

Report to Congress

Department of the Air Force Report on the State of Military Justice for Fiscal Year 2021

December 31, 2021

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

I. INTRODUCTION

The Department of the Air Force is fully committed to the fair and effective administration of military justice and ensuring we have a disciplined force to support our national security objectives. The military justice system showed its strength and resolve in FY21 despite the continued challenges presented by COVID-19. The resiliency and ingenuity that military justice practitioners across all ranks and positions exhibited ensured the system continued to operate efficiently and effectively despite varying levels of restricted movement and public health measures. Air Force Judge Advocate General (JAG) Corps personnel worked with partners in public health to guarantee courts-martial and associated military justice hearings continued in a safe and effective manner. Law office personnel constructed barriers, redesigned courtrooms, and found alternate venues at their installations when courtrooms were too small to accommodate sufficient social distancing requirements. The Air Force Judge Advocate General's School (AFJAGS), circuit counsel, and military judges found ways to adapt training to virtual platforms, allowing for distance learning, even for the dynamic and practice-based courses that focus on litigation development. This innovation and adaptation supported the fundamental notion that justice must continue.

Additionally, on 26 February 2021, the Secretary of Defense established the 90-day Independent Review Commission on Sexual Assault in the Military (IRC). On 1 July 2021, the IRC published their report which included four lines of effort and over 80 recommendations for improvement. The JAG Corps immediately began assessing the recommendations and developing an implantation plan for recommendations within JAG Corps oversight. The JAG Corps is working diligently to address the concerns identified by the Independent Review Commission (IRC) and implement meaningful changes that will enhance victim services and promote the effective administration of military justice.

At the same time, the JAG Corps continues to be fully engaged on the topic of racial disparity in the military justice system. Historical data has long revealed a disparity in the number of disciplinary actions taken against Black Airmen and Guardians. We continue to analyze military justice statistics and engage with our members to ensure our processes promote fairness and equity. This effort involves hard conversations across all levels of the Department of the Air Force between and among those stakeholders in the military justice system. Our legal professionals continue to work with commanders, first sergeants, and supervisors collectively to understand the root causes of the disparity. We currently have several lines of effort designed to study data, identify root causes, and build more transparency in the system. These efforts include collecting and analyzing demographic data for justice actions, implementing bias training for the JAG Corps, and instituting an Appellate Victim and Witness Assistance Program.

Finally, the JAG Corps continues to provide enhanced legal services to victims of crime. In the past year, the Special Victim's Counsel Directorate has been renamed the Victim's Counsel Directorate to reflect the expanded services now being provided to victims. These new

services include advocating for victims of domestic violence offenses in addition to sex-based offenses.

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

II. DATA ON THE NUMBER AND STATUS OF PENDING CASES

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

III. INFORMATION ON THE APPELLATE REVIEW PROCESS

The United States Air Force Court of Criminal Appeals (AFCCA) issued 192 opinions and orders deciding cases before the court in Fiscal Year 2021. One case was a published opinion. *See United States v. Lepore*, No. ACM S32537, __ M.J. __, 2021 CCA LEXIS 466 (A.F. Ct. Crim. App. 16 Sep. 2021) (en banc). The court held oral argument in two cases: *United States v. Harris*, Misc. Dkt. No. 2020-07, 2021 CCA LEXIS 176 (A.F. Ct. Crim. App. 16 Apr. 2021) (unpub. op.); and *United States v. Rodela*, No. ACM 20080 (opinion not yet issued). AFCCA ended FY21 with nine active duty and three reserve appellate military judges.

a. Compliance with Processing Time Goals

- (1) In FY21, no convictions in Department of the Air Force cases were set aside on speedy trial grounds.
- (2) Thirteen cases exceeded 120 days from sentencing to convening authority's action (the "Moreno 1" standard). Under the facts of each case, AFCCA found no relief warranted for these violations of the *Moreno* standard.
- (3) Four cases exceeded the 30-day window from the date of convening authority's action to docketing at AFCCA (the "Moreno 2" standard). AFCCA found relief warranted for a violation of the *Moreno* standard in one of these cases. Specifically, the "Moreno 2" standard was exceeded by 38 days, and AFCCA granted a ten-day credit against Appellant's term of confinement for this violation. *See United States v. Simmons*, No. ACM 39342 (f rev), 2020 CCA LEXIS 356, at *16 (A.F. Ct. Crim. App. 2 Oct. 2020) (unpub. op.).
- (4) Thirteen other cases involved post-trial processing under the post-1 January 2019 rules. Two of these cases exceeded the 150-day standard for facially unreasonable delay from sentencing to docketing, articulated by AFCCA in *United States v. Livak*,

80 M.J. 631 (A.F. Ct. Crim. App. 2020). However, AFCCA found no relief warranted for these violations of the *Moreno/Livak* standard.

- (5) Twenty-nine cases exceeded the standard of 18 months from docketing to 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: In one case, the court found unremediated actual and apparent UCI in the accusatory phase of the court-martial. The court set aside the findings of guilty and the sentence, and dismissed the charges and specifications without prejudice. *See United States v. Butler*, No. ACM 39802, 2021 CCA LEXIS 424 (A.F. Ct. Crim. App. 20 Aug. 2021) (unpub. op.).
- (2) Denial of Right to Speedy Review: None.
- (3) Loss of Records of Trial: AFCCA remanded two cases due to missing material in the record of trial. In one case, the transcript from the appellant’s arraignment was missing from the record. *See United States v. Matthew*, No. ACM 39796, 2020 CCA LEXIS 486 (A.F. Ct. Crim. App. 23 Dec. 2020) (unpub. op.). The case was redocketed with AFCCA and the court has not issued a final decision. In the other case, a prosecution exhibit was incomplete. *See United States v. Perez*, No. ACM S32637, 2021 CCA LEXIS 285 (A.F. Ct. Crim. App. 14 Jun. 2021) (unpub. op.). After the record was returned to the court, AFCCA ultimately affirmed the findings and sentence. *See United States v. Perez*, No. ACM S32637 (f rev), 2021 CCA LEXIS 501 (A.F. Ct. Crim. App. 28 Sep. 2021) (unpub. op.).
- (4) Other Administrative Deficiencies: AFCCA reviewed 42 cases in which the convening authority erroneously took no action on the sentence. *See generally United States v. Brubaker-Escobar*, __ M.J. __, 2021 CAAF LEXIS 818 (C.A.A.F. 7 Sep. 2021) (per curiam). In 37 of the 42 cases, AFCCA remanded the case in order for the convening authority to correct the error; in five of the cases, the court did not remand the record or grant other relief on this issue.
- (5) Cases in Which Provisions of the UCMJ Were Found to be Unconstitutional: None.

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

a. Professional Development Directorate

A deliberate professional development model is key to the ability of judge advocates to competently prosecute and defend complex cases. Air Force judge advocates begin their career with the opportunity to litigate as a prosecutor under the supervision of a Staff Judge Advocate, who will generally have well over a decade of experience. Trial counsel serve at least one tour at a base/garrison legal office where they focus on developing and prosecuting cases. Before The Judge Advocate General (TJAG) certifies a judge advocate under Article 27(b), Uniform Code of Military Justice, to serve as lead trial counsel in a general court-martial, the judge advocate must meet certain criteria. The judge advocate must graduate from a nine-week Judge Advocate Staff Officer Course (initial military attorney training), demonstrate the ability to perform duties as trial counsel in multiple courts-martial, and be recommended for certification by both their supervising Staff Judge Advocate and a military judge who has observed them in court. This pre-certification period typically lasts between 18-24 months.

After trial counsel certification, they continue to serve as an assistant trial counsel to a more experienced lead trial counsel (i.e., Circuit Trial Counsel) for cases including capital offenses, national security issues, or sexual assault. The process of serving as assistant trial counsel, or “second chair” lasts until such a time as they have shown a higher level of expertise in litigation matters. As second chair, assistant trial counsel perform assigned duties (e.g., discovery management, witness examinations, motions, opening statement, and/or argument) as determined by the lead trial counsel in consultation with the Staff Judge Advocate.

Certification and experience as a prosecutor in a base/garrison legal office is the baseline from which Air Force litigators grow. Once certified, trial counsel are competitively selected at the local level to be nominated to serve as an Area Defense Counsel or Victims’ Counsel¹ by their Staff Judge Advocate. Staff Judge Advocates build nominations based on actual performance in trial, general duty performance, officership, and personal characteristics of the nominee such as demeanor and ability to lead. The nominations are reviewed by the trial counsel’s and Staff Judge Advocate’s functional chain of command (i.e., senior supervising attorneys) who then forward final nominations to the JAG Corps’ Professional Development Directorate (AF/JAX). AF/JAX also receives feedback from the Trial Defense Division (AF/JAJD) or Victims’ Counsel Division (AF/JAJS) regarding potential Area Defense Counsel or Victims’ Counsel before making recommendations to TJAG, who is personally involved in the assignment of every Area Defense Counsel and Victims’ Counsel to ensure the selection of the best-qualified candidates.

The next stage of development is a selection process to identify those litigators best suited to become senior prosecutors, called Circuit Trial Counsel. These Air Force senior prosecutors usually possess five or more years of experience as an Air Force litigator. They are vetted by the Government Trial and Appellate Operations Division

¹ Effective 4 Nov 2021, Air Force Special Victims’ Counsel were renamed “Victims’ Counsel” to better reflect the expanded scope of their duties and greater victim eligibility for services. The change in title and expansion of victim services is another significant effort to address a recommendation of the IRC report.

(AF/JAJG), recommended by AF/JAX, and assigned by TJAG. Once selected, they receive additional specialized training. Circuit Trial Counsel are responsible for assisting junior trial counsel with criminal cases of all levels of severity and they serve as lead counsel on the most serious cases, to include capital, national security, and sexual assault cases. The Air Force currently maintains 25 Circuit Trial Counsel positions.

The JAG Corps designates some Circuit Trial Counsel as members of the Special Victims Unit, made up of prosecutors possessing specialized experience and who have shown specific aptitude in trying cases involving child victims, allegations of sexual assault, or allegations of domestic violence. These experienced prosecutors have spent over a year as Circuit Trial Counsel prosecuting felony-level cases involving special victims, and they are fundamental to the Air Force's prosecution arm of its Special Victim Investigation and Prosecution capability. This is a specialized capability that is activated for investigations and cases involving unrestricted reports of sexual assault, domestic violence that involves sexual assault and/or aggravated assault with grievous bodily harm, or child abuse that involves sexual assault and/or aggravated assault with grievous bodily harm.

After serving as an Area Defense Counsel or a Circuit Trial, judge advocates may be considered for an assignment as a Circuit Defense Counsel. Circuit Defense Counsel supervise three to five Area Defense Counsel and are co-located in regional offices with Circuit Trial Counsel and military judges. In addition to supervisory duties, they often serve as lead defense counsel in complex and serious courts-martial, and they also represent senior Department of the Air Force personnel accused of misconduct.

Judge advocates, after serving as Area Defense Counsel, Circuit Trial Counsel, Circuit Defense Counsel, or Victims' Counsel, can serve as Appellate Counsel, regional Directors of Trial Operations, Chief Circuit Defense Counsel, or Chief Circuit Victims' Counsel. These very experienced attorneys supervise subordinate counsel and litigate the highest profile cases in the Department of the Air Force. Generally, each Chief Circuit Trial Counsel or Chief Circuit Defense Counsel has 10 to 14 years of experience as an Air Force JAG and previously served as a senior prosecutor or defense counsel, or both. Beyond those positions, there are additional opportunities to remain directly involved with the military justice system, with former circuit counsel often competing favorably for military judge positions and, eventually, for the positions of the Air Force's Chief Prosecutor (Chief, Government Trial & Appellate Division), Chief Defense Counsel (Chief, Trial Defense Division), Chief Circuit Victims' Counsel, and Military Appellate Judge.

Since 18 October 2017, AF/JAX has employed the Military Justice Experience Tracker (MJET) assigning various levels to all judge advocates based on military justice proficiency. These levels track experience levels from new JAG through an advanced military justice practitioner in the JAG Corps.

At its core, the MJET system is an enterprise-level assessment of a member's litigation capabilities. Additionally, members have the ability to self-report their training and experience. On a yearly basis, all judge advocates identify and update their specific areas of legal expertise. This involves quantifying the number of years of practice in the area of law and providing a self-assessment of their level of experience. In addition to listing a variety of legal specialties, like acquisition law, environmental law, international law, operations law, etc., self-reporting allows attorneys to elaborate on specific military justice positions held throughout their careers. Members can report the number of courts-martial in which they have participated and any additional trial experience they may have gained, such as service as a Special Assistant United States Attorney participating in magistrate court at installations where the Department of the Air Force has concurrent or proprietary jurisdiction. AF/JAX independently tracks and reviews military justice and litigation experience through assignments, performance reports, and supervisors' feedback; however, this self-reporting feature allows members to document experiences that may not be visible from those forms of feedback and provides yet another professional development tool that assists TJAG in matching precisely the right talent to precisely the right job.

This year, the JAG Corps is implementing a career path to build career litigation billets in line with the IRC's recommendations. The Air Force JAG Corps is continuing to review its existing programs and has proposed the implementation of a career litigation development track model to formalize career litigation billets while also ensuring career progression in military grade through professional development opportunities. The proposed model incorporates achievable processes to measure, track, and develop additional expertise in special victim-related prosecution, defense and victim representation. The JAG Corps will implement this model upon OSD approval.

b. Trial Counsel

As discussed above, TJAG assigns judge advocates to serve as Circuit Trial Counsel only after significant vetting and based on recommendations from the JAG Corps Chief Prosecutor and Professional Development Division.

Under the supervision of an O-6 Chief Prosecutor, the Circuit Trial Counsel program consists of five Directors of Trial Operations and 18 Circuit Trial Counsel strategically located throughout the world. The Special Victims' Counsel-Circuit Trial Counsel handle the most serious, complicated, and highest-visibility sexual assault cases in the Air Force and are identified after demonstrating enhanced proficiency in prosecuting sexual assault and other victim-centric cases. These attorneys have litigated an average of 60 courts-martial. These counsel, along with the rest of the Circuit Trial Counsel, are supported by AF/JAJG's Assistant Director of Operations-Criminal Investigations & Prosecution, who is AF/JAJG's focal point for issues related to the prosecution of sexual assault cases.

Despite the pandemic, AF/JAJG successfully pursued training opportunities for Circuit Trial Counsel during the fiscal year. Incoming Circuit Trial Counsel attended the Advanced Sexual Assault Litigation Training Course. Some also attended the Advanced

Trial Advocacy Course at AFJAGS, as well as the Prosecuting Complex Cases Course at the Naval Justice School. Circuit Trial Counsel also received a variety of additional training offered by the Air Force, sister services, and non-DoD sources as available. This training adds to the perspective of CTCs and the interaction with attorneys outside the Air Force allows for a valuable cross-feed of information. In total, in FY21, Circuit Trial Counsel attended approximately 1,000 hours of training to improve their advocacy and prosecution skills.

Finally, AF/JAJG is restructuring current trial operations to implement the recommendations of the IRC to establish an independent office overseeing the prosecution of the most serious crimes. This effort includes the realignment of current trial operations staff, implementation of policy guidance establishing the roles and responsibilities of the new office, and supporting the actions of the Joint Service Committee on Military Justice in executing changes to the Manual for Courts-Martial.

c. Defense Counsel

The Trial Defense Division (AF/JAJD) provides all defense services throughout the Department of the Air Force. The Division Chief, together with the Deputy Chief and Manager, oversees trial defense services from Joint Base Andrews through its worldwide team of Area Defense Counsel, Defense Paralegals, Circuit Defense Counsel, Chief Circuit Defense Counsel, and Defense Paralegal Managers. The Division also includes the Defense Counsel Assistance Program, which provides training, resources, and assistance for Air Force defense counsel worldwide. In FY21, AF/JAJD held a Leadership Summit where Chief Circuit Defense Counsel, Defense Paralegal Managers, Circuit Defense Counsel, Defense Counsel Assistance Program staff members, and other AF/JAJD leadership assembled to discuss and improve the management and operation of the division, professional development, and leading trial defense teams.

Area Defense Counsel represent Airmen and Guardians who face adverse action, ranging from administrative personnel matters to general courts-martial. Their primary focus is on the practice of military justice, to include court-martial litigation. Area Defense Counsel begin their defense careers by trying misdemeanor-level cases, supervised by a Circuit Defense Counsel. As Area Defense Counsel increase their skill and experience, they may defend clients alone or as the lead counsel with a junior Area Defense Counsel assigned. Circuit Defense Counsel mentor Area Defense Counsel and are detailed as lead counsel in complex cases or cases where an Area Defense Counsel has requested assistance.

During FY21, AF/JAJD consisted of 85 Area Defense Counsel, 77 Defense Paralegals, 17 Circuit Defense Counsel, three Defense Paralegal Managers, and five Chief Circuit Defense Counsel. Each Chief Circuit Defense Counsel leads a large defense team falling within their respective judicial circuit. There are three circuits are in the Continental United States (CONUS), one servicing United States Air Forces Europe (USAFE), and another servicing Pacific Air Forces (PACAF). A Defense Paralegal Manager is assigned to each of the three CONUS circuits and, in addition to leading their own circuit, they assist in leading, managing, and training Defense Paralegals in the PACAF and USAFE

circuits. Together these professionals provide defense services to Airmen and Guardians around the world.

In FY21, AF/JAJD continued to demonstrate excellence while serving as advocates and representatives for their clients. The continuing success of the Air Force's Area Defense Counsel program is largely attributable to its independence and the effective and zealous advocacy of its personnel. Training remains a top priority to ensure the best representation for 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 sexual assault cases.

In FY21, AF/JAJD conducted regional litigation training in all five circuits. These Circuit Advocacy Training courses provided advanced advocacy skills to defense counsel and paralegals. Due to the COVID-19 pandemic and restrictions on travel, each of the training courses was conducted virtually. AFJAGS directed the Defense Orientation Course twice in FY21. The first course was held virtually due to the pandemic but returned to live instruction in spring 2021. Taught by experienced Circuit Defense Counsel and Defense Paralegals, the Defense Orientation Course provides training to new Area Defense Counsel and Defense Paralegals on the finer aspects of defense advocacy in the Air Force. Initially, COVID-19 delayed courts-martial proceedings. Toward the latter part of FY21, the frequency of courts-martial proceedings increased, providing Circuit Defense Counsel with even more opportunity to provide critical "on-the-job" training and mentoring to the Area Defense Counsel within their circuits.

AF/JAJD continued to work with AF/JAX in FY21 to create defense investigator positions within the Division. These investigators will provide investigative support in sexual assault, national security, and other complex cases similar to criminal defense investigators in civil jurisdictions. The addition of civilian authorizations for defense litigation support will bring the Department of the Air Force military justice system in step with the other military departments and make defense counsel more effective. This will enhance fairness and efficiency, in reality and in appearance. It is also an effort that meets a recommended area of improvement identified in the IRC report.

Finally, AF/JAJD is preparing to implement the recommendations of the IRC to establish control of its own resources. This effort includes realigning current funding mechanisms, developing witness and consultant funding guidelines, and supporting the actions of the Joint Service Committee on Military Justice in executing necessary changes to the Manual for Courts-Martial.

d. Victims' Counsel

The Victims' Counsel Division (AF/JAJS) represents victims of violent crimes as authorized by the Secretary of the Air Force's inherent authority to direct the operations of the Department of the Air Force. See 10 U.S.C. § 9013 and 10 U.S.C. § 1044. Additionally, the Secretary of the Air Force has authorized exceptions to statutory eligibility requirements on a case-by case basis. Finally, under 10 U.S.C. § 8037(c)(2) The Judge Advocate General of the United States Air Force shall, "direct

the officers of the Air Force designated as judge advocates in the performance of their duties.”

All Victims’ Counsel must attend the Air Force Victims’ Counsel Certification Course (AF SVCC). AFJAGS hosts the AF SVCC, where judge advocates receive tailored training and preparation to represent victims of sexual assault and domestic violence. In FY21, AF SVCC returned to in-person instruction. Thirty-one incoming Air Force Victims’ Counsel, 20 incoming Air Force Victims’ Paralegals, and one Air Force civilian Appellate Victims’ Counsel received 58 blocks of instruction covering the representation of adult and child victims of sexual assault and domestic violence. The course also included 100 Victims’ Counsel from sister services attending virtually, and three incoming Air Force Victims’ Counsel virtually attended the Army SVCC, held in July 2021. This year, AF SVCC student feedback indicated appreciation for the course’s real-world practical seminars and small group breakout sessions, some of which included participation from tactical practitioners and other subject matter experts; joint service training; and especially for the compelling accounts shared by real survivors of sexual assault and domestic violence

In FY21, the Judge Advocate General (TJAG) directed Victims’ Counsel (VC) offices (with assistance from Legal Assistance and the Victim Witness Assistance Program (VWAP)) to participate in a pilot program to collect data to determine the advisability and feasibility of expanding Victims’ Counsel (VC) services to Department of the Air Force affiliated victims not currently eligible for services under law and policy. Specifically, this program focused on victims of interpersonal violence (IPV). The program was launched at 10 installations in April 2021 and has continued since that time with expanded availability throughout the DAF. This effort is in line with recommendations from the IRC Report. The holistic approach provided appropriate representation and services for each client, fully tailored to the unique complexities of individual cases. The use of a “no wrong door” concept was focused directly on assisting Airmen and Guardians and ensured critical continuity of care. As part of this program, IPV victims receive privileged, confidential legal advice and services to educate crime victims on legal standards for various crimes under the Uniform Code of Military Justice, educate victims on their rights as crime victims within the Department of the Air Force, and provide access and referrals to victims’ support services as part of a comprehensive legal support network.

e. Appellate Defense Counsel

The Air Force Appellate Defense Division (AF/JAJA) is located at Joint Base Andrews and is responsible for delivering superior appellate defense services to Airmen on appeal. AF/JAJA counsel are selected based upon experience and capability in litigation. In FY21, 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 2021, AF/JAJA provided a two-day newcomer training course for incoming appellate defense counsel and participated in an orientation with the Air Force Court of Criminal

Appeals and the Court of Appeals for the Armed Forces. Counsel provided instruction at the Joint Appellate Defense Training course at Fort Belvoir, which was attended by appellate defense advocates from each of the military services. AF/JAJA counsel also attended the Appellate Judges Education Institute Summit in Austin, Texas. Additionally, appellate defense attorneys continued to provide formal instruction for Circuit Defense Counsel and Area Defense Counsel and distributed a quarterly newsletter to AF/JAJD for defense counsel in the field.

f. Appellate Government Counsel

Appellate Government (AF/JAJG) is located at Joint Base Andrews and is responsible for representing the United States on all appeals before the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces. The Division is staffed by one O-6 Division Chief, who is dual-hatted as the Chief Prosecutor, one O-5 Director of Operations, seven active duty Appellate Government Counsel, six reserve Appellate Government Counsel, and one civilian Associate Chief/Director of Appellate Operations. Additionally, Appellate Government has two active duty paralegals and one civilian paralegal. Appellate Government Counsel vigorously represent the government in Article 66 and Article 67 appeals of Air Force court-martial convictions, and in Article 62 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 Circuit Trial or Defense Counsel recognized for their ability and desire to serve as appellate counsel.

New Appellate Government Counsel participate in an orientation with AF/JAJG, as well as orientations with the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces. During the year, Appellate Government Counsel attend two main courses to enhance their appellate advocacy. These counsel attend and participate as instructors at the Annual Joint Appellate Advocacy Training, which provides valuable instruction on appellate advocacy from plenary speakers and allows for cross-pollination between Appellate Government Counsel from all services. Ordinarily, Appellate Government counsel also attend the annual continuing legal education program sponsored by the Court of Appeals for the Armed Forces allowing for specific training on appellate advocacy run by and from the perspective of the appellate judges of our highest court, though this was cancelled in FY 21 due to the COVID-19 pandemic. All Appellate Government Counsel possess training and experience in litigating sexual assault cases. In addition, the AF/JAJG Division Chief, Director of Operations, and Associate Chief hold Top Secret clearances in the event classified matters arise on appeal.

g. The Air Force Judge Advocate General's School

The Air Force Judge Advocate General's School (AFJAGS) is the educational arm of the JAG Corps. Located at Maxwell Air Force Base, Alabama, AFJAGS provides education

and training in all aspects of military legal practice to attorneys and paralegals from all military services, other federal agencies, and several foreign countries. Military justice instruction topics include advocacy, administration, military rules of evidence, the rules of criminal procedure, sexual assault policy and response, and diversity and inclusion. AFJAGS faculty members also provide instruction on military justice for the schools and colleges across Air University, the Air Force’s center for professional military education. During FY21, AFJAGS faculty members instructed more than 9,250 students at these military academic institutions. AFJAGS plays a critical role educating national security leaders in the law, to include addressing congressionally mandated military justice training for Wing, Vice Wing, and Group Commanders during the Senior Officer Legal Orientation Course. Similarly, senior Department of the Air Force enlisted leaders receive essential military justice training at the Senior Enlisted Legal Orientation Course and the Chief’s Leadership Course.

In 2021, the AFJAGS and Information Services Directorate annex building was completed. The forty-two thousand square foot building doubles the school’s teaching capacity and offers a classified teaching space, enhancing warfighting legal education.

Additionally, AFJAGS published 12 articles through the Air Force JAG Corps magazine, *The Reporter*, reaching nearly 3,000 readers. Further, AFJAGS initiated significant revisions to the school’s flagship publication to the Department of the Air Force field writ large, *The Military Commander and the Law*. AFJAGS revised this vital resource for commanders, first sergeants, and leaders at every level, to include clear and comprehensive guidance to dealing with law and policy in the arena of responding to and preventing sexual assault. *The Military Commander and the Law* is available in a print edition and online to Department of the Air Force legal professionals and commanders worldwide. In addition, AFJAGS produced 11 webcasts on various national security law topics. These webcasts are available “on demand” via AFJAGS’ web-based learning management system which is accessible to all members of the JAG Corps. AFJAGS also produced its own podcast, recording 24 episodes on relevant national security law topics with guest speakers including the Chief Master Sergeants of the Air Force and Space Force. Lauded for their timely and relevant legal and leadership topics, the podcasts have reached more than 6,000 listeners worldwide.

More than 2,500 students attended in-residence and distance education courses in FY21. With more than 67 AFJAGS course offerings, the following courses devoted substantial resources to military justice-related topics:

Accelerated Commissioning Program & Total Force Officer Training
Advanced Sexual Assault Litigation Course
Advanced Trial Advocacy Course
Air Command and Staff College
Chaplain’s College (Basic, Deputy Wing, and Wing Chaplain Courses)
Chief’s Leadership Course
Defense Orientation Course (new Area Defense Counsel and Defense Paralegals)
Discovery Management Course (distance learning)

First Sergeant's Academy
Gateway (intermediate leadership course for Air Force JAG Corps majors)
Judge Advocate Staff Officer Course (initial training for new Judge Advocates)
Law Office Manager Course
Leadership Development Course for Squadron Command
Military Justice Administration Course
Military Personnel Management Course
Non-Commissioned Officer Academy & Senior Non-Commissioned Officer Academy
Paralegal Apprentice Course
Paralegal Craftsman Course
Senior Enlisted Legal Orientation Course
Senior Officer Legal Orientation Course
Special Victims' Counsel Course
Squadron Officer School
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

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

Further, AFJAGS advances the Chief of Staff of the Air Force and Chief of Space Operations priorities by helping to lead the way in preparing our legal professionals and national security leaders to cultivate and sustain a culture of diversity and inclusion and an environment of excellence. AFJAGS developed and refined a four-module block on diversity and inclusion for the Judge Advocate Staff Officer Course, including unconscious bias, racial disparity in military justice seminar, command perspective, and gender bias panel. The Military Justice Division also incorporates diversity and inclusion issues within student seminar problems and exercises. Finally, AFJAGS plays an integral part in preparing Judge Advocate Generals' Corps personnel to participate proficiently in national security cases through its many national security law course offerings as well as training in war-gaming at Air University. By integrating subject matter experts from the Operations and International Law Directorate, AFJAGS incorporates, into the various national security courses offered throughout the year, instruction on the Great Power Competition and the National Security and National Defense Strategies as well as other current issues of interest in operations law.

h. Military Justice Law and Policy Division

The Military Justice Law and Policy Division (AF/JAJM), as part of the Office of The Judge Advocate General, provides military justice administration and support across the JAG Corps in addition to taking 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 Department of the Air Force representative to the Department of Defense's Joint Service Committee on Military Justice (JSC). The Department of the Air Force is currently the chair of the JSC. In FY21, AF/JAJM incorporated changes in the law pursuant to the Fiscal Year 2021 National Defense Authorization Act and initiated a complete review and rewrite of the four fundamental military justice policy publications and their corresponding templates and checklists. In addition to this review, AF/JAJM drafted a new policy publication for victim and witness rights and procedures that brings together into one publication the Victims' Counsel Program, Victim and Witness Assistance Program, and domestic violence services.

Moreover, AF/JAJM led efforts to implement policy to meet the intent of the IRC's recommendation to create a uniform standard of proof (preponderance of the evidence) for nonjudicial punishment. As part of their efforts, they revised AFI 51-202, *Nonjudicial Punishment*, with an eye toward obtaining publication approval by 31 December 2021.

AF/JAJM also spearheaded advice to the service on implementation and enforcement of the Secretary of Defense's mandate that military personnel be vaccinated against COVID-19. AF/JAJM developed and distributed a detailed guide to assist commanders in the field with understanding the regulations and with addressing personnel who refused vaccination or sought medical or religious exemptions.

AF/JAJM continued to provide training across the JAG Corps during restrictions of movement imposed due to COVID-19 via pre-recorded webinars and live webcasts. The various training courses included the Staff Judge Advocate Course (pre-recorded and live webcasts), the Military Justice Administration Course (live training), and the Victim and Witness Assistance Program Symposium (live webcast).

Additionally, AF/JAJM provides timely notice and advice to the field about matters of military justice law and policy through the Online News Service, a weekly email sent to all members of the Air Force Judge Advocate General's Corps.

i. Trial and Appellate Judiciary

- (1) Trial Judges: The Chief Trial Judge, located at Joint Base Andrews, manages the Air Force Trial Judiciary (AF/JAT), which includes judges assigned to five judicial circuits as well as all court reporter functions and personnel around the world. Chief Circuit Military Judges supervise the various judges within each circuit. Four judges are stationed in the two overseas circuits: two in Europe and two in the Pacific. Primarily, military trial judges preside over trials referred to general and special courts-martial. The complexity of these cases has increased due to the continuing

implementation of the Military Justice Act of 2016, which became effective on 1 January 2019. As a result, trial judges have become accustomed to 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.

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

Each year, the trial judiciary trains alongside all trial judges in the Department of Defense. In 2021, the Joint Military Judges Annual Training was conducted virtually due to COVID concerns. Judges from each of the services met virtually and participated in training on classified and national security cases, docket management, voir dire and warrants, among other topics. The Military Commissions Trial Judiciary provides additional training applicable to their work.

- (2) Appellate Military Judges: During FY21, the number of active duty appellate military judges assigned to AFCCA varied between nine and 10, and the number of reserve appellate military judges between two and three.

Three AFCCA judges currently serve on the United States Court of Military Commissions Review (USCMCR). 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.

According to Rule 1(c) of the Joint Rules of Appellate Procedure for Courts of Criminal Appeals, effective 1 January 2019, tenure for appellate military judges assigned to a service court of criminal appeals is for a minimum of three years, except under certain circumstances identified in the Rule. *See* 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 July. AFCCA also conducts in-house initial training for newly assigned appellate judges. Additionally, court personnel attended the William S. Fulton, Jr. Military Appellate Judges' Training Conference, which AFCCA hosted on 20

October 2020 at the Jacob Smart Conference Center, Joint Base Andrews, Maryland. Two appellate military judges attended the New York University School of Law Institute of Judicial Administration's New Appellate Judges Seminar, hosted virtually 19–23 July 2021. As a result of COVID-19 mandates, the annual Court of Appeals for the Armed Forces Continuing Legal Education and Training Program, normally held in March and offered to all services, was canceled.

Additionally, the court support staff consists of a Clerk of the Court, two commissioners, and two paralegals (one military and one civilian). However, the military paralegal position has been vacant since July 2021. The court also hosted two Summer 2021 law student interns and one Fall 2021 law student extern under the JAX Intern/Extern Program.

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

a. Total Workforce

The Air Force JAG Corps has approximately 1,316 judge advocates and 920 paralegals on active duty rotated on an annual basis in support of military justice functions. Company grade officers (lieutenants and captains) make up approximately 44% (586) of the JAG Corps. Approximately 28% (366) are majors and approximately 19% (245) are lieutenant colonels. Colonels and above, including one lieutenant general, one major general, and two brigadier generals, comprise approximately nine percent (123) of the Corps. As detailed in Section IV, 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. Air Force JAG Corps personnel may specialize in military justice positions as they gain more experience. Currently, the Military Justice and Discipline Domain (AF/JAJ) has over 420 personnel dedicated to specialized military justice positions including those referenced throughout this report. Opportunities in civil litigation across the JAG Corps also contribute to a robust cadre of experienced litigators.

b. Funding

Currently, there are several funding concerns for the JAG Corps as to the administration of military justice. The first involves the Independent Review Commission's recommendation to provide a separate process to fund the Defense Counsel Program, specially the funding of expert consultants and witnesses. AF/JA is not funded to cover those costs and would need additional funding to do so. In addition to this issue, there are several other funding considerations that must be considered for future military justice operations.

The number of overall courts-martial were down during the height of COVID-19 restrictions, however, travel-related expenses did not drop proportionately. This was partially due to the COVID-19 restriction of movement requirements, which required

some travelers to isolate at the court-martial location prior to the commencement of the court-martial. The isolation period resulted in additional per diem expenses that would not otherwise be incurred in a non-COVID-19 environment. With the termination of many travel restrictions, it is anticipated travel will resume to normal levels. There is sufficient funding to cover those costs in FY22.

To address the emerging military justice technology requirements, the Department of the Air Force contracted for the Disciplinary Case Management System (DCMS) in FY20. DCMS is to be the replacement program for AMJAMS, the JAG Corps' legacy military justice management system. The DCMS contract was awarded in FY21 to begin the implementation and covers the cost of licensing and sustainment of the system. DCMS will begin replacing AMJAMS in FY22 through a phased plan. The JAG Corps secured funding for the first two years of the program, but has not been granted full funding for follow-on years. In FY21 and previous years, the JAG Corps has been able to modify AMJAMS to support legislative requirements mandated by the NDAA. However, AMJAMS and other Department of the Air Force information technology platforms may be incapable of supporting all legislatively-mandated technology requirements for FY22. Failure to fully fund the DCMS program through the Future Year Defense Program could negatively impact the timely implementation of DCMS and the ability to meet all legislative requirements.

Additional JAG Corps initiatives, including the hiring of dedicated defense investigators and expansion of VC services to victims of domestic and interpersonal violence, will require additional resources and personnel. These initiatives are closely linked to efforts to ensure fair and equitable representation of all Airmen and Guardians involved in the military justice process.

c. Training

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

d. Officer and Enlisted Grade Structure

Area Defense Counsel and Victims' Counsel serve in the grade of O-3. They are supported by Defense Paralegals and Victims' Paralegals, respectively, who serve in the grades of E-5 and above. Paralegals are not eligible to become defense paralegals 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 AFJAGS.

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

VI. CONCLUSION

The superior efforts of JAG Corps professionals in FY21 are apparent throughout this report. The adaptability of our military justice practitioners is key to continuing to provide commanders with the necessary tools to promote good order and discipline throughout their units in a timely and accurate manner.

Despite the ongoing challenges of the COVID-19 pandemic, the JAG Corps put numerous initiatives into practice in FY21. These include, but are not limited to, the expansion of Victims' Counsel legal services to include domestic violence survivors and other victims of violent crimes through the Pilot Project; implementation of the No-Wrong-Door Policy; laying the groundwork for an Appellate Victim and Witness Assistance Program; implementing the DoD Safe-to-Report policy; expanding defense services through the provision of dedicated defense investigators; and creating directors of trial operations to ensure the health of our prosecution function. The Department of the Air Force 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.

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

VII. APPENDIX

U.S. AIR FORCE MILITARY JUSTICE STATISTICS

Report Period: FY 2021

PART 1 – PENDING COURTS-MARTIAL [A]			
TYPE COURT	PREFERRED AND PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		160	
BCD SPECIAL		28	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))		2	
SUMMARY		5	
TOTAL:		195	

PART 2 – BASIC COURTS-MARTIAL STATISTICS				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	INCREASE (+)/ DECREASE (-) OVER FY19 IN CASES
GENERAL [B]	199	111	61	+48%
BCD SPECIAL[C]	136	112	17	-5.5%
NON-BCD SPECIAL	0	0	0	N/A
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	7	6	1	+0%
SUMMARY	69	68	1	+ 4.5%
OVERALL CASES RATE OF INCREASE (+)/DECREASE (-) FROM FY 20				+17.1%

PART 3 – ACCUSED DEMOGRAPHIC DATA												
	Total	Gender		Ethnicity [D]		Race						
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	American / Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unknown
General	199	193	6	28	89	2	5	43	3	130	8	8
BCD Special	136	125	11	18	69	1	4	45	0	78	6	2
Non-BCD Special	0	0	0	0	0	0	0	0	0	0	0	0
Military Judge Alone Special	7	6	1	2	2	0	0	0	0	5	1	1
Summary	69	61	8	9	36	1	0	30	1	32	4	1

PART 4 – VICTIM DEMOGRAPHIC DATA [E]												
	Total	Gender		Ethnicity [F]		Race						
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	American / Indian / Alaska Native	Asian	Black / African Americans	Native Hawaiian / Pacific Islander	White	Other	Unknown
General	314	58	256	33	185	6	6	36	2	161	21	88
BCD Special	64	19	45	8	40	3	2	8	2	33	5	11
Non-BCD Special	0	0	0	0	0	0	0	0	0	0	0	0
Military Judge Alone Special	2	1	1	0	1	0	0	0	0	1	1	0
Summary	26	7	19	3	21	0	0	6	1	14	3	2

PART 5 –DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT		
GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES/DISMISSALS	41/7	
NUMBER OF BAD-CONDUCT DISCHARGES	38	
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	44	

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG		
ARTICLE 66(b)(1) – APPEALS BY ACCUSED	2	
ARTICLE 66(b)(2) – FORWARDED BY TJAG	0	
ARTICLE 66(b)(3)/ ARTICLE 66(b) (Pre-MJA16) – AUTOMATIC REVIEW	137	
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	185	
TOTAL CASES REFERRED FOR REVIEW [I]	191	
TOTAL CASES REVIEWED [J]	192	
TOTAL CASES PENDING AT CLOSE OF PERIOD	184	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+4	

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 (87/150)	58%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+51.4%
PERCENTAGE OF TOTAL PETITIONS GRANTED (9/87)	10.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+24.1%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (9/150)	6%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+88%

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

PART 10 – ORGANIZATION OF COURTS [H]		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL		69
SPECIAL COURTS-MARTIAL		95
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))		7
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL		55
SPECIAL COURTS-MARTIAL		37

PART 11 – STRENGTH [L]		
AVERAGE ACTIVE DUTY STRENGTH	328,873	

PART 12 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	4,022	
RATE PER 1,000	12.33	
RATE OF INCREASE (+)/DECREASE (-) IN NJPs OVER FY20	-5.9%	

Explanatory Notes

[A] Data for cases pending as of 30 September 2021.

[B] The remaining 27 cases were dismissed.

[C] The remaining 7 cases were dismissed.

[D] 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.

[F] 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 the pre-Military Justice Act of 2016, whereby The Judge Advocate General reviewed any general court-martial case that did not qualify for Article 66 review.

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

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

[J] Figure includes applications for relief under both the pre-MJA16 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 Fiscal Year 2021.

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

Report to Congress

U.S. Army Report on Military Justice for Fiscal Year 2021

31 December 2021

Prepared by:

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

The estimated cost of this report or study for the Department of Defense is approximately \$15,008 for the 2021 Fiscal Year. This includes \$8 in expenses and \$15,000 in DoD labor.

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DEPARTMENT OF THE ARMY
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REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY
ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE
OCTOBER 1, 2020 TO SEPTEMBER 30, 2021

In fiscal year 2021 (FY21), The Judge Advocate General's Corps (JAG Corps) continued to enhance the practice of military justice despite the challenges associated with the COVID-19 pandemic. This fiscal year was a year of continued transparent self-assessment and continued transformation of the military justice response to sexual assault.

Independent comprehensive investigations by the Army's Fort Hood Independent Review Committee (FHIRC) and the Secretary of Defense's Independent Review Commission (IRC) revealed gaps in trust of junior enlisted Soldiers, systemic inefficiencies, and cultural failures that have impeded progress in addressing sexual assault and harassment. Addressing those findings, along with the continued implementation and assessment of Military Justice Redesign, were the focus for the Army JAG Corps this year.

Following the two reports, the Secretary of Defense specifically directed the Department of Defense (DoD) to work with Congress to amend the Uniform Code of Military Justice (UCMJ) by removing the prosecution decision of special victim offenses from the military chain of command in favor of dedicated offices within each military department staffed by Judge Advocates with specialized training and experience. The cooperative and comprehensive work to design and implement the most effective military justice process for both prosecution and defense is ongoing and will likely require a substantial restructuring of the JAG Corps. The immense task of amending the statutory scheme, and the Rules for Courts-Martial, is also underway at the close of the FY.

The JAG Corps fully implemented the requirements under Article 140a, UCMJ, which directed the Services to provide public access to dockets, court filings, and court records. All of these documents are available online through the Army Court-Martial Public Records System (ACMPRS).

The Trial Defense Service (TDS) is implementing a parallel restructure, TDS 2.0, which divides defense counsel responsibilities between litigation functions and non-judicial functions. The Trial Defense Service also developed additional reach-back assistance from a Complex Litigation Section and launched the Defense Investigator (DI) Program, consisting of twelve DIs assigned to eight TDS regions. Data-driven assessments by outside analysts, inspections, and feedback from practitioners continue to refine and improve the efficient and effective delivery of legal services to commands and to accused Soldiers as the JAG Corps prepares for final direction from Congress on the requirements of a revised UCMJ.

In furtherance of TJAG's duties under Article 6(a), UCMJ, TJAG and senior leaders in the JAG Corps conducted twenty-three visits (including some virtual events, given the COVID

19 restrictions) to installations and commands in the United States and overseas 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 FY21, the Army had 745 pending courts-martial cases, 17 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 FY21, is provided in the Appendix.

2. Information on the appellate review process:

a. Compliance with processing time goals: In FY 2021, 315 records of trial and over 900 motions and briefs were referred the U.S. Army Court of Criminal Appeals (ACCA) for judicial review. Records for 286 of the 315 cases were received for the first time (not a remand from CAAF or returned from the convening authority after remand). Of those cases, 2 were processed under pre-Military Justice Act of 2016 (MJA 16) procedures involving a promulgating order and 284 were processed under MJA 16 procedures involving an entry of judgment. For the pre-MJA 16 cases, the average processing times for the two courts-martial from sentencing to convening authority action was 371 days. In those two cases, initial action was not completed by the convening authority within the 120 days prescribed by United States v. Moreno. One of the records was received by ACCA within 30 days of convening authority action. In 204 of the 284 MJA 16 cases, the certification of the record of trial was completed within 120 days. 192 of the MJA 16 cases were received by ACCA within 30 days of the completion of either the certification of the record of trial or entry of judgment, whichever was later.

In FY21, ACCA rendered an initial decision in 337 cases, with an average processing time of 243 days from receipt of the record of trial by the clerk of court to ACCA decision. Of the 337 decisions, 330 were issued within the 18-month period prescribed in United States v Moreno.

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

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

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

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

d. Cases where a finding was clearly against the weight of the evidence. Two cases.

United States v. Lieutenant Colonel Mark Christensen, Army 20190197. A panel of officers convicted the accused of a single specification of assault consummated by a battery in violation of Article 128, UCMJ. The specification at issue alleged the accused unlawfully shoved his

spouse in the chest with his hands and struck her hand with a door. On review, the Army Court of Criminal Appeals found the evidence factually insufficient to support the finding that the accused shoved his spouse with his hands, but otherwise affirmed the remaining language of the specification. The court determined the accused's sentence for the Article 128 violation (a dismissal, confinement for three months, forfeiture of \$4000 for six months, and a reprimand) was appropriate for the conviction, but due to dilatory post-trial processing on the part of the government, reduced the period of forfeiture from six months to five months.

United States v. Specialist Ronald Givens, Army 20190132. Following the accused's plea to a specification of assault consummated by a battery, an enlisted panel convicted appellant, contrary to his pleas, of one specification each of making a false official statement, larceny of military property, assault consummated by a battery, communicating a threat, and child endangerment, in violation of Article 107, 121, 128, and 134, UCMJ. On review, the Army Court of Criminal Appeals found the child endangerment specification factually insufficient. That specification stemmed from an altercation between the accused and his wife while their child slept in a nearby bed. The court found the evidence did not support one of the elements of child endangerment, specifically that the accused "endangered [the child's] physical health, safety, and welfare through culpable negligence" while engaged in the altercation with his spouse, as the record did not establish how the child was placed at risk. Though setting this one specification aside, the court affirmed the sentence adjudged at trial.

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

a. Institutional Programs for all Judge Advocates: In FY21, the Army JAG Corps continued refinement of a number of programs aimed at improving the competence and expertise of Judge Advocates litigating courts-martial cases.

(1) Military Justice Redesign. In 2019, The Judge Advocate General directed the implementation of the Military Justice Redesign (MJR), which represented a comprehensive, systemic change to Army military justice practice. This restructure began to position the JAG Corps for the seismic shift from command disposition authority to Judge Advocates and the establishment of special victim prosecution offices. Military Justice Redesign ensures that a specialized cadre of Judge Advocates, led by the existing Special Victim Prosecution teams, are prosecuting special victim crimes, while other Judge Advocates are gaining critical litigation experience in general crimes and military justice advisor billets.

(2) The Trial Advocacy Center: In 2019, The Judge Advocate General approved the establishment of the Trial Advocacy Center to build expertise across the litigation spectrum—from criminal to civil. The Trial Advocacy Center is set to become the premier Department of Defense (DoD) training center for trial attorneys; the only of its kind within DoD. It will synchronize, develop, and conduct advocacy training in support of the Army's relentless pursuit of trial excellence. Since its establishment, the Advocacy Center acquired a 10,000 square foot building on Fort Belvoir, adjacent to the U.S. Army Legal Services Agency, to convert into the

Advocacy Center's training facility. The Advocacy Center's training facility is projected to open for training in the Spring of 2022, dependent on COVID restrictions. The facility will feature five mock courtrooms and a large classroom with capacity for 100 students that can be partitioned into two additional mock courtrooms. The mock courtrooms will feature state of the art presentation and audio-visual technology.

(3) Court Reporting. This FY, The Army JAG Corps fully implemented its modernized court reporting technology. Until recently, Army court reporters used a time-consuming process called "redictation" to produce a written transcript following a court-martial. This process involves recording a proceeding, followed by listening to and repeating the words spoken at the proceeding into speech recognition software to produce a written transcript that must then be edited to correct the errors in the speech recognition. Using the new technology, the words spoken at a proceeding are automatically recognized, by speaker, and a written transcript is produced nearly simultaneously. The court reporter then edits the transcript for accuracy immediately after the proceeding. While the Army's use of this technology is nascent, it is expected to further reduce court-martial post-trial processing times and make court reporters available to SJAs and military judges for other court reporter related tasks.

(4) Deployability. An essential aspect of military justice is that it is deployable. The National Security Law Division (NSLD) continued preparing judge advocates and paralegals for upcoming operational deployments to Operation Inherent Resolve and Operation Spartan Shield. Specifically, NSLD conducted mission-tailored pre-deployment training programs using mobile training teams comprised of recently re-deployed personnel, as well as currently deployed personnel (via secure video teleconference). The instruction covered all core legal disciplines, including military justice and international law. With respect to the military justice portion of the training, instructors explored the unique aspects and logistical challenges of administering military justice in a deployed environment.

b. Trial Counsel:

(1) In FY21, the Trial Counsel Assistance Program (TCAP) continued to execute along its three coordinated lines of efforts to ensure justice is served in special victim and complex cases. First, TCAP delivered continuing legal education and specialized training to Army military justice advisors, trial counsel, and government paralegals worldwide. Second, TCAP provided direct prosecutorial assistance to SJA offices on many of the Army's most complex and/or high-profile cases. Third, TCAP provided training and technical oversight to the Army's new Rehearing Center of Excellence at Fort Leavenworth, Kansas. Finally, TCAP managed the operations of the Special Victim Prosecution (SVP), Special Victim Noncommissioned Officer (SVN), Special Victim Witness Liaison (SVL) programs, as well as the Complex Litigation Team.

(2) The cadre of TCAP trainers, including seven military attorneys, three civilian Special Victim Litigation Experts, a legal administrator, and a part-time senior paralegal noncommissioned officer, developed and delivered 31 training events for military justice advisors, trial counsel, and government paralegals worldwide. Despite COVID-19 related travel challenges, TCAP was able to execute 18 specialty training courses, either in person or virtually,

including: the Basic Trial Advocacy Course (BTAC); Prosecuting Domestic Violence Course; Special Victim Prosecutor (SVP) Course; Introduction to Forensic Evidence Course; Sexual Assault Trial Advocacy Course (SATAC); Prosecuting Child Abuse Course; Special Assistant United States Attorney Course; and the Special Victim's Team Course. The TCAP Team also traveled to 13 Army installations to conduct two-to-four day outreach training events.

(3) Many of this year's training events focused on trial advocacy skills and prosecuting sexual assault and domestic violence cases. This year also focused on training those in the recently implemented positions of military justice advisor, general crimes trial counsel, and special victim trial counsel. Additionally, in light of COVID-19 travel restrictions, TCAP also successfully conducted several of our staple courses, including BTAC and Prosecuting Domestic Violence course, entirely online. Throughout the year, TCAP continually adapted and updated our course materials for our specialty courses and outreaches given logistical challenges caused by the COVID-19 pandemic.

(4) In support of its mission to assist prosecutors in the field, TCAP continued to provide expert military counsel to prosecute many of the Army's most complex and/or high-profile cases. This included direct expert assistance and consultation from TCAP's three civilian Special Victim Litigation Experts (SVLEs) and Complex Litigation Team. The Complex Litigation Team consists of two field-grade military justice practitioners that assist with complex and capital litigation across the Army. Additionally, the Complex Litigation team provides support to cases involving classified evidence. In total, despite the challenges associated with the COVID pandemic, our SVLEs and Complex Litigation teams traveled to support 18 high profile cases throughout the year.

(5) TCAP continued its routine information-sharing and collaboration activities such as publishing regular issues of its "TCAP Express" newsletter to inform and advise the field on new legal developments and issues. TCAP also developed and distributed a training and resource guide containing useful templates and tools for the newly implemented military justice advisor position. In line with its training and support mission, TCAP responded in real time to hundreds of legal questions submitted by phone and email from prosecutors and paralegals worldwide.

(6) TCAP saw three SVP positions convert from overstrength positions to full authorizations. TCAP managed the Army's current 29 SVPs, 23 SVNs, and 24 SVLs located at the Army's busiest UCMJ jurisdictions. The SVP team's primary mission is to ensure that every instance of sexual assault, child abuse, and intimate-partner violence within their geographic area of responsibility is properly investigated and, where appropriate, charged and prosecuted. The SVPs, SVNs, and SVLs also work with the Criminal Investigation Command's specialized Sexual Assault Investigators and with the local SVCs to ensure that survivors are treated respectfully, notified of all available support services, and kept informed on the status of the investigation and prosecution. SVPs are also charged with creating local training programs for trial counsel and government paralegals in order to ensure that our trial practitioners receive relevant military justice and advocacy training on a regular basis.

c. Defense Counsel.

(1) In FY21, approximately 476 judge advocates and 162 27D paralegals were serving in the Active, Reserve, and National Guard Components in the U.S. Army Trial Defense Service (TDS) worldwide. This included 150 judge advocates on active duty; 179 judge advocates assigned to one of three Army Reserve (USAR) TDS Legal Operations Detachments (LOD), and 147 judge advocates in the Army National Guard (ARNG). Trial Defense Service provides high quality, professional defense services to Soldiers throughout the Army. Counsel assigned to TDS are stationed at 40 active duty installations worldwide and approximately 100 reserve component locations, though their oversight and supervision is independent from local commanders and the Staff Judge Advocate offices. The Chief, TDS, exercises centralized supervision over all TDS-assigned counsel from the Office of the Chief, TDS at Fort Belvoir, Virginia.

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

The FY21 active duty workload was as follows:

General and Special Courts-Martial:	593
Administrative Representation/Consults:	16,835
Nonjudicial Punishment:	19,177
Military Justice Consultations:	19,770

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

(4) U.S. Army Reserve TDS consists of approximately 179 judge advocates, three legal administrators, and 48 enlisted paralegals. Three separate units divide the USAR TDS personnel. The 22d LOD, headquartered in San Antonio, Texas, has an area of responsibility that includes all states west of the Mississippi River, along with the Republic of Korea and U.S. territories in the Pacific Command Area of Responsibility. The 154th LOD, headquartered in Alexandria, Virginia, covers the U.S. Southeast, Lower Mississippi River Valley, and Puerto Rico. The 16th LOD, headquartered in Fort Hamilton, New York, covers the U.S. Northeast, Midwest, and Germany.

(5) The ARNG TDS, headquartered in Arlington, Virginia, consists of approximately 147 judge advocates, one legal administrator, and 62 enlisted paralegals stationed in 50 states, the District of Columbia, and 3 territories. The Office of the Chief, ARNG TDS in Arlington, Virginia, provides the technical supervision, management, direction, and legal defense training for all ARNG TDS while in Title 32 status.

(6) The Defense Counsel Assistance Program (DCAP) is the training branch of TDS. In FY21, DCAP staff consisted of four judge advocates and two civilian Senior Counsel/Trainers, who provided on-site training and real-time advice to more than 141 active component TDS attorneys and their paralegals, assigned to field offices worldwide. The training events included three iterations of Defense Counsel (DC) 101, a three-day course that provides critical instruction to newly assigned DC and paralegals on all aspects of client representation with an emphasis on professional responsibility and complex issues arising in sexual assault cases. Furthermore, DC attended one of five regionally aligned DC 102 courses and received training on new developments in military justice and trial advocacy, with a focus on sexual assault litigation, and DC attended one of two DC 103 courses, which focuses on digital evidence. Regional and Senior DC from the Active, Reserve, and National Guard gathered to receive instruction on their duties as leaders in TDS at Trial Defense Leader Training (TDLT). Additionally, DCAP and the Trial Counsel Assistance Program (TCAP) jointly organized and taught multiple Advanced Trial Communication Courses, Trial Litigation Paralegal Courses, and Expert Symposia. DCAP also organized courses focused on voir dire, negotiations, and the USACIL Criminal Laboratory to give DCs an opportunity to tour the lab and receive instruction in different areas of expertise.

(7) In FY21, DCAP received over one thousand inquiries from DC via emails, phone calls, and in-person inquiries during training events. Defense Counsel Assistance Program highly qualified experts (HQEs) and counsel provided direct assistance to DC in the field that included researching case law, answering case specific questions, providing sample motions, expert requests, and other trial documents. Moreover, DCAP's website and the Knowledge Management Milbook website provided counsel with reference materials on critical issues. DCAP continued "DCAP Talks" this fiscal year; it is a series of video podcasts providing counsel on-demand training in targeted areas outside the reach of our current DC 101, 102, and 103 curricula. Finally, DCAP also worked with Defense Appellate Division (DAD) to assist TDS counsel in the preparation and filing of extraordinary writs before the Army Court of Criminal Appeals (ACCA) and the Court of Appeals for the Armed Forces (CAAF).

(8) In addition to providing training and advice, the DCAP updated the 11th Edition of the DC 101 Deskbook and distributed it to all newly assigned DC. The DCAP reissued the DC 102 Deskbook and distributed it to all DCs. DCAP also prepared and disseminated multiple "DCAP Sends" information papers, which quickly explained important new developments in military justice to DC. DCAP encouraged the utilization of the new online advocacy trainer for use by all counsel in the JAG Corps, in coordination with the Office of the Judge Advocate General, Criminal Law Division, and TCAP, for organizational level training. Finally, DCAP began a monthly newsletter called The Buccaneer, which is designed to keep defense counsel up to date in appellate case law, practice tips, and court-martial lessons learned.

(9) The Trial Defense Service established a complex litigation section in FY19, specifically designed to advise the field in high profile and complex cases, act as counsel in complex and capital cases when detailed by the Chief, USATDS, and manage the training for a cohort of 20 DC selected to participate in the complex litigation program. The complex litigation section is currently comprised of one LTC Judge Advocate and one MAJ Judge Advocate. While these officers continued to build on the complex litigation training program developed in previous

years, most training was canceled due to the COVID-19 pandemic. An attorney from the complex litigation section was detailed to six cases referred to general courts-martial in FY21.

(10) The National Defense Authorization Act for FY20, Section 540J, directed the service secretaries to begin pilot programs for defense investigators. In FY21, TDS continued to fill the 12 term over-hire defense investigator billets with a total of 10 defense investigators located at 8 field offices around the world. TDS hired and trained 4 new defense investigators in FY21. Defense investigators provided case reviews of countless case files and were detailed to numerous courts-martial over the course of FY21, resulting in numerous acquittals, dismissed charges and specifications, and other positive outcomes for TDS clients.

(11) The Defense Appellate Division (DAD) provides appellate representation to eligible Soldiers before the Army Court of Criminal Appeals (ACCA), the Court of Appeals for the Armed Forces (CAAF), and the Supreme Court of the United States (SCOTUS). Eligible Soldiers include those convicted at courts-martial where the approved sentence includes a punitive discharge or confinement for one year or more. DAD is comprised of eighteen active duty and eight reserve component defense appellate attorneys, one civilian senior capital appellate attorney, two civilian paralegals, and one legal support specialist. DAD attorneys also assist military and civilian trial defense counsel in the preparation and filing of extraordinary writs before the aforementioned courts, as well as responding to interlocutory appeals filed by the government in accordance with Article 62, UCMJ. Last year, DAD filed 310 briefs with ACCA. DAD also filed 167 total briefs with CAAF. Appellate counsel raised assignments of error in 52% of these cases. Counsel also argued seven cases at ACCA and eleven at CAAF.

d. Special Victims' Counsel: The Army Special Victims' Counsel Office of the Program Manager (SVCOPM) provides technical and policy oversight of the SVC Program and to SVCs serving in the field. The Chiefs of Legal Assistance (or Chiefs of Client Services, if appropriate) and the SVCOPM provide technical advice and professional responsibility supervision.

(1) The Army standard is that every SVC must complete a certification course and be personally certified by TJAG prior to representing SVC clients. Additionally, each SVC must complete a child representation course before representing child clients. The Air Force and the Army collaborated and sent attendees to each Service's certification course. Each of the sister Services provides experienced SVC/VLC facilitators and instructors for the Army SVC certification and child courses.

(2) Upon arrival to a permanent duty station or assignment as an SVC, SVCs must receive training on how the local civilian jurisdictions handle victim rights, prosecution of criminal offenses, sentencing, and protective orders. The Army JAG Corps mandated this state-specific training consistent with section 550c of the FY20 NDAA. The purpose of this training is to equip SVCs with the knowledge to advise clients on jurisdictional preference decisions. This training was accomplished by Offices of the Staff Judge Advocate and Regional Managers in coordination with local attorneys and Reserve Component Judge Advocates.

(3) As of 31 September 2021, there were 79 AC SVCs who actively represented clients. During FY21, SVCs assisted 2,274 clients, consisting of 1,856 Service members, 521 adult

dependents, 30 DoD Civilian employees, and 88 minors. SVCs conducted 28,305 counselings, 720 outreach/training events, and attended 3,129 interviews, 128 administrative separation proceedings, and 283 courts-martial. SVCs provided services wherever our Soldiers were deployed including Iraq, Afghanistan, Kuwait, Europe, and Asia.

(4) During FY21, Army Leadership provided the Army SVC Program an additional 30 SVC positions. This growth provides greater flexibility to respond to requests for SVC services, eases the caseload burden of current SVCs, and assists eligible victims of domestic violence offenses.

e. The Judge Advocate General's Legal Center and School (TJAGLCS) Criminal Law Academic Department: The mission of the Criminal Law Department (ADC) of TJAGLCS in Charlottesville, Virginia, is to educate, develop, inspire, and sustain excellence in the practice of military criminal law. The need to hone military justice skills in today's technology driven, joint, expeditionary force is paramount and is the primary focus of ADC's curriculum. The ADC is responsible for developing brand new judge advocates' understanding of substantive criminal law and military justice procedure and basic trial advocacy skills. It also trains seasoned advocates on intermediate to advanced trial advocacy skills and keeps them abreast of recent changes to military justice practice. 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 a number of diverse audiences to include Army judge advocates, sister service judge advocates, commanders, and international students. Courses are designed for: initial-entry judge advocates in the Officer Basic Course (OBC); new trial counsel, defense counsel, and special victim counsel (SVC) in the Intermediate Trial Advocacy Course (ITAC); mid-level judge advocates in the Judge Advocate Officer Graduate Course, the Military Justice Leaders Course, the Judge Advocate Officer Advanced Course (reserve Component), and the SVC and Domestic Violence and Child SVC certification courses; senior judge advocates in the Military Judge Course and the Staff Judge Advocate Course; 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, domestic violence, and general crimes fact pattern, and are synchronized with other JAG Corps training agencies to maximize interagency operability.

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

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

(4) The ADC continued to grow our SVC certification curriculum this year through continued development of the SVC Child and Domestic Violence Victim Course, which follows the week of SVC Certification course and is required for SVCs to represent child victims. This development came through increasing our relationships with outside organizations such as the Army Family Advocacy Program (FAP), the Behavioral Science Education Division at the U.S. Army Military Police School, and the National Crime Victim Law Institute (NCVLI) at Lewis and Clark Law School, among others. Guest instructors from these various programs provided expert instruction to certifying SVCs on the dynamics of representing victims of domestic violence. The SVC and DV/Child Victim Course is offered once a year, alternating with the Air Force JAG School. Due to continued COVID-19 protocol considerations, this year's course was taught through Distance Learning (DL). This allowed for a greater attendance population from all five services around the world, to include SVC paralegals, who are often unable to attend due to space constraints. This increased availability resulted in the largest number of attendees in course history, creating a robust discussion and diverse viewpoints in the breakout sessions.

(5) The Criminal Law Department traditionally hosts the Kenneth J. Hodson Lecture in Criminal Law each year; however, COVID-19 restrictions prevented the lecture last year. The lecture should proceed as planned in the spring of 2022.

f. Trial and Appellate Judges: There are 26 active duty and 23 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 consists of five circuits worldwide. Chief Circuit Judges supervise the circuit judges within each circuit. There are currently three judges stationed in other countries, one in Korea and two in Germany. The reserve component judges are assigned to the 150th Legal Operations Detachment headquartered in Alexandria, Virginia and commanded by the Chief Trial Judge, USAR. Additionally, the Trial Judiciary provides military

judges to serve as judges with the Military Commissions Trial Judiciary. At the close of FY 21, there were three Army military judges appointed to serve on the Military Commissions Trial Judiciary, one of whom, COL Lanny Acosta, acts as the Chief Judge.

(1) Military judges primarily preside over trials referred to general and special courts-martial. While the volume of cases has continued to wane slightly, perhaps attributable to continuing COVID-19 travel restrictions, the percentage of contested cases remains high due to the significant number of sexual misconduct related prosecutions. In FY21, military judges of the U.S. Army Trial Judiciary presided over **705 original courts-martial**, a **3 percent decrease** from FY20. Of the total cases tried in FY21, 193 were fully contested, 74 involved mixed pleas, 292 were guilty pleas, and the remaining 146 were terminated prior to findings. This represents a **9 percent increase in contested cases** out of the 559 cases in which findings were entered in FY21. 271 of those cases resulting in findings, or **48 percent, included sexual misconduct related offenses** (Articles 120, 120b, and 120c), a **10 percent increase from FY20**.

(2) The Trial Judiciary took an active role in the implementation of Article 140a, which directed the Services to provide public access to dockets, court filings, and court records. The judiciary already provided public access to dockets worldwide through our website, and the docket is now also available through the Army Court-Martial Public Records System (ACMPRS). ACMPRS is now online at <https://www.jagcnet.army.mil/ACMPRS> and in addition to real-time docketing information provides public access to redacted court filings and documents as soon as practicable after trials conclude. In FY21, the Trial Judiciary headquarters received a new authorization for a GS-12 Clerk of Court to oversee the implementation of these procedures.

(3) Rounding out the headquarters in addition to the Chief Trial Judge, Court Administrator, and new Clerk of Court, the Judiciary also benefited from the installation of a Deputy Chief Trial Judge in FY21. Colonel Tyesha Smith, one of our most accomplished and esteemed trial judges, assumed that position in July 2021. She will become the Trial Judiciary's first African-American and third female Chief Trial Judge in March 2022 and is poised to lead the judiciary to even greater heights.

(4) Regardless of the talent in its headquarters, the strength of the Trial Judiciary will always be its trial judges in the field, who rely on our robust training program to maintain their proficiency. The Trial Judiciary conducts an annual Military Judges' Course at TJAGLCS1 in Charlottesville, Virginia. The three-week course is a certification course for judge advocates of all Services – Army, Navy, Marine Corps, Air Force, and Coast Guard – prior to assignment as military judges. The course also occasionally includes select international students. In FY21, a record-high 58 judge advocates attended the 64th Military Judge Course held from June 14 to July 2, 2021. Eight active component, 9 reserve component, and 6 National Guard Army judge advocates graduated and were sworn in as new military trial judges. 2 of the active component judges were assigned to the Army Court of Criminal Appeals. The keynote speaker for the course was the incoming Chief Judge of the Court of Appeals for the Armed Forces, the Honorable Kevin Ohlson.

(5) The Joint Military Judges' Annual Training was conducted remotely and facilitated by the sea services in February 2021. All military trial judges attended. The Army Trial Judiciary also funded several online courses through the National Judicial College. With the support of the Army JAG Corps leadership, and by enforcing rigorous COVID-19 mitigation measures, the Army Trial Judiciary was able to execute in-person Trial Judge's Sexual Assault Case Training in September 2021 at Fort Belvoir, VA. For the first time, first-term judges attended an extra day of training prior to the full training conference beginning, which was enthusiastically endorsed by the new judges. The judiciary continues to find new ways to work, train, and network, using such tools as zoom for government and MS Teams for interlocutory hearings, meetings, and file sharing.

(6) The Trial Judiciary continues to maintain and update DA Pamphlet 27-9, Military Judges' Benchbook (Benchbook), used by all Services, which contains trial scripts and pattern instructions for members. Changes to the Benchbook are approved by the Chief Trial Judge following review and comment by the Benchbook Committee and other stakeholders in the military justice community. 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.

(7) The Trial Judiciary is pleased to support the training efforts of the JAG Corps writ large, through participation in trial, defense, and special victim counsel training events, paralegal and court reporter training, and advocacy training. The judiciary also participates in mock trial events for junior high and high school students as well as law school moot court competitions. Several judges have also volunteered their time to speak to affinity mentorship groups both in and outside of the JAG Corps, as well as engaging in recruitment opportunities for the Army and the JAG Corps. These efforts fulfill the enduring vision of the Trial Judiciary: Independent but Invested.

g. Litigation Division: During FY21, 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.

(1) The Military Personnel Litigation (LTM) Branch was involved in 22 habeas corpus or military justice cases in FY21, 17 of which remain active. In the 5 cases that were concluded, LTM successfully defended against collateral attacks on court-martial convictions, as well as requests for federal court intervention with respect to issues such as confinement conditions, illegal detention, loss of good conduct time, and transfer out of military confinement facilities.

(2) While the majority of these collateral attacks concern traditional evidentiary and procedural challenges such as those pertaining to jurisdiction, sufficiency of the evidence, or the effectiveness of counsel, several recent cases have concerned novel or otherwise undeveloped areas of the law. In one case, a Soldier challenged the lawfulness of his conviction after elected officials made widely publicized comments concerning the perceived guilt of the Soldier—conduct which the Soldier alleged tainted the results of his trial. Most recently, LTM litigated the effect of a presidential pardon on a federal district court's jurisdiction over a Soldier's petition for writ of habeas corpus. This rarely examined area of the law as it relates to courts-martial,

resulted in district and appellate court examination of the background and history of the presidential pardon power and more definitive guidance on the impacts a pardon could have on ongoing judicial proceedings.

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

h. Commanders: Judge Advocates continue to provide training, advice, and assistance to Commanders as they execute their central role in ensuring good order and discipline, justice, and accountability. By regulation, Army Senior Leadership requires Brigade level commanders to attend the Senior Officer Leadership Orientation (SOLO) Course at TJAGLCS or virtually due to COVID, and many battalion commanders also attend on a space available basis. In FY21, 561 commanders attended the SOLO. 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. Thirty-six general officers attended GOLO training at TJAGLCS in FY21. Company commanders and First Sergeants receive onsite training from a trial counsel serving the jurisdiction on victims' rights, reporting and processing sexual assault cases. The JAG Corps leadership also provides instruction at the Pre-Command Course in Fort Leavenworth, Kansas, where a JAG Corps general officer conducts military justice and other training with future battalion and brigade commanders, ensuring 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 its Personnel, Plans, and Training Office (PPTO), continues to work with Army leadership to ensure sufficient legal support to the force, whether that force expands or contracts. The JAG Corps established an Operational Planning Team (OPT) to study, develop, and plan the implementation of the future structural changes to the JAG Corps in the military justice arena. Always looking toward the future to develop and improve, the JAG Corps structural changes will require deliberate planning, time, and increased resources to ensure an efficient, fair, professional military justice enterprise.

a. On September 30, 2021, the Army's end-strength was 489,069 Army Soldiers on Active Duty compared to 485,383 at the end of FY20. The attorney strength of the JAG Corps Active Component (AC) at the end of FY21 was 1,817 (not including general officers). This does not include 68 officers and two enlisted Soldiers attending law school while participating in the Army's Funded Legal Education Program. The FY21 end-strength of 1,817 compares to an end-strength of 1,832 in FY20.

b. The diverse composition of the FY21 AC attorney population included 141 African Americans, 111 Asian Americans, 73 Hispanic Americans, and 524 female Soldiers

c. The grade distribution of the JAG Corps AC attorneys for FY21 was: 6 general officers; 139 colonels; 239 lieutenant colonels; 536 majors; and 903 captains and first lieutenants. An additional 108 warrant officers, 764 civilian attorneys, 767 civilian paraprofessionals and 1,520 enlisted paralegals from the AC supported legal operations worldwide.

d. The attorney strength of the JAG Corps USAR at the end of FY21 was 1,725 (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 attorney strength of the ARNG at the end of FY21 was 1,522.

e. At the end of FY21, more than 400 Army JAG Corps personnel (officer and enlisted, AC and Reserve Component) were deployed to operations in, Djibouti, Egypt, Guantanamo Bay, Honduras, Iraq, Israel, Kosovo, Kuwait, Poland, Qatar, Romania, Turkey, United Kingdom, Ukraine, and other locations around the world.

CONCLUSION

The Army JAG Corps is well-positioned to usher in a new era of Military Justice. We stand ready to implement the monumental changes to the structure of the system and will execute with vigor, competence, and professionalism. We embrace the changes that represent a healthy growth of our criminal justice system. The JAG Corps will continue to utilize its people, programs, and technology to deliver its Soldiers, Civilians, Families, and victims the military justice system they deserve.

In a year filled with significant change, the JAG Corps, as trusted professionals, continued to provide principled legal counsel and premier legal services to senior commanders and leaders. The JAG Corps is committed to sustained excellence in its performance of its military justice mission in a just, effective, and expeditionary manner. The JAG Corps also continues to monitor newly emerging military justice requirements, including all proposed legislation which affects both the UCMJ and the MCM, to help to ensure a gold-standard military justice system that the Army demands and that its Soldiers deserve.



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

APPENDIX

Report Period: FISCAL YEAR 2021

PART 1 - PENDING COURTS-MARTIAL (As of 30 September 2021)			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		12	
BCD SPECIAL		2	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		3	
SUMMARY		0	
TOTAL:	728	17	745

PART 2 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED		CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
	Arraigned	Completion			
GENERAL	502	394	321	73	+2.3%
BCD SPECIAL [A]	155	127	122	5	-14.2%
NON-BCD SPECIAL	0	0	0	0	0.0%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	48	38	31	7	-22.4%
SUMMARY	105		104	1	+15.5%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT					

PART 3 – ACCUSED DEMOGRAPHIC DATA (Persons)

TYPE COURT	Total	GENDER		ETHNICITY			RACE						
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	Unknown/ Other	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unknown
GENERAL	394	386	8	79	297	18	7	10	114	11	220	16	16
BCD SPECIAL	127	120	7	25	35	67	1	4	42	1	68	2	9
MILITARY JUDGE ALONE SPECIAL	38	33	5	6	22	10	0	1	13	0	23	1	0
SUMMARY	105	96	9	16	51	38	1	5	38	0	44	2	15

APPENDIX

PART 4 – VICTIM DEMOGRAPHIC DATA (Persons)

TYPE COURT	Total*	GENDER			ETHNICITY			RACE					
		Male	Female	Unknown	Hispanic / Latino	Non-Hispanic / Latino	Unknown/ Other	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Unknow
GENERAL	438	81	346	11	63	293	115	3	10	84	12	266	63
BCD SPECIAL	98	36	61	1	20	58	20	1	1	17	1	62	16
MILITARY JUDGE ALONE SPECIAL	13	6	7	0	3	9	1	0	0	2	0	11	0
SUMMARY	33	15	18	0	4	19	10	0	3	5	0	19	6

* Total number of identifiable victims.

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

GENERAL COURTS-MARTIAL (CA LEVEL)		
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	92(+16)	
NUMBER OF BAD-CONDUCT DISCHARGES [A]	112	
SPECIAL COURTS-MARTIAL		
NUMBER OF BAD-CONDUCT DISCHARGES	65	

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	1	
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0	
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	314	
FOR EXAMINATION UNDER ARTICLE 65(d)	127	

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

TOTAL ON HAND BEGINNING OF PERIOD		50[C]	
TOTAL CASES THAT CAME AT ISSUE		354[C]	
TOTAL CASES DECIDED		364[D]	
TOTAL PENDING AT CLOSE OF PERIOD		40[C]	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD		-20.5%	

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

NUMBER	352	
PERCENTAGE	99.44%	

APPENDIX

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

TOTAL PETITIONS TO CAAF	203
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PART 10 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD		10	
RECEIVED		10	
DISPOSED OF		0	
GRANTED	1		
DENIED	6		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		3	

PART 11 – ORGANIZATION OF COURTS [E]

TRIALS BY MILITARY JUDGE ALONE			
GENERAL COURTS-MARTIAL		299	
SPECIAL COURTS-MARTIAL		111	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		38	
TRIALS BY MILITARY JUDGE WITH MEMBERS			
GENERAL COURTS-MARTIAL		95	
SPECIAL COURTS-MARTIAL		16	

PART 12 – STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	489,069 [F]
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PART 13 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	25,232
RATE PER 1,000	51.59

EXPLANATORY NOTES

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

Report to Congress

U.S. Navy Report on Military Justice for Fiscal Year 2021

31 December 2021

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 \$3,730 for the 2022 Fiscal Year. This includes \$0 in expenses and \$3,730 in DoD labor.

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**ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE
OCTOBER 1, 2020 TO SEPTEMBER 30, 2021**

1. Introduction: This report is submitted pursuant to Article 146a, Uniform Code of Military Justice (UCMJ). In fiscal year 2021 (FY21), the Navy Judge Advocate General's Corps (JAGC) executed its military justice mission in a highly professional fashion. The Navy tried 220 courts-martial, (combined general, special, and summary courts-martial) and the Navy-Marine Corps Court of Criminal Appeals (NMCCA) reviewed 317 Navy and Marine Corps cases on appeal. The JAGC also implemented several major structural and procedural improvements. First, in order to improve lines of authority, accountability, and responsibility, Naval Legal Service Command (NLSC) was decoupled from the position of the Deputy Judge Advocate General in August 2021, and reorganized under the leadership of an independent Flag officer commander who reports to the Chief of Naval Operations. Second, in order to better support prosecution services, the JAGC increased personnel in the busiest prosecution offices and created and filled two new O-6 positions: (1) the Assistant for Prosecution Services – responsible for modernizing trial department practice and policy, and (2) the Complex Case Counsel – available to support complex litigation demands around the globe. Third, the JAGC implemented several recommendations from the Comprehensive Review of the Uniformed Legal Communities (CR), including updating military justice-related decision aids for commanders, modernizing courtroom systems (e.g. upgrading audio and wireless internet capability), and re-aligning specialized military justice billets. Finally, the JAGC implemented recommendations from the Sexual Assault Accountability and Investigation Task Force (SAAITF), including updating special victim case training standards for military justice practitioners and completing a multi-disciplinary assessment of special victim investigation and prosecution capability. These efforts reflect the JAGC's commitment to continuous assessment and improvement, exceptional service and professionalism, and the fair administration of military justice.

2. Data on the number and status of pending courts-martial: The Navy, in coordination with the Marine Corps, tracks courts-martial information through the "Wolverine" case management database. At the end of FY21, there were 117 pending Navy courts-martial (74 referred for trial and 43 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) Two Navy cases were determined to have violated an accused's right to speedy trial at the trial stage. In the first case, a military judge determined that a violation of Rule for Courts-Martial 707 occurred and dismissed the charges. The case was subsequently re-arraigned and docketed for trial in the future. In the second case, a military judge determined that a violation of Article 10, UCMJ, occurred and dismissed the charges. As a result, at the direction of the Judge Advocate General and Commander, Naval Legal Service Command, a senior appellate military judge conducted an investigation and offered recommendations on remedial action and process improvements, including additional training and supervisory oversight on speedy trial and pretrial processes. To minimize the risk of potential speedy trial issues, the Assistant for Prosecution Services (APS), a special assistant to the Director, Region Legal Service Office Operations, has increased monitoring and oversight of trial processing time goals throughout the enterprise. In addition, the Navy Trial Counsel Assistance Program (TCAP) developed and delivered training for trial counsel on strategies to avoid speedy trial issues.

(2) No Navy cases exceeded 120 days from sentencing to Convening Authority's (CA) action (the "*Moreno I*" guideline). Two (2) cases exceeded the 30-day window from the date of CA's action to docketing at NMCCA (the "*Moreno II*" guideline) by 34 and 49 days, respectively.

(3) One case exceeded 150 days from announcement of the sentence to docketing at NMCCA (the "Post Trial I" and "Post Trial II" guidelines) by 728 days.¹ The delay in this case was attributable to a defense request to defer convening authority's action to permit opportunity to submit clemency matters based on cooperation in other ongoing prosecutions.

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

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

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

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

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

¹ Reflects processing time goals as established in JAG Instruction 5814.1D of September 6, 2019 as modified by *United States v. Rivera*, No. 202000111, 2021 CCA LEXIS 418 (N-M Ct. Crim. App. Aug. 19, 2021) (holding the 2016 Military Justice Act superseded the *Moreno I* and *II* timelines but left untouched the *Moreno III* timeline).

(1) *Larrabee v. Braithwaite*, 502 F. Supp. 3d 322 (D.D.C. 2020). Steven M. Larabee, a military retiree living in Iwakuni, Japan, was convicted by general court-martial of one specification of sexual assault and one specification of indecent recording. The NMCCA and the Court of Appeals for the Armed Forces affirmed the findings and sentence. Mr. Larabee filed a petition for Writ of Certiorari with the United States Supreme Court, which was denied on 19 February 2019. In March 2019, Mr. Larabee filed suit against the Honorable Kenneth J. Braithwaite in his official capacity as Secretary of the Navy in the United States District Court for the District of Columbia, challenging the provision of the UCMJ that allows for court-martial of military retirees. Judge Richard J. Leon ruled that in the absence of a principled basis promoting good order and discipline, Congress' exercise of court-martial jurisdiction over all members of the Fleet Marine Corps Reserve is unconstitutional. This ruling is currently pending further appellate review at the United States Court of Appeals for the District of Columbia Circuit.

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 cases², national security cases, sexual assault cases, and proceedings of military commissions:

a. Military Justice Litigation Career Track (MJLCT)

(1) In 2007, the MJLCT was developed in order to develop and retain a cadre of specialized litigators to serve across the spectrum of military justice billets. During FY21, the MJLCT was comprised of 99³ designated officers in paygrades O-3 (Lieutenant) to O-6 (Captain). These officers served in the Navy's most important military justice positions, including: Commanding Officer and Executive Officer of some Region Legal Service Offices and Defense Service Offices; Trial Counsel Assistance Program (TCAP) Director/Deputy Director and Defense Counsel Assistance Program (DCAP) Director/Deputy Director, providing real-time assistance in individual trials and vital reach-back resources for litigators throughout the Fleet; Senior Trial Counsel (Senior Prosecutor) in all eight Navy prosecution commands and Senior Defense Counsel in all four Navy defense commands; some Victims' Legal Counsel in various locations; Military Commissions (both prosecution and defense – where 9 of the assigned Navy judge advocates were MJLCT officers); and Military Judge, in which 12 of 13 Navy judges assigned to the Navy-Marine Corps Trial Judiciary were MJLCT officers, as were 3 of the 5 Navy judges assigned to the Navy and Marine Corps Court of Criminal Appeals.

(2) In FY21, additional enhancements to the track were approved, including the re-coding of 18 existing billets as MJLCT billets. These additional MJLCT billets ensure that at least one

² 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.

³ Increased from 95 designated officers in FY20.

senior MJLCT officer (O-5 or above) will serve as the Commanding Officer, Executive Officer, Officer-in-Charge, or Senior Trial/Senior Defense counsel at every litigation command within NLSC. Three new Assistant Senior Trial Counsel billets were added, as well as two O-4 billets at the Trial and Defense Counsel Assistance Program offices, providing increased opportunities for specialization for members of the track as well as invaluable mentorship opportunities for newer attorneys considering specializing in litigation. The Navy also added additional civilian paralegal and administrative assistant billets to support litigators in the busiest areas. The Navy is now in its second year of placing a MJLCT officer in a rotational assignment for one year with the U.S. Attorney's Office to gain exposure to federal practice in a high-volume jurisdiction. The Navy also began piloting a Complex Case Counsel billet, filled by a senior O-6 MJLCT litigator available for assignment to prosecute the Navy's most complex cases. Finally, the Navy established the position of the Assistant for Prosecution Services (APS), an O-6 billet, serving as a special assistant to the Director, Region Legal Service Offices Operations and responsible for developing and coordinating prosecution policy, overseeing the Trial Counsel Assistance Program, and supervising the Complex Case Counsel.

(3) To improve judicial stability and expertise, the Navy utilized a continuation board for military judges approaching mandatory retirement. Selected judges can be retained for three years beyond their mandatory retirement date. The Navy also began assigning O-4 special court-martial (SPCM) judges to busy fleet concentration areas, allowing for the timely adjudication of pretrial matters, special courts-martial, and magistrate functions.

b. Military Justice Training and Professional Development Programs.

(1) The Naval Justice School (NJS), headquartered in Newport, RI, conducted over 104 in-resident and virtual courses for more than 3,900 students in FY21, including providing over 200 military justice practitioners with military justice training. NJS courses included the Military Justice Orientation Course, Prosecuting Special Victim Cases, Defending Sexual Assault Cases, Senior Counsel Manager's Course, and Classified Information Litigation Course.

(2) In April 2021, the Navy launched the Military Justice Orientation (MJO) Course with a second iteration in July 2021. The course provided comprehensive military justice training to new trial and defense counsel by utilizing lectures, live demonstrations, and practical exercises led by experienced field practitioners. The MJO Course curriculum incorporated a variety of new training standards and certification requirements into one course, including those recommended by the SAAITF, thus ensuring uniform training.

(3) 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, five of which focused on military justice. This year, NJS implemented an updated curriculum for the Basic Lawyer Course after close coordination with a senior review panel of military justice leaders across the Navy, Marine Corps, and Coast Guard. The revalidated course objectives,

including the standards for JAG certification as a courtroom counsel under Article 27, UCMJ, were designed to complement the curriculum and learning objectives of the MJO Course.

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

(5) NJS, in coordination with Navy and Marine Corps Victims’ Legal Counsel (VLC) organizations, continued development of the Navy’s inaugural Victims’ Legal Counsel Certification Course that will commence in April 2022. Currently, Navy and Marine Corps VLC attend either the Air Force or Army Special Victims’ Counsel Certification courses. The new Navy course will offer 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 course will also offer practical exercises to develop and enhance technical representation and advocacy skills of VLC counsel.

c. Trial Counsel

(1) The Trial Counsel Assistance Program (TCAP) is tasked with ensuring that all trial counsel receive proper training and supervision and have access to necessary resources. In FY21, TCAP was staffed with an O-6 (Captain) MJLCT “Expert” designated officer (who was relieved in August by an O-5 (Commander) MJLCT “Expert” designated officer), two O-4 (Lieutenant Commanders) MJLCT “Specialist I and II” designated officers, and two civilian (GS-15) attorneys with extensive civilian prosecution experience in complex cases.

(2) TCAP provided in-person or virtual training at each of the main prosecution offices located at the Navy’s Region Legal Service Offices. They also conducted regular training webinars on critical and emerging issues and utilized the help of civilian experts to provide training on domestic violence and vicarious trauma.

(3) As in previous years, TCAP supported trial counsel with extensive “reach back” support. TCAP conducted recurring case review conferences with trial counsel to provide guidance and case merits analysis. TCAP facilitated an online community discussion portal for all trial counsel that provided real-time advice to counsel worldwide. TCAP also maintained an updated online database of sample documents and guides. Additionally, members of TCAP assisted with some high-profile cases as either detailed military trial counsel or as civilian government representatives under Military Rule of Evidence 615.

(4) A large majority of new trial counsel completed the two-week MJO Course, designed to provide critical baseline knowledge to new prosecutors. More experienced trial counsel received advanced training at the week-long Prosecuting Special Victim Crimes Course, which focused on domestic violence, adult sexual assault, and child abuse/exploitation crimes. Both trainings were organized and led by TCAP personnel.

(5) Every trial counsel was supervised by an experienced O-5 (Commander) or O-4 (Lieutenant Commander) MJLCT-designated officer serving as senior trial counsel. All senior trial counsel received additional training in special victims' litigation and many also received formal training in complex litigation, supervision of subordinate counsel, and the management of a prosecution office.

(6) At the direction of the SAAITF, the Special Victim Investigation and Prosecution (SVIP) Compliance Review Team was appointed to review all Department of Defense (DoD) and Navy SVIP policies and procedures. The purpose of the Review Team was to ensure collaboration of all members of the SVIP team throughout a case and evaluate the execution of SVIP policies and procedures in five particular regional areas of responsibility to ensure they complied with both Navy and DoD regulations. This team was composed of personnel from the Navy VLC Program, the Naval Criminal Investigative Service, Sexual Assault Prevention and Response program, the Office of the Judge Advocate General, and TCAP. In FY21, the multi-disciplinary team provided its completed review to the SAAITF, finding the Navy in compliance with all SVIP requirements and providing recommendations as to additional improvements.

d. Defense Counsel

(1) Similar to TCAP, the Defense Counsel Assistance Program (DCAP) provided support and assistance to defense counsel worldwide. In FY21, 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 newly-hired 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, a monthly Podcast, and a regular newsletter that highlighted emerging issues and provided advice to defense counsel throughout the fleet. DCAP also maintained a central repository of defense resources and an online discussion board. On several occasions, DCAP personnel provided on-site support to ongoing courts-martial and worked alongside defense counsel as assistant counsel of record.

(4) All new defense counsel completed the new two week MJO Course at NJS. This course included classroom instruction by military justice specialists and hands-on practical exercises that culminated in a head-to-head mock trial with new trial counsel attending a parallel prosecution-focused MJO course. New defense counsel also attended a Defending Sexual Assault Cases course either remotely or in person. Experienced defense counsel and military

justice managers attended a variety of advanced training in complex litigation, including training provided by the National Criminal Defense College.

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

(6) The four regional defense commands were supported by eight criminal investigators called Defense Litigation Support Specialists (DLSS). These civilian investigative experts each carried an average of twenty complex cases in FY21. Additionally, DLSS assisted the DCAP's Mobile Training Team and global defense training efforts.

e. VLC

(1) By the end of FY21, 44 VLC provided legal support to approximately 1,600 sexual offense and domestic violence victims at over 500 proceedings and conducted 374 outreach briefs to more than 25,000 personnel. In order to continue to meet our mission, the Navy authorized and filled 11 new VLC personnel during FY21 (10 in the field; 1 at headquarters).⁴ The headquarters billet and two of the field billets were filled in early FY21 while the remaining new billets were filled in the summer and fall of 2021. VLC were supervised and trained within the VLC Program, which is overseen by a senior O-6 (Captain) Chief and a civilian GS-15 Deputy.

(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 JAG, the NLSC Commander, and the VLC Program Chief prior to selection. With the detailing of new billets and routine turnover, nineteen new VLC were selected in FY21.

(3) All new VLC completed a Special Victims' Counsel Certification Course prior to representing clients. VLC also attended specialized courses in representing child victims and victims of domestic violence. In September 2021, the VLC Program held its sixth annual training symposium. This week-long program (conducted virtually due to COVID-19) included training on: vicarious trauma; child victims; recent appellate case law; professional responsibility; domestic violence; and procedures for expedited transfers and transitional compensation benefits. In addition, the VLC Program conducted monthly training for all personnel throughout FY21. As discussed above, the Navy VLC Program will commence a new certification course in April 2022.

⁴ In FY20, a VLC was also placed in Sasebo, Japan.

(4) The VLC Program continued its appellate practice team with six VLC appellate practitioners assigned, as a collateral duty, to aid trial VLC on interlocutory and appellate issues. The VLC Program also utilized a Victims' Counsel Assistance Program (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.

f. Military Judges

(1) The Navy-Marine Corps Trial Judiciary (NMCTJ) presided over all courts-martial within the Department of the Navy and is composed of ten judicial circuits. In FY21, the NMCTJ consisted of 25 active-duty Navy and Marine Corps judges and 12 Reserve Navy and Marine Corps judges.

(2) In FY21, the NMCCA consisted of six to nine active-duty Navy and Marine Corps appellate judges, six Navy Reserve appellate judges, and two Marine Corps Reserve appellate judges.

(3) Selection Requirements. The Navy employed rigorous screening and training requirements for military judges in FY21.

(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, ensured 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 Judge Advocate General's Legal Center and School in Charlottesville, VA. The course included detailed instruction on the court-martial process, evidence, procedure, Constitutional law, judicial problem solving, and judicial methodology. It also incorporated demonstrations and practical exercises. For FY21, the Military Judge Course utilized hybrid in-person and virtual classwork to ensure new military judges received training while observing pandemic mitigation requirements.

(4) Military Judges Continuing Education

(a) In February 2021, the Department of the Navy hosted the Joint Military Judges Annual Training with instructors from the DoD, National Judicial College (NJC),⁵ and the NMCTJ. All active duty and reserve judges assigned to the NMCTJ participated in this three-day course, as did over 100 additional judges across all services. The training included courses

⁵ The NJC is a fully accredited civilian university that hosts 30 to 40 judicial courses annually.

on the potential impact of vicarious trauma and unconscious bias on the court-martial process and its participants. Due to COVID-19 restrictions, the course was held virtually this year.

(b) In September 2021, all NMCTJ judges participated in annual training provided by NJC and NMCTJ instructors.⁶ Training topics included judicial methodology, evidentiary issues associated with child and expert witness testimony, child sexual assault cases, and judicial ethics.

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

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

g. National Security Cases (NSC)

(1) The Office of the Judge Advocate General (OJAG) Code 30 is unique in the DoD as the only office exclusively dedicated to supporting litigation involving classified information. It is the Navy JAGC's center of excellence for classified information litigation, including courts-martial designated as NSC. In FY21, Code 30 staff consisted of an O-5 (Commander) Director, an O-4 (Lieutenant Commander) Deputy Director, and an O-4 (Major) Marine Corps Liaison Officer.

(2) In FY21, Code 30 provided support to eleven military proceedings (four courts-martial, one federal district court case, three administrative hearings, and three active investigations) involving classified information. Code 30 reviewed all proposed legislation or regulations pertaining to national security matters and coordinated with Original Classification Authorities (OCA) and Special Security Officers. Code 30 also worked with the Department of Justice (DOJ), other intelligence and law enforcement partners, and other Services, to refine classified litigation practice across the Sea Services, improve the use of classified information in military and DOJ cases, and ensure that classified information remains protected from unauthorized disclosure during litigation. Code 30 provided extensive investigation and litigation support to judge advocates across all the Services and law enforcement agents including:

(a) Reviewing and cataloging classified material for trial; coordinating with high-level OCA; facilitating security clearance requests for courts-martial personnel; processing requests for classification reviews of evidence; and advising on the classified information privilege under Military Rule of Evidence 505, the Classified Information Procedures Act, and the State Secrets Protection Act.

⁶ The training was shifted to a virtual forum to comply with pandemic mitigation measures.

(b) Providing classified information litigation training to judge advocates at the first virtual Classified Information Litigation Course, and to military judges and others involved in classified information litigation through other courses.

(c) Maintaining a library of resources for NSC and publishing the 2021 edition of the National Security Litigation JAGC Primer.

(d) Ensuring our two classified information litigation “hubs” are equipped to litigate national security and classified information cases.

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

h. Military Commissions

(1) The Office of Commissions – Prosecution (OCP). In FY21, 11 active duty Navy Judge Advocates (supported by three reserve officers) and 8 Legalmen served at OCP, which used 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) The Military Commissions Defense Office (MCDO). In FY21, 15 Navy judge advocates and 7 Legalmen served at the MCDO. Each military counsel was assigned to one of the 11 defense teams, trained in the rules and procedures of the Military Commissions Act of 2019, and worked under the mentorship of an experienced civilian attorney. A Managing Defense Counsel also supervised day-to-day operations of each defense team.

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. New statutory requirements contained in the FY21 and FY22 NDAA, combined with calls from Congress to more closely track and report disciplinary proceeding data will likely require some additional legal resources and personnel. As noted in the SECNAV-directed Comprehensive Review of the Uniformed Legal Communities, resources have been a challenge for the JAGC.

b. Judge advocate manning. In FY21, the VLC Program established 11 new counsel billets to provide critical legal services to victims of domestic violence and meet the VLC-related

provisions of the FY20 NDAA. This augmentation is expected to improve our ability to meet military justice requirements.

c. Enlisted paralegal manning. The Navy JAGC was supported by 467 active-duty personnel in the Legalman rating in FY21, 47 less than the authorized end strength of 514. Some of the gapped billets affected prosecution and defense offices, which detracted from military justice efficiency by requiring judge advocates to spend time on administrative and paralegal duties, rather than focusing on their counsel responsibilities. The Navy JAGC is continuing to work with Navy Personnel Command with a goal of eliminating this shortfall by the end of FY22.

d. Civilian paralegals and other specialists. In recognition of the need for additional civilian support to uniformed personnel, the JAGC received approval to hire 86 civilian billets in FY22: 35 paralegal, administrative assistant, and courtroom security billets hired for litigation offices; 19 billets to support legal technology improvements; 17 billets to provide legal counsel to domestic violence victims (for legal assistance and VLC services); 11 billets to facilitate public access to courts-martial documents; and 4 billets to support curriculum development and instruction at NJS.

e. Training. The JAGC made significant training advancements in FY21. In order to improve litigation training for both trial counsel and defense counsel, we implemented revised certification requirements and learning objectives, as well as consolidated the Basic Trial Advocacy and Trial/Defense Counsel Orientation courses into the comprehensive MJO Course. This course began in April 2021 and is offered three times each year. Additionally, NJS continued to develop the Training Tracker Management Program – a “training jacket” for all members of the Navy legal community – that will enable the community to monitor and assess the training status of our counsel and paralegals. Several CR recommendations relate to military justice training and continued focus is needed to ensure NJS has the necessary budget and personnel resources to meet all training requirements.

f. Retention. Retaining senior and mid-career litigators continued to be a challenge. The JAGC has requested an increase in Judge Advocate Career Incentive Pay (JACP), which has remained unchanged since 2001. As mid-career officers become eligible for Public Service Loan Forgiveness (PSLF) relief, and take advantage of the Blended Retirement System (BRS), retention of mid-grade officers will likely remain a challenge. The JAG Corps remains focused on monitoring how retention incentives such as JACP and geographically flexible billets offset the combination of PSLF forgiveness and BRS for mid-career and senior litigators. Also, the loss of flag pay (in retirement), several years ago, for those senior O-6s who serve as Assistant Judge Advocates General, removed a valuable financial incentive to retain senior JAGC officers.

g. Technology. Deficiencies in information technology systems continued to be one of our biggest challenges. Our legal community lacks modern systems in military justice data collection, case management, and court reporting.⁷ Although more work is needed, we took the

⁷ This was a specific finding of the CR.

following steps in FY21 to improve our military justice management systems and court-reporting abilities:

(1) The Navy and Marine Corps continued efforts to configure and deploy a new military justice management system (Naval Court-Martial Reporting System (NCORS)) to more efficiently collect required data, manage cases throughout the courts-martial process, and provide public access to dockets, filings, and records, all required by Article 140a, UCMJ. The goal is a modern, cloud-hosted, highly-configurable system with data sharing and interfaces with other Department of the Navy databases. As we continue coordinating with Navy information technology offices on our requirements, OJAG and Marine Corps Judge Advocate Division have implemented a bridging military justice management system called “Wolverine.” In September 2021, NCORS moved into Phase 2, a six-month prototype phase to configure military justice workflow requirements using a modern, robust, highly-configurable, commercial/out-of-the-box Customer Relationship Management platform. By March 2022, the prototype will be ready for testing and acceptance, and if approved, we are positioned to move immediately into Phase 3, a nine-month pilot to production phase to get NCORS to full operational capability. OJAG requested NCORS funding support during the FY23 Program Objectives Memorandum (POM) cycle (Secretariat Review Board (SRB)), however, the request was disapproved. Some FY22 funding has been secured from the DoD SAPRO allocation, however, depending on the actual cost, a funding shortfall is still expected in FY22. Because the SRB23 request for NCORS resources was denied, funding shortfalls exist through the Future Year Defense Program (FYDP).

(2) The Navy JAGC continued its effort to configure, test, pilot, and eventually field an artificial intelligence-supported, cloud-based speech-to-text transcription capability that implements post-trial processing requirements from the 2016 Military Justice Act. Once implemented, this will improve the Navy’s ability to generate quality records of trial in a timely manner. The Marine Corps purchased and will field a similar capability at all Marine Corps courtrooms.

h. Impact of the COVID-19 pandemic. The Navy continued to utilize technology to mitigate the risk of COVID-19 by expanding the use of remote case conferences, witness testimony, and hearings. Additionally, many training opportunities were offered virtually.

6. Conclusion. The Navy judge advocate community is continually adapting to ensure the best possible execution of the military justice mission. The commitment to our underlying principles remains strong and our dedication to Navy core values ensures that the JAGC will continue to deliver timely and accurate legal services in support of the Navy's mission. The fair administration of military justice remains one of my top priorities as we build on the successes of the past year.



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

APPENDIX

Report Period: FISCAL YEAR 2021

PART 1 - NAVY PENDING COURTS-MARTIAL (As of 30 September 2021)			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		53	
BCD SPECIAL		18	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		2	
SUMMARY [C20-QCAR]		1	
TOTAL:	43	74	117

PART 2 - NAVY COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OF CASES TRIED OVER LAST REPORT
GENERAL	110	79	31	+41.0%
BCD SPECIAL	75	72	3	-29.9%
NON-BCD SPECIAL	0	0	0	0.0%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	9	3	6	-30.8%
SUMMARY	26	26	0	+13.0%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-0.5%

PART 3 – ACCUSED DEMOGRAPHIC DATA

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	110	110	0	19	87	4	1	4	26	2	68	7	2
SPECIAL	75	70	5	11	59	5	1	2	23	2	37	8	2
MJ SPECIAL (Art. 16 (c)(2))	9	9	0	0	9	0	0	0	5	0	4	0	0
SUMMARY	26	23	3	5	17	4	0	1	9	0	12	4	0

APPENDIX

PART 4 – VICTIM DEMOGRAPHIC DATA [A]

TYPE COURT	Total	GENDER ⁸		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	182	55	105	16	126	40 ⁹	1	3	15	2	106	15	40 ¹⁰
SPECIAL	67	26	32	12	51	4	0	4	11	2	44	5	1
MJ SPECIAL Art. 16(c)(2)	4	3	1	0	4	0	0	0	0	0	3	1	0
SUMMARY	17	6	10	3	13	1	0	0	0	0	13	3	1

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

GENERAL COURTS-MARTIAL (CA LEVEL)	31	
NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)		
NUMBER OF BAD-CONDUCT DISCHARGES	28	
SPECIAL COURTS-MARTIAL	31	
NUMBER OF BAD-CONDUCT DISCHARGES		

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

FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	0	
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0	
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	265	
FOR EXAMINATION UNDER ARTICLE 65(d)	31	

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

TOTAL ON HAND BEGINNING OF PERIOD	198[C]	
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⁸ 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.

⁹ Thirty-six of the victims identified as “unknown” race or ethnicity were derived from one general court-martial involving child pornography identified through the National Child Victim Identification Program. The race and ethnicity of these individuals was unavailable.

¹⁰ See footnote 9.

APPENDIX

TOTAL CASES REFERRED FOR REVIEW		282[C]	
TOTAL CASES REVIEWED		317[D]	
TOTAL PENDING AT CLOSE OF PERIOD		165[C]	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD		+18.7%	

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

TOTAL PETITIONS TO CAAF	51
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PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (NAVY & MARINE CORPS)

TOTAL PENDING BEGINNING OF PERIOD		15	
RECEIVED		16	
DISPOSED OF:		18	
GRANTED	4		
DENIED	10		
NO JURISDICTION	4		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		13	

PART 10 – NAVY ORGANIZATION OF COURTS [E]

TRIALS BY MILITARY JUDGE ALONE		140	
GENERAL COURTS-MARTIAL		61	
SPECIAL COURTS-MARTIAL		70	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		9	
TRIALS BY MILITARY JUDGE WITH MEMBERS		54	
GENERAL COURTS-MARTIAL		49	
SPECIAL COURTS-MARTIAL		5	

PART 11 – NAVY STRENGTH [CNP-Mr. Kevin Stransky, kevin.a.stransky.civ@us.navy.mil]

AVERAGE ACTIVE DUTY STRENGTH	352,633 [F]
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PART 12 – NAVY NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ) [C13]

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	5,286
RATE PER 1,000	15

EXPLANATORY NOTES

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

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

[C] Includes only cases briefed and at issue.

APPENDIX

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

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

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



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

Report to Congress

U.S. Marine Corps Report on Military Justice for Fiscal Year 2021

31 December 2021

Prepared by:

HEADQUARTERS UNITED STATES MARINE CORPS
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WASHINGTON DC 20350-1000

The estimated cost of this report or study for the Department of Defense is approximately \$9,700 in Fiscal Years 2021 - 2022. This includes \$5 in expenses and \$9,700 in DoD labor.

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**REPORT OF THE
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS
ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE
1 OCTOBER 2020 TO 30 SEPTEMBER 2021**

1. Introduction. The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) submits this report in accordance with Article 146a, Uniform Code of Military Justice (UCMJ). As a core component of legal support, the provision of military justice occupies the majority of personnel and assets within the Marine Corps legal community. In supervising the administration of military justice,¹ the SJA to CMC closely coordinates with the Navy Judge Advocate General (JAG)² and collaborates with the other services' JAG Corps. Among several initiatives implemented by the Marine Corps legal community during Fiscal Year 2021 (FY21), the SJA to CMC prioritized the re-organization of the Marine Corps' prosecution function. In particular, in July of 2021, the Marine Corps consolidated all trial counsel and trial counsel support personnel under a newly-established Trial Services Organization (TSO). To lead the TSO, the Marine Corps created a colonel (O-6) billet—the Chief Trial Counsel (CTC). Details regarding the establishment of the TSO and CTC, along with the SJA to CMC's other significant military justice-related initiatives, are included in this report.

2. Data on Numbers and Status of Pending Cases. At the end of FY21, the Marine Corps had 245 pending cases. Of those, 129 were referred to trial by court-martial and the remaining 116 cases were preferred and pending a disposition decision. The data regarding these 245 pending cases is depicted in Part 1 of the Appendix. Data pertaining to cases tried to completion is also included in the Appendix.

3. Information on the Appellate Review Process

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

(1) *Moreno I* and Post-Trial I. No case exceeded the pre-MJA 16 *Moreno I* guideline of 120 days from sentencing to Convening Authority's (CA) action. One case exceeded the MJA

¹ 10 U.S.C. §806 (2018).

² The Marine Corps provides information within this report on cases convened by Marine Corps commanders. However, within the Department of the Navy, certain procedures within the military justice system, such as appellate practice, are under the cognizance of the Judge Advocate General of the Navy.

16 Post-Trial I guideline of 120 days from announcement of the sentence to forwarding for appellate review.³

(2) *Moreno II* and Post-Trial II. No case exceeded the pre-MJA 16 *Moreno II* guideline of 30 days from the CA's action to docketing at the NMCCA. One case exceeded the MJA 16 Post-Trial II guideline of 30 days from forwarding for appellate review to docketing at the NMCCA.⁴

(3) *Moreno III*. No case exceeded the *Moreno III* guideline of 18 months from docketing at the NMCCA to decision.⁵

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

c. No Marine Corps case held a provision of the UCMJ unconstitutional.

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

a. Trial Counsel

(1) Marine Corps trial counsel represent the United States as prosecutors in courts-martial and as recorders in administrative separation proceedings. Judge advocates will typically serve as a trial counsel in their first or second tour of duty and tend to be in the grade of captain (O-3), with some senior first lieutenants (O-2). The installation's Senior Trial Counsel (STC), who is typically a major (O-4) with significant litigation experience, supervises each trial counsel. A Regional Trial Counsel (RTC), a lieutenant colonel with extensive litigation experience, further supervises the STCs in each of the Marine Corps' four geographic regions.⁶ Finally, the Marine Corps' CTC, a colonel (O-6), supervises the four RTCs. All trial counsel and supervisory trial

³ United States v. Rivera, No. 202000111, slip op. (N-M Ct. Crim. App. Aug. 19, 2021) (finding no prejudice for a Post-Trial I violation of 22 days).

⁴ United States v. Tabor, No. 202100046 (docketed on 22 February 2021).

⁵ See United States v. Rivera, No. 202000111, slip op. at 8 (N-M Ct. Crim. App. Aug. 19, 2021) (holding that "the *Moreno III* time standard—the time between docketing with this Court and issuing our opinion—is untouched by MJA 16.").

⁶ The four regions include: (1) the National Capitol Region; (2) the Eastern Region (composed of installations generally situated on the East Coast); (3) the Western Region (composed of installations generally situated on the West Coast); and (4) the Pacific Region (which includes installations in Hawaii and Japan).

counsel are part of the Marine Corps' TSO, the newly established prosecution organization led by the CTC, which is described in additional detail below.⁷

(2) The entry-level training for all Marine Corps judge advocates includes completion of the Basic Lawyer Course (BLC) and, as of Fiscal Year 2021, the Military Justice Orientation Course (MJOC). These courses are taught consecutively at the Naval Justice School aboard Naval Station Newport, Rhode Island. Successful completion of the BLC and the trial counsel-track⁸ of MJOC qualifies a Marine Corps judge advocate to represent the United States as a trial counsel in special courts-martial under the close supervision of the cognizant STC and RTC.⁹ After demonstrating competency at litigating special courts-martial, a trial counsel may obtain qualification to represent the United States as a lead trial counsel in general courts-martial.¹⁰

(3) Once a trial counsel acquires sufficient experience prosecuting general courts-martial and the trial counsel's supervisory counsel are confident in the individual's litigation capabilities, the CTC may grant qualification to represent the United States as lead trial counsel in special victim cases.¹¹ In the Marine Corps, all special victim cases must have a Special Victim Investigation and Prosecution (SVIP)-qualified trial counsel detailed as lead counsel.¹² Obtaining the SVIP qualification requires a demonstration of experience, leadership, maturity, and a high degree of competency in the courtroom.¹³ As of the date of this report, 42 of the TSO's 72 trial counsel possess this qualification.

(4) To supplement a trial counsel's professional development, each RTC is supported by a civilian LAA, a GS-15 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 within their respective regions, with a focus on complex litigation. Additionally, the TSO maintains a Trial Counsel Assistance Program (TCAP) Director who is a lieutenant colonel (O-5). Supervised by the CTC, the TCAP Director is responsible for providing ongoing assistance to trial counsel in the field and coordinating training opportunities, both internal and external to the TSO.¹⁴ Trial counsel also receive assistance from the Appellate Government Division (Code 46) of the Office of the Judge Advocate General (OJAG) of the Navy. Code 46 is composed of Navy and Marine Corps judge advocates who are responsible for representing the

⁷ See *infra* p. 7.

⁸ The MJOC is a two-week course divided into two distinct tracks—one track for trial counsel and another for defense counsel. The first week of MJOC consists largely of lecture and discussions that are conducted separately (one set of lectures and discussions for judge advocates in the trial counsel track and a separate set for judge advocates in the defense counsel track). The second week of MJOC brings the two tracks together in a contested mock trial, including all trial phases (*voir dire*, opening statement, direct and cross-examinations, etc.).

⁹ U.S. MARINE CORPS, ORDER 5800.16 – Volume 16, LEGAL SUPPORT AND ADMINISTRATION MANUAL, MILITARY JUSTICE para. 022201 (14 July 21) [hereinafter LSAM – V16].

¹⁰ *Id.* at para. 022202.

¹¹ 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 (domestic violence involving aggravated assault or child abuse) or 128b, 132, and 134 (child pornography) of the Uniform Code of Military Justice. *Id.* at para. 050101.

¹² *Id.*

¹³ See *id.* at para. 022303; see also CTC Policy Memorandum 3-21 (Personnel Qualifications).

¹⁴ 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.

United States on appellate matters before the NMCCA and the Court of Appeals for the Armed Forces. Accordingly, judge advocates at Code 46 assist trial counsel with interlocutory appeals and other appellate matters.

(5) National security cases are uncommon and involve additional complexities associated with security, evidence handling, and clearance levels. For efficiency, all national security cases in the Marine Corps are prosecuted by trial counsel assigned to the Legal Services Support Section-National Capital Region (NCR).¹⁵ This facilitates 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 that region receive advanced training on national security litigation. Trial counsel detailed to these cases also receive assistance from the Navy OJAG National Security Litigation Division (Code 30).

(6) In FY21, no capital offenses were referred to court-martial. Although the Marine Corps infrequently litigates capital cases, procedures are in place to ensure that the trial counsel who may be called upon to prosecute a capital case possess the necessary training, experience, and support to competently do so. Any trial counsel detailed to a capital case must be SVIP-qualified.¹⁶ Additionally, the authority to detail an individual trial counsel to represent the government on a capital case is withheld to the cognizant RTC.¹⁷ Moreover, the civilian LAAs within each region are responsible for providing support on such cases.¹⁸

b. Defense Counsel

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

(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.²² The DCAP is led by a major (O-4) with an LL.M. in criminal law, is stationed in the NCR, and serves under the direct supervision of the CDC.²³ Each defense counsel is required to attend three mandatory training events: (1) the two weeklong defense-track

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

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

¹⁷ *Id.* at para 0306.

¹⁸ *Id.* at para 0208.

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

²⁰ *Id.* at para. 010601.

²¹ CDC POLICY MEMORANDUM 4.2A, ATTORNEY ADVISOR MISSION AND CORRESPONDING POLICIES (16 Jan. 19).

²² LSAM – V3, *supra* note 19 at para. 010606, 010607.

²³ *Id.*

MJOC; (2) a weeklong course aimed specifically at litigating sexual assault and other special victim cases; and (3) an annual weeklong training course. All three of the courses are hosted and managed by the DCAP. In addition, every SDC and RDC conducts monthly and quarterly training. Marine Corps defense counsel also attend civilian-led training events hosted by the National Criminal Defense College, the Bronx Defenders Academy, the National Criminal Defense College, the Trial Lawyers College, and the National Association of Criminal Defense Lawyers.

(3) To ensure the competency of counsel assigned to specific cases, the CDC maintains internal safeguards regarding new counsel orientation, annual training, and detailing authorities and considerations.²⁴ In conjunction with continuous training and supervision, these safeguards ensure that defense counsel effectively, competently, and ethically represent their clients. In accordance with Sexual Assault Accountability and Investigation Task Force (SAITF) Recommendation 2.4²⁵ and Section 540J of the FY20 NDAA,²⁶ Judge Advocate Division (JAD) continues the hiring process for four defense investigators. Once hired, these defense investigators will play a significant role by enabling defense counsel to better prepare to defend an accused.

c. Victims' Legal Counsel

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

(2) To serve as a VLC, Marine Corps judge advocates are subject to a rigorous nomination, screening, interview, and vetting process.²⁸ A VLC nominee must be serving in, or selected to, the grade of captain (O-3), have at least six months of military justice experience as a trial counsel or defense counsel, and have tried at least one contested court-martial.²⁹ The nominee must undergo a sensitive screening process, which includes a thorough review of the nominee's Official Military Personnel File.³⁰ The nominee is also interviewed by the responsible RVLC and the CVLC, and must successfully complete an approved Special Victims' Counsel (SVC)/VLC certification course. Only after successfully undergoing the above process, the SJA to CMC certifies the nominee to serve as a VLC.

²⁴ CDC POLICY MEMORANDUM 2.1B, NEW DSO MEMBER ORIENTATION (11 Jun. 19); CDC POLICY MEMORANDUM 4.1B, DEFENSE SERVICES ORGANIZATION ANNUAL TRAINING PROGRAM (15 Jan. 19); CDC POLICY MEMORANDUM 3.1D, DETAILING AND INDIVIDUAL MILITARY COUNSEL AUTHORITY FOR MARINE CORPS DEFENSE SERVICES ORGANIZATION (6 Nov. 20).

²⁵ SEXUAL ASSAULT ACCOUNTABILITY AND INVESTIGATION TASK FORCE, REPORT 38 (30 Apr. 19).

²⁶ National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 540J, 133 Stat. 1371 (2020).

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

²⁸ *Id.* at para 0103.

²⁹ *Id.* at para. 010305.

³⁰ *Id.* at para. 010309.

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

(4) In FY21, the VLCO carried out several initiatives to raise the standard of practice and provide better service and assistance to victims. The VLCO established the VLC Assistance Program (VLCAP) to better mentor, train, and assist VLC throughout the Service.³¹ The VLCO executed a memorandum of understanding with the Navy VLC Program, the Coast Guard SVC Program, and the Army SVC Program to provide coordinated cross-service support and assistance to victims at installations where a Marine Corps VLC is not assigned or readily available. The VLCO further implemented a community outreach program to better inform the Marine Corps community of VLC availability and services.

(5) In carrying out the Commandant of the Marine Corps' guidance, statutory requirements,³² and the recommendations of the Department of the Navy (DON) Legal Community Comprehensive Review³³ and Center for Naval Analysis Study,³⁴ the Marine Corps increased the total number of VLC billets from 14 to 23. Because VLC are limited to representing no more than 25 clients at any given time,³⁵ this increase in the total number of VLC billets assures the Marine Corps is appropriately manned to support eligible victims.

d. Trial and Appellate Military Judges

(1) All Marine Corps military judges are screened and selected for judicial service via a competitive board process established by the Navy JAG.³⁶ The selection process includes careful evaluation of the education, experience, accomplishments, temperament, and leadership capabilities of the candidates. Trial and appellate military judges must possess a suitable background in military justice, sound judgement, an even temperament, unquestioned maturity of character, and exemplary writing skills. Each candidate seeking future assignment to the judiciary must submit an application to the Judicial Screening Board. A candidate's application must include appraisals from judges before whom they have litigated and a detailed summary of their qualifications and experience.

(2) Marine Corps judge advocates selected by the Judicial Screening Board become eligible for assignment to the judiciary. However, selection does not guarantee assignment to a judicial billet. Finally, prior to assignment to a judicial billet, military judges must pass the three-week military judge course conducted at The Army Judge Advocate General's Legal Center and

³¹ *Id.* at para. 010303.

³² See National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, §§ 541, 548, 133 Stat. 1374-75, 1378-79 (2020).

³³ COMPREHENSIVE REVIEW OF THE DEPARTMENT OF THE NAVY'S UNIFORMED LEGAL COMMUNITIES, REPORT (Dec. 2019).

³⁴ OPTIMIZING COMMAND LEGAL ADVICE AND LEGAL SERVICES SUPPORT, REPORT, CENTER FOR NAVAL ANALYSES (May 2020).

³⁵ LSAM – V4, *supra* note 27 at para. 010205.D.

³⁶ U.S. DEP'T OF NAVY, JAGINST 5817.1D, JUDICIAL SCREENING BOARD (14 Jul. 2021).

School (TJAGLCS) in Charlottesville, Virginia. Eighteen Marine Corps judge advocates currently serve as trial military judges (eleven active duty and seven reservists) and six serve as appellate military judges at the NMCCA (four active duty and two reservists).

e. Military Commissions

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

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

g. Additional Policy and Regulatory Efforts

(1) Establishment of the Trial Services Organization and the Chief Trial Counsel of the Marine Corps. In July of 2021, the Commandant of the Marine Corps, through a change to Volume 16 of Marine Corps Order 5800.16—the Legal Support and Administration Manual (LSAM)—established a single organization—the TSO—under which all trial counsel and trial counsel support personnel now belong.³⁷ Prior to creation of the TSO, the Marine Corps' four prosecution regions operated independently of one another. This consolidation has allowed for unity of command, standardization of trial counsel policy, and higher quality oversight of personnel and individual cases. As discussed above, the TSO is led by the CTC—a colonel (O-6) billet within the headquarters element of the TSO located in the NCR.³⁸ The headquarters element also includes the TCAP Director, who is responsible for providing case-specific assistance and for coordinating training for all trial counsel throughout the organization. Prior to

³⁷ LSAM – V16, *supra* note 9 at para. 020202.

³⁸ See discussion *infra* p 1-3.

establishing the TSO, the Military Justice Branch at JAD maintained the TCAP function. However, due to that construct, the TCAP Director was not part of the trial organization. By placing the TCAP function within the TSO, the Marine Corps ensures that all its trial counsel receive uniform practice guidance and standardized training.

(2) Implementation of Victim Notification Requirements. Sections 538 and 549 of the National Defense Authorization Act for Fiscal Year 2020 (FY20 NDAA) imposed new victim notification requirements for all sexual assault offenses.³⁹ Additionally, Section 540C of the FY20 NDAA created a requirement for commanders to make timely dispositions following a determination not to refer a sex-related offense to court-martial when the non-referral determination is due to insufficient evidence.⁴⁰ The DoD provided guidance to the Services through subsequent policies.⁴¹ On 29 October 2020, JAD issued a practice advisory detailing the Marine Corps' implementation plan for complying with these notification requirements.⁴² The practice advisory also outlined a process for ensuring the documentation of these notifications in the electronic case management system.⁴³ On 14 July 2021, the Marine Corps incorporated these victim notification procedures into Volume 16 of the LSAM.⁴⁴ In sum, through these policies and procedures, the Marine Corps places significant responsibility upon trial counsel and staff judge advocates to ensure these notifications occur.

(3) Reorganization of the Marine Corps Victim and Witness Assistance Program. Related to the victim notification requirements outlined above, the Marine Corps also updated the LSAM to overhaul the Victim and Witness Assistance Program (VWAP). The purpose of this reorganization was to increase the quality of the legal community's coordination with victims and witnesses of UCMJ violations. Under the previous VWAP construct, the Marine Corps' VWAP was managed by the Deputy Branch Head of the Military Justice Branch within JAD, a major (O-4) with significant military justice experience.⁴⁵ However, this was one of many of the Deputy Branch Head's duties. Additionally, many personnel throughout the fleet conducting VWAP duties did so as a collateral responsibility. As part of the VWAP's reorganization, JAD established a dedicated civilian GS-13 VWAP Director position.⁴⁶ An individual has accepted an offer for the Director position and is in the final stages of the hiring process. In addition to the Director position, the Marine Corps also established eight civilian GS-7 VWAP Coordinator positions.⁴⁷ As of the date of this report, these eight positions are all in various phases of the

³⁹ See National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, §§ 538, 540C, 133 Stat. 1363-64, 1366 (2020).

⁴⁰ § 549, 133 Stat. at 1379.

⁴¹ Memorandum from Under Sec'y of Defense for Personnel and Readiness to Secretaries of the Military Departments, subject: (Implementation of Sections 538 and 549 of the National Defense Authorization Act for Fiscal Year 2020) (29 Jun. 2020); Memorandum from Under Sec'y of Defense for Personnel and Readiness to Secretaries of the Military Departments, subject: (Implementation of Section 540C of the National Defense Authorization Act for Fiscal Year 2020) (14 Sep. 2020).

⁴² Practice Advisory 12-20, Judge Advocate Division, U.S. Marine Corps, subject: Victim Notification Requirements for Sexual Assault Offenses and Timely Disposition Requirements for Nonprosecutable Sex-Related Offenses (29 Oct. 2020).

⁴³ *Id.*

⁴⁴ LSAM – V16, *supra* note 9 at para. 040402-03.

⁴⁵ See U.S. MARINE CORPS, ORDER 5800.14, VICTIM-WITNESS ASSISTANCE PROGRAM (15 Mar. 2013) (superseded by LSAM – V16, *supra* note 9).

⁴⁶ LSAM – V16, *supra* note 9 at para. 040904.

⁴⁷ *Id.* at para. 0411.

hiring process, with some individuals hired and others in the final stages of onboarding. Generally, these VWAP Coordinators are responsible for assisting the trial counsel with day-to-day coordination with victims and witnesses. They also assist the trial counsel with ensuring compliance with all statutory and regulatory victim notification requirements.

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

a. In FY21, the Marine Corps military justice community effectively accomplished its broad and complex mission. The establishment of the TSO and the reorganization of our VWAP has postured our Marines for continued success. Looking forward, our military justice professionals in the field and our team at JAD stand ready to support the Commandant of the Marine Corps, the Secretary of the Navy, and the Secretary of the Defense as we refine our military justice practice by implementing the military justice reforms of the FY22 NDAA and the Secretary of Defense-approved Recommendations of the Independent Review Commission on Sexual Assault in the Armed Forces (IRC). To ensure success on both fronts, there are two planning efforts underway. First, I have established an operational planning team (OPT), led by the JAD Deputy Director for Military Justice—a colonel (O-6) billet established in July of 2021. Second, to ensure synchronization across the DON uniformed legal community, members of the JAD OPT are engaged in a coordinated planning effort with the Navy OJAG. Through these dual planning efforts, the Marine Corps will identify necessary resourcing, explore structural changes, and develop implementation and execution strategies.

b. Accordingly, in FY22, my military justice-related priorities are as follows:

- (1) Implement the military justice reforms of the FY22 NDAA;
- (2) Implement the Line of Effort 1 (Accountability) recommendations of the IRC; and
- (3) Position, staff, fund, equip, train, and educate our community to meet the needs of our current and future operating environments.

5. Conclusion. The Marine Corps legal community is well positioned to deliver high quality military justice support across the Service. Our military justice practitioners will continue to receive rigorous training and extensive supervision in the performance of their duties. As we implement significant military justice reform, the Marine Corps legal community remains committed to executing its vital role of promoting justice through the existence of a fair and impartial justice system that assists in maintaining good order and discipline within the force, promotes efficiency and effectiveness within the force, and thereby strengthens the national security of the United States.



D. J. BLIGH
Major General, U.S. Marine Corps

APPENDIX

Report Period: FISCAL YEAR 2021

PART 1 – PENDING COURTS-MARTIAL [A]			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		67	
SPECIAL		43	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		9	
SUMMARY		10	
TOTAL:	116	129	245

PART 2 – BASIC COURTS-MARTIAL STATISTICS [B]				
TYPE COURT	TRIED	CONVICTIONS	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OF TOTAL CASES TRIED OVER LAST REPORT
GENERAL	124	105	19	+0.8%
SPECIAL	120	111	9	-6.25%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	22	18	4	+68%
SUMMARY	109	107	2	+48%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OF CASES TRIED OVER LAST REPORT				+19%

PART 3 – ACCUSED DEMOGRAPHIC DATA													
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	124	122	2	33	89	2	1	5	24	3	83	8	0
SPECIAL	120	113	7	28	92	0	2	3	31	0	76	8	0
MJ SPECIAL (Art. 16 (c)(2))	22	21	1	4	18	0	0	0	4	0	18	0	0
SUMMARY	109	107	2	31	78	0	0	2	13	0	85	9	0

PART 4 – VICTIM DEMOGRAPHIC DATA													
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	39	7	32	5	18	16	0	2	4	0	18	1	14
SPECIAL	23	6	17	2	10	11	0	1	2	0	9	0	11
MJ SPECIAL (Art. 16 (c)(2))	3	0	3	0	2	1	0	0	0	0	2	0	1
SUMMARY	45	21	24	4	27	14	0	4	3	0	22	2	14

PART 5 – MARINE CORPS DISCHARGES [C]		
GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	52	
NUMBER OF BAD-CONDUCT DISCHARGES	46	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	68	

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG (Navy & Marine Corps)		
FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	0	
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY JAG	0	
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	265	
FOR EXAMINATION UNDER ARTICLE 65(d)	31	

PART 7 – WORKLOAD OF THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (Navy & Marine Corps)		
TOTAL ON HAND BEGINNING OF PERIOD		198 [D]
TOTAL CASES REFERRED FOR REVIEW		282 [D]
TOTAL CASES REVIEWED		317 [E]
TOTAL PENDING AT CLOSE OF PERIOD		165 [D]
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD		+18.7%

PART 8 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (Navy & Marine Corps)	
TOTAL PETITIONS TO CAAF	51

PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (Navy & Marine Corps)			
TOTAL PENDING BEGINNING OF PERIOD		15	
RECEIVED		16	
DISPOSED OF		5	
GRANTED	4		
DENIED	10		
NO JURISDICTION	4		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		13	

PART 10 – MARINE CORPS ORGANIZATION OF COURTS BY FORUM [F]			
TRIALS BY MILITARY JUDGE ALONE		224	
GENERAL COURTS-MARTIAL		92	
SPECIAL COURTS-MARTIAL		110	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))		22	
TRIALS BY MILITARY JUDGE WITH MEMBERS		42	
GENERAL COURTS-MARTIAL		32	
SPECIAL COURTS-MARTIAL		10	

PART 11 – STRENGTH [G]			
AVERAGE ACTIVE DUTY STRENGTH		180,849	

PART 12 – NONJUDICIAL PUNISHMENT (Art. 15, UCMJ)			
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED		5,936	
RATE PER 1,000		32.82	

EXPLANATORY NOTES

[A] Pending cases as of 30 September 2021.

[B] Based on the number of cases, not on the number of charges.

[C] Based on the Statements of Trial Results.

[D] Includes only cases briefed and at issue.

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

[F] Only includes cases tried to verdict.

[G] This number includes only active duty component Marines.



Military Justice in the Coast Guard (FY 2021)

Report to Congress
December 10, 2021



U. S. Coast Guard

Foreword

December 10, 2021

I am pleased to present the following report, Military Justice in the Coast Guard (FY 2021).

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

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

The Honorable James Inhofe
Chairman, Senate Armed Services Committee

The Honorable Jack Reed
Ranking Member, Senate Armed Services Committee

The Honorable Adam Smith
Chairman, House Armed Services Committee

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

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

Sincerely,



Melissa Bert
Rear Admiral, U.S. Coast Guard
Judge Advocate General and Chief Counsel





Military Justice in the Coast Guard (FY 2021)

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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) 2021

Pending Courts-Martial (Persons)

Type Court	Preferred	Referred
General	N/A	9
Special	N/A	6
Total	11	15

Basic Courts-Martial Statistics (Persons)

Forum	Tried	Convicted	Acquittal	Rate of Increase (+) / Decrease (-) For Tried Cases Over Last FY
General	12	8	4	+200%
Bad Conduct Discharge Special	13	13	0	+62%
Non-Bad Conduct Discharge Special	3	3	0	N/A*
Summary	6	6	0	-50%

* FY 2021 marks the first year of use of the Non-Bad Conduct Discharge Special by the Coast Guard.

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 2021	1
Cases Received By Judge Advocate General (JAG) within 120 Days of Sentencing	6
Cases Referred To CCA within 30 Days of JAG Receipt	6
CCA Decision within 18 Months of Referral	1

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. Demographic Data*

Accused Demographic Data											
	Total	Gender		Ethnicity		Race					
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	American Indian / Alaska Native	Asian	Black / African Americans	Native Hawaiian / Pacific Islander	White	Other
General	12	12	0	1	10	1	0	0	0	10	1
Special	16	15	1	4	10	0	2	3	1	9	1
Summary	6	6	0	1	1	0	1	0	0	2	3

Victim Demographic Data											
	Total	Gender		Ethnicity		Race					
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	American Indian / Alaska Native	Asian	Black / African Americans	Native Hawaiian / Pacific Islander	White	Other
General	10	3	7	2	6	0	0	1	0	8	1
Special	21	6	15	0	19	0	3	2	0	15	0
Summary	8	4	4	0	8	0	1	0	0	7	0

*Some demographic data was not available for all accused members and victims.

D. Measures Implemented to Increase Proficiency of Judge Advocates

Measures	Notes/Details:
To Participate As Trial And Defense Counsel	<p><u>Training:</u> To obtain initial Article 27(b), UCMJ, certification as a trial and defense counsel, Coast Guard judge advocates are required to attend the Basic Lawyer Course at Naval Justice School. In addition, Coast Guard trial counsel, defense counsel, and Special Victims' Counsel (SVC) attend advanced trial advocacy training offered at Naval Justice School, the Army JAG's Legal Center and School, and the Air Force JAG's School.</p> <p><u>Organization:</u> The Legal Service Command (LSC) has established fifteen full-time trial counsel who participate in all general courts-martial throughout the Coast Guard and may assist other legal offices with special and summary courts-martial.</p> <p><u>Defense Counsel:</u> Pursuant to a Memorandum of Understanding with the Navy JAG Corps, the Coast Guard has eight full-time judge advocates assigned to Navy Defense Service Offices for two year assignments where they defend both Coast Guard and Navy members at courts-martial. In exchange, the Navy JAG Corps may provide defense counsel for Coast Guard members at Coast Guard courts-martial. The Coast Guard also assigns two judge advocates to the Navy-Marine Corps Appellate Defense division to represent members on appeal at the Coast Guard Court of Criminal Appeals and the Court of Appeals for the Armed Forces.</p>

Measures	Notes/Details:
To Preside As A Military Judge	<p>The Coast Guard currently has three General Court-Martial Judges and seven special court-martial judges.</p> <p>All Coast Guard military judges attend the Army JAG's Legal Center and School Joint Military Judges Course in order to be initially certified as a military judge and attend Joint Military Judges Annual Training to maintain their Article 26(b), UCMJ, certification.</p>
To Perform Duties of SVC	<p>In addition to initial Article 27(b) training at Naval Justice School, all SVC judge advocates must complete the Army or Air Force Certification Course.</p> <p>Coast Guard judge advocates are sent to the Air Force Intermediate Sexual Assault Litigation Course (parts one and two).</p> <p>Coast Guard SVCs also have the opportunity to attend trainings such as the Crimes Victim Law Conference; End Violence Against Women International Conference; Crimes Against Women Conference; and Crimes Against Children Conference.</p>

Special Focus of Military Training

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

E. Independent Views of the Sufficiency of Resources Available

The Coast Guard has two hundred and sixty two active duty judge advocates and twenty two reserve judge advocates, as well as one hundred and four civilian attorneys and one hundred and eleven support staff, both military and civilian. The Coast Guard maintains fifteen trial counsel at the LSC, which are supplemented by other judge advocates assigned throughout the country. Currently, eight judge advocates are assigned to Navy Defense Service Offices. The Coast Guard has fourteen SVCs. With three general counsel-martial judges, seven special court-martial judges, six civilian appellate judges, and two military appellate judges, the Coast Guard judiciary remains fully staffed. Overall, the Coast Guard has an adequate level of judge advocates to effectively carry out its military justice responsibilities. The Coast Guard does not have paralegal type rating within its enlisted ranks. To support the military justice function, the Coast Guard relies on enlisted members trained in general administrative matters. Accordingly, maintaining an adequate number of trained and experienced enlisted members (e.g., administrative personnel with Naval Justice School training) to support military justice functions continues to be a challenge.

F. Other Matters

As noted in section II.A, the overall number of courts-martial in the Coast Guard increased significantly from FY 2020 to FY 2021. The increase in courts-martial is likely due to a combination of increased referrals and a backlog of cases delayed by the Covid-19 pandemic. Even with the increased number of cases, the Coast Guard had sufficient resources to complete each referred court-martial.

I have directed the Coast Guard's Office of Military Justice to begin planning for the implementation of significant military justice reforms likely to be enacted in the FY 2022 National Defense Authorization Act. While the specific details of any Congressional reforms are unknown, each legislative proposal separates the commander from the disposition process with respect to certain offenses, and gives that authority to a qualified judge advocate designated as the special victim prosecutor (SVP). Additionally, each proposal requires the SVP, and subordinate SVPs, to have significant military justice experience. These reforms will require a significant reorganization of the Coast Guard military justice structure, as well as a reallocation of resources. If these reforms are enacted, the Coast Guard will need an appropriate implementation time period to ensure proper offices are created, and that these offices have sufficient qualified judge advocates to meet potential statutory SVP requirements.

During FY 2020, along with Navy and Marine Corps judge advocates, Coast Guard judge advocates participated in the Sexual Assault Accountability and Investigative Task Force, which emphasized increased litigation training requirements for judge advocates. This work by the various Sea Service judge advocate communities culminated in the design of the Military Justice Orientation Course (MJOC). Implemented in FY 2021, the MJOC provides comprehensive, advanced military justice training to new trial and defense counsel on sexual assault prosecution and defense. The MJOC provides new judge advocates in-depth, practical experience through courtroom led training conducted by experienced trial and defense counsel. Coast Guard judge advocates attend the MJOC directly after completing their initial military justice training at the Basic Lawyer Course held at the Naval Justice School. The MJOC ensures that new judge advocates have sufficient courtroom and advocacy training before entering their first litigation billet.

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 legal 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.