



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

26 July 2022

MEMORANDUM FOR THE JUDGE ADVOCATES GENERAL
THE STAFF JUDGE ADVOCATE TO THE COMMANDANT

SUBJECT: Requests for Information Regarding Military Justice Issues

1. On June 22, 2022, at the 23rd Public Meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), the Committee received testimony on the status of creation of the Offices of Special Trial Counsel, appointment of Lead Special Trial Counsel, precept language utilized in officer promotions, and diversity within the Judge Advocate Generals' Corps.
2. I respectfully ask your staffs to provide our staff with the responses specified in the Requests for Information by the date requested (Encls 1 and 2).
3. Thank you for your support of this important project. My POC is Mr. Chuck Mason, Data Lead, at (571) 296-5303 or robert.c.mason2.civ@mail.mil.

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JEFF A. BOVARNICK
Colonel, U.S. Army
Staff Director

2 Encls
As stated

cc:
Mr. Dwight Sullivan (DoD OGC)
Service Representatives

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

Request for Information from Service Judge Advocates General

26 July 2022

Creation of Offices of Special Trial Counsel and Related Issues

I. Purpose

1. In a memorandum dated 11 March 2022 (attached), the Secretary of Defense established policies governing Offices of Special Trial Counsel (OSTC) for the Military Departments and required such policies “be incorporated in issuances promulgated by the Secretary of each Military Department to be issued within 180 days of the date of the memorandum.” Further the memorandum provided that Services identify recommended nominees for Lead Special Trial Counsel (LSTC) no later than September 30, 2022.
2. On June 22, 2022, at the 23rd Public Meeting of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), the Committee received testimony on the status of the creation of the OSTC and appointments of the LSTC.
3. With the understanding that some of the covered offenses subject to disposition by the OSTC include sexual assault crimes, the DAC-IPAD has expressed an interest in further understanding the role of the OSTC and LSTC and potential impacts to investigation, prosecution and defense of these offenses.
4. Additionally, the DAC-IPAD is interested if judge advocates serving in specialized military justice billets, such as special victim prosecutors or Service-specific military justice tracks, have specific or additional precept language for promotion boards that differentiates such billets from operational or administrative law billets during the promotion process.

II. Authority

1. The DAC-IPAD is a federal advisory committee established by the Secretary of Defense pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended.
2. The mission of the Committee is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
3. The DAC-IPAD requests the assistance of the Military Departments to provide the requested information by the suspense date indicated below.

DAC-IPAD Request for Information

Creation of Offices of Special Trial Counsel and Related Issues

III. Suspense

Suspense	RFI	Proponent – Military Services
9 Sep 2022	Documents	Service TJAG provide precept language, as provided in Section IV, Request 1.
9 Sep 2022	Documents	Service TJAG provide materials related to creation of the OSTC, as provided in Section IV, Request 2.
9 Sep 2022	Documents	Service TJAG provide competency/qualification criteria, as provided in Section IV, Request 3.

IV. Information Requested

1. The precept language provided to board members for Fiscal Years 2019, 2020, 2021, and 2022 promotion boards for judge advocates to pay grades, O-4, O-5, and O-6.
2. All issuances and/or guidance by Secretaries of the Military Departments, as required by the Secretary of Defense memorandum (above), establishing and incorporating policies pertaining to the creation of Offices of Special Trial Counsel.
3. The competency and/or qualification standards or policies used in the process of identifying qualified nominees for the Lead Special Trial Counsel position.



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

MAR 11 2022

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Policies Governing Offices of Special Trial Counsel

In accordance with title 10, U.S. Code, section 1044f, as enacted by section 532 of the National Defense Authorization Act for Fiscal Year (FY) 2022, effective immediately, I establish the following policies for the Military Departments' Offices of Special Trial Counsel and their personnel. These policies will be incorporated in issuances promulgated by the Secretary of each Military Department to be issued within 180 days of the date of this memorandum.

I. Mission

The mission of the Offices of Special Trial Counsel is to provide expert, specialized, independent, and ethical representation of the United States, under the direct civilian control of the Secretary of the applicable Military Department, in the investigation and trial-level litigation of covered offenses as prescribed by article 1(17) of the Uniform Code of Military Justice, 10 U.S.C. § 801(17), and other offenses over which the offices exercise authority.

II. Offices' Establishment

- A. Not later than December 27, 2023, the Secretaries of the Military Departments will ensure that an Office of Special Trial Counsel with respect to each Military Service within their respective Military Department is at full operational capability, recognizing that those offices cannot exercise the authorities newly enacted by the National Defense Authorization Act for FY 2022 with respect to offenses that occur before December 28, 2023. In preparation for full operational capability, the Secretaries of the Military Departments will take the following actions, completion of which will be reported to the General Counsel of the Department of Defense:
1. Not later than July 15, 2022, establish the Offices of Special Trial Counsel. For purposes of initial operational capability, the Department of the Air Force may establish a single Office of Special Trial Counsel for both the Air Force and the Space Force.
 2. Not later than September 30, 2022, identify recommended nominees for Lead Special Trial Counsel.
 3. Not later than October 15, 2022, identify Special Trial Counsel.
 4. Not later than December 31, 2022, develop and issue initial training and education policies for the Offices of Special Trial Counsel.



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5. Not later than January 1, 2023, or such later date on which each Lead Special Trial Counsel is confirmed and appointed as a general or flag officer, assign, and where applicable ensure the permanent change of station of, Lead Special Trial Counsel to that permanent general/flag officer position.
 6. Not later than August 31, 2023, assign or detail, and where applicable ensure the permanent change of station of, judge advocates to fill the Special Trial Counsel positions. Until December 27, 2023, either (a) the Lead Special Trial Counsel, or (b) if the Lead Special Trial Counsel has not yet been appointed, the Secretary of the Military Department concerned may make Special Trial Counsel available to perform duties outside of the Office of Special Trial Counsel, provided that the primary duty of the Special Trial Counsel is within the Office of Special Trial Counsel. This authority of the Lead Special Trial Counsel or the Secretary of the Military Department concerned may not be delegated. Beginning on December 27, 2023, the provisions of para. IV.B.4 will apply.
 7. Not later than July 1, 2023, establish standard operating procedures for the Offices of Special Trial Counsel, including the reciprocal agreements required by para. III.B.2.
- B. Pursuant to section 958(b)(1) of the National Defense Authorization Act for FY 2020, Public Law No. 116-92 (2019), the Secretary of the Air Force may designate a single Space Force judge advocate to be the Lead Special Trial Counsel for both the Air Force and the Space Force.

III. Offices' Functions

- A. All Lead Special Trial Counsel, Special Trial Counsel, and other support personnel deemed appropriate by the Secretary of the Military Department concerned will be assigned to an Office of Special Trial Counsel, which will supervise and oversee the United States' legal representation in the investigation and trial-level litigation of covered offenses as defined by article 1(17) of the Uniform Code of Military Justice, 10 U.S.C. § 801(17), and other offenses over which the office exercises authority.
- B. Independence
1. The Offices of Special Trial Counsel will operate independently of the military chains of command of both the victims of alleged covered offenses and those accused of covered offenses as defined by article 1(17) of the Uniform Code of Military Justice, 10 U.S.C. § 801(17), and any other offenses over which the offices exercise authority.
 2. The Military Departments will enter into reciprocal agreements to provide for the legal representation of the United States in the investigation and trial-level litigation by another Military Service's Office of Special Trial Counsel of any

offense over which an Office of Special Trial Counsel is precluded from exercising authority because either the alleged offender or victim is a member of the relevant Office of Special Trial Counsel (see para. III.B.1).

3. Special Trial Counsel will conduct their assigned activities free from unlawful or otherwise unauthorized influence or coercion.

IV. Personnel

A. Office Head

1. Each Office of Special Trial Counsel will be headed by a general or flag officer with significant military justice experience with the title, "Lead Special Trial Counsel."
2. To promote both the appearance and the actuality of independence to the maximum extent possible, each Lead Special Trial Counsel will serve for a specified fixed term of not less than three years, with an option for that term to be renewed for a subsequent fixed term or terms of any length. A Lead Special Trial Counsel may be relieved of duty prior to the end of his or her term only for cause, unless he or she leaves active duty or is promoted. The Secretaries of the Military Departments will promulgate issuances governing the grounds and procedures for relieving a Lead Special Trial Counsel for cause. Only the Secretary of the Military Department concerned or the Secretary's superior may relieve a Lead Special Trial Counsel for cause.
3. Each Lead Special Trial Counsel will report directly to the Secretary of the Military Department concerned with no intervening authority.
4. No Lead Special Trial Counsel may be assigned any additional duties with the following exception. If favorably endorsed by a Lead Special Trial Counsel, a request for that Lead Special Trial Counsel to serve on an officer promotion selection board may, at the discretion of the Secretary of the Military Department, be granted.
5. No Lead Special Trial Counsel may be supervised or rated by anyone other than the Secretary of the applicable Military Department.
6. In cases over which an Office of Special Trial Counsel exercises authority, the Lead Special Trial Counsel of the applicable Military Service will have exclusive authority to determine whether to file an appeal under Article 62 of the Uniform Code of Military Justice (10 U.S.C. § 862), in consultation with appellate government counsel in the office of the Judge Advocate General of the applicable Military Department. Appellate government counsel will litigate those appeals on behalf of the United States and are responsible for the substance and content of submissions to the appellate courts.

B. Special Trial Counsel

1. Special Trial Counsel will be assigned to the Office of Special Trial Counsel for a fixed term of not less than three years. Those assignments may, with the permission of the applicable Judge Advocate General or, in the case of Marine Corps judge advocates, the Commandant of the Marine Corps, be renewed for subsequent fixed terms of any length. Each Military Department's issuance governing its Office or Offices of Special Trial Counsel will provide that a Special Trial Counsel may be released before the end of the fixed term only if the Special Trial Counsel leaves active duty or at the direction or with the permission of the Lead Special Trial Counsel with notice to the applicable Judge Advocate General or, in the case of Marine Corps judge advocates, the Commandant of the Marine Corps.
2. Special Trial Counsel will be highly skilled, experienced, well-trained, and competent in handling the investigation and trial-level litigation of covered offenses.
3. Special Trial Counsel will be supervised and rated only by personnel assigned to the applicable Office of Special Trial Counsel.
4. The Military Services will instruct promotion boards to value litigation experience.
5. A request may be made to a Lead Special Trial Counsel to detail a Special Trial Counsel to a case that does not fall under the authority of an Office of Special Trial Counsel. The Lead Special Trial Counsel will have exclusive and unreviewable authority to grant or deny such a request. If a Special Trial Counsel is detailed to a case that does not fall under the authority of an Office of Special Trial Counsel, no one other than a member of an Office of Special Trial Counsel will prepare a performance evaluation for the Special Trial Counsel for the period during which the Special Trial Counsel performs those duties.

V. Command Input

The commander of any victim of an alleged covered offense and the commander of any accused in a case involving a covered offense will be given a reasonable opportunity to provide input to the Special Trial Counsel regarding case disposition, but that input is not binding on the Special Trial Counsel.

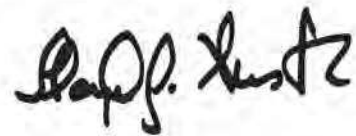
VI. Training

The Lead Special Trial Counsel will establish appropriate training programs for personnel assigned to their respective offices. Joint training among the Military Services' Offices of Special Trial Counsel is encouraged. Lead Special Trial Counsel are encouraged to

have personnel assigned to their respective offices participate in training with judge advocates outside of the Offices of Special Trial Counsel in addition to appropriate specialized training within the Office of Special Trial Counsel concerned. Lead Special Trial Counsel are encouraged to send their respective personnel to training programs outside the Department of Defense, including those offered by the Department of Justice.

VII. Exceptions to Policy

Exceptions to these policies may be granted only by the Secretary of Defense or the Deputy Secretary of Defense. That authority may not be delegated.

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

Request for Information from Service Judge Advocates General

26 July 2022

Diversity Statistics for Service Judge Advocate General's Corps

I. Purpose

1. In 2020, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) published its *Report on Racial and Ethnic Data Relating to Disparities in the Investigation, Prosecution, and Conviction of Sexual Offenses in the Military*.
2. On June 22, 2022, at the 23rd Public Meeting of the DAC-IPAD the Committee received testimony on diversity within the Judge Advocate General's Corps.
3. The DAC-IPAD remains interested in potential diversity disparities in military justice with respect to offenders and victims of sexual offenses, and of the practitioners as well.

II. Authority

1. The DAC-IPAD is a federal advisory committee established by the Secretary of Defense pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended.
2. The mission of the Committee is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
3. The DAC-IPAD requests the assistance of the Military Departments to provide the requested information by the suspense date indicated below.

III. Suspense

Suspense	RFI	Proponent – Military Services
22 Aug 2022	Data	Service TJAG provide data, in Excel, as provided in Section IV below.

DAC-IPAD Request for Information

Diversity Statistics for Service Judge Advocate General's Corps

IV. Information Requested

1. Please provide the numbers of the total force for your Service as well as the Judge Advocate General's Corps (JAG) as of the following dates: June 1, 2022; June 1, 2021, and June 1, 2020. Additionally, for the same dates, please break out the following demographic data for Members of the Service and Members of the JAG Corps.

As of June 1, 2022:

- Service – Total number of Members (Enlisted and Officers)
- JAG Corps – Total number of Members (Enlisted and Officers)

Service by Member		JAG Corps by Member	
Sex (by category)	# of each	Sex (by category)	# of each
Race (by category)	# of each	Race (by category)	# of each
Ethnicity (by category)	# of each	Ethnicity (by category)	# of each
Pay Grade (by category)	# of each	Pay Grade (by category)	# of each
Service by Pay Grade		JAG Corps by Pay Grade	
Sex (by category)	# of each	Sex (by category)	# of each
Race (by category)	# of each	Race (by category)	# of each
Ethnicity (by category)	# of each	Ethnicity (by category)	# of each

Repeat above information as of June 1, 2021, and June 1, 2020.