

Report to Congress

Department of the Air Force Report on the State of Military Justice for Fiscal Year 2022

December 31, 2022

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**IN ACCORDANCE WITH ARTICLE 146A, UNIFORM CODE OF MILITARY JUSTICE,
THE FOLLOWING INFORMATION IS PROVIDED:**

I. INTRODUCTION

The Department of the Air Force (DAF) remains fully committed to the fair and effective administration of military justice and ensuring a disciplined Air Force and Space Force to support national security objectives. Military justice continued to be a principal focus for the Air Force Judge Advocate General's Corps (JAG Corps) in Fiscal Year 2022 (FY22). In FY22, the JAG Corps prioritized implementing Section 532 of the FY22 National Defense Authorization Act (NDAA), which directed the standup of the Office of the Special Trial Counsel (OSTC). The mission of the OSTC is to provide expert, specialized, independent, and ethical representation of the United States in the investigation and trial-level litigation of covered offenses. In FY22, The Judge Advocate General (TJAG) certified the first cadre of OSTC prosecutors, ahead of full operational capability in December 2023, to serve as lead counsel on cases involving covered offenses, including sexual assault, domestic violence, and homicide. On 30 November 2022, the Senate confirmed the DAF's nominee for the position of Lead Special Trial Counsel of the OSTC.

Additionally, the JAG Corps focused on implementing the recommendations of the Independent Review Commission on Sexual Assault in the Military (IRC). The JAG Corps took meaningful steps towards carrying out recommendations across the IRC's four lines of effort. In this regard, the JAG Corps is most heavily involved in enhancing victim services and promoting the fair and efficient administration of military justice worldwide.

We provide the following information to illustrate the current state of the DAF's military justice practice.

II. DATA ON THE NUMBER AND STATUS OF PENDING CASES

The DAF collects court-martial data through its Automated Military Justice Analysis and Management System (AMJAMS). AMJAMS is the sole database for military justice processing, capturing case status updates and developments in each investigation for timely review and coordination. This system facilitates oversight and allows for a better understanding of resource allocation, identification and sharing of best practices, and the channeling of detached and neutral legal advice to the field from experienced practitioners. AMJAMS tracks cases from the point legal offices are initially notified of allegations through final disposition of those allegations. The Appendix provides data on pending DAF cases.

III. INFORMATION ON THE APPELLATE REVIEW PROCESS

The United States Air Force Court of Criminal Appeals (AFCCA) issued 189 opinions and orders for cases before the court in FY22. Three opinions were published, meaning they serve as binding precedent for DAF courts-martial. *See United States v. Hepperman*, No. ACM 40065, __ M.J. __, 2022 CCA LEXIS 552 (A.F. Ct. Crim. App. 28 Sep. 2022); *United States v. Andersen*, 82 M.J. 543 (A.F. Ct. Crim. App. 2022); *United States v. Rodela*, 82 M.J. 521 (A.F. Ct. Crim. App. 2021). The court held oral argument in three cases: *United States v. Covitz*, No. ACM 40193, 2022 CCA LEXIS 563 (A.F. Ct. Crim. App. 30 Sep. 2022) (unpub. op.);

United States v. Martinez, No. ACM 39903 (f rev), 2022 CCA LEXIS 324 (A.F. Ct. Crim. App. 31 May 2022) (unpub. op.); and *United States v. Ramirez*, Misc. Dkt. No. 2021-05, 2021 CCA LEXIS 710 (A.F. Ct. Crim. App. 30 Dec. 2021) (unpub. op.). AFCCA ended FY22 with eight active duty and four reserve appellate military judges.

a. Compliance with Processing Time Goals

- (1) In FY22, no convictions in DAF cases were set aside on speedy trial grounds.
- (2) Two cases exceeded 120 days from sentencing to the convening authority's action (the "Moreno 1" standard). Under the facts of each case, AFCCA found no relief warranted for these violations of the *Moreno* standard.
- (3) No cases exceeded the 30-day window from the date of the convening authority's action to docketing at AFCCA (the "Moreno 2" standard).
- (4) Under post-1 January 2019 post-trial processing rules, seven cases exceeded the 150-day standard for facially unreasonable delay from sentencing to docketing, articulated by AFCCA in *United States v. Livak*, 80 M.J. 631 (A.F. Ct. Crim. App. 2020). However, AFCCA found no relief warranted for these facially unreasonable delays under the *Moreno/Livak* standard.
- (5) Twelve cases exceeded the standard of 18 months from docketing to the convening authority's decision on action (the "Moreno 3" standard). Under the facts of each case, AFCCA found no relief warranted for these violations of the *Moreno* standard.

b. Other Issues

- (1) Unlawful Command Influence: The court did not find unlawful command influence in any of its decisions.
- (2) Denial of Right to Speedy Review: None.
- (3) Loss of Records of Trial:
 - a. In FY21, AFCCA remanded one case because the transcript from the appellant's arraignment was missing from the record. See *United States v. Matthew*, No. ACM 39796, 2020 CCA LEXIS 486 (A.F. Ct. Crim. App. 23 Dec. 2020) (unpub. op.). The case was redocketed with AFCCA, and in FY22, the court issued a decision in which the findings and sentence were set aside because the record of trial was incomplete. The convening authority ordered a rehearing under Rule for Courts-Martial 1103(f) (MCM 2016 ed.), which is still forthcoming. See *United States v. Matthew*, No. ACM 39796 (f rev), 2022 CCA LEXIS 425, at *16 (A.F. Ct. Crim. App. 21 July 2022) (unpub. op.).
 - b. Additionally, AFCCA remanded nine cases due to incomplete records of trial. See *United States v. Romero-Alegria*, No. ACM 40199, 2022 CCA

LEXIS 558 (A.F. Ct. Crim. App. 22 Sep. 2022) (order); *United States v. Ort*, No. ACM 40261, 2022 CCA LEXIS 521 (A.F. Ct. Crim. App. 31 Aug. 2022) (order); *United States v. Cooper*, No. ACM 40092, 2022 CCA LEXIS 243 (A.F. Ct. Crim. App. 28 Apr. 2022) (order); *United States v. Payan*, No. ACM 40132, 2022 CCA LEXIS 242 (A.F. Ct. Crim. App. 28 Apr. 2022) (order); *United States v. Wermuth*, No. ACM 39856 (f rev), 2022 CCA LEXIS 208 (A.F. Ct. Crim. App. 1 Apr. 2022) (order); *United States v. Mobley*, No. ACM 40088, 2022 CCA LEXIS 79 (A.F. Ct. Crim. App. 4 Feb. 2022) (order); *United States v. Goldman*, No. ACM 39939, 2022 CCA LEXIS 43, at *17–18 (A.F. Ct. Crim. App. 20 Jan. 2022) (unpub. op.) (remanding to correct entry of judgment, but identifying multiple missing portions of record of trial that could be corrected during remand); *United States v. Mardis*, No. ACM 39980, 2022 CCA LEXIS 10 (A.F. Ct. Crim. App. 6 Jan. 2022) (unpub. op.); *United States v. Daley*, No. ACM 40012, 2022 CCA LEXIS 7 (A.F. Ct. Crim. App. 5 Jan. 2022) (unpub. op.).

(4) Other Administrative Deficiencies:

- a. Convening Authority Failure to take Action on Sentence: AFCCA reviewed 26 cases in which the convening authority erroneously failed to take action on the entire sentence. *See generally United States v. Brubaker-Escobar*, 81 M.J. 471 (C.A.A.F. 2021) (per curiam). In 20 of the 26 cases, AFCCA tested the procedural error for prejudice and found none—thus finding no relief was warranted on these grounds. In two of the 26 cases, AFCCA remanded the case for other errors, and thus did not test for prejudice—instead noting that the convening authority could take action on the entire sentence, as required, during remand. In four of the 26 cases, AFCCA remanded the case in order for the convening authority to correct the error.
- b. Other Cases involving Administrative Deficiencies: AFCCA reviewed one case in which the post-trial processing improperly failed to include a Staff Judge Advocate’s Recommendation (SJAR), as well as an opportunity for the accused/appellant to respond to matters in the SJAR. *See United States v. Rodriguez*, No. ACM 38519 (f rev), 2021 CCA LEXIS 688 (A.F. Ct. Crim. App. 21 Dec. 2021) (unpub. op.). Ultimately, the court set aside the convening authority’s order and returned the case for proper post-trial processing. *Id.* at *19. AFCCA also reviewed and remanded two cases in which the court found noncompliance with a term of the pretrial agreement because the entry of judgment failed to reflect that specifications and/or language within specifications were dismissed with prejudice. *See United States v. Maurer*, No. ACM 39737 (f rev), 2022 CCA LEXIS 371 (A.F. Ct. Crim. App. 21 Jun. 2022) (unpub. op.); *United States v. Goldman*, No. ACM 39939, 2022 CCA LEXIS 43 (A.F. Ct. Crim. App. 20 Jan. 2022) (unpub. op.). In *Goldman*, while remanding, the court also identified missing items in the record of trial and noted the convening authority’s failure to take action on the sentence as required—and authorized the

convening authority and military judge to take corrective action on these matters during remand. *See Goldman*, 2022 CCA LEXIS 43, at *17–18. Additionally, in *Goldman*, after the case was re-docketed, the court subsequently issued an additional remand because the entry of judgment errors remained uncorrected. *See United States v. Goldman*, No. ACM 39939 (f rev), 2022 CCA LEXIS 511 (A.F. Ct. Crim. App. 30 Aug. 2022) (unpub. op.). AFCCA also reviewed three cases in which a plea agreement or pretrial agreement required one or more specifications to be dismissed with prejudice, but the entry of judgment failed to note such dismissal with prejudice; the court ultimately dismissed these specifications with prejudice as part of appellate review. *See United States v. Binegar*, No. ACM S32625 (f rev), 2022 CCA LEXIS 533 (A.F. Ct. Crim. App. 14 Sep. 2022) (unpub. op.); *United States v. Hong*, No. ACM 39830 (f rev), 2022 CCA LEXIS 120 (A.F. Ct. Crim. App. 24 Feb. 2022) (unpub. op.); *United States v. Marable*, No. ACM 39954, 2021 CCA LEXIS 662 (A.F. Ct. Crim. App. 10 Dec. 2021) (unpub. op.). AFCCA also reviewed one case in which the entry of judgment contained numerous errors and failed to adequately identify the offenses to which the appellant pleaded guilty; the court remanded for corrective action. *See United States v. Novelli*, No. ACM 40103, 2022 CCA LEXIS 403 (A.F. Ct. Crim. App. 12 Jul. 2022) (per curiam) (unpub. op.). Furthermore, AFCCA reviewed and remanded one case due to ambiguity in the convening authority’s decision on action. *See United States v. Sayers*, No. ACM 40142, 2022 CCA LEXIS 565 (A.F. Ct. Crim. App. 27 Sep. 2022) (order). Lastly, AFCCA reviewed three cases in which the convening authority improperly failed to provide the accused five days to respond to victim matters before issuing a decision on action. AFCCA remanded all three cases for further post-trial processing. *See United States v. Baker*, No. ACM 40091, 2022 CCA LEXIS 523 (A.F. Ct. Crim. App. 6 Sep. 2022) (unpub. op.); *United States v. Kim*, No. ACM 40057, 2022 CCA LEXIS 276 (A.F. Ct. Crim. App. 9 May 2022) (unpub. op.); *United States v. Halter*, No. ACM S32666, 2022 CCA LEXIS 9 (A.F. Ct. Crim. App. 6 Jan. 2022) (unpub. op.).

(5) Cases in Which Provisions of the UCMJ Were Found to be Unconstitutional: None.

IV. MEASURES IMPLEMENTED BY THE AIR FORCE TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO PARTICIPATE COMPETENTLY IN CAPITAL CASES, NATIONAL SECURITY CASES, SEXUAL ASSAULT CASES, AND MILITARY COMMISSIONS

a. Judge Advocate Professional Development

Professional development of DAF judge advocates is coordinated by The Judge Advocate General’s Professional Development Directorate (AF/JAX), which is responsible for the administration of human capital policies, standards, and processes

involving JAG Corps force management, manpower and organization, deployment taskings, assignments, and officer recruiting and accessions.

In FY22, the JAG Corps established a new military justice professional development model, called the Career Litigation Development Plan (CLDP), to adeptly resource and manage military justice assignments and litigation opportunities to ensure judge advocates are sufficiently adept and experienced at serving in critical roles in the military justice system over the course of a career. The CLDP deliberately vectors certain judge advocates through successive military justice-focused assignments to create and maintain specialists in litigation and the administration of military justice. These assignments include positions where judge advocates represent individuals or the United States Government in trial-level litigation and appellate proceedings, develop military justice policy, serve as military justice instructors and military judges, and advise on or administer matters across the continuum of discipline.

The CLDP establishes five levels of competency, with special designations and training requirements at each level. This model incorporates achievable processes to measure, track, and develop expertise in all aspects of litigation, including prosecution, defense, and victim representation functions. This new model is designed to ensure that highly capable and experienced judge advocates are involved in every stage of the military justice process across the continuum of rank and responsibility over the course of a military career.

In addition to implementing the CLDP in FY22, the DAF, through the JAG Corps, established the provisional OSTC as directed by the FY22 NDAA. The mission of the OSTC is to provide expert, specialized, independent, and ethical representation of the United States in the investigation and trial-level litigation of covered offenses as prescribed by Article 1(17) of the Uniform Code of Military Justice (UCMJ) (Title 10 U.S.C. § 801(17)). Although this Office is independently organized under the Secretary of the Air Force, the JAG Corps is responsible for organizing, training, resourcing, and equipping the requirements of the OSTC.

To ensure qualified and experienced judge advocates are assigned to roles within the OSTC, the JAG Corps has developed a robust OSTC staffing process. This includes an assignment selection process that analyzes multiple data points, including prior military justice experience and duties, military justice and litigation training, criminal justice experience prior to military service, the number and types of courts-martial and other proceedings participated in, military grade and assignment history, temperament and interpersonal qualities, levels of civilian and military education, and personal interest in criminal litigation. After these factors are considered, candidates are vetted with the leadership of the provisional OSTC for fitness for duty in the position based on a holistic review of each candidate's experience, expertise, and acumen for litigation. Once the most qualified candidates are identified for the OSTC, TJAG personally assesses their qualifications and assigns them to duty within the OSTC.

In addition to this selection process, judge advocates selected for OSTC positions are also required to complete a foundational Special Trial Counsel (STC) qualification course before performing duties. OSTC leadership will continuously monitor the performance of each judge advocate assigned to the OSTC to ensure the requisite proficiency and performance is maintained. Should proficiency standards not be maintained, procedures have been established for the removal of judge advocates from these positions should such action be necessary. Fixed terms of three-year assignments have been established for OSTC positions to ensure judge advocates develop and maintain optimal effectiveness.

To meet full operational capability of the OSTC by the statutory effective date of 27 December 2023, the JAG Corps will assign a cadre of 32 judge advocates to STC billets. Additionally, the JAG Corps has proposed a resourcing plan to increase the staffing of the OSTC through FY 2026 to meet anticipated increases in reports of covered offenses, investigations, and courts-martial.

b. Trial Counsel

Separate and apart from the OSTC, TJAG assigns judge advocates to serve as Circuit Trial Counsel only after significant vetting and based on recommendations from the JAG Corps Chief Prosecutor and Professional Development Division. The primary duties of Circuit Trial Counsel (CTC) are to serve as lead trial counsel in courts-martial and to train, advise, and assist other personnel involved in courts-martial prosecutions. Under the supervision of the O-6 Chief Prosecutor, the CTC program consists of five District Chief Special Trial Counsel and 18 Circuit Trial Counsel strategically located throughout the world.

Each District Chief Special Trial Counsel and 14 sitting Circuit Trial Counsel are certified by TJAG as Special Trial Counsel, and handle the most serious, complicated, and highest-visibility special victim cases in the DAF. All DAF senior prosecutors are supported by the Assistant Director of Operations–Training and Policy, for the Government Trial and Appellate Operations Division (AF/JAJG), who is AF/JAJG’s focal point for training and the prosecution of special victim cases.

Further, on 15 June 2022, TJAG certified the first cadre of DAF STC. STC are attorneys who have been designated as judge advocates and certified as STC pursuant to DAF STC certification criteria. In order to be certified as STC, these judge advocates had to complete the first ever STC qualification course. Additionally, each prospective STC completed a certification interview with the Acting Lead STC; the OSTC Director of Operations; and two other special victim certified prosecutors.

AF/JAJG and the OSTC successfully pursued training opportunities during the fiscal year. As previously stated, all STC completed the STC qualification course. This course comprised of a range of instructors, including DAF senior litigators, sister service subject matter experts, Department of Justice personnel, and law enforcement criminal investigation agents. The material included complex litigation strategy, in-depth briefings from forensic experts, complex charging analysis, and round-table discussions

to impart institutional knowledge. In addition, AF/JAJG successfully pursued training opportunities for CTC during the fiscal year. Incoming CTC and STC attended the Advanced Sexual Assault Litigation Training Course. Some also attended the Advanced Trial Advocacy Course at the Air Force Judge Advocate General's School (AFJAGS), as well as the Prosecuting Complex Cases Course at the Naval Justice School. STC and CTC also received a variety of additional training offered by the Air Force, sister services, and non-DoD sources as available. This training adds to the perspective of STC and CTC and the interaction with attorneys outside the Air Force allows for a valuable cross-feed of information. In total, in FY22, STC and CTC attended more than 1000 hours of training to improve their advocacy and prosecution skills.

c. Defense Counsel

The Trial Defense Division (AF/JAJD) provides criminal defense services for eligible Airmen and Guardians within the DAF. The Division Chief, together with the Deputy Chief and Division Manager, oversee trial defense operations from Joint Base Andrews as provided by the Division's worldwide team of Area Defense Counsel, Defense Paralegals, Circuit Defense Counsel, Chief Circuit Defense Counsel, Defense Investigators, and Defense Paralegal Managers. Also included within the Division is the Defense Counsel Assistance Program, which consists of a civilian employee in the grade of GS-15 who provides training, resources, and assistance for defense counsel worldwide.

In addition to the Air Force Rules of Professional Responsibility and their respective state bar rules, JAJD personnel must comply with the Trial Defense Division Charter which defines the type of defense services that may be provided by Division personnel and makes clear to whom those services may be provided. The Division's operating instruction also provides guidance to defense counsel and their teams.

Area Defense Counsel represent Airmen and Guardians who are facing adverse action ranging from administrative personnel matters to courts-martial. Area Defense Counsel begin their defense careers by defending individual clients in matters such as nonjudicial punishment, and by acting as second-chair defense counsel on courts-martial while being supervised by a Circuit Defense Counsel. Circuit Defense Counsel mentor Area Defense Counsel and are detailed as lead counsel in more complex cases or cases where an Area Defense Counsel has requested assistance. As Area Defense Counsel increase their skill and experience, their supervising Circuit Defense Counsel and Chief Circuit Defense Counsel may allow them to defend court-martial clients alone or to act as lead defense counsel at trial along with a more junior Area Defense Counsel serving as second chair.

During FY22, in addition to the four leadership positions previously noted, AF/JAJD consisted of 83 Area Defense Counsel, 77 Defense Paralegals, 18 Circuit Defense Counsel, three Defense Paralegal Managers, five Chief Circuit Defense Counsel, and five Defense Investigators. Each Chief Circuit Defense Counsel led Division personnel who fell within their respective geographical circuits. There are three circuits in the Continental United States (CONUS), one encompassing United States Air Forces Europe (USAFE), and another consisting of Pacific Air Forces (PACAF) installations. A Defense Paralegal Manager (DPM) is assigned to each of the three CONUS circuits. In

addition to leading Defense Paralegals within their own circuits, the DPMs for the Eastern and Western CONUS circuits assisted in leading, managing, and training Defense Paralegals located in USAFE and PACAF, respectively. Defense Investigators advised defense counsel on investigative strategies in individual cases, conducted witness interviews, and provided formal and informal instruction to defense counsel on how to best capture evidence that might be of use at court-martial or in other adverse proceedings. Together these professionals provided defense services to Airmen and Guardians around the world.

Throughout FY22, AF/JAJD personnel continued to demonstrate excellence while serving as advocates and representatives for their clients. The continuing success of the Air Force's Area Defense Counsel program is largely attributable to its independence and the effective and zealous advocacy of assigned personnel. Training remains a top priority to ensure effective, quality representation of clients and to maintain a team of defense counsel with the right skills and experience to ensure outstanding advocacy even in the most complex cases, including those involving allegations of sexual assault and domestic violence.

In FY22, all new Division personnel attended one of two Defense Orientation Courses (DOC) held at AFJAGS. DOC is designed to train new Area Defense Counsel and Defense Paralegals on client and office management as well as on defense specific advocacy concepts. DOC is taught by experienced Circuit Defense Counsel and Defense Paralegal Managers. Area Defense Counsel also had the opportunity to attend the two-week Trial and Defense Advocacy course (TDAC). TDAC was hosted by AFJAGS twice in FY22. It is a more intensive advocacy course providing both Trial Counsel and Area Defense Counsel an opportunity for practical, scenario-based training and an opportunity to obtain constructive feedback from more experienced litigators. TDAC challenges trial and defense counsel by having them prepare and execute each stage of trial, from *voir dire* to the sentencing phase.

AFJAGS also hosted the Advanced Trial Advocacy Course (ATAC) in FY 22. This course was attended by Circuit Defense Counsel and their government counterparts. ATAC is taught by experienced litigators from outside of the Department of Defense (DoD). The goal of the course is to further hone the skills of our more seasoned practitioners by presenting them with the opportunity to practice advanced trial advocacy techniques. Lastly, in FY22, AF/JAJD held a Leadership Summit where Division leadership met with Chief Circuit Defense Counsel, Circuit Defense Counsel, the Defense Counsel Assistance Program Manager, and three Defense Investigators. These senior members of the Trial Defense Division focused on topics related to improving the management and operation of the division, professional development, and leading trial defense teams.

In FY22, AF/JAJD also conducted regional litigation training events, referred to as Circuit Advocacy Trainings (CATs) in four of our five judicial circuits. A fifth planned training for the Pacific Circuit was cancelled due to continued concerns regarding pandemic-related travel restrictions and costs. These CATs provided advanced advocacy

and leadership training to defense counsel and paralegals, as well as an opportunity for leadership to connect with geographically-separated personnel.

In FY22, AF/JAJD hired five defense investigators during the stand-up of the new defense investigator capability within the trial defense community. By the end of FY23, there will be eight defense investigator positions strategically embedded at DAF installations around the globe. The addition of this capability will both improve the quality of defense services and maintain the overall credibility of the military justice system by creating parity of resources available to trial and defense counsel.

Based upon the recommendations of the IRC, AF/JAJD has prepared and tested procedures that will enable defense counsel to independently obtain expert assistance necessary to adequately represent DAF clients who are facing court-martial. Finally, at the end of FY22, AF/JAJD began work on a transition plan through which the Trial Defense Division will move into a district model mirroring that utilized by the OSTC. This new organizational structure will replace the current geographical circuit model, and will facilitate continued parity of resources, training, and experience between the prosecution and defense communities within the DAF.

d. Victims' Counsel

The Victims' Counsel Division (AF/JAJS) represents victims of violent crimes as authorized by the Secretary of the Air Force's inherent authority to direct the operations of the DAF. See 10 U.S.C. § 9013 and 10 U.S.C. § 1044. Additionally, the Secretary of the Air Force has authorized exceptions to statutory eligibility requirements on a case-by case basis. Finally, under 10 U.S.C. § 9037(c)(2), TJAG shall, "direct the officers of the Air Force designated as judge advocates in the performance of their duties."

In November 2021, the VC Charter was approved. The VC Charter consolidates legal and regulatory authorities for the operation of VCs and permits expansion of VC services beyond statutory eligibility requirements. In approving the Charter, TJAG officially changed the Division's name from the Special Victims' Services Division to the Victims' Counsel Division, capturing the expanded scope of eligible clients and the legal mission.

All Victims' Counsel (VCs) must attend the Air Force Victims' Counsel Course (AF VCC). AFJAGS hosts the AF VCC, where judge advocates receive tailored training and preparation to represent and/or advise victims of sexual assault, domestic violence, and interpersonal violence. At the 2022 VCC, 28 incoming Air Force VCs and 20 incoming Air Force Victims' Paralegals (VPs) received 51 blocks of instruction concerning legal representation of adult and child victims of sex-related and domestic violence offenses, and legal consultations for adult victims of interpersonal violence. The course also included 12 Special Victims' Counsel/Victims' Legal Counsel from sister services. Two incoming Air Force VCs attended the Army VCC. This year's VCC student feedback included appreciation for: small group seminars and exercises,

the ability to network with peers and supervisors, the inclusion of tactical practitioners and subject matter experts, and the inclusion of a survivor’s personal experience.

In February 2022, TJAG approved the VC Division to offer a one-week VC Distance Learning Certification Course, as needed, to fill the VC vacancies that may arise off-cycle to ensure continuity of victim services at VC office locations. The one-week curriculum meets DoD certification training requirements and would be available to joint service members in need of certification training before the resident courses are held, normally between April–August.

In March 2022, the VC Division was officially approved to provide privileged, confidential legal advice and services to DAF victims of interpersonal violence, including workplace violence and sexual harassment. The expansion of VC services effectively executes a “no wrong door” approach to comprehensive and holistic victims’ legal services. The DAF continues to study ways to better support all crime victims.

e. Appellate Defense Counsel

The Air Force Appellate Defense Division (AF/JAJA) is located at Joint Base Andrews and is responsible for delivering superior appellate defense services to Airmen and Guardians on appeal. AF/JAJA counsel are selected by TJAG based upon experience and capability in litigation. In FY22, AF/JAJA was staffed by one O-6 Division Chief, one O-5 Deputy Chief, nine active-duty appellate attorneys, two active-duty paralegals, one GS-15 civilian attorney, and eight Reserve attorneys.

In 2022, AF/JAJA provided a two-day newcomer training course for incoming appellate defense counsel and participated in an orientation with the AFCCA and the Court of Appeals for the Armed Forces (CAAF). Counsel provided instruction at the Joint Appellate Advocacy Training course at Fort McNair, which was attended by appellate advocates from each of the military services. AF/JAJA counsel also attended the Appellate Judges Education Institute Summit in Scottsdale, Arizona and the North Carolina Appellate Advocacy Training in Chapel Hill, North Carolina. Additionally, appellate defense attorneys continued to provide formal instruction for Circuit Defense Counsel and Area Defense Counsel and distributed a quarterly newsletter to AF/JAJD for defense counsel in the field.

f. Appellate Government Counsel

The Appellate Government section of AF/JAJG is located at Joint Base Andrews and is responsible for representing the United States on all appeals before the AFCCA and the CAAF. The section is staffed by one O-6 Division Chief, who is dual-hatted as the Chief Prosecutor, one O-5 Director of Operations, six active-duty Appellate Government Counsel, eight Reserve Appellate Government Counsel, and one civilian Associate Chief/Director of Appellate Operations. Additionally, AF/JAJG has one active-duty paralegal and one civilian paralegal. Appellate Government Counsel vigorously represent the government in Article 66 and Article 67, UCMJ, appeals of DAF court-

martial convictions, and in Article 62, UCMJ, interlocutory appeals on behalf of the government.

TJAG, in coordination with the AF/JAJG Division Chief, selects officers to be Appellate Government Counsel based upon their experience and capability with respect to litigation and legal writing. Appellate Government Counsel are generally O-3s and O-4 judge advocates. Typically, Appellate Government Counsel are chosen from officers currently serving as Area Defense Counsel, Victims' Counsel, or Circuit Trial or Defense Counsel recognized for their ability and desire to serve as appellate counsel.

New Appellate Government Counsel participate in an orientation with AF/JAJG, as well as orientations with the AFCCA and the CAAF. During the year, Appellate Government Counsel attend two main courses to enhance their appellate advocacy. Counsel attend and participate as instructors at the Annual Joint Appellate Advocacy Training, which provides valuable instruction on appellate advocacy from plenary speakers and allows for cross-pollination between Appellate Government Counsel from all services. The Appellate Government Counsel also attend the annual continuing legal education program sponsored by the CAAF allowing for specific training on appellate advocacy run by and from the perspective of the appellate judges of our highest court. All Appellate Government Counsel possess training and experience in litigating sexual assault cases. In addition, the AF/JAJG Division Chief, Director of Operations, and Associate Chief hold Top Secret clearances in the event classified matters arise on appeal.

g. The Air Force Judge Advocate General's School

The AFJAGS is the educational center of the JAG Corps. Located at Maxwell Air Force Base, Alabama, AFJAGS provides education and training in all aspects of military legal practice to attorneys and paralegals from all military services, other federal agencies, and several foreign countries. Military justice instruction topics include advocacy, administration, military rules of evidence, the rules of criminal procedure, sexual assault policy and response, and diversity and inclusion. AFJAGS faculty members also provide instruction on military justice for the schools and colleges across Air University, the DAF's center for professional military education. During FY22, AFJAGS faculty members instructed more than 9,600 students at these military academic institutions. AFJAGS plays a critical role educating national security leaders in the law, to include addressing congressionally mandated military justice training for wing, vice wing, and group commanders during the Senior Officer Legal Orientation Course. Similarly, senior DAF enlisted leaders receive essential military justice training at the Senior Enlisted Legal Orientation Course and the Chief's Leadership Course.

Additionally, AFJAGS published 14 articles through the Air Force JAG Corps magazine, *The Reporter*, reaching nearly 3,000 readers. Further, AFJAGS initiated significant revisions to the school's flagship publication to the DAF field, titled *The Military Commander and the Law*. AFJAGS revised this vital resource for commanders, first sergeants, and leaders at every level, to include clear and comprehensive guidance for dealing with law and policy in the arena of responding to and preventing sexual assault. *The Military Commander and the Law* is available in a print edition and online to DAF

legal professionals and commanders worldwide. In addition, AFJAGS produced 22 webcasts on various national security law topics. These webcasts are available “on demand” via AFJAGS’ web-based learning management system which is accessible to all members of the JAG Corps. AFJAGS also produced its own podcast, recording 19 episodes on relevant national security law topics with guest speakers including the Chief Master Sergeants of the Air Force and Space Force. Lauded for their timely and relevant legal and leadership topics, the podcasts have reached approximately 5,000 listeners worldwide.

More than 2,000 students attended AFJAGS in-residence and distance education courses in FY22. With more than 72 AFJAGS course offerings, the following courses devoted substantial resources to military justice-related topics:

Accelerated Commissioning Program & Total Force Officer Training
Advanced Sexual Assault Litigation Course
Advanced Trial Advocacy Course
Air Command and Staff College
Chaplain’s College (Basic, Deputy Wing, and Wing Chaplain Courses)
Chief’s Leadership Course
Defense Orientation Course (new Area Defense Counsel and Defense Paralegals)
Discovery Management Course (distance learning)
First Sergeant’s Academy
Gateway (intermediate leadership course for Air Force JAG Corps majors)
Guardian Orientation Course
International Officers School
Judge Advocate Staff Officer Course (initial training for new judge advocates)
Law Office Manager Course
Leadership Development Course for Squadron Command
Military Justice Administration Course
Military Personnel Management Course
Non-Commissioned Officer Academy & Senior Non-Commissioned Officer Academy
Paralegal Apprentice Course
Paralegal Craftsman Course
Senior Enlisted Legal Orientation Course
Senior Officer Legal Orientation Course
Squadron Officer School
Staff Judge Advocate Course
Training by Reservists in Advocacy and Litigation Skills (held regionally in the United States and overseas)
Trial and Defense Advocacy Course
Victim/Witness Assistance Program Course
Victims’ Counsel Course

Several of the courses listed above involve a specific focus on sexual assault litigation using practical applications that focus on sexual assault cases: Judge Advocate Staff Officer Course, Trial and Defense Advocacy Course, Advanced Sexual Assault Litigation Course, and Training by Reservists in Advocacy and Litigation Skills. In addition, other courses, such as Advanced Trial Advocacy Course, Defense Orientation Course, and Military Justice Administration Course also contain critical updates to the law as it pertains to sexual assault in the military.

Further, AFJAGS advances the Chief of Staff of the Air Force and Chief of Space Operations priorities by helping to lead the way in preparing our legal professionals and national security leaders to cultivate and sustain a culture of diversity and inclusion and an environment of excellence. AFJAGS developed and refined a three-module block on diversity and inclusion for the Judge Advocate Staff Officer Course, including unconscious bias, racial disparity in military justice seminar, and a command perspective from a graduated commander. The Military Justice Division also incorporates diversity and inclusion issues within student seminar problems and exercises. Finally, AFJAGS integrated diversity and inclusion training into the Senior Enlisted Legal Orientation, Staff Judge Advocate Course, Law Office Management Course, and Gateway by developing seminar problems to facilitate student discussion.

h. Military Justice Law and Policy Division

The Military Justice Law and Policy Division (AF/JAJM), provides military justice administration and support across the JAG Corps and is the lead on issues related to the establishment of military justice law and policy. An O-6 leads AF/JAJM and serves a dual role as the Division Chief and as the DAF representative to the DoD's Joint Service Committee on Military Justice (JSC). The DAF is currently the chair of the JSC until January 2023. In FY22, AF/JAJM incorporated changes in the law pursuant to the FY22 NDAA and initiated a complete review and rewrite of the fundamental military justice policy publication, Department of the Air Force Instruction (DAFI) 51-201, *Administration of Military Justice*, which was published 14 April 2022. In addition to this review, AF/JAJM published an entirely new policy publication for victim and witness rights and procedures, DAFI 51-207, *Victim and Witness Rights and Procedures*, 14 April 2022, which consolidates policies for the Victims' Counsel Program, the Victim and Witness Assistance Program, and witness travel for military justice proceedings.

AF/JAJM led efforts to implement DAF policy to meet the intent of the IRC's recommendation to create a uniform standard of proof (preponderance of the evidence) for nonjudicial punishment. As part of their efforts, AF/JAJM revised DAFI 51-202, *Nonjudicial Punishment*, 4 January 2022, to memorialize this standard of proof and implement procedures for appellate review.

AF/JAJM continued to provide training across the JAG Corps and is the course host for the Military Justice Administration Course and Victim and Witness Assistance Program Symposium, each held twice annually.

Finally, AF/JAJM provides timely notice and advice to the field about matters of military justice law and policy. This occurs regularly through the JAG Corps Online News Service, a weekly email sent to all members of the JAG Corps. Additionally, military justice policy expressly provides that legal offices at any level may contact AF/JAJM directly, and in any given year AF/JAJM answers several hundred questions from practitioners in the field on all aspects of military justice practice.

i. Trial and Appellate Judiciary

Trial Judges: The Chief Trial Judge, located at Joint Base Andrews, manages the Air Force Trial Judiciary (AF/JAT), which includes judges assigned to five judicial circuits as well as all court reporter functions around the world. Chief Circuit Military Judges supervise the various judges within each circuit. Seventeen judges are stationed stateside, and four judges are stationed in the two overseas circuits: two in Europe and two in the Pacific.

The Air Force Trial Judiciary also works closely with judges in the other services to ensure a standardized application of military law and procedure across criminal trials conducted throughout the DoD. To that end, members of the trial judiciary attend the Military Judges' Course at the U.S. Army Judge Advocate General's Legal Center and School in Charlottesville, Virginia. The three-week course prepares judge advocates from all services for their roles as trial and appellate military judges. The course provides detailed instruction on substantive and procedural criminal law, and judicial ethics and responsibilities. The curriculum focuses on sexual assault offenses, rules of evidence applicable thereto, and victims' rights. It also covers national security concerns and instances where closed hearings are required by law.

Each year, the trial judiciary trains alongside all trial judges in the DoD. In 2022, the Air Force Trial Judiciary hosted the Joint Military Judges Annual Training in-person at AFJAGS. Instruction included courses on victim's rights under Article 6b of the UCMJ, sentencing evidence and methodology, ethics issues involving social media, and recent appellate cases. The Military Commissions Trial Judiciary provides additional training applicable to their work.

Appellate Military Judges: During FY22, the number of active-duty appellate military judges assigned to AFCCA varied between seven and nine, and the number of reserve appellate military judges varied between three and four.

Two AFCCA judges served on the United States Court of Military Commissions Review (USCMCR) in FY22. The USCMCR hears appeals in cases convened under the Military Commissions Act of 2009. The USCMCR not only hears cases with a finding of guilty from military tribunals at Guantanamo Bay, but also hears appeals on issues taken prior to and during trial.

Tenure for appellate military judges assigned to a service court of criminal appeals is for a minimum of three years, except under certain circumstances. See Article 66(a), UCMJ, 10 U.S.C. § 866(a); R.C.M. 1203(a); Jt. Ct. Crim. App. R. 1(c).

Judge advocates designated for assignment as military appellate judges are required to attend the three-week Military Judges' Course at The Army Judge Advocate General's Legal Center and School in Charlottesville, Virginia, which occurs once a year in June. AFCCA also conducts in-house initial training for newly assigned appellate judges. Additionally, court personnel attended the William S. Fulton, Jr. Military Appellate Judges' Training Conference, which the Navy-Marine Corps Court of Criminal Appeals hosted on 26–27 October 2021 at the Washington Navy Yard, and the Army Court of Criminal Appeals hosted on 20–21 September 2022 at the Federal Judicial Center, Washington, D.C. Finally, court personnel attended the annual CAAF Continuing Legal Education and Training Program, held on 9–10 March 2022, at American University Washington College of Law.

Additionally, the court support staff consists of a Clerk of the Court, two commissioners, one civilian paralegal, and one military paralegal. The military paralegal position was vacant all of FY22 and this essential position remains unfilled. The court also hosted one Fall 2021 law school extern, one Spring 2022 intern, and three Summer 2022 law student intern/externs; all interns/externs were assigned under the AF/JAX Intern/Extern Program, except one law student in Summer 2022 who was a volunteer.

V. INDEPENDENT VIEWS OF THE JUDGE ADVOCATE GENERAL AS TO THE SUFFICIENCY OF RESOURCES, INCLUDING TOTAL WORKFORCE, FUNDING, TRAINING, AND OFFICER AND ENLISTED GRADE STRUCTURE, TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS

a. Total Workforce

The JAG Corps has approximately 1,318 judge advocates and 920 paralegals on active duty, who are assigned to various roles in support of military justice functions, on an annual basis. Company grade officers (O-1 to O-3) make up approximately 44% (580) of the JAG Corps. Approximately 28% (367) are majors (O-4) and approximately 19% (249) are lieutenant colonels (O-5). Colonels (O-6) and above, including one lieutenant general (O-9), one major general (O-8), and two brigadier generals (O-7), comprise approximately 9% (126) of the Corps. All judge advocates and paralegals begin their careers as trial counsel and military justice technicians in support of military justice functions and prosecution of courts-martial. Currently, the Military Justice and Discipline Domain (AF/JAJ) has over 420 personnel dedicated to specialized military justice positions including those referenced throughout this report. Opportunities in civil litigation across the JAG Corps also contribute to a robust cadre of experienced litigators. Additionally, as described above, JAG Corps personnel may now, more than ever, specialize in military justice and litigation positions at levels of increasing responsibility and expertise with the addition of the new CLDP.

b. Funding

While the JAG Corps, through its headquarters function AF/JA, has been successful in covering expenses, especially those related to military justice, we continue to work

through budgetary constraints to cover the expanding scope of military justice responsibilities.

One recent military justice initiative is the IRC's recommendation to modify funding authorities for the Defense Counsel Program, especially funding of expert consultants and witnesses. Under the current DAF plan, the Air Force Major Commands or Space Force Field Commands will continue to fund these costs but will move the approval process to an independent authorizing authority apart from the convening authority. If further law or policy restricts the ability to execute in this manner, placing the financial burden on the JAG Corps, we would work within the enterprise to find alternative solutions to meet the budgetary requirements.

Another new initiative is the creation of the OSTC. AF/JA is currently funding the stand-up and will continue to work within the DAF to establish the future funding construct. Once it reaches full operational capability, the OSTC is estimated to cost approximately \$5M per year.

To address emerging military justice technology requirements, the DAF contracted for the Disciplinary Case Management System (DCMS) in FY20. DCMS is to be the replacement program for AMJAMS, the JAG Corps' legacy military justice management system. The DCMS contract was awarded in FY21 to begin the implementation and covers the cost of licensing, cloud hosting, and sustainment of the system. DCMS will begin replacing AMJAMS in FY23 through a phased plan. The JAG Corps secured funding in FY22 for the first four iterations of the DCMS program and has been granted funding for the next five years to cover the remaining costs.

c. Training

Judge advocates are well and deliberately trained and developed throughout their careers, both at the local and enterprise level. AF/JAX, in coordination with subject matter experts and AFJAGS, continuously reviews, updates, and develops curriculum to meet the needs of the JAG Corps, thus ensuring currency and relevance in continuing education needs.

AF/JAX chaired a Utilization and Training Workshop (U&TW) at which Major Command and Field Command Staff Judge Advocates gathered to review the Course Training Standards (CTS) published in the Career Field Education and Training Plan. Over 200 CTS training line items were reviewed for three mandatory courses with substantive military justice training in the curriculum (the Judge Advocate Staff Officer Course, Staff Judge Advocate Course, and Gateway—a leadership course for mid-level O-4s). The U&TW helps to ensure the military justice training provided at these mandatory courses is both sufficient and timely, based on DAF priorities and the needs of the field.

AF/JAX centrally managed JAG Corps attendance at military justice courses within the JAG Corps and at Sister Service schools. In FY22, AF/JAX selected 934 students to

attend courses with military justice training topics—many students attend multiple courses during the year.

AF/JAX worked with AF/JAZ to increase the number of centrally funded litigation training opportunities for judge advocates. During FY22, two AFJAGS courses that previously required local funding were converted to central funding. The Trial Defense and Advocacy Course is held twice a year and is now centrally funded for up to 70 students per year. The Advanced Trial Advocacy Course is held once a year and is now centrally funded for up to 35 students per year.

d. Officer and Enlisted Grade Structure

Area Defense Counsel and Victims' Counsel generally serve in the grade of O-3. They are supported by Defense Paralegals and Victims' Paralegals, respectively, who serve in the grades of E-5 and above. Paralegals are not eligible to become Defense Paralegals or Victims' Paralegals until they meet certain professional requirements called "skill levels." Paralegals enter their first assignment at a skill level of three, and they must gain the next skill level (five-level) through on-the-job training and by satisfying academic requirements. Once paralegals meet the five-level requirements, they are eligible for selection as Defense Paralegals and Victims' Paralegals. The final level, seven, is achieved by qualifying for, attending, and completing an eight-week in-residence course held at AFJAGS.

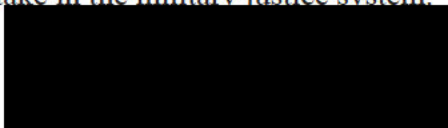
Area Defense Counsel and Victims' Counsel are capable of advocating fully and zealously without regard to differences between counsel, decision makers, and their clients in terms of rank or grade. Both have independent reporting chains from the installations they support, free of undue command influence. Area Defense Counsel report to Circuit Defense Counsel, who generally serve in the grade of O-4 and are responsible for a geographic region, as noted above. Circuit Defense Counsel, in turn, report to Chief Circuit Defense Counsel, who serve in the grades of O-4 and O-5, depending on the size of the circuit to which they are assigned. Victims' Counsel report to Chief Circuit Victims' Counsel, who serve in the grades of O-4 or O-5, depending on the size of the circuit to which they are assigned, and have a broader scope of responsibility in terms of personnel.

Judge advocates assigned to the Office of Military Commissions, to include the Judiciary, Convening Authority, Prosecutor, or Military Commissions Defense Organization, are generally in the grades of O-3 to O-5.

VI. CONCLUSION

The impact of the JAG Corps attorneys and paralegals in FY22, across all spectrums of military justice, are apparent through the accomplishments noted in this report. The adaptability of our military justice practitioners is key to continuing to provide commanders with the necessary tools to promote good order and discipline throughout their units in a timely and accurate manner, and it will serve as the backbone to successfully standing up the OSTC to full operational capability in 2023.

The JAG Corps implemented numerous key initiatives in FY22. These include, but are not limited to, the initial stand-up of the OSTC, continued implementation of IRC recommendations, and the codification of the JAG Corps-wide litigation development plan. The DAF maintains an effective, efficient, strong and robust military justice program that appropriately balances the competing interests of all of those with a stake in the military justice system.



CHARLES L. PLUMMER
Lieutenant General, USAF
The Judge Advocate General

VII. APPENDIX

DEPARTMENT OF THE AIR FORCE MILITARY JUSTICE STATISTICS

Report Period: FY 2022

PART 1 – PENDING COURTS-MARTIAL [A]			
TYPE COURT	PREFERRED AND PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		143	
BCD SPECIAL		65	
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))		3	
SUMMARY		6	
TOTAL:	67	217	284

PART 2 – BASIC COURTS-MARTIAL STATISTICS				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	INCREASE (+)/ DECREASE (-) OVER FY21 IN CASES
GENERAL [B]	161	101	37	-19.1%
BCD SPECIAL [C]	138	98	5	+1.4%
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	15	14	1	+114.3%
SUMMARY	87	85	2	+ 26.1%
OVERALL CASES RATE OF INCREASE (+)/DECREASE (-) FROM FY 21				-2.4%

PART 3 – ACCUSED DEMOGRAPHIC DATA												
	Total	Gender		Ethnicity [D]		Race						
		Male	Female	Hispanic / Latino	Non-Hispanic	American Indian	Asian	Black / African	Native Hawaiian / n/	White	Other	Unknown
General	161	155	6	18	143	3	4	32	3	105	5	9
BCD Special	138	124	14	26	112	1	4	31	1	92	8	1
Military Judge	15	14	1	1	14	0	1	6	0	8	0	0

Alone Special												
Summary	87	77	10	14	73	2	2	20	0	55	7	1

PART 4 – VICTIM DEMOGRAPHIC DATA [E]												
	Total	Gender		Ethnicity [F]		Race						
		Male	Female	Hispanic / Latino	Non-Hispanic	American Indian	Asian	Black / African	Native Hawaiian	White	Other	Unknown
General	316	38	278	29	287	0	1	29	2	148	25	111
BCD Special	80	36	43	11	48	0	0	7	0	35	6	11
Military Judge Alone Special	7	2	5	2	5	0	0	2	0	2	1	2
Summary	42	22	20	4	38	0	3	0	2	20	1	18

PART 5 – DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT		
GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES/DISMISSALS	44/9	
NUMBER OF BAD-CONDUCT DISCHARGES	33	
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	26	

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY TJAG		
ARTICLE 66(b)(1) – APPEALS BY ACCUSED	1	
ARTICLE 66(b)(2) – FORWARDED BY TJAG	0	
ARTICLE 66(b)(3)/ARTICLE 66(b) (Pre-MJA16) – AUTOMATIC REVIEW	121	
FOR EXAMINATION UNDER ARTICLE 69(a) (Pre-MJA16 Cases) [G]	0	
FOR EXAMINATION UNDER ARTICLE 69 (Post-MJA16 Cases) [H]	5	

PART 7 – WORKLOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS		
TOTAL CASES ON-HAND BEGINNING OF PERIOD	184	
TOTAL CASES REFERRED FOR REVIEW [I]	151	
TOTAL CASES REVIEWED [J]	189	
TOTAL CASES PENDING AT CLOSE OF PERIOD	146	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-3	

PART 8 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES		
PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES (76/189)		40.2%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		-17.8%
PERCENTAGE OF TOTAL PETITIONS GRANTED (15/76)		19.7%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD		+9.4%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (15/189)		7.9%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		+1.9%

PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ [G]			
TOTAL PENDING BEGINNING OF PERIOD		2	
RECEIVED		5	
DISPOSED OF		0	
RELIEF GRANTED	0		
RELIEF DENIED	3		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		2	

PART 10 – ORGANIZATION OF COURTS [K]		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL	92	
SPECIAL COURTS-MARTIAL	88	
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	15	
TRIALS BY MILITARY JUDGE WITH MEMBERS		

GENERAL COURTS-MARTIAL	66	
SPECIAL COURTS-MARTIAL	47	

PART 11 – STRENGTH [L]		
AVERAGE ACTIVE DUTY STRENGTH	329,486	

PART 12 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	4,183	
RATE PER 1,000	12.70	
RATE OF INCREASE (+)/DECREASE (-) IN NJPs OVER FY21	-5.9%	

Explanatory Notes

[A] Data for cases pending as of 30 September 2022.

[B] The remaining 23 cases were dismissed.

[C] The remaining 35 cases were dismissed.

[D] Gender, racial and ethnic demographic data is self-reported by servicemembers and pulled from AFPC databases by AMJAMS. Any unaccounted for numbers in ethnic demographic data reflects either “unknown,” “none,” or “declined to respond,” answers from servicemembers. The results of AMJAMS data pulls for ethnicity yield only Hispanic and non-Hispanic categories such that the specific numbers for each of the other categories is unknown.

[E] The victim demographic data contained with this table refers only to victims named in a specification. Figures may not equate to number of courts-martial, as some courts-martial may involve no or multiple victims. Victim data includes tried and pending cases.

[F] Gender, racial and ethnic demographic data is self-reported by servicemembers and pulled from AFPC databases by AMJAMS. Any unaccounted for numbers in ethnic demographic data reflects either “unknown,” “none,” or “declined to respond,” answers from servicemembers. The results of AMJAMS data pulls for ethnicity yield only Hispanic and non-Hispanic categories such that the specific numbers for each of the other categories is unknown.

[G] Refers to Article 69(a), UCMJ, in effect before the Military Justice Act of 2016, whereby The Judge Advocate General reviewed any general court-martial case that did not qualify for Article 66 review.

[H] Refers to the current Article 69, UCMJ, whereby the accused may petition The Judge Advocate General for relief after completion of an initial review under Article 64 or Article 65.

[I] Includes opinions and orders terminating cases and withdrawals from appellate review.

[J] Figure includes applications for relief under both the pre-Military Justice Act of 2016 Article 69(b) and the current Article 69.

[K] Figure includes cases tried to completion where the Court-Martial Order or the Entry of Judgment was completed within FY22.

[L] Figure includes only active component Airmen and Guardians and does not include the Air Force Reserves or the Air National Guard.

Report to Congress

U.S. Army Report on Military Justice for Fiscal Year 2022

31 December 2022

Prepared by:

**THE OFFICE OF THE JUDGE ADVOCATE GENERAL, U.S. ARMY
ARMY PENTAGON
WASHINGTON DC 20310-2200**

The estimated cost of this report or study for the Department of Defense is approximately \$2,990 for the 2022 Fiscal Year. This includes \$0 in expenses and \$2,990 in DoD labor.

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DEPARTMENT OF THE ARMY
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REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY
ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE
OCTOBER 1, 2021 TO SEPTEMBER 30, 2022

In fiscal year 2022 (FY22), The Judge Advocate General's Corps (JAG Corps) continued to refine the practice of military justice by assessing, planning, and executing the FY22 NDAA legislative change to the Uniform Code of Military Justice. It was a year of continued self-assessment and evolution of the military justice system response to sexual assault.

The Army fully supports the legislative changes and the Secretary of Defense's initiatives requiring highly skilled prosecutors and support staff dedicated to overseeing the disposition of murder, sexual assault, and related crimes. The Secretary of the Army established the Office of Special Trial Counsel (OSTC) as a Field Operating Agency on July 15, 2022. Once fully operational, OSTC will make initial disposition decisions and binding referral decisions for the 11 covered offenses required by the FY 2022 NDAA.

To effectuate the legislative change, the JAG Corps moved aggressively to transform structure, seek necessary authorities, and establish OSTC. It enhanced the Military Justice Career Model (MJCM) and opened the doors to a state-of-the-art Advocacy Training Center.

The Trial Defense Service (TDS) and Special Victim Counsel (SVC) Program have also implemented significant changes to improve representation of accused Soldiers and Victims and restructure in anticipation of the new changes to the military justice system. In FY22, the Trial Defense Service began to restructure to reflect the changes in the prosecution function, which will include complex litigation teams located within each of the eight circuits and amended business rules for detailing counsel to cases involving complex issues and covered offense crimes.

In furtherance of TJAG's duties under Article 6(a), UCMJ, TJAG and senior leaders in the JAG Corps conducted eleven worldwide visits (including some virtual events, given the COVID 19 restrictions) to installations and commands to inspect the delivery of military justice support to commanders and Soldiers.

1. Data on the number and status of pending courts-martial cases: The Army manages and tracks courts-martial and other Military Justice actions through its Army Court-Martial Information System (ACMIS) and Military Justice Online (MJO) applications. At the end of FY22, the Army had 185 pending courts-martial cases, 57 of which were referred for trial by courts-martial, with the remainder pending disposition decisions. Data on the number of cases pending, as well as cases completed in FY22, is provided in the Appendix.

2. Information on the appellate review process:

a. Compliance with processing time goals: In FY 2022, 305 records of trial and over 1,000 motions and briefs were referred to one of the three judicial panels comprising the U.S. Army Court of Criminal Appeals (ACCA) for judicial review. Of those 305, 277 were received for the first time (not a remand from CAAF or returned from the convening authority after remand). Of these cases, 0 were processed under pre-Military Justice Act of 2016 (MJA16) procedures involving a promulgating order and 277 were processed under MJA16 procedures involving an entry of judgement. In 145 of the 277 MJA16 cases, the certification of the record of trial was completed within 120 days. In 194 of the 277 MJA16 cases were received by ACCA were within 30 days of the completion of the later of certification of the record of trial or entry of judgment.

ACCA rendered an initial decision in 315 cases in FY22, with an average processing time of 225 days from receipt of the record of trial by the clerk of court to decision by ACCA. Of the 315 decisions, 305 were issued within the 18-month period prescribed by United States v Moreno.

b. Descriptions of the circumstances surrounding cases in which general or special court-martial convictions were:

(1) Reversed because of command influence or denial of the right to speedy review: None.

(2) Otherwise remitted because of loss of records of trial or other administrative deficiencies: None.

c. Analysis of each case in which a provision of the UCMJ was held unconstitutional: None.

d. Cases where a finding was clearly against the weight of the evidence: None.

3. Measures implemented by the Army to ensure the ability of judge advocates to participate competently as trial counsel, defense counsel, military judges, and Special Victims' Counsel, with emphasis on capital cases, national security cases, sexual assault cases, and proceedings of military commissions:

a. **Institutional Programs for all Judge Advocates.** In FY22, the Army JAG Corps continued refinement of several programs aimed at improving the competence and expertise of Judge Advocates litigating courts-martial cases.

(1) The Office of Special Trial Counsel. Pursuant to the FY22 NDAA, The Judge Advocate General directed the planning, assessment, and creation of a new independent prosecution structure, the Office of Special Trial Counsel (OSTC). In July 2022, the Secretary of the Army established the OSTC as a separate field operating agency of the Office of The Judge Advocate General. This new organization will be responsible for the legal coordination of investigations, and trial-level litigation for eleven specified UCMJ offenses. The OSTC establishment is a

comprehensive, systemic change to Army military justice practice as the JAG Corps prepares for the shift of disposition authority from command to Judge Advocates. The OSTC significantly increased the number of litigation billets within the U.S. Army. The approved OSTC structure will include 159 personnel in FY23 and will grow to 180 personnel by FY25. This growth includes 53 litigation billets for judge advocates certified as special trial counsel. In total, including growth in both the OSTC and TDS, an additional 74 litigation billets for judge advocates in the grade of O-3 through O-5 will be available by FY25.

(2) Trial Defense Service. To ensure parity in the military justice system, additional resourcing for the Trial Defense Service was necessary to continue to provide principled counsel to Soldiers accused of crimes. The Trial Defense Service will grow by approximately 54 billets across FY23 and FY25, including 21 litigation billets for judge advocates serving as defense counsel. In addition, there has been sustained focus on the hiring and retention of quality independent defense investigators which enhance the Trial Defense Counsel's resources and ability to conduct their own independent investigation without potentially revealing their trial strategy to the government.

(3) Military Justice Career Model and Enhanced Professional Development Proficiency Codes (PDPCs). The JAG Corps has had numerous military justice opportunities and career paths and since December 2021, the JAG Corps formalized the Military Justice Career Model. The Military Justice Career Model identifies qualifying positions by rank for prosecutors, defense counsel, special victims' counsel, military judges, and other military justice practitioners. In the future, the Military Justice Career Model will be used to better identify seasoned litigators and advocates to fill qualifying positions in key military justice billets. While the JAG Corps used PDPCs for almost a decade to identify military justice experience, the refined PDPCs include a more robust assessment of education, training, and experience as well as a qualitative evaluation of temperament and competency. The PDPCs also feature a specific identifier for those with notable litigation skill.

(4) The Trial Advocacy Center. In May 2022, The Judge Advocate General opened the Trial Advocacy Center on Fort Belvoir establishing the premier and only Department of Defense (DoD) training center for trial attorneys. The Trial Advocacy Center synchronizes, develops, and conducts advocacy training in support of the Army's continued refinement of litigation expertise. The facility has five mock courtrooms and a large classroom with capacity for 100 students that can be partitioned into two additional mock courtrooms.

(5) Court Reporting. The Judge Advocate General directed an operational planning team to conduct comprehensive study of the roles and functions of court-reporting, efficient use of Clerks of Court, and the continued potential gradual increase in pre-referral judicial authorities. The objective is to ensure the court-martial process from referral to receipt of a record of trial at the Army Criminal Court of Appeals is modernized to reflect the future of military justice within the Army.

b. Trial Counsel.

(1) In FY22, the Trial Counsel Assistance Program (TCAP) tackled three focused lines of effort by: (1) delivering continuing legal education and advanced trial advocacy training to legal professionals across the Army; (2) providing specialized technical and direct prosecutorial assistance for complex cases and high profile court-martials; and (3) ensuring justice in special victim cases through the oversight of Special Victim Prosecutors (SVP), Special Victim Noncommissioned Officers (SVN), Special Victim Liaisons (SVL), and the Complex Litigation Team. Additionally, TCAP successfully executed considerable modifications as required by Congress for the continued expert litigation of criminal justice cases throughout the Army. In FY22, TCAP formed an OSTC transition team that served as key players in meeting the demands of congressional and DoD requirements, laying the foundation, and proposing structure and policies for OSTC, while preparing for its implementation in FY23.

(2) The Trial Counsel Assistance Program's team of experts consists of eight military attorneys, three Special Victim Litigation Expert (SVLE) civilians, a legal administrator, one senior paralegal noncommissioned officer, and two SVLs (including one manager). Together, they developed the training for and instructed at 21 specialized advocacy courses, covering a broad range of topics including: Basic Trial Advocacy (BTAC), General Crimes, Technology and Crime, Military Institute for the Prosecution of Sexual Violence (MIPSV), Prosecuting Domestic Violence, Prosecuting Child Abuse, Forensic Interviewing and Forensic Evidence, and the Victim Witness Assistance Program. In FY22, TCAP's flagship courses focused on sexual assault, domestic violence, and child abuse resulting in more than 120 student attorneys and paraprofessionals being trained on special victim cases. TCAP additionally completed 16 outreach training events at Army installations worldwide to meet with individual prosecution teams, military justice advisors, paralegals, and civilian legal professionals.

(3) The FY22 witnessed the opening of the U.S. Army Advocacy Center, the JAG Corps' most modern training facility. The Trial Counsel Assistance Program immediately utilized the Advocacy Center's seven state-of-the-art courtrooms and consolidated training room, hosting five training seminars in the Center's first five months. The Trial Counsel Assistance Program has 22 training courses slotted for FY23, to include the first iteration of the Office of Special Trial Counsel (STC) Certification Course. The STC Certification Course will be TCAP's longest course, projected at four weeks, and includes specialized victim-focused prosecutorial instruction and courtroom facilitated exercises, enabling STCs to further hone expert advocacy skills for the most demanding special victim cases. The STC Certification Course will provide the JAG Corps with properly trained STCs, eligible to become TJAG certified STCs.

(4) The Trial Counsel Assistance Program provided Army legal professionals with updates by emphasizing recent developments and changes in case law through its writing and distribution of the "TCAP Express," a newsletter published monthly. The Trial Counsel Assistance Program sent more than a dozen personnel to the Annual Conference on Crimes Against Women, the Nation's largest and most prestigious annual conference to address special victim crimes. The Trial Counsel Assistance Program SVLEs and senior prosecutors provided classes and led group discussions related to the military practice at this event. In addition to their training events, the

team provided direct prosecutorial support and assistance by answering over 1,500 real-time questions via telephone and email submitted by Army litigators and paralegals across the field.

(5) The Trial Counsel Assistance Program's Complex Litigation Team consists of two field-grade military attorneys who work in coordination with three civilian SVLEs. Together, they supported practitioners across the Army, assisting in some of the most complex and high-profile trials, including 25 homicide, 17 special victim, and 8 national security/classified evidence cases. SVLEs and complex litigators provided both consultation services as well as direct, hands-on assistance by traveling to military installations worldwide. The Trial Counsel Assistance Program's SVLEs traveled for 30 special victim cases where they helped develop trial strategy, conducted witness meetings, and provided real time assistance for ongoing courts-martial. As part of the OSTC implementation, TCAP's Complex Litigation Team will migrate to the OSTC in FY23. The Trial Counsel Assistance Program's SVLEs will integrate into the OSTC and continue to provide their significant expertise to the OSTC once it is fully established.

(6) In support of special victim cases, TCAP managed a robust cohort of 81 SVPs, SVN, and SVLs located at installations across the Army, ensuring prosecutorial and investigative expertise for special victim and especially complex cases worldwide. Special Victim Prosecutors began planning to be certified as STC and organized under the OSTC at full operational capability in late 2023. The NDAA drove growth in TCAP's SVP program at echelon, resulting in the planning and coordination for adding 27 installation positions for attorneys, noncommissioned officers, and SVLs within OSTC. The Trial Counsel Assistance Program transitioned its focus to training and support for general crimes prosecutions and will relinquish its oversight of the SVPs to OSTC for those cases alleging sexual assault, child abuse, and intimate partner violence, among other covered offenses.

c. Defense Counsel.

(1) In FY22, approximately 502 judge advocates and 200 paralegals were serving in the Active, Reserve, and National Guard Components in the U.S. Army Trial Defense Service (TDS) worldwide. This included 142 judge advocates on active duty; 201 judge advocates assigned to one of three Army Reserve (USAR) TDS Legal Operations Detachments (LOD), and 139 judge advocates in the Army National Guard (ARNG). Trial Defense Service provides high quality, professional defense services to Soldiers throughout the Army. Counsel assigned to TDS are stationed at 42 active-duty installations worldwide and approximately 47 reserve component locations, though their oversight and supervision is independent from local commanders and the Staff Judge Advocate offices. The Chief, TDS, exercises centralized supervision over all TDS-assigned counsel from the Office of the Chief, TDS at Fort Belvoir, Virginia.

(2) Detailed TDS counsel zealously represented Soldiers at Army special and general courts-martial. In addition, TDS counsel assisted Soldiers facing other military justice related adverse administrative actions such as administrative separation proceedings and memoranda of reprimand rebuttals. The FY22 active-duty workload was as follows:

General and Special Courts-Martial: 563
Administrative Representation/Consults: 29,011

Nonjudicial Punishment: 21,863

Other Military Justice Consultations: 24,550

(3) Trial Defense Service provided defense services to Army personnel deployed worldwide, including Iraq, Kuwait, and Qatar. The field office in Kuwait supports personnel in these areas, with defense counsel traveling into theater as needed.

(4) U.S. Army Reserve TDS consists of approximately 201 judge advocates, 3 legal administrators, and 69 enlisted paralegals. Three separate units divide the USAR TDS personnel. The 22d LOD, headquartered in San Antonio, Texas, has an area of responsibility that includes all states west of the Mississippi River, along with the Republic of Korea and U.S. territories in the Pacific Command Area of Responsibility. The 154th LOD, headquartered in Alexandria, Virginia, covers the U.S. Southeast, Lower Mississippi River Valley, and Puerto Rico. The 16th LOD, headquartered in Fort Hamilton, New York, covers the U.S. Northeast, Midwest, and Germany.

(5) The ARNG TDS, headquartered in Arlington, Virginia, consists of approximately 139 judge advocates, 1 legal administrator, and 78 enlisted paralegals stationed in 50 states, the District of Columbia, and 3 territories. The Office of the Chief, ARNG TDS in Arlington, Virginia provides the technical supervision, management, direction, and legal defense training for all ARNG TDS while in Title 32 status.

(6) The Defense Counsel Assistance Program (DCAP) is the training branch of TDS. In FY22, DCAP staff consisted of 4 judge advocates, 2 civilian attorney-advisors, and 1 legal administrator who provided on-site training and real-time advice to more than 200 active component TDS attorneys and their paralegals, assigned to field offices worldwide. The training events included three iterations of Defense Counsel (DC) 101, a three-day course that provides critical instruction to newly assigned DC and paralegals on all aspects of client representation with an emphasis on professional responsibility and complex issues arising in sexual assault cases. All DC attended one of eight regionally aligned DC 102 courses and received training on new developments in military justice and trial advocacy, with a focus on sexual assault litigation, and furthermore, 37 DCs attended DC 103 course, which focuses on digital evidence. Regional and Senior DC from the Active, Reserve, and National Guard gathered to receive instruction on their duties as leaders in TDS at Trial Defense Leader Training (TDLT). Additionally, DCAP and the Trial Counsel Assistance Program (TCAP) jointly organized and taught multiple Advanced Trial Communication Courses, Trial Litigation Paralegal Courses, and Expert Symposia. DCAP also organized courses or coordinated for DCs to attend courses focused on voir dire, negotiations, implicit bias, child interviewing, case strategies in child abuse cases, forensic sciences, and drug/DUI cases. Defense counsel also had the opportunity to tour the USACIL Criminal Laboratory and receive instruction in different areas of expertise.

(7) In FY22, DCAP received over 1,000 inquiries from DC via emails, phone calls, and in person during training events. Defense Counsel Assistance Program's expert civilian attorney-advisors and counsel provided direct assistance to DC in the field including researching case law, answering case specific questions, providing sample motions, expert requests, and other trial documents. Moreover, DCAPs website and the Knowledge Management Milbook website

provided counsel with reference materials on critical issues. Defense Counsel Assistance Program continued "DCAP Talks" this fiscal year as well as implementing "DCAPs 5 for 5"; a series of video podcasts providing counsel on-demand training in targeted areas outside the reach of our current DC 101, 102, and 103 curricula. Finally, DCAP also worked with Defense Appellate Division (DAD) to assist TDS counsel in the preparation and filing of extraordinary writs before the Army Court of Criminal Appeals (ACCA) and the Court of Appeals for the Armed Forces (CAAF).

(8) In addition to providing training and advice, the DCAP updated the 12th Edition of the DC 101 Deskbook and distributed it to all newly assigned DC. The Defense Counsel Assistance Program reissued the DC 102 Deskbook and distributed it to all DCs. Finally, DCAP continued its monthly newsletter called the Buccaneer, which is designed to keep defense counsel up to date in appellate case, law practice tips, and court-martial lessons learned.

(9) Trial Defense Service's complex litigation section is specifically designed to advise the field in high profile and complex cases, act as counsel in complex and capital cases when detailed by the Chief, USATDS, and manage the training for a cohort of 20 DC selected to participate in the complex litigation program. The complex litigation section is currently comprised of one lieutenant colonel judge advocate and one major judge advocate. These officers manage the capital and complex litigation counsel by identifying high level defense training opportunities as well as planned and conducted DoD's only joint capital litigation training event. An attorney from the complex litigation section was detailed to four cases referred to general courts-martial in FY22. The complex litigation section will reorganize in FY23 to an expanded complex litigation program with complex litigators located at installations worldwide.

(10) In FY22, TDS continued to fill defense investigators located at 8 field offices around the world. Defense investigators provided case reviews of countless case files and were detailed to numerous courts-martial, contributing to acquittals, dismissed charges and specifications, and other positive outcomes for TDS clients.

(11) The Defense Appellate Division (DAD) provides appellate representation to eligible Soldiers before the Army Court of Criminal Appeals (ACCA), the Court of Appeals for the Armed Forces (CAAF), and the Supreme Court of the United States (SCOTUS). Eligible Soldiers include those convicted at courts-martial where the approved sentence includes a punitive discharge or confinement for two years or more. The Defense Appellate Division is comprised of seventeen active-duty and eight reserve component defense appellate attorneys, one civilian senior capital appellate attorney, two civilian paralegals, and one legal support specialist. The Defense Appellate Division attorneys also assist military and civilian trial defense counsel in the preparation and filing of extraordinary writs before the courts, as well as responding to interlocutory appeals filed by the government in accordance with Article 62, UCMJ.

(12) The Defense Appellate Division currently represents Soldiers in approximately 298 cases. These cases are moving through the various stages of the appellate process, either recently received at DAD, pending action by ACCA or CAAF, or awaiting final action and discharge from the Army. There are 101 cases pending review and submission to ACCA.

(13) Last year, DAD filed 341 briefs with ACCA. DAD also filed 155 total briefs with CAAF. Appellate counsel raised assignments of error in 33% of these cases. Counsel also argued 17 cases at ACCA and 7 at CAAF.

(14) Through the Army Court's outreach program, DAD argued cases at the George Washington University School of Law and the South Texas College of Law. Through these outreach arguments, DAD appellate attorneys, along with the Government Appellate Division, showcase their advocacy skills to potential future officers, and increase the level of understanding and familiarity with the military justice system among audiences at law schools, military installations, and other public facilities

d. Special Victims' Counsel (SVC). Army SVCs provide legal counsel to eligible clients who report as victims of sex-related or domestic violence offenses. SVCs ensure clients' interests and rights are recognized and protected throughout all proceedings. SVCs empower clients through professional competency and advocacy.

(1) Special Victims' Counsel Office of the Program Manager. The Army Special Victims' Counsel Program provides technical and policy oversight, training, and technical support for all Army SVCs. SVCs also receive supervision and support from Chiefs of Legal Assistance, SVC Regional Managers (RM), and senior Judge Advocates at their installation. In circumstances where the interests of victim-clients do not align with the interests of the Government, RMs and the Program Manager provide technical advice and professional responsibility supervision.

(2) Special Victims' Counsel Certification. Every Army SVC must complete either the Army or the Air Force SVC Certification Course and be personally certified by The Judge Advocate General (TJAG) prior to representing SVC clients.

(3) Fiscal Year 22 Certification Course Improvements. The Army SVC Certification Course (SVCCC) was restructured after reviewing student feedback and surveys of current and former SVCs. The 122 students participated in plenary lectures and discussions, break-out groups, and a motion exercise led by the US Army's Chief Trial Judge. The SVCCC also included 56 instructors from DoD, DA, TCAP, The Judge Advocate General Legal Center and School (TJAGLCS), and civilian experts in psychology, victimology, and forensics. The course addresses the law, procedures, best practices, introduction to other stakeholders, the justice process, investigation through post-incarceration client rights, and high-level trauma informed tactics. The course also focused on SVC wellness and incorporated victim perspectives through presentations by domestic violence and sexual assault victims.

(4) Special Victims' Counsel Training. In addition to the SVC Certification Course, every Army SVC must also complete state-specific training and online training on the DoD CATCH Program prior to representing a client. Additionally, each of the five RMs conducts a two-day refresher training annually.

(5) Special Victims' Counsel Career Opportunities. The Army now includes SVC experience towards requirements for the Military Justice Professional Development Proficiency

Code (PDPC). SVCs have also begun attending more training offered for trial and defense counsel and both intra-agency and joint training opportunities.

(6) Special Victims' Counsel Minimum Tour Length. The Judge Advocate General set the minimum tour-length for Army SVCs at 18 months. The 18-month tours reduce the frequency of turnover clients may have in their SVC representation while allowing for flexibility in assignments and ensuring SVCs have enough time to learn and thrive in the position.

(7) Special Victims' Counsel Caseload Cap. Effective 23 September 2022, TJAG capped the caseload for SVCs at 25 clients per SVC. This new policy will ensure the Army meets its statutory obligations and identifies obstacles to maintaining this caseload cap.

(8) Special Victims' Counsel Billets. During FY22, the Army SVC Program gained 17 SVC positions and 5 SVC paralegal positions. This projected growth provides greater flexibility to respond to requests for SVC services, eases the caseload burden of current SVCs, and assists eligible victims of domestic violence offenses. The growth brings the Army SVC Program to 91 SVC and 17 SVC NCO billets.

(9) SVC Service and Statistics. As of 30 September 2022, there were 92 SVCs representing clients. This includes 62 full-time and 30 part-time SVCs. SVCs provided services wherever our Soldiers were deployed including Iraq, Kuwait, Europe, and Asia. During FY22, SVCs assisted 2,265 clients. Of these clients, 129 began with restricted reports that were later converted to unrestricted reports. SVC services were provided to 379 clients reporting allegations of domestic violence. The clients came from all potential categories of eligibility consisting of 1,627 Servicemembers, 17 DoD Civilian employees, 527 adult dependents, and 73 minor dependents. In support of these clients, SVCs conducted 33,643 counselings, attended 3,433 interviews, and represented clients at 260 administrative separation proceedings and 285 courts-martial. To ensure our military communities are aware of the service provided by the SVC Program, SVCs presented at 533 outreach/training events.

e. The Judge Advocate General's Legal Center and School (TJAGLCS) Criminal Law Academic Department. The mission of the Criminal Law Department (ADC) of TJAGLCS in Charlottesville, Virginia, is to educate, develop, inspire, and sustain excellence in the practice of military criminal law. The need to hone military justice skills in today's technology driven, joint, expeditionary force is paramount and is the primary focus of our curriculum. The ADC is responsible for developing brand new judge advocates' understanding of substantive criminal law and military justice procedure and basic trial advocacy skills. It also trains seasoned advocates on intermediate to advanced trial advocacy skills and keeps them abreast of recent changes to military justice practice. Professors also provide limited off-site instruction and critical reach-back capability for military justice practitioners world-wide.

(1) The ADC provides a variety of courses to a number of diverse audiences to include judge advocates, sister service judge advocates, commanders, and international students. Courses are designed for: initial-entry judge advocates in the Officer Basic Course (OBC); new trial counsel, defense counsel, and special victim counsel (SVC) in the Intermediate Trial Advocacy Course (ITAC); mid-level judge advocates in the Graduate Course, the Military Justice Leaders

Course, the Judge Advocate Officer Advanced Course, and the SVC and Domestic Violence and Child SVC certification course; senior judge advocates in the Military Judge Course and the Staff Judge Advocate Course, and commanders in the Senior Officer Legal Orientation Course, Army Strategic Education Program (ASEP), and General Officer Legal Orientation Course (GOLO). Those courses focused on training trial counsel, defense counsel, and SVC are taught utilizing a sexual assault fact pattern, domestic violence fact pattern, and general crimes fact pattern, and are synchronized with other JAG Corps training agencies to maximize interagency operability.

(2) The ITAC is an advocacy-centered course designed to be more challenging than the OBC and serves as intermediate level advocacy training. The ITAC builds on courses junior advocates will have already received, to include: the Basic Trial Advocacy Course (offered by TCAP), Defense Counsel 101 (offered by DCAP), and the SVC/DV Child Course (offered by ADC). Students learn how to conduct sophisticated case analysis of four types of cases involving sexual assault, domestic violence, fraud, and drug use, conduct voir dire, prepare instructions, interview victims and witnesses, interact with an SVC, conduct a direct and cross-examination of victims and witnesses, interview and conduct direct examinations of expert witnesses, and use technology and demonstrative evidence in the opening statement and closing argument. This year, the ADC continued to refine the course by ensuring advocates conducted four separate trials during the course of two weeks. To add realism to this intensive training, students had to interview and cross-examine a forensic psychologist, digital forensic analysts, toxicologists, and sexual assault medical forensic examiners. Additionally, judge advocates who are attending the Graduate Course role-play the victim and witnesses to provide ITAC students with the challenge of interviewing and interacting with live victims. This course is also greatly enhanced through our partnership with the University of Virginia by integrating experts from their nursing school, multiple Ph.D. programs, and medical school as both guest instructors and testifying experts at no cost. This demanding course is offered twice annually.

(3) The SVC certification course is required prior to TJAG certifying an SVC to see clients. Students in this course learn best practices for working with sex assault victims, how trauma impacts crime victims, how to work with law enforcement and victim-care professionals, how to manage professional responsibility and scope of representation issues, and how to most effectively advocate for victim's rights while working with commanders, law enforcement, and other participants in the military justice system. The SVC certification course includes a roundtable discussion where actual sexual assault victims discuss their experiences and the assistance they received from their respective SVC/VLC. As victim rights and policies continue to develop, the ADC assists in the implementation and education of those policies and makes recommendations for policy changes and improvements to the SVC Program, OCLL, and OTJAG Criminal Law Division.

(4) The ADC continued to grow the SVC certification curriculum this year through continued development of the SVC Child and Domestic Violence Victim Course, which follows the week of SVC Certification course and is required for SVC to represent child victims. This development came through increasing our relationships with outside organizations such as the Army Family Advocacy Program (FAP), the Behavioral Science Education Division at the U.S. Army Military Police School, and the National Crime Victim Law Institute (NCVLI) at Lewis

and Clark Law School, among others. Guest instructors from these various programs provided expert instruction to certifying SVC on the dynamics of representing victims of domestic violence. The SVC and DV/Child Victim Course is offered once a year, staggered from the offering from the Air Force JAG School. This year's course was taught in-person, which added to the student learning experience. Although it is important to retain flexibility to conduct the course through Distance Learning (DL) if necessary, in-person instruction is preferred.

(5) The ADC designed and executed the 1st Military Justice Advisor Course to provide tailored legal training to military justice advisors, judge advocates whose primary responsibility is to provide military justice legal advice to commanders. Additionally, the ADC is working with the Trial Counsel Assistance Program (TCAP) and the Trial Defense Service (TDS) to design the 1st Advanced Military Justice Practitioner Course, a weeklong course that will be required attendance to Army judge advocates assigned to the Office of Special Trial Counsel and certain TDS positions. Attendance at the course will be a prerequisite to certification as a Special Trial Counsel.

(6) The ADC annually conducts in coordination with the Trial Judiciary the three week-long the Military Judge Course (MJC). The MJC is TJAGLCS' most academically rigorous course and has been recognized for excellence by the American Bar Association.

(7) The ADC implemented a systems approach to planning, executing, and improving its curriculum through an iterative in progress review and after-action review process. ADC's intent is to make its courses more practical to the students. Along this line of effort, ADC implemented the "Eliminating Bias in Military Justice" which is taught to every student population ADC teaches, both commander and attorney.

(8) The ADC traditionally hosts the Kenneth J Hodson Lecture in Criminal Law each year. Ms. Stephanie Barna, former General Counsel to the Senate Armed Services Committee (SASC) gave the Kenneth J. Hodson Chair lecture on 13 April 2022. She gave a tremendously important lecture on the history of changes to military justice and her predictions of the future of military justice practice, based on her experiences working for several Secretaries of Defense and her work for the SASC.

f. Trial and Appellate Judges. There are 24 active duty and 22 reserve component military judges in the U.S. Army Trial Judiciary. The Chief Trial Judge, located at Fort Belvoir, Virginia, leads the Trial Judiciary, which currently consists of five circuits worldwide. Chief Circuit Judges supervise the circuit judges within each circuit. There are currently three judges stationed overseas, one in Korea and two in Germany. The reserve component judges are assigned to the 150th Legal Operations Detachment headquartered in Alexandria, Virginia and commanded by the Chief Trial Judge, USAR. Additionally, the Trial Judiciary provides military judges to serve as judges with the Military Commissions Trial Judiciary.

(1) Military judges primarily preside over trials referred to general and special courts-martial. While the volume of cases waned, the percentage of contested cases remained significant due to the number of sexual misconduct related prosecutions. In FY22, military judges of the U.S. Army Trial Judiciary presided over 615 original courts-martial, a 13 percent

decrease from FY21. Of the total cases tried in FY22, 153 were fully contested, 49 involved mixed pleas, 276 were guilty pleas, and the remaining 137 were terminated prior to findings. Of the 478 cases in which findings were entered in FY22, 220 of them or 46 percent included sexual misconduct related offenses (Articles 120, 120b, and 120c), a 2 percent decrease from FY21.

(2) The Trial Judiciary took an active role in the implementation of Article 140a, which directed the Services to provide public access to dockets, court filings, and court records. The judiciary already provided public access to dockets worldwide through our website, and the docket is now also available through the Army Court-Martial Public Records System (ACMPRS). ACMPRS is now online at <https://www.jagcnet.army.mil/ACMPRS> and in addition to real-time docketing information provides public access to redacted court filings and documents as soon as practicable after trials conclude. In FY22, the Trial Judiciary headquarters received a GS-12 Clerk of Court to assist in the implementation of these procedures.

(3) The strength of the Trial Judiciary will always be its trial judges in the field, who rely on our robust training program to maintain their proficiency. The Trial Judiciary conducts an annual Military Judges' Course at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia. The three-week course is a certification course for judge advocates of all Services – Army, Navy, Marine Corps, Air Force, and Coast Guard – prior to assignment as military judges. The MJC trains new military judges from all services and is conducted in close coordination with the chief trial judges of each service. Graduates of the course become certified as military judges, with Army graduates being conferred the 27B military occupational specialty to differentiate them from 27A judge advocates. This year, the course occurred from 13 June to 1 July 2022 certifying 35 students to serve as military judges, broken down as follows: 12 Army; 9 Air Force; 4 Coast Guard; 6 Marine Corps, and 4 Navy. One of the active component judges was assigned to the Army Court of Criminal Appeals. The keynote speaker for the course was the Chief Judge of the Court of Appeals for the Armed Forces, the Honorable Kevin Ohlson.

(4) The Joint Military Judges' Annual Training was conducted and facilitated by the Air Force in February 2022. All military trial judges attended. The Army Trial Judiciary also funded several online courses through the National Judicial College. The Army Trial Judiciary was able to execute Trial Judge's Sexual Assault Training (TJSAT) in September 2022 at Fort Belvoir, VA. For the first time, circuit clerks of court joined military judges during TJSAT for combined and clerk-specific training led by the judiciary's new clerk of court. The judiciary continues to find new ways to work, train, and network, using such tools as Zoom for government and MS Teams for interlocutory hearings, meetings, and file sharing.

(5) The Trial Judiciary continues to maintain and update DA Pamphlet 27-9, Military Judges' Benchbook (Benchbook), used by all Services, which contains trial scripts and pattern instructions for panel members. Changes to the Benchbook are approved by the Chief Trial Judge following review and comment by the Benchbook Committee and other stakeholders in the military justice community. Anyone, to include members of the public, may propose changes to the Benchbook. The process to propose changes as well as an electronic version of the Benchbook, containing all approved changes to date, can be found on the Trial Judiciary website at www.jagcnet.army.mil/USATJ.

(6) Finally, the Trial Judiciary is pleased to support the training efforts of the Judge Advocate General's Corps writ large, through participation in trial, defense, and special victim counsel training events, paralegal and court reporter training, and advocacy training. This year, the judiciary created an MS Teams "Bridging the Gap" channel for judges to provide timely feedback to counsel regarding their advocacy. The channel, which has almost three hundred members, has been highly praised by both trial counsel and defense counsel for its usefulness to the field. The judiciary also participates in mock trial events for junior high and high school students as well as law school moot court competitions. Several judges have also volunteered their time to speak to affinity mentorship groups both in and outside of the JAG Corps, as well as engaging in recruitment opportunities for the Army and the JAG Corps. These efforts fulfill the enduring vision of the Trial Judiciary: Independent but Invested.

g. Litigation Division. During FY22, Litigation Division's caseload included several civil lawsuits involving military justice matters. Most suits were brought by former Soldiers seeking collateral review of military court-martial proceedings pursuant to a petition for writ of habeas corpus in federal district court. The Military Personnel Litigation (LTM) Branch was involved in 32 habeas corpus or military justice cases in FY22, 28 of which remain active. In the 4 cases that were concluded, LTM successfully defended against collateral attacks on court-martial convictions, as well as requests for federal court intervention with respect to issues such as confinement conditions, illegal detention, loss of good conduct time, and transfer out of military confinement facilities.

(1) While the majority of these collateral attacks concern traditional evidentiary and procedural challenges such as those pertaining to jurisdiction, sufficiency of the evidence, or the effectiveness of counsel, several recent cases concerned novel or otherwise undeveloped areas of the law. In FY22, LTM defended against several challenges to the Army's court-martial jurisdiction over retirees, including medical retirees. Several other recent cases have directly challenged the level of scrutiny the federal courts should apply when reviewing court-martial convictions in habeas corpus cases. The petitioners argue that the federal courts should apply a very thorough, in-depth review of court-martial proceedings and military appellate court decisions. The outcome in these cases could have wide-ranging effects in pending and future habeas corpus cases involving court-martial convictions.

(2) Additionally, Litigation Division periodically handles civil rights lawsuits involving Constitutional challenges to the military justice system or their confinement conditions, such as allegations involving alleged violations of equal protection, due process, freedom of religion, and the First Amendment, as well as Freedom of Information Act requests pertaining to military justice cases. Overall, Litigation Division has not noted any trends with respect to civil litigation concerning the military justice system.

h. Commanders. Judge Advocates continue to provide training, advice, and assistance to Commanders as they execute their central role in ensuring good order and discipline, justice, and accountability. By regulation, Army Senior Leadership requires Brigade level commanders to attend the Senior Officer Leadership Orientation (SOLO) Course at TJAGLCS or virtually due to COVID, and many battalion commanders also attend on a space available basis. In FY22, 398 commanders attended the SOLO and all command-selected brigade commanders attended. At the

SOLO, a faculty member from TJAGLCS ADC teaches commanders a specific block of instruction on sexual assault response and prevention. General officers attend the General Officer Leadership Orientation (GOLO), a one-on-one desk side briefing covering victims' rights, convening authority responsibilities/duties, military justice updates, retaliation issues and prevention strategies. Eleven general officers attended GOLO training at TJAGLCS in FY22. Company commanders and First Sergeants receive onsite training from a trial counsel serving the jurisdiction on victims' rights, reporting and processing sexual assault cases. The JAG Corps leadership also provides eleven hours of instruction at the Pre-Command Course on military justice and other training ensuring compliance with Article 137, UCMJ, in Fort Leavenworth, Kansas for all active component battalion commanders.

4. The independent view of The Judge Advocate General on the sufficiency of resources available within the Army, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions: The Army JAG Corps, through its Personnel, Plans, and Training Office (PPTO), continues to work with Army leadership to ensure sufficient legal support to the force. The JAG Corps continues to study, develop, and implement the necessary changes in the military justice enterprise to enable effective, efficient support to the commanders and leaders at camp, post, and station. Always looking toward the future to develop and improve, the JAG Corps continues deliberate planning to assess if increased resources are necessary to ensure an efficient, fair, professional military justice enterprise.

a. On September 30, 2022, the Army's end-strength was 465,625 Army Soldiers on Active Duty compared to 489,069 at the end of FY21. The attorney strength of the JAGC Active Component (AC) at the end of FY22 was 1,827 (not including general officers). This does not include 68 officers and five enlisted Soldiers attending law school while participating in the Army's Funded Legal Education Program. The FY22 end-strength of 1,827 compares to an end-strength of 1,817 in FY21. The composition of the FY22 AC attorney population included 140 African Americans (8%), 114 Asian Americans (6%), 78 Hispanic Americans (4%), and 542 female Soldiers (30%).

b. The grade distribution of the JAGC AC attorneys for FY22 was: seven general officers; 129 colonels; 272 lieutenant colonels; 543 majors; and 896 captains and first lieutenants. An additional 112 warrant officers, 757 civilian attorneys, 808 civilian paraprofessionals and 1,459 enlisted paralegals from the AC supported legal operations worldwide.

c. The attorney strength of the JAGC USAR at the end of FY22 was 1,740 (which includes officers serving in Troop Program Units, the Drilling Individual Mobilization Augmentee (DIMA) Program, the Individual Ready Reserve, and the Active Guard Reserve Program). The total strength of the ARNG at the end of FY22 was 1,626. This includes 783 attorneys, 42 warrant officers, and 801 enlisted paralegals.

d. At the end of FY22, more than 360 Army JAGC personnel (officer and enlisted, AC and Reserve Component) were deployed in operations in, Djibouti, Egypt, Guantanamo

Bay, Bahrain, Jordan, Iraq, Kosovo, Kuwait, Poland, Qatar, Romania, Ukraine, and other locations around the world.

CONCLUSION

The Army JAG Corps stands ready to continue to implement and refine transformational change to the military justice process and assist commanders in maintaining a disciplined fighting force. As we implement the monumental changes to the structure of the system, the JAG Corps will continue to embrace modernization efforts that represent a healthy evolution of our criminal justice system.

In the next fiscal year, the Army JAG Corps will be focused on achieving full operational capability for the OSTC in preparation for the December 28, 2023 statutory transfer of disposition authority from commander to special trial counsel of covered offenses. The confirmation of a general officer to serve as the Lead Special Trial Counsel, the publication of a revised Manual for Courts-Martial, and the optimization efforts for the Trial Defense Service all serve as significant milestones in the next year. In this period of great change, the JAG Corps will continue to utilize its people, programs, and technology to deliver its Soldiers, Civilians, Families, and victims the military justice system they deserve.

Through it all, the JAG Corps' trusted professionals will continue to provide principled legal counsel and premier legal services to senior commanders, leaders, and Soldiers.



STUART W. RISCH
Lieutenant General, US Army
The Judge Advocate General

APPENDIX

Report Period: FISCAL YEAR 2022

PART 1 - PENDING COURTS-MARTIAL (As of 30 September 2022)			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		47	
BCD SPECIAL		8	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		2	
SUMMARY		0	
TOTAL:	185	57	242

PART 2 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED		CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER NUMBER OF CASES TRIED TO COMPLETION LAST REPORT
	Arraigned	Completion			
GENERAL	439	335	285	50	-14.9%
BCD SPECIAL [A]	142	111	101	10	-12.6%
NON-BCD SPECIAL	0	0	0	0	0.0%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	34	32	28	4	-15.8%
SUMMARY	47				
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT					

PART 3 – ACCUSED DEMOGRAPHIC DATA (Persons) [B]

TYPE COURT	Total	GENDER		ETHNICITY			RACE					
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	Unk/Other	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other
GENERAL	335	323	12	265	64	6	2	9	98	7	147	72
BCD SPECIAL	111	104	7	28	82	1	0	2	28	2	50	29
MILITARY JUDGE ALONE SPECIAL	32	28	4	5	24	3	0	0	11	0	13	8
SUMMARY	47	41	6	8	4	35	1	1	15	0	22	8

APPENDIX

PART 4 – VICTIM DEMOGRAPHIC DATA (Persons)

TYPE COURT	Total*	GENDER		ETHNICITY			RACE					
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	UNK / Other	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	UNK/ Other
GENERAL	296	53	243	33	126	137	1	11	47	0	115	122
BCD SPECIAL	66	36	30	10	28	28	0	1	15	0	17	33
MILITARY JUDGE ALONE SPECIAL	14	5	9	1	6	7	0	0	1	0	8	5
SUMMARY	6	4	2	0	3	3	0	0	0	0	3	3

*Total number of identifiable victims

PART 5 – DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT [D]

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	83(+12)	
NUMBER OF BAD-CONDUCT DISCHARGES	117	
SPECIAL COURTS-MARTIAL		
NUMBER OF BAD-CONDUCT DISCHARGES	65	

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	2	
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0	
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	303	
FOR EXAMINATION UNDER ARTICLE 65(d)	122	

PART 7 – WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD	40[E]	
TOTAL CASES THAT CAME AT ISSUE	357[E]	
TOTAL CASES DECIDED	342[F]	
TOTAL PENDING AT CLOSE OF PERIOD	55[E]	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD	-6.0%	

PART 8 – APPELLATE COUNSEL REQUESTS BEFORE U.S. ARMY COURT OF CRIMINAL APPEALS (ACCA)

NUMBER	357	
PERCENTAGE	100.00%	

APPENDIX

PART 9 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)

TOTAL PETITIONS TO CAAF	168
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PART 10 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD		4	
RECEIVED		3	
DISPOSED OF		4	
GRANTED	2		
DENIED	2		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		3	

PART 11 – ORGANIZATION OF COURTS [G]

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		242	
SPECIAL COURTS-MARTIAL		97	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		32	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		93	
SPECIAL COURTS-MARTIAL		14	

PART 12 – STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	465,625 [H]	
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PART 13 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	20,850	
RATE PER 1,000	44.74	

EXPLANATORY NOTES

- [A] Cases convened by GCM convening authority.
- [B] For the purposes of this report, conducted means completed.
- [C] For the purposes of this report, conducted means completed.
- [D] Based on Entry of Judgment and records of trial received in FY for appellate review.
- [E] Includes only cases briefed and at issue.
- [F] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.
- [G] Only includes cases that were tried to completion.
- [H] This number includes only Active Component Soldiers and does not include USAR, National Guard or AGR personnel.



Military Justice in the Coast Guard (FY 2022)

Report to Congress
December 06, 2022



U. S. Coast Guard

Foreword

December 06, 2022

I am pleased to present the following report, Military Justice in the Coast Guard (FY 2022).

The National Defense Authorization Act for Fiscal Year 2017, codified in Section 946a of Title 10, United States Code (U.S.C.), directs the submission of an annual report on the number and status of pending cases; information on the appellate review process; an explanation of measures implemented to increase proficiency of judge advocates; and independent views regarding the sufficiency of available resources.

Pursuant to Congressional requirements, this report is being provided to the following members of Congress:

The Honorable James Inhofe
Chairman, Senate Armed Services Committee

The Honorable Jack Reed
Ranking Member, Senate Armed Services Committee

The Honorable Adam Smith
Chairman, House Armed Services Committee

The Honorable Mac Thornberry
Ranking Member, House Armed Services Committee.

I am happy to answer any further questions you may have, or your staff may contact the Coast Guard Senate Liaison Office at (202) 224-2913 or House Liaison Office at (202) 225-4775.

Sincerely,





Military Justice in the Coast Guard (FY 2022)

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I. Legislative Language

The *National Defense Authorization Act for Fiscal Year 2017* (Public Law 114-328 codified in 10 U.S.C. §946a) includes the following requirement:

ART. 146a. ANNUAL REPORTS

(a) COURT OF APPEALS FOR THE ARMED FORCES.—Not later than December 31 each year, the Court of Appeals for the Armed Forces shall submit a report that, with respect to the previous fiscal year, provides information on the number and status of completed and pending cases before the Court, and such other matters as the Court considers appropriate regarding the operation of this chapter.

(b) SERVICE REPORTS.—Not later than December 31 each year, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps shall each submit a report, with respect to the preceding fiscal year, containing the following:

- (1) Data on the number and status of pending cases.
- (2) Information on the appellate review process, including—
 - (A) information on compliance with processing time goals;
 - (B) descriptions of the circumstances surrounding cases in which general or special court-martial convictions were (i) reversed because of command influence or denial of the right to speedy review or (ii) otherwise remitted because of loss of records of trial or other administrative deficiencies; and
 - (C) an analysis of each case in which a provision of this chapter was held unconstitutional.
- (3)(A) An explanation of measures implemented by the armed force concerned to ensure the ability of judge advocates—
 - (i) to participate competently as trial counsel and defense counsel in cases under this chapter;
 - (ii) to preside as military judges in cases under this chapter; and
 - (iii) to perform the duties of Special Victims' Counsel, when so designated under section 1044e of this title.(B) The explanation under subparagraph (A) shall specifically identify the measures that focus on capital cases, national security cases, sexual assault cases, and proceedings of military commissions.
- (4) The independent views of each Judge Advocate General and of the Staff Judge Advocate to the Commandant of the Marine Corps as to the sufficiency of resources available within the respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions.
- (5) Such other matters regarding the operation of this chapter as may be appropriate.

- (c) SUBMISSION.—Each report under this section shall be submitted—
- (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives; and
 - (2) to the Secretary of Defense, the Secretaries of the military departments, and the Secretary of the department in which the Coast Guard is operating when it is not operating as a service in the Navy.

II. Report

A. Number and Status of Pending Cases during Fiscal Year (FY) 2022

Pending Courts-Martial (Persons)*

Type Court	Preferred	Referred
General	N/A†	5
Special	N/A†	0
Total	7	5

* Shows cases which were pending in denoted status as of 30 Sep 22

† Type of Court-Martial not determined at preferral stage

Basic Courts-Martial Statistics (Persons)

Forum	Tried	Convicted†	Acquittal
General	7*	5	1
Bad Conduct Discharge Special	0	0	0
Non-Bad Conduct Discharge Special	7	6	1
Summary	4	4	0

† One FY22 Trial was continued until FY23 such that the outcome is pending.

‡ Includes all trials where at least one specification resulted in a guilty finding.

B. Appellate Review Process Data

Compliance with Appellate Time Goals

Decisions By Court Of Criminal Appeals (CCA) Reviewed under Article 66, Uniform Code of Military Justice (UCMJ), in FY 2022	6
Cases Received By Judge Advocate General (JAG) within 120 Days of Sentencing*	5
Cases Referred To CCA within 30 Days of JAG Receipt*	4
CCA Decision within 18 Months of Referral*	6

*Considers only Article 66, UCMJ cases decided by CCA in FY2022.

Circumstances in which General/Special Court Martial Convictions were Reversed or Remitted

Reversed Because of Command Influence or Denial of the Right to Speedy Review	0
Remitted Due to Loss of Records or Administrative Deficiencies	0

Analysis of Cases Held Unconstitutional

Case Name	Charges	Synopsis:
None to Report	---	---

C. Measures Implemented to Increase Proficiency of Judge Advocates

Measures	Notes/Details:
To Participate As Trial And Defense Counsel	<p><u>Training</u>: To obtain initial Article 27(b), UCMJ, certification as a trial and defense counsel, Coast Guard judge advocates are required to attend the Basic Lawyer Course at Naval Justice School. In addition, Coast Guard trial counsel, defense counsel, and Special Victims' Counsel (SVC) attend advanced trial advocacy training offered at Naval Justice School, the Army JAG's Legal Center and School, and the Air Force JAG's School.</p> <p><u>Organization</u>: The Legal Service Command (LSC) has established fifteen full-time trial counsel who participate in all general courts-martial throughout the Coast Guard and may assist other legal offices with special and summary courts-martial.</p> <p><u>Defense Counsel</u>: Pursuant to a Memorandum of Understanding with the Navy JAG Corps, the Coast Guard has eight full-time judge advocates assigned to Navy Defense Service Offices for two-year assignments where they defend both Coast Guard and Navy members at courts-martial. In exchange, the Navy JAG Corps may provide defense counsel for Coast Guard members at Coast Guard courts-martial. The Coast Guard also collocates two judge advocates with the Navy-Marine Corps Appellate Defense division who represent members on appeal at the Coast Guard Court of Criminal Appeals and the Court of Appeals for the Armed Forces.</p>
To Preside As A Military Judge	<p>The Coast Guard currently has three General Court-Martial Judges and seven special court-martial judges.</p> <p>All Coast Guard military judges attend the Army JAG's Legal Center and School Joint Military Judges Course in order to be initially certified as a military judge and attend Joint Military Judges Annual Training to maintain their Article 26(b), UCMJ, certification.</p>
To Perform Duties of SVC	<p>In addition to initial Article 27(b) training at Naval Justice School, all SVC judge advocates must complete the Army or Air Force Certification Course.</p> <p>Coast Guard SVC judge advocates are generally sent to the Air Force Intermediate Sexual Assault Litigation Course (parts one and two).</p> <p>Coast Guard SVCs also have the opportunity to attend trainings such as the Crimes Victim Law Conference; End Violence Against Women International Conference; Crimes Against Women Conference; and Crimes Against Children Conference.</p>

Special Focus of Military Training

Focus	Notice
Capital Cases	The Coast Guard has not tried a capital case. If a capital case were to be referred, the Coast Guard would coordinate support from another service for trial counsel and defense counsel with capital litigation experience.
Military Commissions	The Coast Guard does not have counsel or judges assigned to the military commissions.
National Security	The Coast Guard has not tried a national security case. If a national security case were to be referred, the Coast Guard would coordinate support from another service for trial counsel and defense counsel with national security case experience.
Sexual Assault	<p><u>Organization</u>: All sexual assault case prosecutions are led by trial counsel assigned to the LSC. Coast Guard judge advocates assigned to the Navy Defense Service Office, along with Navy counsel, represent members accused of sexual assault.</p> <p><u>Training</u>: Trial counsel attend the Special Victims Capability Course taught at the Army JAG's Legal Center and School. Coast Guard judge advocates also have the opportunity to attend Prosecuting Sexual Assault training courses at Naval Justice School, the Army JAG's Legal Center and School, and the Air Force JAG's School, as well as other trial advocacy courses offered at all three schools.</p>

D. Independent Views of the Sufficiency of Resources Available

The Coast Guard currently has an adequate level of judge advocates to effectively carry out its military justice duties. However, additional resources are needed to implement and execute reforms enacted in the National Defense Authorization Act of 2022, which mandates that special trial counsel have exclusive authority for prosecutorial decisions for certain covered offenses effective December 2023.

As further detailed to its congressional committees pursuant to Section 539F of NDAA FY2022, the Coast Guard requires an additional 58 military and civilian personnel, including billets for special trial counsel, defense counsel, special victims counsel, investigators and litigation support personnel. Currently, the Coast Guard has 56 judge advocates and civilian attorneys assigned to military justice including 15 full-time trial counsel (assisted by other judge advocates at field offices), 8 defense counsel, 14 special victims counsel, 3 general and 7 special court-martial judges, and 5 civilian and 2 military (7 total) appellate court judges. The Coast Guard lacks a paralegal-type enlisted ranking and is therefore challenged in maintaining an adequate number of trained and experienced enlisted members to provide administrative litigation support. The Coast Guard hopes to remedy this issue by hiring GS-12 and GS-11 paralegals and obtaining enlisted members to provide specific functions (e.g., prisoner escort and courtroom security).

E. Other Matters

The Coast Guard is creating an Office of the Chief Prosecutor (OCP) which will be initially stood up in July 2023. It will be led by a Rear Admiral (lower half) who will serve in a role similar to the Lead Special Trial Counsel in the other services and will report administratively to the Judge Advocate General. The Coast Guard is not subject to the requirement applicable to the other services that report directly to the service secretary without intervening authority. Pursuant to Section 531 of NDAA 2022, Special Trial Counsel (STC) will have exclusive authority to prosecute enumerated covered offenses as well as related and known offenses committed by an accused. The OCP will consolidate all Coast Guard court-martial prosecution functions into one office including having a STC division for covered offenses and a Trial Counsel division for general military offenses. The OCP will have an initial capability using 24 billets drawn from the current prosecution office as well as 3 temporary billets. In Fiscal Years 2024 and 2025, the Coast Guard plans to establish a lead STC who will add 32 additional billets to the OCP or to directly support it.

In January 2023, the Coast Guard will assume the chair (from the Air Force) of the Joint Service Committee on Military Justice and will serve in that capacity until December 2024. This past year, the Coast Guard was heavily involved in drafting extensive revisions to the Manual for Courts Martial to carry out the sweeping reforms imposed by NDAA.

The Coast Guard is firmly committed to ensuring its military justice system remains comprised of competent legal professionals. Highly trained and committed legal practitioners are required if we are to ensure all accused are afforded their Constitutional rights, as well as ensure crime victims are cared for and receive their rights under the Uniform Code of Military Justice and other applicable Coast Guard policies. When comprised of highly trained, competent judge advocates, the U.S. military justice system fulfills its mandated national security purpose: to promote justice, assist in maintaining good order and discipline in the armed forces, and promote efficiency and effectiveness in the military establishment.



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20380-1775

Report to Congress

U.S. Marine Corps Report on Military Justice for Fiscal Year 2022

30 December 2022

Prepared by:

HEADQUARTERS UNITED STATES MARINE CORPS
JUDGE ADVOCATE DIVISION
3000 MARINE CORPS PENTAGON
WASHINGTON DC 20350-1000

The estimated cost of this report or study for the Department of Defense is approximately \$17,242 in Fiscal Years 2022 - 2023. This includes \$5 in expenses and \$17,242 in DoD labor.

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**REPORT OF THE
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS
ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE
1 OCTOBER 2021 TO 30 SEPTEMBER 2022**

1. Introduction. The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) submits this report in accordance with Article 146a, Uniform Code of Military Justice (UCMJ). As a core component of legal support, the provision of military justice occupies the majority of personnel and assets within the Marine Corps legal community. In supervising the administration of military justice,¹ the SJA to CMC closely coordinates with the Judge Advocate General (JAG) of the Navy² and collaborates with the other services' JAGs. There are several initiatives implemented by the Marine Corps legal community during Fiscal Year 2022 (FY22):

a. The SJA to CMC commenced implementation of the Office of Special Trial Counsel (OSTC) pursuant to Subtitle D, National Defense Authorization Act for Fiscal Year 2022 (FY22 NDAA). The OSTC will provide expert, specialized, independent, and ethical representation of the United States for investigation and trial-level litigation for offenses over which the OSTC exercises authority, including those covered offenses defined in Article 1(17), UCMJ.

(1) Establishment of the Office of Special Trial Counsel. The Marine Corps established a regional OSTC model that utilizes centralized oversight and decentralized execution. In addition to the OSTC Headquarters located at Joint Base Myer-Henderson Hall, in Arlington, Virginia, there are four OSTC regional offices across the Marine Corps. The Marine Corps OSTC reached initial operational capability when the Deputy Lead Special Trial Counsel (O-6) reported to the office on 4 July 2022. In addition, the Marine Corps has met all timelines set forth in the Secretary of Defense's Memorandum of 11 March 2022, including reaching initial operating capability, identifying its recommended nominee for Lead Special Trial Counsel (O-7), identifying the pool of judge advocates meeting the criteria to serve as Special Trial Counsel, and developing and issuing initial training and education policies for the OSTC. The Marine Corps continues to work toward meeting the additional requirements of assigning the Lead Special Trial Counsel, assigning Special Trial Counsel, and establishing standard operating procedures and reciprocal agreements with the other services.

(2) Manning the Office of Special Trial Counsel. Headquarters Marine Corps and Judge Advocate Division (JAD) are engaged in manpower restructuring to ensure that the military justice community is adequately resourced and manned. To that end, as of 1 October 2022, Headquarters Marine Corps has built and purchased the manpower structure required for the OSTC. Further, in September 2022, the Marine Corps held a screening board made up of senior judge advocates with significant military justice experience to identify Marine Corps judge advocates qualified for certification as Special Trial Counsel in accordance with criteria

¹ 10 U.S.C. §806 (2018).

² The Marine Corps provides information within this report on Marine Corps cases, meaning those cases in which a Marine Corps convening authority refers charges to a court-martial. However, within the Department of the Navy, certain procedures within the military justice system, such as appellate practice, are under the cognizance of the Navy JAG.

established by the SJA to CMC pursuant to Article 24a(b), UCMJ. The board screened the records of 442 judge advocates in the grades of Captain through Lieutenant Colonel and identified those judge advocates meeting the education and experience criteria. Following the review of the board results by the OSTC and a sensitive screening of the records of those favorably screened by the board, in October 2022, the SJA to CMC reported to the Secretary of the Navy a list of 228 judge advocates who he determined were professionally and personally qualified to serve as Special Trial Counsel. The approximately 33 judge advocates to be assigned as Special Trial Counsel will be from this pool of 228 officers. The OSTC currently consists of the Deputy Lead Special Trial Counsel, who is an O-6 Marine Corps judge advocate, and the Regional Special Trial Counsel for the Western Region, who is an O-5 Marine Corps judge advocate. In July 2022, a Marine Corps board convened and selected Colonel K. Scott Woodard as the Lead Special Trial Counsel nominee. Colonel Woodard has since been nominated by the President and confirmed by the Senate.

(3) Secretary of the Navy OSTC Policy. On 7 September 2022, in coordination with JAD and the Office of the Judge Advocate General (OJAG) of the Navy, the Secretary of the Navy promulgated policies that govern the Navy and Marine Corps OSTCs. These policies ensure that the OSTCs for the Navy and Marine Corps are independent, both in appearance and in fact, specialized, and expert. The Lead Special Trial Counsel will be responsible for ensuring the effective operation and administration of the OSTC. Consistent with the provisions of Article 6, UCMJ, Title 10 U.S. Code, section 806, the SJA to CMC will be responsible for ensuring the readiness of all military justice entities, including the OSTC. However, to ensure the independence of the OSTC, the Lead Special Trial Counsel will report directly to the Secretary of the Navy with no intervening authority.

b. In response to the major structural and substantive changes to the military justice system from the FY22 NDAA, the Joint Service Committee on Military Justice (JSC), with active Marine Corps participation, commenced a wholesale review of the Manual for Courts-Martial (MCM). Through their meticulous review, the JSC proposed a new edition of the MCM to the President, for issuance via executive order.

c. In addition to the requirements of the FY22 NDAA, JAD is executing the recommendations of the Independent Review Commission on Sexual Assault in the Military (IRC) approved by the Secretary of Defense. This includes the establishment of defense-controlled funding, the implementation of career litigation billets for Marine Corps judge advocates, and the publication of the results of disciplinary actions related to sexual misconduct.

2. Data on Numbers and Status of Pending Cases. At the end of FY22, the Marine Corps had 129 pending cases. Of those, 70 were referred to trial by court-martial and the remaining 59 cases were preferred and pending a disposition decision. Part 1 of the Appendix includes data pertaining to these pending cases. Data pertaining to cases tried to completion are also included in the Appendix.

3. Information on the Appellate Review Process

a. Compliance with Processing Time Goals. The Navy-Marine Corps Court of Criminal Appeals (NMCCA) reviews appellate cases for both the Navy and the Marine Corps. Cases considered by the NMCCA which were referred to court-martial before 1 January 2019 must comply with post-trial processing rules established prior to the implementation of the Military Justice Act of 2016 (MJA 16), commonly referred to as the *Moreno I*, *Moreno II*, and *Moreno III* guidelines. Cases referred after 1 January 2019 are required to comply with the MJA 16 post-trial processes and comply with timelines established by JAG Instruction 5814.1D of September 6, 2019, referred to as the Post-Trial I, Post-Trial II, and Post-Trial III guidelines. The information provided below pertains only to Marine Corps cases and accounts for both *Moreno* guidelines and MJA 16 Post-Trial guidelines:

(1) Moreno Guidelines. No Marine Corps case exceeded the *Moreno I* guideline of 120 days from sentencing to Convening Authority's (CA) action. No Marine Corps case exceeded the *Moreno II* guideline of 30 days from the CA's action to docketing at the NMCCA.³ No Marine Corps case exceeded the *Moreno III* guideline of 18 months from docketing at the NMCCA to decision.

(2) MJA 16 Post-Trial Guidelines. No Marine Corps case exceeded the MJA 16 Post-Trial I guideline of 120 days from announcement of the sentence to forwarding for appellate review. No Marine Corps case exceeded the MJA 16 Post-Trial II guideline of 30 days from forwarding for appellate review to docketing at the NMCCA. No Marine Corps case exceeded the MJA 16 Post-Trial III guideline of 18 months days from docketing at the NMCCA to decision.

b. No Marine Corps case was reversed by the NMCCA because of command influence or denial of the right to speedy review. Additionally, no Marine Corps case was remitted because of the loss of a record of trial or other administrative deficiency.

c. No Marine Corps case held a provision of the UCMJ unconstitutional. However, in *Larrabee v. Braithwaite*, 502 F. Supp. 3d 322 (D.D.C. 2020), Judge Richard J. Leon of the United States District Court for the District of Columbia ruled that in the absence of a principled basis promoting good order and discipline, Congress' exercise of court-martial jurisdiction over all members of the Fleet Marine Corps Reserve is unconstitutional. As background, Mr. Larrabee was a military retiree living in Iwakuni, Japan, and was convicted by general court-martial of one specification of sexual assault and one specification of indecent recording. The NMCCA and the Court of Appeals for the Armed Forces (CAAF) affirmed the findings and sentence. Mr. Larrabee filed a petition for writ of certiorari to the United States Supreme Court, which was denied on 19 February 2019. In March 2019, Mr. Larrabee filed this suit in the United States District Court for the District of Columbia against the Honorable Kenneth J. Braithwaite in his official capacity as Secretary of the Navy, challenging the

³ In *United States v. Allison*, 2021 CCA Lexis 605 (N-M Ct.Crim.App. 2021), the Navy-Marine Corps Court of Criminal Appeals found a *Moreno II* violation for a 109-day delay between the convening authority's action and the docketing of the record at the court. This violation occurred in FY19, but the court issued the *Allison* opinion on 16 November 2021, within the fiscal year of this Article 146a, UCMJ, report.

provision of the UCMJ that allows for courts-martial of military retirees. In *Larrabee v. Del Toro*, 45 F.4th 81 (D.C. Cir. 2022), the U.S. Court of Appeals for the D.C. Circuit reversed the district court and held that the exercise of court-martial jurisdiction over Mr. Larrabee was constitutional based on his status as a member of the Fleet Marine Corps Reserve.⁴

d. Analysis of each case in which the NMCCA made a final determination that a finding of a court-martial was clearly against the weight of the evidence, including an explanation of the standard of appellate review applied in such case.⁵

(1) *United States v. Armendariz*, 82 M.J. 712 (N-M Ct.Crim.App. 2022). The NMCCA set aside Master Sergeant Armendariz's convictions for sexual assault, abusive sexual contact, and adultery as factually insufficient (i.e., the court was not convinced of his guilt beyond a reasonable doubt). After conducting a de novo review, the court held there was insufficient evidence to support penile penetration, a required element of the sexual assault and adultery offenses, or that Master Sergeant Armendariz touched the alleged victim's breast, a required element of the abusive sexual contact offense.

(2) *United States v. Lee*, 82 M.J. 591 (N-M Ct.Crim.App. 2022). The NMCCA set aside Sergeant Lee's conviction for attempted indecent conduct for attempting to induce or entice a minor to engage in sexual activity as legally insufficient (i.e., no reasonable fact-finder could have found all the essential elements beyond a reasonable doubt). Sergeant Lee had been communicating online with an undercover FBI Agent acting as part of a sting operation to apprehend child sex offenders. Sergeant Lee initially expressed interest in having sex with the undercover FBI agent's minor daughter, but later changed his mind and ceased communicating with the undercover FBI agent. After conducting a de novo review, the court found the evidence to be legally insufficient in that the obscene conversation was too preliminary to constitute a substantial step, a required element of the attempted indecent conduct offense.

(3) *United States v. Mader*, 2022 CCA LEXIS 293 (N-M Ct.Crim.App. 2022). The NMCCA set aside Sergeant Mader's conviction for assault consummated by battery as factually insufficient (i.e., the court was not convinced of his guilt beyond a reasonable doubt). The offense stemmed from a hazing ritual during which Sergeant Mader burned three junior Marines with a cigarette. After conducting a de novo review, the court found the evidence to be factually insufficient in that the Government failed to prove beyond a reasonable doubt that Sergeant Mader's mistaken belief that the three junior Marines consented to being burned was neither honest nor reasonable.

(4) *United States v. Murphy*, 2022 CCA LEXIS 105 (N-M Ct.Crim.App. 2022). The NMCCA set aside Lance Corporal Murphy's conviction for abusive sexual contact as factually

⁴ On 20 December 2022, the D.C. Circuit Court of Appeals denied Mr. Larrabee's petition for a rehearing en banc. *Larrabee v. Del Toro*, 2022 U.S. App. LEXIS 35191.

⁵ The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283, (FY21 NDAA) significantly amended UCMJ Article 66(d), 10 USC 866(d), the statutory standard by which a Court of Criminal Appeals conducts its factual sufficiency review. This standard—that a Court of Criminal Appeals must be “clearly convinced that the finding of guilty was against the weight of the evidence”—is not applicable to offenses that occurred before 1 January 2021. The NMCCA set aside findings for legal or factual insufficiency in the following Marine Corps cases in FY22; however, since the offenses were committed before 1 January 2021, this new standard did not apply.

insufficient (i.e., the court was not convinced of his guilt beyond a reasonable doubt). After conducting a de novo review, the court held that the evidence was factually insufficient based on the ambiguous and conflicting testimony as to whether Lance Corporal Murphy actually touched the alleged victim's genitalia, a required element of the abusive sexual contact offense.

4. Measures Implemented by the Marine Corps to Ensure the Ability of Judge Advocates to Serve in Certain Billets and be Detailed to Certain Types of Cases. The Marine Corps military justice community is comprised of trial counsel, defense counsel, victims' legal counsel (VLC), appellate trial and defense counsel, trial and appellate military judges, staff judge advocates, enlisted legal services specialists, legal administrative officers, civilian paralegals, and Litigation Attorney Advisors (LAA, formerly "Highly Qualified Experts"). To accomplish the military justice mission, this community of professionals relies on the experience of its practitioners, close supervision, and robust training. The measures specific to trial counsel, defense counsel, victims' legal counsel, and military judges are detailed below.⁶

a. Trial Counsel

(1) Marine Corps trial counsel represent the United States as prosecutors in courts-martial and as recorders in administrative separation proceedings. Judge advocates will typically serve as a trial counsel in their first or second tour of duty and tend to be in the grade of captain (O-3), with some senior first lieutenants (O-2).

(2) The Trial Services Organization (TSO) is the Marine Corps' prosecutorial entity and is composed of all Marine Corps trial counsel. The Chief Trial Counsel of the Marine Corps (CTC), a colonel (O-6), leads the TSO. A major (O-4) assists the CTC and serves as the Operations Officer for the TSO and the Director of the Trial Counsel Assistance Program (TCAP). A captain (O-3) serves as the TCAP Deputy Director. TCAP is responsible for providing ongoing assistance to trial counsel in the field and coordinating training opportunities, both internal and external to the TSO.⁷

(3) The TSO is divided by the Marine Corps' four geographic regions.⁸ Each region of the TSO is composed of a Regional Trial Office (RTO) led by a Regional Trial Counsel (RTC), who is typically a lieutenant colonel with extensive litigation experience. The regions are divided by installation, with each major installation within the region supported by an Installation Trial Office (ITO) led by a Senior Trial Counsel, who is typically a major (O-4) with prior litigation experience. Trial counsel are assigned to ITOs and are supervised by Senior Trial Counsel.

⁶ The U.S. Marine Corps FY23 Article 146a, UCMJ, report will include an explanation of measures implemented by the Marine Corps to ensure that those judge advocates designated as Special Trial Counsel have the abilities required to serve as Special Trial Counsel and be detailed to covered offenses.

⁷ The primary training event attended annually by all members of the TSO is the weeklong TSO Annual Training. This event focuses on reinforcing the skills and knowledge necessary for the competent prosecution of complex cases and special victim cases. TCAP coordinates a variety of additional training opportunities for the TSO and publishes a fiscal year military justice training calendar every September for the following fiscal year. The military justice training calendar for FY23 was published on 24 September 2022 in Marine Administrative Message (MARADMIN) 488/22.

⁸ These are: (1) the National Capitol Region; (2) the Eastern Region (composed of installations generally situated on the East Coast); (3) the Western Region (composed of installations generally situated on the West Coast); and (4) the Pacific Region (which includes installations in Hawaii, Guam, and Japan).

Senior Trial Counsel are supervised by the respective RTC for the region. The RTC are supervised by the CTC. In addition to trial counsel and supervisory counsel, the RTOs and ITOs are composed of enlisted legal services specialists who assist trial counsel with routine functions such as processing discovery material for disclosure, assisting with witness interviews, maintaining court-martial data, and similar activities. Finally, some RTOs employ a complex trial team (CTT) composed of experienced trial counsel to handle particularly complex cases within the region. Trial counsel assigned to the CTT are supervised by the RTC.

(4) The entry-level training for all Marine Corps judge advocates includes completion of the Basic Lawyer Course (BLC) and, as of FY21, the Military Justice Orientation Course (MJOC). These courses are taught consecutively at the Naval Justice School (NJS) aboard Naval Station Newport, Rhode Island. Successful completion of the BLC and the trial counsel-track⁹ of MJOC qualifies a Marine Corps judge advocate to represent the United States as a trial counsel in special courts-martial under the close supervision of the cognizant Senior Trial Counsel and RTC.¹⁰ After demonstrating competency at litigating special courts-martial, a trial counsel may be qualified to represent the United States as a lead trial counsel in general courts-martial.¹¹

(5) Once a trial counsel acquires sufficient experience prosecuting general courts-martial and the trial counsel's supervisory counsel are confident in the individual's litigation capabilities, the CTC may qualify the trial counsel to represent the United States as lead trial counsel in special victim cases.¹² In the Marine Corps, all special victim cases must have a Special Victim Investigation and Prosecution (SVIP)-qualified trial counsel detailed as lead counsel.¹³ Obtaining the SVIP qualification requires the satisfaction of particular experience and training criteria in addition to successful screening by an SVIP qualification board.¹⁴ SVIP qualification boards are typically chaired by the CTC and include at least two additional supervisory counsel. The board engages in a Socratic assessment of the candidate's prosecutorial knowledge and judgment and then votes on the candidate's suitability for SVIP qualification. As of the date of this report, 42 of the TSO's 72 trial counsel are SVIP qualified.

(6) To supplement the professional development of trial counsel, the TSO employs three civilian LAAs, who are civilian GS-15 employees with significant experience in criminal litigation. These civilian advisors help trial counsel prepare their individual cases. They also play a significant role in training trial counsel, with a focus on complex litigation. Trial counsel

⁹ The MJOC is a two-week course divided into two distinct tracks—one track for trial counsel and another for defense counsel. The first week of MJOC consists largely of lecture and discussions that are conducted separately—one set of lectures and discussions for judge advocates in the trial counsel track and a separate set for judge advocates in the defense counsel track. The second week of MJOC brings the two tracks together in a contested mock trial, including all trial phases (voir dire, opening statement, direct and cross-examinations, etc.).

¹⁰ U.S. MARINE CORPS, ORDER 5800.16 – Volume 16, LEGAL SUPPORT AND ADMINISTRATION MANUAL, MILITARY JUSTICE para. 022201 (14 July 21) [hereinafter LSAM – V16].

¹¹ *Id.* at para. 022202.

¹² The Marine Corps defines a special victim case as any case involving violations of Articles 117a, 118, 119, 119a, 120, 120a, 120b, 120c, 125, 128 (for domestic violence involving aggravated assault or child abuse), 128b, 132 (when the retaliation was for reporting a sex-related offense), 134 (child pornography), and 80 (for any attempts to commit the previously identified offenses) of the Uniform Code of Military Justice. *Id.* at para. 050101.

¹³ *Id.*

¹⁴ *See id.* at para. 022303; *see also* CTC Policy Memorandum 3-21 (Personnel Qualifications).

also receive assistance from the Appellate Government Division (Code 46) of Navy OJAG. Code 46 is composed of Navy and Marine Corps judge advocates who are responsible for representing the United States on appellate matters before the NMCCA and the CAAF. Accordingly, judge advocates at Code 46 assist trial counsel with interlocutory appeals and other appellate matters.

(7) National security cases are uncommon and involve additional complexities associated with classified information, security, evidence handling, and clearance levels. For efficiency, trial counsel assigned to the National Capital Region (NCR) of the TSO prosecute all national security cases in the Marine Corps.¹⁵ Consolidating these cases for prosecution by a single region facilitates uniform coordination with other federal agencies in the area and enables access to courtrooms capable of handling classified information. As a result, trial counsel assigned to the NCR receive advanced training on national security litigation. Trial counsel detailed to these cases also receive assistance from Code 30, Navy OJAG's National Security Litigation Division.

(8) In FY22, no capital offenses were referred to court-martial. Although the Marine Corps infrequently litigates capital cases, procedures are in place to ensure that the trial counsel who may be called upon to prosecute a capital case possess the necessary training, experience, and support to competently do so. Any trial counsel detailed to a capital case must be SVIP-qualified.¹⁶ Additionally, the authority to detail a trial counsel to represent the government on a capital case is withheld to the cognizant RTC.¹⁷ Moreover, the civilian LAAs within each region are responsible for providing support on such cases.¹⁸

b. Defense Counsel

(1) Marine Corps defense counsel within the Defense Services Organization (DSO) provide criminal defense services to Marines accused of offenses at courts-martial and those who are the subject of adverse administrative proceedings. Similar to trial counsel's supervisory chain, every defense counsel is supervised by a Senior Defense Counsel (SDC) in the grade of major (O-4), and a Regional Defense Counsel (RDC) in the grade of lieutenant colonel (O-5).¹⁹ All defense counsel fall under the supervision of the Chief Defense Counsel of the Marine Corps (CDC), who is a colonel (O-6).²⁰ The CDC is assisted in their duties by a Deputy CDC who is also a colonel (O-6).²¹ Two civilian GS-15 LAAs advise and support the four RDCs. One is located at Camp Lejeune, North Carolina, and supports the Eastern Region, and the other is located at Marine Corps Recruit Depot San Diego, California, and supports the Western Region.²² Three

¹⁵ LSAM – V16, *supra* note 9 at para. 061003.

¹⁶ *Id.* at para. 050101 (defining SVIP cases to include Article 118, UCMJ).

¹⁷ *Id.* at para 0306.

¹⁸ *Id.* at para 0208.

¹⁹ U.S. MARINE CORPS, ORDER 5800.16 – Volume 3, LEGAL SUPPORT AND ADMINISTRATION MANUAL, MARINE CORPS DEFENSE SERVICES ORGANIZATION para. 010608, 010609 (20 Feb. 18) [hereinafter LSAM – V3].

²⁰ *Id.* at para. 010601.

²¹ The Deputy CDC billet was established in late FY22; a pending update to the LSAM will account for this new billet.

²² CDC POLICY MEMORANDUM 4.2A, ATTORNEY ADVISOR MISSION AND CORRESPONDING POLICIES (16 Jan. 19).

of the four regions also have a Defense Services Organization Investigator (DSOI) who plays a significant role by enabling defense counsel to better prepare to defend an accused.²³

(2) The Defense Counsel Assistance Program (DCAP) coordinates training for all Marine Corps defense counsel and maintains a collaborative website to facilitate each defense counsel's ability to share lessons learned.²⁴ The DCAP is led by a major (O-4) with a Master of Laws (LL.M.) in criminal law, is stationed in the NCR, and serves under the direct supervision of the CDC.²⁵ Each defense counsel is required to attend three mandatory training events: (1) the two-week-long defense-track MJOC; (2) a weeklong course aimed specifically at litigating sexual assault and other special victim cases; and (3) an annual weeklong training course. All three of the courses are hosted and managed by the DCAP. In addition, every SDC and RDC conducts monthly and quarterly training. Marine Corps defense counsel also attend civilian-led training events hosted by the National Criminal Defense College, the Bronx Defenders Academy, the National Criminal Defense College, the Trial Lawyers College, and the National Association of Criminal Defense Lawyers.

(3) To ensure the competency of counsel assigned to specific cases, the CDC maintains internal safeguards regarding new counsel orientation, annual training, and detailing authorities and considerations.²⁶ In conjunction with continuous training and supervision, these safeguards ensure that defense counsel effectively, competently, and ethically represent their clients. In addition, JAD is in the process of hiring three additional LAAs, four paralegals, four office administrators, and one DSOI.

c. Victims' Legal Counsel

(1) Marine Corps VLC provide legal representation to eligible victims of sexual assault, domestic violence, and other crimes throughout the military justice process. Each VLC is supervised by a Regional Victims' Legal Counsel (RVLC) in the grade of major (O-4) and the Chief Victims' Legal Counsel of the Marine Corps (CVLC), who is a senior Marine Corps judge advocate serving in or selected to the grade of colonel (O-6).²⁷

(2) To serve as a VLC, Marine Corps judge advocates are subject to a rigorous nomination, screening, interview, and vetting process.²⁸ A VLC nominee must be serving in, or selected to, the grade of captain (O-3), have at least six months of military justice experience as a trial counsel or defense counsel, and have tried at least one contested court-martial.²⁹ The nominee

²³ Despite multiple hiring efforts in FY22, a fourth DSOI position for the Pacific Region was not filled in FY22. Hiring actions will continue in FY23 to fill the Pacific Region DSOI position.

²⁴ LSAM – V3, *supra* note 19 at para. 010606, 010607.

²⁵ *Id.*

²⁶ CDC POLICY MEMORANDUM 2.1B, NEW DSO MEMBER ORIENTATION (11 Jun. 19); CDC POLICY MEMORANDUM 4.1B, DEFENSE SERVICES ORGANIZATION ANNUAL TRAINING PROGRAM (15 Jan. 19); CDC POLICY MEMORANDUM 3.1D, DETAILING AND INDIVIDUAL MILITARY COUNSEL AUTHORITY FOR MARINE CORPS DEFENSE SERVICES ORGANIZATION (6 Nov. 20).

²⁷ U.S. MARINE CORPS, ORDER 5800.16 – Volume 4, LEGAL SUPPORT AND ADMINISTRATION MANUAL, MARINE CORPS VICTIMS' LEGAL COUNSEL ORGANIZATION para. 010202, 0103 (26 Aug. 21) [hereinafter LSAM – V4]

²⁸ *Id.* at para 0103.

²⁹ *Id.* at para. 010305.

must undergo a sensitive screening process, which includes a thorough review of the nominee's Official Military Personnel File.³⁰ The CVLC and responsible RVLC also interview the nominee. The nominee must successfully complete an approved Special Victims' Counsel (SVC)/VLC certification course. Only after successfully undergoing this complete process, the SJA to CMC certifies the nominee to serve as a VLC.

(3) Marine Corps VLC participate in several training events throughout the year. The Marine Corps Victims' Legal Counsel Organization (VLCO) hosts an all hands annual weeklong training symposium, and individual VLC also participate in regional quarterly training events. These training efforts ensure that the VLC remain current in law and practice and remain capable of performing their duties with a high degree of proficiency.

(4) In FY22, the VLCO carried out several initiatives to raise the standard of practice and provide better service and assistance to victims. The VLCO implemented the first client-focused survey for USMC VLC clients, which is accessible online. While the initial sample size is small, survey feedback has already provided valuable information concerning the client experience to the VLCO. In addition, along with the Navy Victims' Legal Counsel Program and NJS partners, the VLCO planned and executed the first ever Navy-Marine Corps VLC Certification Course at NJS in Newport, Rhode Island. In the past, the Marine Corps has relied on certification courses provided by the Air Force and Army. However, those courses did not include training on regulations and other matters unique to the sea services. The VLCO collaborated closely with Navy and NJS partners to design and implement the course, which 40 Navy, Marine Corps, and Coast Guard students attended. Among these students were 14 Marine Corps VLC and one Marine Corps paralegal. Lastly, as part of an ongoing effort to optimize VLC services with an emphasis on post-trial and appellate VLC services, the VLCO hired a GS-15 LAA. The LAA is a highly experienced retired senior judge advocate with a very strong legal and policy background in special victim litigation and legislation and more than 30 years of military justice legal experience, including service as a military appellate judge and the Program Manager for the US Army Special Victim Counsel Program. The LAA serves as a senior advisor to the CVLC, as well as an experienced appellate and post-trial mentor and victims' counsel.

d. Trial and Appellate Military Judges

(1) All Marine Corps military judges are screened for judicial service via a competitive board process established by the Navy JAG.³¹ The screening process includes careful evaluation of the education, experience, accomplishments, temperament, and leadership capabilities of the candidates. Trial and appellate military judges must possess a suitable background in military justice, sound judgement, an even temperament, unquestioned maturity of character, and exemplary writing skills. Each candidate seeking future assignment to the judiciary must submit an application to the Judicial Screening Board. A candidate's application must include appraisals from judges before whom they have litigated and a detailed summary of their qualifications and experience.

³⁰ *Id.* at para. 010309.

³¹ U.S. DEP'T OF NAVY, JAGINST 5817.1K CH-1, JUDICIAL SCREENING BOARD (1 Sep. 2022).

(2) Marine Corps judge advocates selected by the Judicial Screening Board become eligible for assignment to the judiciary. However, selection does not guarantee assignment to a judicial billet. Finally, prior to assignment to a judicial billet, military judges must pass the three-week military judge course at The Army Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia. Eighteen Marine Corps judge advocates currently serve as trial military judges (twelve active duty and six reservists) and five serve as appellate military judges at the NMCCA (three active duty and two reservists).

(3) In February 2022, the Department of the Air Force hosted the Joint Military Judges Annual Training at the Air Force Judge Advocate General's School at Maxwell AFB, Alabama, with instructors from the DoD, the Navy-Marine Corps Trial Judiciary (NMCTJ), the Honorable Judge Gregory Maggs from the Court of Appeals for the Armed Forces, and Professor Erwin Chemerinsky, Dean, and Jesse H. Choper, Distinguished Professor of Law, University of California, Berkeley School of Law. A number of active duty and reserve judges assigned to the NMCTJ participated in this three-day course, as did over 100 additional judges across all services. During the training, the NMCTJ judges went to the Legacy Museum in Montgomery, Alabama, and received unconscious bias training.

(4) In September 2022, all NMCTJ judges participated in annual training provided by outside organizations and NMCTJ instructors. Training topics included judicial methodology, evidentiary issues associated with Military Rules of Evidence 412 and 513, judicial ethics, memory and alcohol issues in sexual assault cases, and diversity, equity, and inclusion on the bench and in the courtroom.

(5) NMCCA judges attended the annual William S. Fulton, Jr., Military Appellate Judges' Training Conference, a two-day, inter-service event held in Washington, D.C., that included discussion on significant appellate developments (U.S. Supreme Court, Court of Appeals for the Armed Forces, and Service Courts of Criminal Appeals cases), ethics, and common issues at the Courts of Criminal Appeals.

e. Military Commissions

(1) One Marine Corps judge advocate and two legal services specialists served at the Office of the Commissions-Prosecution (OCP). The OCP uses a robust orientation program to train new counsel. All new counsel were trained in the role of the commissions, the rules and procedures of the Military Commissions Act of 2009, and litigating classified information cases under the Military Commissions Act corollary to the Classified Information Procedures Act. All counsel worked under the supervision of experienced attorneys to gain practical experience and training.

(2) Four Marine Corps judge advocates and two legal services specialists served at the Military Commissions Defense Office. Prior to assignment to one of the defense teams, each counsel receives training on the rules and procedures of the Military Commissions Act of 2019. These Marines work under the day-to-day supervision and mentorship of a managing military defense counsel and an experienced civilian attorney.

f. Masters of Criminal Law. Each year, the Marine Corps board-selects approximately eight highly-qualified judge advocates to obtain a LL.M. in criminal law. Upon selection, these judge advocates attend the Army's yearlong criminal law LL.M. program at TJAGLCS. Upon receipt of the criminal law LL.M., these judge advocates receive an Additional Military Occupational Specialty that allows the Marine Corps to identify them as uniquely qualified to serve in military justice billets of significant responsibility. As these officers progress through their careers, they are the most competitive for assignment to supervisory counsel billets within the TSO, DSO, and VLCO, and for assignment as military judges. Additionally, a Marine Corps judge advocate who obtains this LL.M. is eligible to return to TJAGLCS for assignment as a professor of law.

5. Independent Views of the Staff Judge Advocate to the Commandant of the Marine Corps on the Sufficiency of Resources to Capably Perform Military Justice Functions.

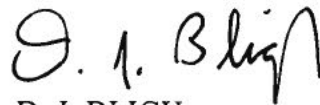
a. In FY22, the Marine Corps military justice community effectively accomplished its broad and complex mission and aggressively began implementation of military justice reforms. However, it became apparent during planning efforts that the existing structure of the Marine Corps legal community was not right-sized, staffed, or aligned to implement and execute the military justice reforms of the FY22 NDAA and the Secretary of Defense-approved recommendations of the IRC. To ensure appropriate resourcing, the SJA to CMC submitted a Military Justice Reform Table of Organization and Equipment Change Request (TOECR) to Marine Corps leadership seeking to grow the legal community's structure and to appropriately align and staff the military justice portions of that structure. The Military Justice Reform TOECR was approved, and the additive structure, appropriately aligned, was published to the Marine Corps' Authorized Strength Report, and was fully purchased as of 1 October 2022. Accordingly, the growth of the Marine Corps legal community to support all military justice reform efforts will require additional salary, information technology, office equipment, travel, and training for an additional 133 personnel. This growth accounts not only for the establishment of the OSTC, but also increased demands in the DSO, TSO, and elsewhere. Continued, sustainable resourcing is essential for the Marine Corps to fully execute recent military justice reforms and perform its enduring military justice function.

b. The OSTC will be comprised of 33 Special Trial Counsel billets, 16 enlisted support billets, and 15 GS civilian support billets. The OSTC will require an independent operations budget. The current estimate is approximately \$5 million annually. OSTC leadership continues to work with Marine Corps Installations leadership to identify suitable facilities in which to locate the Regional and Installation OSTC offices.

c. Additionally, in order to ensure that the defense counsel representing an accused charged with a covered offense are well trained, experienced, highly skilled, and competent, the Marine Corps is reinforcing the DSO with an additional 13 field grade judge advocates, one warrant officer, three civilian Litigation Attorney Advisors, and eight civilian support staff. The additional field grade judge advocates will be designated as "Special Defense Counsel" and will have similar qualifications in terms of experience and expertise as Special Trial Counsel. Also, the FY22 NDAA requires the Marine Corps to ensure military defense counsel have timely and reliable access to funding for all defense investigation, travel, and support needs. The Marine Corps has established independent defense funding to support these in the amount of \$2 million annually.

d. The Marine Corps is enhancing support billets and related military justice billets to match the manpower investments into military justice. For example, the Marine Corps is adding eight military judges, four misconduct officers, which are analogous to military magistrates, five military justice instructors, and a military justice curriculum developer. The Marine Corps is in the process of hiring 46 civilians to fill various military justice reform implementation positions within the OSTC, DSO, TSO, and JAD, including a military justice data manager, Defense Sexual Assault Incident Database program manager, attorney advisors and training coordinators for the OSTC, DSO and JAD, and administration officers for the OSTC, DSO, and TSO.

6. Conclusion. Through deliberate planning and execution, the Marine Corps legal community remains well positioned to deliver high quality military justice support across the Service. While focusing on the near-term priorities of implementing the military justice reforms of the FY22 NDAA and the Secretary of Defense-approved IRC recommendations, the Marine Corps legal community maintains an unwavering commitment to executing its vital role of promoting justice through the existence of a fair and impartial justice system that assists in maintaining good order and discipline within the force, promotes efficiency and effectiveness within the force, and thereby strengthens the national security of the United States.



D. J. BLIGH
Major General, U.S. Marine Corps
Staff Judge Advocate to the Commandant
of the Marine Corps

APPENDIX

Report Period: FISCAL YEAR 2022

PART 1 – PENDING COURTS-MARTIAL [A]			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		38	
SPECIAL		24	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		6	
SUMMARY		2	
TOTAL:	59	70	129

PART 2 – BASIC COURTS-MARTIAL STATISTICS [B]				
TYPE COURT	TRIED	CONVICTIONS	ACQUITTALS	INCREASE (+)/ DECREASE (-) OF TOTAL CASES TRIED OVER LAST REPORT
GENERAL	93	72	21	-25.00%
SPECIAL	89	80	9	-25.83%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	24	16	8	+9.09%
SUMMARY	113	112	1	+3.67%
OVERALL INCREASE (+)/DECREASE (-) OF CASES TRIED OVER LAST REPORT				-14.93%

PART 3 – ACCUSED DEMOGRAPHIC DATA [B]													
TYPE COURT	Total	GENDER		ETHNICITY			RACE						
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	Unknown	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unknown
GENERAL	93	93	0	26	67	0	2	2	15	0	60	14	0
SPECIAL	89	85	4	24	65	0	2	1	13	0	55	18	0
MJ SPECIAL (Art. 16 (c)(2)(A))	24	22	2	2	22	0	0	1	5	0	16	2	0
SUMMARY	113	113	0	31	78	4	1	3	26	0	83	0	0

PART 4 – VICTIM DEMOGRAPHIC DATA [C]														
TYPE COURT	Total	GENDER			ETHNICITY			RACE						
		Male	Female	Unk	Hispanic / Latino	Non-Hispanic / Latino	Unk	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unk
GENERAL	216	55	97	64	26	92	98	1	3	14	2	88	3	105
SPECIAL	57	19	33	5	14	33	10	0	4	2	1	40	2	8
MJ SPECIAL (Art. 16 (c)(2)(A))	7	5	2	0	0	7	0	0	0	0	0	7	0	0
SUMMARY	19	8	11	0	5	9	5	0	0	1	0	9	2	7

PART 5 – MARINE CORPS DISCHARGES [D]	
GENERAL COURTS-MARTIAL	
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	40
NUMBER OF BAD-CONDUCT DISCHARGES	28
SPECIAL COURTS-MARTIAL	
NUMBER OF BAD-CONDUCT DISCHARGES	54

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG (Navy & Marine Corps)	
FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	7
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY JAG	1
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	230
FOR EXAMINATION UNDER ARTICLE 65(d)	43

PART 7 – WORKLOAD OF THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (Navy & Marine Corps)	
TOTAL ON HAND BEGINNING OF PERIOD	165 [E]
TOTAL CASES REFERRED FOR REVIEW	252 [E]
TOTAL CASES REVIEWED	289 [F]
TOTAL PENDING AT CLOSE OF PERIOD	128 [E]
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD	-8.8%

PART 8 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (Navy & Marine Corps)	
TOTAL PETITIONS TO CAAF	41

PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (Navy & Marine Corps)	
TOTAL PENDING BEGINNING OF PERIOD	15
RECEIVED	2
DISPOSED OF	13
GRANTED	1
DENIED	12
NO JURISDICTION	0
WITHDRAWN	0
TOTAL PENDING AT END OF PERIOD	4

PART 10 – MARINE CORPS ORGANIZATION OF COURTS BY FORUM [B]	
TRIALS BY MILITARY JUDGE ALONE	178
GENERAL COURTS-MARTIAL	71
SPECIAL COURTS-MARTIAL	83
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	24
TRIALS BY MILITARY JUDGE WITH MEMBERS	28
GENERAL COURTS-MARTIAL	22
SPECIAL COURTS-MARTIAL	6

PART 11 – STRENGTH	
AVERAGE ACTIVE COMPONENT STRENGTH	176,556

PART 12 – NONJUDICIAL PUNISHMENT (Art. 15, UCMJ) [G]	
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	6,358
RATE PER 1,000	36.01

EXPLANATORY NOTES

[A] Pending cases as of 30 September 2022.

[B] Based on the number of individuals against whom charges were referred to court-martial by a Marine Corps convening authority and those charges were tried to verdict.

[C] Based on the number of individuals named as a victim in a specification referred to court-martial by a Marine Corps convening authority or are otherwise identified as victims by the Government with respect to such referred specification as reflected in the Military Justice Electronic Case Management System.

[D] Based on the Statements of Trial Results.

[E] Includes only cases briefed and at issue.

[F] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.

[G] Includes only active component Marines.

Report to Congress

U.S. Navy Report on Military Justice for Fiscal Year 2022

31 December 2022

Prepared by:

**THE OFFICE OF THE JUDGE ADVOCATE GENERAL, U.S. NAVY
NAVY PENTAGON
WASHINGTON DC 20310-1000**

The estimated cost of this report or study for the Department of Defense is approximately \$3740 for the 2023 Fiscal Year. This includes \$0 in expenses and \$3740 in DoD labor.

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**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY
ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE
OCTOBER 1, 2021 TO SEPTEMBER 30, 2022**

1. Introduction: The Office of the Judge Advocate General (OJAG), Department of the Navy (DON) submits this report pursuant to Article 146a, Uniform Code of Military Justice (UCMJ) for fiscal year 2022 (FY22). The Navy Judge Advocate General's Corps (JAGC) conducted its military justice mission with utmost professionalism and dedication to the Fleet. The Navy tried 190 courts-martial (combined general, special, and summary courts-martial) and the Navy-Marine Corps Court of Criminal Appeals (NMCCA) reviewed 289 Navy and Marine Corps cases on appeal.

- In addition to the above described administration of courts-martial and appeals, OJAG commenced implementation of the Navy's Office of the Special Trial Counsel (OSTC) pursuant to Subtitle D, National Defense Authorization Act for Fiscal Year 2022 (FY22 NDAA). The Navy's OSTC, along with the Marine Corps OSTC, will provide expert, specialized, independent and ethical representation of the United States for investigation and trial-level litigation for covered offenses within the Department of the Navy (DoN), as described in Article 1(17), UCMJ. To accomplish this requirement, OJAG established the Accountability Reform Operational Planning Team (OPT) led by the Assistant Judge Advocate General, Military Law in coordination with the Marine Corps' Judge Advocate Division (JAD). The OPT unified multilateral lines of effort from across the JAGC and JAD, and determined the administrative structures, reforms, and funding necessary for the implementation of OSTC and to conform to other statutory requirements.
- Following the major structural and substantive changes from the FY22 NDAA to the military justice system, the Joint Service Committee (JSC), including Navy and Marine Corps representatives, commenced a wholesale review of the Manual for Courts-Martial (MCM). Through their meticulous review, the JSC is proposing a new edition of the MCM to the President, for issuance via Executive Order.
- This fiscal year also saw the creation of new methods for promoting diversity, equity, and inclusion in the military justice system. The Military Justice Litigation Career Track (MJLCT) established a Diversity, Equity and Inclusion Advisory Council to coordinate with the previously established JAGC Standing Advisory Council on Inclusion and Diversity.

All these efforts reflect the JAGC's commitment to continuous assessment and improvement, exceptional service and professionalism, and the fair administration of military justice.

2. Data on the number and status of pending courts-martial: The Navy, in coordination with the Marine Corps, tracks courts-martial information through the "Wolverine" case management Sharepoint database. At the end of FY22, there were 129 pending Navy courts-martial (84 referred for trial and 45 with preferred charges pending disposition decisions). Additional information on the status of pending cases is available in Part 1 of the Appendix.

3. Information on the appellate review process

a. Compliance with processing time goals.

(1) No Navy cases were determined to have violated an accused's right to speedy trial at the trial stage.

(2) No Navy cases exceeded 120 days from sentencing to Convening Authority's (CA) action (the "Moreno 1" guideline). No Navy cases exceeded the 30-day window from the date of CA's action to docketing at NMCCA (the "Moreno 2" or "Post-Trial II" guideline).¹

(3) One case exceeded 120 days from announcement of the sentence to forwarding for appellate review (the "Post Trial I" guideline). *U.S. v. Becker* exceeded this 120 day timeline by 11 days. The delay in this case was attributable to the defense's request for delay in order to respond to a reconstructed record of trial.

(4) During appellate review, no Navy cases referred prior to January 1, 2019 exceeded 18 months from docketing to decision by NMCCA (the "Moreno III" guideline), and no Navy cases referred on or after January 1, 2019 exceeded 18 months from docketing to decision by NMCCA ("the Post Trial III" guideline).

b. Descriptions of the circumstances surrounding cases in which general or special court-martial convictions were:

(1) Reversed on appeal because of command influence or denial of the right to speedy review: None.

(2) Otherwise remitted because of loss of records of trial or other administrative deficiencies: None.

c. Analysis of each case in which a provision of the UCMJ was held unconstitutional:

¹ Reflects processing time goals as established in JAG Instruction 5814.1D of September 6, 2019 as modified by *United States v. Rivera*, No. 202000111, 2021 CCA LEXIS 418 (N-M Ct. Crim. App. 2021) (holding the 2016 Military Justice Act superseded the Moreno I and II timelines but left untouched the Moreno III timeline).

(1) *Larrabee v. Del Toro*, 45 F.4th 81 (D.C. Cir. 2022). The U.S. Court of Appeals for the DC Circuit held that there was court-martial jurisdiction over Mr. Larrabee based on his status as a member of the Fleet Marine Corps Reserve. This overruled the United States District Court for the District of Columbia ruling, where Judge Richard J. Leon ruled that in the absence of a principled basis promoting good order and discipline, Congress' exercise of court-martial jurisdiction over all members of the Fleet Marine Corps Reserve is unconstitutional. *Larrabee v. Braithwaite*, 502 F. Supp. 3d 322 (D.D.C. 2020). As background, Mr. Larrabee was a military retiree living in Iwakuni, Japan, and was convicted by general court-martial of one specification of sexual assault and one specification of indecent recording. The NMCCA and the Court of Appeals for the Armed Forces affirmed the findings and sentence. Mr. Larrabee filed a petition for Writ of Certiorari from C.A.A.F. with the United States Supreme Court, which was denied on 19 February 2019. In March 2019, Mr. Larrabee filed suit against the Honorable Kenneth J. Braithwaite in his official capacity as Secretary of the Navy in the United States District Court for the District of Columbia, challenging the provision of the UCMJ that allows for courts-martial of military retirees.

d. Analysis of each case in which a Court of Criminal Appeals made a final determination that a finding of a court-martial was clearly against the weight of the evidence, including an explanation of the standard of appellate review applied in such case.²

(1) *United States v. Armendariz*, 82 M.J. 712 (N-M Ct.Crim.App. 2022). The NMCCA set aside Master Sergeant Armendariz's convictions for sexual assault, abusive sexual contact, and adultery. Reviewing the evidence and "applying neither a presumption of innocence nor presumption of guilt," as the standard of appellate review per *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002), the Court held there was insufficient evidence to support penile penetration, a required element for both sexual assault and adultery. Additionally, there was no DNA evidence to corroborate an individual's claim that Armendariz had touched her breasts.

(2) *United States v. Taylor*, 82 M.J. 614 (N-M Ct.Crim.App. 2022). The NMCCA set aside Electrician's Mate Third Class Taylor's conviction for communicating a threat to an individual. During a drunken argument with that individual, Taylor flew into a rage that so scared the individual that she ran upstairs and locked herself in a room. After the individual had run upstairs, Taylor said to two other Sailors, "I'm going to kill the b[****]." Reviewing the evidence and "applying neither a presumption of innocence nor presumption of guilt," as the

² The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283, (FY21 NDAA) significantly amended UCMJ Article 66(d), 10 USC 866(d), the statutory standard by which a Court of Criminal Appeals conducts its factual sufficiency review. The FY21 NDAA statutory standard -- that a Court of Criminal Appeals must be "clearly convinced that the finding of guilty was against the weight of the evidence" -- is not applicable to offenses that occurred prior to 1 January 2021. The NMCCA did not review any case this fiscal year under the FY21 NDAA standard because all offenses in question took place prior to 1 January 2021. However, in FY22, the NMCCA made a final determination and set aside findings based on lack of factual or legal sufficiency under the prior appellate standard in 5 of 289 cases. In comparison, in FY21, the NMCCA made a final determination under this standard in 5 of 317 cases.

standard of appellate review per *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002), the Court held that there was insufficient evidence because Taylor had not communicated the threat directly to the individual.

(3) *United States v. Lee*, 82 M.J. 591 (N-M Ct.Crim.App. 2022). The NMCCA set aside Sergeant Lee's conviction for attempted indecent conduct for attempting to induce or entice a minor to engage in sexual activity. Sergeant Lee had been communicating online with an undercover FBI Agent, acting as part of a sting operation to apprehend child sex offenders. The FBI Agent identified himself as "Watching Dad" and solicited Lee to engage in sex with "Watching Dad's" 13-year-old daughter. Initially, through a series of online communications, Lee expressed interest in having sex with "Watching Dad's" minor daughter, but later changed his mind and ceased communicating with "Watching Dad." Because Lee was convicted of attempted indecent conduct, the Court held that there was insufficient evidence to support that he committed a substantial step with the specific intent to commit indecent conduct with a minor. In this case, the Court found the evidence was legally insufficient in that no "reasonable fact-finder could have found all the essential elements beyond a reasonable doubt." *United States v. Turner*, 25 M.J. 324 (C.M.A. 1987) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Specifically, the Court held that words alone were legally insufficient to constitute the required substantial step towards committing the underlying offense in question.

(4) *United States v. Mader*, 2022 CCA LEXIS 293 (N-M Ct.Crim.App. May 19, 2022). The NMCCA set aside Sergeant Mader's conviction for assault and battery for burning three junior Marines with a cigarette as part of a hazing ritual. Reviewing the evidence and "applying neither a presumption of innocence nor presumption of guilt," as the standard of appellate review per *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002), the Court held that the Government had failed to prove beyond a reasonable doubt that Mader did not have an honest, albeit mistaken belief, that the three junior Marines consented to being burned.

(5) *United States v. Murphy*, 2022 CCA LEXIS 105 (N-M Ct.Crim.App. Feb 17, 2022). The NMCCA set aside Lance Corporal Murphy's conviction for abusive sexual contact for touching, directly or through the clothing, the genitalia of an individual. Reviewing the evidence and "applying neither a presumption of innocence nor presumption of guilt," as the standard of appellate review per *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002), the Court held that the evidence was factually insufficient based on the conflict of the testimony as to whether Murphy actually touched the individual's genitalia or her hip area.

4. Measures implemented by the Navy to ensure the ability of judge advocates to participate competently as trial counsel and defense counsel; preside as military judges; and perform the duties of Victims' Legal Counsel, with emphasis on capital cases³, national security cases, sexual assault cases, and proceedings of military commissions

³ Navy judge advocates served in military commissions as trial or defense counsel on two capital-referred cases. The JAGC continues to work with Department stakeholders to update its capital litigation requirements.

a. Military Justice Litigation Career Track (MJLCT)

(1) In 2007, the MJLCT was created in order to develop and retain a cadre of specialized litigators to serve across the spectrum of military justice billets. During FY22, the MJLCT was comprised of 106⁴ designated officers in paygrades O-3 (Lieutenant) to O-7 (Rear Admiral (Lower Half)). These officers served in the Navy's most important military justice positions, including: Interim Lead of the OSTC; Commanding Officer and Executive Officer of some Region Legal Service Offices (RLSO) and Defense Service Offices (DSO); Trial Counsel Assistance Program (TCAP) Director/Deputy Director and Defense Counsel Assistance Program (DCAP) Director/Deputy Director, providing real-time assistance in individual trials and vital reach-back resources for litigators throughout the Fleet; Trial Department Head⁵ (Senior Prosecutor) in all eight Navy prosecution commands and Senior Defense Counsel (SDC) in all four Navy defense commands; some Victims' Legal Counsel (VLC) in various locations; Military Commissions (both prosecution and defense) including the Chief Prosecutor for the Military Commissions (O-7 position); and Military Judge. 9 of 10 Navy judges assigned to the Navy-Marine Corps Trial Judiciary (NMCTJ) and 3 of 5 Navy judges assigned to the NMCCA were MJLCT officers that were either designated as a "Specialist II" or "Expert."

(2) In FY22, the existing experience and selection standards of the MJLCT were instrumental to developing criteria for certification of the Special Trial Counsel (STCs) that will be assigned to the OSTC. Officers to be certified as STC will be required to be a member of the MJLCT. In preparation for the expansion of billets anticipated with the development of the OSTC, multiple additional billets in both the prosecution and defense bars will be filled with MJLCT members. The Navy also continues to place at least one MJLCT officer in a rotational assignment for one year with the Department of Justice (DOJ) to gain exposure to federal practice in a high-volume jurisdiction, and this year expanded the program to a valuable partnership with the U.S. Attorney's Office for the Southern District of California in San Diego.

(3) To improve judicial stability and expertise, the Navy utilized a continuation board for military judges approaching mandatory retirement. In FY22, two senior Navy JAGC Captains (O-6) were selected to be retained for three years beyond their mandatory retirement date to serve as military judges.

b. Military Justice Training and Professional Development Programs

(1) The Naval Justice School (NJS), headquartered in Newport, RI, conducted 108 in-resident and virtual courses for 3,647 students in FY22, including providing 340 military justice practitioners with military justice training. NJS courses included the Military Justice Orientation Course (MJOC), Prosecuting Special Victim Cases, Defending Sexual Assault Cases, Senior Counsel Manager's Course, VLC Certification Course, and Classified Information Litigation Course.

⁴ Increased from 99 designated officers in FY21.

⁵ Renamed on September 30, 2022, formerly titled Senior Trial Counsel.

(2) At the NJS Basic Lawyer Course (BLC), all new Navy judge advocates, along with new Marine Corps and Coast Guard counsel, received ten weeks of legal training, five of which focused on military justice. NJS annually implements an updated curriculum for the BLC after close coordination with a senior review panel of military justice leaders across the Navy, Marine Corps, and Coast Guard. The revalidated course objectives, including the standards for JAG certification as a courtroom counsel under Article 27, UCMJ, are designed to complement the curriculum and learning objectives of the MJOC.

(3) Similar to prior years, all Navy judge advocates in their initial tours underwent a robust professional development program at their first commands. This program included professional development in military justice (with year-long assigned rotations in prosecution or defense offices). NJS reviewed and updated the professional development standards for this program to ensure it contains the most up-to-date training objectives and current policies. The program, previously known as the First Tour Judge Advocate Program was renamed the Judge Advocate Professional Development and Training Program in 2021 to better reflect the purpose and function of the program.

(4) FY22 was the first full year of conducting the MJOC. This two-week course, offered three times during the year, provides critical baseline knowledge and comprehensive military justice training to new trial attorneys. Parallel MJOC courses designed specifically for prosecution and defense counsel utilized classroom instruction by military justice specialists, live demonstrations, and hands-on practical advocacy exercises led by experienced field practitioners, culminating in a mock trial between prosecution and defense counsel in the parallel courses. The MJOC curriculum incorporates a variety of training standards and certification requirements into one course, including those recommended by the Sexual Assault Accountability and Investigation Task Force, thus ensuring uniform training.

(5) NJS developed and executed the Navy and Marine Corps inaugural VLC Certification Course on 25-29 April 2022 in coordination with Navy and Marine Corps VLC organizations. The course was completed by 18 Navy VLC (including VLC Program Chief), 17 Marine Corps VLC, and four Coast Guard Special Victims' Counsel (SVC). Three Navy VLC and one civilian paralegal who were unable to attend the Navy and Marine Corps VLC Certification Course were certified after completion of the Army SVC Certification Course in August 2022. Planning for the second iteration of the Navy and Marine Corps course is underway, with a scheduled course date of 24-28 April 2023 at NJS. Prior to the development of this course, Navy and Marine Corps VLC attended either the Air Force or Army SVC Certification courses. This year's Navy course offered plenary, panel, and breakout sessions with judge advocates, VLC stakeholders (including Family Advocacy Program and Naval Criminal Investigative Service representatives), and subject matter experts such as expert witnesses and military judges. The course also offered practical exercises to develop and enhance technical representation and advocacy skills of VLC counsel.

c. Trial Counsel

(1) TCAP is tasked with ensuring that all trial counsel receive proper training, support, and assistance, and have access to necessary resources. In FY22, TCAP was staffed with an O-5 (Commander) MJLCT “Expert” designated officer as Director, an additional O-5 MJLCT “Specialist II” designated officer who joined the team to support an ongoing complex General Court-Martial, two O-4 (Lieutenant Commander) MJLCT “Specialist II” designated officers, an E-8 (Senior Chief Petty Officer) Legalman, and two civilian (GS-15) attorneys with extensive civilian prosecution experience in complex cases, one of whom serves as Deputy Director.

(2) TCAP provided in-person or virtual training at each of the main prosecution offices located at the Navy’s eight RLSOs. They also conducted regular training webinars on critical and emerging issues. Additionally, they provided focused training to individual prosecution offices by request.

(3) TCAP supported trial counsel with extensive “reach back” support, and conducted recurring case review conferences with trial counsel to provide guidance and case analysis. TCAP facilitated multiple online community discussions targeted at different groups (Senior Prosecutors, trial counsel, and judge advocates in their initial tour) that provided real-time advice, calibrated based on experience level, to counsel worldwide. TCAP also maintained an updated online database of sample documents and guides. Upon request and as needed, TCAP provided on-site support to ongoing courts-martial and served as counsel of record.

(4) All new trial counsel completed the required MJOC. More experienced trial counsel received advanced training at the week-long Prosecuting Special Victim Crimes Course. These two NJS courses benefit from instruction led predominantly by TCAP personnel. Additionally, utilizing the help of civilian experts, TCAP provided focused in-person trainings on prosecuting domestic violence, child abuse, and child exploitation cases.

(5) Every trial counsel was supervised by an experienced O-5 or O-4 MJLCT-designated officer serving as Senior Prosecutor, each of whom was selected based on military justice experience, capacity for special victim and other complex litigation, and their ability to supervise subordinate counsel and manage a prosecution office.

(6) The Assistant for Prosecution Services (APS) position was established to enhance prosecution focus, consistency, oversight and rapid dissemination of lessons learned, and to facilitate a more uniform practice across the prosecution enterprise. The APS, an O-6 and MJLCT Expert, reports directly to the RLSO Director of Operations and works closely with RLSO Trial Departments Heads and Commanding Officers. In FY22, APS led case management system improvement efforts, oversaw high-visibility, pre-trial confinement, and speedy-trial vulnerable cases, and implemented policies to reduce case processing timelines.

d. Defense Counsel

(1) Similar to TCAP, DCAP provided support and assistance to defense counsel worldwide. In FY22, DCAP was staffed with an O-5 (Commander) MJLCT “Specialist II” designated officer as Director, two other MJLCT designated officers (one O-5 on the West Coast and one O-4 in Washington, DC), and a civilian Deputy Director with over 30 years of criminal defense experience.

(2) DCAP utilized a variety of methods to provide support to defense counsel worldwide, including in-person and virtual training, a monthly Podcast, and a regular newsletter that highlighted emerging issues and provided advice to defense counsel throughout the fleet. DCAP also maintained a central repository of defense resources and an online discussion board. On several occasions, DCAP personnel provided on-site support to ongoing courts-martial and worked alongside defense counsel as assistant counsel of record. In September 2022, DCAP held the DSO Training Symposium, hosting over 70 attendees across all Navy defense offices. This was the first in-person annual symposium in over four years.

(3) All new defense counsel completed the required MJOC, with instruction led predominantly by DCAP personnel. New defense counsel also attended the Defending Sexual Assault Cases course in August 2022. Experienced defense counsel and military justice managers attended a variety of advanced training in complex litigation, including training provided by the National Criminal Defense College.

(4) Similar to the prosecution command structure, each defense counsel was supervised by an SDC at one of four regional defense commands. All SDCs were O-4 (Lieutenant Commander) or O-5(sel) MJLCT-designated officers. In addition, all regional defense commands were led by either an MJLCT-designated commanding officer or executive officer with significant military justice experience.

(5) The four regional defense commands were supported by eight criminal investigators called Defense Litigation Support Specialists (DLSS). These civilian investigative experts each carried an average of twenty complex cases in FY22. Additionally, DLSS assisted the DCAP’s Mobile Training Team and global defense training efforts, and presented multiple training blocks at the 2022 DSO Training Symposium.

e. Victims’ Legal Counsel

(1) By the end of FY22, 44 VLC provided legal support to approximately 1,600 sexual offense and domestic violence victims at over 500 proceedings and conducted more than 500 outreach briefs to more than 20,000 personnel. VLC were supervised and trained within the VLC Program, which is overseen by a senior O-6 (Captain) Chief, a civilian GS-15 Deputy, and a senior O-5 (Commander) Operations Officer.

(2) The JAGC maintained a rigorous selection process and extensive training program for new VLC, ensuring that motivated, capable attorneys were assigned to this critical function. Every VLC candidate was screened based on their experience, maturity, and judgment, and were interviewed by the JAG, Commander, Naval Legal Service Command (NLSC) (O-7), and the VLC Program Chief prior to selection. With the detailing of new billets and routine turnover, 20 new VLC were selected in FY22.

(3) All new VLC completed a VLC/SVC Certification Course prior to representing clients. VLC also attended specialized training in representing child victims and victims of domestic violence. In September 2022, the VLC Program held its seventh annual training symposium. This week-long, in-person program included training on: vicarious trauma; resilience; child victims; recent appellate case law; professional responsibility; and domestic violence resources. The training symposium also included presentations from the Acting Director of the Navy's Force Resiliency Office, Naval Criminal Investigative Service, the District Attorney of Santa Barbara County, the JAG, and the NLSC Commander. In addition, the VLC Program conducted monthly training for all personnel throughout FY22. As discussed above, NJS will continue offering an annual VLC certification course, next scheduled for April 2023.

(4) The VLC Program continued to develop its appellate practice team, extending it to eight VLC appellate practitioners assigned, as a collateral duty, to aid trial VLC on interlocutory and appellate issues. The VLC Program also utilized a Victims' Counsel Assistance Program to facilitate reach-back support for VLC practitioners in the field. This program, staffed by VLC personnel as a collateral duty, provides military justice expertise and support to VLC personnel at trial.

f. Military Judges

(1) The NMCTJ presides over all courts-martial within the Department of the Navy and is composed of ten judicial circuits. In FY22, the NMCTJ consisted of 27 active-duty Navy and Marine Corps judges and 13 Reserve Navy and Marine Corps judges.

(2) In FY22, the NMCCA consisted of between seven to nine active-duty Navy and Marine Corps appellate judges, six Navy Reserve appellate judges, and two Marine Corps Reserve appellate judges.

(3) Selection Requirements. The Navy continued to employ rigorous screening and training requirements for military judges in FY22.

(a) Before assignment to a trial or appellate judicial billet, Navy and Marine Corps judge advocates were screened by a Judicial Screening Board and certified by the JAG as

qualified for judicial duties. This process, unique to the Navy and Marine Corps, ensured only highly qualified judge advocates are recommended for the bench.

(b) All newly reporting trial and appellate judges graduated the exhaustive three-week Military Judge Course hosted by the U.S. Army's Judge Advocate General's Legal Center and School in Charlottesville, VA. The course included detailed instruction on the court-martial process, evidence, procedure, Constitutional law, judicial problem solving, and judicial methodology. It also incorporated demonstrations and practical exercises. The course returned to an entirely in-person format this year.

(4) Military Judges Continuing Education

(a) In February 2022, the Department of the Air Force hosted the Joint Military Judges Annual Training at the Air Force Judge Advocate General's School at Maxwell AFB, Alabama, with instructors from the Department of Defense (DOD), and the NMCTJ, as well as the Honorable Judge Gregory Maggs from CAAF, and Professor Erwin Chemerinsky, Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law. A number of active duty and reserve judges assigned to the NMCTJ participated in this three-day course, as did over 100 additional judges across all services. During the training, the NMCTJ judges went to the Legacy Museum in Montgomery, Alabama, and received unconscious bias training. The Department of the Navy will host this training, likely in person, in fiscal year 2023.

(b) In September 2022, all NMCTJ judges participated in annual training provided by outside organizations and NMCTJ instructors. Training topics included judicial methodology, evidentiary issues associated with Military Rules of Evidence 412 and 513, judicial ethics, memory and alcohol issues in sexual assault cases, and diversity, equity, and inclusion on the bench and in the courtroom.

(c) NMCTJ judges also attended a variety of courses hosted by the National Judicial College (NJC), including judicial writing and search and seizure.

(d) NMCCA judges attended the annual William S. Fulton, Jr., Military Appellate Judges' Training Conference, a two-day, inter-service event held in Washington, D.C., that included discussion on significant appellate developments (U.S. Supreme Court, CAAF, and Service Courts of Criminal Appeals cases), ethics, and common issues at the Courts of Criminal Appeals.

(e) Several NMCCA judges also attended NJC-hosted courses, including a judicial writing course and the annual Appellate Judges Education Institute (AJEI) summit.

g. National Security Cases

(1) OJAG Code 30 is unique in the DOD as the only office exclusively dedicated to supporting litigation involving classified information. It is the Navy JAGC's center of excellence for classified information litigation, including courts-martial designated as national security cases. In FY22, Code 30 staff consisted of an O-5 (Commander) Director and O-4 (Lieutenant Commander) Deputy Director.

(2) In FY22, Code 30 provided support to 1 federal district court case involving classified information, and 12 military cases (2 appellate cases, 4 courts-martial, 2 administrative hearings, 2 active investigations, and 2 non-judicial punishment cases). Code 30 coordinated multiple matters with Original Classification Authorities (OCA) and Special Security Officers. Code 30 also worked with the DOJ, other intelligence and law enforcement partners, and other Services, to refine classified litigation practice across the Sea Services, improve the use of classified information in military and DOJ cases, and ensure that classified information remains protected from unauthorized disclosure during litigation. Code 30 provided extensive investigation and litigation support to judge advocates across all the Services and law enforcement agents including:

(a) Coordinating with high-level OCAs; facilitating security clearance requests for courts-martial personnel; processing requests for classification reviews of evidence; and advising on the classified information privilege under Military Rule of Evidence 505 and the Classified Information Procedures Act, as applicable.

(b) Providing classified information litigation training to judge advocates from across the Services at Code 30's annual Classified Information Litigation Course and to military judges and others involved in classified information litigation through other courses.

(c) Maintaining a library of resources for national security/classified information cases, including distributing Code 30's National Security Litigation Primer to practitioners.

(d) Ensuring our two classified information litigation "hubs" in Norfolk and San Diego are equipped to litigate national security and classified information cases.

(e) Providing supplemental instruction for the Joint Counterintelligence Training Activity DOD Counterintelligence Agent Course.

h. Military Commissions

(1) The Office of the Chief Prosecutor (OCP). In FY22, 12 active duty Navy Judge Advocates (supported by 2 reserve officers) and 7 Legalmen served at OCP, which used a robust orientation program to train new counsel. In June 2022, RDML Aaron Rugh, USN, joined OCP

as Chief Prosecutor. All new counsel were trained in the role of the commissions, the rules and procedures of the Military Commissions Act of 2009, and litigating classified information cases under the Military Commissions Act corollary to the Classified Information Procedures Act. All counsel worked under the supervision of experienced attorneys to gain practical experience and training.

(2) The Military Commissions Defense Office (MCDO). Legal efforts at MCDO combine criminal law, constitutional law, international humanitarian law, and international relations. In FY22, 20 Navy judge advocates (17 active duty, 3 reserve) and 9 Legalmen served at the MCDO. Each military counsel was assigned to one of 10 defense teams, trained in the rules and procedures of the Military Commissions Act of 2009, and worked under the mentorship of an experienced civilian attorney. A Managing Defense Counsel also supervised day-to-day operations of each defense team, with senior Navy judge advocates typically assigned as Managing Defense Counsel for their respective joint teams.

5. The independent views of the JAG as to the sufficiency of resources available within the Navy, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions: During FY22, new statutory requirements contained in the FY21 and FY22 NDAAs, combined with calls from Congress to more closely track and report disciplinary proceeding data, required additional legal resources and personnel. Over the course of the Programming Objective Memorandum (POM) 2022 budgetary cycle, the JAGC grew by a total of 96 civilian, 17 officer, and 1 enlisted billets, in response to the 2019 SECNAV directed Comprehensive Review (CR) of the uniformed legal communities in the DON. The CR documented organizational, procedural and resource-related issues that had limited the efficiency and effectiveness of legal services. Notwithstanding these gains, NLSC continues to experience growth in mission requirements, including expansion of legal services to victims of domestic violence, that drive a continuing and critical need for additional military and civilian personnel and support.⁶ Obtaining the resources, personnel, and support necessary to meet new and growing legal demand signals continues to be a priority for the JAGC.

a. Funding process. Continuing resolutions impact the ability to execute funding earlier in the fiscal year, which in turn hampers the ability to obtain additional funding due to low execution rates.

(1) In October 2019, NLSC requested Shore Manpower Requirements Determination (SMRD) reviews for all 14 (now 13) NLSC commands. This request was in accordance with the manpower review called for in the Comprehensive Review. Navy Manpower Analysis Center has completed SMRD reviews of six NLSC commands. The Budget Submitting Office is currently updating the NLSC activity manpower document to reflect requirements (45 military and 11 civilian billets) that were validated through the SMRD study. In POM24,

⁶ Mission requirements extend beyond specific military justice billets in trial, defense, and the VLC, and include NLSC billets such as legal assistance, education specialists, physical security, and information technology specialists.

NLSC submitted unfunded requests for these validated billets, but they were not approved through the POM and Secretariat Review Board (SRB) process.

(2) Supplemental Sexual Assault Prevention and Response (SAPR) funding from both DON and DoD was delayed due to the continuing resolution and the requisite steps in the reprogramming process. With SAPR funding generally not available until the fourth quarter of the fiscal year, planning and execution of those funds presents challenges.

b. Judge advocate manning. In FY22, the JAGC filled six new judge advocate billets required by the Fleet in order to provide specialized and comprehensive legal support. Also during FY22 and in response to the SECNAV Comprehensive Review recommendations, the Navy realigned staff judge advocates and others to the Region Commanders they support in order to better align with the mission, including military justice advice. However, persistent O-4 manning shortfalls,⁷ including among staff judge advocates and litigators, continued through FY22, impacting assignment of officers to fill military justice billets at this rank. The JAGC is actively working to address these shortfalls through combination of promotion planning and retention efforts, including the introduction of increased JAGC incentive pay in FY22.

c. Enlisted paralegal manning. The Navy JAGC was supported by 474 active-duty personnel in the Legalman rating in FY22, 53 less than the authorized enlisted programmed authorizations of 527. Some of the gapped billets affected prosecution and defense offices, detracting from military justice efficiency by requiring judge advocates to spend time on administrative and paralegal duties rather than focusing on their counsel responsibilities. During this same period, the JAGC filled nine new Legalmen billets required by the Fleet in order to provide specialized and comprehensive legal support. The Navy JAGC is continuing to work with Navy Personnel Command to convert more Fleet Sailors to the LN rating (currently a conversion-only rating) with a goal of eliminating this shortfall.

d. Civilian paralegals and other specialists. Of the aforementioned 96 additional civilian billets approved by POM 22: 31 billets comprised of civilian attorneys, paralegals, and courtroom security personnel hired for military justice support; 17 billets to provide legal counsel to domestic violence victims (for legal assistance and VLC services); 11 billets to facilitate public access to courts; and the remaining for other JAGC mission areas. The civilian hiring process can be cumbersome and resulted in the onboarding of only 30 of the 59 new military justice related civilian billets in FY22.

e. Training. The JAGC made significant training advancements in FY22. In addition to the training courses previously described, the development and implementation of the OSTC in 2023 and beyond will keep military justice training at the forefront of training and curriculum development efforts for the JAGC and across the Navy. This will require increased dedication of our training and education resources. Continued focus is needed to ensure NJS and the OJAG

⁷ At the end of FY22, JAGC O-4 officer programmed authorizations were 286, while actual inventory was only 256, for a shortfall of 30 O-4s.

Special Assistant for Training (currently dual-hatted as CO of NJS) have the necessary budget and personnel resources to meet all training requirements.

f. Retention. Retaining senior and mid-career litigators and staff judge advocates continued to be a challenge. The JAGC received an increase in Judge Advocate Career Incentive Pay (JACP) in July 2022, from a total potential incentive pay out of \$60,000 per JAG over 7 years, to \$110,000 per JAG over 9 years (with an additional \$30,000 available to MJLCT litigators). JACP remained \$30,000 for Phase I (O-3s with 5 to 7 years commissioned service (YCS)) and increased from \$15,000 to \$40,000 at specific career intervals: Phase II (O-4s with 8 to 10 YCS) and Phase III (O-4s with 11 to 13 YCS). JACP also included a targeted \$10,000 incentive for MJLCT officers as each of the three phases. Prior to this increase, the JACP had remained unchanged since 2001. Increasingly, more mid-career officers are eligible for Public Service Loan Forgiveness (PSLF) relief and have taken advantage of the Blended Retirement System (BRS), which poses a continued retention challenge. The JAGC remains focused on monitoring how retention incentives such as JACP and geographically flexible billets offset the combination of PSLF relief and BRS for mid-career and senior litigators and staff judge advocates. Also, the loss of flag pay (in retirement), several years ago, for those senior O-6s who serve as Assistant Judge Advocates General removed a valuable financial incentive to retain senior JAGC officers.

g. Technology. Deficiencies in information technology systems continued to be one of our biggest challenges. Our legal community lacks modern systems in military justice data collection, case management, and court reporting. Although more work is needed, the Navy JAGC took the following steps in FY22 to improve military justice management systems and court-reporting abilities:


(1) While still utilizing the bridging, Sharepoint-based, military justice management system called "Wolverine," implemented in 2018, the Navy and Marine Corps continued efforts in conjunction with Navy information technology offices, including PMW 250, to configure and deploy a new military justice management system (Naval Court-Martial Reporting System (NCORS)). NCORS will more efficiently collect required data, manage cases throughout the courts-martial process, and provide public access to dockets, filings, and records, all required by Article 140a, UCMJ. The goal is a modern, cloud-hosted, highly-configurable system with data sharing and interfaces with other Department of the Navy databases. In July 2022, NCORS moved into Phase 3, a twelve-month pilot to production phase: to finish configuration of military justice workflows and supporting stakeholder modules; deploy the platform into an approved Cloud environment; and reach Full Operational Capacity (FOC) for the system. Once operational, NCORS will move into Phase 4 (sustainment), beginning with a contract (baseline plus 4 option years) for ongoing administration and maintenance of the NCORS platform. OJAG requested NCORS funding support during the FY23 POM and SRB cycle, however, the request was disapproved. Because the SRB23 request for NCORS resources was denied, there is insufficient funding (current projected funding shortfall is at least \$4.53M) for award of the Phase 4 contract. In prior years, the JAGC utilized DoD SAPR funding to augment the NCORS baseline budget, which was insufficient in FY21 (for the Phase 2 contract award) and FY22 (for

the Phase 3 contract award). However, the funding shortfall for Phase 4 must be addressed not later than March 2023, a full 5-6 months in advance of the timeline for receipt of DoD SAPR funding (usually received in August and September). Beginning not later than March 2023, and for all future fiscal years, full funding support for NCORS must be provided by spring in order to complete staffing requirements for timely contract award.

(2) The Navy JAGC was unsuccessful in its effort to configure, test, and pilot an artificial intelligence-supported, cloud-based speech-to-text transcription capability. Current efforts now focus on updating and upgrading existing courtroom information technology equipment and the hardware and software dedicated to court-reporting functions. Over the course of FY23, courtrooms in the four busiest judicial circuits will be upgraded to integrate new audio capture equipment with our existing courtroom technology. In addition, all court reporters will receive new hardware along with the latest updated version of our transcription software.

h. Facilities. The Navy continues to pursue a multiyear effort by the JAGC to establish a newly renovated Fleet Legal Services Complex in Norfolk, Virginia, designed to consolidate and optimize the major military justice functions in the Navy's largest fleet concentration area. While the design phase was successfully initiated in FY22, the Navy continues its efforts to balance competing priorities to see the project to fruition.

6. Conclusion: The Navy JAGC continues to seek opportunities to better serve the Fleet and meet the evolving challenges of military justice and mission accomplishment. Military justice is essential to maintaining good order and discipline throughout the Fleet, and the JAGC will remain at the forefront of reform efforts and implementation. Continuing to implement military justice reform as mandated by the FY22 NDAA and addressing the recommendations of the Secretary of Defense's Independent Review Commission on Sexual Assault in the Military are my top priority. This requires focus not only on the manning and resourcing required to establish the OSTC, but also on the development of the processes and training for litigators, staff judge advocates, commanders and the Fleet. We are on target to meet all implementation milestones. As always, the JAGC maintains its stalwart resolve to embody the Navy's core values, provide the highest level of professional legal services to Sailors, Marines, and their families, and ensure the fair administration of justice. Rising to meet the mission, and delivering exceptional results, is one of my top priorities for the JAGC in the next year.


D. E. CRANDALL
Vice Admiral, JAGC, U.S. Navy
Judge Advocate General

APPENDIX

Report Period: FISCAL YEAR 2022

PART 1 – NAVY PENDING COURTS-MARTIAL (As of 30 September 2022)

TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		49	
BCD SPECIAL		33	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(a))		1	
SUMMARY [C20-QCAR]		1	
TOTAL:	45	84	129

PART 2 – NAVY COURTS-MARTIAL STATISTICS (PERSONS)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OF CASES TRIED OVER LAST REPORT
GENERAL	81	67	14	- 26.4%
BCD SPECIAL	94	87	7	+ 25.3%
NON-BCD SPECIAL	0	0	0	0.0%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(a))	6	3	3	- 22.2%
SUMMARY	9	9	0	- 69.2%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				- 13.6%

PART 3 – ACCUSED DEMOGRAPHIC DATA

TYPE COURT	Total	GENDER		ETHNICITY			RACE						
		M	F	Hispanic / Latino	Non-Hispanic / Latino	Unknown	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unknown
GENERAL	81	79	2	14	66	1	1	2	21	0	49	8	0
SPECIAL	94	88	6	9	85	0	1	4	28	1	46	14	0
MJ SPECIAL (ART. 16 (c)(2)(a))	6	6	0	2	4	0	1	0	3	0	2	0	0
SUMMARY	9	8	1	1	8	0	0	0	4	0	2	3	0

APPENDIX

PART 4 – VICTIM DEMOGRAPHIC DATA [A]

TYPE COURT	Total	GENDER			ETHNICITY			RACE						
		M	F	UNK	Hispanic / Latino	Non-Hispanic / Latino	UNK	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	UNK
GENERAL	149	12	126	11	12	47	90	1	3	9	1	39	9	87
SPECIAL	83	17	62	4	7	48	28	0	1	8	0	40	6	28
MJ SPECIAL (ART. 16(c)(2)(a))	3	1	1	1	1	1	1	0	0	0	0	1	1	1
SUMMARY	8	3	5	0	0	7	1	1	0	1	0	3	2	1

PART 5 – NAVY DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT [B]

GENERAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	20
NUMBER OF BAD-CONDUCT DISCHARGES	29
SPECIAL COURTS-MARTIAL	
NUMBER OF BAD-CONDUCT DISCHARGES	32

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG (NAVY & MARINE CORPS)

FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	7
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	1
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	230
FOR EXAMINATION UNDER ARTICLE 65(d)	43

PART 7 – WORKLOAD OF THE U.S. NAVY - MARINE CORPS COURT OF CRIMINAL APPEALS (NAVY & MARINE CORPS)

TOTAL ON HAND BEGINNING OF PERIOD	165 [C]
TOTAL CASES REFERRED FOR REVIEW	252 [C]
TOTAL CASES REVIEWED	289 [D]
TOTAL PENDING AT CLOSE OF PERIOD	128 [C]
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD	- 8.8%

APPENDIX

PART 8 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF) (NAVY & MARINE CORPS)

TOTAL PETITIONS TO CAAF	41
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PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (NAVY & MARINE CORPS)

TOTAL PENDING BEGINNING OF PERIOD		15
RECEIVED		2
DISPOSED OF:		13
GRANTED	1	
DENIED	12	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		4

PART 10 – NAVY ORGANIZATION OF COURTS [E]

TRIALS BY MILITARY JUDGE ALONE		146
GENERAL COURTS-MARTIAL	55	
SPECIAL COURTS-MARTIAL	85	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(a))	6	
TRIALS BY MILITARY JUDGE WITH MEMBERS		35
GENERAL COURTS-MARTIAL	26	
SPECIAL COURTS-MARTIAL	9	

PART 11 – NAVY STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	348,521 [F]
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PART 12 – NAVY NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	5,992
RATE PER 1,000	17.2

EXPLANATORY NOTES

[A] Total includes victims not accounted for in the gender section. These victims are either an organization or have an undisclosed gender.

[B] Based on Entry of Judgment and records of trial received in FY for appellate review.

[C] Includes only cases briefed and at issue.

[D] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.

[E] Only includes cases that were tried to completion.

[F] This number includes only Active Component Sailors and does not include USNR, unless the Reservists were called to Active Duty during the FY.