

Report to Congress

U.S. Army Report on Military Justice for Fiscal Year 2023

31 December 2023

Prepared by:

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

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**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY
ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE
OCTOBER 1, 2022 TO SEPTEMBER 30, 2023**

In Fiscal Year 2023 (FY23), The Judge Advocate General's Corps (JAG Corps) continued to refine the practice of military justice by assessing, planning, and executing the training, policy, infrastructure, and technology changes necessary to support the military justice reforms required by the FY22 NDAA and FY23 NDAA. It was a year of transformation focused on building expertise, ensuring a smooth transition to the full operational capability (FOC) of the Office of Special Trial Counsel (OSTC), and preserving the Army's commitment to good order and discipline.

The Secretary of the Army established the OSTC as a field operating agency in July 2022. In FY23, the OSTC met several milestones as it approached FOC. These included: establishment of a permanent OSTC headquarters at Fort Belvoir, Virginia, eight circuit offices, and 28 field offices throughout the world; issuance of special trial counsel training and education policies; development and implementation of Standard Operating Procedures (SOPs); and the assignment and certification of all special trial counsel. These steps have fully prepared the OSTC for FOC on 28 December 2023.

The Trial Defense Service (TDS) and Special Victim's Counsel (SVC) Program also implemented significant changes to improve representation of accused Soldiers and victims of sex-related and domestic violence offenses and restructure in anticipation of changes to the military justice system. In FY23, TDS continued to implement structural changes, including establishment of regional complex litigation teams, and hiring personnel as part of the Defense Investigator program. With regard to defense resources, the JAG Corps established the policy and regulatory structure to facilitate independent defense witness funding. During FY23, the JAG Corps created a Civilian SVC Pilot Program and began identifying, training, and certifying civilian legal assistance attorneys as SVC. This program, which will continue through FY24, will improve access to SVC services for victims and increase continuity of care throughout the process.

In furtherance of TJAG's duties under Article 6(a), UCMJ, TJAG and senior leaders in the JAG Corps conducted 20 worldwide visits 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 FY23, the Army had 283 pending courts-martial cases, 75 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 FY23 is provided in the Appendix.

2. Information on the appellate review process:

a. Compliance with processing time goals: In FY23, 358 records of trial and over 950 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, 341 were received for the first time (rather than on remand from the Court of Appeals for the Armed Forces (CAAF) or returned from the convening authority after remand). Of these cases, none were processed under the procedures applicable prior to the effective date of the Military Justice Act of 2016 (MJA 16) involving a promulgating order and 341 were processed under MJA 16 procedures involving an entry of judgement. In 175 of the 341 cases processed under MJA 16 procedures, the certification of the record of trial was completed within 120 days. In 259 of the 341 cases processed under MJA 16 procedures the record was received by ACCA within 30 days of the completion of the later of certification of the record of trial or entry of judgement.

In FY23, ACCA rendered an initial decision in 298 cases, with an average processing time of 245 days from receipt of the record of trial by the clerk of court to decision by ACCA. Of the 298 decisions, 287 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.

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.** The JAG Corps focused in FY23 on executing the training, policy, infrastructure, and technology changes necessary to support the military justice reforms required by the FY22 NDAA and FY23 NDAA. It was a year of transformation focused on structural changes.

(1) The Office of Special Trial Counsel. Pursuant to the FY22 NDAA and FY23 NDAA military justice reforms and guidance from the Secretary of Defense, the OSTC structure is in the final stages of implementation. The permanent OSTC headquarters was established at Fort Belvoir, Virginia in June 2023. The OSTC held its inaugural Special Trial Counsel Certification course over four weeks in June and September 2023. In August 2023 the OSTC established 28 field offices and eight circuit headquarters throughout the world. All OSTC personnel and resources are in place, and the OSTC is positioned for FOC on 28 December 2023, when it will

begin exercising authority over 13 designated covered UCMJ offenses. Establishment of the OSTC significantly increased the number of litigation billets in the JAG Corps. The OSTC currently has 159 authorized personnel and will grow to 180 authorized personnel by FY 25. This initial growth includes 53 litigation billets for judge advocates certified as special trial counsel.

(2) Trial Defense Service. To ensure parity in the military justice system, additional resourcing for TDS was necessary to continue to provide principled counsel to Soldiers accused of crimes. The Trial Defense Service will grow by approximately 60 authorized personnel between FY23 and FY25, including 21 litigation billets for judge advocates serving as defense counsel. In FY23, the JAG Corps continued numerous initiatives in support of defense counsel control of defense resources. These included: 1) establishing the policy and regulatory structure to facilitate independent defense witness funding; and 2) continued hiring in support of the Defense Investigator program. The Trial Defense Service also completed a comprehensive manpower study to determine the right personnel resourcing to support paralegal assignment to Trial Defense Service offices.

(3) Court Reporting Operational Planning Team. In FY22 The Judge Advocate General directed formation of an operational planning team (OPT) to assess the allocation of personnel and resources in the courts-martial process from the point of referral of charges to trial by court-martial to submission of a record of trial to ACCA, with specific emphasis on court-reporting. The OPT met frequently between September 2022 and August 2023 to focus on the mission of modernizing the structure, training, policies, and doctrine applicable to courts-martial processing, given statutory and technological changes, increased complexity in litigation, increased responsibilities for records management and public access. Continued work in FY24 will focus on implementing the structural, training, and regulatory changes recommended by the OPT as approved by The Judge Advocate General.

(4) Additional Transformation. In FY23 the JAG Corps focused on the redesign of training, policy, infrastructure, and technology changes necessary to support the military justice reforms required by the FY22 NDAA and FY23 NDAA. The JAG Corps developed and implemented a comprehensive training curriculum to educate Soldiers, Commanders, and judge advocates on changes to the military justice system, including the authorities of special trial counsel. During FY23, the JAG Corps continued to participate in the Joint Service Committee on Military Justice efforts to revise the Manual for Courts-Marital (MCM). In July, after the President issued an executive order amending the MCM, the JAG Corps finalized revision of Army Regulation 27-10, Military Justice. The JAG Corps also completed a structural reorganization of military justice personnel, including special trial counsel, defense counsel, SVC, and military judicial personnel, into eight circuits. Finally, during FY23 the JAG Corps modernized and significantly modernized one of its military justice databases, MJO.

b. Trial Counsel.

(1) Trial Counsel Assistance Program. FY23 was a year of significant transition for the Trial Counsel Assistance Program (TCAP). TCAP continued its three focused lines of effort by (1) providing continuing legal education and trial advocacy training at all levels to legal

professionals across the Army, and sister services; (2) delivering specialized technical and direct prosecutorial assistance for all criminal prosecutions, including complex and high profile courts-martial; and (3) ensuring justice in special victim cases through the oversight of the Special Victim Prosecutors (SVP), Special Victim Noncommissioned Officers (SVN), Special Victim Liaisons (SVL), and the Complex Litigation Team.

In June 2023, many of the personnel previously assigned to TCAP were reassigned to the OSTC. This reassignment specifically included special victim prosecutor, many of whom were trained and certified as special trial counsel. The reassignment also included special victim prosecutor support personnel such as the special victim noncommissioned officers (who were redesignated as special trial counsel noncommissioned officers), special victim liaisons, and special victim litigation experts. Those TCAP personnel remaining after the transition included five military attorneys, one senior civilian attorney advisor, and a legal administrator. In FY23, TCAP completed 17 training courses and 11 installation outreaches including development of a New Prosecutor course.

(2) Office of Special Trial Counsel. Beginning in June 2023, the OSTC assumed responsibility for the special victim-focused training previously conducted by TCAP. This included the Military Institute for the Prosecution of Sexual Violence (MIPSV), Prosecuting Domestic Violence, and Prosecuting Child Abuse courses. These courses included formal classroom instruction by nationally renowned experts on the dynamics of domestic violence and sexual assault, recognizing injuries, and identifying offender characteristics. Attendance at these courses was required for all special trial counsel and open to all trial counsel.

The OSTC conducted its first Special Trial Counsel Certification Course over four weeks in July 2023 and September 2023. This course focused on advanced classroom instruction and advocacy exercises related to the prosecution of covered offense cases. Completion of this course is a prerequisite for certification by TJAG as special trial counsel in accordance with 10 U.S.C. § 824a. A total of 67 attorneys are expected to be certified as special trial counsel prior to 28 December 2023.

Throughout FY23 OSTC attorneys presented at various conferences and external organizations such as the National District Attorneys Association and the Annual Conference on Crimes Against Women, which is the Nation's largest and most prestigious annual conference to address special victim crimes.

(3) Government Appellate Division. In accordance with 10 U.S.C. § 870, Government Appellate Division (GAD) counsel represent the U.S. Army in all appeals before ACCA, CAAF, and the Supreme Court of the United States (SCOTUS), when requested to do so by the Attorney General. It also represents the United States in government appeals in accordance with 10 U.S.C. § 862 and petitions for extraordinary relief. Additionally, GAD oversees the operations of TCAP and provides support to the rehearing center at Fort Leavenworth, Kansas. Government Appellate Division currently consists of 14 judge advocates, seven reserve component judge advocates, and two civilian paralegals.

Government Appellate Division represented the Government in approximately 300 cases in FY23 and filed 275 briefs at ACCA, including responses to 226 specific assignments of error, eight specified issue briefs, eight supplemental briefs, six appeals in accordance with 10 U.S.C § 862, and one extraordinary writ. At CAAF, GAD filed 110 responses to petitions for grants of review and 14 briefs, which included eight final briefs, four responses to extraordinary writs, and two other briefs. The GAD argued 14 cases before ACCA and seven cases before CAAF, including *United States v. Hasan*.

Government Appellate Division counsel participated in three ACCA Outreach Arguments in FY23 including oral arguments held at Florida International University College of Law (Miami, Florida); Temple University Beasley School of Law (Philadelphia, Pennsylvania); and Inter American University of Puerto Rico School of Law (San Juan, Puerto Rico).

Training for GAD counsel in FY23 included new counsel training, for newly assigned counsel shortly after their arrival to GAD; attendance at the annual two-day CAAF Continuing Legal Education and Training Program held at the Antonin Scalia School of Law at George Mason University; and the 10th Annual two-day Joint Appellate Advocacy Training held at Joint Base Andrews.

c. Defense Counsel.

(1) Trial Defense Service. In FY23, approximately 502 judge advocates and 200 paralegals were serving in the active duty, U.S. Army Reserve (USAR), and Army National Guard (ARNG), components of TDS. This included 148 judge advocates on active duty; 201 judge advocates assigned to one of three USAR TDS Legal Operations Detachments (LOD), and 125 judge advocates in the ARNG. While their oversight and supervision are independent from Commanders and Staff Judge Advocates, defense counsel assigned to TDS are stationed at 42 active duty military installations worldwide and approximately 47 reserve component locations. The Chief, TDS is located at Fort Belvoir, VA and exercises centralized supervision over all TDS assigned counsel.

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 actions such as administrative separation proceedings, nonjudicial punishment, and memoranda of reprimand rebuttals. In FY23 active duty defense counsel assisted Soldiers with the following actions:

General and Special Courts-Martial: 675
Administrative Representation / Consults: 45,190
Nonjudicial Punishment: 15,282
Other Military Justice Consultations: 49,512

From the TDS field office in Kuwait, TDS provided defense services to Soldiers deployed worldwide, including Iraq, Kuwait, and Qatar.

In FY23, USAR TDS consisted of approximately 201 judge advocates, three legal administrators, and 69 enlisted paralegals. These personnel were assigned to three separated

LODs. The 22d LOD, headquartered in San Antonio, Texas, area of responsibility included all states west of the Mississippi River, as well as the Republic of Korea and other locations in the Indo-Pacific region. The 154th LOD, headquartered in Alexandria, Virginia, area of responsibility included the southeastern United States, the lower Mississippi River valley, and Puerto Rico. The 16th LOD, headquartered in Fort Hamilton, New York, area of responsibility included the northeastern and Midwest United States and Germany.

The ARNG TDS, headquartered in Arlington, Virginia, consisted of approximately 125 judge advocates, two legal administrators, and 66 enlisted paralegals stationed in 50 states, the District of Columbia, and three 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.

In July 2023, the first cohort of defense complex litigators were assigned to TDS. This included eight defense complex litigators assigned to circuit locations with worldwide coverage. Defense complex litigators will provide advice and assistance to defense counsel within their circuit on high profile and complex cases, will be detailed to complex and capital cases as required, and will assist the senior defense counsel with defense counsel training. In FY23, two additional defense complex litigators were assigned to TDS headquarters at Fort Belvoir, Virginia. These officers assisted in the management of complex litigation counsel, identified defense training opportunities, planned, and executed a joint capital litigation training event, and were detailed to three cases referred to general courts-martial in FY23.

In FY23, TDS continued to hire and onboard defense investigators, including 15 defense investigators stationed at 12 field offices worldwide. Defense investigators provided case reviews of countless case files and were detailed to numerous courts-martial positive outcomes for TDS Soldier-clients.

(2) Defense Counsel Assistance Program. The Defense Counsel Assistance Program (DCAP) is the training branch of TDS. In FY23, DCAP included four judge advocates, two civilian attorney advisors, and one legal administrator. The Defense Counsel Assistance Program provided on-site training and real-time advice to active duty defense counsel and paralegals assigned to field offices worldwide.

In FY23, DCAP training events included three iterations of Defense Counsel 101, a five-day course that provided critical instruction to newly assigned defense counsel, paralegals, and defense investigators on all aspects of client representation with an emphasis on professional responsibility, complex issues arising in sexual assault cases, and negotiations. Approximately, 85 defense counsel and defense complex litigators attended one of five iterations of Defense Counsel 102 and received training on new developments in military justice and hands-on trial advocacy training, with a focus on sexual assault litigation. Approximately, 49 defense counsel attended Defense Counsel 103, which focused on digital evidence and motions preparation. Regional defense counsel, senior defense counsel, defense paralegal non-commissioned officers in charge, and defense investigators from the active duty, USAR, and ARNG components received instruction on their TDS leadership duties at the Trial Defense Leader Training (TDLT). Additionally, defense investigators received two days of instruction on substantive investigation

issues. Additionally, 14 attorneys attended Basic Trial Advocacy Course, 28 attended Intermediate Trial Advocacy Course, and 28 attended the Advanced Practitioners Course. The Defense Counsel Assistance Program also coordinated defense counsel attendance at the following courses: Advanced Trial Communications, Advanced Justice Practitioner's Course, Capital Voir Dire, Advanced Strategies for Child Abuse Cases, Classified Litigation, Forensic Child Interviews, Defending Sexual Assault Cases, and Destigmatizing and Litigating Mental and Behavioral Health in Criminal Cases. Defense counsel also had the opportunity to tour the U.S. Army Criminal Investigation Laboratory and receive instruction regarding forensic laboratory services.

In FY23, DCAP received over 1,000 emails, phone calls, and in-person inquiries from defense counsel. The Defense Counsel Assistance Program civilian attorney advisors provided direct assistance to defense counsel by researching case law, answering case specific questions, and providing sample motions, expert requests, and other trial documents. Moreover, DCAPs website provided counsel with DCAP trainings, desk books, and other reference materials on critical issues. Through DCAP Talks and DCAP 5-5, DCAP helped improved defense counsel practice, provided notice of changes in the law, and discussed the application of emerging appellate case law to trial defense strategy and practice. Through DCAP Bloviates, DCAP provided in-depth analysis on significant advocacy issues. Finally, DCAP also worked with DAD to assist TDS counsel in the preparation and filing of extraordinary writs before ACCA and CAAF.

In FY23, DCAP updated the Defense Counsel 102 Deskbook and released the 13th edition of the Defense Counsel 101 Deskbook. Both were distributed to all newly assigned defense counsel. Finally, DCAP continued its monthly newsletter, designed to provide information on appellate case law, law and advocacy practice tips, court-martial lessons learned, and the use of emerging technology and software in practice.

(3) Defense Appellate Division. The Defense Appellate Division (DAD) provided appellate representation to eligible Soldiers before ACCA, CAAF, and SCOTUS. Eligible Soldiers included those Soldiers convicted at courts-martial. The Defense Appellate Division included seventeen active duty and eight reserve component appellate defense counsel, one civilian senior capital appellate defense counsel, two civilian paralegals, and one legal support specialist. Appellate defense counsel assisted military and civilian trial defense counsel in the preparation and filing of extraordinary writs before ACCA and CAAF and represented Soldiers during interlocutory appeals in accordance with 10 U.S.C § 862.

At the end of FY23, DAD counsel represented Soldiers in approximately 378 cases at various stages of the appellate process and had 159 cases pending review and submission to ACCA. In FY23, DAD counsel filed 323 briefs with ACCA and 111 petitions with CAAF. DAD counsel also represented Soldiers during numerous oral arguments, including 16 cases argued before ACCA and nine argued before CAAF.

Defense Appellate Division counsel participated in three ACCA Outreach Arguments in FY23 including oral arguments held at Florida International University College of Law (Miami, Florida); Temple University Beasley School of Law (Philadelphia, Pennsylvania); and Inter

American University of Puerto Rico School of Law (San Juan, Puerto Rico). Additionally, DAD counsel participated in one CAAF outreach argument at Joint Base Lewis-McChord, Washington. Through these outreach arguments, appellate counsel were able to showcase 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 Victim's Counsel.** Special Victim's Counsel provided legal counsel to eligible clients who reported as victims of sex-related or domestic violence offenses. Special Victim's Counsel ensured clients' interests and rights were recognized and protected throughout the courts-marital process, and they empowered clients through professional competency and advocacy.

(1) The Army SVC Program provided technical and policy oversight, training, and technical support for all Army SVCs. Special Victim's Counsel also received 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 SVC Program provided technical advice and professional responsibility supervision.

(2) 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. In FY23, the Army conducted two SVC Certification Courses at TJAGLCS in Charlottesville, VA. The first course was held from 13-17 February 23, and it provided instruction on representation of adult sexual assault victims. The students who attended this course returned to TJAGLCS for the Child and Domestic Violence Certification Course, held in August 2023. A second SVC Certification Course was held 14-18 August 2023. In total, the Army trained 131 students, including active duty, USAR, and ARNG judge advocates, paralegals, other service personnel, as well as seven Army civilian legal assistance attorneys.¹ During these courses the students participated in plenary lectures and discussions, break-out groups, and a motion exercise led by the Army's Chief Trial Judge and other currently serving Army judges. The course addressed the law, procedures, best practices, introduction to other stakeholders, the justice process, investigation through post-incarceration client rights, and high-level trauma informed tactics. These courses also focused on wellness of the SVCs themselves and incorporated victim perspectives through presentations by domestic violence and sexual assault victims.

(3) Prior to attending the SVC Certification Course, nominees were required to complete the online DoD Catch a Serial Offender (CATCH) Program training. Special Victim's Counsel stationed within the continental United States were required to complete state-specific training prior to client representation as required by Section 550C of the FY20 NDAA. Additionally, in FY23, the SVC Program conducted three two-day trainings hosted by the Eastern, Western, and Europe regions.

¹ These attorneys were certified as SVCs as part of the Army's Civilian SVC Pilot Program implemented 1 October 2023.

(4) In FY23 the SVC Program implemented a Leadership Development Program (LDP) specifically for SVCs and SVC paralegals. During FY23, the SVC Program trained SVCs on case file management, client management, and key considerations in transferring and terminating client relationships.

(5) During FY23, TJAG approved a Civilian SVC Pilot Program which began on 1 October 2023. In FY23 the SVC Program identified, trained, and certified seven civilian legal assistance attorneys as part of this program. The pilot program will run through FY24 and is intended to help improve access to SVC services for victims and increase continuity of care throughout the process.

(6) The Judge Advocate General established a minimum tour-length for Army SVCs at 18 months. This change was implemented to reduce the frequency of SVC turnover for clients while allowing flexibility in the judge advocate assignment process and ensuring SVCs have sufficient time in positions to learn and thrive.

(7) Near the end of FY22, TJAG capped the caseload for SVCs at 25 clients per SVC. This policy ensured the Army met its statutory obligations, allowed SVCs to provide the best possible care to their clients, and enabled better management of SVC client caseloads and personal well-being. Since this policy's enactment, the SVCP has processed over 250 requests for SVCs to exceed the caseload cap.

(8) During FY23, the Army SVC Program added 17 SVC positions and five SVC paralegal positions. This growth provided greater flexibility to respond to requests for SVC services and allowed SVCs to better assist clients. In FY23 the active duty Army SVC Program included 91 SVCs and 17 SVC NCO billets.

(9) During FY23, 151 judge advocates performed SVC duties. This included 76 judge advocates who performed SVC duties full-time and 72 who performed SVC duties part-time, throughout or at some point during the fiscal year. Special Victim's Counsel provided services throughout the world, including deployed locations such as Iraq, Afghanistan, Kuwait, Africa, Europe, and Asia. During FY23, SVCs assisted 2,077 new clients. Special Victim's Counsel services were provided to an additional 384 clients reporting allegations of domestic violence. Of these clients, 129 were initially restricted reports that were later converted to unrestricted reports. Special Victim's Counsel clients included 1,464 Servicemembers, 28 DoD civilian employees, 514 adult dependents, and 58 minor dependents. In support of these clients, SVCs conducted 32,350 legal counselings, attended 2,888 interviews, and represented clients at 307 administrative separation proceedings and 250 courts-martial. To ensure military communities were aware of SVC Program services, SVCs conducted presentations at 553 outreach or training events.

e. The Judge Advocate General's Legal Center and School Criminal Law Academic Department. The mission of The Judge Advocate General's Legal Center and School (TJAGLCS) Criminal Law Department (ADC) 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 the curriculum. The ADC is responsible for developing 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 apprised of recent changes to military justice practice. The ADC 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 diverse audiences to include judge advocates (from all services), commanders, and international students. Courses are designed for: initial-entry judge advocates in the Officer Basic Course (OBC); new trial counsel, defense counsel, and 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 Child and Domestic Violence Certification Course; senior judge advocates in the Military Judges' Course and the Staff Judge Advocate Course; and commanders in the Senior Officer Legal Orientation Course (SOLO), 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 prior courses for more junior judge advocates, including: the Basic Trial Advocacy Course (offered by TCAP), Defense Counsel 101 (offered by DCAP), and the SVC Child and Domestic Violence Certification Course (offered by ADC). Students learn how to conduct sophisticated case analysis of four types of cases (sexual assault, domestic violence, fraud, and drug use), conduct voir dire, prepare panel member instructions, interview victims and witnesses, interact with an SVC, conduct direct and cross-examination of victims and witnesses, interview and conduct direct examinations of expert witnesses, and use technology and demonstrative evidence in an opening statement and closing argument. During FY23, the ADC continued to refine the course by ensuring advocates conducted four separate trials during the two-week course. 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, Graduate Course judge advocates serve as role players and provide ITAC students with the challenge of interviewing and interacting with victims and witnesses. This course was also greatly enhanced through 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. This demanding course was offered twice during FY23.

(3) Successful completion of the SVC Certification Course is required prior to certification by TJAG as an SVC. In this course, judge advocates learn best practices for working with victims of sexual assault, 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 advocate for victims' rights while working most effectively with commanders, law enforcement, and others in the military justice system. The SVC Certification Course includes a roundtable discussion where several individuals discuss their

experience and the assistance they received from an SVC. As victim's 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.

(4) The ADC continued to refine the SVC Certification Course curriculum this year through continued development of the SVC Child and Domestic Violence Certification Course, which follows the SVC Certification Course and is required prior to SVC representation of child clients. In FY23, courses were held 14-18 August 2023 and 21-24 August 2023. A second SVC Certification Course was added to increase the number of available training opportunities and the overall number of SVCs throughout the Army. That course was held 13-17 February 2023. For all SVC courses, ADC continued to develop 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 SVC on the dynamics of representing victims of domestic violence. The SVC Certification Course is offered twice a year while the SVC Child and Domestic Violence Certification Course is offered once a year.

(5) The ADC continued to create courses and content to respond to needs of the force. The ADC designed and executed the 2nd 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.

(6) The ADC annually conducts three week-long the Military Judge's Course. The Military Judge's Course is an academically rigorous course and has been recognized for excellence by the American Bar Association. The Military Judge's Course 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 was held from 22 May 2023 to 9 June 2023 and 42 military judges were certified, including 16 from the Army, 11 from the Air Force, 3 from the Coast Guard, 5 from the Marine Corps, and 7 from the Navy.

(7) In FY23, the ADC implemented a systems approach to planning, executing, and improving its curriculum through an iterative in-progress review and after-action review process. The intent of this approach is to make courses more practical for students. In FY23, ADC implemented the "Eliminating Bias in Military Justice" which was taught to every ADC student population, including both commanders and judge advocates.

(8) The ADC traditionally hosts the Kenneth J. Hodson Lecture in Criminal Law each year. Colonel (Retired) Larry Morris, Chief of Staff and Counselor to the President at the Catholic University of America, gave the Kenneth J. Hodson Chair lecture on 31 March 2023. Colonel Morris spoke at length about his thirty years of service as a judge advocate and the history of changes to military justice in that time.

f. Trial Judiciary.

(1) At the end of FY23 there were 26 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 eight circuits worldwide. Chief Circuit Judges supervise the judges within each circuit. In FY23 there were three military judges stationed at overseas locations, including one in Korea and two in Germany. Reserve component military judges were assigned to the 150th Legal Operations Detachment headquartered in Alexandria, Virginia and commanded by the Chief Trial Judge, USAR. Additionally, the Trial Judiciary provided military judges to serve as judges with the Military Commissions Trial Judiciary.

(2) Military judges primarily presided over trials referred to general and special courts-martial. In FY23, military judges presided over 675 original courts-martial, a 10% increase from FY22. Of the total cases tried in FY23, 151 were fully contested, 35 involved mixed pleas, 311 were guilty pleas, and the remaining 178 were terminated prior to findings. Of the 497 cases in which findings were entered in FY23, 232 of them (47%) included sexual misconduct related offenses (including alleged violations of Articles 120, 120b, and 120c, UCMJ), which was a less than 1% increase from FY22.

(3) The strength of the Trial Judiciary will always be its trial judges in the field, who rely on a 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 from all services—Army, Navy, Marine Corps, Air Force, and Coast Guard—prior to assignment as military judges. In FY23, 16 judge advocates attended the 66th Military Judges' Course held from 22 May 2023 to 9 June 2023. Nine active component, four USAR, and three ARNG judge advocates graduated from the course and were sworn in as new military trial judges. In addition to comprehensive military justice instruction, targeted and tailored instruction on unconscious bias and judicial wellness were two areas of emphasis during the FY23 course. The keynote speaker for the course was the Honorable Gregory Maggs, a sitting judge on the CAAF.

(4) In February 2023, the Navy conducted and facilitated the Joint Military Judges' Annual Training for all active duty and reserve trial judges. The Army Trial Judiciary held its annual Trial Judge's Sexual Assault Training in September 2023 at Fort Belvoir, VA. One of the highlights from this training was an inaugural block entitled "Tapping the Well of Wisdom." As part of the trial judiciary's continued focus on wellness and resiliency, four retired military judges spoke about the stressors of being a judge and how they coped with the difficult pace and subject matter. Each of them candidly shared what they wished they knew, implemented, or discovered that made their life on the bench, and life after leaving the bench, happier and healthier. The director of the Fort Belvoir Armed Forces Wellness Center also provided judges with additional helpful tools and resources. The trial judiciary continues to search for new and impactful ways of supporting, training, and better equipping its judges.

(5) The Trial Judiciary maintains and updates Department of the Army Pamphlet 27-9, Military Judges' Benchbook, which is used by all services and contains trial scripts and pattern

instructions for panel members. Changes to the Military Judge's Benchbook are approved by the Chief Trial Judge following review and comment by a 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) In FY23 the Trial Judiciary supported the training efforts of the JAG Corps, through participation in trial, defense, and special victim's counsel training events, paralegal and court reporter training, and advocacy training. Two years ago, the Trial Judiciary created an MS Teams "Bridging the Gap" channel for judges to provide timely feedback to counsel regarding advocacy. At the end of FY23, the channel had over four hundred members and was routinely praised by both trial counsel and defense counsel for its usefulness. The trial judiciary also participated in mock trial and moot court competitions; several judges volunteered to speak to mentorship groups, both within and outside the JAG Corps; and many engaged in recruitment opportunities for the Army and the JAG Corps. These efforts fulfilled the enduring vision of the Trial Judiciary: Independent but Invested.

g. Litigation Division. During FY23, 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 46 habeas corpus or military justice cases in FY23, 35 of which remain active. In the 11 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 from military confinement facilities.

(1) While many of these collateral attacks concerned traditional evidentiary and procedural challenges such as those pertaining to jurisdiction, sufficiency of the evidence, or the effectiveness of counsel, several recent cases involved novel, or otherwise undeveloped, areas of the law. In FY23, several petitioners brought challenges to the constitutionality of non-unanimous verdicts under the UCMJ. These petitioners argued that recent Supreme Court case law requiring unanimous verdicts in state courts must be applied to courts-martial. In addition, LTM continued to successfully defend against several challenges to the Army's court-martial jurisdiction over retirees, including medical disability retirees.

(2) Litigation Division periodically handles civil lawsuits involving Constitutional challenges to the military justice system or military confinement conditions, such as 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, and many battalion commanders also attend on a space available basis. In FY23, 393 commanders attended the SOLO, including all command-selected brigade commanders. 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. Seventeen general officers attended GOLO training at TJAGLCS in FY23. Company commanders and First Sergeants receive onsite training on various legal topics, including victims' rights, reporting and processing sexual assault cases. Additionally, in FY23 TJAGLCS created a new military justice training package which incorporates bias training. The JAG Corps leadership also provides eleven hours of instruction for active duty battalion commanders and four hours of instruction for active duty battalion command sergeants major attending the Pre-Command Course at Fort Leavenworth, Kansas. This instruction ensured compliance with Article 137, UCMJ.

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 the 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 seeking to develop and improve, the JAG Corps continues deliberate planning to assess if increased resources are necessary to ensure an efficient, fair, and professional military justice enterprise.

a. On 30 September 2023, the Army's end-strength was 453,468 Soldiers on active duty compared to an end strength of 465,625 in FY22. The attorney strength of the JAG Corps active component (AC) at the end of FY23 was 1,833. This figure does not include general officers or the 65 officers and eight enlisted Soldiers attending law school while participating in the Funded Legal Education Program. The FY23 end-strength of 1,841 is higher than the end-strength of 1,827 in FY22. The composition of the FY23 active component judge advocate population was 11% African American, 2% Asian American, 9% Hispanic American, and 30% female.

b. The grade distribution of the active duty judge advocate population for FY23 was: eight general officers (which includes the Legal Counsel to the Chairman Joint Chiefs of Staff; the Lead Special Trial Counsel; and the Chief Defense Counsel for the Office of Military Commissions); 132 colonels; 261 lieutenant colonels; 530 majors; and 918 captains and first lieutenants. An additional 103 warrant officers, 671 civilian attorneys, 602 civilian paraprofessionals and 1,626 enlisted paralegals from the active component supported legal operations worldwide.

c. The USAR judge advocate end strength at the end of FY23 was 1,866 (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 ARNG strength at the end of FY23 was 1,565. This includes 743 attorneys, 52 warrant officers, and 770 enlisted paralegals.

d. At the end of FY23, more than 320 JAG Corps personnel were deployed to assist operations in Guantanamo Bay, United Kingdom, Germany, Poland, Lithuania, Estonia, Romania, Kosovo, Syria, Iraq, Qatar, Bahrain, United Arab Emirates, Bahrain, Kuwait, Israel, Jordan, Djibouti, and other locations around the world.

CONCLUSION

The Army JAG Corps is trained, resourced, and ready to implement the FY22 and FY23 NDAA military justice reforms. These reforms require transformational change to the military justice process and all judge advocates are prepared to assist—whether advising Commanders in maintaining a disciplined fighting force, referring covered offenses to trial by courts-martial, representing accused Soldiers, or providing services to victims of sex-related and domestic violence offenses. As we implement these changes, the JAG Corps will continue to assess, refine, and improve the military justice system.

In the next fiscal year, the JAG Corps will be steadfast in advising on all aspects of military justice. For non covered offenses, principled counsel will continue to be provided to commanders and aid them in maintaining good order and discipline. For covered offenses, the JAG Corps will diligently ensure the success of the OSTC as it achieves FOC on 28 December 2023. Further focusing on systems, the JAG Corps will continue the work of the Court Reporting OPT to modernize the structure, training, and policies applicable to processing courts-martial. Put simply, the JAG Corps will focus on implementing the necessary structural, training, and regulatory changes to promote fairness, efficiency, and trust in the military justice system.

In this period of great change, the JAG Corps will utilize its people, programs, and technology to continue to deliver a military justice system, rooted in our constitutional principles, that treats all participants with respect. Through it all, our JAG Corps' trusted professionals will continue to provide principled legal counsel and premier legal services to senior commanders, leaders, Soldiers, and Families.



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

APPENDIX

Report Period: FISCAL YEAR 2023

PART 1 - PENDING COURTS-MARTIAL (As of 30 September 2023)			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		60	
BCD SPECIAL		7	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		3	
SUMMARY		5	
TOTAL:	208	75	283

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	492	356	294	62	+6.3%
BCD SPECIAL [A]	154	119	114	5	+7.2%
NON-BCD SPECIAL	0	0	0	0	0.0%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	29	22	19	3	-31.3%
SUMMARY	34				
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	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unknown
GENERAL	356	350	6	76	280	5	8	100	0	222	21	0
BCD SPECIAL	119	116	3	29	90	1	2	44	2	65	5	2
NON-BCD SPECIAL	0	0	0	0	0	0	0	0	0	0	0	0
MILITARY JUDGE ALONE SPECIAL	22	21	1	2	20	1	0	7	0	12	2	0
SUMMARY	34	33	1	7	26	0	4	8	0	21	1	0

APPENDIX

PART 4 – VICTIM DEMOGRAPHIC DATA (Persons) [C]												
TYPE COURT	Total*	GENDER		ETHNICITY**		RACE						
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unknown
GENERAL	249	66	187	41	127	10	0	39	0	117	6	66
BCD SPECIAL	34	7	27	8	20	1	0	5	0	16	0	9
NON-BCD SPECIAL	0	0	0	0	0	0	0	0	0	0	0	0
MILITARY JUDGE ALONE SPECIAL	20	6	14	5	10	2	0	1	0	14	1	2
SUMMARY	22	11	11	4	15	2	0	7	0	11	0	2

* Total number of identifiable victims

** Total does not include 89 victims with other/unknown ethnicity

PART 5 – DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT [D]		
GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	93(+15)	
NUMBER OF BAD-CONDUCT DISCHARGES	147	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	70	

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG		
FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	14	
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0	
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	344	
FOR EXAMINATION UNDER ARTICLE 65(d)	63	

PART 7 – WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEALS			
TOTAL ON HAND BEGINNING OF PERIOD		55[E]	
TOTAL CASES THAT CAME AT ISSUE		325[E]	
TOTAL CASES DECIDED		321[F]	
TOTAL PENDING AT CLOSE OF PERIOD		59[E]	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD		-6.1%	

PART 8 – APPELLATE COUNSEL REQUESTS BEFORE U.S. ARMY COURT OF CRIMINAL APPEALS (ACCA)		
NUMBER	322	
PERCENTAGE	99.08%	

APPENDIX

PART 9 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)	
TOTAL PETITIONS TO CAAF	118

PART 10 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ			
TOTAL PENDING BEGINNING OF PERIOD		4	
RECEIVED		5	
DISPOSED OF		8	
GRANTED	1		
DENIED	3		
NO JURISDICTION	4		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		1	

PART 11 – ORGANIZATION OF COURTS [G]			
TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		270	
SPECIAL COURTS-MARTIAL		110	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		22	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		86	
SPECIAL COURTS-MARTIAL		9	

PART 12 – STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	453,625 [H]	

PART 13 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	17,462	
RATE PER 1,000	38.49	

EXPLANATORY NOTES

[A] Cases convened by GCM convening authority.

[B] The accused demographic data presented in this report relates only to courts-martial cases conducted on or after 17 June 2020, in accordance with section 540I of the National Defense Authorization Act for Fiscal Year 2020. For the purposes of this report, conducted means completed.

[C] The victim demographic data presented in this report relates only to courts-martial cases conducted on or after 17 June 2020, in accordance with section 540I of the National Defense Authorization Act for Fiscal Year 2020. 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.

Report to Congress

U.S. Navy Report on Military Justice for Fiscal Year 2023

31 December 2023

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 \$2630.00 for the 2024 Fiscal Year. This includes \$0 in expenses and \$2630.00 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, 2022 TO SEPTEMBER 30, 2023**

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 2023 (FY23). The Navy tried 199 courts-martial (combined general, special, and summary courts-martial) and the Navy-Marine Corps Court of Criminal Appeals (NMCCA) reviewed 187 Navy and Marine Corps cases on appeal. Judge advocate litigators and advisors throughout the Judge Advocate General's Corps (JAGC) made numerous contributions to the improvement and expansion of the military justice mission in FY23.

- In addition to the above described administration of courts-martial and appeals, OJAG, through efforts led by the Assistant Judge Advocate General, Military Law, and the Accountability Reform Operational Planning Team (OPT), focused on the establishment of the Office of the Special Trial Counsel (OSTC) and implementation of the other reforms pursuant to Subtitle D, National Defense Authorization Act for Fiscal Year 2022 (FY22 NDAA) and the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (FY23 NDAA). The OSTC, under the direction of Lead Special Trial Counsel (LSTC) RDML Jon Stephens, JAGC, USN, reached full operational capability on 28 December 2023, and is prepared to execute its mission. The OSTC is a fully independent prosecutorial organization with the LSTC reporting directly to the Secretary of the Navy. OJAG provides administrative support to the OSTC, and will continue to man, train, and equip them as necessary to meet their mission.
- OJAG continued to respond to the recommendations from the Independent Review Commission on Sexual Assault in the Military (IRC), while also expanding efforts to address the recommendations from the Independent Review Team Report on Racial Disparities in the Investigative and Military Justice Systems (IRT).
- Building upon the statutory reforms, the Joint Service Committee on Military Justice (JSC) completed their comprehensive review of the Manual for Courts-Martial (MCM). The President issued Executive Order 14103 in July 2023 that promulgated the substance of their recommendations. Substantial revisions to the Manual of the Judge Advocate General were completed in December 2023 to reflect the statutory reforms and Executive Order 14103.

Each of these efforts demonstrate the JAGC's commitment to constant assessment and process improvement, a dedication to instilling trust in the system, and a high degree of professional service across the legal community.

2. Data on the number and status of pending courts-martial: The Navy collects courts-martial information through the Naval Court-Martial Reporting System (NCORS) case management database.¹ At the end of FY23, there were 90 pending Navy courts-martial (58 referred for trial and 32 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) In *United States v. Christopher*,² NMCCA ruled that the post-trial processing exceeded 150 days from the announcement of the sentence to docketing at NMCCA (the “Moreno I” and “Moreno II” guidelines, combined, or “Post Trial II”).³ In that case, 311 days passed between sentencing and the military judge signing the Entry of Judgment. An additional 6 days passed between the Entry of Judgment and the docketing of the case with NMCCA, thus bringing the total to 317 days. Balancing the length of delay, reasons for delay, demand for speedy trial, and prejudice to Appellant, NMCCA concluded Appellant’s post-trial due process rights were denied. More information on *United States v. Christopher* is provided in para. b.(1) and b.(2) below. The Navy has assessed many of the issues highlighted by our appellate court in this case, and is actively working to apply lessons learned.

(2) 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 reversed on appeal because of unlawful command influence or denial of the right to speedy review or otherwise remitted because of loss of records of trial or other administrative deficiencies: One.

(1) *United States v. Christopher*, the same case in paragraph 3.a.(1), was the only case in the Department of the Navy that was reversed on appeal because of denial of the right to speedy review:

In *Christopher*, Appellant was originally convicted in 2015 of three specifications of assault upon a child, and one specification of indecent acts with a child. The military judge sentenced the Appellant to six years’ confinement and a dishonorable discharge. At a post-trial hearing, the military judge dismissed two of the assault specifications for being outside the statute of limitations and declared a mistrial for sentencing. Following resentencing, Appellant was

¹ Prior to the standup of NCORS, the Navy utilized the Wolverine case management system. That platform remains in use as an archive for court-martial data for cases pre-dating NCORS. The goal is that all new active cases are submitted to NCORS.

² *United States v. Christopher*, No. 201600249, 2023 CCA LEXIS 362, at *9 (N-M Ct. Crim. App. Aug. 31, 2023)

³ 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).

sentenced to two years' confinement and a dishonorable discharge. On appeal, NMCCA found Appellant's trial defense team ineffective, set aside the remaining convictions, and authorized a rehearing. The Appellant, following a lengthy post-trial and appellate process, was retried in 2021 and convicted of a single specification of assault upon a child. He was sentenced to 345 days' confinement, but credited with time already served. During the appellate review of Appellant's new conviction, NMCCA determined the military judge abused his discretion in his ruling on a speedy trial motion under R.C.M. 707. The NMCCA concluded that the government's failure to work diligently to find Appellant, who had been administratively discharged after the first case, resulted in a violation of Rule for Courts-Martial 707. NMCCA set aside Appellant's conviction, and dismissed it with prejudice.

(2) In *Christopher*, which is the same case in paragraphs 3.a.(1) and 3.b.(1), the NMCCA further held that the loss of records of trial, and inaccuracies within the record, precluded meaningful appellate review.⁴

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

d. Analysis of each case in which a Court of Criminal Appeals made a final determination that 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: Two

(1) *United States v. Marsden*, 2023 CCA LEXIS 101. The NMCCA set aside three of Aviation Ordnanceman Third Class Andrew Marsden's convictions for attempted sexual abuse of a child, attempted production of child pornography, and attempted viewing of child pornography. The Court held that the evidence admitted at trial was factually insufficient to sustain the convictions, specifically finding that the military judge improperly considered inadmissible evidence regarding AO3 Marsden's IP address in reaching findings beyond a reasonable doubt. Without the evidence of AO3 Marsden's IP address, the Government's remaining evidence was insufficient to sustain a conviction beyond a reasonable doubt that AO3 Marsden was in fact the person attempting to commit the alleged offenses.

(2) *United States v. London*, 2023 CCA LEXIS 193. The NMCCA set aside Lance Corporal Samuel London's sole conviction of involuntary manslaughter for his role in a fist fight between Lance Corporal London, his two friends, and six civilian members of the Emerson College Lacrosse Team. The fight resulted in the death of one of the lacrosse players, Mr. Hotel, who fell backwards, hit his head on a brick entranceway and fractured his skull. At trial there was inconsistent evidence on whether Mr. Hotel hit his head as a result of Lance Corporal London's punch or whether he simply fell backwards during the fight. Because no witness testified that they observed Mr. Hotel get punched, and only one witness testified that he "heard" a punch and then saw Mr. Hotel fall, the Court held that the evidence admitted at trial was factually insufficient to sustain the conviction.

⁴ *Id.*

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 cases,⁵ national security cases, sexual assault cases, and proceedings of military commissions:

a. Military Justice Litigation Career Track (MJLCT).

(1) In 2007, the JAGC established the MJLCT in order to develop and retain a cadre of specialized litigators to serve across the spectrum of military justice billets. During FY23, the MJLCT was comprised of 110 designated officers in paygrades O-3 (Lieutenant) to O-7 (Rear Admiral Lower Half).⁶ These officers served in the Navy's most important military justice positions, including: an O-7 Lead Special Trial Counsel (LSTC); Commanding Officer and Executive Officer of some Region Legal Service Offices (RLSO) and Defense Service Offices; Trial Counsel Assistance Program (TCAP) Director/Deputy Director and Defense Counsel Assistance Program (DCAP) Director/Deputy Director, each providing real-time assistance in individual trials and vital reach-back resources for litigators throughout the Fleet; Director of Appellate Defense; Senior Trial Counsel (Senior Prosecutors) in all eight Navy prosecution commands; Chief Special Trial Counsel in ten OSTC offices; Senior Defense Counsel in all four Navy defense commands; Victims' Legal Counsel in various locations; Military Commissions counsel (both prosecution and defense), including the Chief Prosecutor for Military Commissions (O-7 position); Military Judges assigned to the Navy-Marine Corps Trial Judiciary⁷; and three of the five Navy judges assigned to the Navy and Marine Corps Court of Criminal Appeals.

(2) In FY23, the existing experience and selection standards of the MJLCT were instrumental in developing criteria for certification of the Special Trial Counsel (STCs) assigned to the OSTC. All STCs are members of the MJLCT and all Chief STCs are qualified as MJLCT Specialist II. Both Region STCs are MJLCT Experts, post-command O-6s, with previous experience as Military Judges.

(3) The Navy continues to place a MJLCT officer in a rotational, one-year assignment with the U.S. Attorney's Office for the Southern District of California in San Diego, CA to gain exposure to federal practice in a high-volume jurisdiction.

(4) To improve judicial stability and facilitate more judicial experience for MJLCT officers, the Navy has also been assigning O-4 special courts-martial (SPCM) judges to busy fleet concentration areas. In FY23, this included one MJLCT officer assigned in Norfolk, VA. This allows for the timely adjudication of pretrial matters, SPCM, and magistrate functions.

⁵ While the Navy has not tried a capital-referred case in recent decades, Navy judge advocates have 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.

⁶ Increased from 106 designated officers in FY22.

⁷ All but one of the Navy judges assigned to the Navy-Marine Corps Trial Judiciary were MJLCT officers that were designated as either a MJLCT Specialist II or Expert. The one exception was a JAG Corps Officer with extensive military justice experience and prior service as an Appellate Judge.

b. Military Justice Training and Professional Development Programs.

(1) The Naval Justice School (NJS), headquartered in Newport, RI, conducted 102 in-resident and virtual courses for 3,840 students in FY23, including providing 350 military justice practitioners with military justice training. NJS courses included the Military Justice Orientation Course (three iterations annually), Victims' Legal Counsel Certification Course, Defending Sexual Assault Cases Course, Senior Counsel Manager's Course, Legalman Litigation Office Manager's Course, Paralegal Litigation Support Course (two iterations annually), and the Classified Information Litigation Course.

(2) As in past years, new Navy judge advocates, along with new Marine Corps and Coast Guard counsel, received ten weeks of legal training at the NJS Basic Lawyer Course (BLC), five of which focused on military justice. This year NJS implemented an updated curriculum for the BLC, incorporating the substantial military justice reforms required by the FY22 and FY23 NDAs and Executive Order 14103. These changes address, among other matters, the OSTC.

(3) All Navy judge advocates in their initial tours underwent a robust professional development program. 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.

(4) NJS, in coordination with Navy and Marine Corps VLC organizations, developed and executed the second iteration of the annual Victims' Legal Counsel Certification Course, held 17-26 April 2023. The course was completed by 18 Navy VLC. Although not required, four new civilian paralegals also completed the course. Planning for the third iteration of the Navy and Marine Corps course has begun, and it is scheduled for 29 April through 8 May 2024 at NJS. Prior to the development of this course, Navy and Marine Corps VLC attended either the Air Force or Army SVC Certification courses. The new Navy course offers 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. This year's course was expanded by two and a half training days—for a total of 8 training days—in order to provide more practical exercises which are invaluable in developing and enhancing technical representation and advocacy skills of VLC.

c. Trial Counsel.

(1) TCAP is tasked with ensuring that all trial counsel at the Navy's RLSOs receive proper training and supervision, and access to necessary resources. If requested, TCAP also serves a supporting role for counsel assigned to OSTC. For most of FY23, TCAP was staffed with an O-5 (Commander) MJLCT "Expert" designated officer as Director, an additional O-5 MJLCT "Specialist II" designated officer serving as the Navy's complex case counsel, two O-4 (Lieutenant Commander) MJLCT "Specialist II" designated officers, an E-6 (First Class Petty Officer) Legalman lead paralegal, and two civilian (GS-15) attorneys with extensive civilian prosecution experience in complex cases, one of whom served as Deputy Director. Due to a

combination of manning issues and the creation of the Office of the Special Trial Counsel, at the end of FY23, TCAP headquarters was staffed with the O-5 Director, one O-4, the E-6 lead paralegal, and one civilian.

(2) TCAP provided in-person or virtual training at each of the main prosecution offices located at the RLSOs. They also conducted regular training webinars on critical and emerging issues in litigation practice and 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 (Trial Department Heads, core counsel, and initial tour judge advocates) that provided real-time advice, calibrated based on experience level, to counsel worldwide. The Program also teamed with the Assistant for Prosecution Services (APS) to create and maintain the Trial Counsel Manual⁸, a comprehensive guide to prosecuting cases designed to promote consistency throughout the trial practice.

(4) New trial counsel completed the TCAP-led, two-week Military Justice Orientation Course (MJOC), offered three times during the year and designed to provide critical baseline knowledge to new prosecutors. Additionally, utilizing the help of civilian experts, TCAP provided focused in-person trainings on both crimes involving intimate partner violence and forensic/child victim interviews. TCAP further organized a training, along with defense counsel, at the U.S. Army Criminal Investigation Laboratory (USACIL) on DNA and forensic evidence.

(5) Every trial counsel was supervised by an experienced O-5 or O-4 MJLCT-designated officer serving as Trial Department Head, 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) To minimize the risk of potential speedy trial issues, APS has increased monitoring and oversight of trial processing time goals throughout the enterprise. In addition, TCAP developed and delivered training for trial counsel on strategies to avoid speedy trial issues.

d. OSTC. In 2022, OJAG Code 20, OSTC, and NJS began efforts to create a new Special Trial Counsel Certification Course. The inaugural Sea Services Special Trial Counsel (STC) Certification Course was held in May 2023. At the course, Navy and Marine Corps judge advocates trained in-person alongside their U.S. Coast Guard colleagues for two weeks on substantive law, policy, and practical skills. The STCs attended a third week of virtual training offered by the Army’s Judge Advocate General Legal Center and School (TJAGLCS) which focused on black letter law training. The three week STC Certification Course was required for all STCs prior to receiving certification to perform STC duties. All detailed STCs were duly certified by the Judge Advocate General and are prepared to perform STC duties.

⁸ The Trial Counsel Manual was drafted in close coordination with the OSTC and informed the development of the Office of Special Trial Counsel Manual.

e. Defense Counsel.

(1) DCAP provided support, resources, and training to Navy and Coast Guard defense counsel worldwide. In FY23, DCAP was staffed with an O-5 (Commander) MJLCT “Specialist II” designated officer as Director, two other MJLCT designated officers (one O-5 and one senior O-3), and a civilian Deputy Director with over 30 years of criminal defense experience.

(2) DCAP utilized a variety of methods to provide support, including in-person and virtual training, and a monthly newsletter, highlighting emerging issues and providing advice to defense counsel throughout the fleet. The Program also maintains a central repository of defense resources and an online discussion board. In FY23, DCAP published three new resources outlining procedures and best practices for attorneys and paralegals in the field, including the Enlisted Administrative Separation desk book, the Personal Representation desk book, and the Defense Paralegal Training Guide. On several occasions, DCAP personnel provided on-site support to ongoing courts-martial and worked alongside defense counsel as assistant counsel of record.

(3) DCAP staffed a robust training continuum throughout the year, including three sessions of a defense-focused, two-week MJOC at NJS. This course included classroom instruction by the Program’s leadership, defense counsel, and other military justice specialists, in addition to hands-on practical exercises that culminated in a head-to-head mock trial with new trial counsel attending a parallel prosecution-focused MJOC. All new defense counsel attended the MJOC. DCAP also presented the annual in-person Defending Sexual Assault Cases (DSAC) course and the Senior Counsel Managers Course (SCMC) geared toward more experienced defense counsel and defense leaders, respectively.

(4) In addition to the NJS courses, DCAP conducted four, week-long individualized Mobile Training Team (MTT) events at defense offices throughout the country. In September, DCAP coordinated and presented the 2023 Defense Service Office (DSO) Training Symposium for all defense counsel in the enterprise, which featured instruction from Navy JAG Military Justice leaders, the Innocence Project, the Public Defender Service for the District of Columbia, the Kinsey Institute, the Board for Correction of Naval Records, the DoD Cyber Crime Center, and the Forensic Justice Project. Throughout the year, defense counsel attended a variety of advanced training in complex litigation, including training provided by the National Criminal Defense College, Bronx Defenders, USACIL, and Temple Law.

(5) Similar to the prosecution command structure, each defense counsel was supervised by a Senior Defense Counsel at one of four regional defense commands. Three of the senior defense counsel were O-4 (Lieutenant Commander), while another was promoted to O-5 (Commander) during FY23. All four were MJLCT-designated officers assigned by the JAG. In addition, all defense commands were led by a commanding officer or executive officer with significant military justice experience.

(6) The four defense commands were supported by seven criminal investigators called Defense Litigation Support Specialists (DLSS). These civilian investigative experts each carried an average of ten to twenty complex cases in FY23. Additionally, DLSS assisted DCAP’s Mobile Training Team and global defense training efforts.

(7) In FY23, Director of Operations for the Defense Service Offices also managed the first ever Navy Independent Defense Funding budget and developed a standard operating procedure to receive and process requests from defense counsel for all aspects of pretrial investigations and case preparation.

f. Victims' Legal Counsel.

(1) During FY23, 44 Victims' Legal Counsel (VLC) provided legal support to approximately 1,700 victims of sexual offense and domestic violence at over 500 proceedings. VLC also conducted more than 600 outreach briefs to more than 25,000 personnel. Throughout FY23, VLC were in compliance with statutory-mandated caseload caps. 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. During the end of FY22 and throughout FY23, the VLCP headquarters element expanded to include the hiring of a newly created Senior Policy and Appellate Advisor (GS-14 attorney) and a GS-13 Supervisory Paralegal who oversees five new field civilian paralegal positions.

(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 interviewed by the VLC Program Chief, the NLSC Commander, and the JAG or DJAG prior to selection. Eighteen new VLC were selected in FY23.

(3) All new VLC completed the VLC Certification Course prior to representing clients. VLC also attended specialized training in representing child victims and victims of domestic violence. In August 2023, the VLC Program held its eighth annual training symposium. This three-day, in-person program included training on a wide range of topics, including: vicarious trauma; resilience; child victims; recent appellate case law; professional responsibility; domestic violence resources; leadership; and a presentation from the NLSC Commander. In addition, the VLC Program conducted monthly training for all personnel throughout FY23. As discussed above, the Navy VLC Program will continue to provide its annual certification course, with the next course scheduled for April 2024.

(4) The VLCP continued its appellate practice, utilizing a team of nine VLC appellate practitioners assigned, as a collateral duty, to aid on interlocutory and appellate issues. This function is now augmented by the expertise, consistency, and experience of the newly hired civilian Senior Policy and Appellate Advisor. During FY23, the VLCP appellate team filed multiple briefs, including amicus filings, with the NMCCA, the Court of Appeals for the Armed Forces, and the Supreme Court of the United States. The VLCP also utilized a Victims' Counsel Assistance Program (VCAP) 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.

g. Military Judges.

(1) The Navy-Marine Corps Trial Judiciary (NMCTJ) presided over all courts-martial within the Department of the Navy, composed of ten judicial circuits. In FY23, the NMCTJ consisted of 29 active-duty Navy and Marine Corps judges and 12 Reserve Navy and Marine Corps judges. In FY23, the NMCCA consisted of seven to nine active-duty Navy and Marine Corps appellate judges, six Navy Reserve appellate judges, and two Marine Corps Reserve appellate judges.

(2) Selection Requirements. The Navy continued to employ rigorous screening and training requirements for military judges in FY23.

(a) Before assignment to a trial or appellate judicial billet, Navy and Marine Corps military judges 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, ensures only highly qualified judge advocates are recommended for the bench.

(b) All newly reporting trial and appellate judges attended the three-week Military Judge Course hosted by the U.S. Army's TJAGLCS 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.

(3) Military Judges Continuing Education.

(a) In February 2023, the Navy JAGC hosted the Joint Military Judges Annual Training at Naval Air Station North Island in Coronado, California, with instructors from the DoD and the NMCTJ, as well as 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. The three-day course was attended by 24 active-duty and 10 reserve judges assigned to the NMCTJ, as well as over 100 additional judges across all services. During the training, the NMCTJ judges received specialized training on wellness from Ms. Audra Adaire of the Naval Postgraduate School.

(b) In September 2023, all NMCTJ judges participated in annual training provided by outside organizations and NMCTJ instructors. Training topics included the July 2023 Executive Order, 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, including courses on judicial writing and search and seizure.

h. National Security Cases (NSC).

(1) The National Security Division (Code 30) in OJAG 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 and courts-martial designated as NSCs. In FY23, Code 30 staff consisted of an O-5 (Commander) Director and an O-3 (Lieutenant) Deputy Director.

(2) Code 30 provided advice and resources in twenty-one cases involving classified information (three courts-martial, three federal district court criminal cases, two federal district court civil cases, three administrative hearings, and ten active investigations). In addition to serving as a litigation resource for judge advocates in the field, both prosecutors and defense counsel, Code 30 coordinated with Original Classification Authorities, facilitated security clearance requests for court-martial personnel, and advised on classified information safeguards, including applicability of Military Rule of Evidence (MRE) 505, during the court-martial process. Code 30 also worked with the Department of Justice (DoJ), intelligence and law enforcement partners, and other Services, to refine the classified litigation practice and improve the use of classified information in military and DoJ cases.

(3) In partnership with the U.S. Army Advocacy Center at Fort Belvoir, VA, Code 30 orchestrated the first Joint Classified Litigation Course in FY23. This week-long, DoD-wide course provided training to 41 students and brought together subject matter experts from the DoJ, National Security Agency, National Geospatial-Intelligence Agency, Central Intelligence Agency, Federal Bureau of Investigations, Naval Criminal Investigative Service, Army and Navy Trial Judiciaries, and the Federal Judiciary.

(4) In collaboration with NJS, Code 30 also provided classified information litigation training to 50 military justice practitioners at Code 30's annual Classified Information Litigation Course (CILC). Focused on foundational concepts and practical advice, the CILC included training on MRE 505 and 506, charging considerations, intelligence equities, classified information handling procedures, and trial, defense, and judiciary perspectives.

(5) Code 30 maintained a library of resources for national security/classified information cases, including distributing its National Security Litigation Primer to military justice practitioners in the field working on active cases.

(6) In support of the Navy's two National Security Litigation "hubs," Code 30 provided design input for construction of state of the art facilities to be located at the Fleet Legal Services Complex in Norfolk as well as improvements in Building 56 at Naval Base San Diego. This will ensure both sites remain equipped to litigate national security and classified information cases well into the future.

i. Military Commissions.

(1) The Office of Military Commissions – Prosecution (OCP). In FY23, 11 active duty Navy judge advocates (including the Chief Prosecutor for Military Commissions), one Navy Reserve judge advocate, and 8 legalmen served at OCP, which used a robust orientation program to train new counsel and paralegals. All personnel 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 and paralegals 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 FY23, 13 Navy judge advocates and 10 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 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 on 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:

a. Significant Developments in FY23. OJAG implemented a complex set of new regulatory and statutory requirements that combined to create additional need for legal resources and improved processes in information technology (IT). Statutory changes brought forward by the FY22 and FY23 NDAs and renewed calls to improve processes for tracking and maintaining public access to military justice records have placed increased demand on OJAG’s capabilities. The following lines of effort warrant further emphasis as essential areas where additional resources were applied in FY23 and may be needed moving forward.

(1) OSTC. After months of planning, training, and execution involving numerous units throughout the JAG enterprise, the OSTC reached full operational capability ahead of the statutory effective date of 28 December 2023. However, additional statutory reforms will become effective in 2025 and OSTC expects more resourcing requirements moving forward.

(2) Independent Defense Funding. IRC Recommendation 1.7.e called for the military services to “study and establish funding for defense counsel control.” Independent Defense Funding was made available, as a pilot program, in FY23. The program was not funded through FY24, requiring the diversion of other OJAG funds to continue to support this vital resource for defense counsel. If the JAGC is to meet the intent of IRC Rec. 1.7e, we will need to identify additional resources through FY24 and beyond to meet the needs of the program.

b. Resourcing. Over the course of the Program Objectives Memorandum (POM) 25 budgetary cycle, OJAG, NLSC and OSTC requested an increase in military and civilian manpower and support as the JAGC continues to experience growth in mission requirements.

To meet these needs, the JAGC continues to work within current budgetary limits to fund and properly equip personnel.

c. Funding process. Continuing resolutions impact the ability to execute funding earlier in the fiscal year, leading to lower execution rates. This hampers OJAG's ability to obtain additional funding as the fiscal year progresses.

(1) The NLSC enterprise has additional requirements for manpower that have been validated through the Budget Submitting Office (BSO) and through the Shore Manpower Requirements Determination (SMRD) process. These requests have not yet been funded or approved through the Programming Objective Memorandum (POM) and Secretariat Review Board (SRB) process.

(2) The JAGC relies upon supplemental Sexual Assault Prevention and Response (SAPR) funding to resource parts of the military justice mission. However, SAPR funding is also regularly delayed due to continuing resolutions and the requisite steps in the reprogramming process.

(3) Historically, the JAGC has used under-executed labor to supplement funding for unfunded (or underfunded) support needs, including military justice requirements. In FY24, the JAGC does not anticipate having labor under-execution. As of 11 December 2023, the JAGC has an 3% vacancy rate.

d. Judge advocate manning. In FY23, the JAGC was supported by 978 judge advocates, just four judge advocates fewer than the FY23 authorized end strength of 982. FY24 authorized end strength is estimated to be 1,010.

e. Enlisted paralegal manning. The Navy JAGC was supported by 529 active-duty personnel in the Legalman rating in FY23—27 fewer than the authorized end strength of 556. As a result, some of the gaps in billets affected workload distribution in prosecution and defense offices. The Navy JAGC is working with Navy Personnel Command to eliminate this shortfall by accelerating the pace at which legalmen are brought into the rating. This includes increasing the maximum enrollment in each legalman "A" class from 30 to 45 students, resulting in a 37.7% increase in new legalmen accessions compared to FY22.

f. Civilian attorneys, paralegals and other specialists. The JAGC received approval to hire 96 civilian billets in FY22. Several challenges precluded the immediate filling of these billets, including the need to develop position descriptions, hiring managers needing more training on the DON hiring and recruitment processes, and backlogs resulting from the significant uptick in hiring. To address these deficiencies, OJAG staff were deployed across the JAGC to ensure greater understanding of the process and to monitor adherence to timelines. At the end of FY23, 92 of the 96 billets were filled.

g. Training. The JAGC made significant training advancements in FY23, as referenced in other sections of this report. Most notably, NJS, OSTC, and Code 20 developed and executed the first Special Trial Counsel Certification Course in May and June of this year. In addition, OJAG Code 20, and representatives throughout the JAGC, developed a series of trainings for legal

practitioners, commanders and other leaders, legal partners, and sailors across the Fleet to educate the Navy on the numerous military justice reforms implemented by the FY22 and FY23 NDAAAs.

h. Retention. Retaining officers across all pay grades continued to be a challenge in FY23. An increasing number of mid-career officers are eligible for Public Service Loan Forgiveness (PSLF) relief and have taken advantage of the Blended Retirement System (BRS), which also poses a retention challenge across the Navy. In July 2022, the JAG Corps received an increase in Judge Advocate Career Incentive Pay (JACP) which increased total payments for Phases I through III from \$60,000 to \$110,000 per qualifying judge advocate. An additional \$10,000 per phase was instituted for MJLCT officers to specifically address retention of experienced litigators. Prior to this increase, the JACP had remained unchanged since 2001. OJAG remains focused on monitoring how recently increased retention incentives such as the significant JACP increase and geographically flexible billets offset the combination of PSLF forgiveness and BRS for mid-career officers, including senior litigators.

i. Technology.

(1) In July 2023, NCORS transitioned into Phase 4 (Sustainment) and was deployed under Initial Operational Capability (IOC), initiating a twelve-month sprint schedule to fine tune configuration of military justice workflows and support stakeholder modules. OJAG plans to reach Full Operational Capacity (FOC) in summer 2024.⁹ NCORS collects required data, manages cases throughout the court-martial process, and enables processing for public access to dockets, filings, and records, as required by Article 140a, UCMJ.

(2) OJAG requested NCORS funding support for an additional four years of administration and maintenance support through the SRB. The SRB directed OJAG to seek funding from other sources, including DoD SAPR funds, which have been utilized in previous years. Beginning in March 2024, and for all future fiscal years, full funding support for NCORS is necessary to continue to maintain NCORS and improve military justice case management.

j. Facilities. The Navy, particularly with the growth of OSTC, continues to work JAGC facilities issues. In Norfolk, Virginia, the multi-year effort to establish a newly renovated Fleet Legal Services Complex is ongoing with the intent to consolidate and optimize the major military justice functions in the Navy's largest fleet concentration area. Design proposals currently under consideration include the use of modular building components which are expected to increase the speed and cost efficiency of this renovation project. The Navy also has successfully procured additional spaces in other fleet concentration areas to serve as OSTC office spaces, and will continue to address renovation needs moving forward.

⁹ Prior to the standup of NCORS, the Navy utilized the Wolverine case management system. That platform remains in use as an archive for court-martial data for cases pre-dating NCORS. The goal is that all new active cases are submitted to NCORS.

6. Conclusion. Each day across the JAGC, judge advocates, legalmen, and our civilian professionals demonstrate their determination to consistently improve the administration of military justice. Over the last year, the JAGC timely responded to significant statutory reform, met all implementation milestones, and is on target to continue to do so. There will be more opportunities ahead as military justice reforms take effect, and the JAGC adjusts practice as needed. One of my top objectives for the JAGC over the next year is supporting the successful stand up of the OSTC while continuing to address the recommendations of the IRC and IRT, ensuring military justice remains a tool for maintaining good order and discipline, and preserving the rights of Sailors throughout the military justice process. I have total confidence in this community to meet this mission and achieve exceptional results.



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

APPENDIX

Report Period: FISCAL YEAR 2023

PART 1 - NAVY PENDING COURTS-MARTIAL (As of 30 September 2023)

TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		35	
BCD SPECIAL		13	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		4	
SUMMARY [C20-QCAR]		0	
TOTAL:	38	52	90

PART 2 - NAVY COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+/ DECREASE (-) OF CASES TRIED OVER LAST REPORT
GENERAL	85	69	16	+4.9%
BCD SPECIAL	76	72	4	-19.1%
NON-BCD SPECIAL	0	0	0	0.0%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	4	2	2	-33.3%
SUMMARY	34	34	0	+277.8%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				+4.7%

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	85	83	2	10	74	1	2	1	19	0	48	15	0
SPECIAL	76	68	8	14	62	0	0	1	16	1	49	9	0
MJ SPECIAL (Art. 16 (c)(2))	4	3	1	1	3	0	0	0	1	1	1	1	0
SUMMARY	34	27	7	3	31	0	0	0	8	0	19	7	0

APPENDIX

PART 4 – VICTIM DEMOGRAPHIC DATA [A]

TYPE COURT	Total	GENDER [B]			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	117	29	62	26	9	61	47	3	6	19	3	41	6	39
SPECIAL	130	46	82	2	5	42	83	1	2	5	0	35	7	80
MJ SPECIAL Art. 16(c)(2)	3	1	2	0	0	1	2	0	0	0	0	0	1	2
SUMMARY	20	4	14	2	2	13	5	0	1	4	0	7	3	5

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

GENERAL COURTS-MARTIAL (CA LEVEL)	
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	22
NUMBER OF BAD-CONDUCT DISCHARGES	30
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	19

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

FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	71
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	166
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	128[D]
TOTAL CASES REFERRED FOR REVIEW	180[D]
TOTAL CASES REVIEWED	187[E]
TOTAL CASES DECIDED PRIOR FISCAL YEAR	293[E]
TOTAL PENDING AT CLOSE OF PERIOD	133[D]
RATE OF INCREASE (+)/DECREASE (-) OF NUMBER OF CASES DECIDED AS COMPARED TO FY22 REPORTING PERIOD	-36.17

APPENDIX

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

TOTAL PETITIONS TO CAAF	44
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PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (NAVY & MARINE CORPS)

TOTAL PENDING BEGINNING OF PERIOD		4
RECEIVED		5
DISPOSED OF:		4
GRANTED	0	
DENIED	4	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		5

PART 10 – NAVY ORGANIZATION OF COURTS [F]

TRIALS BY MILITARY JUDGE ALONE	142	
GENERAL COURTS-MARTIAL	64	
SPECIAL COURTS-MARTIAL	74	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	4	
TRIALS BY MILITARY JUDGE WITH MEMBERS	23	
GENERAL COURTS-MARTIAL	21	
SPECIAL COURTS-MARTIAL	2	

PART 11 – NAVY STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	339,190 [G]
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PART 12 – NAVY NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	6,231
RATE PER 1,000	18.4

APPENDIX

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] Some crimes reported in the database do not include persons as victims, but instead identify an organizational victim. For example, a drug offense may sometimes list “USN” or something similar as the victim. This results in a number of male and female victims not equaling the total number of victims.
- [C] Based on Entry of Judgment and records of trial received in FY for appellate review.
- [D] Includes only cases briefed and at issue.
- [E] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.
- [F] Only includes cases that were tried to completion.
- [G] This number includes only Active Component Sailors and does not include USNR, unless the Reservists were called to Active Duty during the FY.



Department of the Air Force

Report to Congressional Committees

Department of the Air Force Report on the State of Military Justice for Fiscal Year 2023

December 2023

The estimated cost of this report or study for the Department of Defense is approximately \$11,000 in DoD labor for the 2024 Fiscal Year.





**DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON DC 20330**

Department of the Air Force Report on the State of Military Justice for Fiscal Year 2023

This report, in accordance with Article 146a, Uniform Code of Military Justice, details the state of the Department of the Air Force's (DAF) military justice system in Fiscal Year 2023 (FY23).

The DAF's military justice system was strong throughout FY23. The DAF's Judge Advocate General's Corps (JAG Corps) and DAF judge advocates continued to provide critical legal advice and representation across the spectrum of military justice practice in FY23, including as members of the newly formed Office of Special Trial Counsel (OSTC) under the leadership of the Brigadier General Christopher Brown, the Lead Special Trial Counsel (LSTC), as well as members of the Trial Defense Division, Victims' Counsel Division, and Trial Judiciary, among many others. The JAG Corps, while delivering these critical services, also implemented significant changes to the DAF military justice system through the implementation of amendments to the Manual for Courts Martial and DAF-wide policies and regulations, including the formal stand-up of the OSTC. The DAF JAG Corps, in FY23, continued to demonstrate its adaptability through the implementation of these wide-ranging changes while continuing to appropriately balance the competing interests of all of those with a stake in the military justice system.

Sincerely,

PLUMMER.CHARL
ES.L.

Digitally signed by
PLUMMER.CHARLES.L. [REDACTED]
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The Judge Advocate General



Introduction

This report is provided to the congressional defense committees as directed by 10 U.S.C. § 946a(b).

(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;

(C) an analysis of each case in which a provision of this chapter was held unconstitutional; and

(D) an 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.

(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.

Executive Summary

The Department of the Air Force (DAF) is fully committed to the fair and effective administration of military justice and ensuring a disciplined 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 2023 (FY23). FY23 saw the JAG Corps prioritize the implementation of Executive Order (E.O.) 14103, signed by the President on 28 July 2023, which made wide ranging amendments to the Manual for Courts-Martial (MCM). These changes include amendments requiring independent funding of defense expert witnesses and consultants, new processes related to the selection of court martial members, and military judge sentencing for non-capital offenses, among many other changes. To effectuate these wide-ranging changes, the DAF revised and updated numerous DAF-wide policies to further enhance victim services and promote the efficient administration of military justice worldwide.

The JAG Corps also dedicated significant effort and resources to complete the standup of the Office of the Special Trial Counsel (OSTC). In FY23, the DAF welcomed Brigadier General Christopher Brown as its first Lead Special Trial Counsel (LSTC), who is directed to lead OSTC in its mission to provide expert, specialized, independent, and ethical representation of the United States in the investigation and trial-level litigation of covered offenses, including sexual assault, domestic violence, child pornography, and homicide. In addition, The Judge Advocate General (TJAG) certified 19 new Special Trial Counsel (STC) and assigned a total of 39 active duty and reserve STC to six OSTC district offices worldwide.

Members of the JAG Corps' Military Justice and Discipline Domain (AF/JAJ) and the OSTC executed a comprehensive training program on these important changes, providing in-person training at nearly every DAF installation. The training program ultimately facilitated 400 hours of training to over 3,600 Airmen and Guardians worldwide. This demonstration of close JAG Corps-OSTC coordination provides the blueprint for the successful implementation of OSTC authority and the MCM amendments in E.O. 14103.

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

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I. 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). Historically, AMJAMS has been the sole database for military justice processing and capturing case status updates and developments in each investigation for timely review and coordination. In FY23, the DAF implemented its phased plan and began to systematically implement and utilize the Disciplinary Case Management System (DCMS) at some DAF installations. Eventually, DCMS is to be the replacement program for AMJAMS enterprise wide and will become the DAF’s sole military justice management system. Both AMJAMS and DCMS facilitate oversight and allow for a better understanding of resource allocation, identification and sharing of best practices, while also ensuring prompt legal advice from experienced practitioners to more junior judge advocates

in the field. AMJAMS and DCMS track cases from the point legal offices are initially notified of allegations through final disposition of those allegations. Additionally, DCMS will provide more advanced and streamlined tracking processes when it is fully operational. The Appendix provides data on pending DAF cases.

II. INFORMATION ON THE APPELLATE REVIEW PROCESS

The United States Air Force Court of Criminal Appeals (AFCCA) issued 164 opinions and orders for cases before the court in FY23. Four opinions were published, meaning they serve as binding precedent for DAF courts-martial. See *In re KK*, Misc. Dkt. No. 2022-13, ___ M.J. ___, 2023 CCA LEXIS 31 (A.F. Ct. Crim. App. 24 Jan. 2023); *United States v. Valentin-Andino*, 83 M.J. 537 (A.F. Ct. Crim. App. 2023); *United States v. Schauer*, 83 M.J. 575 (A.F. Ct. Crim. App. 2023), *rev. denied*, No. 23-0168, ___ M.J. ___, 2023 CAAF LEXIS 571 (C.A.A.F. 8 Aug. 2023); *United States v. Cabuhat*, No. ACM 40191, ___ M.J. ___, 2023 CCA LEXIS 387 (A.F. Ct. Crim. App. 13 Sep. 2023). The court held oral argument in one case as part of its oral argument outreach program at Louisiana State University Paul M. Hebert Law Center, Baton Rouge, Louisiana: *United States v. Cabuhat*, ___ M.J. ___, 2023 CCA LEXIS 387 (A.F. Ct. Crim. App. 13 Sep. 2023). AFCCA ended FY23 with nine active duty and four reserve appellate military judges.

a. Compliance with Processing Time Goals

- (1) In FY23, no convictions in DAF cases were set aside on speedy trial grounds.
- (2) Under pre-1 January 2019 post-trial processing rules, one case exceeded 120 days from sentencing to the convening authority's action (the "*Moreno 1*" standard). Under the facts of this case, AFCCA found no relief warranted for the violation of the *Moreno* standard.
- (3) Under pre-1 January 2019 post-trial processing rules, 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, six cases exceeded the 150-day standard for facially unreasonable delay from sentencing to docketing with AFCCA, articulated by AFCCA pursuant to *United States v. Livak*, 80 M.J. 631 (A.F. Ct. Crim. App. 14 Sep. 2020). No relief was warranted for these facially unreasonable delays addressed by AFCCA under the *Livak* standard.
- (5) Nine cases exceeded the standard of 18 months from docketing to AFCCA rendering a decision (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 FY23, AFCCA remanded four cases because the record of trial did not contain audio recording of the court-martial. *See United States v. Valentin-Andino*, 83 M.J. 537 (A.F. Ct. Crim. App. 30 Jan. 2023); *United States v. McCoy*, No. ACM 40119, 2022 CCA LEXIS 632 (A.F. Ct. Crim. App. 31 Oct. 2022) (order); *United States v. Wilson*, No. ACM 40274, 2023 CCA LEXIS 343 (A.F. Ct. Crim. App. 16 Aug. 2023) (unpub. op.); *United States v. Brown*, No. ACM 40066, 2022 CCA LEXIS 625 (A.F. Ct. Crim. App. 25 Oct. 2022) (order).
 - b. The court remanded another case after discovering that a prosecution exhibit, which was a computer disc, was cracked and therefore inoperable. *See United States v. Fernandez*, No. ACM 40290, 2022 CCA LEXIS 668 (A.F. Ct. Crim. App. 17 Nov. 2022).
 - c. Another case was remanded because proprietary software was needed to view 13 prosecution exhibits and therefore the exhibits were inoperable. *See United States v. Lake*, No. ACM 40168, 2022 CCA LEXIS 706 (A.F. Ct. Crim. App. 7 Dec. 2022) (order).
 - d. Additionally, AFCCA remanded 17 cases due to incomplete records of trial. *See United States v. Johnson*, No. ACM 40291, 2023 CCA LEXIS 169 (A.F. Ct. Crim. App. 11 Apr. 2023) (order); *United States v. Goodwater*, No. ACM 40304, 2023 CCA LEXIS 231 (A.F. Ct. Crim. App. 31 May 2023) (order); *United States v. Pulley*, No. ACM 40438, 2023 CCA LEXIS 155 (A.F. Ct. Crim. App. 31 Mar. 2023) (order); *United States v. Welsh*, No. ACM S32719, 2022 CCA LEXIS 63 (A.F. Ct. Crim. App. 26 Oct. 2022) (order); *United States v. Irvin*, No. ACM 40311, 2023 CCA LEXIS 201 (A.F. Ct. Crim. App. 12 May 2023) (order); *United States v. Gonzalez*, No. ACM 40375, 2023 CCA LEXIS 378 (A.F. Ct. Crim. App. 8 Sep. 2023) (unpub. op.); *United States v. Gammage*, No. ACM S32731, 2023 CCA LEXIS 240 (A.F. Ct. Crim. App. 5 Jun. 2023) (order); *United States v. Gammage*, No. ACM S32731 (f rev), 2023 CCA LEXIS 421 (A.F. Ct. Crim. App. 29 Sep. 2023) (order); *United States v. Hubbard*, No. ACM 40339, 2023 CCA LEXIS 263 (A.F. Ct. Crim. App. 15 Jun. 2023) (order); *United States v. Wilson*, No. ACM 40274, 2023 CCA LEXIS 343 (A.F. Ct. Crim. App. 16 Aug. 2023) (unpub. op.); *United States v. Paugh*, No. ACM 40231, 2023 CCA LEXIS 119 (A.F. Ct. Crim. App. 7 Mar. 2023) (order);

United States v. Lampkins, No. ACM 40135, 2022 CCA LEXIS 750 (A.F. Ct. Crim. App. 25 Oct. 2022) (order); *United States v. Stafford*, No. ACM 40131, 2022 CCA LEXIS 654 (A.F. Ct. Crim. App. 8 Nov. 2022) (order); *United States v. Blackburn*, No. ACM 40303, 2023 CCA LEXIS 386, (A.F. Ct. Crim. App. 11 Sep. 2023) (order); *United States v. Portillos*, No. ACM 40305, 2023 CCA LEXIS 321 (A.F. Ct. Crim. App. 1 Aug. 2023) (unpub. op.); *United States v. Simmons*, No. ACM 40462, 2023 CCA LEXIS 236 (A.F. Ct. Crim. App. 5 Jun. 2023) (order); *United States v. Ort*, No. ACM 40261 (f rev), 2022 CCA LEXIS 571 (A.F. Ct. Crim. App. 11 Oct. 2022) (order).

(4) Other Administrative Deficiencies:

- a. Convening Authority Failure to Take Action on Sentence: None.
- b. Other Cases involving Administrative Deficiencies:
 - i. AFCCA reviewed and remanded one case due to ambiguity in the convening authority's decision on action and the adjudged sentence exceeding the jurisdictional limits of the court-martial in that the forfeitures reflected an amount that did not account for the reduction in grade. *See United States v. Jones*, No. ACM S32717, 2022 CCA LEXIS 652 (A.F. Ct. Crim. App. 7 Nov. 2022) (order).
 - ii. AFCCA reviewed and remanded one case in which the convening authority took post-trial action before the deadline to submit clemency matters and rebut victim matters had expired. *See United States v. Portillos*, No. ACM 40305, 2023 CCA LEXIS 321 (A.F. Ct. Crim. App. 1 Aug. 2023) (unpub. op.).
 - iii. AFCCA also reviewed and remanded one case 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. The entry of judgment also incorrectly reflected pleas and findings. *See United States v. Graves*, No. ACM 40340, 2023 CCA LEXIS 356 (A.F. Ct. Crim. App. 23 Aug. 2023) (unpub. op.).
 - iv. AFCCA identified errors in the entry of judgment in three cases that the court corrected pursuant to its R.C.M. 1111(c)(2) authority. *See United States v. Welsh*, No. ACM S32719 (f rev), 2023 CCA LEXIS 157 (A.F. Ct. Crim. App. 6 Apr. 2023) (unpub. op.); *United States v. Heard*, No. ACM 40159, 2022 CCA LEXIS 657 (A.F. Ct. Crim. App. 14 Nov. 2022) (unpub. op.).

op.); *United States v. Todd*, No. ACM S32701, 2022 CCA LEXIS 687 (A.F. Ct. Crim. App. 28 Nov. 2022) (unpub. op.).

- v. AFCCA also reviewed one case in which the entry of judgment incorrectly reflected that the appellant requested a deferment of his sentence when he did not. *United States v. Wilson*, No. ACM 40274, 2023 CCA LEXIS 343 (A.F. Ct. Crim. App. 16 Aug. 2023) (unpub. op.).
- vi. AFCCA reviewed and remanded one case due to a discrepancy in the attachments to the stipulation of fact admitted during the appellant's court-martial and the attachments contained in the record of trial. See *United States v. Manzano Tarin*, No. ACM S32734, 2023 CCA LEXIS 291 (A.F. Ct. Crim. App. 27 Jun. 2023) (order).
- vii. 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. Valentin-Andino*, 83 M.J. 537, 544 (A.F. Ct. Crim. App. 30 Jan. 2023); *United States v. Arroyo*, No. ACM 40321, 2023 CCA LEXIS 358 (A.F. Ct. Crim. App. 25 Aug. 2023) (unpub. op.); *United States v. Haynes*, No. ACM 40306, 2023 CCA LEXIS 361 (A.F. Ct. Crim. App. 30 Aug. 2023) (unpub. op.).

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

(6) Cases in Which AFCCA Made a Final Determination that a Finding of a Court-Martial was Clearly Against the Weight of the Evidence: AFCCA did not conclude any court-martial findings were clearly against the weight of the evidence as set out in Section 542 of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for FY21 (FY21 NDAA). However, AFCCA set aside an offense in three cases based on a factual sufficiency review completed under the standard of review applicable to offenses committed prior to the effective date of Section 542 of the FY21 NDAA. See *United States v. Bousman*, No. ACM 40174, 2023 CCA LEXIS 66 (A.F. Ct. Crim. App. 8 Feb. 2023) (unpub. op.) (setting aside one specification of aggravated assault under Article 128, UCMJ, on factual sufficiency grounds but finding the appellant guilty of two lesser included offenses of assault under Article 128, UCMJ, and reassessing the appellant's sentence in light of the affirmed offenses); *United States v. Thompson*, No. ACM 40019 (rem.), 2023 CCA LEXIS 210 (A.F. Ct. Crim. App. 18 May 2023) (unpub. op.) (setting aside and dismissing with prejudice one charge and one specification of production of child pornography under Article 134, UCMJ, on factual

sufficiency grounds and reassessing the appellant's sentence for the remaining affirmed offenses, including sexual assault of a child under Article 120, UCMJ); *United States v. Nestor*, No. ACM 40250, 2023 CCA LEXIS 272 (A.F. Ct. Crim. App. 30 Jun. 2023) (unpub. op.) (setting aside and dismissing with prejudice one specification of wrongful distribution of child pornography under Article 134, UCMJ, on legal and factual sufficiency grounds and reassessing the appellant's sentence for the remaining affirmed offense of possession of child pornography under Article 134, UCMJ).

III. 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

Judge Advocate and paralegal professional development is coordinated by TJAG'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 FY23, the JAG Corps continued to implement and further develop the new military justice professional development model, called the Career Litigation Development Plan (CLDP), to ably 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, the DAF, through the JAG Corps, continued to resource and stand-up the OSTC, as directed by the FY22 NDAA and further implemented by E.O. 14103. 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), UCMJ. 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 staffing process for this office. This includes an assignment selection process which 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 OSTC's leadership 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, new judge advocates selected for OSTC positions are also required to complete a foundational 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 as necessary. Fixed terms of three-year assignments have been established for OSTC positions to ensure judge advocates develop and maintain optimal effectiveness.

In order for OSTC to meet full operational capacity by 27 December 2023, the JAG Corps has assigned a cadre of 39 judge advocates dedicated to the investigation and prosecution of covered offenses. Additionally, the JAG Corps has a Secretary of the Air Force approved resourcing plan to increase OSTC staffing through FY 2027 to meet anticipated increases in reports of covered offenses, investigations, and courts-martial.

b. Trial Counsel

As mentioned above, the JAG Corps again made significant changes to its Trial Counsel cadre in FY23. After standing up a provisional OSTC in FY22, the DAF welcomed its first LSTC and officially created the OSTC. In FY23, TJAG, at the recommendation of the LSTC, certified 19 new STC and assigned a total of 39 active duty and reserve STC to six OSTC district offices worldwide. STC candidates were selected because of their skill as special victim litigators with substantial training, experience, and more than proficient skills in executing, overseeing, and supervising litigation duties.

In FY23, the Air Force Judge Advocate General's School (AFJAGS) hosted the second annual DAF STC Qualification Course. The STC Qualification Course included lectures and practical exercises, testing the candidate's knowledge and ability to manage the investigation and prosecution of covered offenses. The Course culminated in an objective final exam, demonstrating the candidate's understanding of interpersonal violence, sexual assault, child abuse and exploitation, the Uniform Rules of Practice before the Air Force Courts-Martial, the MCM, and other applicable law and policy. In addition to the Course, all STC candidates also attended the DAF OSTC annual training and underwent a panel interview with sitting STCs.

Along with the standup of the OSTC offices, the District Trial Counsel (DTC) position was created. DTC are responsible for serving as senior litigation support for non-covered offense cases throughout the DAF. TJAG assigns judge advocates to serve as DTC only after significant vetting and based on recommendations from the JAG Corps Chief Prosecutor and Professional Development Division.

Under the supervision of the O-6 Chief Prosecutor, the DTC program consists of six experienced trial practitioners strategically located throughout the world. The DTC are supervised by the Director of Operations - Government Trial and Appellate Operations Division (AF/JAJG), who is AF/JAJG's focal point for issues related to the training and prosecution of complex non-covered offense cases.

The JAG Corps provided significant resourcing support to both STC and DTC who routinely attended continuing education throughout the year, including litigation and investigation-specific courses offered by other Military Services and civilian Federal agencies.

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, Maryland, as provided by the Division's worldwide team of Area Defense Counsel, Defense Paralegals, Senior Defense Counsel, Chief District 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, AF/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 Charter also provides guidance to defense counsel and their teams as they represent clients.

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 Senior Defense Counsel. Senior 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 Senior Defense Counsel and Chief District 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 FY23, in addition to the four leadership positions previously noted, AF/JAJD consisted of 85 Area Defense Counsel, 78 Defense Paralegals, 18 Senior Defense Counsel, three Defense Paralegal Managers, five Chief District Defense Counsel, and eight Defense Investigators. Each Chief District Defense Counsel leads Division personnel who fall within their respective districts. There are four districts in the Continental United States (Districts 1-4), one encompassing United States Air Forces Europe (USAFE) (District 5), and another consisting of Pacific Air Forces (PACAF) installations (District 6). Three Defense Paralegal Managers are assigned to Districts 1/5, Districts 2/6, and District 3/4.

Defense investigators were assigned to eight billets worldwide, where they assisted defense counsel with development of investigative strategies, conducted witness interviews, and provided formal and informal instruction on how to best capture evidence that might be of use at court-martial or in other adverse proceedings. Joint Base Langley-Eustis, Virginia (District 1), Travis Air Force Base, California (District 2), and Joint Base San Antonio-Randolph, Texas (Districts 3 and 4) each served as home station for two defense investigator billets responsible for investigations within their continental United States (CONUS) districts. Ramstein Air Base, Germany (District 5) and Kadena Air Base, Japan (District 6) each served as home station for a single defense investigator who assist, respectively, on cases arising in the United States Air Forces in Europe (USAFE) and Pacific Air Forces (PACAF) Major Commands. Together these professionals provided defense services to Airmen and Guardians around the world.

Throughout FY23, AF/JAJD personnel continued to demonstrate excellence while serving as advocates and representatives for their clients. The continuing success of the DAF'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 FY23, all new AF/JAJD personnel attended one of two Defense Orientation Courses (DOC) that were held at the 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 Senior 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 the AFJAGS twice in FY23. 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.

The AFJAGS also hosted the Advanced Trial Advocacy Course (ATAC) in FY23. This course was attended by Senior Defense Counsel and their Trial Counsel counterparts. ATAC is taught by experienced litigators from inside and 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.

In FY23, AF/JAJD finalized planning for a Senior Defense Counsel Qualification Course and Leadership Summit, set to commence in FY24. This new one-week course was designed by AF/JAJD personnel and approved by TJAG as the trial defense counterpart to a similar course designed to train senior prosecutors selected for assignment within the OSTC. It will take place at the AFJAGS in May 2024. Incoming Senior Defense Counsel will receive training on how to lead and develop the defense counsel and defense paralegals they will be expected to supervise both in and out of the courtroom. Additionally, judge advocates who have been selected for assignment as a Senior Defense Counsel will be trained on, and required to demonstrate knowledge of, the law and a high degree of competence in trial litigation through exercises and a written examination. A passing score, as certified by the Chief, AF/JAJD, will be required before Senior Defense Counsel candidates will be designated as fully trained and prepared to supervise others in the representation of Airmen and Guardians.

In FY23, AF/JAJD also conducted 5 virtual litigation training events, referred to as District Advocacy Remote Trainings (DARTs). These DARTs provided advanced advocacy and leadership training to defense counsel and paralegals, as well as an opportunity for leadership to connect, albeit virtually, with geographically separated personnel.

As planned throughout FY23 and fully implemented in FY24, AF/JAJD gained the authority to independently authorize and employ experts for trial preparation with the appointment of four Defense Expert Authorization Officials (DEAOs). These four DEAOs are assigned to JAJD and at a minimum hold the grade of O-5 select. DEAOs authorize or deny expert requests submitted by defense counsel. Authorized requests are funded by the general court-martial convening authority over the relevant case.

d. Victims' Counsel

The Victims' Counsel Division (AF/JAJS) maintained 48 operating locations worldwide with five District Chief Victims' Counsel; three District Paralegal Managers; 53 Victims' Counsel; 48 Victims' Paralegals; and a headquarters office at Joint Base Andrews comprised of an O-6 Division Chief, an O-5 Deputy Chief, a GS-14 Chief of Appellate and Outreach, a Chief of Training and Programs, and a Senior Paralegal Manager.

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, in accordance with TJAG's authorities outlined in DAFI 51-101, *The Air Force Judge Advocate General's (AFJAG) Corps Operations, Accessions, and Professional Development*, para. 1.2, TJAG is responsible for recruiting, selecting, training, and assigning judge advocates and civilian attorneys within the DAF as Victims' Counsel.

All Victims' Counsel must attend the DAF Victims' Counsel Course (VCC), or another service's victims' counsel certification course, prior to representing clients. At the 2023 VCC, hosted at the AFJAGS, 31 incoming DAF Victims' Counsel and 17 incoming DAF Victims' Paralegals (VPs) received 64 blocks of tailored instruction on advising and legal representation of adult and child victims of sex-related and domestic violence offenses, and adult victims of interpersonal violence. The course also included 13 Special Victims' Counsel/Victims' Legal Counsel from sister services. In addition to certifying new Victims' Counsel and Victims' Paralegals at VCC, five DAF Victims' Counsel Division personnel attended the in-person Army Special Victims' Counsel Course in August of 2023. This year's DAF VCC included tactical practitioners and subject matter experts, as well as a survivor's personal experience.

This year, AF/JAJS also partnered with the Department of Justice Office for Victims of Crime (OVC) to provide tailored training and live interaction to facilitate meaningful discussions on resiliency and self-care for Victims' Counsel and Victims' Paralegals. Victims' Counsel and Victims' Paralegals received tools and resources to recognize and mitigate the impact of burnout and vicarious trauma while learning strategies for improving personal and team resiliency. OVC also provided training to AF/JAJS leadership, which identified potential barriers to building a trauma-informed leadership approach and ways to overcome those barriers.

In January 2023, AF/JAJS began providing monthly training on the Military Justice Appellate Process, facilitated by the Chief, Appellate and Outreach who is the DoD's only Civilian Appellate Victims' Counsel. Training topics included: automatic appeals & unanimous verdicts, clemency & parole, post-trial hearings, writ petitions under Article 6b, and a caselaw update. In addition to training, AF/JAJS has engaged in robust appellate litigation. Victims' Counsel petitioned the AFCCA for a writ of

mandamus under Article 6b(e) in seven cases. Two cases were appealed directly to the Court of Appeals for the Armed Forces (CAAF). In one case, CAAF prescribed the way for victims to access the Court via certification by the respective services' TJAG. With that precedent, Appellate Victims' Counsel sought and received TJAG certification of one case. The appellate practice of the program forged new pathways for victims to seek redress and enforcement of their rights.

Also in January 2023, AF/JAJS launched a Professional Responsibility Training Team whose mission was to create resources and training on Victims' Counsel and Victims' Paralegal specific professional responsibility challenges. Since its inception, the team has published nine newsletters focused on ethics issues affecting Victims' Counsel and Victims' Paralegals. Additionally, it has facilitated two quarterly trainings with small group interactive sessions to discuss issues and test Victims' Counsel and Victims' Paralegal knowledge on solving complex professional responsibility issues.

Finally, in October of 2023, TJAG approved a pilot program of the Victims' Counsel Advocacy Course, a five-week hybrid (in-residence and distance learning) course dedicated to elevating Victims' Counsel trial competency skills. This course will be the first course in the DoD dedicated solely to improving the advocacy skills of Victims' Counsel.

e. Appellate Government Counsel

The Appellate Government section of AF/JAJG is located at Joint Base Andrews, Maryland, 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 DAF's Chief Prosecutor, one O-5 Director of Operations, four active-duty Appellate Government Counsel, eight reserve Appellate Government Counsel, and one civilian Associate Chief/Director of Appellate Operations. Additionally, Appellate Government 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-4s. Typically, Appellate Government Counsel are chosen from officers currently serving as Area Defense Counsel, Victims' Counsel, or District 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 attended two main courses to enhance their appellate advocacy. Appellate counsel attended and participated as instructors at the Annual Joint Appellate Advocacy Training, which provides valuable instruction on appellate

advocacy from plenary speakers and allows for interaction with Appellate Government Counsel from all services. The Appellate Government Counsel also attended 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.

f. 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 appeals to AFCCA, CAAF, and writs of certiorari to the Supreme Court of the United States. AF/JAJA counsel are selected based upon experience and capability in litigation. In FY23, 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 attorney, and eight reserve attorneys.

In FY23, AF/JAJA provided a two-day newcomer training course for incoming appellate defense counsel and participated in an orientation with the AFCCA and the CAAF. Counsel hosted and provided instruction at the Joint Appellate Advocacy Training course at Joint Base Andrews, Maryland, which was attended by appellate advocates from each of the military services. AF/JAJA counsel also attended the Appellate Judges Education Institute Summit in Washington, D.C., and the North Carolina Appellate Advocacy Training in Chapel Hill, North Carolina. Additionally, AF/JAJA continued to provide formal instruction for Senior Defense Counsel and Area Defense Counsel and distributed two quarterly newsletters to AF/JAJD for defense counsel in the field before reorienting outreach efforts to collaborate with AF/JAJD on podcasts and quarterly newsletters.

g. The Air Force Judge Advocate General's School

The AFJAGS is the educational arm of the JAG Corps. Located at Maxwell Air Force Base, Alabama, the 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, the military rules of evidence, the rules of criminal procedure, sexual assault policy and response, and diversity and inclusion. The 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 FY23, the AFJAGS faculty members instructed more than 11,000 students at these military academic institutions. The AFJAGS plays a critical role educating national security leaders in the law, to include addressing congressionally mandated military justice training for wing, deputy 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.

The AFJAGS’ flagship publication to the DAF, *The Military Commander and the Law*, continues to serve as a vital resource for Air and Space Force commanders, senior enlisted leaders, and leaders at every level. It provides clear and comprehensive guidance for law and policy across all legal domains. The 2023 edition is available in print and online form. Additionally, the AFJAGS published 22 articles and 10 podcast transcripts through the DAF JAG Corps e-magazine, *The JAG Reporter*, reaching more than 20,000 users. The AFJAGS also produced 25 webcasts on various legal topics. These webcasts are available “on demand” via the AFJAGS’ web-based learning management system which is accessible to all members of the JAG Corps. Finally, the AFJAGS produced its own podcast, recording 11 episodes discussing relevant legal topics with 14 different guests. The podcast continues to be one of the AFJAGS’ best outreach tools, having reached over 22,000 listeners in 2023.

More than 2,800 students attended the AFJAGS’ in-residence and distance education courses in FY23. With more than 67 AFJAGS course offerings, the following courses devoted resources to military justice-related topics:

Advanced Sexual Assault Litigation Course
Advanced Trial Advocacy Course
Air Command and Staff College
Annual Survey of the Law
Chaplain’s College (Basic, Deputy Wing, and Wing Chaplain Courses)
Chief’s Leadership Course
Civilian Legal Orientation Course
Court Reporter Course
Defense Orientation Course (new Area Defense Counsel and Defense Paralegals)
First Sergeant’s Academy
Gateway (intermediate leadership course for DAF JAG Corps majors)
Guardian Orientation Course
International Officers School
Judge Advocate Staff Officer Course (initial training for new judge advocates)
Law Office Management Course
Leadership Development Course for Squadron Command
Military Justice Administration Course
Noncommissioned Officer Academy & Senior Noncommissioned Officer Academy
Office of Special Trial Counsel Initial Qualification Course
Paralegal Advanced Developmental Education Course
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, TDAC, Advanced Sexual Assault Litigation Course, and Training by Reservists in Advocacy and Litigation Skills. In addition, other courses, such as ATAC, DOC, and the Military Justice Administration Course also contain critical updates to the law as it pertains to sexual assault in the military.

Further, the JAG Corps entered into a Memorandum of Agreement with the Air Force Office of Special Investigations and welcomed the first liaison officer into AFJAGS where he is being integrated across military justice coursework as well as operations and international law and national security topics. Finally, the AFJAGS has strategically realigned its curriculum to integrate the latest developments from the OSTC and incorporate key elements of the FY22 NDAA and E.O. 14103 military justice reforms, ensuring the most up to date education and training for its students.

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 voting group member for the DoD's Joint Service Committee on Military Justice (JSC). In FY23, the DAF finished its two-year assignment as the chair of the JSC, passing the rotating position to the U.S. Coast Guard.

In FY23, AF/JAJM incorporated changes in the law after the President signed E.O. 14103, which made wide-ranging amendments to the MCM. AF/JAJM 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*. In addition to this review, AF/JAJM published a new guidance memorandum to DAFI 51-201 requiring installation-level command publish the nature and results of disciplinary actions related to sexual misconduct and sexual harassment to the installation every 60 days.

AF/JAJM published a new guidance memorandum to DAFI 51-207, *Victim and Witness Rights and Procedures*, to implement IRC Recommendation 1.7e and establish DAF policy for the provision of independent civilian expert witnesses and

consultant access for defense counsel. Additionally, AF/JAJM completed a full rewrite of DAFI 51-507, *Enlisted Discharge Boards and Boards of Officers*, to standardize and update the procedures related to administrative separation boards. AF/JAJM also distributed guidance to the JAG Corps to implement procedures that facilitate an accused's right to a direct appeal to the AFCCA and require a verbatim court transcript for all convictions and sentences, as required by amendments in the FY23 NDAA.

AF/JAJM partnered closely with the OSTC to execute a DAF-wide training program on the 2023 amendments to the MCM in E.O. 14103 and the 2022 NDAA, including the authority over covered offenses given to the OSTC. A representative from AF/JAJM and the OSTC conducted in-person training for judge advocates, investigators, commanders, and command teams, at DAF installations across the world, to date providing over 400 hours of training to 2,500 judge advocates and 2,000 command team members and investigators. This in-depth training explained the 2023 MCM amendments, provided hands on training through real world scenarios, and connected local judge advocate teams and their commanders and staff to the STCs with authority over covered offenses at their installation.

AF/JAJM also continued to provide other relevant 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. AF/JAJM built a JAG Corps-wide Microsoft Teams page which facilitated easier access to the field for timely policy updates, while also allowing a broader reach to, and direct engagement with, military justice practitioners. Each year, AF/JAJM answers several hundred questions from practitioners in the field on all aspects of military justice practice from legal offices at all levels. AF/JAJM also sends out regular policy updates through the JAG Corps Online News Service, a weekly online newsletter distributed to all members of the JAG Corps.

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 six judicial districts as well as all court reporter functions around the world. Chief District Military Judges supervise the various judges within each district. Seventeen active duty trial judges and four reserve trial judges are stationed stateside. Four trial judges are stationed in the two overseas districts: two in Europe and two in the Pacific. The Military Justice Act of 2016, which became effective on 1 January 2019, and E.O. 14103, which relevant part became effective on 28 July 2023, provides trial judges the authority to execute new processes including pre-referral requests for warrants, orders, or subpoenas, the use of the Judge Alone Special Court-Martial forum, various new trial procedures, and new post-trial processes requiring Statements of Trial Results and Entries of Judgment.

AF/JAT 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 DAF's trial judiciary trains alongside all trial judges in the DoD. In 2023, the Navy Trial Judiciary hosted the Joint Military Judges Annual Training in-person at Naval Base Coronado, California. Instruction included courses on victim's rights under Article 6b of the UCMJ, sentencing evidence and methodology, updates to the rules of evidence and rules for courts martial, 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 FY23, the number of active-duty appellate military judges assigned to AFCCA varied between five and nine, and the number of reserve appellate military judges varied between three and four.

Three AFCCA judges served on the United States Court of Military Commissions Review (USCMCR) in FY23. 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. Four court personnel attended the Appellate Judges Education Institute Annual Training in Scottsdale, Arizona, from 10-13 November 2022. Several court personnel also attended the annual CAAF Continuing Legal Education and Training Program, held on 10-11 May 2023, at the Antonin Scalia Law School at George Mason University.

Additionally, the court support staff consists of a Clerk of the Court, one commissioner, and one civilian paralegal during FY23. The military paralegal position is vacant. The court also hosted two Summer 2023 law student externs assigned under the AF/JAX Intern/Extern Program.

IV. 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 JAG 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 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 as they continue in their careers with the addition of the 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. In FY22, and continuing into FY23, AF/JA was directed to implement several new initiatives.

The first such initiative centered around the IRC's recommendation to provide a separate process to fund the Defense Counsel Program, especially the funding of defense expert consultants and witnesses. While the approval process for defense counsel expert consultant and witnesses was modified through a guidance memorandum to DAFI 51-207, *Victim and Witness Rights and Procedures*, in FY23 to allow independent approval by DEAOs, the funding process was not modified. Given the estimated cost of this program, the DAF retained a funding mechanism whereby Air Force Major Commands and Space Force Field Commands continue to fund defense expert consultant and witness costs after their approval by a DEAO. If this funding process is not retained and the requirement were to fall to AF/JA to fund, this program will equal one-half of the current AF/JA non-CIVPAY Operations and Maintenance (O&M) budget.

The second initiative creating new cost is the full implementation of the Defense Investigator Program. AF/JA has been able to fund the initial implementation of this

new capability. The current funding requirements for this program are covered for FY24, but will eventually result in AF/JA working within the DAF enterprise to find alternative solutions to meet the budgetary requirements.

The third and final additional cost is the stand-up of the OSTC. Although the OSTC is independently organized under the Secretary of the Air Force, AF/JA is responsible for organizing, training, resourcing, and equipping the requirements of the OSTC. In FY23 the OSTC stand-up cost approximately \$4M, which was resourced organically by AF/JA. However, this is not a sustainable funding mechanism, and the OSTC will either need to be funded independently as a Secretary of the Air Force direct report, or AF/JA will need to seek additional funding resources within the DAF enterprise. AF/JA is still awaiting a final funding decision but anticipates that it will be directed to fund the OSTC. AF/JA is working to acquire the needed funding. AF/JA did request the required manpower and funding increases in the FY25 POM and those decisions are pending at the time of this report's submission.

Added to these initiatives are the rising costs faced by AF/JA in areas such as litigation travel, training, and information technology advancements.

To address the emerging military justice technology requirements, the DAF contracted for the 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. The DAF has begun the rollout of DCMS 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 sustainment costs.

c. Training

Judge advocates and paralegals 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 the 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 FY23, AF/JAX selected 853 students to attend courses with military justice training topics—many students attend multiple courses during the year. AF/JA also approved the creation of the Victims' Counsel Advocacy Course, a course aimed at providing Victims' Counsel with vital advanced training on litigation techniques and courtroom advocacy, the first iteration of which will take place in FY24.

AF/JAX worked with AF/JAZ to increase the number of centrally funded litigation training opportunities for judge advocates. The TDAC is held twice a year and is now centrally funded for up to 72 students per year. The ATAC is held once a year and is now centrally funded for up to 15 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-4 through E-7. Paralegals are not eligible to become Defense Paralegals and 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, 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 the AFJAGS.

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

Conclusion

The superior efforts of JAG Corps' professionals in FY23 are apparent throughout the accomplishments noted in this report. Our military justice practitioners are working tirelessly to implement the most wide-ranging changes to the DAF's military justice system

since the first implementation of the UCMJ in 1951. The adaptability of our practitioners is key to ensuring the smooth stand-up of the OSTC, while also continuing to provide commanders with the necessary tools to promote good order and discipline throughout their units in a timely and accurate manner.

The JAG Corps put numerous initiatives into practice in FY23 to effectuate the President's MCM amendments in E.O. 14103. These changes impact almost every aspect of the DAF's military justice and discipline processes. They include, but are not limited to, the resourcing and stand-up of the Congressionally mandated OSTC, and the continued implementation of IRC recommendations and the JAG Corps-wide CLDP. The DAF maintains a strong and robust military justice program that appropriately balances the competing interests of all of those with a stake in the military justice system.

Appendix

DEPARTMENT OF THE AIR FORCE MILITARY JUSTICE STATISTICS

Department of the Air Force Report on the State of Military Justice for Fiscal Year 2023

Report Period: FY 2023

PART 1 – PENDING COURTS-MARTIAL [A]			
TYPE COURT	PREFERRED AND PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		79	
BCD SPECIAL		74	
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))		8	
SUMMARY		82	
TOTAL:	58	243	301

PART 2 – BASIC COURTS-MARTIAL STATISTICS				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	INCREASE (+)/ DECREASE (-) OVER FY22 IN CASES
GENERAL [B]	154	92	49	-4.3%
BCD SPECIAL[C]	86	70	14	-38%
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	10	8	2	-33%
SUMMARY	89	89	0	+ 2.3%
OVERALL CASES RATE OF INCREASE (+)/DECREASE (-) FROM FY 22				-15.5%

PART 3 – ACCUSED DEMOGRAPHIC DATA												
	Total	Gender		Ethnicity [D]			Race					
		Male	Female	Hispanic / Latino	Non-Hispanic	American Indian / Alaska Native	Asian	Black / African	Native Hawaiian / Pacific	White	Other	Unknown
General	154	148	6	22	132	2	7	28	1	101	11	4
BCD Special	86	77	9	6	80	0	2	28	1	50	4	1
Military Judge Alone Special	10	8	2	1	9	0	1	3	0	4	2	0
Summary	89	81	8	9	80	1	6	17	0	51	8	6

PART 4 – VICTIM DEMOGRAPHIC DATA [E]												
	Total	Gender		Ethnicity [F]		Race						
		Male	Female	Hispanic / Latino	Non-Hispanic	American Indian / Alaska Native	Asian	Black / African	Native Hawaiian / Pacific	White	Other	Unknown
General	262	45	217	19	243	2	1	23	1	150	22	63
BCD Special	80	21	59	6	74	0	4	14	1	34	3	24
Military Judge Alone Special	7	5	2	0	7	0	1	1	1	4	0	0
Summary	52	16	36	5	47	0	0	7	2	28	3	12

PART 5 – DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT		
GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES/DISMISSALS	40/10	
NUMBER OF BAD-CONDUCT DISCHARGES	23	
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	25	

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY TJAG		
ARTICLE 66(b)(1) – APPEALS BY ACCUSED	20	
ARTICLE 66(b)(2) – FORWARDED BY TJAG	0	
ARTICLE 66(b)(3)/ARTICLE 66(b) (Pre-MJA16) – AUTOMATIC REVIEW	97	
FOR EXAMINATION UNDER ARTICLE 69(a) (Pre-MJA16 Cases) [G]	0	
FOR EXAMINATION UNDER ARTICLE 69 (Post-MJA16 Cases) [H]	2	

PART 7 – WORKLOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS		
TOTAL CASES ON-HAND BEGINNING OF PERIOD	146	
TOTAL CASES REFERRED FOR REVIEW [I]	165	
TOTAL CASES REVIEWED [J]	164	
TOTAL CASES PENDING AT CLOSE OF PERIOD	147	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-25	

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 (77/164)	46.9%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+16.6%
PERCENTAGE OF TOTAL PETITIONS GRANTED (8/77)	10.4%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-47.2%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (8/164)	4.9%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-37.9%

PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ [G]			
TOTAL PENDING BEGINNING OF PERIOD		1	
RECEIVED		2	
DISPOSED OF		2	
RELIEF GRANTED	1		
RELIEF DENIED	1		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		1	

PART 10 – ORGANIZATION OF COURTS [K]		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL	87	
SPECIAL COURTS-MARTIAL	68	
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	8	
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL	67	
SPECIAL COURTS-MARTIAL	20	

PART 11 – STRENGTH [L]		
AVERAGE ACTIVE DUTY STRENGTH	320,045	

PART 12 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	3,676	
RATE PER 1,000	11.29	
RATE OF INCREASE (+)/DECREASE (-) IN NJPs OVER FY22	-12.1%	

Explanatory Notes

[A] Data for cases pending as of 30 September 2023.

[B] The remaining 13 cases were dismissed.

[C] The remaining 2 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 TJAG 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 TJAG 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 FY23.

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

Distribution

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Report to Congress

U.S. Marine Corps Report on Military Justice for Fiscal Year 2023

31 December 2023

Prepared by:

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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 2022 TO 30 SEPTEMBER 2023**

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).¹ This report illustrates the state of military justice practice in the Marine Corps and highlights significant initiatives undertaken during Fiscal Year 2023 (FY23). Most notably, the Marine Corps' deliberate planning and execution in FY23 lead up to the Marine Corps Office of Special Trial Counsel (OSTC) reaching full operational capability by 27 December 2023. All 33 Special Trial Counsel (STC) and 16 enlisted support personnel are in place across the Headquarters element, four regional offices, and nine installations. The OSTC stands ready to execute its mission to provide expert, specialized, independent, and ethical representation of the United States in the investigation and trial-level litigation for offenses over which the OSTC exercises authority, including those covered offenses defined in Article 1(17), UCMJ. Additionally, in FY23 the Marine Corps continued implementation of the recommendations of the Independent Review Commission on Sexual Assault in the Military (IRC) approved by the Secretary of Defense and began efforts to respond to the recommendations of the Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems.

2. Data on Numbers and Status of Pending Cases. At the end of FY23, the Marine Corps had 114 pending cases. Of those, 62 were referred to trial by court-martial and the remaining 52 cases were preferred and pending a disposition decision. The Appendix includes data pertaining to these pending cases as well as cases tried to completion in FY23.

3. Information on the Appellate Review Process

a. Compliance with Processing Time Goals. Cases referred after 1 January 2019 are required to comply with the Military Justice Act of 2016 (MJA 16) post-trial processes and the 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 timelines. The Navy-Marine Corps Court of Criminal Appeals (NMCCA) has held that MJA 16 superseded *Moreno I* and *Moreno II* but left *Moreno III* untouched.² In FY23, the NMCCA found no Marine Corps case to have exceeded the Post-Trial I timeline of 120 days from announcement of the sentence to forwarding for appellate review or the Post-Trial II timeline of 30 days from forwarding for appellate review to docketing at NMCCA.³ Further, no Marine Corps case exceeded the Post-Trial III/*Moreno III* timeline of 18 months from docketing at the NMCCA to decision.

¹ 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.

² *United States v. Rivera*, 81 M.J. 741, 745 (N-M Ct. Crim. App. 2021).

³ In *Rivera*, the NMCCA held that it “will only test for prejudice when the total Post-Trial I and Post-Trial II timeline—the time between announcement of sentence and docketing with this Court—exceeds 150 days.” *Id.* at 746.

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

c. In no Marine Corps case was a provision of the UCMJ held to be unconstitutional.

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.⁴ In *United States v. London*, 2023 CCA LEXIS 193, the NMCCA set aside Lance Corporal Samuel London’s conviction of involuntary manslaughter as factually insufficient (i.e., the court was not convinced of his guilty beyond a reasonable doubt) after conducting a de novo review. The conviction stemmed from a fight in 2019 involving Lance Corporal London, his two friends, and six civilian members of the Emerson College Lacrosse Team. The fight resulted in the death of one of the lacrosse players, Mr. Hotel, who fell backwards, hit his head on a brick entranceway and fractured his skull. At trial, there was inconsistent evidence on whether Mr. Hotel hit his head as a result of being punched by Lance Corporal London or whether he fell backwards during the fight due to some other cause. Though one witness testified that he heard a punch and then saw Mr. Hotel fall, no witness testified that they observed Mr. Hotel get punched. The Court held that the evidence admitted at trial did not eliminate other potential causes for Mr. Hotel’s injuries and, therefore, was factually insufficient to sustain the conviction.

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). To accomplish the military justice mission, this professional community relies on the experience of its practitioners, close supervision, and robust training. The measures specific to trial counsel, defense counsel, VLC, and military judges are detailed below, in addition to more general measures to build upon the qualifications of our military justice practitioners.

a. Trial Counsel

(1) Marine Corps trial counsel serve within the Trial Services Organization (TSO).⁵ 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

⁴ The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, P.L. 116-283, (FY21 NDAA) significantly amended Article 66(d), UCMJ, 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. In FY23, the NMCCA set aside the conviction for factual insufficiency in the following case; however, since the offense was committed before 1 January 2021, this new standard did not apply.

⁵ The TSO has an enduring mission after 27 December 2023 to prosecute offenses over which an STC does not exercise authority. Given the altered role of the TSO after 27 December 2023, some of the measures discussed in the following paragraphs, such as Special Victim Investigation and Prosecution qualification procedures, will not endure.

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.⁶

(2) The TSO is comprised of Regional Trial Offices (RTO) in the National Capital, Eastern, Western, and Pacific Regions. Each of the four RTOs is led by a Regional Trial Counsel (RTC), who is typically a lieutenant colonel (O-5) 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. 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.

(3) The entry-level training for all Marine Corps judge advocates includes completion of the Basic Lawyer Course (BLC) and 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-track of MJOC⁷ 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.⁸ 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.⁹

(4) 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 RTC may qualify the trial counsel to represent the United States as lead trial counsel in special victim cases.¹⁰ In the Marine Corps, all special victim cases must have a Special Victim Investigation and Prosecution (SVIP)-qualified trial counsel detailed as lead counsel.¹¹

⁶ 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 military justice training calendar every fiscal year.

⁷ The MJOC is a two-week course divided into two separate tracks—one for trial counsel and another for defense counsel. The first week of MJOC consists largely of separate lectures and discussions for the trial counsel and defense counsel tracks. 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.).

⁸ U.S. MARINE CORPS, ORDER 5800.16 – Volume 16, LEGAL SUPPORT AND ADMINISTRATION MANUAL, MILITARY JUSTICE para. 022201 (14 July 21) [hereinafter LSAM – V16].

⁹ *Id.* at para. 022202.

¹⁰ 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 UCMJ. *Id.* at para. 050101.

¹¹ *Id.*

Obtaining the SVIP qualification requires the satisfaction of particular experience and training criteria in addition to successful screening by an SVIP qualification board.¹² SVIP qualification boards are typically chaired by the RTC and include at least two additional supervisory counsel. Currently, 43 of the TSO's 80 trial counsel are SVIP qualified.

(5) 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 also receive assistance from the Appellate Government Division (Code 46), Office of the Judge Advocate General of the Navy (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 Court of Appeals for the Armed Forces (CAAF). Accordingly, judge advocates at Code 46 assist trial counsel with interlocutory appeals and other appellate matters.

(6) 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.¹³ 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.

(7) In FY23, 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.¹⁴ Additionally, the authority to detail a trial counsel to represent the government on a capital case is withheld to the cognizant RTC.¹⁵ Moreover, the civilian LAAs within each region are responsible for providing support on such cases.¹⁶

b. Special Trial Counsel. The inaugural Sea Services STC Certification Course was held in May 2023, the culmination of months of planning beginning in 2022. At the course, Navy and Marine Corps judge advocates trained in-person alongside their U.S. Coast Guard colleagues for two weeks on substantive law, policy, and practical skills. The judge advocates attended a third week of virtual training offered by the Army Judge Advocate General's Legal Center and School (TJAGLCS) which focused on black letter law training. All Marine Corps judge advocates in attendance had been favorably screened by a board and approved by the SJA to CMC as possessing the professional and personal qualifications to serve as STC. Successful completion

¹² See *id.* at para. 022303; see also CTC Policy Memorandum 3-21B (Personnel Qualifications).

¹³ LSAM – V16, *supra* note 9 at para. 061003.

¹⁴ *Id.* at para. 050101 (defining SVIP cases to include Article 118, UCMJ).

¹⁵ *Id.* at para 0306.

¹⁶ *Id.* at para 0208.

of the three-week STC Certification Course was required for the Marine Corps judge advocates prior to being formally certified as STC by the SJA to CMC pursuant to Article 24a, UCMJ. Marine Corps STC serve under the supervision of the Lead STC (O-7), Regional STC (O-5), and STC Team Leads (O-4).

c. Defense Counsel

(1) Marine Corps defense counsel within the Defense Services Organization (DSO) provide legal services to Marines accused of crimes at courts-martial and those who are the subject of adverse administrative proceedings. Similar to a trial counsel's supervisory chain, each 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).¹⁷ All defense counsel fall under the supervision of the Chief Defense Counsel of the Marine Corps (CDC), who is a colonel (O-6).¹⁸ The CDC is assisted by a Deputy CDC, who is also a colonel (O-6), and an Operations Officer, who is a lieutenant colonel (O-5).¹⁹ The DSO is also staffed with five civilian LAAs, one stationed within each of the four regions, and one stationed at the DSO Headquarters office in Arlington, Virginia.²⁰ Each region also has a civilian Defense Services Organization Investigator (DSOI) who plays a significant role by enabling defense counsel to better prepare to defend an accused.

(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.²¹ The DCAP is led by a major (O-4) with a Master of Laws (L.L.M.) in criminal law, is stationed in the NCR, and serves under the direct supervision of the CDC.²² Each defense counsel is required to attend three mandatory training events: (1) the two-week-long defense-track of the 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 courses are hosted and managed by the DCAP. In addition, every SDC and RDC conducts monthly and quarterly training, respectively. 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.²³ In conjunction with continuous training and supervision, these safeguards ensure that defense counsel effectively, competently, and ethically represent their clients.

¹⁷ 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].

¹⁸ *Id.* at para. 010601.

¹⁹ These billets were established in late FY22; a pending update to the LSAM will account for this new billet.

²⁰ CDC POLICY MEMORANDUM 4.2A, ATTORNEY ADVISOR MISSION AND CORRESPONDING POLICIES (16 Jan. 19).

²¹ LSAM – V3, *supra* note 19 at para. 010606, 010607.

²² *Id.*

²³ CDC POLICY MEMORANDUM 2.1B, NEW DSO MEMBER ORIENTATION (11 Jun. 19); CDC POLICY MEMORANDUM 4.1C, DEFENSE SERVICES ORGANIZATION ANNUAL TRAINING PROGRAM (14 Oct 22); CDC POLICY MEMORANDUM

(4) The Marine Corps undertook efforts in FY23 to enhance the competence and effectiveness of the DSO. In response to the creation of the OSTC, the Marine Corps established the billet of Special Defense Counsel, to be held by judge advocates in the grade of major (O-4) with qualifications equivalent to those of STC. There are nine Special Defense Counsel billets, with at least one at most DSO installation offices. Filling all these billets is an SJA to CMC-directed priority for FY24. Ten additional civilian support positions (paralegals and office administrators) were also established within the DSO with hiring efforts continuing into FY24. Additionally, the proven benefit of the Defense Litigation Resource Funds in FY23 prompted the expansion of matters for which expenditures are permitted and increasing its annual budget to \$4 million.

d. 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).²⁴

(2) To serve as a VLC, Marine Corps judge advocates are subject to a rigorous nomination, screening, interview, and vetting process.²⁵ 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.²⁶ The nominee must undergo a sensitive screening process, which includes a thorough review of the nominee's Official Military Personnel File.²⁷ The CVLC and responsible RVLC also interview the nominee. The nominee must successfully complete an approved Special Victims' Counsel (SVC)/VLC certification course. 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 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 FY23, the VLCO carried out several initiatives to raise the standard of practice and provide better service and assistance to victims. The VLCO continued to implement the first client-focused survey for USMC VLC clients. All clients are offered the opportunity to complete the survey upon conclusion of the attorney-client relationship and termination of representation. In FY23, clients submitted 31 surveys. The vast majority of those surveys

3.1D, DETAILING AND INDIVIDUAL MILITARY COUNSEL AUTHORITY FOR MARINE CORPS DEFENSE SERVICES ORGANIZATION (6 Nov. 20).

²⁴ 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]

²⁵ *Id.* at para 0103.

²⁶ *Id.* at para. 010305.

²⁷ *Id.* at para. 010309.

indicated a very high level of satisfaction with VLC services. In addition, along with the Navy Victims' Legal Counsel Program and Naval Justice School partners, the VLCO planned and executed the second Navy-Marine Corps VLC Certification Course at NJS in Newport, Rhode Island. The VLCO collaborated closely with Navy and NJS partners to design and implement the course, which 35 Navy and Marine Corps students attended. Among these students were eight Marine Corps VLC and two Marine Corps legal services specialists.

(5) The VLCO currently has 20 active-duty VLC assigned to ten military installations in the United States and three VLC assigned overseas. During FY23, Marine Corps VLC represented 1,042 clients. The average VLCO-wide caseload was 578. The average number of cases per VLC was 27.99.

e. Trial and Appellate Military Judges

(1) All Marine Corps military judges are screened for judicial service via a competitive board process established by the Judge Advocate General of the Navy.²⁸ 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, 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.

(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. Prior to assignment to a judicial billet, military judges must pass the three-week military judge course at TJAGLCS. The course includes detailed instruction on the court-martial process, evidence, procedure, constitutional law, judicial problem solving, and judicial methodology. It also incorporates demonstrations and practical exercises. Seventeen Marine Corps judge advocates currently serve as trial military judges (twelve active duty and five reservists) and six serve as appellate military judges at the NMCCA (three active duty and three reservists).

(3) In February 2023, the Navy hosted the Joint Military Judges Annual Training at Naval Air Station North Island in Coronado, California, with instructors from the Department of Defense and the Navy-Marine Corps Trial Judiciary (NMCTJ), as well as the Honorable Judge Gregory Maggs from the CAAF, and Professor Erwin Chemerinsky, Dean and Jesse H. Choper Distinguished Professor of Law, University of California, Berkeley School of Law. The three-day course was attended by 24 active-duty and 10 reserve judges assigned to the NMCTJ, as well as over 100 additional judges across all services. During the training, the NMCTJ judges received specialized training on wellness from Ms. Audra Adaire of the Naval Postgraduate School.

(4) In September 2023, all NMCTJ judges participated in annual training provided by outside organizations and NMCTJ instructors. Training topics included the Executive Order

²⁸ U.S. DEP'T OF NAVY, JAGINST 5817.1K CH-1, JUDICIAL SCREENING BOARD (1 Sep. 2022).

14103 of 28 July 2023, 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 also attended a variety of courses hosted by the National Judicial College, including courses on judicial writing and search and seizure.

f. Military Commissions

(1) Two Marine Corps judge advocates and four 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.

g. Master of Laws—Criminal Law. Each year, the Marine Corps board-selects approximately eight highly-qualified judge advocates to obtain a Master of Laws degree (LL.M.) in military law with a specialty in criminal law. Upon selection, these judge advocates attend the yearlong criminal law LL.M. program at TJAGLCS. Upon receipt of the criminal law LL.M., these judge advocates receive Additional Military Occupational Specialty (AMOS) 4409 (Master of Criminal Law) that identifies them as possessing specialized understanding in technical and constitutional areas of criminal law and the UCMJ. As these officers progress through their careers, they are more competitive for assignment to supervisory counsel billets within the litigation organizations 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.

h. Litigation Additional Military Occupational Specialties. In FY23, Judge Advocate Division developed a series of litigation-focused AMOSs designed to identify those officers with demonstrated litigation experience and expertise. AMOSs 4450 (Litigator), 4451 (Senior Litigator), 4452 (Supervisory Litigator), and 4453 (Expert Litigator) were added to the Marine Corps Military Occupational Specialties Manual in June 2023. Various litigation billets have since been coded to a corresponding AMOS of appropriate expertise in the Authorized Strength Report. This coding creates an assignment preference, whereby an officer not possessing the appropriate AMOS would only be assigned to that billet by exception. In September 2023, a board screened all eligible officers to identify those with the requisite experience for awarding these new AMOSs. Those favorably screened and approved have now been assigned the AMOSs.

i. Military Legal Education and Training Branch. In FY23, the SJA to CMC established the Military Legal Education and Training Branch within Judge Advocate Division to directly support the SJA to CMC's responsibility for development and oversight of legal education and training in the Marine Corps. The branch coordinates the efforts of Marine Corps legal practice area stakeholders in systematically reviewing and developing legal education and training for both legal and non-legal personnel. A significant focus of the branch in FY23 was the development of a comprehensive training program on Article 15, UCMJ, nonjudicial punishment. The branch will address other subject matters in FY24, elevating the overall level of readiness by Marine Corps personnel with military justice-related duties.

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. As discussed in last year's report, the Marine Corps legal community's structure grew by 133 military and civilian positions through planning efforts to implement the military justice reforms of the FY22 National Defense Authorization Act (NDAA) and the Secretary of Defense-approved recommendations of the IRC. During FY23, the Marine Corps prioritized filling the billets most critical for successful implementation of the reform at the outset. In FY24, the Marine Corps will work toward filling the remaining billets and continue aggressive hiring actions for the unfilled civilian positions. Continued, sustainable resourcing is essential for the Marine Corps to fully execute recent military justice reforms and perform its enduring military justice function. This includes not only the sustained operation of the OSTC, estimated to require approximately \$5 million annually, but in support of other initiatives to raise the bar of military justice practice in other organizations, such as the DSO's Defense Litigation Resource Funds.

6. Conclusion. This year's efforts have prepared us to cross the line of departure of the FY22 NDAA military justice reform. As the OSTC begins to exercise its statutory authority, it will do so with the benefit of comprehensive planning and execution to ensure it is appropriately staffed, resourced, and comprised of highly qualified counsel and support personnel. But this year's efforts have not been focused on the OSTC alone. Military justice practitioners in other organizations remain steadfast in their commitment and preparedness in executing their vital roles in a fair and impartial justice system.



D. J. BLIGH

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

APPENDIX

Report Period: FISCAL YEAR 2023

PART 1 – PENDING COURTS-MARTIAL [A]			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		29	
SPECIAL		31	
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))		2	
SUMMARY		0	
TOTAL:	52	62	114

PART 2 – BASIC COURTS-MARTIAL STATISTICS [B]				
TYPE COURT	TRIED	CONVICTIONS	ACQUITTALS	INCREASE (+)/ DECREASE (-) OF TOTAL CASES TRIED OVER LAST REPORT
GENERAL	83	67	16	-10.75%
SPECIAL	85	74	11	-4.49%
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	14	8	6	-41.67%
SUMMARY	63	58	5	-44.25%
OVERALL INCREASE (+)/DECREASE (-) OF CASES TRIED OVER LAST REPORT				-23.2%

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	83	81	2	32	51	0	2	3	5	0	62	10	1
SPECIAL	85	80	5	27	58	0	1	2	9	0	54	19	0
MJ SPECIAL (Art. 16 (c)(2)(A))	14	13	1	3	11	0	0	1	1	0	10	2	0
SUMMARY	63	62	1	15	47	1	1	1	12	0	46	2	1

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	138	74	63	1	28	77	33	0	4	11	0	77	14	32
SPECIAL	81	30	51	0	18	47	16	0	3	8	1	48	6	15
MJ SPECIAL (Art. 16 (c)(2)(A))	7	5	2	0	2	5	0	0	0	1	0	6	0	0
SUMMARY	41	14	26	1	3	21	17	0	0	0	0	20	4	17

PART 5 – MARINE CORPS DISCHARGES [D]	
GENERAL COURTS-MARTIAL	
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	25
NUMBER OF BAD-CONDUCT DISCHARGES	35
SPECIAL COURTS-MARTIAL	
NUMBER OF BAD-CONDUCT DISCHARGES	48

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG (NAVY & MARINE CORPS)	
FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	71
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	166
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	128 [E]
TOTAL CASES REFERRED FOR REVIEW	180 [E]
TOTAL CASES REVIEWED	187 [F]
TOTAL CASES DECIDED PRIOR FISCAL YEAR	293 [F]
TOTAL PENDING AT CLOSE OF PERIOD	133 [E]
RATE OF INCREASE (+)/DECREASE (-) OF NUMBER OF CASES DECIDED AS COMPARED TO FY22 REPORTING PERIOD	-36.17

PART 8 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF) (NAVY & MARINE CORPS)	
TOTAL PETITIONS TO CAAF	44

PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (NAVY & MARINE CORPS)	
TOTAL PENDING BEGINNING OF PERIOD	4
RECEIVED	5
DISPOSED OF:	4
GRANTED	0
DENIED	4
NO JURISDICTION	0
WITHDRAWN	0
TOTAL PENDING AT END OF PERIOD	5

PART 10 – MARINE CORPS ORGANIZATION OF COURTS BY FORUM [B]	
TRIALS BY MILITARY JUDGE ALONE	153
GENERAL COURTS-MARTIAL	62
SPECIAL COURTS-MARTIAL	77
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	14
TRIALS BY MILITARY JUDGE WITH MEMBERS	29
GENERAL COURTS-MARTIAL	21
SPECIAL COURTS-MARTIAL	8

PART 11 – STRENGTH	
AVERAGE ACTIVE COMPONENT STRENGTH	172,756

PART 12 – NONJUDICIAL PUNISHMENT (Art. 15, UCMJ) [G]	
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	5,988
RATE PER 1,000	34.66

EXPLANATORY NOTES

[A] Pending cases as of 30 September 2023.

[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.



Military Justice in the Coast Guard (FY 2023)

Report to Congress
December 27, 2023



U.S. Coast Guard

Foreword

December 27, 2023

I am pleased to present the following report, Military Justice in the Coast Guard (FY 2023).

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 Jack Reed
Chairman, Senate Armed Services Committee

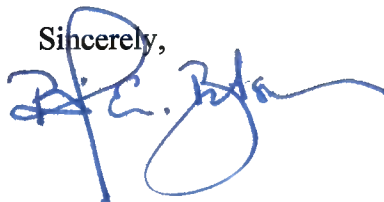
The Honorable Roger Wicker
Ranking Member, Senate Armed Services Committee

The Honorable Mike Rogers
Chairman, House Armed Services Committee

The Honorable Adam Smith
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,

A handwritten signature in blue ink, appearing to read "R. C. Byrd". The signature is stylized and written over the word "Sincerely,".



Military Justice in the Coast Guard (FY 2023)

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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) 2023

Pending Courts-Martial (Persons)*

Type Court	Preferred	Referred
General	N/A†	6
Special	N/A†	1
Total	0	7

* Shows cases which were pending in denoted status as of 30 Sep 23

† Type of Court-Martial not determined at preferral stage

Basic Courts-Martial Statistics (Persons)

Forum	Tried	Convicted†	Acquittal
General	11	9	2
Bad Conduct Discharge Special	7	7	0
Non-Bad Conduct Discharge Special	0	0	0
Summary	18	16	2

† 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 2023	4
Cases Received by Judge Advocate General (JAG) within 120 Days of Sentencing*	9
Cases Referred to CCA within 30 Days of JAG Receipt*	3
CCA Decision within 18 Months of Referral*	4

*Considers only Article 66, UCMJ cases decided by CCA in FY2023. Some cases are still pending referral.

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 and defense counsel 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 Coast Guard will exercise the new military justice authorities outlined in the FY 2022 and FY 2023 NDAs effective December 28, 2023. Interim steps are underway to prepare for the new construct, including the transition of all Legal Service Command trial counsel billets to the Office of the Chief Prosecutor (OCP), the Coast Guard equivalent of Department of Defense's (DoD's) Office of Special Trial Counsel (OSTC). OCP is responsible for all prosecutions in the Coast Guard.</p> <p>Section 531 of the FY 2022 NDAA directed the creation of prosecutor positions called "Special Trial Counsel" (STC) who will have "exclusive authority" over 13 specified "covered offenses" after December 27, 2023, displacing authority previously exercised by commanders. This mandate applied to the Coast Guard. These STC prosecutor positions could have been managed under the prior Coast Guard trial services construct within the Legal Service Command. Section 532 of the FY 2022 NDAA required each DoD Service, but not the Coast Guard, to establish an office to supervise and oversee STC activities, headed by a Lead STC, who must be an O-7 or higher. While not required to do so by Section 532, the Coast Guard OCP was voluntarily created to align with the DoD OSTC approach and enhance the proficiency of counsel. Like DoD, the Coast Guard's OCP is led by an O-7. The initial Coast Guard STCs are in place and attended the joint Special Trial Counsel Certification Course (STCCC) with the Navy and Marine Corps in May and June 2023. Business Rules, operating procedures, and implementing policy for the changes published in EO 14103 on July 28, 2023 apply to Coast Guard military justice cases and are in place ahead of December 28, 2023. OCP personnel and field Staff Judge Advocates have received training on the military justice changes.</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 has three judge advocates and a paralegal collocated 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</p>

Measures	Notes/Details:
	the Armed Forces. Cooperation with the Navy enhances the proficiency of Coast Guard judge advocates.
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 Special Victims' Counsel (SVC)	<p>In addition to initial Article 27(b) training at Naval Justice School, all SVC judge advocates must complete one of the DoD Certification Courses offered by the Navy, Army, and Air Force.</p> <p>Coast Guard SVC judge advocates may also attend the Air Force Intermediate Sexual Assault Litigation Course (parts one and two).</p> <p>In addition, Coast Guard SVCs may attend trainings specific to victim advocacy, 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 but is in the process of developing more comprehensive procedures for handling a national security case. However, until those measures are finalized, 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 currently led by trial counsel assigned to the OCP. Coast Guard judge advocates assigned to Navy Defense Service Offices, 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 is actively working towards achieving an adequate number of judge advocates and support personnel 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, 2023, and 2024 which, in part, mandate 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, at full operational capability in FY26, the Coast Guard will require 58 military and civilian personnel billets to support the activities of the Office of the Chief Prosecutor. In addition to the 24 billets existing in FY24, 34 new billets are required in FY25 for special trial counsel, trial counsel, civilian court reporters, paralegals, and administrative support staff. In addition, civilian court reporters and paralegals are necessary due to the fact that 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. Resource proposals have been submitted for both military and civilian positions through FY26 and the Coast Guard is working on projections for FY27 and later. The Coast Guard also intends to hire GS-12 and GS-11 personnel to provide specific functions (e.g., prisoner escort and courtroom security).

E. Other Matters

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.