that the evidence discovered by the investigation demonstrates that the accused person did not commit the offense.
 - When this occurs, the allegations are determined to be unfounded, meaning false or baseless
 - There has been a small rise (4%) in the overall percentage of subjects with unfounded allegations since FY09.
 - **584 subjects:** outside the legal authority of the Department
 - 250 subjects: remain unidentified despite a criminal investigation
 - 131 subjects: Department could not take action against civilians or foreign nationals because they were not subject to military law
 - 192 subjects: civilian authority or foreign government asserted its authority over Service members
 - 11 subjects: died or deserted before disciplinary action could be taken against them
 - From FY09 to FY12, the percentage of subjects investigated for sexual assault found to be outside the Department's legal authority varied between 13% and 22%
 - Remaining **1,714 subjects** presented to military commanders for consideration of disciplinary action.
 - **509 subjects:** commanders could not take action against due to evidentiary problems.
 - **81 subjects:** received no disciplinary action because commanders determined the criminal allegations were unfounded (false or baseless).
 - **1,124 subjects:** commanders had sufficient evidence to take disciplinary action against (further breakdown below)
 - **880 subjects:** sexual assault charges substantiated; sexual assault offense warranted discipline
 - **244 subjects:** evidence supported command action for other misconduct discovered during the sexual assault investigation (such as making a false official statement,

adultery, underage drinking, or other crimes under the UCMJ), but not a sexual assault charge.

- **627** subjects: still in progress
- Percentage of military subjects for whom disciplinary action was not possible because victim(s) declined to participate in the military justice system:
 - FY09 10%
 - FY10 17%
 - FY11 12%
 - FY12 11%
- **1,124** subjects: commanders had sufficient evidence to take disciplinary action against (further breakdown below)
 - **880** subjects: sexual assault charges substantiated; sexual assault offense warranted discipline
 - **594 subjects (68%): courts-martial charges preferred** (initiated) against them (FY07, 30% of subjects had charges preferred against them)
 - 460 subjects: court martial outcomes completed by the end of the FY12:
 - 302 subjects' cases proceeded to trial:
 - 238 subjects (79%): convicted
 - Most received at least four kinds of punishment: confinement, reduction in rank, fines or forfeitures, and a discharge (enlisted) or dismissal (officers) from service.
 - 64 subjects (21%): acquitted
 - 88 subjects: Court-martial charges dismissed
 - However, commanders used evidence gathered during the sexual assault investigations to take nonjudicial punishment against 16 subjects.
 - 70 subjects: granted a resignation or discharged instead of court martial.
 - Resignations and discharges in lieu of court-martial are granted by the Department in certain circumstances. These separation actions may only occur after court-martial charges have been preferred against the accused. For such an action to occur, the accused must initiate the process.
 - Resignation or discharge in lieu of court-martial requests include a statement of understanding of the offense(s) charged and the consequences of administrative separation, an acknowledgement that any separation could possibly have a negative characterization, and an acknowledgement that the accused is guilty of an offense for which a punitive

discharge is authorized or a summary of the evidence supporting the guilt of the accused.

- Discharges of enlisted personnel in lieu of court-martial are usually approved at the Special Court-Martial Convening Authority level.
- Resignations of officers in lieu of court-martial are approved by the Secretary of the Military Department.
- In FY12, 62 of 66 enlisted members who received a discharge in lieu of court-martial were separated Under Other Than Honorable Conditions (UOTHC), the lowest characterization of discharge possible administratively (two subjects received General discharges, and information was not available for the other two).
- **158 subjects (18%) were entered into proceedings for nonjudicial punishment under Article 15 of the UCMJ; 154 completed in FY12**
 - 93% of subjects were found guilty by the commander and received punishment.
 - 1 administered nonjudicial punishment was for a penetrating sex offense (nonconsensual sodomy).
 - Most subjects who received nonjudicial punishment received at least four kinds of punishment: reduction in rank, a fine or forfeiture of pay, restriction of their liberty for a period of time, and extra duty or hard labor.
 - For 2 subjects (1% of those punished) the nonjudicial punishment served as grounds for a subsequent administrative discharge.
 - However, the actual number of discharges may have been higher, as all related discharge actions may not have been completed in the current FY.
- **128 subjects (15%) received a discharge or another adverse administrative action**
 - 63 subjects: commanders administratively discharged
 - 39 subjects: General discharge
 - 14 subjects: UOTHC discharge
 - 10 subjects: data unavailable
 - 65 subjects: commanders took adverse administrative actions
 - Adverse administrative actions are typically used when available evidence does not support more serious disciplinary action.
 - These actions consist of Letters of Reprimand, Letters of Admonishment, and Letters of Counseling. These actions may also include but are not limited to denial of re-enlistment, the cancellation of a promotion, and the cancellation of new or special duty orders.

- 244 subjects: evidence supported command action for other misconduct discovered during the sexual assault investigation (such as making a false official statement, adultery, underage drinking, or other crimes under the UCMJ), but not a sexual assault charge.
 - 37 subjects (15%) had court-martial charges preferred against them
 - 122 subjects (50%) were entered into proceedings for nonjudicial punishment
 - 85 subjects (35%) received some form of adverse administrative action or discharge
- Note: In the Army, allegations resulting in referral of court-martial charges rose 56% (from 272 to 424) in FY12. Prosecution rate of these charges was 57% in FY12 compared to less than 20% in civilian jurisdictions.

Table 3: Military Subject Dispositions in FY12

Subject Disposition Category	Military Subject Dispositions Reported in FY12	Subjects in Investigations Opened and Closed in FY12	Subjects in Investigations Opened Prior to FY12 and Closed in FY12
Military Subjects in Sexual Assault Cases Reviewed for Possible Disciplinary Action	1,714	802	912
Evidence-Supported Commander Action	1,124	553	571
Sexual Assault Offense Action	880	449	431
<i>Court-Martial Charge Preferred (Initiated)</i>	594	266	328
<i>Nonjudicial Punishment (Article 15, UCMJ)</i>	158	109	49
<i>Administrative Discharge</i>	63	39	24
<i>Other Adverse Administrative Action</i>	65	35	30
Evidence Only Supported Action on a Non-sexual Assault Offense	244	104	140
<i>Court-Martial Charge Preferred (Initiated)</i>	37	8	29
<i>Nonjudicial Punishment (Article 15, UCMJ)</i>	122	59	63
<i>Administrative Discharge</i>	26	10	16
<i>Other Adverse Administrative Action</i>	59	27	32
Commander Declined Action	81	39	42
<i>Unfounded by Command</i>	81	39	42
Commander Action Precluded	509	210	299
<i>Victim Died</i>	0	0	0
<i>Victim Declined to Participate in the Military Justice Action</i>	196	85	111
<i>Insufficient Evidence to Prosecute</i>	307	121	186
<i>Statute of Limitations Expired</i>	6	4	2

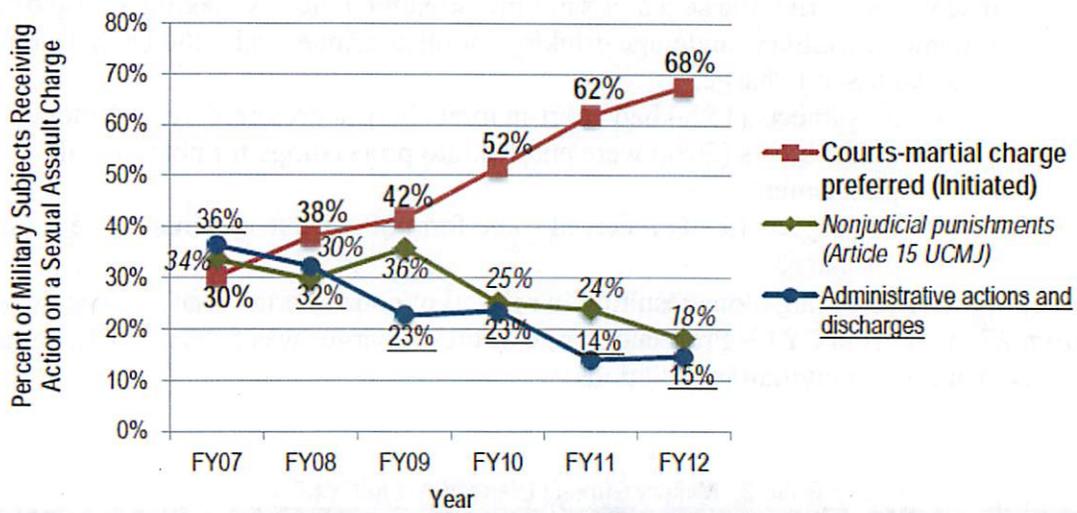


Exhibit 11: Breakdown of disciplinary actions taken against subjects for sexual assault offenses, FY07–12

Notes:

1. Percentages are of subjects found to warrant disciplinary action for a sexual assault offense only. Other misconduct (false official statement, adultery, etc.) is not shown.
2. Percentages listed for some years exceed 100% due to rounding of percentages to the nearest whole point.

DEMOGRAPHICS: VICTIMS and SUBJECTS

- Demographics are based on completed FY12 Unrestricted Reports
- **2,610 investigations** of sexual assault initiated and completed in FY12.
 - 2,940 victims
 - 2,900 subjects
 - 430 investigations involved multiple victims and/or multiple subjects.
- Victims: majority tend to be female, under the age of 25, and of junior enlisted grades
 - Gender:
 - 88% female
 - 12% male
 - Age:
 - 16-19: 18%
 - 20-24: 51%
 - 25-34: 25%
 - 35-49: 4%
 - 50+: <1%
 - Not available: <1%
 - Rank/Grade:
 - E1-E4: 73%
 - E5-E9: 12%
 - WO1-WO5: <1%
 - O1-O3: 3%
 - O4-O10: <1%
 - Cadet/Midshipmen: 1%
 - US Civilian: 8%
 - Foreign National: 2%
- Subjects: majority tend to be male, under the age of 35, and of junior enlisted grades
 - Gender:
 - 90% female
 - 2% male
 - 8% unknown
 - Age:
 - 16-19: 5%
 - 20-24: 36%
 - 25-34: 30%
 - 35-49: 11%
 - 50+: 1%
 - Not available: 17%
 - Rank/Grade:
 - E1-E4: 51%
 - E5-E9: 28%
 - WO1-WO5: 1%
 - O1-O3: 3%
 - O4-O10: 1%
 - Cadet/Midshipmen: 1%

- US Civilian: 3%
- Foreign National: 2%
 - This year the Military Services reported that 54 foreign national subjects were suspected to have committed sexual assaults against Service members.
 - 37 were foreign national civilians
 - 17 were foreign Service members
- Unknown: 10%

COMBAT AREA OF INTEREST

- **239 reports** (Restricted and Unrestricted) of sexual assault in CAIs
 - 8% decrease in overall reporting in CAIs from FY11
 - **212 Unrestricted Reports** (decrease of 6% from the 225 Unrestricted Reports in FY11)
 - 23 (11%) made in Iraq
 - 132 (62%) made in Afghanistan
 - 57 made in Kuwait (19), Bahrain (15), the United Arab Emirates (12), Djibouti (2), Jordan (2), Kyrgyzstan (2), Qatar (2), Egypt (1), Oman (1), and Saudi Arabia (1)
 - Demographic information about the Unrestricted Reports made in CAIs was drawn from the **216 investigations closed during FY12**
 - 243 victims
 - 216 subjects
 - 39 investigations involved more than one victim, more than one subject, or multiple victims and subjects.
 - Victims in CAIs:
 - Mirror the demographics of victims in all Unrestricted Reports made to the Department: mostly female Service members, under the age of 25, and of a junior enlisted grade.
 - Subjects in CAIs:
 - Mirror the demographics of subjects in all Unrestricted Reports made to the Department, in that they are mostly male Service members, under the age of 35, and of an enlisted grade.
 - **28 initial Restricted Reports in CAIs** (decrease of 39% the initial 46 Restricted Reports in FY11)
 - 1 Restricted Report converted to an Unrestricted Report, leaving **27 Restricted in FY12**
 - Of the 28 initial Restricted Reports,
 - 6 (21%) made in Iraq
 - 7 (25%) made in Afghanistan
 - 15 made in Qatar (10), Kuwait (2), Bahrain (1), Egypt (1), and Kyrgyzstan (1)
 - The 28 victims who initially made Restricted Reports of sexual assault in CAIs mirror the demographics of victims in all Restricted Reports made to the Department, in that they were mostly female Service members, under the age of 25, and of a junior enlisted grade.

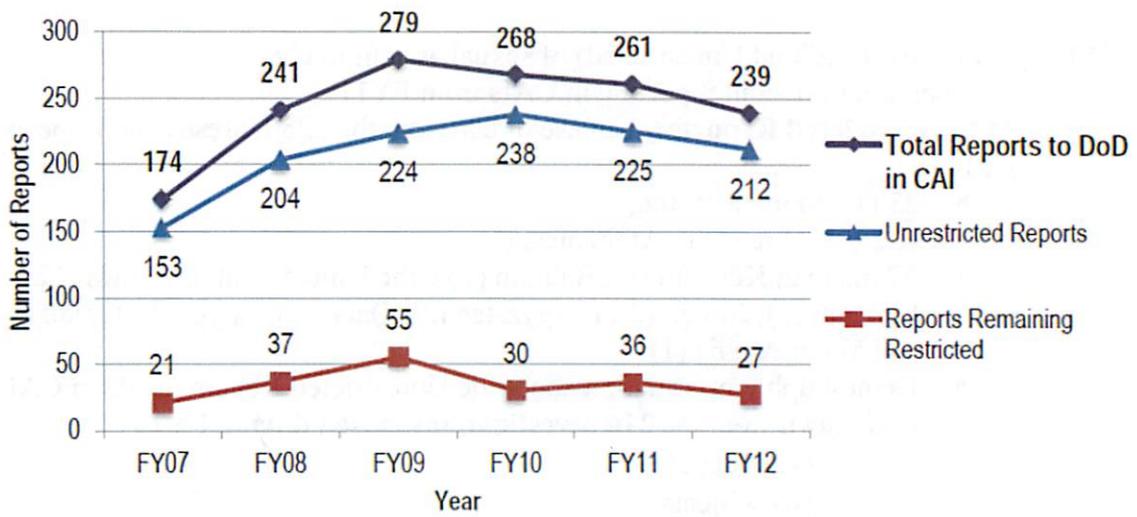


Exhibit 23: Total Reports of Sexual Assault in CAIs: Unrestricted Reports and Restricted Reports, FY07-FY12

MISCELLANEOUS

- The Department implemented an expedited transfer policy for victims who file an Unrestricted Report of sexual assault.
 - FY12: **216 of 218** requests for expedited transfer were approved.
 - Army: approved 84 of 86. Of the two denied, the allegation was deemed not credible by CID in one case, and an administrative separation of the victim was in progress at the time of the assault in the other case.
 - Navy: approved 43 of 43.
 - Marine Corps: approved 34 of 34.
 - Air Force: approved 48 of 48.
 - Army National Guard: approved 5 of 5.
 - Air National Guard: approved 2 of 2.
- The Military Services reported there were a total of **582 Sexual Assault Forensic Examinations (SAFEs)** conducted during FY12.
 - Note: The decision to undergo a SAFE always belongs to the victim.
- Sexual victimization is a likely risk factor for subsequent victimization.
 - In order to derive an overall percentage of Active Duty men and women who have experienced USC in their military career, the WGRA combined the USC rate for the past 12 months with the survey item that asked respondents who did not experience USC in the past 12 months if they had experienced USC since joining the military.
 - Indicated they experienced USC prior to entry into the military:
 - 30% of women
 - 6% of men
 - Indicated they experienced USC since joining the military:
 - 23% of women
 - 4% of men
 - Finding: Service members with a pre-service history of USC accounted for a larger-than-expected proportion of those experiencing USC in the past year.
- The DoD Family Advocacy Program (FAP) and SAPRO collaborated on the *Prevalence of Intimate Partner Violence, Stalking, and Sexual Violence Among Active Duty Women and Wives of Active Duty Men – Comparisons with Women in U.S. General Population, 2010*.
 - Primary finding: risk of lifetime and past-year contact sexual violence is the same for military women and civilian women.
- The CDC *National Intimate Partner and Sexual Violence Survey (NISVS)* is an ongoing, nationally representative telephone survey that collects detailed information on intimate partner violence (IPV), sexual violence, and stalking victimization of adult women and men in the United States
 - Based on the survey design, the *NISVS* allowed for a first-time comparison of civilian and military rates of IPV, sexual violence, and stalking.

- In 2010 the Department, Department of Justice, and CDC worked together to include two random samples from the military, totally 2,800 DoD women:
 - 1,408 Active Duty women
 - 1,428 Wives of Active Duty men.
- DoD women compared to about 9,000 civilian women.
- The definitions of IPV, sexual violence, and stalking used in the *NISVS* military report were aligned to closely match DoD definitions.
 - “Contact sexual violence” in particular was aligned to the DoD definition of the range of crimes under the UCMJ constituting an adult sexual assault.
- Findings:
 - Risk of contact sexual violence for military and civilian women is the same, after controlling for age and marital status differences between these groups.
 - With few exceptions, the past year and lifetime occurrence of IPV, sexual violence, and stalking in the civilian and military populations have no statistically significant differences.
 - Active Duty women were significantly less likely than civilian women to indicate that they experienced IPV in the 3 years prior to the survey.
 - Active Duty women were less likely to experience stalking than civilian women.
 - Deployment history appears to impact Active Duty women’s experience of IPV and sexual violence.
 - Active duty women with a deployment history had higher rates of IPV and sexual violence than women without a deployment history.
 - These differences appeared in the past 3-year and lifetime prevalence rates, but were not present in the past-year prevalence rates.
 - This suggests that IPV and sexual violence are problems that may develop over time for Active Duty women who have deployed.
- Civilian research indicates victims only report a small fraction of sexual assaults to law enforcement.
 - Of the 1.1 million U.S. civilian women estimated to have experienced nonconsensual vaginal, oral, or anal penetration in 2005, only about 173,800 (16%) said they reported the matter to police.
 - For the estimated 673,000 U.S. civilian college-aged women who experienced nonconsensual vaginal, oral, or anal penetration, only about 77,395 (11.5%) indicated they reported it to the police.
 - The definition of sexual assault used in this college sample refers to penetrating crimes only.
 - Consequently, it captures fewer crimes than the DoD definition of sexual assault, which encompasses both penetrating and non-penetrating sexual offenses, and attempts to commit these offenses.

Training

- **SARCs and SAPR VAs**
 - **Army:** trained 8,495 personnel slated for duty as a SARC or SAPR VA (including Active, Guard, and Reserve) via SHARP Mobile Training Teams using the 80-hour SHARP certification curriculum.
 - Nearly 3,000 Sexual Assault Response Coordinators (SARC) and Victim Advocates (VA) credentialed under the DoD Sexual Assault Advocate Certification Program.
 - Every brigade has one SARC and VA, and 829 SARC & VA positions resourced for battalions and below
 - **Navy:** provided initial training to 22 new SARCs and 3,844 SAPR VAs, as well as 10 hours of refresher training to 3,020 SAPR VAs.
 - 4,567 Active Duty SAPR VAs were trained and qualified to operate in a deployed environment.
 - **Marine Corps:** provided 38 new SARCs with the 40-hour victim advocacy training necessary for credentialing.
 - 372 SAPR VAs and Unit VAs received victim advocacy or quarterly refresher training conducted by an installation SARC.
 - 84 SARCs were trained and qualified to operate in a deployed environment.
 - **Air Force:** trained 70 new SARCs in a 40-hour course, and 96 SARCs received training to operate in a deployed environment.
 - 211 full time positions dedicated to sexual assault prevention and response: 96 Full time installation SARC's (69 GS12 civilians and 27 active duty officers); 14 MAJCOM or equivalents; 24 AFOSI investigators; 7 Special Victim Senior Trial Counsel; and 75 support positions.
 - 5,145 SAPR VAs received training, to include deployment training.
 - 3,159 trained voluntary VA's
 - Approved 224 new positions in 2013 for supervisors, installation personnel, and council members in the sexual assault prevention and response (SAPR) program.
 - Personnel gaps in SAPR program have occurred as a result of SARC vacancies and a lack of availability in full time civilian VAs
- **Commanders**
 - **Army:** provided SHARP training to 203 brigade commanders, 593 battalion commanders, and 409 Command Sergeants Major.
 - Commanding officer's conduct command climate assessments at 30 days, 6 months, and annually thereafter once they have assumed command
 - **Navy:** SARCs trained a total of 2,058 commanders on their roles and responsibilities within the Navy's SAPR program.
 - 296 prospective commanding and executive officers, 180 Command Master Chiefs/Chiefs of the Boat, and 205 Flag and General Officers received SAPR training prior to assuming command or a senior leadership position.

- **Marine Corps:** over 70 commanders and 50 Sergeants Major received SAPR training in the form of Command Team SAPR Training.
 - 81 General Officers were trained at a SAPR General Officer Symposium and 59 senior enlisted leaders were trained on SAPR at the Sergeants Major Symposium in FY12.
- **Air Force:** trained 4,592 Wing, Vice Wing, and Group commanders in SAPR.
 - Wing Commanders required to report sexual assaults to the Air Force Chief of Staff within 48 hours of initial report.
- **Air National Guard:** trained 794 commanders in bystander intervention.
- **Criminal Investigators**
 - **Army:** All Criminal Investigation Command agents who investigate sexual assault allegations received refresher training developed by USAMPS.
 - More than 1,600 military and civilian criminal investigators from across DoD were also trained at USAMPS on sexual assault investigative techniques.
 - Staff of 11 Highly Qualified Experts, 21 special investigators, and 19 special victim prosecutors focusing "nearly exclusively" on sexual assault.
 - Hired additional examiners to maintain 60 day turnaround for DNA tests mandated by Congress.
 - **Navy:** SARCs trained 264 criminal investigators on their role in the Navy SAPR program.
 - 95 NCIS employees, special agents, investigators, and support personnel received advanced training on sexual assault investigations.
 - **Marine Corps:** 67 new special agents completed basic training that met DoD standards for sexual assault investigation training.
 - **Air Force:** 2,046 criminal investigators received Annual Periodic Sexual Assault Investigations Training and 24 completed the Sex Crimes Investigation Training Program.
 - 170 criminal investigators attended the Basic Special Investigations Course and 17 attended the Advanced General Crimes Investigation Course.
 - Developed an eight-day advanced sex crimes investigations training program (SCTIP)
 - In 2009, added 24 Office of Special Investigations agents to exclusively cover sexual assaults and added additional sexual assault training for prosecutors and investigators.
 - 7,825 law enforcement personnel received sexual assault training.
 - AFOSI approved to increase training funds for advanced criminal investigations to AFOSI agent from \$42,000 in FY12 to \$750,000 in FY13
 - **National Guard Bureau:** trained 10 sexual assault investigators at the Army's Special Victims Unit Investigations course at USAMPS.
- **Medical Personnel**
 - **Army:** 188 physicians, physician assistants, and registered nurses completed the Medical Command Sexual Assault Medical Forensic Examiner training.
 - **Navy:** trained 27,513 medical first responders and 132 forensic examiners for both the Navy and Marine Corps.

- **Air Force:** provided 24,680 Air Force medics with first responder SAPR training for healthcare providers.
 - First Responder training for SAPR healthcare providers has increased from 6,000 medics in FY10
 - AF plans to add 339 active duty mental health staff by FY16 to reduce the stigma associated with reporting mental health issues related to sexual assault
- **Judge Advocates**
 - **Army JAG Legal Center and School** provided first responder training to 757 Army JAs, including 215 Army Reserve and 135 Army National Guard JA Officers.
 - Trained 454 trial counsel and 151 defense counsel in sexual assault issues.
 - **Navy:** Naval Justice School trained 178 Navy JAs on sexual assault. Examples of courses include Prosecuting Alcohol Facilitated Sexual Assault Cases, Defending Sexual Assault Cases, and Sexual Assault Investigation and Prosecution.
 - **Marine Corps:** Trial Counsel Assistance Program trained 295 JAs in sexual assault investigation and prosecution.
 - Most trial counsel attended at least two training sessions.
 - **Air Force:** The Judge Advocate General's School (TJAGS) provided formal training to over 1,400 JAs and paralegals.
 - Over 1,000 JAGs and paralegals viewed webcasts on sexual assault-related topics, and hundreds more attended training conducted at venues other than TJAGS.
 - Trained 60 attorneys for the Special Victims' Counsel (SVC) Program in 2013 to provide victims legal assistance and encourage Unrestricted Reports. 260 victims have requested and been assigned an SVC in 2013.
 - **Air National Guard:** trained 451 JAs in bystander intervention.

*** Recommend reviewing Appendix D (pp. 106-121, Vol. I) for a summary of all the stats, in addition to the summary charts at the end of Enclosures 1-4.**

Fact Sheet on Department of Defense Sexual Assault Statistics¹

1. Introduction. On April 15, 2013, the Department of Defense (DoD) released a two-volume, 1,494 page report on sexual assaults involving the Armed Forces in 2012 (2012 DoD Report). The 2012 DoD Report cost \$514,000 to prepare. The 2012 DoD Report was undergirded by the 309-page 2012 *Workplace and Gender Relations Survey of Active Duty Members (2012 WGRA)*. It was clear from questions from the Senate Armed Services Committee Hearing on June 5, 2013 that key metrics were not included in the 2012 DoD Report, and the reliability of the 26,000 extrapolation of active duty military victims was debatable.

2. The 2012 DoD Report.

a. In FY 2012, there were 2,949 Service member victims initiating 2,166 unrestricted reports² and 783 restricted reports (which cannot be investigated).³ The 2012 DoD Report does not divide the offenses by gender of victim. The numbers for specific offenses tried by courts-martial are not indicated. Instead, the 2012 DoD Report consolidates the dispositions for the crimes of rape, sexual assault, aggravated sexual contact, abusive sexual contact, nonconsensual sodomy, and attempts to commit these acts into the category "sexual assault."⁴

¹ This document reflects the personal opinion of the author and does not represent the views of George Washington University or the Law School.

² "In FY12, there were 2,558 unrestricted reports of sexual assault involving Service members as either the subject or victim of a sexual assault; 1,985 (76 percent) of the 2,558 unrestricted reports involved Service members as victims. Because some incidents involved multiple victims, 2,166 Service member victims were involved in these 1,985 Unrestricted Reports. . . Each year, the majority of sexual assault reports received by the [Military Criminal Investigative Organizations] involve the victimization of Service members by other Service members. In FY12, 1,590 of the 2,558 Unrestricted Reports (62 percent) involved allegations of Service member-on-Service member sexual assault." 2012 DoD Report, Vol. I at 60. The DoD Report includes the number of unrestricted reports of service member-on-service member by offense type in the individual Service sections and the overall numbers for the Services by gender for victim and offender. 2012 DoD Report, Vol. I at 191 (Army), 479 (Navy), 534 (Marine Corps), 635 (Air Force). The information for restricted reports is much less specific. 2012 DoD Report, Vol. I at 195 (Army), 483 (Navy), 537 (Marine Corps), 639 (Air Force).

³ 2012 DoD Report, Vol. I at 3, 25, 58-60. Victims making unrestricted reports trigger a criminal investigation and notification to the command about the allegation. *Id.* at 101. Victims making restricted reports may receive medical or counseling services without triggering an investigation, and the command receives limited information about the allegation. *Id.* at 87. No disciplinary action may be taken against a perpetrator based on a restricted report because of the DoD promise to protect the victim's confidentiality.

⁴ The 2012 DoD Report provides percentages of original allegations in unrestricted reports as follows: Abusive and Wrongful Sexual Contact 35%; Aggravated Sexual Assault and Sexual Assault 28%; Rape 27%; Consensual Sodomy 6%; Aggravated Sexual Contact 4%; Indecent Assault <1%; and Attempts <1%. 2012 DoD Report, Vol. I at 62.

b. The 2012 WGRA extrapolated that 6.1% of active duty women and 1.2% active duty men experienced some kind of unwanted sexual contact (USC) in the 12 months prior to being surveyed based on the 1.6% of the active duty force that chose to respond.⁵ The 2012 WGRA extrapolated from those percentages that there were approximately 26,000 active duty USC victims.⁶ The DoD extrapolation concluded 12,463 women (6.1% of active duty women) and 14,205 men (1.2% of active duty men), were the victims of sexual assault in FY 2012.⁷

c. The 2012 DoD Report includes the unrestricted reports of sexual assault by type of offense originally alleged and the military status of the victim as follows:

Most Serious Offense Alleged in Report	Total Unrestricted Reports	Number of Reports Involving Service Members as Victims	Number of Reports Involving Non-Service Members as Victims
Rape	678	487	209
Aggravated Sexual Assault and Sexual Assault	724	573	151
Aggravated Sexual Contact	92	70	22
Abusive Sexual Contact	308	252	56
Wrongful Sexual Contact	580	478	102
Indecent Assault	6	6	0
Nonconsensual Sodomy	162	129	33
Attempts to Commit Offenses	10	10	0
Total Unrestricted Reports in FY12	2,558	1,985	573

d. The 2012 WGRA survey method entailed emailing written surveys to 108,478 active duty service members.⁸ The WGRA survey did not involve follow-up interviews; instead questionnaires were emailed to respondents; and respondents were asked

⁵ 2012 DoD Report, Vol. I at 2. On September 30, 2012, the total DoD active duty population was 1,388,028. The DoD received 22,792 responses to the survey, which is 1.6% of the active duty population.

⁶ *Id.*, at 11-12.

⁷ On September 30, 2012, the total female population on active duty was 204,309, and the male population was 1,183,179. DoD Personnel and Procurement Statistics, <http://siadapp.dmdc.osd.mil/personnel/MILITARY/miltop.htm>. 6.1% of 204,309 is 12,463; and 1.2% of 1,183,719 is 14,205. 12,463 plus 14,205 is 26,667. See 2012 DoD Report, Vol. I at 25-26. The 26,000 number in the 2012 DoD Report is an approximation. *Id.*

⁸ 2012 *Workplace and Gender Relations Survey of Active Duty Members* at 6, http://www.sapr.mil/public/docs/research/2012_Workplace_and_Gender_Relations_Survey_of_Active_Duty_Members-Survey_Note_and_Briefing.pdf [hereinafter 2012 WGRA].

whether they were subjected to USC.⁹ The “overall weighted response rate for eligibles, corrected for nonproportional sampling, was 24% (male 23%, female 29%)”; DoD received 22,792 completed surveys.¹⁰ The surveys that were less than 50% completed were not counted,¹¹ and there was no assessment to determine whether someone who failed to complete a survey was less likely to have had an unwanted sexual contact in their extrapolation calculation.

e. In FY 2012, unrestricted reports of sexual assault indicated 88% of the victims were female and 12% were male. (2012 DoD Report, Vol. I at 81) In FY 2012 restricted reports, 79% of the victims were female, 13% were male, and 8% were unavailable.¹²

f. In FY 2012, 90% of the subjects in unrestricted reports were male, 2% were female, and the gender of the remainder was unknown.¹³

3. The 2010 Center for Disease Control and Prevention (CDC) Reports.

a. The 2012 DoD Report explicitly relies on the CDC’s 2010 MILITARY NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISV) REPORT and its comparison with

⁹ Survey recipients were asked the following:

In the past 12 months, have you experienced any of the following sexual contacts that were against your will or occurred when you did not or could not consent where someone:

- Sexually touched you (e.g., intentional touching of genitalia, breasts, or buttocks) or made you sexually touch them?
- Attempted to make you have sexual intercourse, but was not successful?
- Made you have sexual intercourse?
- Attempted to make you perform or receive oral sex, anal sex, or penetration by a finger or object, but was not successful?
- Made you perform or receive oral sex, anal sex, or penetration by a finger or object?

2012 WGRA, *supra* note 8, at 9. The wording of the question implies that holding a mental reservation about sexual activity is sufficient without any manifestation of lack of consent. USC under such circumstances may not constitute a provable criminal offense. Because of the complexity of the crimes and defenses, careful follow-up interviews by well-trained specialists are crucial for accurate assessments of sexual crimes victimization.

¹⁰ 2012 WGRA, *supra* note 8, at 1, 6.

¹¹ *Id.*, at 6.

¹² *Id.*, at 88.

¹³ *Id.*, at 83.

national data in *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report (2010 CDC NISVS)*, to corroborate the extrapolation made by the 2012 WGRA, stating, “[This 2010 MILITARY NISV REPORT, a] CDC-conducted survey provided the Department with a reliable prevalence estimate for contact sexual violence among Active Duty women and female spouses of military men, which aligned closely to similar findings in the 2010 WGRA.”¹⁴ In 2010, the CDC conducted a telephonic survey using question responses to collect detailed information on sexual and stalking victimization of adult civilian men and women, and separately, of active duty military men and women on past-year and lifetime experiences of sexual violence.¹⁵ The CDC survey included a non-military sample¹⁶ and a military sample involving approximately 2,800 DoD women (1,408 Active Duty women and 1,428 wives of Active Duty men).¹⁷ The CDC determined that “The risk of contact sexual violence for military and civilian women is the same, after controlling for age and marital status differences between these groups.”¹⁸

b. The 2010 MILITARY NISV REPORT includes in its overall numbers statistical information about non-criminal, socially inappropriate conduct, reducing its value to assess the scope of criminal sexual violence in the military. The 2010 MILITARY NISV REPORT includes the broad definition of “contact sexual violence” as “completed forced penetration . . . sexual coercion, and other unwanted sexual contact experiences.”¹⁹

¹⁴ 2012 DoD Report, Vol. I, at 44. The 2012 DoD Report cites to the similar definitions of “unwanted sexual contact” in the 2012 WGRA Report, *supra* n. 8, and “contact sexual violence.” See Centers for Disease Control and Prevention (CDC), *Prevalence of Intimate Partner Violence, Stalking, and Sexual Violence Among Active Duty Women and Wives of Active Duty Men—Comparisons with Women in the U.S. General Population, 2010* (Mar. 2013) [hereinafter 2010 MILITARY NISV REPORT]. The 2010 MILITARY NISV REPORT was prepared by Michele C. Black and Melissa T. Merrick and “the Centers for Disease Control and Prevention (CDC) for the Department of Defense (DoD) as part of an interagency agreement between the National Institute of Justice (NIJ) and the CDC. The interagency agreement set forth multi-agency (NIJ, CDC, DoD) efforts in support of the 2010 National Intimate Partner and Sexual Violence Survey.” 2012 DoD Report, Vol. II, Annex D at 714. The 2010 MILITARY NISV REPORT is presented at pages 711-765, Annex D to Volume II of the 2012 DoD Report.

¹⁵ 2012 DoD Report, Vol. II, Annex D, 2010 MILITARY NISV REPORT, *supra* note 14, at 714-65.

¹⁶ 2010 MILITARY NISV REPORT, *supra* note 14, at 714-65. Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention [hereinafter 2010 CDC NISVS], http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf, at 9 (stating that the CDC collected data from 16,507 completed and 1,542 partially completed telephone interviews of over a 12-month period.).

¹⁷ 2012 DoD Report, Vol. I, at 16.

¹⁸ *Id.*

¹⁹ 2012 DoD Report, Vol. I, at 44 (“The term “contact sexual violence” (CSV) is the CDC’s survey term for contact sexual crimes between adults. Careful effort was made to align the definition of “contact sexual

One survey question for “contact sexual violence” asks, “How many people have ever . . . kissed you in a sexual way? Remember, we are only asking about things that you didn’t want to happen.”²⁰ Another series of questions ask, “How many people have you had vaginal, oral, or anal sex with after they pressured you by . . . doing things like telling you lies, making promises about the future they knew were untrue, threatening to end your relationship, or threatening to spread rumors about you? [or by] wearing you down by repeatedly asking for sex, or showing they were unhappy?” Some of the conduct included in this survey such as an unwanted kiss and “making promises about the future” to pressure or trick someone into engaging in sexual conduct describe inappropriate and socially offensive conduct; however, they are unlikely to constitute criminal conduct, which should be the focus of protecting victims from the criminal act of sexual assault.

c. The 2010 CDC NISVS concluded that tens of millions of U.S. women were lifetime victims of sexual assaults and rape, and more than one million are victimized each year.²¹ The number of cases law enforcement reported to the DOJ was a fraction of these extrapolations. The CDC determination of the prevalence of contact sexual violence for the 12 months prior to the survey among active duty women involving

violence” with the definition of “unwanted sexual contact,” the Department’s survey term for the same behaviors. CSV and USC both involve intentional sexual contact that was against a person’s will or occurred when the person did not or could not consent. The terms describe completed and attempted oral, anal, and vaginal penetration with any body part or object, and the unwanted touching of genitalia and other sexually-related areas of the body).

²⁰ 2012 DoD Report, Vol. II, Annex D, App. A, 2010 MILITARY NISV REPORT, *supra* note 14, Victimization Questions, at 742.

²¹ 2010 CDC NISVS, *supra* note 16, Executive Summary at 1-2. (“Nearly 1 in 5 women (18.3%) and 1 in 71 men (1.4%) in the United States have been raped at some time in their lives, including completed forced penetration, attempted forced penetration, or alcohol/drug facilitated completed penetration. . . . An estimated 13% of women and 6% of men have experienced sexual coercion in their lifetime (i.e., unwanted sexual penetration after being pressured in a nonphysical way); and 27.2% of women and 11.7% of men have experienced unwanted sexual contact.”). The DoD chose to utilize the CDC to conduct telephone surveys, and arrived at “a reliable prevalence estimate for contact sexual violence among Active Duty women and female spouses of military men, which aligned closely to similar findings in the 2010 WGRA Report. Another primary finding of the survey was that the risk of lifetime and past-year contact sexual violence is the same for military women and civilian women.” 2012 DoD Report at 44. The 2010 CDC NISVS calculated the number of women who are victims of contact sexual violence to be a weighted lifetime percentage of 40.3 and the number of U.S. victims to be 35,396,000. 2012 DoD Report, Vol. II, App. B, 2010 MILITARY NISV REPORT, *supra* note 14, Table 1, at 746. The 2010 MILITARY NISV REPORT determined that the prevalence of contact sexual violence for the 12 months prior to the survey among women aged 18 and 59 years in the general U.S. population with non-intimate partner. *Id.* at 729. The 2010 MILITARY NISV REPORT defines “intimate partner” to include “current or former cohabitating or non-cohabitating romantic or sexual partners.” The rate of sexual contacts was 5.2 percent, amounting to 4,598,000 victims. *Id.* at 746.

military and civilian perpetrators was 5.6 percent, amounting to 10,000 victims.²² According to the 2012 DoD Report, the number of reported and unreported military victims of sexual assault was 2,949, and the CDC number is 3.4 times higher than the actual reported number.²³

d. The 2010 CDC NISVS measurements reflect a vast variation between the different states, which may indicate that the survey was conducted inconsistently or some other explanation exists for these substantial variations.²⁴

e. The 2010 MILITARY NISV REPORT and 2010 CDC NISVS' methods of telephone interviews make these surveys more reliable than the 2012 WGRA for extrapolation purposes, as interviews make it possible to more thoroughly and carefully assess the sexual offense incident. These survey results, however, seem inflated because the survey includes noncriminal sexual activity that is not beneficial in assessing criminal sexual assault offenses in the military Services.

4. Department of Justice Victimization and Prosecution Reports.

a. The Department of Justice's (DOJ) National Crime Victimization Survey (NCVS). The DOJ has been conducting the NCVS since 1973. The DOJ states:

NCVS is the Nation's primary source of information on criminal victimization. Each year, data are obtained from a nationally representative sample of about 40,000 households comprising nearly 75,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States. Each household is interviewed

²² The 2012 DoD Report, Vol. II, App. B, 2010 MILITARY NISV REPORT, Table 1, at 746 indicated the 95 percent confidence interval was 4.2 percent to 6.9 percent for the Active Duty women victims. On September 2012, the total DoD active duty population was 1,399,622 and the female population on active duty was 204,309. DoD Personnel and Procurement Statistics, <http://siadapp.dmdc.osd.mil/personnel/MILITARY/miltop.htm>. The product of 5.6% and 204,309 is 11,441.

²³ 2012 DoD Report, at 3.

²⁴ 2010 CDC NISVS, *supra* note 16, at 3, 67 ("[S]tate-level estimates varied with lifetime estimates for women ranging from 11.4% to 29.2% for rape; 28.9% to 58% for sexual violence other than rape; and 25.3% to 49.1% for rape, physical violence, and/or stalking by an intimate partner. For men, lifetime estimates ranged from 10.8% to 33.7% for sexual violence other than rape; and 17.4% to 41.2% for rape, physical violence, and/or stalking by an intimate partner."). Based on the 2010 CDC NISVS' extrapolations indicating 18.3% or 15 million U.S. females between the ages of 18 and 59 were the victims of "severe physical violence, rape, or stalking" during their lifetimes and 1.8% or 1,476,360 were victims during the previous year. 2012 DoD Report, Vol. II, App. B, 2010 MILITARY NISV REPORT, Table 2 at 747 shows a 20% lifetime prevalence of contact sexual violence among women in the general U.S. Population age 18 to 59 or 16,404,000 women. The total population of U.S. women is 82,020,000; 18.3% of 82,020,000 is 15,009,660; 1.8% of 82,020,000 is 1,476,360.

twice during the year. The survey enables BJS [Bureau of Justice Statistics] to estimate the likelihood of victimization by rape, sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft for the population as a whole as well as for segments of the population such as women, the elderly, members of various racial groups, city dwellers, or other groups. The NCVS provides the largest national forum for victims to describe the impact of crime and characteristics of violent offenders.²⁵

The NCVS sends interviewers who question victims about incidents and then classify the events as various types of offenses. The NCVS notes:

The measurement of rape and sexual assault presents many challenges. Victims may not be willing to reveal or share their experiences with an interviewer. The level and type of sexual violence reported by victims is sensitive to how items are worded, definitions used, data collection mode, and a variety of other factors related to the interview process. In addition, the legal definitions of rape and sexual assault vary across jurisdictions. The NCVS presents one approach to measuring and enumerating these incidents as well as other forms of violence and property crime.²⁶

The NCVS surveyed 143,120 men and women through personal interviews during 2011.²⁷ The same individuals were interviewed every six months for seven interviews.²⁸ The NCVS received a 90% response rate and acknowledged that various survey methods inflate or cause underreporting of survey results.²⁹ Further, the NCVS attempts to increase the accuracy of reports by improving the training of interviewers.³⁰ The extrapolated rape and sexual assault total for 2002 was 349,810; for 2010 it was

²⁵ The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, website, <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=245> (last visited June 5, 2013).

²⁶ Department of Justice, Bureau of Justice Statistics, *Female Victims of Sexual Violence, 1994-2010*, NCJ 240655 (Mar. 2013) at 2, <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf> [hereinafter 2013 DOJ FEMALE SEXUAL ASSAULT VICTIMS REPORT].

²⁷ Department of Justice, Bureau of Justice Statistics, *Criminal Victimization, 2011*, NCJ 239437 (Oct. 2012) at 12, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4494> [hereinafter 2011 CRIMINAL VICTIMIZATION REPORT].

²⁸ *Id.*, at 12.

²⁹ *Id.*, at 12-14.

³⁰ *Id.*, at 12-14.

268,570; and for 2011 it was 243,800.³¹ The NCVS determined the rape and sexual assault rate per thousand was 1.5 in 2002; 1.0 in 2010; and .9 in 2011.³²

b. The Federal Bureau of Investigation (FBI) Uniform Crime Report (UCR) Program is the primary source for all crime data throughout the United States (federal and state combined), and it includes offense information for one sexual offense, forcible rape.³³ The National Judicial Reporting Program (NJRP) compiles detailed information on the sentences that felons receive in state courts nationwide and on characteristics of the felons. NJRP surveys have been conducted every 2 years since 1986. The Department of Justice publishes federal prosecution rates and conviction rates.³⁴

c. The Administrative Office of U.S. Courts lists the sexual offenses tried in each U.S. District Court, and overall throughout the United States on the world wide web.³⁵ In

³¹ *Id.*, at 2-3. The 2013 DOJ FEMALE SEXUAL ASSAULT VICTIMS REPORT, *supra* note 26, shows total male and female rape and sexual assaults in 2010 by using a 2-year rolling average centered on the most recent year with female victimization of 269,700, which is 2.1 per thousand, and male victimization of 17,400, which is .1 per thousand. *Id.* at 11-12.

³² 2011 CRIMINAL VICTIMIZATION REPORT, *supra* n. 27, at 3. The NCVS used a total U.S. population of age 12 or older of 231,589,260 in 2002; 255,961,940 in 2010; and 257,542,240 in 2011. *Id.*

³³ According to the Federal Bureau of Investigation (FBI) UNIFORM CRIME REPORTS (UCR), in 2005, "There were an estimated 93,934 forcible rapes reported to law enforcement," and "The rate of forcible rapes in 2005 was estimated at 62.5 offenses per 100,000 female inhabitants." http://www2.fbi.gov/ucr/05cius/offenses/violent_crime/forcible_rape.html. In 2011, the most recent year available, "There were an estimated 83,425 forcible rapes reported to law enforcement in 2011" and "The rate of forcible rapes in 2011 was estimated at 52.7 per 100,000 female inhabitants." <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/violent-crime/forcible-rape>.

³⁴ See U.S. Department of Justice, *Federal Justice Statistics, 2008*, Nov. 2010, NCJ 231822, at 5 (2008 FEDERAL JUSTICE STATISTICS), <http://www.bjs.gov/content/pub/html/fjsst/2008/fjs08st.pdf>. Sexual abuse is defined as "rape, assault with intent to commit rape, and carnal knowledge of a female under age 16 who is not one's wife. . . . [It] include[es] sexual abuse of a minor and cases of sexual abuse in federal prisons." *Id.* at 69. In FY 2007, U.S. Attorney Offices received 960 cases of sexual abuse of the 178,570 total or .5% of the total suspects. *Id.* at 10 (Table 2.1). 53.4% of cases of sexual abuse referred were prosecuted in U.S. District Court. *Id.* at 12 (Table 2.2). In FY 2007, 554 trials were completed, 446 pleaded guilty, 2 pleaded nolo contendere, convicted, and of those convicted, 446 pleaded guilty, 2 pleaded nolo contendere, 30 were convicted after jury trials, and 3 were convicted after bench trials. *Id.* Of the 73 defendants not convicted, 64 cases were dismissed, 6 were acquitted by juries, and 3 by bench trials. *Id.* The rate of guilty pleas was 93% (446 divided by 481) as compared to 97% of all "convictions in U.S. district court in 2009 were the result of guilty pleas." Compare *Id.* with U.S. Department of Justice, FEDERAL JUSTICE STATISTICS, 2009, Dec. 2011, NCJ 234184, at page 12. <http://bjs.gov/content/pub/pdf/fjs09.pdf>. The Department of Justice eliminated the category of sexual abuse from their annual statistical report in 2009. *Id.*

³⁵ Administrative Office of U.S. Courts. <http://www.uscourts.gov/Statistics/StatisticalTablesForTheFederalJudiciary/december-2012.aspx>.

the Department of Defense, general courts-martial jurisdictions do not publish court-martial statistics on the world wide web.

5. Department of Education Surveys and Reports.

a. Surveys of female college students have indicated significantly higher victimization extrapolations than the 2012 WGRA and 2012 DoD Report.³⁶

b. Department of Education reports indicate much smaller rates of victimization than the college student surveys, and lower rates than the 2012 DoD Report.³⁷

6. Analysis.

a. The gender percentages of victims in restricted and unrestricted reports are 88% female and 12% male, whereas the 2012 WGRA victimization percentage is 47% female and 53% male. 12% of 2,949 military victim reports is 354 male victims. 354 male victims compared to the 2012 WGRA's extrapolated 14,205 male victims means only one in 40 male victims reported their victimization.

b. 90% of the subjects in unrestricted reports are male. 90% of 14,205 male victims (the WGRA's extrapolated number of male victims) is 12,784. The extrapolation of 12,784 military male-on-male assaults appears to be extremely inflated. The number of male-on-male investigations is 160 or 10% of the total number of investigations (1,590).³⁸ The number of male-on-male courts-martial prosecutions is not indicated in

³⁶ Kilpatrick, D., Resnick, H., Ruggiero, K., Conoscenti, L., and McCauley, J., U.S. Department of Justice, *Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study*. Washington, DC (2007) at 3, 28, <https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf> [hereinafter 2007 KILPATRICK STUDY]. The 2007 KILPATRICK STUDY was financed through a federally funded grant; however, it was not "published by the U.S. Department of Justice." *Id.* at 1. The Report includes the following disclaimer, "Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice." *Id.* The 2007 KILPATRICK STUDY was the cited basis concerning the prevalence of national rape incidents. 2012 DoD Report, Vol. I, at 18 n. 31, 53 n. 69.

³⁷ The 2007, 2008, and 2009 Clery Act reportable forcible sex offenses were 3,478 in 2007; 3,270 in 2008; and 3,284 in 2009. U.S. Department of Education, DATA ON CAMPUS CRIME, at 5-6, <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. The female student population for those three years was: 2007 (10,432,000); 2008 (10,914,000); and 2009 (11,658,000). http://nces.ed.gov/programs/digest/d11/tables/dt11_200.asp. The female college student victimization rate per thousand for forcible sex offenses for those three years was: 2007 (.33); 2008 (.30); and 2009 (.28).

³⁸ The FY 2012 DoD number of unrestricted reports of male-on-male sexual assaults was 160. 2012 DoD Report, Vol. I, at 191 (Army-85), 479 (Navy-37), 534 (Marine Corps-23), 635 (Air Force-15). 1,590 unrestricted reports involved allegations of Service member-on-Service member sexual assault. See note 2, *supra*. Unrestricted reports result in criminal investigations. See note 3, *supra*.

the 2012 DoD Report; however, it would be surprising if the number was more than about ten percent.

c. The extrapolated number of military victims of sexual assault (26,000) in the 2012 DoD Report is 20 times as high as the survey numbers found in the 2011 Criminal Victimization Report.³⁹ However, the DoD extrapolation and survey did not involve trust and reliability building interviews. The 2012 WGRA did not involve repeated interviews of the same respondents. The 2007 Kilpatrick Study extrapolated a college female rape victimization percentage more than three times higher than the 2012 WGRA rape extrapolation of female active duty women.⁴⁰

d. The 2012 WGRA utilized the results from the 2010 MILITARY NISV REPORT to support the 26,000 extrapolation. 2010 MILITARY NISV REPORT mixed non-criminal sexual misbehavior into their interview questions which may have confused respondents and caused inflated results. The 2010 MILITARY NISV REPORT found vast variations in sexual victimizations between different states.⁴¹ Absent a credible explanation for the different state results, the CDC survey results should be viewed with skepticism and assessed as too unreliable to support the 2012 WGRA's extrapolation of 26,000 victims.

³⁹ Using the total DoD active duty population of 1,388,028 and the extrapolated number of 26,000 military victims found in the 2012 DoD Report, the extrapolated rate per thousand is 18.7, which is 20 times the rate per thousand for the most recent year available in the 2011 CRIMINAL VICTIMIZATION REPORT, *supra* n. 27. Reporting rates per thousand allow comparison of reports from groups of different sizes and it facilitates year-after-year comparisons, even when the total number of people in a group has changed. 2012 DoD Report, Vol. I, at 60. Actual victim reporting rates for the last six years are as follows: FY 2007 (1.6); FY 2008 (1.7); FY 2009 (1.9); FY 2010 (1.8); FY 2011 (1.9), and FY 2012 (2.1). *Id.* at 60. Rates are calculated using the number of Service member victims in unrestricted and restricted reports and Active Duty Military Service end strength for each year on record with Defense Manpower Data Center (DMDC). *Id.*

⁴⁰ 2007 KILPATRICK STUDY, *supra* n. 36, at 3, states:

Estimates are that 673,000 of nearly 6 million women (11.5%) currently attending American colleges have ever been raped. This includes an estimated half-million college women who have been forcibly raped, 160,000 who have experienced drug-facilitated rape, and over 200,000 who have experienced incapacitated rape. During the past year alone, 300,000 college women (5.2%) were raped: nearly 200,000 who have been forcibly raped, nearly 100,000 who have experienced drug-facilitated rape, and over 100,000 who have experienced incapacitated rape." [].

Id. The 2012 DoD Report provides 27% of the unrestricted reports of USC were rapes. 2012 DoD Report, Vol. I at 62. 27 times 6.1% is 1.65%. The annual college rape percentage is 3.15 times as high as the military rape percentage.

⁴¹ See, e.g., Virginia (11.4%) and California (14.6%) were less than half the rates for lifetime rape of Michigan (25.6%) and Alaska (29.2%). 2010 CDC NISVS, *supra* note 16, Table 7.1 at 68-69.

LISA M. SCHENCK
J.S.D., LL.M. (2), J.D., M.P.A.

SUMMARY OF EXPERIENCE

- Associate Dean for Academic Affairs at The George Washington University Law School managing over 260 adjunct professors at a law school with over 2,000 students (J.D., LL.M., and S.J.D.) since 2009.
- Personal familiarity with adult higher education and advanced degree programs. Obtained a J.S.D. (doctor of laws) and LL.M. (master of laws) from Yale Law School and additional LL.M., M.P.A., and J.D. while on active duty.
- Professorial Lecturer in Law at The George Washington University Law School, creating and teaching Military Justice; co-authored a textbook, *Modern Military Justice: Cases and Materials* (West Publishing 2012).
- Twenty-five years of leadership experience as a military officer, lawyer, and judge managing legal offices and advising commanders and government officials. Retired as a colonel, U.S. Army. Tried numerous cases as a prosecutor and Special Assistant U.S. Attorney. Supervised other prosecutors and managed Federal Magistrate Court Programs. As a criminal appellate judge, participated in over 1,900 criminal cases, acted as the lead judge for over 770 cases, and presided over numerous oral argument hearings.
- Academic administrative and teaching experience as an Assistant Professor, Co-Course Director, and Department Academic Counselor at the United States Military Academy, West Point, NY.
- Graduate training and relevant experience in business. Obtained a Masters in Public Administration through Fairleigh Dickinson University's continuing education program and inducted as a member of *Delta Mu Delta Honor Society in Business Administration*. As Department Academic Counselor, recruited students into the American Legal System academic program for the Law Department at West Point.

EDUCATION

YALE LAW SCHOOL, New Haven, CT, J.S.D. (doctor of the science of law), 2007

- Thesis: "Achieving Global-Scale Collective Action: Applying Lessons From Nuclear Arms Control to Climate Change," *available at* www.lisaschenck.com. Dissertation Committee: Professor Daniel C. Esty (Chair), Professor Susan Rose-Ackerman, and Professor Ruth Wedgwood

YALE LAW SCHOOL, New Haven, CT, LL.M. (master of laws), 1998

- Environmental Law concentration
- 1997, Army Funded Master of Laws Scholarship Program Recipient (1 of 10 selected in the Army)
- *Awarded Honors*

THE JUDGE ADVOCATE GENERAL'S LEGAL CENTER & SCHOOL, Charlottesville, VA, LL.M., 1995

- Military Criminal Law concentration
- *Commandant's List*

NOTRE DAME LAW SCHOOL, Notre Dame, IN, J.D., 1989, *Cum Laude*

- 1986, Army Funded Legal Education Program Recipient (1 of 10 selected in the Army)
- *Dean's Honor List*

FAIRLEIGH DICKINSON UNIVERSITY, Rutherford, NJ, M.P.A., 1986

- *G.P.A. 4.0*
- *Delta Mu Delta Honor Society in Business Administration*

PROVIDENCE COLLEGE, Providence, RI, B.A., 1983, *Cum Laude*

- 1980, Reserve Officer Training Corps Scholarship Recipient
- *Dean's List*
- *Distinguished Military Graduate*
- 1983, *Providence College Alumni Military Academic Achievement Award*

ACADEMIC EXPERIENCE AND AWARDS**ASSOCIATE DEAN FOR ACADEMIC AFFAIRS, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL,
Washington, DC**

November 2009 – Present

- Managing and overseeing the adjunct faculty program consisting of over 260 adjunct professors at a law school with more than 2,000 students (J.D., LL.M., and S.J.D.). Reviewing adjunct faculty course evaluations, counseling individuals orally and in writing, including taking corrective actions, as necessary, to resolve issues of low course evaluations.
- Ensuring timely and substantively trained adjunct faculty are recruited, approved, hired, appointed, and assigned to courses each semester. Negotiate compensation with adjunct faculty.
- In coordination with the Senior Associate Dean for Academic Affairs, scheduling faculty and course assignments each fall with approximately 250 classes, spring with over 260 classes, and summer semester with over 45 classes, recruiting adjunct faculty members as needed.
- In coordination with the Senior Associate Dean for Academic Affairs, ensuring professors submit exams, assists in overseeing the administration of over 6,000 exams in 8 days and 7 nights.
- Reviewing and approving grades submitted each semester by adjunct professors.
- Responding to and conducting initial review of new course curriculum proposals.
- Dean's representative to the Faculty Curriculum Committee, Staff Service Committee, Committee on Incidents of Discrimination and Harassment, Scholarship Committee, and Admissions Committee (previously served on the Academic Integrity Committee).
- Overseeing adjunct professor compensation, a budget of \$1 million.
- July 2010 – April 2012. Oversaw the Outside Placement Program comprised of one Assistant Dean, a Program Coordinator, and Experiential Learning Fellow, a program involving students serving in volunteer, non-paid externships with judicial, non-profit, and governmental organizations and enroll in co-requisite courses. Ensured a smooth transition in Summer Session 2011 when the Outside Placement distance program was established, an online program for students with externships outside the D.C. metropolitan area who took the co-requisite courses through the online teaching tool *Illuminate Live*.

**PROFESSORIAL LECTURER IN LAW, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL,
Washington, DC**

March 2010 – Present

- Created a new course, Military Justice
- Developed course materials and taught the course using co-authored case book for *Modern Military Justice: Cases and Materials* (West Publishing 2012)

**SENIOR ADVISER, NATIONAL SECURITY & U.S. FOREIGN RELATIONS LAW LL.M. PROGRAM, THE GEORGE
WASHINGTON UNIVERSITY LAW SCHOOL**

Washington, DC

August 2012 – Present

- Advise LL.M. candidates regarding course selection and program requirements
- Assist J.D. and LL.M. candidates to secure externship positions in federal agencies

**ASSISTANT PROFESSOR & CO-COURSE DIRECTOR, United States Military Academy, West Point, NY
May 1995 – August 1997**

- *Instructor, Constitutional and Military Law*, 1995 – 1997; Appointed Assistant Professor (July 1997)
- *Co-Course Director/ Instructor, Introduction to Legal Methods*, 1996 – 1997
- *Department Academic Counselor*, 1996 – 1997
 - Managed academic programs for 115 cadets enrolled in the American Legal System Field of Study.
 - Briefed West Point cadets in their junior year about the field of study.
 - Responsible for recruiting cadets into the American Legal System Field of Study.
- *Awarded Meritorious Service Medal.*
- 1999, *The Honor Society of Phi Kappa Phi Scholastic Achievement Award*

- 1999, *The Honor Society of Phi Kappa Phi Inductee* (1 of 5 West Point staff & faculty members appointed into Phi Kappa Phi National Honor Society)

INSTRUCTOR, CRIMINAL LAW, Ft Rucker, AL, May 1992 – February 1994

- Courses taught: military criminal law for Aviation Officer Basic Course, Advanced Course, Warrant Officer Candidate School, and Senior Warrant Officer Course.
 - 1994, *Fort Rucker Professional Woman of the Year*

LEADERSHIP EXPERIENCE

SENIOR ADVISOR, DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES, Science Applications International Corporation, Alexandria, VA 22314

September 2008 – November 2009

- Advised and assisted a Congressionally-mandated Task Force comprised of Senior DoD and civilian officials in examining matters relating to sexual assault by members or against members of the Armed Forces of the United States. Reviewed DoD standards related to sexual assault offenses in the Armed Forces. Advised the Task Force and staff regarding DoD's reporting, investigative, and adjudicative process for sexual assault offenses.
- Reviewed DoD criminal investigative techniques, rules of evidence and procedure, court precedent, and statutory and regulatory guidelines as they relate to sexual assault offenses. Evaluated prior DoD criminal investigations and courts-martial cases, interviewing military prosecutors, defense counsel, and judges, and assessing military and civilian law enforcement coordination, victim care, sexual offense prevention, and resource management.
- Researched and proposed statutory and regulatory modifications, and assessed data compiled during on-site evaluations at various military installations for inclusion in the Task Force's Congressional report.

SENIOR APPELLATE MILITARY JUDGE, COLONEL, U.S. Army Court of Criminal Appeals, Arlington, VA

- *Senior Judge, May 2005 – June 2008*
 - Developed, conducted oversight, managed, and presided over a three-judge panel on the highest Army court with appellate jurisdiction over Army courts-martial (criminal trials).
 - Supervised administrative personnel and associate judges; managed case flow of trial records.
 - Decided criminal appellate cases, responded to briefs, motions, and errors raised on appeal; presided over oral argument hearings; wrote decisions affirming, modifying or setting aside trial findings and sentences, and writing opinions reflecting and supporting these decisions.
 - Participated in reviewing over 1,900 criminal investigative/court-martial records of trial (reports). As the lead judge reviewed and summarized (reporting to the other voting judges) over 770 criminal cases which provided findings and conclusions that evaluated whether statutory, regulatory, or policy standards had been violated and whether corrective action was required.
 - *Awarded the Legion of Merit.*
- *Associate Judge, October 2002 – May 2005*
 - Reviewed courts-martial records of trial and acted on appellate issues raised by defense or identified; identified legal and factual issues; performed research; wrote decisions affirming, modifying or setting aside trial findings and sentences and supporting opinions reflecting these decisions, providing guidance and precedent to members of the Armed Forces and the legal profession regarding the administration of military justice.
 - 2003, *Judge Advocates Association Outstanding Career Armed Services Attorney Award (Army)*

ASSOCIATE JUDGE, U.S. Court of Military Commission Review, Arlington, VA 22203

- *Associate Judge, July 2007 – 1 June 2008 (Position held concurrent with Senior Judge position)*
 - Inter-service DoD appellate court with jurisdiction over all cases prosecuted under the Military Commission Act involving detainees held at Guantanamo Bay, Cuba.

ENVIRONMENTAL LAW ATTORNEY, U.S. Army Legal Services Agency, Arlington, VA, 2000 – 2002

- At Headquarters, Department of the Army (HQDA), participated in sensitive policy making, implementing, and defending before Congress. Prepared (and accompanied) witnesses such as the Army Vice Chief of Staff to Congressional hearings before the Senate Armed Services Committee and other committees regarding impact of environmental restrictions on the military services.
- Wrote reports, briefings, and correspondence responding to White House, Congressional, and military department inquiries involving the impact of environmental restrictions on military readiness.
- Participated in the Army's public affairs strategies for high-profile, sensitive issues at environmental cleanup sites.
- Advised the Army Staff, Secretariat, and installations regarding environmental laws and regulations for ranges and military munitions. Worked with EPA, Department of Defense (DoD), the Corps of Engineers, and military services regarding issues such as hazardous waste management, cleanup of contaminated sites, unexploded ordnance response actions, requirements on ranges, and several ongoing enforcement actions.

EXECUTIVE OFFICER, CRIMINAL LAW DIVISION, Office of The Judge Advocate General, HQDA, Arlington, VA, 1999 – 2000

- Advised Army Staff and field offices regarding criminal law policy and operations. Prepared reports, briefings, and correspondence for White House, Congressional, DoD, and HQDA staff inquiries.
- Responded to, made recommendations regarding, and processed Freedom of Information Act and Privacy Act, clemency, and Army Presidential Pardon requests.
- Responsible for day-to-day division management and administration.

CHIEF, ADMINISTRATIVE & CIVIL LAW DIVISION, United States Military Academy, West Point, NY, 1998 – 1999

- Supervised a staff of 3 attorneys and 2 paralegals providing legal services to commanders and directorates on installation operations including advice on cadet misconduct and honor investigations, and labor, contract, ethics, administrative, regulatory, environmental, and Freedom of Information Act matters.
- Supervised the management of Federal Magistrate Court Program, processing numerous federal petty and misdemeanor cases, as well as probation revocations, sentence hearings, and trials.
- Supervised cadet honor hearing officer and provided guidance regarding numerous honor violations and investigations. Advised investigating officers conducting cadet misconduct hearings.
- As Academy Ethics Counselor, provided advice regarding the Joint Ethics Regulation and other ethics issues.
- *Awarded Meritorious Service Medal.*

DEPUTY STAFF JUDGE ADVOCATE (DEPUTY CHIEF COUNSEL), Ft Rucker, AL, February 1994 – July 1994

- Supervised a staff of 30, including 9 attorneys practicing environmental law, criminal law, administrative law, claims, and legal assistance for a 48,000-person client base.
- Managed office administrative, personnel, financial, and information resources.
- *Awarded Meritorious Service Medal.*

CHIEF, CRIMINAL LAW DIVISION, SUPERVISING SPECIAL ASSISTANT U.S. ATTORNEY, Ft Rucker, AL, May 1992 – February 1994

- Supervised military justice administration for over 6,000 soldiers; advised commanders, staff, and investigators regarding criminal law matters. Led a division of prosecutors, paralegals, and court reporters.
- Government prosecutor for numerous courts-martial and government representative for separation boards.
- Managed and led the Federal Magistrate Court Program, processing approximately 1,400 federal petty and misdemeanor cases, as well as probation revocations, sentence hearings, jury and non-jury trials.
- Victim/Witness Liaison, advising victims of crimes for a 10,000 person community.
- 1994, *Nominee, ABA Outstanding Young Military Service Lawyer*

CHIEF, LEGAL ASSISTANCE & CLAIMS DIVISIONS, Ft Rucker, AL, September 1991 – May 1992

- Supervised 2 divisions, assisting a 48,000-person client base. Met with clients and provided legal advice regarding family law, probate, estate planning, medical malpractice and tort claims, and medical care and property damage recovery.
- Developed forms and letters for expeditious response to client concerns. Led Legal Assistance Division to receive Chief of Staff's Award for Excellence.
- Expedited processing of claims, reduced number of property claims over 60 days old by 73 percent, total number of open small claims by 75 percent; increased processing time on small claims by 63 percent; increased medical care recovery collection actions by 140 percent.

LEGAL ADVISOR/PROSECUTOR, Republic of Korea, January 1990 – October 1991

- *Acting Command Judge Advocate, Camp Humphreys Legal Center*, June 1991 – September 1991
- *Camp Humphreys Prosecutor*, April 1991 – September 1991, prosecuted numerous courts-martial and represented the government in administrative hearings.
- *Claims & Legal Assistance Attorney, Camp Humphreys Legal Center*, January 1991 – September 1991, assisting with criminal law, claims, legal assistance, and administrative law matters for over 13,000 soldiers.
 - *Awarded Army Commendation Medal.*
- *Camp Hovey Prosecutor and Legal Center Officer In Charge*, 2d Infantry Division, 1990
 - Supervised Camp Hovey Legal Center specializing in criminal, administrative, and operational law issues for over 5,000 soldiers.
 - Government prosecutor for numerous courts-martial and representative in administrative hearings.
 - *Awarded Army Commendation Medal.*

U.S. ARMY SIGNAL CORPS OFFICER, Fort Monmouth, NJ, November 1983 – August 1986

- *Assistant Chief, Equipment Fielding Team*, December 1985 – August 1986. Fielded \$2 million of communications equipment to a Special Operations Airborne Battalion, Fort Bragg, NC.
- *Assistant Secretary of the General Staff*, August 1984 – December 1985. As the interface between three general officers and the command, reviewed and staffed command directives and correspondence pertaining to research, development and acquisition for the Army's communications-electronics requirements.
- *Project Officer*, May 1983 – August 1984. Supervised a \$23 million modernization of a communications-electronics research and development facility.

PUBLICATIONS

Modern Military Justice: Cases and Materials (textbook co-authored with Professor Gregory Maggs) (West Publishing 2012)

"From Start to Finish: A Historical Review of Nuclear Arms Control Treaties and Starting over with the New START," 20 *Cardozo Journal of International & Comparative Law* 399 (2012) (co-authored with Robert Youmans)

"The U.S. Can Escape the Climate Change 'Prisoners' Dilemma," *The Hill's Congress Blog* (November 10, 2010) (co-authored with Earl Saxon) (reprinted on the website for The Academy for Educational Development)

"Climate Change 'Crisis' – Struggling for Worldwide Collective Action," 19 *Colorado Journal of International Environmental Law & Policy* 319 (Summer 2008)

"Achieving Global-Scale Collective Action: Applying Lessons From Nuclear Arms Control to Climate Change," (J.S.D. dissertation 2007) *available at* www.lisaschenck.com

“Let’s Clear the Air: Enforcing Civil Penalties Against Federal Violators of the Clean Air Act,” The George Washington University Law School and Section of Environment, Energy, & Resources of the American Bar Association, 6 *Environmental Lawyer* 839 (June 2000)

“Wetlands Protection: Regulators Need to Give Credit to Mitigation Banking,” Pennsylvania State University, Dickinson Law School, 9 *Dickinson Journal of Environmental Law & Policy* 103 (Spring 2000)

“Liability of Municipalities Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA): Is this a Legal Hazard to the Environment?,” 23 *Seton Hall Legislative Journal* 1 (1998)

“Child Neglect in the Military Community: Are We Neglecting the Child?,” 148 *Military Law Review* 1 (Spring 1995)

Environmental Law Division Note, “Encroachment: Putting the ‘Squeeze’ on the Department of Defense (DoD),” December 2001, *Army Lawyer*

Environmental Law Division Note, “DoD Range Rule Withdrawn with a View Towards Reproposal,” February 2001, *Army Lawyer*

Environmental Law Division Note, “Unexploded Ordnance (UXO): An Explosive Issue?,” October 2000, *Army Lawyer*

“Assault at West Point: The Court-Martial of Johnson Whittaker,” 148 *Military Law Review* 274 (Spring 1995) (book review)

“Prisoners of Hope: Exploiting the POW/MIA Myth in America,” 146 *Military Law Review* 291 (Fall 1994) (book review)

Operations and Training Note, “Military Qualifications Standards System,” October 1989, *Army Lawyer*

JUDICIAL OPINIONS AND REPORTED CASES

- In my capacity as an appellate military judge on the U.S. Army Court of Criminal Appeals, I wrote approximately 79 judicial opinions from October 2002 to June 2008.
- Authored numerous reported cases including: *United States v. Dacosta*, 63 M.J. 575 (A. Ct. Crim. App. 2006); *United States v. Estes*, 62 M.J. 544 (A. Ct. Crim. App. 2005); *United States v. Gilchrist*, 61 M.J. 785 (A. Ct. Crim. App. 2005); and *United States v. Hammond*, 61 M.J. 676 (A. Ct. Crim. App. 2005).

BAR & COURT ADMISSIONS & PROFESSIONAL ORGANIZATION MEMBERSHIPS: Supreme Judicial Court of Massachusetts (MA Bar); U.S. Supreme Court; U.S. Court of Appeals for the Federal Circuit; U.S. District Court, Middle District of Alabama; U.S. Court of Appeals for the Armed Forces; U.S. Army Court of Criminal Appeals; Judge Advocates Association Inn of Court – 1999 – Present; Secretary, 2000 – 2001.

REFERENCES

Interim Dean Gregory Maggs (gmaggs@law.gwu.edu)
Interim Dean & Former Senior Associate Dean for Academic Affairs
The George Washington University Law School
716 20th Street, NW
Washington, DC 20052
(202) 994-6031

Rear Admiral (ret.) Hank Molinengo (hrmolinengo@law.gwu.edu)
Associate Dean for Administrative Affairs
The George Washington University Law School
2000 H Street, NW
Washington, DC 20052
(202) 994-5093