

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



MEETING AND REFERENCE MATERIALS

PUBLIC MEETING
January 25, 2019
ARLINGTON, VIRGINIA

**Defense Advisory Committee on Investigation, Prosecution, and Defense
of Sexual Assault in the Armed Forces (DAC-IPAD)**

PUBLIC MEETING AGENDA

January 25, 2019

**Doubletree by Hilton Crystal City
300 Army Navy Drive, Arlington, Virginia**

8:30 a.m. – 9:00 a.m.	Administrative Session (41 C.F.R. § 102-3.160, not subject to notice & open meeting requirements)
9:00 a.m. – 9:10 a.m.	Public Meeting Begins – Welcome and Introduction - <i>Designated Federal Official Opens Meeting</i> - <i>Remarks of the Chair</i>
9:10 a.m. – 10:40 a.m.	Panel: Effects of Sexual Assault Investigations on Accused Service Members (1 hr 30 mins)
10:40 a.m. – 10:50 a.m.	Break
10:50 a.m. – 11:50 p.m.	Data Working Group Presentation of Sexual Assault Court-Martial Data (1 hr)
12:00 p.m. – 1:00 p.m.	Lunch
1:00 p.m. – 2:00 p.m.	Case Review Working Group Presentation of Investigative Case File Review Data (1 hr)
2:00 p.m. – 2:10 p.m.	Break
2:10 p.m. – 4:45 p.m.	Committee Deliberations on March 2019 Draft Report (3.5 hrs)
4:45 p.m. – 5:00 p.m.	Public Comment
5:00 p.m.	Public Meeting Adjourned

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

**January 25, 2019
DAC-IPAD Public Meeting
Biographies of Presenters
Effects of Sexual Assault Investigations on Accused Service Members
9:10 a.m. – 10:40 a.m.**

Lieutenant Colonel Jay Morse, USA (Retired) is owner/principal of Faro, International, a consulting firm focusing on law and operations in the security and Rule of Law sectors. Lieutenant Colonel Morse is a retired US Army Lieutenant Colonel, and served as both an Army Aviator and a Judge Advocate. His military assignments include the Chief of Stability Operations for the International Law Division in the Army's Office the Judge Advocate General; the Chief of the Army's Trial Counsel Assistance Program, where he was also the lead prosecutor in the case of United States v. SSG Bales, a sixteen-count wartime homicide trial; the Staff Judge Advocate and Deputy SJA at the 101st Airborne Division and Ft. Campbell; and various positions with the 2nd, 3rd, and 4th Infantry Divisions. Most recently, Lieutenant Colonel Morse was the Senior Military Advocate for Center for Civilians in Conflict, where he provided in-house counsel on strategic engagements with militaries and governments around the world, designed multi-phase, experiential training to reduce civilian harm in conflict zones; and advocated to governments and international organizations on the importance of protecting civilians during conflict.

Colonel Doug James, USAF (Retired) is the President of Hound Strategic and volunteers his time as President of Save Our Heroes, a non-profit dedicated to advocating for falsely accused service members and their families. Colonel James is very passionate about maintaining the integrity of the military judicial process—a process he has experienced first-hand. A retired US Air Force Colonel, Colonel James served as a USAF Command Pilot with over 2,800 hours in fighter aircraft. He was a recognized senior staff member supporting CENTCOM leadership where he successfully led a team of Coalition forces in Iraq and Afghanistan. He then served as Deputy Assistant Director of Air and Space Operations for the U.S. Air Force's Pacific Command (PACAF). At PACAF, Colonel James was the senior staff member responsible for leading the headquarters' crisis action team.

Colonel David "Wil" Riggins, USA (Retired) is a United States Military Academy graduate where he earned a Bachelor of Science Degree in Mechanical Engineering. He holds a Master of Science degree in Systems Engineering from the University of Virginia and completed a Senior Service College Fellowship at the University of Texas, Austin.

Colonel Riggins's deployments include Panama, Desert Storm, Desert Shield and Operation Enduring Freedom. After several assignments, including Project Manager Soldier Warrior in the Army Program Executive Office Soldier for four years, he was selected to be the Director of Investment in the Army Budget Office responsible for the management of \$32 Billion of Army Investment appropriations.

Colonel Riggins's awards and decorations include the Legion of Merit (2), Bronze Star Medal, Defense Meritorious Service Medal, the Army Meritorious Service Medal (3), the Master Parachutist Badge, Air Assault Badge and Ranger Tab. In 2013, Colonel Riggins was selected and nominated by the President for promotion to Brigadier General. Colonel Riggins retired in 2015, with more than 27 years of service. He and his wife, Nancy, reside in Northern Virginia. They have four adult children: Weston, Austin, Cassie and Baylee.

DAC-IPAD
875 N. Randolph Street, Suite 150
Arlington, VA 22203

Subject: Testimony of Lieutenant Colonel (Retired) Joseph Morse
October 4, 2018

Introduction

My name is Jay Morse, and I am a retired US Army lieutenant colonel. I served on active duty as an Army aviator from 1993 until 1998, when I was selected to attend law school under the Funded Legal Education Program. I transferred into the Judge Advocate General's Corps (JAGC) in 2001, and until my retirement in 2015 served in various positions including, but not limited to: Trial Counsel (prosecutor), Defense Counsel, Senior Defense Counsel, Deputy Staff Judge Advocate, Staff Judge Advocate, and Chief of the Trial Counsel Assistance Program (TCAP). In February of 2014, approximately four months shy of completing my third year as the Chief of TCAP, I was falsely accused of sexual assault.

I am grateful for the opportunity to appear before this panel of experts and to share my experience. Though I am certainly not the only service member to be falsely accused of sexual assault, I believe I am particularly qualified to discuss the nuances of how the Army responds to such allegations, as well as impact on an accused. I have directed sexual assault investigations and prosecutions; defended soldiers alleged to have committed sexual assault; supervised defense counsel; supervised prosecutors, to include more than 30 Special Victim Prosecutors and three civilian Highly Qualified Expert attorneys; led the Army's training of all prosecutors; advised senior judge advocates on nearly every high-profile case between July 2011 and March 2014; advised convening authorities in accordance with statutory requirements in the Uniform Code of Military Justice (UCMJ); and helped to shape the Army's response to the significant congressional and public interest in how the Army investigated and prosecuted sexual assault allegations. Lastly, I have experienced the process as one accused of committing a crime.

In February of 2014, an Army judge advocate claimed that at a training conference in March of 2011, I ordered her to my hotel room in the early morning hours and then attempted to kiss and "grope" her. In a five-page sworn statement, she made dozens of assertions and implications about me, herself, and the facts around the alleged assault; about our interactions between the years of 2009 and 2014; claimed that I had assaulted others previously; that I regularly fraternized with

subordinates; and that the reason she came forward was that “she felt great consternation” that, in my next position in the JAG Corps as the Staff Judge Advocate for the 1st Cavalry Division, I would be around young female officers and that she “could not sit idly by” while I assaulted others.

On February 21st, I was suspended from my position as the Chief of TCAP. My senior supervisor at the time did not speak with me for approximately three weeks, stating that he did not want to “appear to be taking sides.” I was not permitted to do any work for the duration of the investigation; I was moved to a temporary office and literally sat at my desk and did nothing.

On March 5th, 2014, multiple domestic and international news outlets ran an article with my photo and a headline of some variation of “Army’s top prosecutor accused of sexual assault.” I believe the report was leaked intentionally, most likely by a Criminal Investigation Division (CID) office believing the publicity would generate multiple other accusations against me, as my accuser’s statement implied that I was a repeat sex offender. My accuser’s name has never been made public, and I do not know if the Army investigated who leaked the report.

As a result of the investigation, and in addition to being suspended from my position as the Chief of TCAP, I was “titled” with the offenses of assault, abusive sexual contact, and conduct unbecoming an officer¹; given a locally-filed “letter of reprimand” for poor judgment; fired from my job; constructively forced to withdraw my name from consideration from promotion to the next rank and to submit a request to retire from the Army; and subjected to an Army board of review to determine at which rank I would be allowed to retire.

In the pages below I will elaborate on my experience, and can provide any additional information, to include the investigative file, this board requests.² I believe the file reflects that I was denied any real opportunity to defend myself, and that multiple government officers acted contrary to regulations, procedure, and fundamental fairness. I believe that senior Army leaders and judge advocates became beholden to media and civilian political pressure at the expense of ensuring due process and adherence to the rules. I believe they placed a perceived obligation to

¹ Titling is the act of CID listing an individual as a subject in a report. The standard of proof is whether “credible information exists that the subject committed a criminal offense”. The definition of credible information is significant: “Information disclosed or obtained by a criminal investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained criminal investigator to presume the fact or facts in question are true.” See DODI 5505.7 and AR 195-2. If a person is listed as a subject, they are fingerprinted, photographed, and their information entered (“indexed”) into the Defense Clearing and Investigations Index (DCII).

² Unless otherwise specified, every statement contained or referenced within this document is either my personal experience or reflected in official documents submitted to the US Army between February 2014 and March 2017.

provide political protection to their convening authorities, senior leadership, and themselves above their statutory obligation to the law.

A just system of how we treat an alleged sexual assault victim must be separate from that of how we treat an accused, but we have conflated the two and are at risk of eliminating the latter. It is not good for those accused, it is not good for those accusing, and it is certainly not good for the foundations of our vaunted justice system, that of due process and reasonable doubt and equal protection under the law. We are at the precipice of allowing the court of public opinion to pre-determine legal guilt; to impose a chilling effect not just on victims but on exculpatory testimony as well; to eliminate the very right of an accused to defend himself.

My experience after twenty-two years of Army service is that, as an institution, we respond to external pressures for social change with determined but unstoppable pendulum swings. If one is lucky, one might catch the pendulum at its equilibrium, but the majority of us experience the consequences of gravity and momentum; whether that is of benefit or detriment is purely a matter of timing. I am grateful for this panel's efforts to find a better way, and hope that my experience contributes to a meaningful solution. I hope that my testimony may serve as an additional catalyst for genuine institutional reflection and a reaffirmation that the law, above all else, should dictate our actions.

Investigation to Final Action

Of no surprise to this panel is that most allegations of sexual assault involve just two witnesses, the accused and the accuser. Their testimony is often, if not always, at odds, and my case is no different. Where my accuser writes that I ordered her to my hotel room in the early morning hours, lectured her on an unknown topic, assaulted her when she attempted to leave, and then followed her down a hallway calling after her before she vomited in a stairwell, I remember it quite differently.³

My accuser and I spoke on two occasions in the evening of March 3rd, 2011. In our first conversation she recounted a discussion we had sometime in 2010 regarding a court-martial, when she was a defense counsel and I the Deputy Staff Judge Advocate. She was flattering and gracious,

³ I do not hide behind facts: Though I believe the exculpatory evidence to be overwhelming, if any of my written or oral testimony leaves room to infer that I might be guilty of a crime, it is there purely to emphasize that facts are, and should always be, paramount in making a prosecutorial or adverse administrative decision. I did not assault my accuser or engage in any behavior that could have been considered, perceived, or misinterpreted as assault or non-consensual.

and I took it to mean she was expressing interest in me. She also told me she was divorced, which I later found to be untrue. She was overt in our second conversation that evening, and propositioned me using direct and graphic language. She came to my hotel room in the early morning hours of March 4th on her own accord; we kissed briefly and consensually, and she left a short time later – again on her own accord, and without opposition from me. At the conference the next morning, she sat directly next to me in the back of a large room and for the entirety of the morning session. We had a normal conversation, swapped several text messages, and at the end of the conference, parted with a hug and on amicable terms. I had multiple interactions with my accuser between March 4, 2011 and her claim three years later, all initiated by her and all without issue.

When there are no eyewitnesses to an alleged assault, and no physical evidence, credibility is not only a key factor but is dispositive. One option in determining credibility is by the default standard of our times: *If she made the claim it must be true*. This is, perhaps, acceptable for opening an investigation or for providing assistance to a claimant, but it is a poor standard in assessing guilt and delivering punishment, as it leaves no recourse for one accused of a crime.

Over my accuser's five-page sworn statement, she made dozens of claims not only about this allegation, but about her interactions with me throughout the time we have known one another (between June 2009 and her claim in 2014); about her personal and professional relationship with me; about her own conduct and demeanor; and about how this alleged assault changed her. Nearly every one of my accuser's claims is embellished, misleading, misrepresented, or an outright lie. Each is contradicted with physical evidence, sworn testimony, or both, and found within CID's investigation as well as within defense-provided sworn statements from neutral witnesses.

Some are, at first glance, innocuous. For example, her claim that she had no idea I was even at this conference until the evening of the alleged assault is forcefully contradicted by multiple witnesses who provided sworn statements that she was speaking about me regularly in the days leading up to our encounter. Many of her claims are illogical, such as her reason that she came forward with this allegation: because I was going to an assignment where I would supervise women, and she feared for their safety. My accuser was intimately familiar with my role and responsibilities as the Chief of TCAP, knew I had been in that position for nearly three years, had at least a dozen women subordinates, and was around young female officers as a matter of routine. Others are more damning: where my accuser claimed that each time she would see me, hear my name, or hear my voice, this assault would "coming rushing back" and send her to a dark place, the

reality is very different. Five months after our consensual encounter, my accuser invited herself to a private dinner I arranged only *after* learning I would be there. Me, my accuser, and two friends spent at least three hours having dinner and drinks; one witness described my accuser as clearly attempting “to go home with LTC Morse.” In her statement, my accuser describes this encounter as “[a] group of individuals went out to dinner. While I did go out in a group and he was present, at no time was I alone with him.” There are several others instances of my accuser seeking me out or speaking about me in terms that suggested we were friends or something more.

In short, credibility is and was my only defense to this allegation – not only in the court of public opinion, but consistent with the legal standard for titling (*see* fn 1 above: a titling decision can be made when credible evidence exists; determining “credible” requires assessing the source and nature of the information and the totality of the circumstances). Once I learned the identity of my accuser, I proactively went to Trial Defense Services (TDS) to get an attorney. My goal at the time was to avoid being titled. Though I knew titling was lawfully supposed to be simply an “operational” decision applicable to CID and not a legal or judicial decision, I also believed it would have long-term implications on my ability to succeed in the Army. I hoped to avoid being titled by gathering enough information to show investigators and judge advocates that, whatever the allegation, any implication of a lack of consent was a lie.

Over the course of a few weeks, my attorney received multiple sworn statements from people who knew and worked with my accuser; most reached out to my attorney on their own. Their statements reflected that my accuser, for approximately two years after March 2011, regularly spoke about me in a positive and flattering light; that my accuser made it sound as if she and I had a platonic, if not intimate, relationship; that my accuser was aggressive, a bully, and regularly used sexually-charged language (consistent with the language she used towards me the evening prior to coming to my room; and relevant in that she denied using inappropriate language in general); and that their opinion was that my accuser was, in general, an untruthful person. In a sworn statement subsequently provided to the government, one witness wrote that the accuser sexually assaulted him in a hallway at the Judge Advocate General’s School.⁴

I believe DoD investigators and judge advocates have been conditioned to dismiss any information that questions an accuser’s veracity as an attempt at “victim shaming.” My experience reflects this. The above information is a significantly abridged accounting of exculpatory evidence

⁴ DOD regulations require that all allegations of sexual assault be investigated. I do not know if the government did anything with this information.

relevant to both my and my accuser's credibility, which is specifically relevant when she has made detailed assertions about our interactions, her demeanor, and my conduct. Yet the prosecutor providing advice in this case specifically stated that he would not consider either my or my accuser's credibility when giving advice on the titling decision, or in determining whether probable cause existed to believe I committed a criminal offense.

A second example of the extent to which judge advocates avoid being labeled as engaging in "victim shaming" is the advising Staff Judge Advocate's (SJA) order to me to cease conducting a defense. As stated above, my initial goal was to provide information to prevent an affirmative titling decision; this entailed gathering information that could refute the allegations against me. At no point did I or anyone representing me attempt to get "dirt" or inflammatory information about my accuser, or to attempt to shape the investigation. However, once my accuser learned that her colleagues were speaking with my attorney, she called the SJA handling my case and demanded that he put a stop to it. As a result, on April 3rd, 2018, the SJA ordered a commander in my chain of command to give me a "cease and desist" order. The order directed me that:

"(y)ou may not discuss any facet of this case with any witness or potential witness in the case, nor will you conduct any interviews of potential witnesses until CID has completed its investigation. This prohibition applies to any and all third parties, agents, proxies, or attorneys who may act at your direction or represent you."

The order further stated that any violation of the order, by anyone, could subject me to punishment under the UCMJ.⁵

In the end, the exculpatory evidence included, but was nowhere limited to, the aforementioned statements relevant to my accuser's credibility; multiple witness statements reflecting that my accuser spoke about me – regularly and vehemently – in extremely poor terms in the eighteen months prior to our consensual contact on March 4th, 2011, but regularly spoke glowingly about me after March 4th (indicative is her husband in August of 2011 asking one of their mutual friends if my accuser and I were having an affair);⁶ the results of a polygraph examination

⁵ In response to the cease and desist order, my defense counsel filed an extraordinary writ with the Army Court of Criminal Appeals (ACCA). The Government Appellate Division, whose responsibility is to represent the government at ACCA, refused to defend the order. The Staff Judge Advocate then rescinded the order, publicly stating that the CID investigation was complete and there was no longer a need for the cease and desist order. However, as much as a week later witnesses were contacting my defense counsel after being approached by CID investigators, suggesting that the investigation was not, in fact, complete.

⁶ This is relevant: in her sworn statement, my accuser claims that every time I contacted her, she saw me, or heard my voice or my name, "that night would come rushing back" and would send her to a dark place. The evidence shows otherwise – that after our consensual kissing, she regularly spoke about me in positive terms such that, apparently, her husband thought we were having an affair.

with a finding I was 99.99% truthful to questions directly responsive to the allegations; emails from my accuser to me – written after March 2011 – requesting career guidance; my two sworn statements describing our interactions March 3rd and 4th and denying any non-consensual contact; and witness statements directly contradicting my accuser’s version of her own conduct, behavior, and interactions with me during the week of February 28th to March 4th, 2011.

In brief, this allegation was unsupported, questionable, and false on its face. Credibility was specifically and lawfully an issue, and relevant evidence was specifically ignored or discounted. The evidence notwithstanding, in April 2014, I was titled with the offenses of assault, abusive sexual contact, and conduct unbecoming an officer. I was fingerprinted, photographed, and my name and information entered into the Army Crime Records Center.

In early June of 2014, I was notified that I would be given a General Officer Memorandum of Reprimand (GOMOR) from my Commanding General (CG). Through my attorney, the advising SJA told me that if I did not submit requests to retire and to remove my name from consideration for promotion to colonel in the pending selection board, the Commanding General would “officially file” the reprimand in my permanent record. Because I knew an officially filed GOMOR would result in several more months, if not years, of significant emotional turmoil, I complied with both requests.

I submitted an extensive rebuttal packet, which included two-dozen sworn statements containing exculpatory evidence and nearly 180 letters of recommendation and support.⁷ The Commanding General subsequently filed my GOMOR “locally,” meaning it was not part of my official file, would ostensibly not be used against me for adverse administrative action, and would eventually be discarded. He stated that the GOMOR was for judgment, not assault, and that – importantly – I could continue to serve if I so chose. I inferred this as meaning that the JAG Corps, and not the Commanding General, imposed the sub rosa conditions prompting my retirement.

The chief of the Judge Advocate General’s Corps assignment office told me that he could reassign me somewhere away from the DC area to finish out my time in the JAGC; doing so would have eliminated the GOMOR completely. I declined, and told him that I would prefer to remain at the Pentagon and spend the next year in a job that might help me prepare for life after the Army.

⁷ The staff judge advocate provided my rebuttal packet, in its entirety, to my accuser. It included many sworn statements of people who knew my accuser, and who expressed concern that my accuser would take retribution against them.

In July of 2014, on my first day in my new position, my senior supervisor (then one of the three brigadier generals in the JAGC) informed me that I would receive a “referred” officer evaluation report (OER) – I was to be fired from TCAP – and that the Secretary of the Army wanted to see me reduced to the rank of major upon retirement. This meant that I would be subject to an Army Grade Determination and Reduction Board (AGDRB), which assesses the last rank at which any Army service member served satisfactorily. These two actions are procedurally significant.

First, the sole basis for my referred evaluation report was that a “USACID investigation titled (LTC Morse) for violating UCMJ Article 120, 128, and 133 for an alleged incident in March 2011.” Though multiple Army and DoD regulations preclude adverse administrative action based on a titling decision, AR 195-2 and DoD Instruction (DODI) 5505.07 are most relevant. The DODI states that “(j)udicial or adverse administrative actions shall not be taken against individuals...based solely on the fact that they have been titled or indexed due to a criminal investigation.” Army Regulation 195-2 states that “the decision to list a person's name in the title block of a USACIDC ROI is an investigative determination that is independent of judicial, nonjudicial, or administrative action taken against the individual or the results of such action.”

When I told my senior rater that it was improper to issue a referred OER based on a titling decision, he said, “Jay, how would it look if I didn’t?”

Secondly, on March 18th, 2015, the Recorder for the AGDRB provided me official notification that I would go before a grade determination board. In keeping with AR 15-80, paragraph 1-5, the notification stated that the approval authority for my retirement rank would be the Deputy Assistant Secretary of the Army for Review Boards, who is the approval authority for all colonels (O-6) and below. The next day I received a second, amended notification stating that the Secretary of the Army himself would be the approval authority for my retirement rank. Though this is allowed by the regulation, I also believe it is indicative of the Secretary of the Army’s personal interest in my case.

When I realized I would now be fighting to retire at my rank, and that the locally-filed GOMOR would be used as part of my permanent record to determine my retirement rank⁸, I made three requests: one to Army CID headquarters to review the titling decision⁹; a second to the

⁸ I was provided a copy of all information the Board would consider; included was my referred evaluation report as well as the GOMOR and all supporting documents.

⁹ The standard for reversal of a titling decision is either “wrong guy” or new information. I provided two sworn witness statements, both of which were new and specifically refuted key assertions in my accuser’s statement. I was told by senior

Commanding General to reconsider the local-filing of my reprimand, and to instead rescind it; and a third to the Army Judge Advocate General (TJAG) requesting that the existing SJA be removed from advising the Commanding General only for my GOMOR reconsideration request.

The first two requests were based on new evidence: a sworn statement from an officer present at the March 2011 conference, and two sworn statements from the others present at the August 2011, three-hour dinner with me and my accuser. This new evidence included sworn testimony that, in the early morning hours of March 4th, 2011, the witness saw my accuser in the hotel hallway twice within a short time period, and that on both occasions they exchanged greetings and she seemed composed and normal. The timing is consistent with when she would have been going to and coming from my room, and is contrary to her statement that she ran from my room crying, that I chased after her calling her name, and that she vomited in a stairwell. The other statements were from the other two officers present at the August 2011 dinner with my accuser and me. Both statements reflected that my accuser was normal, seemed unaffected, and was flirtations with me in both word and action.

Lastly, I based my request to the TJAG for a new advising SJA on multiple factors: that the advising SJA was the subject of public and private ridicule for his “cease and desist” order;¹⁰ that he was the subject of an ethics investigation and would at a minimum blame me for it; that he claimed during my GOMOR reading that I could have trained my body to pass the polygraph examination, indicating an inability to treat me fairly and advise objectively; and that he had been recently selected for forced early retirement by the Army JAG Corps. Because there was a reasonable belief that a) the SJA would actually attribute all of the above to me and could not be objective, or that b) there was a reasonable belief that the public would perceive that he would treat me unfairly, I requested a new advising SJA.

All three requests were denied. CID stated that I provided no new evidence – one standard for reconsidering a titling decision – and that all I had done was to disparage my accuser (I did in no form). The Commanding General and SJA denied my request for reconsideration of the reprimand

judge advocates that there was animated discussion at CID regarding my appeal, and that some agents not only felt that the titling should be reversed, but that I shouldn’t have been titled in the first place. Yet, the approximately ten official responses provided to me uniformly stated that I provided no new information; that I should take a polygraph examination if I wanted to support a reversal (I had already provided the results of my poly); and that all I appeared to do was to disparage my accuser.

¹⁰ A popular military law website, “CAAFLog”, published the order as well as the extraordinary writ. See <http://www.caaflg.com/2014/04/29/in-the-theater-of-the-absurd-maybe-maybe-not/?hilit=%27morse%27>.

without citing any basis; and the Army TJAG, through her Executive Officer, stated there was no possibility for perceived or actual bias if the SJA were to provide advice to the commander.

I subsequently provided a response to the Grade Determination Board, and was approved to retire honorably and at my rank of lieutenant colonel.

On March 17th, 2017, I filed a request to the Army Board for Correction of Military Records to rescind my referred evaluation report. I later amended my submission to include a request to overturn the titling decision. Both requests continue to be under consideration.

Personal and Professional Impact

As a result of the allegation and subsequent investigation, I was suspended from my position as the Chief of TCAP and later fired. I was removed from my follow-on assignment as the Staff Judge Advocate of the 1st Cavalry Division; I was removed from the list of selectees for Senior Service College (I had previously been selected but had deferred attendance); I was “titled” for the offenses of abusive sexual contact and conduct unbecoming an officer; I received a locally-filed General Officer Memorandum of Reprimand (GOMOR) for judgment; I was forced to remove my name for consideration for promotion to the rank of colonel; I was constructively forced to retire; and I was considered for reduction in rank upon my retirement.

Though I am grateful to have served and am proud of my rank, I believe I was competitive for promotion to the rank of colonel. If I had remained in the Army, been promoted, and retired as a colonel, my retirement pay would have approximately doubled over the remainder of my lifetime.

I did not want to leave the Army. One of the most emotionally difficult things I have had to do in my life is to write a letter to the promotion board stating that I did not want to be considered for promotion to the rank of colonel. I believe that I had potential for continued promotion in both rank and in positions of responsibility. I had, and have, a strong sense of “right,” purpose, leadership, and belonging to something bigger than myself, and the Army provided a forum for me to realize my goals. I miss my colleagues every day, and continue to struggle to re-find a sense of purpose and belonging. Like a bad ending to an otherwise good movie, the manner in which my career ended has tainted my respect for our system of justice and our institutions, as well as my personal respect for a small handful of senior officers.

My last eighteen months in the Army continues to impact me today, both psychologically as well as professionally. That I was accused of assault is apparent with a simple Google search of my name; as a result I have not been considered for positions for which I am otherwise well-qualified; have been dis-invited from professional conferences; and have lost paid contracts once leaders within the relevant organization found my name on the internet. As a matter of routine, I preempt any discussion with a new potential client or partner by sharing my story. I am in the process of applying to advanced degree programs, and I address it on every application. Each time is like a new kick in the stomach, and a recognition that there is a good chance I will not be selected based not on my record of achievement, but on an unsubstantiated allegation.

I offer the above not to solicit sympathy and certainly not to compare my experience to assault victims – I have learned many things about myself over the last four years, and one is that we experience loss, setbacks, and trauma differently and individually. As a human being, I have changed significantly and fundamentally as a result of this process, and assessing what it means is a continuous work in progress. What I do know is that we have to do better in how we address assault allegations, both legally as well as in the public discourse. I hope that my experience will contribute, in some small way, to restoration of civil dialogue and, most importantly, to doing the right thing for both victims of sexual assault and those falsely accused.

**ATTACHMENTS
TO WRITTEN REMARKS**



DEPARTMENT OF THE ARMY
JOINT BASE MYER – HENDERSON HALL
HEADQUARTERS COMMAND BATTALION
236 SHERIDAN AVE
FORT MYER, VIRGINIA 22211-1199

REPLY TO
ATTENTION OF

IMMH-BN

3 April 2014


MEMORANDUM FOR LTC Joseph B. Morse, U.S. Army Legal Services Agency

SUBJECT: Cease and Desist Order

1. You are under investigation by CID for allegations of misconduct that occurred at a hotel in Alexandria, Virginia in 2011. Effective immediately, you will not discuss any facet of this case with any witness or potential witness in the case, nor will you conduct any interviews of potential witnesses until CID has completed its investigation. This prohibition also applies to any and all third parties, agents, proxies, or attorneys who may act at your direction or represent you.
2. This order shall remain in effect until rescinded by me in writing. Violation of this order could subject you to punishment under the Uniform Code of Justice or adverse administrative action.
3. You will acknowledge receipt of this order in the space provided.
4. Point of contact is the undersigned at [REDACTED].

[REDACTED]
LTC,
Commanding

Acknowledged this 4 day of April, 2014.


JOSEPH B. MORSE
LTC, JA





REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY LEGAL SERVICES AGENCY
9275 GUNSTON ROAD
FORT BELVOIR, VA 22060-5546

JALS-TCA

8 April 2014

MEMORANDUM FOR Lieutenant Colonel [REDACTED] Commander, Headquarters Command Battalion, Joint Base Myer-Henderson Hall, Fort Myer, Virginia 22211-1199

SUBJECT: Request for Redress Under Article 138, UCMJ

1. On 4 April 2014, you issued me a "cease and desist order" in relation to allegations of misconduct occurring in February of 2011. The cease and desist order states that, effective immediately, I am not to "discuss any facet of this case with any witness or potential witness," and am not to "conduct any interviews of potential witnesses until CID has completed its investigation." You stated that this order applied to "any and all third parties, agents, proxies, or attorneys who may act" at my direction or who represent me. My understanding is that your advising Staff Judge Advocate, Colonel [REDACTED] stated to my defense counsel that any actions performed by my defense counsel or any third party and in violation of this order are to be considered attributable to me. Lastly, you stated that the order would remain in effect until personally rescinded by you.

2. The order is materially unfair, is so broad that it extends beyond the legitimate authority of a commanding officer, and is a violation of my legitimate rights under the United States Constitution, including but not limited to the right of free speech, right of association, right to counsel, and the right to prepare a defense when accused of wrongdoing. As such, I believe that your order is an abuse of discretion, especially the provision that limits my defense counsel from zealously and diligently representing me. I maintain that my attorneys may act on my behalf at all times to discover potentially exculpatory information and to prepare for potential adverse action, as such actions are both Constitutionally protected and standard practice in both the military and the civilian world. I consider this a wrong within the meaning of Article 138, UCMJ, and Chapter 19, AR 27-10.

3. As redress, I ask that you immediately rescind the order issued to me on 4 April 2014.


JOSEPH B. MORSE
LTC, JA



DEPARTMENT OF THE ARMY
JOINT BASE MYER-HENDERSON HALL
HEADQUARTERS COMMAND BATTALION
238 SHERIDAN AVE
FORT MYER, VIRGINIA 22211-1199

IMMH-BN

14 Apr 14

MEMORANDUM FOR LTC Joseph B. Morse, U.S. Army Legal Services Agency, 9275
Gunston Road, Fort Belvoir, VA 22060-5546

SUBJECT: Response to Request for Redress Under Article 138, UCMJ

1. I have reviewed your written request for redress under Article 138, UCMJ dated 8 Apr 14. However after much deliberation, I have decided to deny your request to rescind the order. Accordingly, the order that I issued you on 3 Apr 14 remains in effect. As your Commanding Officer, my order is presumed lawful, has a valid military purpose, is clear, narrowly drawn, and addresses a legitimate government interest. See *U.S. v. Moore*, 58 M.J. 466, (C.A.A.F. 2003) and *U. S. v. Womack*, 29 M.J. 88, (C.M.A. 1989). For the record, I note you have not been reprimanded, relieved, nor charged with any offense at this time. I am unaware of any adverse administrative or disciplinary action pending against you.

2. Prior to my issuing this order, it came to my attention that several potential witnesses in this ongoing investigation had been contacted directly or indirectly by third parties under your control. Some had merely been interviewed, some had made statements. Some potential witnesses had been interviewed before CID had spoken with them. Nevertheless the existence of this collateral investigation by you was discovered by the complaining witness. She protested to CID about this issue twice, calling into question whether the integrity of their investigation had been compromised either by you or by third parties under your control. I share those concerns. My "cease and desist" order to you was issued as a last resort to safeguard an objective and impartial investigation by CID.

3. This order is also intended to protect you from accusations of witness tampering or from the appearance of witness tampering, which can be equally fatal. I find the Army Court of Criminal Appeals' rationale persuasive. In *U.S. v. Hatley*, the court reasoned, when considering an order for the subject of an investigation to have no contact with potential witnesses, "[t]he legitimate government objective is apparent: to prevent potential influence of witnesses and likewise protect the [subject] from accusations of witness tampering." 2011 WL 2782023 (Army Ct.Crim.App.) at 6. Had the complaining witness engaged in similar conduct, I would have issued the same order to her. Preserving the integrity of CID's investigation remains my paramount concern.

4. My order of 3 Apr 14 is well within my authority as your commander. Further, it is appropriately narrow in scope and duration, and specifically tailored to meet a specific

legitimate military objective to protect the integrity of an ongoing criminal investigation. The Court of Appeals for the Armed Forces has upheld a similar no-contact order as lawful. *U.S. v. Thompson*, 58 M.J. 43, (C.A.A.F. 2003). In *Thompson*, the court clearly states that "[p]ublic policy supports a strict reading of this no-contact order" under similar circumstances. *Id.* at 45. In support of the public policy goal of a neutral, investigation free of interference, ALARACT 299/2013, paragraph 2, precludes commanders from investigating sexual assault allegations, leaving such investigation solely to CID. The *Thompson* case also illustrates that such a no-contact order extends to third parties and that a Soldier may be held liable for any violation of such an order by a third party for indirectly engaging in such contact.

5. Finally, this narrowly tailored order only sets limits regarding your contact with witnesses or potential witnesses in this case. It does not prohibit contact with those personnel, it merely proscribes talking about the case to any potential witnesses until the investigation by CID is complete. As such, it does not otherwise limit your rights under the United States Constitution, UCMJ, or other applicable laws. Once the investigation by CID is complete, I will rescind the cease and desist order, freeing you to perform your own investigation and interview any and all potential witnesses. Meanwhile, CID must be able to perform an objective and neutral investigation, free of interference, contamination or influence of any potential witness by any party to the investigation. This includes the chain of command, the complaining witness, and/or the subject of a sexual assault investigation, all of whom might choose to speak to potential witnesses before CID has had an opportunity to fully investigate the facts of the case.

6. As I have not granted you the requested redress, I am forwarding your complaint to the officer exercising general court-martial convening jurisdiction.

7. Point of contact is the undersigned at [REDACTED]

[REDACTED]
LTC, [REDACTED]
Commanding



Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

Data Presentation:
Courts-Martial Project

January 25, 2019



Agenda

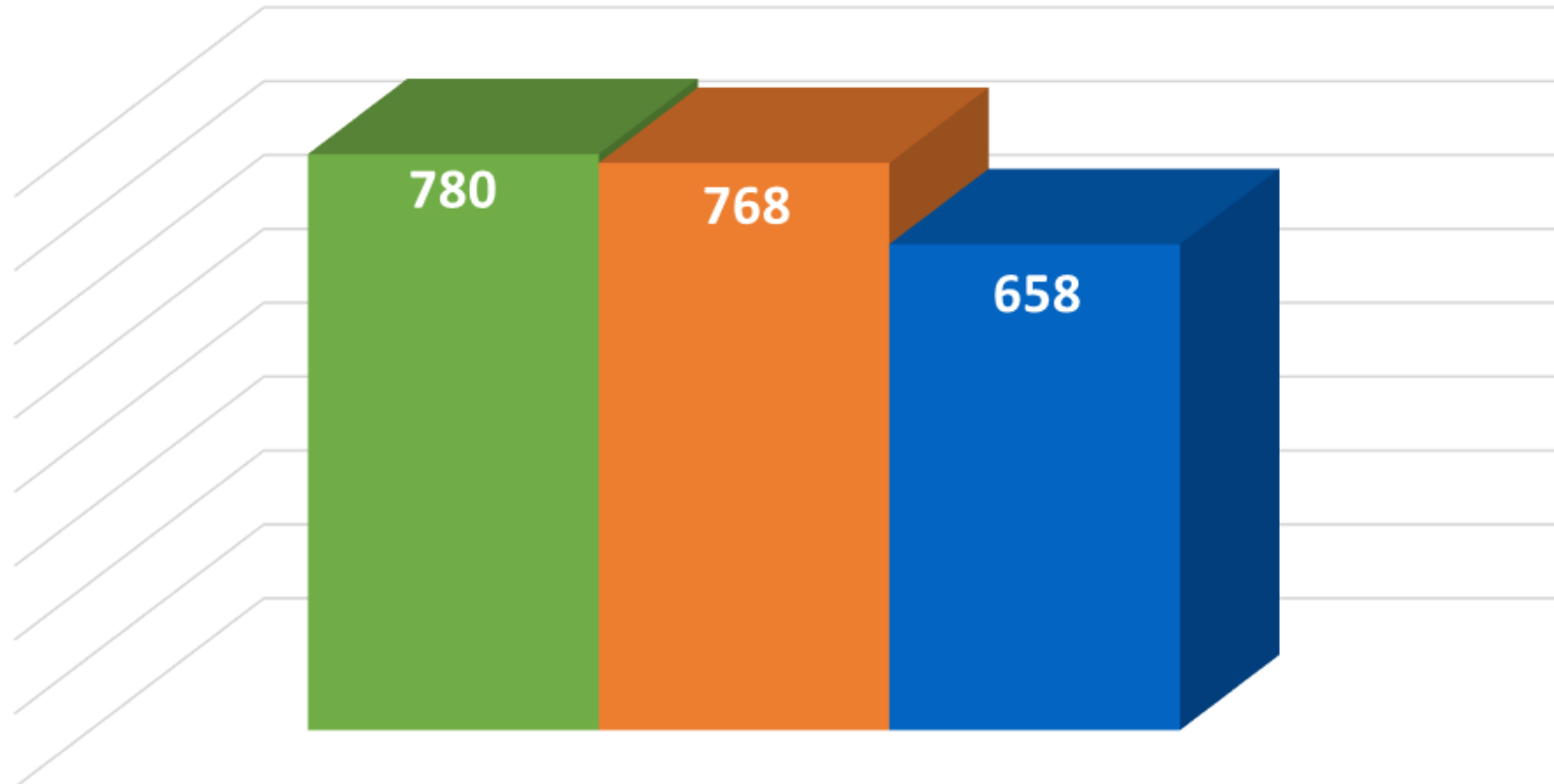
- Court-Martial Data
 - Descriptive Statistics
 - FY2015-2017
 - Multivariate Analysis
 - FY2016
 - FY2017



Court-Martial Data

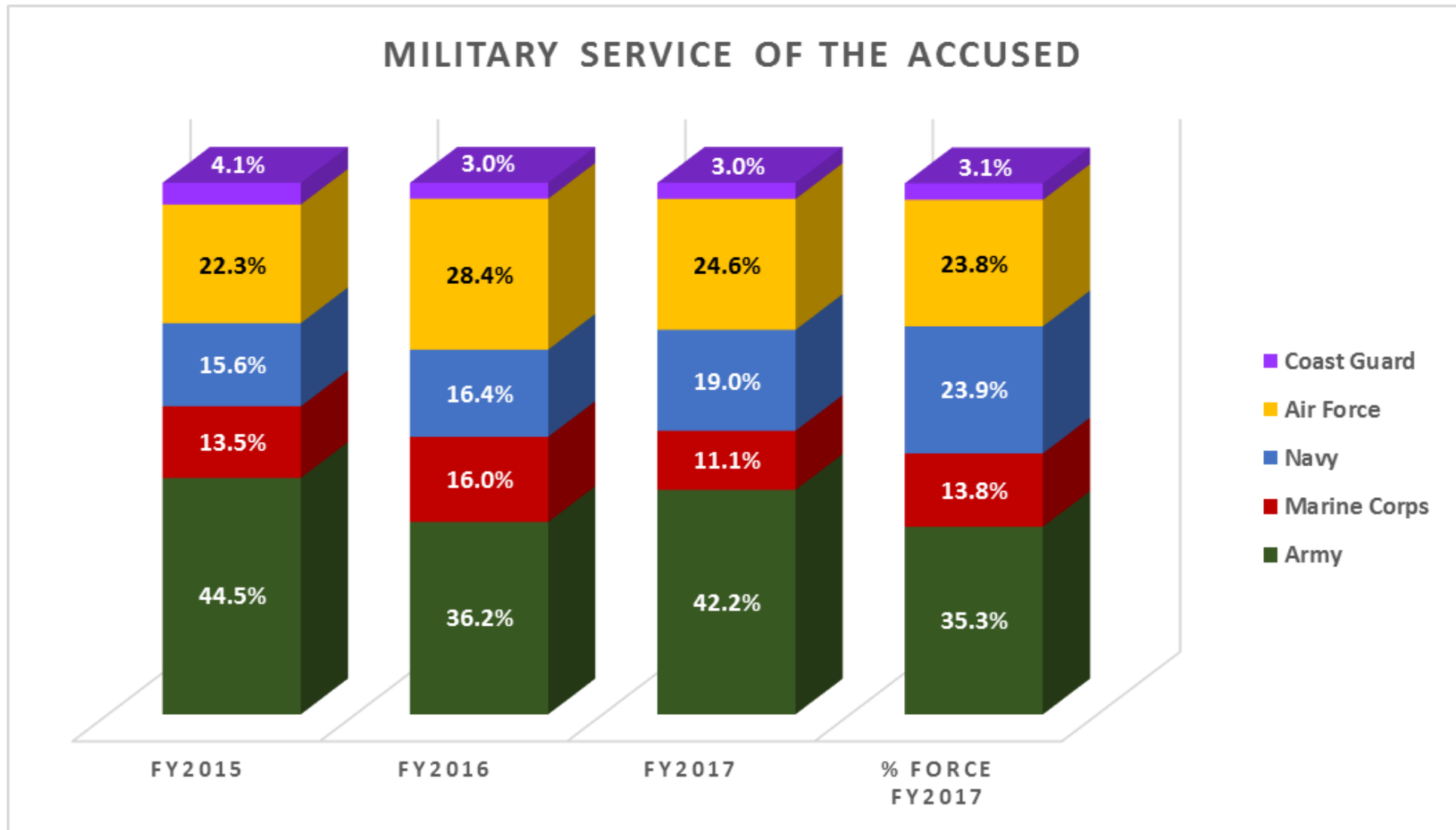
CASES DOCUMENTED BY THE DAC-IPAD

FY2015 FY2016 FY2017





Court-Martial Data





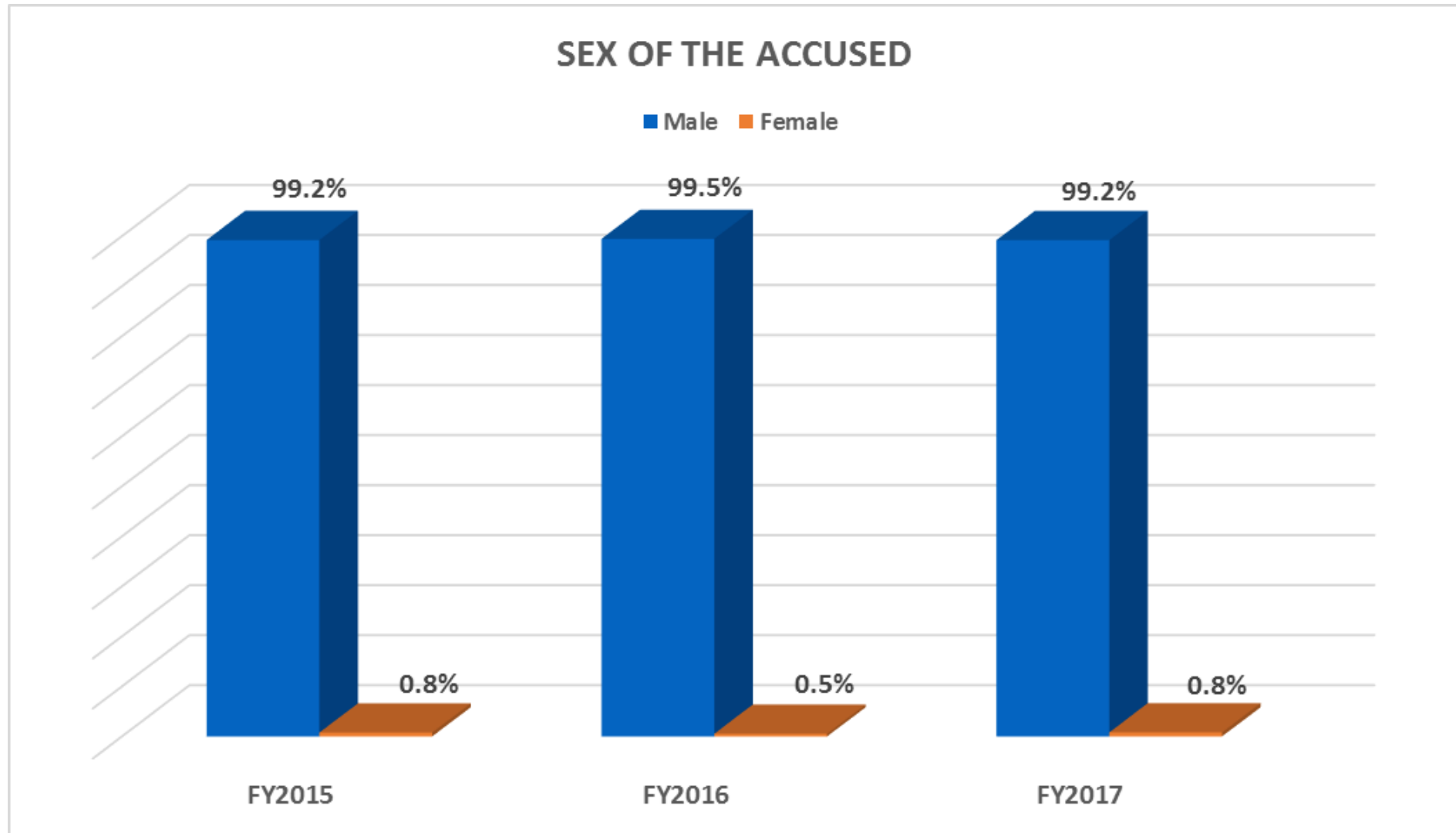
Court-Martial Data

ACTIVE DUTY POPULATION BY MILITARY SERVICE WITH NUMBER OF SEXUAL ASSAULT CASES IN DAC-IPAD DATABASE (FY2017)

	Size of Active Duty Population	Percentage of Total Active Duty Population	Number of Cases in DAC-IPAD Database	Percentage of Cases in DAC-IPAD Database
Army	472,047	35.3%	278	42.2%
Marine Corps	184,401	13.8%	73	11.1%
Navy	319,492	23.9%	125	19.0%
Air Force	318,580	23.8%	162	24.6%
Coast Guard	41,581	3.1%	20	3.0%
Total	1,336,101	100.0%	658	100.0%

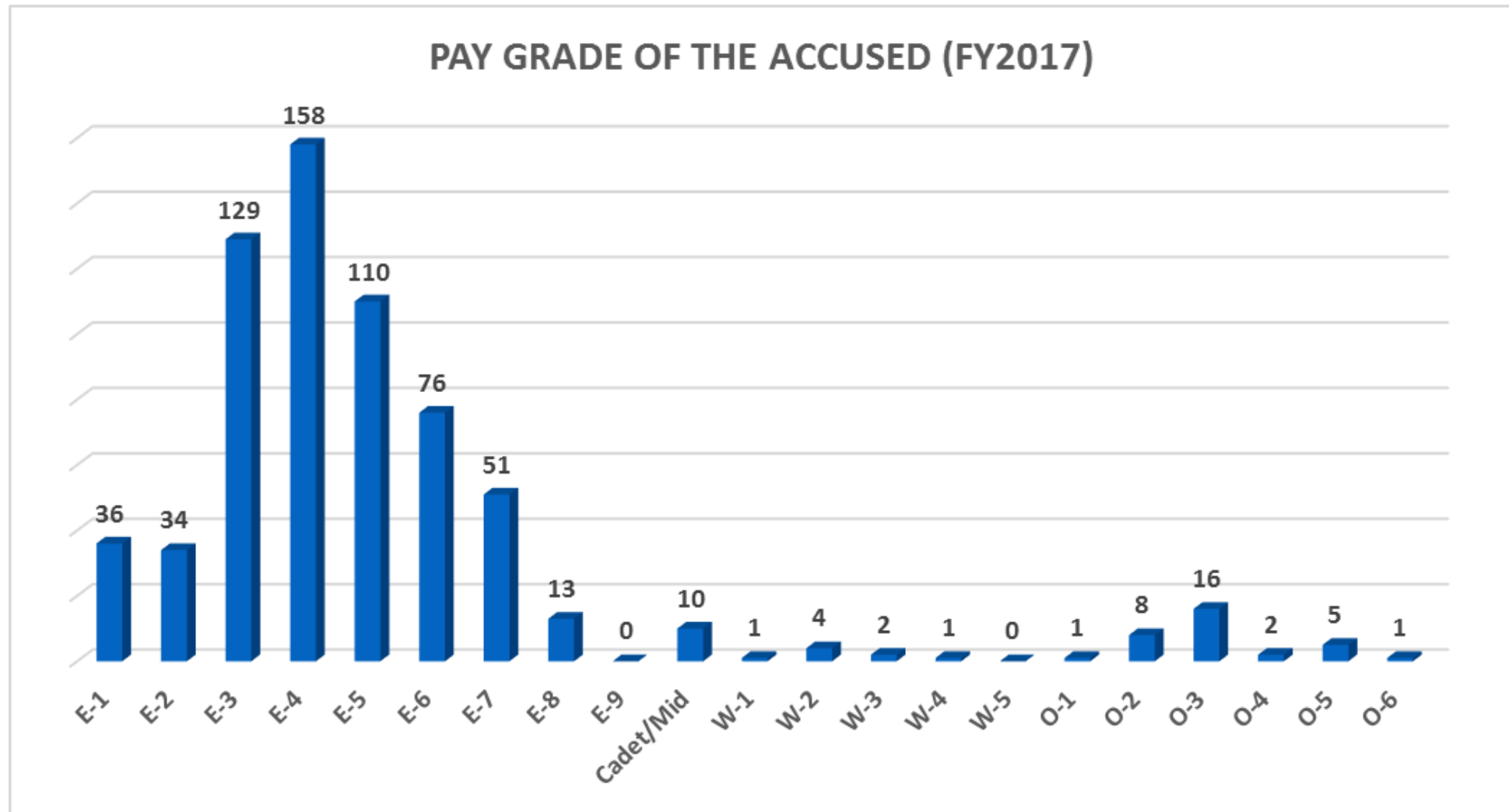


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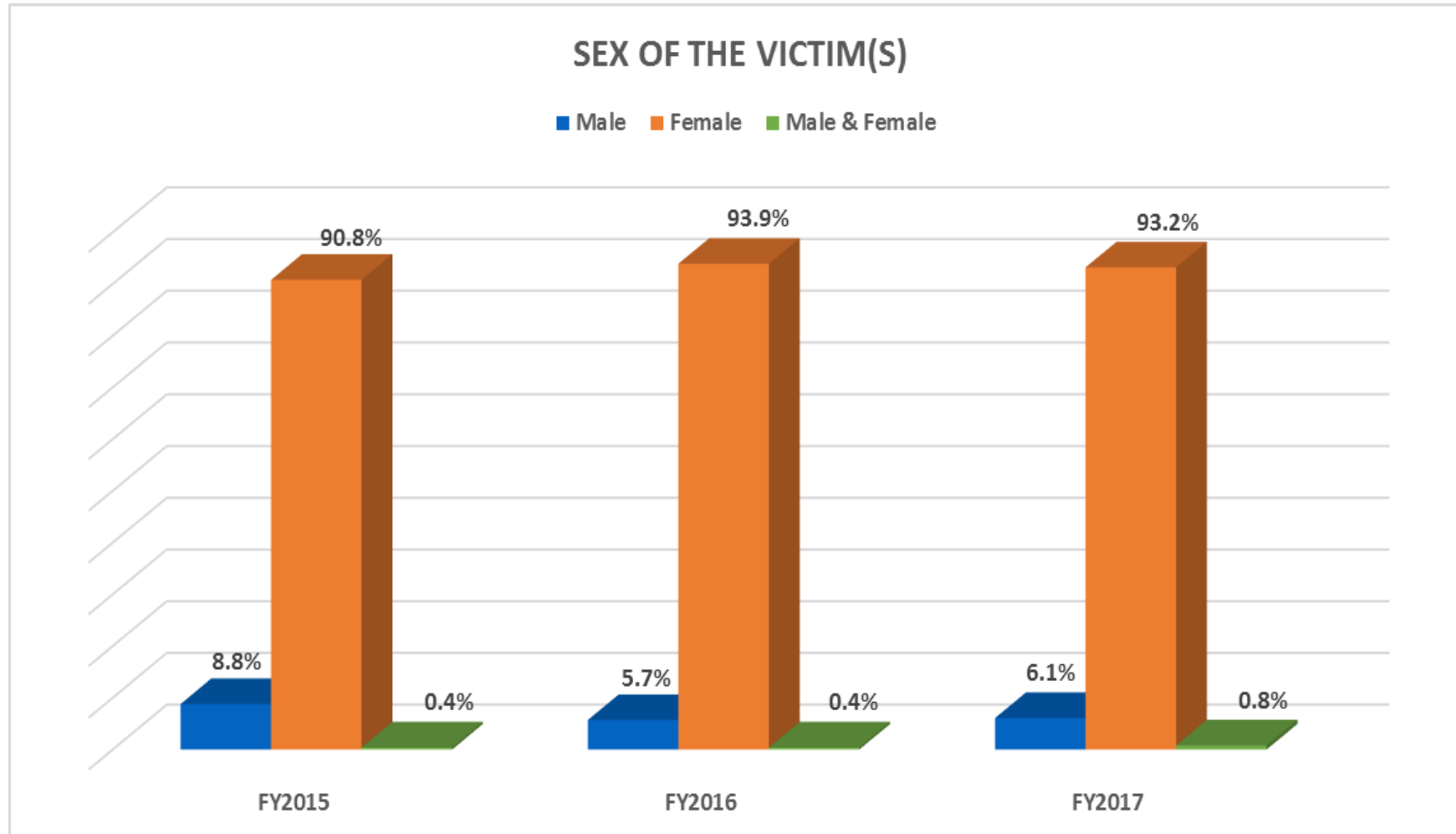


Court-Martial Data





Court-Martial Data

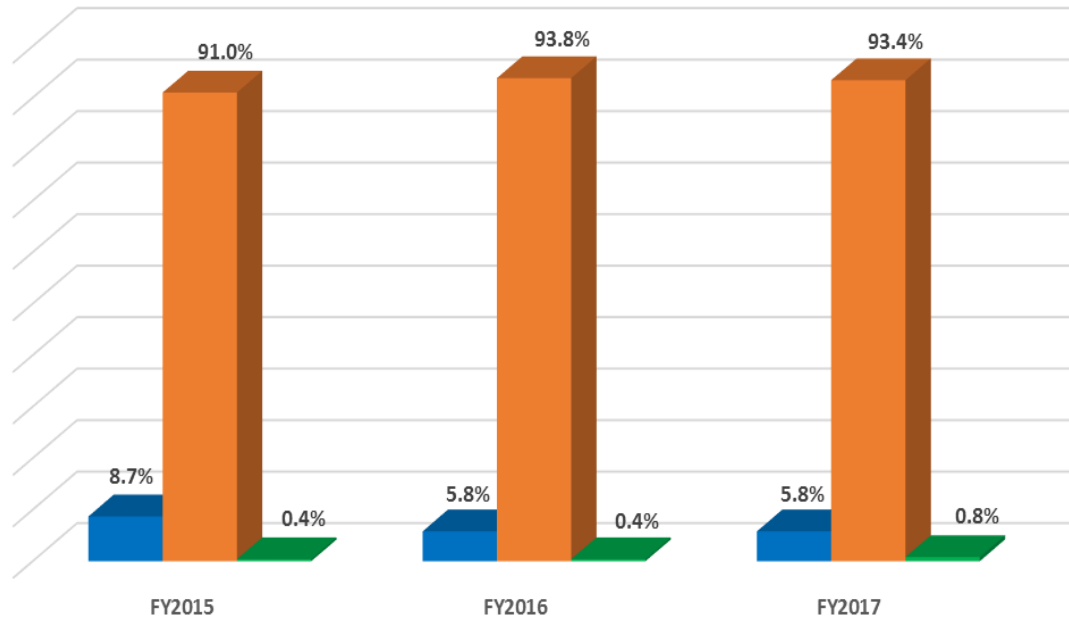




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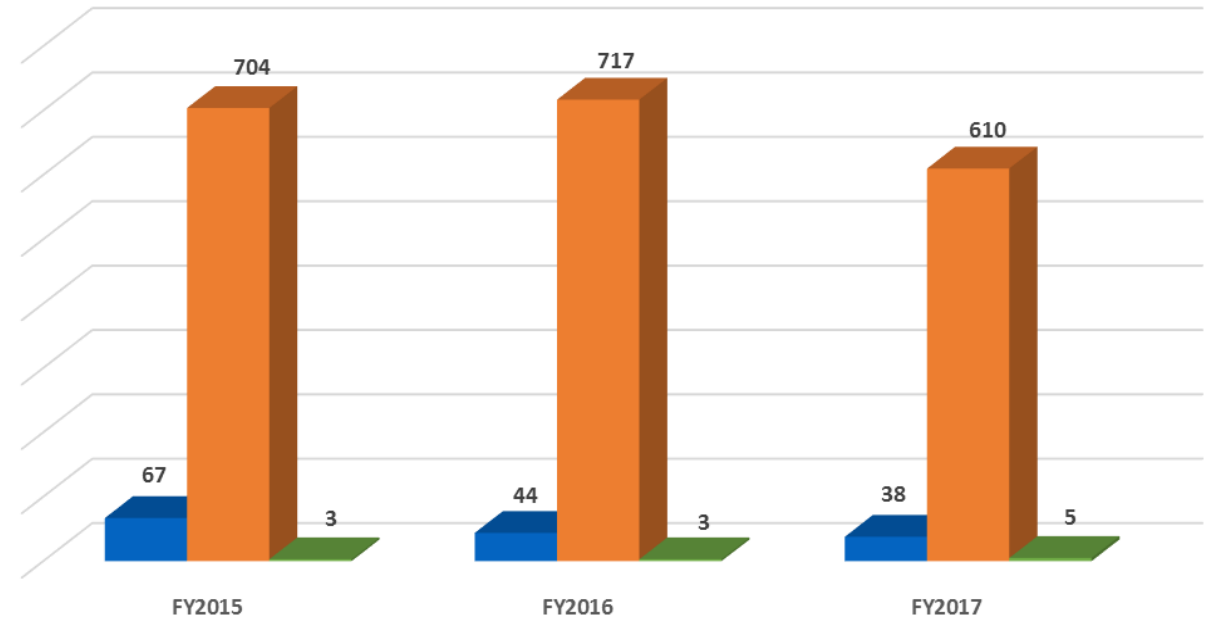
MALE ACCUSED/SEX OF VICTIM(S)

■ Male ■ Female ■ Male & Female



MALE ACCUSED/SEX OF VICTIM(S)

■ Male ■ Female ■ Male & Female

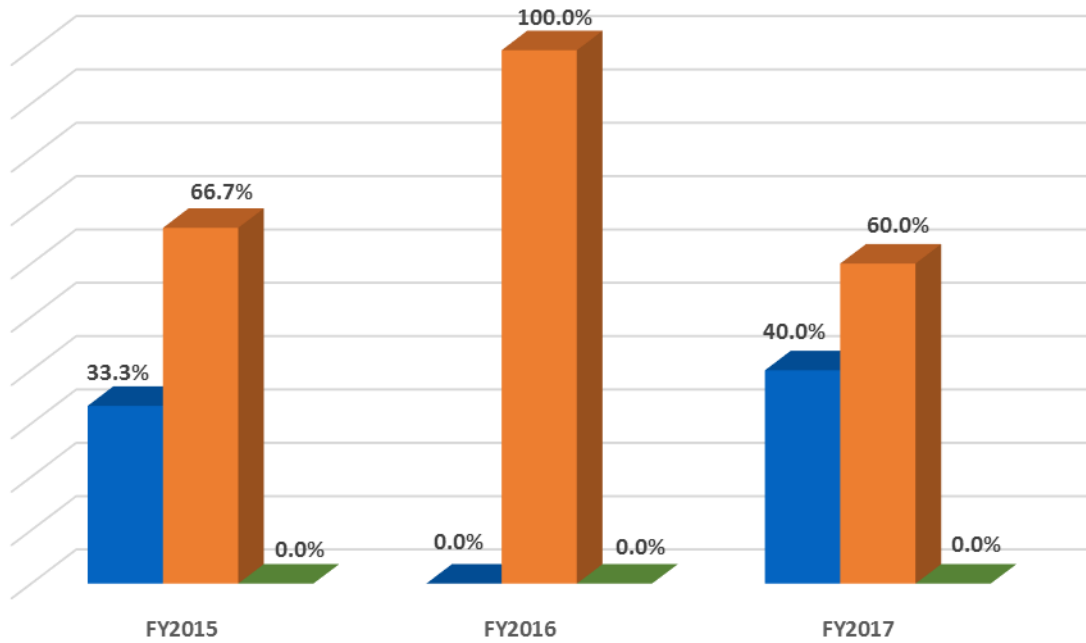




Court-Martial Data

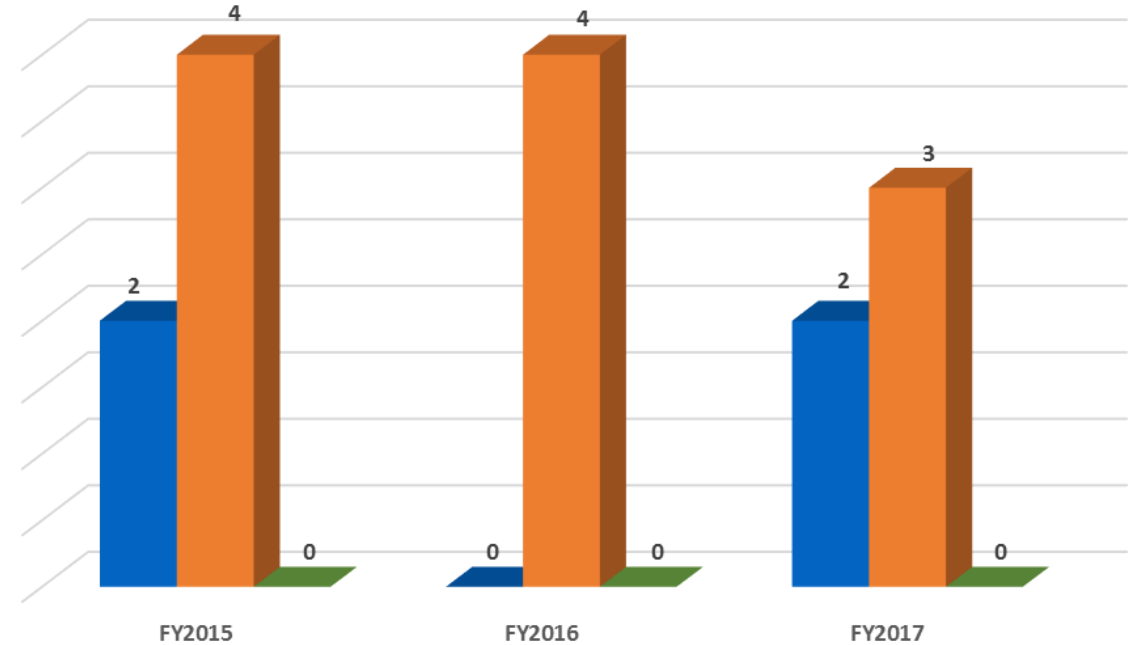
FEMALE ACCUSED/SEX OF VICTIM(S)

■ Male ■ Female ■ Male & Female



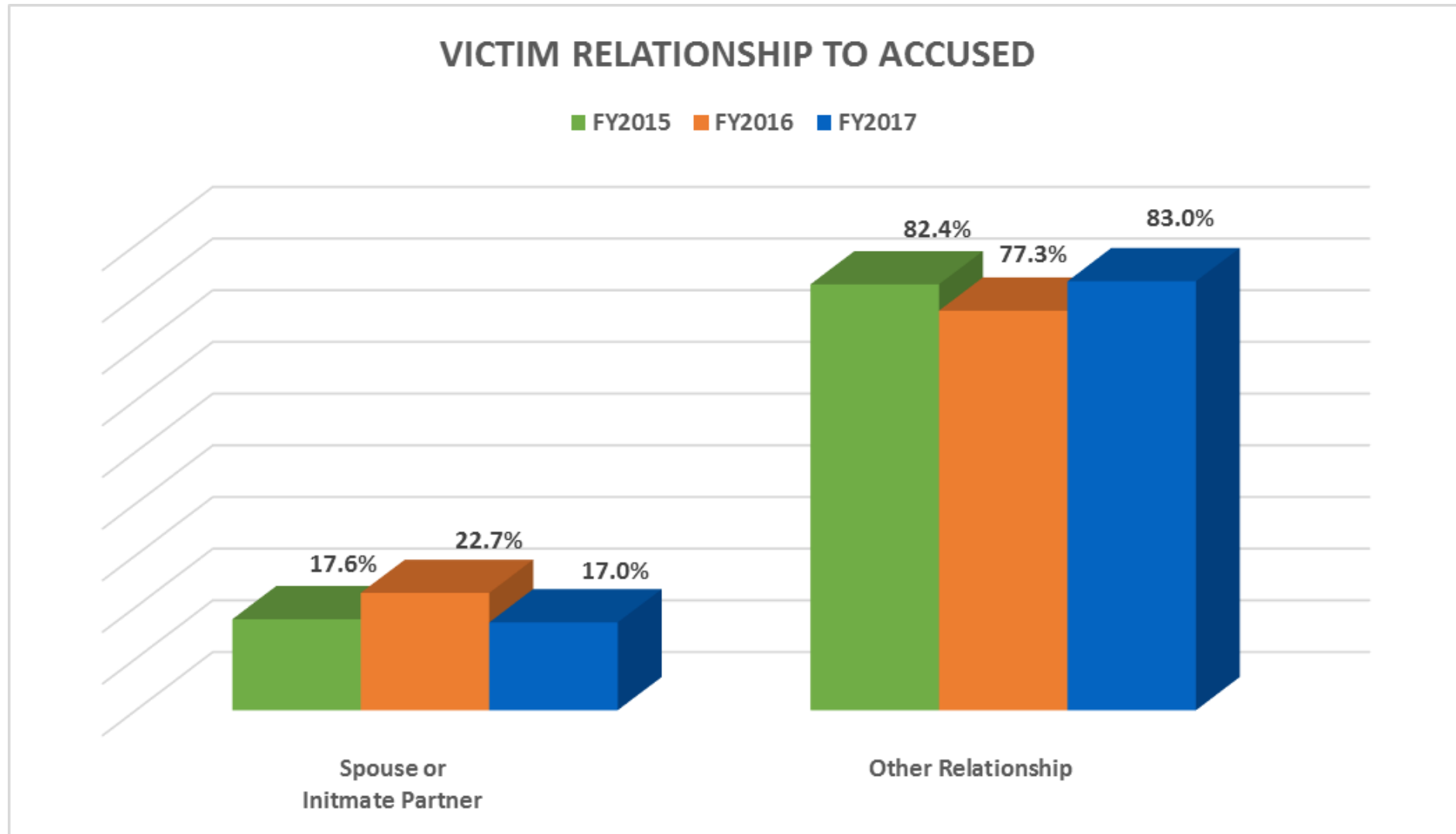
FEMALE ACCUSED/SEX OF VICTIM(S)

■ Male ■ Female ■ Male & Female



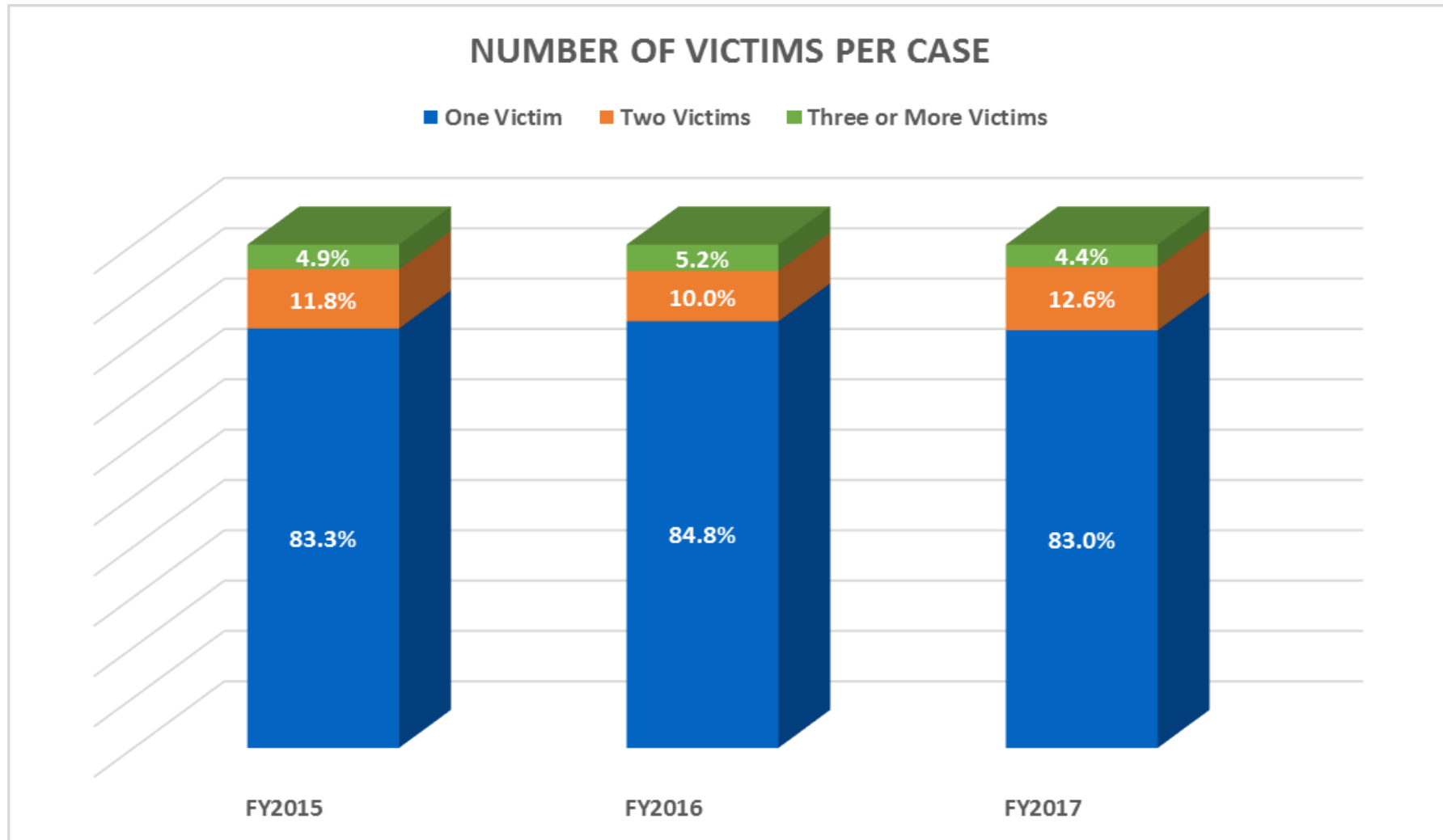


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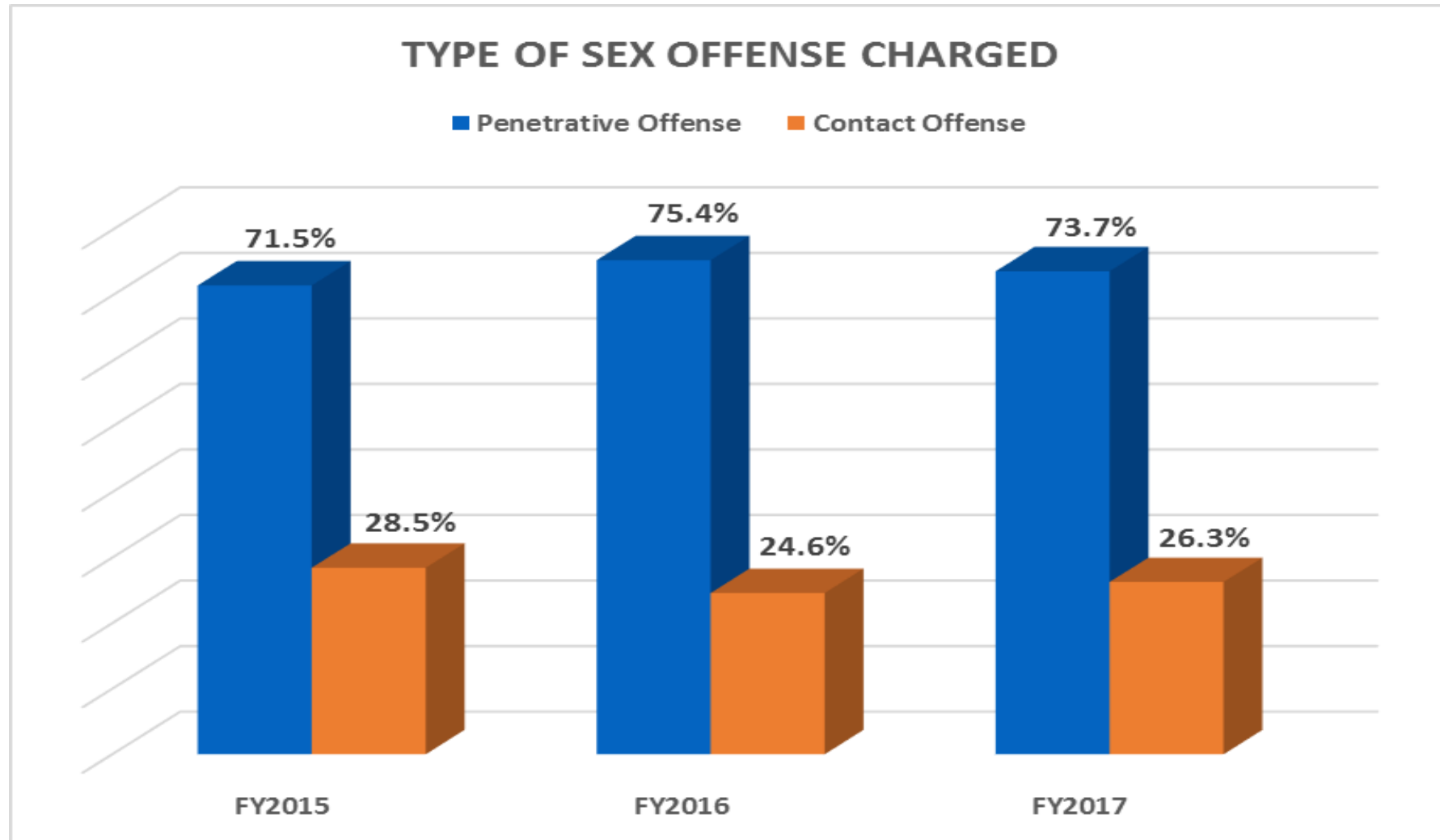


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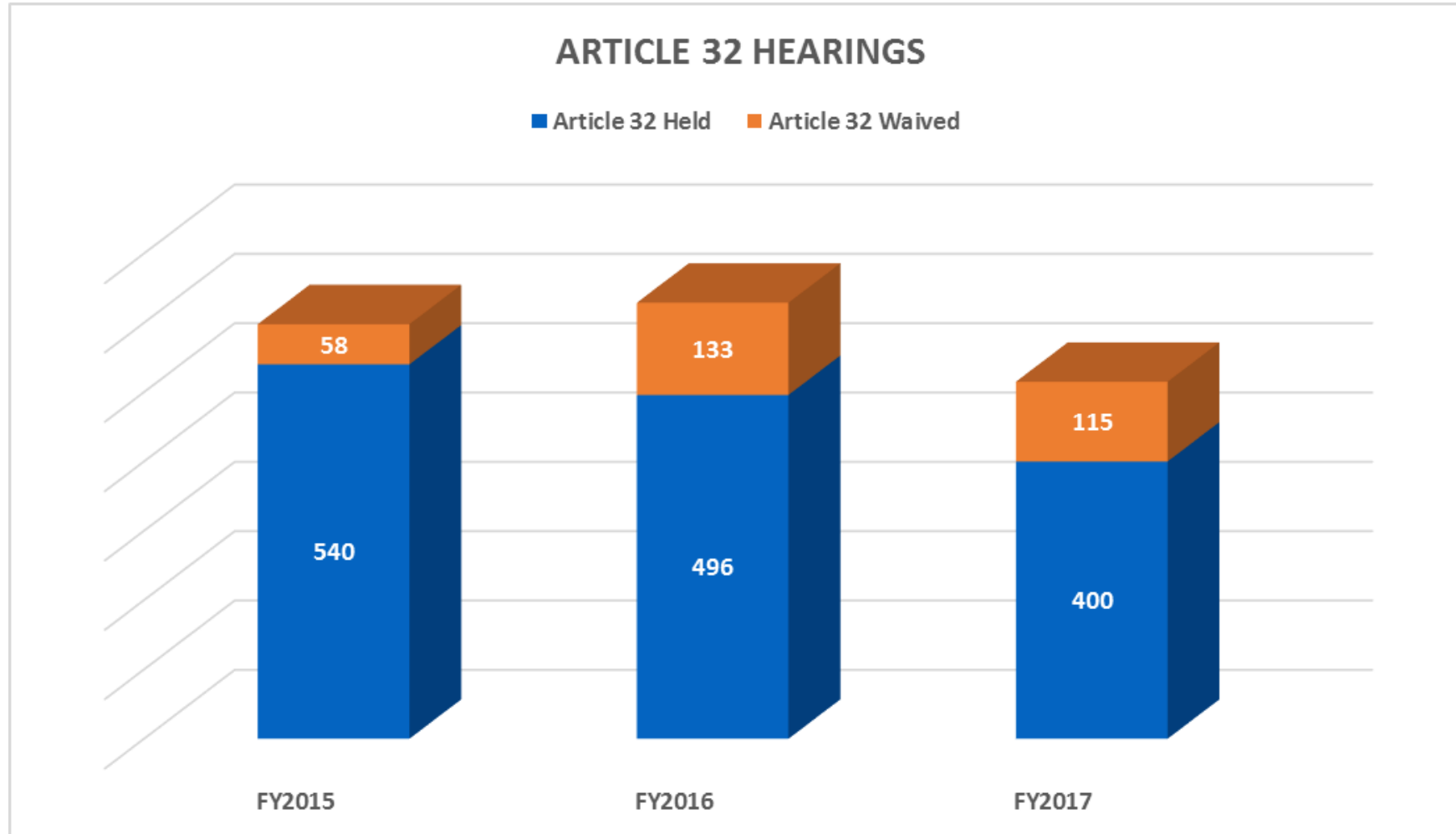


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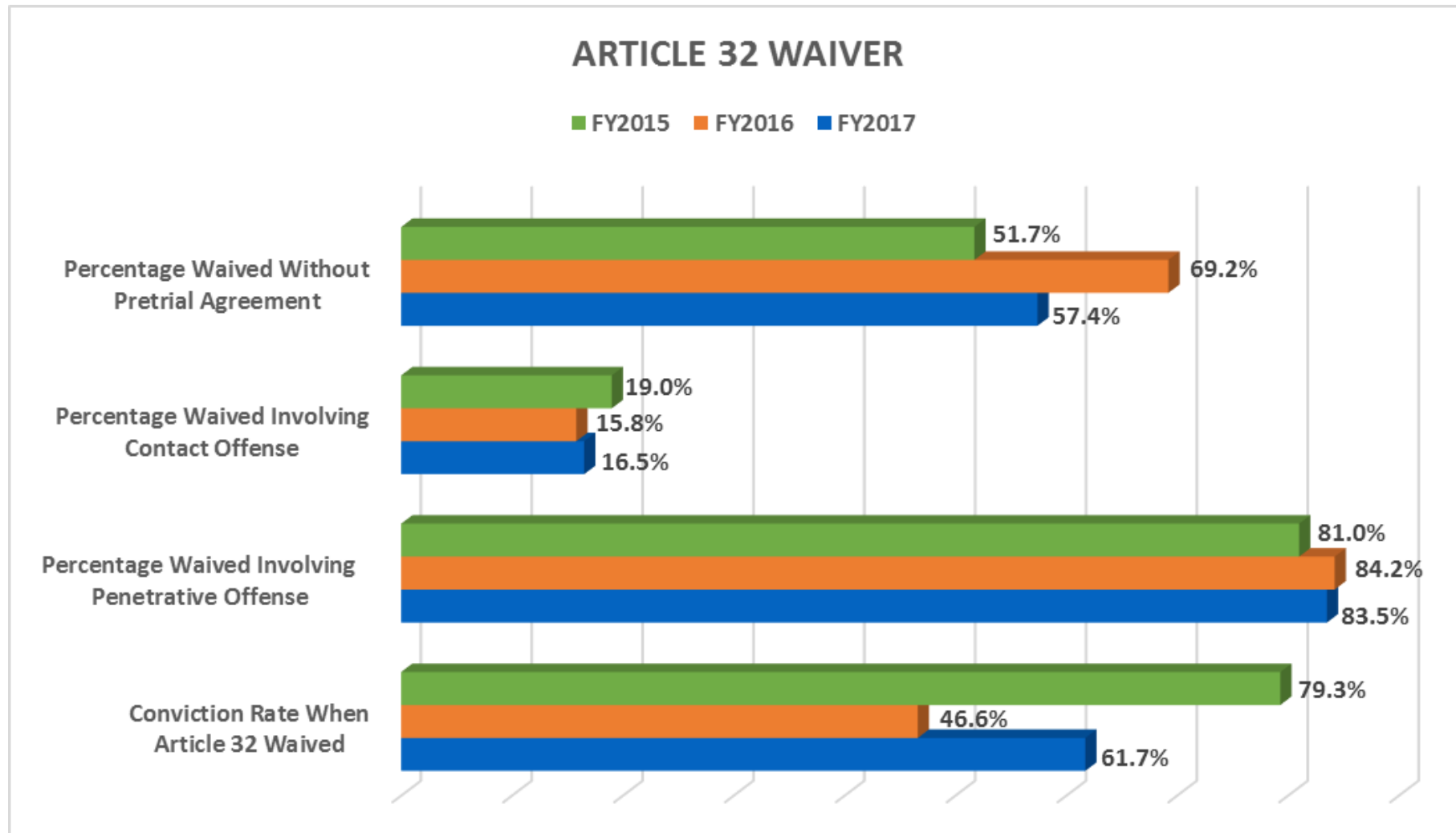


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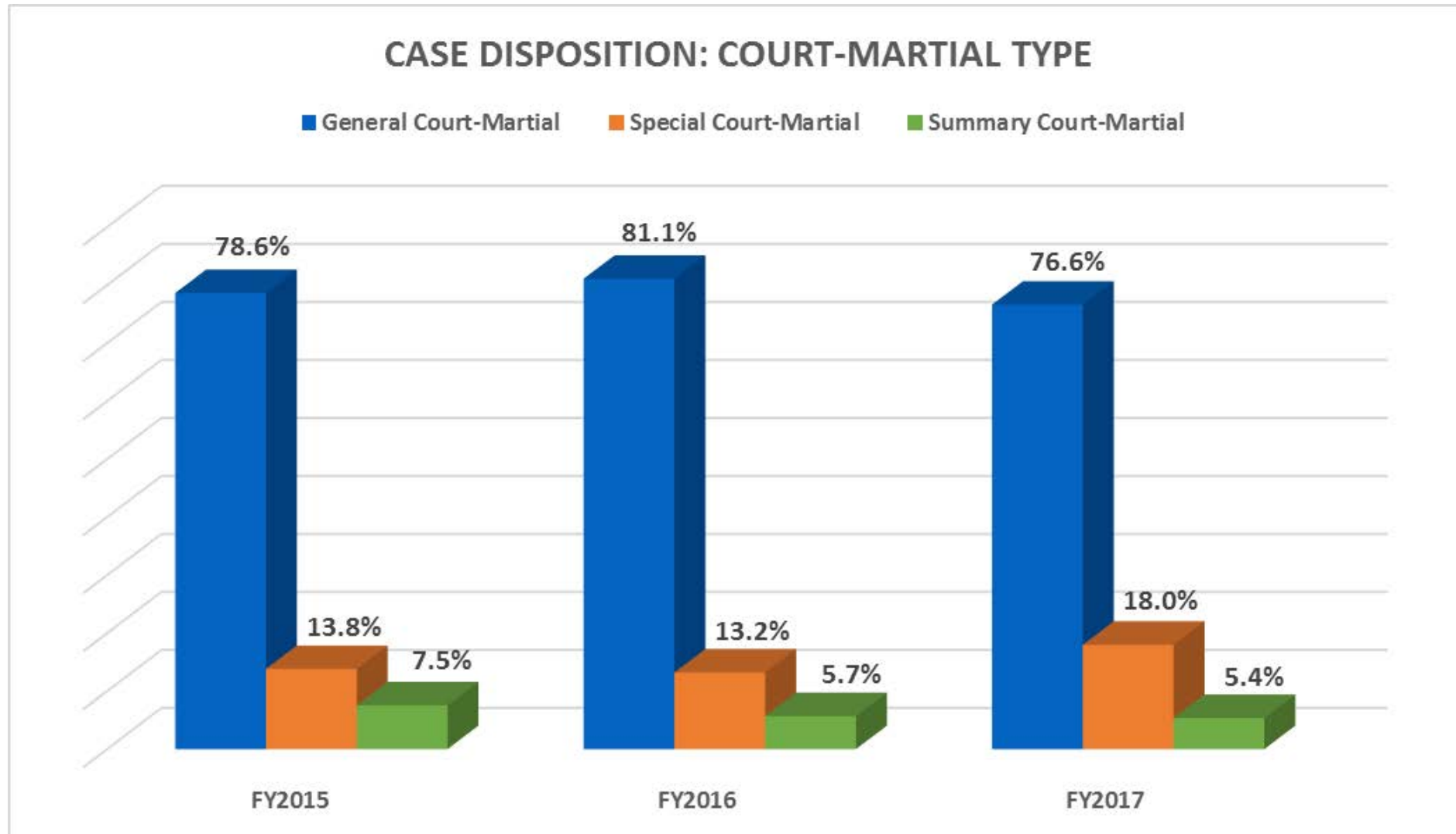


Court-Martial Data





Court-Martial Data





Court-Martial Data

CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY2017)

	General Court-Martial		Special Court-Martial		Summary Court-Martial	
Army	166	89.2%	11	5.9%	9	4.8%
Marine Corps	27	50.0%	21	38.9%	6	11.1%
Navy	54	61.4%	30	34.1%	4	4.5%
Air Force	74	88.1%	10	11.9%	0	0.0%
Coast Guard	7	43.8%	5	31.3%	4	25.0%



Court-Martial Data

CASE DISPOSITION BY MILITARY SERVICE OF THE ACCUSED (FY2017)

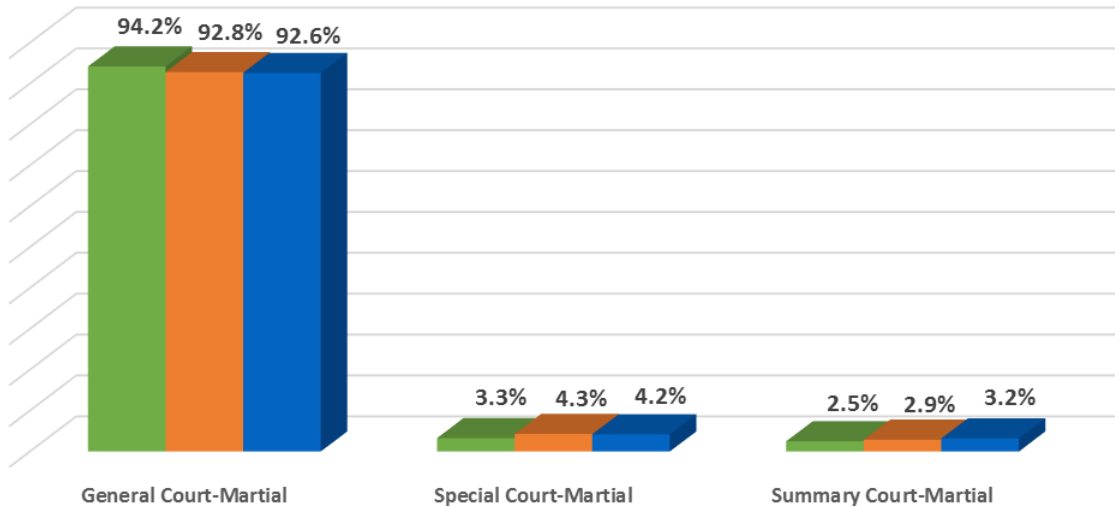
	General Court-Martial				Special Court-Martial				Summary Court-Martial			
	Penetrative		Contact		Penetrative		Contact		Penetrative		Contact	
Army	142	76.3%	24	12.9%	1	0.5%	10	5.4%	4	2.2%	5	2.7%
Marine Corps	24	44.4%	3	5.6%	8	14.8%	13	24.1%	4	7.4%	2	3.7%
Navy	49	55.7%	5	5.7%	2	2.3%	28	31.8%	2	2.3%	2	2.3%
Air Force	68	81.0%	6	7.1%	0	0.0%	10	11.9%	0	0.0%	0	0.0%
Coast Guard	6	37.5%	1	6.3%	2	12.5%	3	18.8%	0	0.0%	4	25.0%



Court-Martial Data

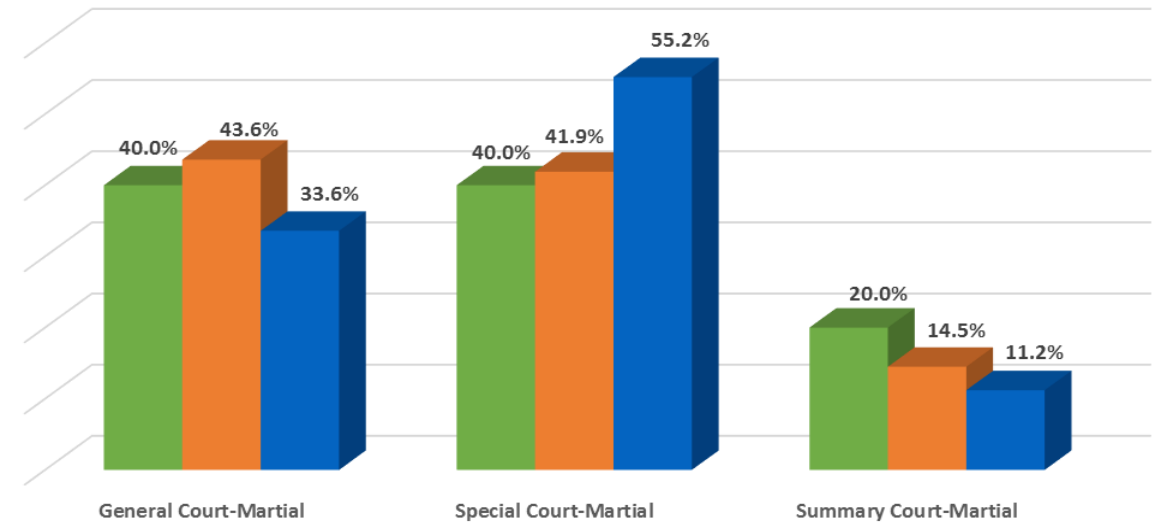
**CASE DISPOSITION:
PENETRATIVE OFFENSE PREFERRED**

FY2015 FY2016 FY2017



**CASE DISPOSITION:
CONTACT OFFENSE PREFERRED**

FY2015 FY2016 FY2017

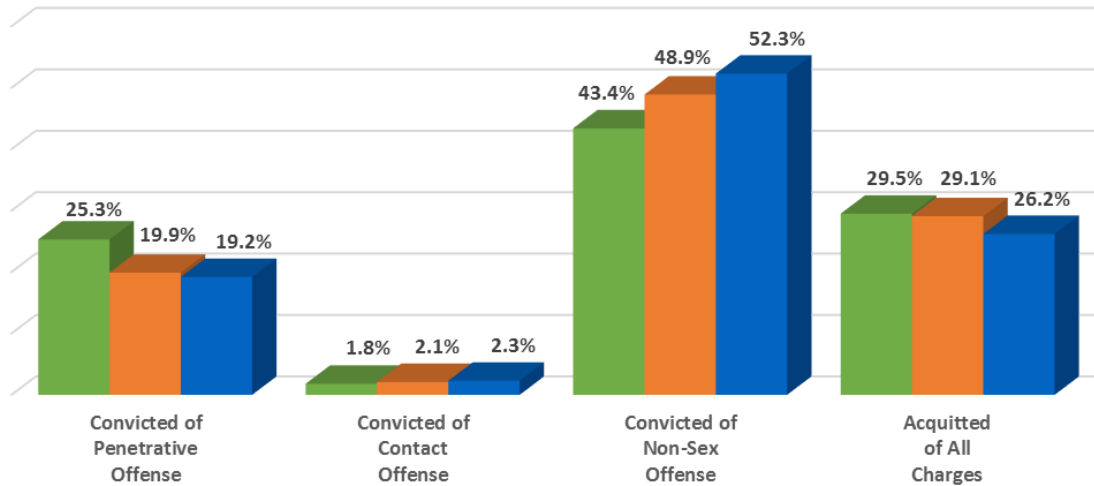




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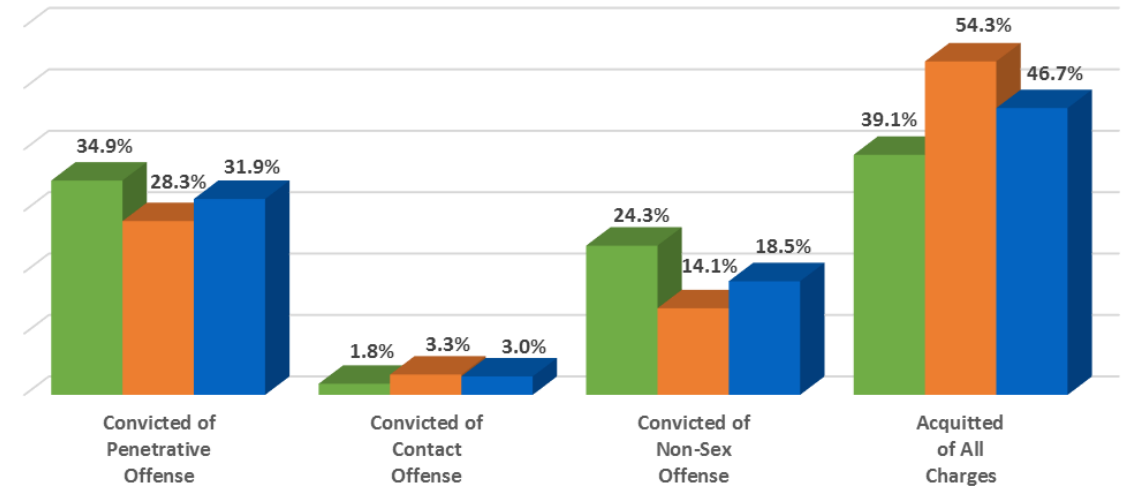
OUTCOMES FOR CONTESTED PENETRATIVE OFFENSE TRIALS:
ADJUDICATED BY MILITARY JUDGE

FY2015 FY2016 FY2017



OUTCOMES FOR CONTESTED PENETRATIVE OFFENSE TRIALS:
ADJUDICATED BY PANEL OF MILITARY MEMBERS

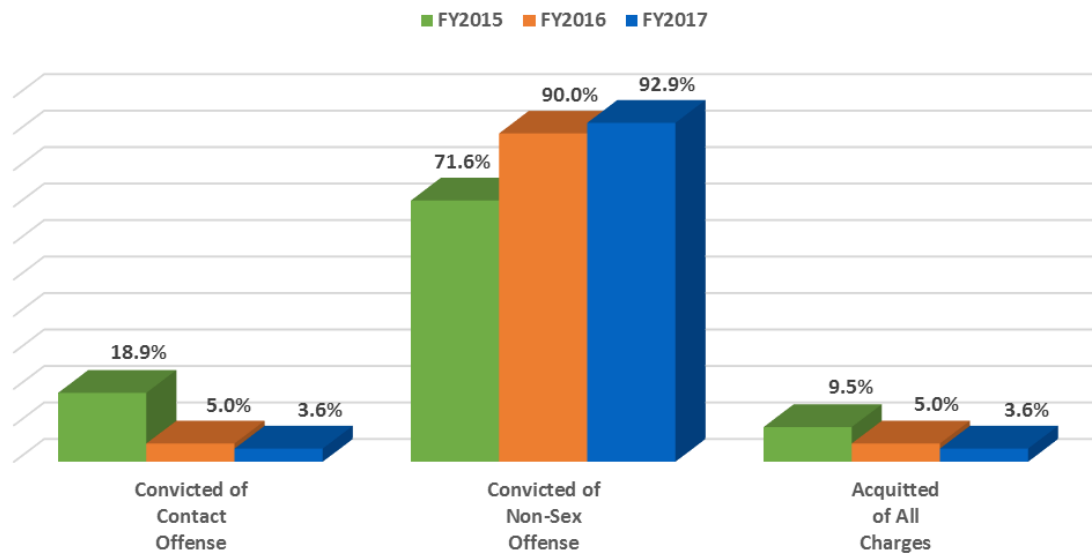
FY2015 FY2016 FY2017



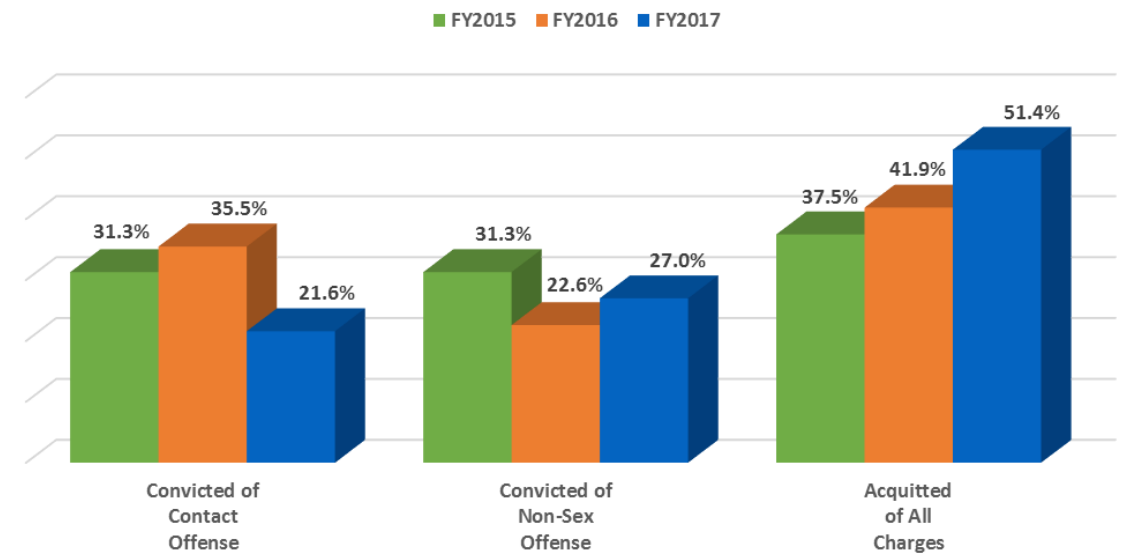


Court-Martial Data

OUTCOMES FOR CONTESTED CONTACT OFFENSE TRIALS:
ADJUDICATED BY MILITARY JUDGE



OUTCOMES FOR CONTESTED CONTACT OFFENSE TRIALS:
ADJUDICATED BY PANEL OF MILITARY MEMBERS

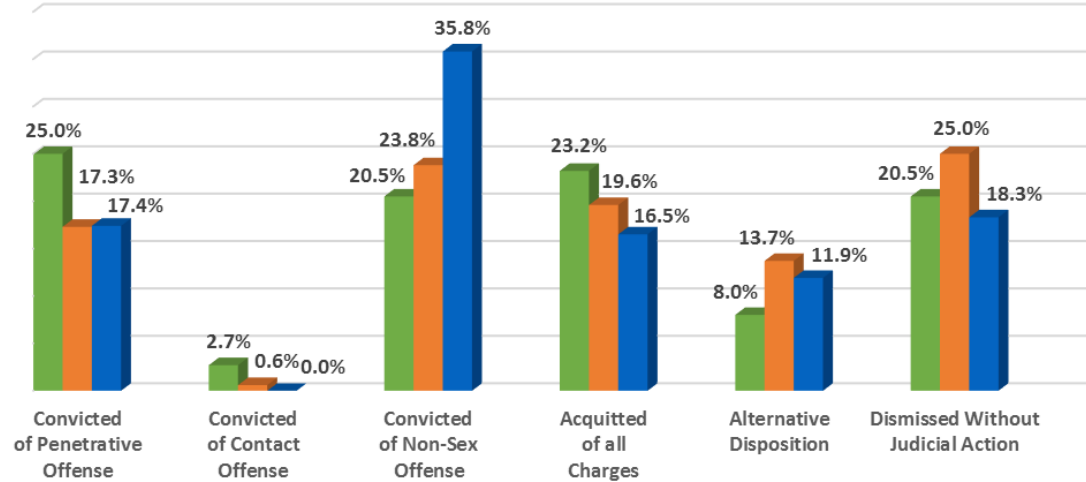




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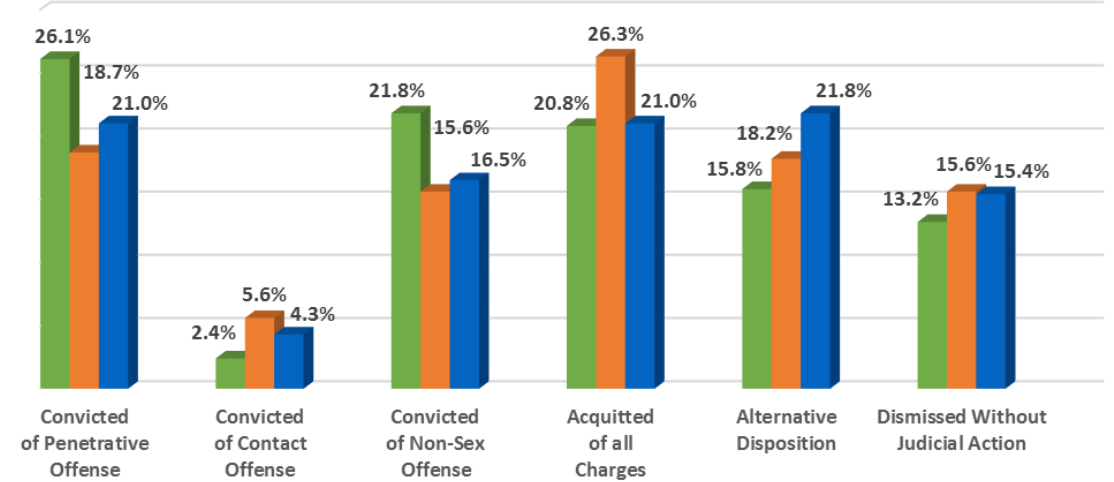
ACCUSED CHARGED WITH PENETRATIVE OFFENSE
VICTIM: SPOUSE OR INTIMATE PARTNER

FY2015 FY2016 FY2017



ACCUSED CHARGED WITH PENETRATIVE OFFENSE
VICTIM: OTHER RELATIONSHIP

FY2015 FY2016 FY2017

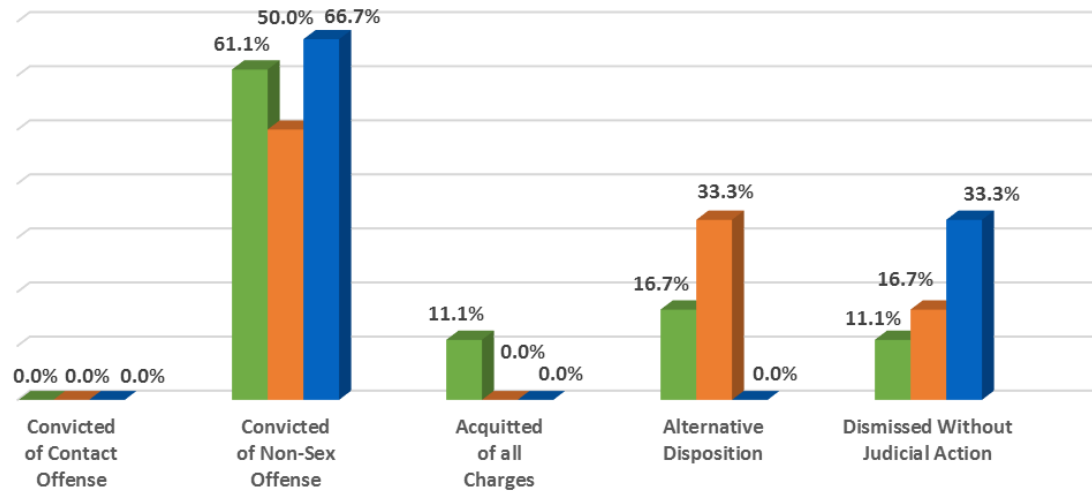




Court-Martial Data

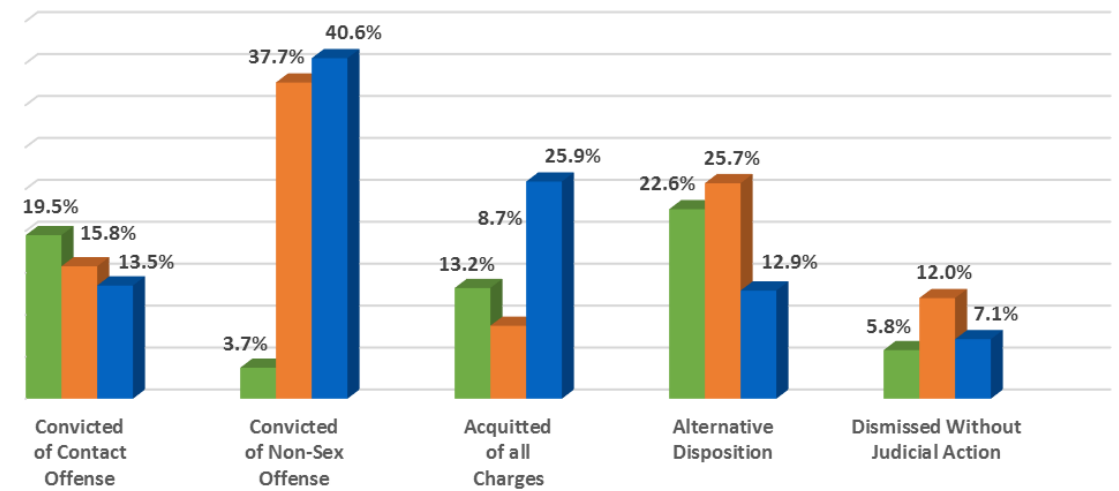
ACCUSED CHARGED WITH CONTACT OFFENSE
VICTIM: SPOUSE OR INTIMATE PARTNER

FY2015 FY2016 FY2017



ACCUSED CHARGED WITH CONTACT OFFENSE
VICTIM: OTHER RELATIONSHIP

FY2015 FY2016 FY2017





Summary of Multivariate Results

- Patterns for FY2016 and FY2017
 - Service Branch
 - Chances of any conviction were lower in Air Force than any other service branch in FY 2016 and FY 2017
 - Convicted Marines tended to face more severe sanctions in FY 2016 and FY 2017



Summary of Multivariate Results

- Patterns for FY2016 and FY2017
 - Number of Charges
 - Chances of conviction are greater when the number of charges is greater
 - Chances of dismissal and acquittal are reduced when the number of charges is greater
 - Severity of punishments are greater when the number of charges is greater



Summary of Multivariate Results

- Patterns for FY2016 and FY2017
 - Charged Offense / Conviction Offense
 - Those charged with a penetrative offense were less likely to be convicted (FY16), more likely to be acquitted (FY16 & FY17), and more likely to be dismissed (FY17)
 - Convictions for penetrative offenses lead to more severe sanctions than convictions for contact and non-sexual offenses



Summary of Multivariate Results

- Patterns for FY2016 and FY2017
 - Victim Variables
 - The chances of case dismissal were greater for intimate-partner cases than for cases with other relationships between the victim and the accused (FY16)
 - Greater numbers of victims in a case was associated with an increased chance of a conviction for a penetrative offense (FY17)
 - Military-only victim cases were linked to reduced chances of a confinement sentence, compared to civilian-only victim cases and those with military and civilian victims (FY17)



Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

Case Review Project
Descriptive Statistics

January 25, 2019



Data to Be Presented

- Two sets of results to be presented.
- Dr. Wells presenting higher level analysis. This analysis will be incorporated as an appendix to the final report and/or in the main body of the report.
- Does data raise further questions DAC-IPAD is interested in exploring?



Reporting Party

Initiation of Investigation: Classification of Reporting Person (N=165)

Reporting Person	Number of Cases	Percentage of Cases
Victim	61	37%
Victim-authorized representative	43	26%
Command report	33	20%
Other Third Party	28	17%

Initiation of Investigation: Third Party as Reporting Person (N=28)

Classification of Third-Party Reporting Person	Number of Cases	Percentage of Investigations
Victim's intimate partner	7	25%
Family, friend, neighbor	11	39%
Other	10	36%



Promptness of the Complaint (N=165)

Time Elapsed Between Incident and Report to Law Enforcement	Number of Cases	Percentage of Cases
Reported within 48 hours	55	33%
Reported between 3 and 30 days	33	20%
Reported between 1 and 6 months	43	26%
Reported between 6 and 12 months	16	10%
Reported more than 1 year later	16	10%
Reported more than 10 years later	2	1%



Duration of Military Criminal Investigations into Allegations of Penetrative Sexual Assault

Case Type	Average Duration (days)
Average duration for all cases (N=165)	192
Average duration for no action cases (N= 122)	177
Average duration for preferred cases (N=43)	233



Victim Demographic Characteristics

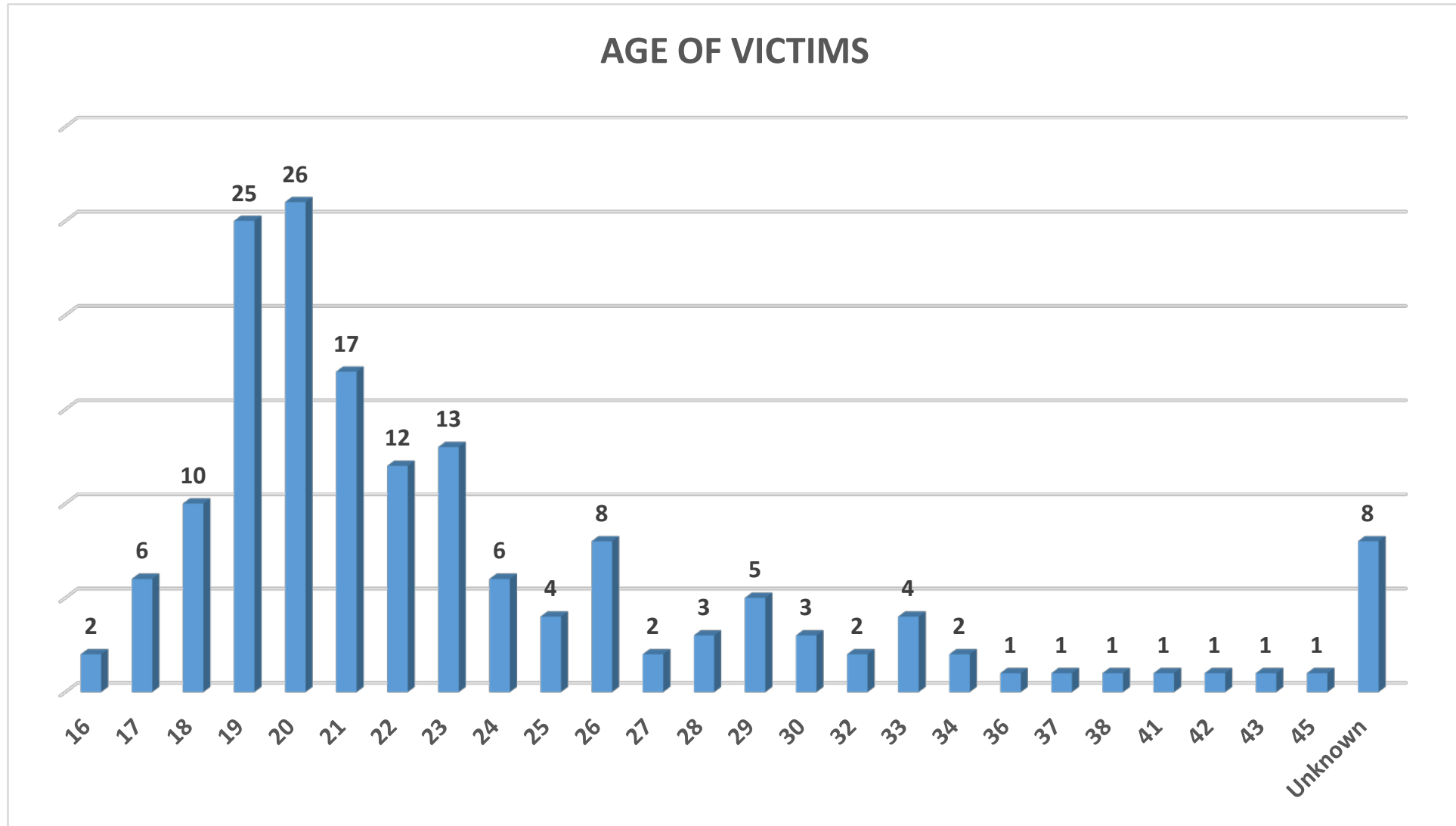
Victim: Demographic Characteristics (N=165)

	Number of Victims	Percentage of Victims
Female	151	92%
Male	14	8%
Enlisted	74	45%
Officer	3	2%
Civilian spouse of service member	40	24%
Other family member	10	6%
Other civilian	34	21%
Foreign national	2	1%
Unknown victim*	2	1%

**One unknown victim is a Service member but no other identifying information is known*



Age of Victims





Victim-Subject Relationship

	N	%
Intimate partner/former intimate partner	40	24.2
Friend	49	29.7
Coworker/classmate/roommate	17	10.3
Acquaintance	29	17.6
On-line/met for the first time	9	5.5
Stranger	11	6.7
Other	4	2.4
Unknown/unable to determine	6	3.6



Victim Participation

Victim: Declination to Participate with the Investigation (N=56)

	Number of Victims	Percentage of Victims
Service member	24	43%
Civilian spouse of service member	20	36%
Family member	2	4%
Other civilian	9	16%
Unknown	1	2%

** Out of the DoD spouses in only 12 cases was the subject the spouse.*



Victim Participation and Representation

Victim: Representation and Participation in the Investigation (N=164)

	Number of Victims	Participated in Investigation	Percentage Participated in Investigation	Declined to Participate in Investigation	Percentage Declined to Participate in
Eligible victims represented by an SVC	81	51	63%	30	37%
Eligible victims not represented by an SVC	45	30	67%	15	33%
Victims not eligible for an SVC	38	28	74%	10	26%
*one victim's eligibility status is unknown					



Victim Participation Compared to Reporting Party

Victim: Participation/Declination with Investigation by Classification of Reporting Person

	Number Participated	Percentage Participated	Number Declined	Percentage Declined
Victim (N=61)	40	66%	21	34%
Authorized Representative (N=43)	25	58%	18	42%
Third Party (N=28)	17	61%	11	39%
Command Report (N=33)	27	82%	6	18%



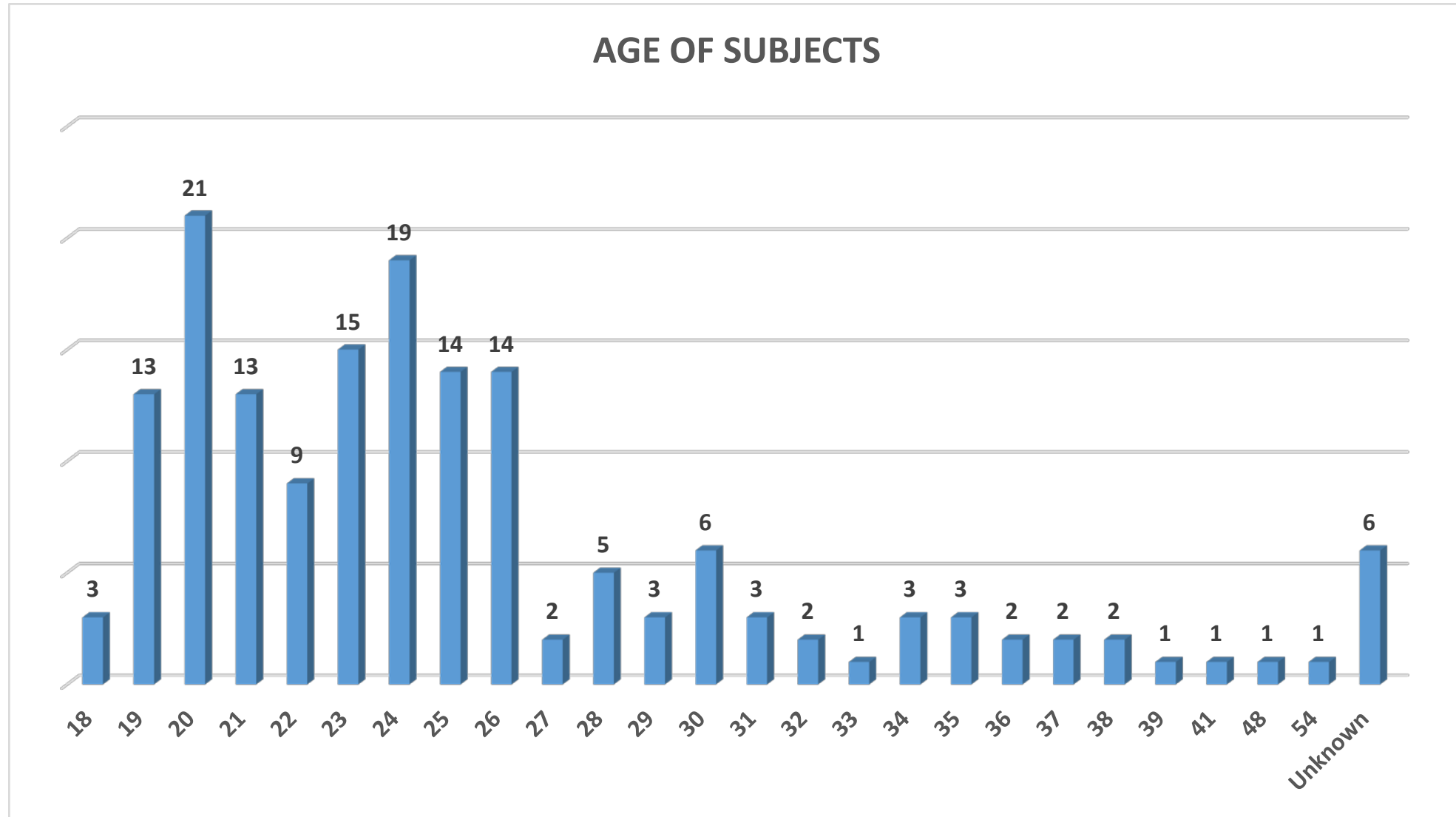
Subject Demographic Characteristics

Subject: Demographic Characteristics (N=165)

	Number of Subjects	Percentage of Subjects
Female	2	1%
Male	163	99%
Enlisted	152	92%
Officer	13	8%



Age of Subject





Subject Statement to Law Enforcement

Subject: Statement to Law Enforcement (N=165)

	Number of Investigations	Percentage of Investigations
Provided Statement	122	74%
Invoked Right to Remain Silent	43	26%

Subject: Legal Representation at Initial Interview (N=11)

	Number of Investigations	Percentage of Investigations
Subject provided statement	4	36%
Invoked right to remain silent	7	64%



Case File Data: Case Closure Status

- How consistently are case closure categories used?
- Compared the following:
 - Command reasons for no action
 - Judge advocate PC determinations for NCIC purposes
 - DIBRs classification
 - MCIO closure status
- Examined 122 no action cases

	Command Decision ^a	Probable Cause ^b	DIBRS	MCIO
No Probable Cause	19 (17.4%)	65 (67%)	N/A	N/A
Unfounded	11 (10.1%)	N/A	37 (30.6%)	27 (25.7%)
Prosecution Declined	7 (6.4%)	N/A	41 (33.9%)	10 (9.5%)
Victim Declined / Did not Participate	23 (21.1%)	N/A	15 (12.4%)	6 (5.7%)
Insufficient Evidence	47 (43.1%)	N/A	N/A	1 (1.0%)



Case File Data: Understanding Victim Impairment

- Like victim-subject relationship, victim impairment is also an important variable to measure, and also presents measurement challenges

	N	%
Victim Reported being Impaired		
Yes	91	55.2
No	74	44.8
Nature of Impairment ^a		
Passed Out / Unconscious	39	42.9
Blacked Out / No Memory / Partial Memory	38	41.8
Asleep	10	11.0
Missing	4	4.4

	Victim Impaired (N = 91)		Victim Not Impaired (n = 74)	
	Victim Used Alcohol	Victim Did Not Use Alcohol	Victim Used Alcohol	Victim Did Not Use Alcohol
Victim Used Drugs	11	4	0	1
Victim Did Not Use Drugs	73	3	22	51



Case File Data: Civilian Agency Involvement and Military Justice Processing

- Purpose is to understand military case processing in cases of civilian agency involvement

Agency Involved ^a		
Municipal, United States	31	62.0
County Agency, United States	10	20.0
Other	9	18.0
Civilian Investigative Agency took Lead		
Yes	34	69.4
No	15	30.6
Civilian Prosecutor Prosecuted the Case		
Yes	1	2.0
No	48	98.0
Reasons for Lack of Civilian Prosecution		
Prosecutor Declined / Case not Presented to Prosecutor	22	45.8
Case Transferred to Military	7	14.6
Victim Declined	6	12.5
Other / Unknown	13	27.1

	N	%
Probable Cause		
No Determination	6	27.3
Yes, PC Existed	5	22.7
No, PC did not Exist	11	50.0
Military Commander Action		
Preferral/Referral	5	22.7
No Action	17	77.3
Military Trial Results		
No Action Taken	17	77.3
Conviction of Sexual Assault	3	13.5
Conviction of Sexual Assault and Non-Sexual Assault	2	9.1



Case File Data: Variables Related to Command Action – No Action Decision

- Bivariate analysis results
- The chances a Commander took action in a case were *greater* when:
 - a JAG determined probable causes existed
 - the victim participated in the investigation
 - the victim received a sexual assault medical examination
 - the victim was asleep or passed out / unconscious
 - the victim and subject were not intimate partners
 - when the victim was not a DoD spouse
 - the subject used alcohol
 - the subject confessed