

Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

Report on Tour Lengths and Rating Chain Structure for Services' Special Victims' Counsel / Victims' Legal Counsel (SVC/VLC) Programs

August 10, 2022

CONTENTS

| | |
|--|----|
| Executive Summary | 1 |
| Recommendations | 1 |
| I. Introduction and Methodology | 2 |
| A. Introduction | 2 |
| B. Methodology | 4 |
| II. Background of SVC/VLC Programs | 6 |
| III. SVC/VLC Tour Lengths | 8 |
| A. Current Practice | 9 |
| B. Assessment of Tour Lengths | 17 |
| C. Recommendation | 21 |
| IV. Army SVC Rating Chain | 23 |
| A. Army SVC Rating Structure and the Other Services' Structures | 23 |
| B. Assessment and Evaluation of the Army SVC Supervisory and Rating Chain | 27 |
| C. Recommendation | 31 |
| V. Conclusion | 32 |

APPENDICES

| | |
|---|-----|
| A. General Counsel of the Department of Defense Memorandum, Oct. 5, 2021 | A-1 |
| B. General Counsel of the Department of Defense Memorandum, Nov. 2, 2021 | B-1 |
| C. General Counsel of the Department of Defense Memorandum, Apr. 21, 2022 | C-1 |
| D. Congressional Letter to the Secretary of Defense, June 14, 2021 | D-1 |
| E. Interservice SVC/VLC Coordination Committee (ICC) Letter, Aug. 11, 2021 | E-1 |
| F. Deputy Secretary of Defense Memorandum, Sept. 2, 2016 | F-1 |
| G. The Judge Advocate General of the U.S. Army Memorandum..... | G-1 |
| H. 10 U.S.C. § 1044e (Special Victims' Counsel for Victims of Sex-Related Offenses) | H-1 |
| I. DAC-IPAD SVCs/VLCs Request For Information 1 and Services' Responses | I-1 |
| J. DAC-IPAD SVCs/VLCs Request For Information 2 and Services' Responses | J-1 |
| K. Interviewee Comments | K-1 |
| L. Diagrams of the Services' Rating Chain Structures | L-1 |
| M. Questions for Current SVCs/VLCs and for SVCs/VLCs with Prior Experience | M-1 |
| N. Questions for Victims | N-1 |
| O. Map of Army SVC Regions..... | O-1 |
| P. Coast Guard Special Victim Counsel (SVC) Program | P-1 |
| Q. <i>United States v. Eric S. Gilmet</i> Unlawful Command Influence Ruling..... | Q-1 |
| R. Sources Consulted..... | R-1 |
| S. Acronyms and Abbreviations | S-1 |
| T. DAC-IPAD Professional Staff..... | T-1 |

Executive Summary

Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) programs in the Military Services provide advice, critical protections, and advocacy for victims throughout the military justice process. The programs—and the dedicated judge advocates who implement them—are at the forefront of the Department of Defense's delivery of legal services to victims. Since the formal inception of the programs in 2013, SVCs/VLCs have represented over 30,000 clients across all of the Military Services.

Over the past decade, the SVC/VLC programs have grown and expanded. While the Services have continually adapted and improved these programs to meet the needs of victims, two aspects of the programs have come under recent scrutiny: (1) the issue of SVC/VLC tour lengths, and whether it is practical to adopt a minimum assignment length, and (2) whether the Army should adopt an independent supervisory rating structure for Army SVCs outside of the Office of the Staff Judge Advocate (OSJA) and local command, thereby aligning Army practice with the SVC/VLC rating structure in the other Military Services.

At the request of the Department of Defense Office of the General Counsel (DoD GC), the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) studied these issues. This report includes the results of a comprehensive review of the Services' SVC/VLC programs, authorities, agency guidance, and reports relevant to these programs. In addition, the study included 60 interviews with current and former SVCs/VLCs, victims represented by SVCs/VLCs, SVC/VLC program managers, and civilian victim advocates who represent military victims of sexual assault.

This report finds that longer tours for SVCs/VLCs better serve victims, minimize delay and inefficiencies in the military justice process, and enable judge advocates to develop the skills and expertise necessary to effectively advocate for their clients. This report also finds that the current Army rating structure adversely affects the independence and zealous advocacy of Army SVCs.

Based on those findings and the comprehensive review, the DAC-IPAD recommends: (1) an 18-month minimum assignment length for SVC/VLC serving in their first tour as a judge advocate, and a 24-month minimum for all other SVCs/VLCs, with appropriate exceptions for personal or operational reasons; and (2) the establishment of an independent supervisory rating structure for Army SVC outside of the OSJA and local command.

Recommendations

DAC-IPAD Recommendation 1: All of the Services should adopt an 18-month minimum assignment length for SVC/VLC serving in their first tour as a judge advocate, and a 24-month minimum for all other SVCs/VLCs, with appropriate exceptions for personal or operational reasons.

DAC-IPAD Recommendation 2: The Army should establish an independent supervisory rating structure for SVCs outside of the OSJA and local command.

I. Introduction and Methodology

A. Introduction

*My VLC was extremely helpful to my mental health and ability to go forward with a trial. The VLC program really works and gave me faith in the legal system.*¹

The serious problem of sexual misconduct cases in the Armed Forces has led to numerous reforms. Among the Military Services' responses, Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) programs are considered particularly successful.² Since their creation in 2013, they have been nationally recognized by Congress, the American Bar Association, civilian prosecutors, and victims for restoring confidence in the military response to sexual assault.³

Over the past decade, Congress has legislated tremendous changes to the Uniform Code of Military Justice (UCMJ), many of which emphasize the prosecution of sexual misconduct in the military.⁴ The Services' SVC/VLC programs have evolved with these changes to military justice, expanding and adapting to improve protections and advocacy for victims in the military justice process. The programs—and the individual counsel who implement them—have been at the forefront of the effort to improve delivery of legal services to victims of sexual misconduct.

However, institutional resistance to change has affected certain aspects of SVC/VLC programs. Litigation was required to ensure that SVCs/VLCs could advocate on behalf of their clients to enforce a victim's legal rights, and appellate decisions continue to define the scope of SVCs'/VLCs' representation.⁵ SVCs/VLCs believe some senior leaders may hold the view that their careers and promotion potential require them, like defense counsel, to return to the "team"

¹ Statement from military victim of sexual assault interviewed as part of this study.

² This report will use the terms special victims' counsel/victim' legal counsel (SVC/VLC) when describing the programs generally or addressing the Military Services' programs collectively. Terminology differs among the Services: Navy and Marine Corps attorneys are known as victims' legal counsel, or VLCs; Army attorneys are known as special victims' counsel, or SVCs; and the Air Force recently renamed its program counsel as victims' counsel, or VCs. This nomenclature, which in all Services emphasizes the focus on the victim, includes domestic violence victims, who now fall under the scope of the SVC/VLC programs. Background research for this report included the Coast Guard; however, because the Coast Guard is aligned under the Department of Homeland Security and its program is small, this report does not assess, evaluate, or make recommendations about the Coast Guard's program for DoD's consideration. *See* Appendix P.

³ In a letter to the Secretary of Defense dated June 14, 2021, Senator Kirsten Gillibrand and Representative Jackie Speier wrote, "Since the program's creation in 2013, the Special Victims' Counsel program has provided much-needed access to support to survivors of military sexual trauma." Letter from Rep. Jackie Speier and Sen. Kirsten Gillibrand to Lloyd J. Austin III, Secretary of Defense (June 14, 2021), *available at* Appendix D. SVC/VLC program managers routinely present the details of the program at bar association events throughout the country.

⁴ The annual National Defense Authorization Acts have included numerous changes to the military justice system; the most comprehensive reforms are found in the Military Justice Act of 2016, set forth in Division E of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 [FY17 NDAA], 130 Stat. 2000 (2016).

⁵ *See LRM v. Kastenberg*, 72 M.J. 364 (C.A.A.F. 2013) (upholding a victim's opportunity to be heard through counsel at a motions hearing to admit evidence on Military Rules of Evidence 412 and 513); *See also United States v. Horne*, 2022 CAAF LEXIS 356, and *United States v. Sanchez*, 2017 CCA LEXIS 203 (dismissing appellants' claims for relief due to unlawful command influence based on the actions of an Air Force SVC and the Army's SVC Program Manager, respectively).

or to the government “side.”⁶ In addition, there is tension inherent in the adversarial process. For example, an SVC/VLC’s professional obligation to their client may conflict with the command when the prosecution authority’s interests differ from the victim’s interests. Overburdened, understaffed, or underfunded SVC/VLC offices or inexperienced counsel can also reduce the effectiveness of these programs.

In their 2021 letter to the Secretary of Defense, Senator Kirsten Gillibrand and Representative Jackie Speier wrote: “One of the top complaints we have heard from military sexual trauma survivors is that they had to work with multiple SVC/VLC on their case due to personnel turnover.”⁷ They added that “in the Navy and the Air Force the average assignment duration for an SVC/VLC is two to three years, while in the Army and the Marine Corps the average assignment duration is twelve to fifteen months.”⁸

1. Tasking to Assess Minimum Tour Length for SVCs/VLCs

In October 2021, the Department of Defense Office of the General Counsel (DoD GC) requested that the DAC-IPAD study and report on the issue of tour lengths of SVCs/VLCs, assess whether it is practical to adopt a minimum assignment length (with appropriate exceptions for operational concerns), and, if practical to adopt a minimum assignment length, recommend what the minimum should be.⁹

2. Tasking to Consider Changes to the Army SVC Supervisory Rating Chains

In November 2021, in conjunction with the minimum tour length tasking, the DoD GC asked the DAC-IPAD to study and report on the rating chains of Army SVC, including

- An assessment of the rating chain for Army SVC officer evaluation reports.
- A comparison of that rating chain with those used in the other Military Services’ SVC/VLC programs.
- An evaluation of whether the rating chain for Army SVCs creates an actual or apparent limitation on those SVCs’ independence or ability to zealously represent their clients.
- Any recommendations for change based on the study’s findings.¹⁰

⁶ Recently, a military judge dismissed a murder case with prejudice for unlawful command influence because a senior officer who oversaw the assignment process for all Marine judge advocates told a group of defense attorneys that they are not “protected” despite having an independent rating chain and that there are consequences for spending years as defense counsel. The military judge’s Ruling on Defense Motion to Dismiss for Unlawful Command Influence in *United States v. Eric s. Gilmet* is available at Appendix Q.

⁷ Letter from Rep. Speier and Sen. Gillibrand to Secretary of Defense Austin, *supra* note 3.

⁸ *Id.*

⁹ See Memorandum from Caroline Krass, DoD General Counsel, to Staff Director, DAC-IPAD, *Request to Study the Tour Lengths of Special Victims’ Counsel/Victims’ Legal Counsel* (Oct. 5, 2021) [Tour Length Memo], available at Appendix A. At the time, the DAC-IPAD was suspended as the result of a zero-based review of all DoD advisory committees directed by the Secretary of Defense on January 30, 2021. On July 6, 2021, the Secretary authorized the DAC-IPAD to resume operations once its new members were duly appointed; as of the date of this report, the members approved for appointment by the Secretary have resumed their duties and conducted public meetings in April and June 2022, where they addressed and approved this report.

¹⁰ See Memorandum from Caroline Krass, DoD General Counsel, to Staff Director, DAC-IPAD, *Request to Study Rating Chain of Army Special Victims’ Counsel* (Nov. 2, 2021) [Rating Chain Memo], available at Appendix B.

3. Request for the DAC-IPAD to Review the Draft Report

On April 21, 2022, the DoD GC requested that the DAC-IPAD review the study and draft report on SVC/VLC tour lengths and Army SVC supervisory rating chains completed by the staff. The staff completed this report during a period when the Committee was inactive due to the DoD zero-based review of all Defense Advisory Committees. The DoD GC requested that the DAC-IPAD complete its review within 120 days.¹¹

4. DAC-IPAD Initial Meeting after Reconstitution

On April 21, 2022, the reconstituted DAC-IPAD held its first public meeting since December, 2020. At the April meeting, the DoD GC informed the Committee of her request for the members to review report. The DAC-IPAD Director informed the members that they would receive the draft report for their review after the April meeting.

5. DAC-IPAD Deliberation and Action on the Draft Report

Prior to the June 2022 public meeting, DAC-IPAD members received the draft SVC/VLC report and provided feedback to the staff. At the June meeting, Committee members deliberated on the appropriate minimum assignment length that the Services' SVCs/VLCs should serve, with exceptions for personal or operational reasons, and voted unanimously to modify the draft report's recommendation on this issue as now set forth. The Committee members all concurred with the draft report's recommendation that the Army should implement an independent rating structure for its SVCs. The Committee voted to remove the eight additional recommendations included in the draft report. Some members noted that these additional recommendations were appropriate for further DAC-IPAD study.

B. Methodology

As part of their comprehensive research on SVC/VLC programs, the DAC-IPAD staff submitted written requests for information (RFIs) to the Services, seeking responses to a range of questions regarding SVC/VLC tour lengths and SVC/VLC rating chains in addition to data about each Service's SVC/VLC program.¹² For example, the Services were asked to provide data on the actual tour lengths of all assigned SVCs/VLCs since 2018, the level of military justice experience for each assigned SVC/VLC, and the names and contact information of SVCs/VLCs—both current and former—and of victims available for interviews.¹³

¹¹ See Memorandum from Caroline Krass, DoD General Counsel, to Chair, DAC-IPAD, *Request to Review Report on Tour Lengths and Rating Chain Structure for Services' Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) Programs* (Apr. 21, 2022) [Request for Review Memo], available at Appendix C.

¹² See Appendix I for DAC-IPAD Request for Information for Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs (Nov. 5, 2021) [RFI 1], and Appendix J for DAC-IPAD Supplemental Request for Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs (Nov. 5, 2021) [RFI 2] (Dec. 14, 2021). Any spreadsheets or documents in the Services' RFI responses that contained personally identifiable information were omitted from Appendix I and are on file with the DAC-IPAD staff.

¹³ The Services' responses to the DAC-IPAD RFI 1 are available at Appendix I; responses to the DAC-IPAD RFI 2 are available at Appendix J.

Then, over a two-month period, the DAC-IPAD staff conducted 60 interviews with 15 former SVCs/VLCs, 21 current SVCs/VLCs, 17 victims represented by SVCs/VLCs, 5 SVC/VLC Program Managers, and 2 civilian victim advocates who provide legal representation to military sexual assault victims and work with military SVCs/VLCs.¹⁴ The study also included an extensive review of literature, statutes, regulations, agency guidance, and reports relevant to SVC/VLC programs.

This report summarizes the responses, interviews, and research and sets forth specific DAC-IPAD recommendations to improve the delivery of legal services for victims of military sexual misconduct. Section II provides background information on the history and development of the SVC/VLC programs. Section III addresses the question of appropriate tour lengths for SVCs/VLCs and considers the advantages and disadvantages of requiring a minimum assignment policy. Section IV describes the Army's unique approach to the SVC rating structure and considers the advantages and disadvantages of requiring the Army, like all other Services, to conduct SVC performance evaluations independently of the Office of the Staff Judge Advocate.

¹⁴ All interviewees were assured confidentiality and no comments are attributed by name.

II. Background of SVC/VLC Programs

While formal military SVC/VLC programs have existed since 2013, the statutory basis for such programs appeared as early as 1984. The DoD Authorization Act of 1985 vested the Service Secretaries with the authority to provide legal assistance for members of the Armed Forces and gave their Judge Advocates General the responsibility for establishing and supervising the legal assistance programs.¹⁵

In 2012, Congress expanded the scope of legal assistance representation to “[a] member of the armed forces, or a dependent of a member, who is the victim of a sexual assault” eligible for “legal assistance provided by military or civilian legal assistance counsel.”¹⁶ In analyzing this new law, the Office of the Secretary of Defense General Counsel provided a legal opinion that the 1984 and 2012 legislation, taken together, authorized judge advocates to provide representational legal assistance to sexual assault victims in the criminal law context.¹⁷

In January 2013, the Air Force began an SVC pilot program that was well-received by Congress. Air Force victim impact surveys reported very high rates of client satisfaction.¹⁸ During the first six months of the Air Force program’s existence, in a case certified by The Judge Advocate General of the Air Force, the Court of Appeals for the Armed Forces held that military trial judges must allow victims’ counsel to be heard on matters involving the victims’ assertion of their rights; failure to do so constitutes a violation of the victim’s due process rights.¹⁹

In June 2013, the Air Force made its SVC program permanent.²⁰ In August 2013, the Secretary of Defense directed the Service Secretaries to implement fully operational programs by January 1, 2014, noting that each Department should establish a program best suited for its Service while mandating that every program provide legal advice and representation to victims throughout the military justice process.²¹

¹⁵ Department of Defense Authorization Act of 1985, Pub. L. No. 98-525, 98 Stat. 2492, § 651 (1984) (“Subject to the availability of legal staff resources, the Secretary concerned may provide legal assistance in connection with their personal civil legal affairs . . .”).

¹⁶ 10 U.S.C. § 1565b (authorizing sexual assault victims to receive legal assistance services) [National Defense Authorization Act of Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1298, § 581 (2011)].

¹⁷ See Lieutenant Colonel Rhea A. Lagano et al., *The Air Force SVC Program: The First Five Years*, THE REPORTER, Dec. 7, 2017, at 32, available at https://www.afjag.af.mil/Portals/77/documents/44_03_web.pdf?ver=2017-07-170459-020 (noting that the opinion, issued on Nov. 9, 2012, held that “representational legal assistance . . . included attending interviews and interfacing with military prosecutors, investigators and defense counsel”).

¹⁸ DEP’T OF DEF., SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2014, 33 (Apr. 29, 2015) [FY14 SAPRO REPORT], available at https://sapr.mil/public/docs/reports/FY14_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf (finding that 90% of victims who were represented by SVC were “very satisfied” with the advice and support their SVC provided, 98% would recommend that other victims request an SVC, 91% said their SVC advocated effectively on their behalf, and 94% indicated that their SVC helped them understand the investigation and court-martial process).

¹⁹ *LRM v. Kastenberg*, *supra* note 5.

²⁰ Lagano et al., *supra* note 17.

²¹ Memorandum from the Secretary of Defense on Sexual Assault Prevention and Response (Aug. 14, 2013) [SecDef Memo], available at https://www.sapr.mil/public/docs/news/SECDEF_Memo_SAPR_Initiatives_20130814.pdf.

In December 2013, the Fiscal Year 2014 (FY14) National Defense Authorization Act (NDAA) required the Military Departments to provide SVC/VLC representation to eligible victims who requested it.²² The statutory provision, codified at 10 U.S.C. § 1044e,²³ addresses SVC/VLC assistance, qualifications, training, and availability; however, the structuring of each SVC/VLC program is left to the discretion of each Military Service, which can take into account its particular needs and resources.

Since SVC/VLC programs began, the statutory parameters defining the role of SVCs/VLCs and the rights of the victim and the accused have changed. The FY15 NDAA expanded SVC/VLC eligibility to Reserve Component and National Guard sexual misconduct victims and amended UCMJ Article 6b to specify that SVCs/VLCs can represent victims and speak for them at proceedings rather than merely accompanying them.²⁴ The FY16 NDAA authorized DoD civilian employees who are sexual misconduct victims to qualify for SVC/VLC representation and required investigators to promptly notify victims of their right to SVCs/VLCs.²⁵ The FY17 NDAA mandated that defense interviews of a victim be conducted in the presence of either government counsel or an SVC/VLC, upon the victim's request.²⁶ The FY20 NDAA required the Services to expand SVC/VLC services to domestic violence victims.²⁷ The Air Force Victims' Counsel Program recently expanded its services to provide confidential legal advice to eligible victims of interpersonal dating, domestic, and workplace violence.²⁸ The Services' SVC/VLC Chiefs or Program Managers meet regularly as a group, formally known as the Interservice SVC/VLC Coordination Committee (ICC), to identify best practices and strive for uniformity when appropriate.²⁹ As a group, the ICC considers issues that affect all the Services, such as cross-Service representation of clients, proposals for change to the Joint Service Committee, and legislative proposals; however, it does not coordinate on procedures internal to a particular Service.³⁰

²² National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66 [FY14 NDAA], § 1702, 127 Stat. 966 (2013).

²³ See Appendix H.

²⁴ Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291 [FY15 NDAA], § 534, 128 Stat. 3292 (2014).

²⁵ National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92 [FY16 NDAA], § 1081, 129 Stat. 726 (2015).

²⁶ FY17 NDAA, *supra* note 4, at 5015(c).

²⁷ National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92 [FY20 NDAA], § 548, 133 Stat. 1198 (2019), cited in Government Accountability Office Report 21-289, *Domestic Abuse: Actions Needed to Enhance DOD's Prevention, Response, and Oversight* 12 (May 2021), available at <https://www.gao.gov/assets/gao-21-289.pdf>. The Army has initiated a Domestic Violence Representation Program to provide legal advice and representation to eligible domestic violence victims through a combination of legal assistance counsel and SVCs, when appropriate. See Army TJAG Policy Memorandum 22-09, *Domestic Violence Representation Program* (Mar. 1, 2022).

²⁸ David DeKunder, *Program Provides Legal Services for Survivors of Interpersonal Violence, Sexual Assault*, JOINT BASE SAN ANTONIO-FORT SAM HOUSTON NEWS (May 4, 2021), available at <https://www.jbsa.mil/News/News/Article/2594830/program-provides-legal-services-for-survivors-of-interpersonal-violence-sexual/>.

²⁹ The ICC, composed of designated SVCs/VLCs from each Service, was established in 2016 and meets quarterly with the DoD GC and Under Secretary of Defense for Personnel and Readiness representatives to review SVC/VLC programs and make recommendations, including changes to statutes or the Manual for Courts-Martial. See Memorandum re: Special Victims' Counsel/Victims' Legal Counsel Programs, Sept. 2, 2016, available at Appendix F.

³⁰ Interview with Marine Corps VLC Program Manager (Dec. 13, 2021).

III. SVC/VLC Tour Lengths

In their June 14, 2021, letter, Senator Gillibrand and Representative Speier proposed that the Secretary, at the Department level, “establish uniform guidance mandating a minimum 2-year assignment duration for SVC/VLC,” citing complaints from victims who were represented by multiple, successive SVCs/VLCs owing to personnel turnover.³¹ Such a change would ease the trauma experienced by survivors in retelling their story to new counsel and would maintain continuity in the military justice process.³²

The ICC, in its response to the June 14, 2021, letter on behalf of the Services, advised against a minimum SVC/VLC assignment length. Instead, the ICC recommended “allowing each Military Service to retain flexibility and independent authority to build and shape its SVC/VLC program, to include assignment of personnel and establishment of supervisory chain of command.”³³ The ICC noted that Navy and Air Force SVC/VLC assignments average two to three years, while Army and Marine Corps SVCs/VLCs average 12 to 18 months within a standard three-year tour. However, the Marine Corps aims for 18-month assignments as the “gold standard” whenever possible.³⁴ According to the ICC, “The Army’s legal leadership has balanced the need to train judge advocates to effectively prosecute crime, defend accused, and represent victims throughout the court-martial process. Balancing those interests would not be possible with mandatory two-year tours for any of those positions.”³⁵ While acknowledging that stabilization or longer SVC/VLC assignments might benefit survivors, the ICC stated that a mandatory two-year SVC/VLC assignment minimum “would significantly curtail the Army and Marine Corps in developing judge advocates to serve as trial or defense counsel, and would reduce other opportunities to gain professional experience that can only improve a judge advocate’s ability to represent survivors as an SVC/VLC.”³⁶

In her October 5, 2021, Tour Length Memo, the DoD GC requested that the DAC-IPAD assess whether it is practical to adopt a minimum assignment length and, if so, what that minimum should be.³⁷ Highlighting the Army’s position that it would not be possible to balance the interests of prosecution, defense, and victim representation with a mandatory two-year tour for any of those positions, the DoD GC remarked: “It is not readily apparent why it is possible for the Air Force and Navy to balance those interests while providing two-to-three-year tours for SVC/VLCs but it is not possible for the Army to do so.”³⁸

³¹ Letter from Rep. Speier and Sen. Gillibrand to Secretary of Defense Austin, *supra* note 3.

³² *Id.*

³³ Letter from Lieutenant Colonel Yong J. Lee, USMC, Interim Chair, ICC, to Beth George, Acting DoD General Counsel (Aug. 11, 2021), *available at* Appendix E.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Tour Length Memo, *supra* note 9.

³⁸ *Id.*

A. Current Practice³⁹

1. Army

The Army currently has 51 full-time SVCs and 30 part-time SVCs serving at 42 different locations, with 1 to 6 SVCs at each location. At the end of FY21, the program had 1,455 clients represented by 78 SVCs. Army SVCs represent from 1 to 49 clients, with an average of 18 clients each. The Army does not collect data on the number of SVCs who represent each client or the length of client representations; however, a sampling of recently terminated representations in each region yielded an average of two SVC detailed to each client, with each client represented by the SVC program for an average of 10 months.⁴⁰

Most Army SVCs receive permanent change of station (PCS) orders for two to three years in a particular location. Initial three-year orders at one location are typically split into two 18-month assignments.⁴¹ Ninety-five Army SVCs completed their assignments after January 1, 2018, serving as an SVC from 1 to 39 months, including 20 SVCs (21%) serving 18 months or more and 46 SVCs (48%) serving less than 12 months.⁴²



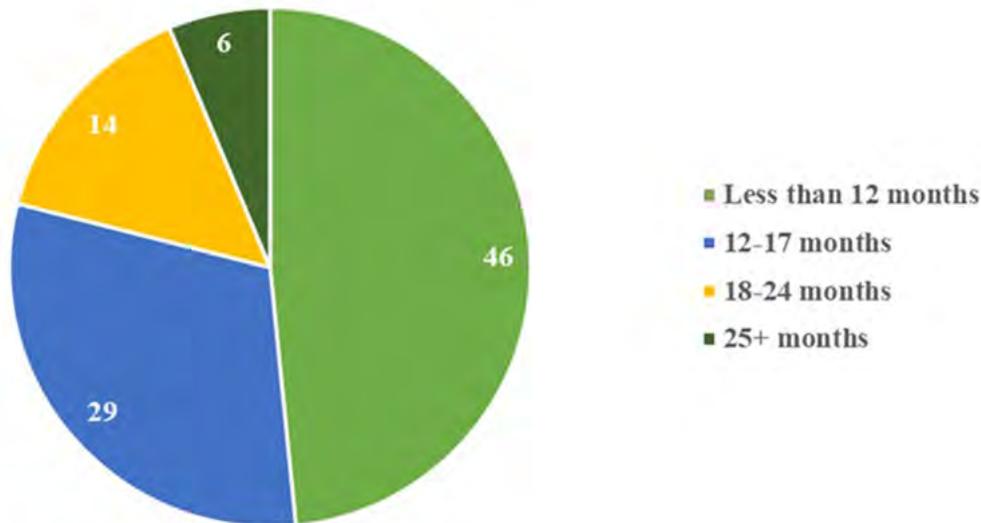
³⁹ Except as noted, all data are accurate as of the date of the Services' responses to RFI 1 provided in November and December 2021, and to RFI 2, provided in January 2022. The Army provided a corrected response to RFI 2 in March 2022, which was used for "Army Response to RFI 2."

⁴⁰ See Appendix I, Army Response to RFI 1, Question 15.

⁴¹ Interview with Army SVC Program Manager (Dec. 10, 2021).

⁴² See Appendix J, Army Response to RFI 2. RFI 2 requested that the Services provide, for each SVC/VLC who completed their assignment after January 1, 2018, the month and year that they began their assignment, the month and year they ended the assignment, whether the assignment was full- or part-time, and the number of that assignment within their assignment history. The DAC-IPAD staff calculated the length of each assignment, excluding the first month and including the last month. For example, an assignment that began in June 2018 and ended in June 2019 was calculated as 12 months long. One SVC was excluded because the reported term of service concluded prior to January 1, 2018.

Army: Number of SVCs by Tour Length



In December 2021, the Army established a minimum 18-month tour length for SVCs, subject to “compelling reasons” that could decrease this time.⁴³ Exceptions to the 18-month minimum include the needs of the Army, needs of the client, or personal circumstances of the SVC.⁴⁴ For an SVC to depart prior to completing an 18-month assignment, their staff judge advocate (SJA) must notify the SVC Program Manager and provide compelling reasons. Next, the Program Manager makes a recommendation to the Chief, Army JAG Personnel, Plans and Training Office for any proposed exception to the 18-month minimum.⁴⁵ The needs of the client and the SVC’s health and well-being, especially as they are affected by vicarious trauma or burnout, are the “highest concerns when considering an early move of an SVC.”⁴⁶

Upon approval by the Program Manager in consultation with the SVC’s SJA, an SVC who moves out of the SVC position may continue to represent a client while in a new position. This rare exception to policy may be granted when a case is scheduled for court-martial soon after the SVC’s planned reassignment.⁴⁷ As a practical matter, SVCs serving on two-year orders are likely to remain in that assignment for the duration of the orders.⁴⁸

⁴³ Judge Advocate Legal Services, PERSONNEL POLICIES ¶5-6(c) (December 2021) [Army JAG Pub 1-1].

⁴⁴ See Appendix I, Army Response to RFI 1, Questions 2, 4. Personal circumstances of the SVC may include schooling, a PCS reassignment, level of performance, and career development

⁴⁵ Army JAG Pub 1-1, *supra* note 43, ¶5-6(c). The Chief of the Personnel, Plans and Training Office acts on the recommendation on behalf of The Judge Advocate General of the Army.

⁴⁶ See Appendix I, Army Response to RFI 1, Question 4.

⁴⁷ *Id.* at Question 14.

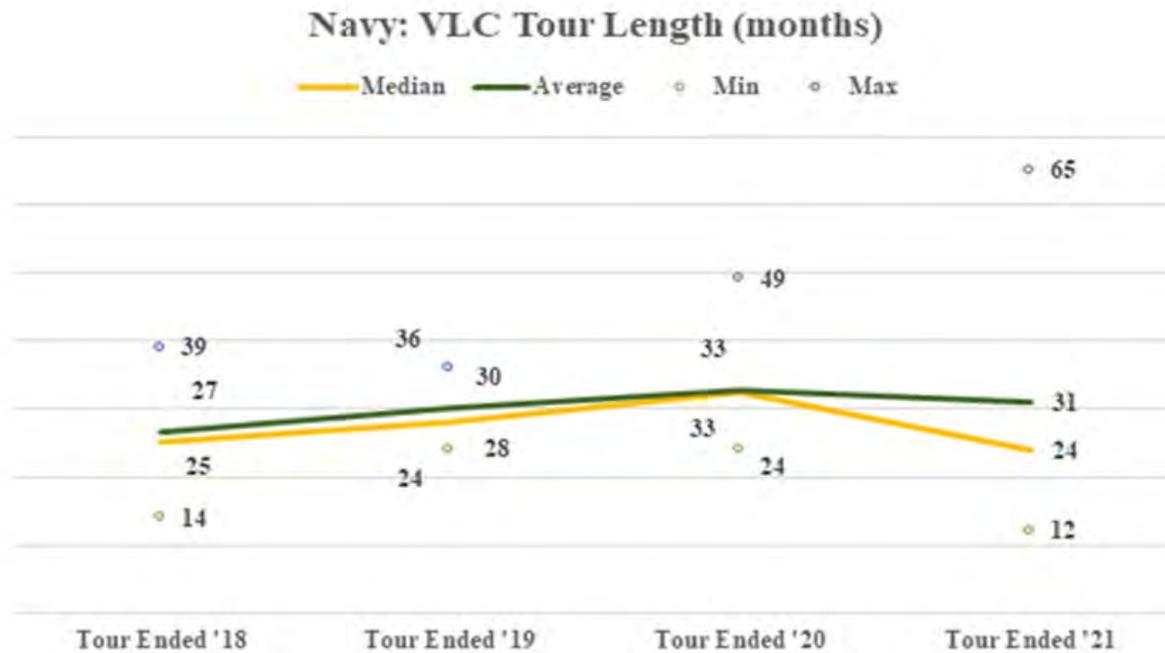
⁴⁸ Interview with Army SVC Program Manager (Dec. 10, 2021).

2. Navy

There are 44 full-time Navy VLC billets, spread across 26 installations, each representing an average of 22 clients at any given time.⁴⁹ There is no specific directive or policy regarding Navy VLC tour length. Navy VLCs receive two- to three-year orders pursuant to the routine detailing process for all Naval Legal Service Command (NLSC) billets, including trial counsel and defense counsel. Aside from those stationed in Bahrain,⁵⁰ all Navy VLCs are issued three-year orders, with reduction to two years for unaccompanied VLCs in specific overseas locations such as Guam, Japan, Italy, and Spain. In addition, VLCs may end their tours after two years if there is a distinct career advantage to doing so.⁵¹

All exceptions to the standard tour length are made on a case-by-case basis by the NLSC Commander, with input from the Chief of the Navy VLC Program and support from The Judge Advocate General of the Navy. In the eight years of the program, only a few exceptions have been granted to allow VLCs to end their tours early, whether because of the VLC’s personal issues or because of difficulty with the job.⁵²

Of the 41 Navy VLCs who completed their assignments after January 1, 2018, 37 VLC (90%) served 24 months or longer. The two shortest tours—12 and 14 months—were served overseas by unaccompanied VLCs in accordance with the tour length requirement for those locations.⁵³



⁴⁹ See Appendix I, Navy Response to RFI 1, Questions 8, 16.

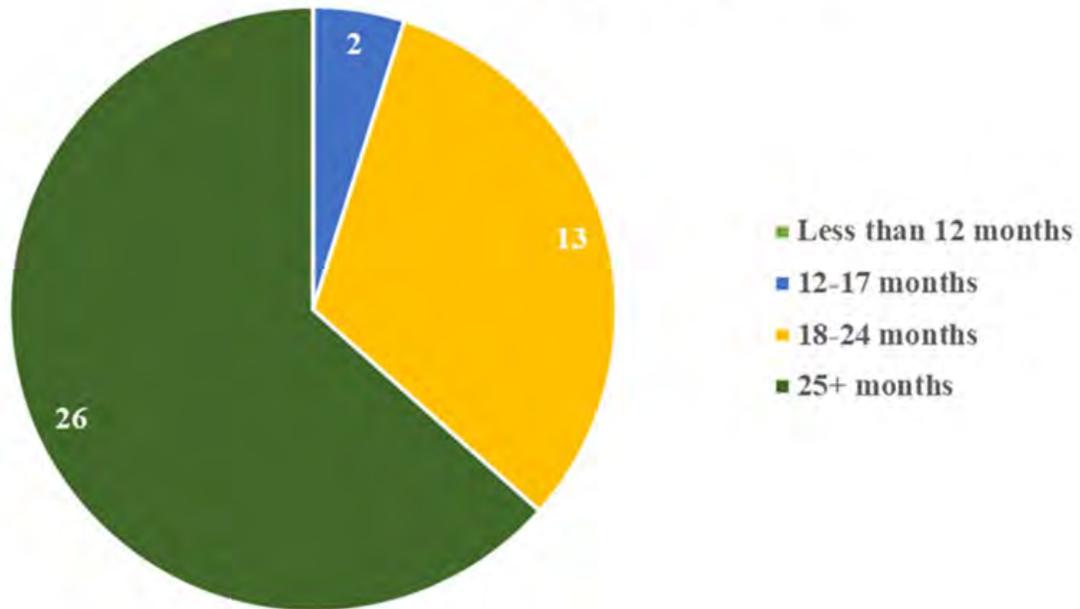
⁵⁰ In Bahrain, the VLC’s tour is limited to 18 months unless the VLC is accompanied by dependents, in which case it can be extended to two years.

⁵¹ See Appendix I, Navy Response to RFI 1, Question 2.

⁵² Interview with Navy VLC Program Manager (Dec. 22, 2021).

⁵³ See Appendix J, Navy Response to RFI 2.

Navy: Number of VLCs by Tour Length



Most clients work with only one Navy VLC for the duration of a case, although a second VLC may take over if the first transfers to another billet before the case concludes. If the client requests to keep the same counsel, the departing VLC may retain the client, especially if the case is about to go to court-martial. In those cases, the Navy works with the gaining command to delay the VLC's transfer or allow the VLC to continue representation after transferring.⁵⁴

The Navy did not provide information concerning the average length of representation, stating:

Providing an average length of representation time would be arbitrary and not reflective of the wide variety of case types, disposition options, and client outcome desires. Cases where a victim requires limited advice and ultimately declines to participate in an investigation can take only a few weeks to a few months. Cases where the client is participating in an investigation but the case is not ultimately taken to court-martial can take from a few months to over a year, depending on whether there are alternative dispositions exercised by the command (such as administrative separation or non-judicial punishment). More complex cases where domestic violence and safety concerns exist and/or that are tried by court-martial can take several years to complete and may even involve follow-on appellate practice.⁵⁵

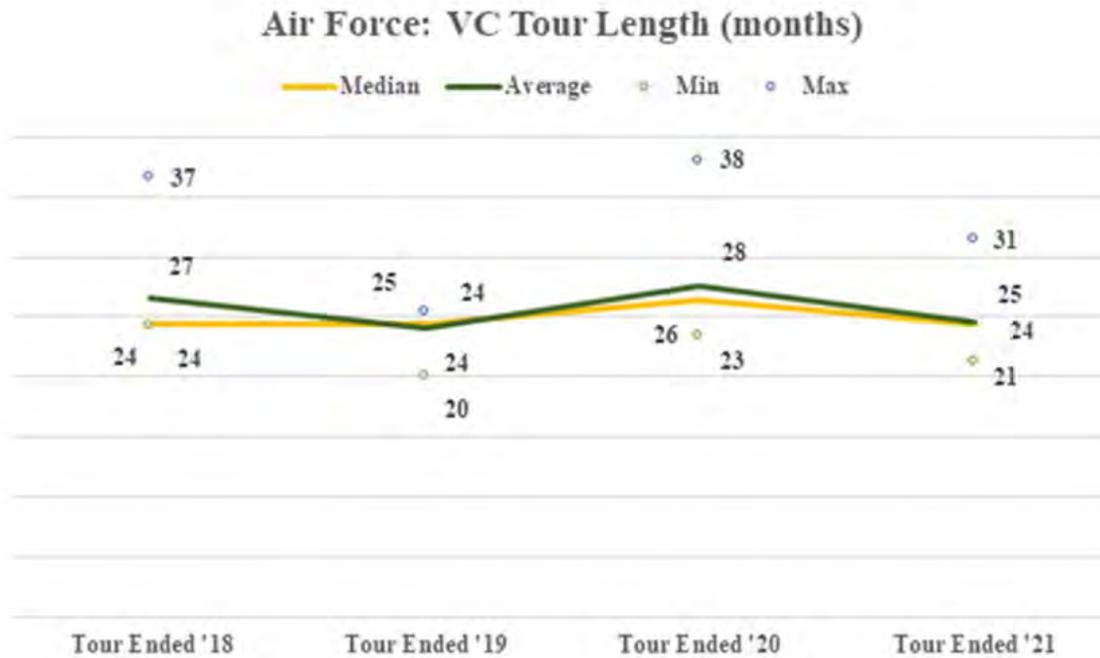
⁵⁴ See Appendix I, Navy Response to RFI 1, Question 14.

⁵⁵ *Id.* at Question 15.

3. Air Force

The Air Force has 57 full-time special victims' counsel (VCs), including five Circuit Chiefs (CCVCs) and one civilian VC, spread across 46 locations, with one or two VCs at each location. On average, VCs represent 22 to 25 clients at any given time.⁵⁶

Air Force VCs, like Navy VLCs, are not subject to any directive or policy prescribing a minimum tour length but as a matter of practice are typically assigned for two- to three-year tours.⁵⁷ Of the 76 VCs who completed their assignments after January 1, 2018, 66 (87%) served for 24 months or longer. The shortest tour length was 20 months; the longest was 38 months.⁵⁸

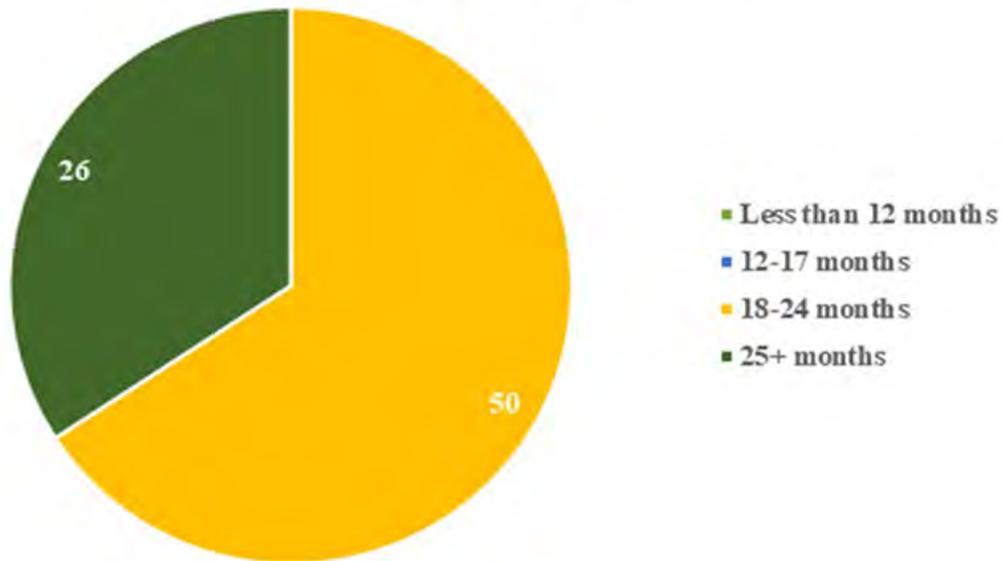


⁵⁶ See Appendix I, Air Force Response to RFI 1, Questions 8, 16.

⁵⁷ *Id.* at Questions 1, 2.

⁵⁸ See Appendix J, Air Force Response to RFI 2.

Air Force: Number of VCs by Tour Length



Several factors influence a VC's assignment length, including the personal and medical needs of the VC and their dependents, mitigation of burnout and vicarious trauma, and a VC's separation or retirement from the Air Force. Professional development needs may also affect tour length, including the movement of experienced VCs into supervisory positions and junior judge advocates into the VC role to gain VC experience and cultivate their skills.⁵⁹

The Judge Advocate General of the Air Force has sole authority to assign judge advocates to their positions and to end a tour whenever the need arises.⁶⁰ The absence of a formal directive regarding minimum tour length preserves maximum flexibility to make assignment decisions based on mission needs, the needs of the Air Force, and the needs of individual VCs.⁶¹

The Air Force does not collect data on the average length of representation, but it makes every effort to ensure that a client has only one VC for the duration of their case. It is rare for a client to have more than two VCs.⁶² A VC who is transferring to a new billet may, at the client's request, continue to represent that client, if it is in the client's best interests and there is no conflict.⁶³

⁵⁹ See Appendix I, Air Force Response to RFI 1, Question 4.

⁶⁰ See 10 U.S.C. §§ 806, 9037.

⁶¹ See Appendix I, Air Force Response to RFI 1, Question 3.

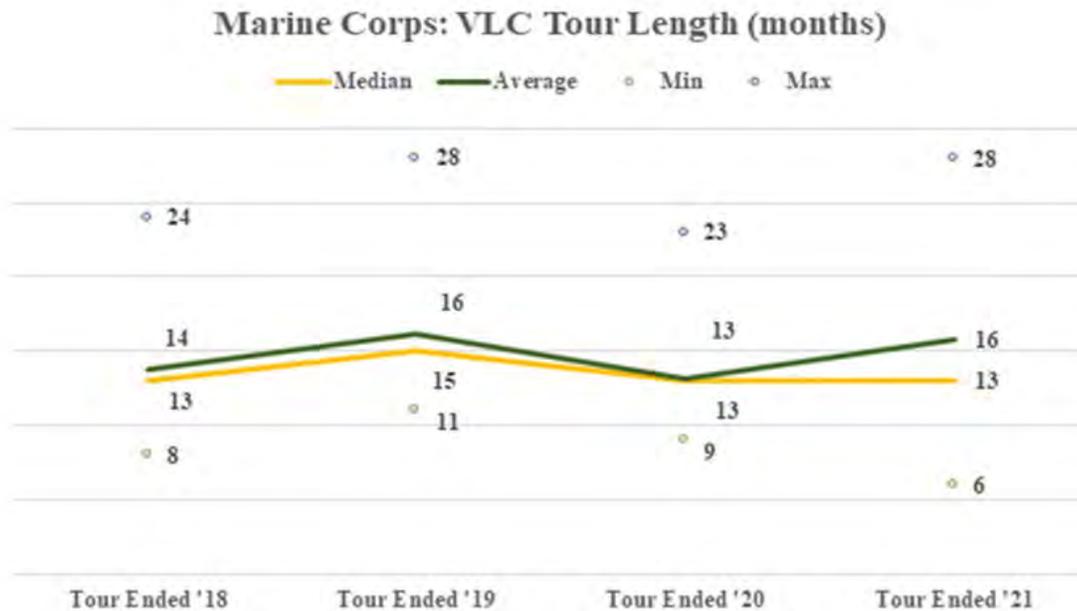
⁶² *Id.* at Questions 15, 16.

⁶³ *Id.* at Question 14.

4. Marine Corps

The Marine Corps VLC Program consists of a Chief VLC (CVLC), Deputy Officer in Charge (OIC), and 18 line VLCs, including four regional VLCs (RVLCs), who provide direct legal services to victims as their primary duty. One additional auxiliary VLC provides part-time services, and the Deputy OIC provides limited scope VLC services as an additional duty.⁶⁴ One to three VLCs serve at 11 different locations, representing an average of 26 clients each. Most victims are represented by only one VLC, but some may have two or more over the duration of a case.⁶⁵ VLC representation of a client generally lasts 12 to 18 months, but may be significantly less than 12 months if the client does not want to participate, and significantly more than 18 months in sexual assault cases in which the client does participate.⁶⁶

There is no mandatory minimum tour length for Marine VLCs, but in August 2021, the Marine Corps formally established a goal to assign all VLCs to two-year tours.⁶⁷ After January 1, 2018 (but before the two-year goal was instituted), 50 VLC assignments were completed, including three on a part-time basis. These assignments, which ranged from 6 to 28 months, averaged 15 months. Of the 50 assignments, 9 VLCs (18%) served for less than 12 months; 29 VLCs (58%) served from 12 to 18 months; and 12 VLCs (24%) served 18 months or longer.⁶⁸



⁶⁴ See Appendix I, Marine Corps Response to RFI 1, Question 8. At the time of the Marine Corps' Response to RFI 1, one additional VLC was in the detailing process; two more were expected to be added in 2022.

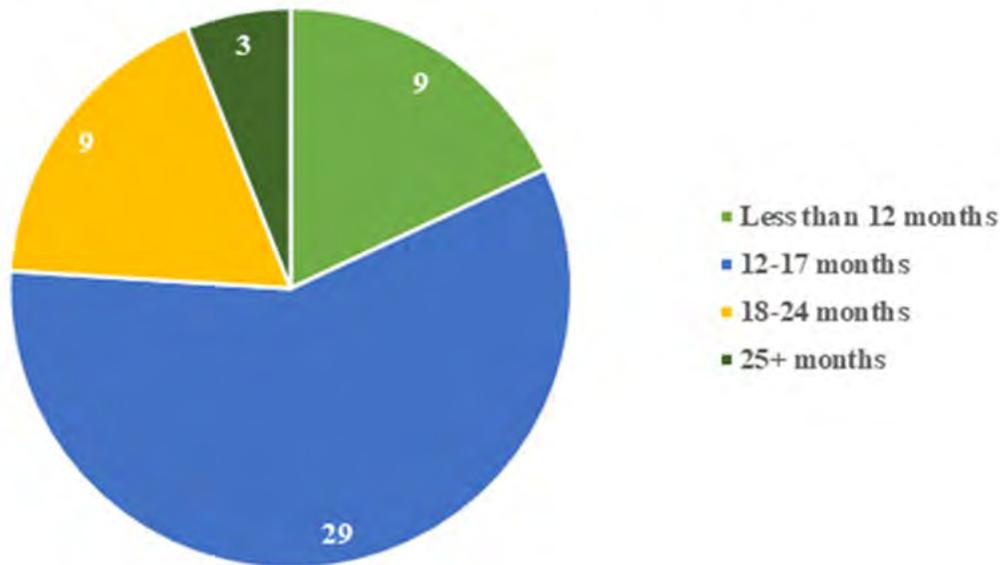
⁶⁵ *Id.* at Question 16.

⁶⁶ *Id.* at Question 15.

⁶⁷ See U.S. Marine Corps Order 5800.16, vol. 4, LEGAL SUPPORT AND ADMINISTRATION MANUAL, MILITARY JUSTICE ORGANIZATION, PERSONNEL, AND QUALIFICATIONS ¶010801 (June 19, 2020; rev. Aug. 26, 2021).

⁶⁸ See Appendix J, Marine Corps Response to RFI 2. As noted in note 42 *supra*, the DAC-IPAD staff calculated tour lengths for all Services by excluding the month the assignment commenced and including the month it ended. This method of calculation differs from the Marine Corps' method, which included the start month and the end month, so that an assignment from June 2018 to June 2019 was calculated as 13 months.

Marine Corps: Number of VLCs by Tour Length



Tours may be shortened for various reasons, including reassignment in response to the needs of the Marine Corps or to the VLC's request for personal reasons. Among other circumstances that may shorten an assignment are the time needed to train or qualify to serve as a VLC; the VLC's remaining time on station; the VLC's selection for resident professional military education (PME) or other boards, such as command, that require an early PCS; and the VLC's limited time (less than two years) remaining on active duty.⁶⁹

If the VLC transfers or leaves military service before the completion of a case, they must give the client reasonable notice of the pending transfer or separation, assist the client in acquiring a new VLC, and turn over the case to the new VLC to ensure continuity of legal services.⁷⁰ The VLC may continue to represent the client after transferring to a new billet if there is a need, and if there is no nonwaivable conflict or statutory prohibition on continued representation.⁷¹ If a client transfers to a new duty station before their case is resolved, the VLC may continue representation at the client's request, or the client may request a replacement VLC at the new duty station, subject to approval by the detailing authority.⁷²

⁶⁹ See Appendix I, Marine Corps Response to RFI 1, Questions 2, 4. If a VLC assignment is curtailed, the officer in charge (OIC) of the responsible Legal Services Support Section (LSSS) or Legal Services Support Team (LSST) coordinates with RVLCs and the CVLC to establish a new end-of-tour date and determine the way ahead, including identification of a judge advocate to replace the outgoing VLC.

⁷⁰ *Id.* at Question 13.

⁷¹ *Id.* at Question 14.

⁷² *Id.* at Question 13.

B. Assessment of Tour Lengths

1. The Impact of Multiple SVCs/VLCs on Victims

Victims represented by SVCs/VLCs stated that changing counsel during a case was inherently stressful, even when they were satisfied with the representation of one or more of their counsel.⁷³ It is common for two or more SVCs/VLCs to represent one client before the case is resolved. Almost all of the interviewed SVCs/VLCs described inheriting clients from their predecessor or from SVCs/VLCs at other locations, and those who had completed their assignments handed off clients when they departed. Of the 17 victims interviewed, 11 were represented by more than one SVC/VLC during their case. Six victims (all represented by Army SVCs or Marine VLCs) were represented by more than two. Two Army victims had four SVCs, and one had five. While the responses did not constitute a scientific sampling of SVCs/VLCs or their clientele, the message was clear and consistent: victims prefer not to change SVCs/VLCs, and they are better served by longer relationships with fewer SVCs/VLCs.⁷⁴

A common victim complaint was the slow pace of military justice. Army victims voiced frustration over further delays when one SVC was reassigned and a new SVC had to learn about the case.⁷⁵ The transition was often hampered by the absence of a “warm handoff”—ideally, an in-person meeting with the victim and both SVCs—to facilitate the transfer of representation. In the absence of a warm handoff or detailed transition memo, the incoming SVC had to rely on the case file, and in some cases had to get the details from the victim.

Repeating a traumatic event narrative was difficult for clients, who felt re-victimized by the repetition.⁷⁶ Transitions were difficult for victims who did not know that their SVC/VLC had transferred until they received an introductory email from a new SVC/VLC. Even those who knew in advance were anxious about the transition, discussing the difficulty of rebuilding trust in successive SVCs/VLCs, especially in temporary SVCs/VLCs assigned as placeholders until the new full-time SVC/VLC was available. Victims complained that most short-term SVCs/VLCs were not emotionally engaged with them or knowledgeable about their case, if they communicated at all. There was a strong correlation between victim satisfaction with their SVC/VLC and the extent of their communication, regardless of the case outcome. SVCs/VLCs who checked in monthly, even with no developments to report, were consistently viewed more favorably than those who let months pass between communications.

⁷³ See examples of victims’ comments at Appendix K.1.

⁷⁴ To varying degrees, the Services track client satisfaction within their SVC/VLC programs. The Army provides clients with an optional electronic exit survey prior to termination of representation, and it is developing an online survey. The Army reports that no client who has submitted a survey response has indicated dissatisfaction with their SVC. Appendix I, Army Response to RFI 1, Question 12. The Navy collects customer satisfaction data on several different platforms, including an online anonymous survey, and they reflect a high degree of satisfaction with the SVC/VLC program even when the case does not go the way the client wanted. Only 1 out of 181 respondents reported dissatisfaction with changing their VLC. Interview with Navy VLC Program Manager (Dec. 22, 2021). The Air Force reports 95% client satisfaction from its military justice experience survey that is available to all victims. Interview with Air Force VC Program Manager (Dec. 14, 2021). The Marine Corps is currently vetting a new client satisfaction survey to enable clients to provide input at the beginning and end of representation, and to raise issues at any point along the way. Interview with Marine Corps VLC Program Manager (Dec. 13, 2021).

⁷⁵ See examples of victims’ comments at Appendix K.1.

⁷⁶ *Id.*

The transition challenge increased when the new SVC/VLC lacked substantial military justice experience.⁷⁷ Without questioning the dedication of junior SVCs/VLCs, victims appreciated the knowledge and skills of experienced counsel. Victims had confidence in SVCs/VLCs who could answer questions and offer advice about the investigation and were familiar with the court-martial process. Victims reported that inexperienced SVCs/VLCs missed opportunities to prepare clients for pretrial interviews with law enforcement, to help obtain military protective orders or expedited transfers, and to advocate against more experienced trial counsel in pretrial meetings and at courts-martial.

2. The Impact of Longer Tours on SVCs/VLCs

Most of the SVCs/VLCs said that longer tour lengths would enable them to handle more cases from beginning to end without transferring clients to new SVCs/VLCs and creating inefficiencies in a process that victims perceive as slow-moving. SVCs/VLCs echoed their clients' sentiments about the value of experience, emphasizing the importance of prior military justice experience for them to effectively advise clients on the process.⁷⁸ Even experienced counsel described a steep learning curve for new SVCs/VLCs; the consensus was that they were most effective after a year in the position. Almost all agreed that 12-month tours are too short, result in too many client handoffs, and end just as the SVC/VLC has reached the point in the learning curve when they are effective and have developed the skills to best represent their clients. However, opinions differed as to how long SVC/VLC assignments should last; the two primary concerns were the emotional toll of the job and its impact on career progression.

a. Burnout, Compassion Fatigue, and Vicarious Trauma

The Services acknowledge that SVCs/VLCs are at high risk of experiencing burnout, compassion fatigue, and vicarious trauma as a result of their work with victims of sexual assault and domestic violence. As defined by the Department of Justice's Office for Victims of Crimes:

Burnout is a state of physical, emotional, and mental exhaustion caused by long-term involvement in emotionally demanding situations. Symptoms may include depression, cynicism, boredom, loss of compassion, and discouragement.

Compassion fatigue is a combination of physical, emotional, and spiritual depletion associated with caring for others who are in significant emotional pain and physical distress.

Vicarious trauma is an occupational challenge for people working and volunteering in the fields of victim services, law enforcement, emergency medical services, fire services, and other allied professions, due to their continuous exposure to victims of trauma and violence. Exposure to the trauma of others has been shown to change the world-view of these responders and can put people and organizations at risk for a range of negative consequences.⁷⁹

⁷⁷ See examples of victims' comments at Appendix K.2.

⁷⁸ See examples of SVC/VLC comments on tour lengths at Appendix K.3.

⁷⁹ Office for Victims of Crime, "Glossary of Terms," *The Vicarious Trauma Toolkit: Blueprint for a Vicarious Trauma-Informed Organization*, <https://ovc.ojp.gov/program/vtt/glossary-terms> (accessed Mar. 24, 2022).

SVCs/VLCs noted the tendency of these issues to emerge at the one-year mark of their assignment, with many stating that they felt the strain at some point during their second year. Serving longer tours, managing heavy caseloads, and being an SVC/VLC as their first duty assignment exacerbated their stress.⁸⁰

Representation of domestic violence victims was another significant factor contributing to an SVC/VLC's psychological stress. Domestic violence cases tend to be more time-consuming, as victims often require multiple services for issues such as divorce, child custody, expedited transfers, and financial assistance. Domestic violence victims may become emotionally dependent on the SVC/VLC if they are isolated from their families and support systems after years of abuse, and they are less likely than other crime victims to want their cases prosecuted.⁸¹

The Services all facilitate discussion and provide training on the mental health

challenges faced by SVCs/VLCs and on the availability of behavioral health services to treat burnout, compassion fatigue, and vicarious trauma.⁸² The Services also offer training on related topics, such as setting boundaries for clients and referring clients to social services so that the SVC/VLC can focus on their responsibilities as attorneys rather than on social work.⁸³

The Services recognize the need to identify and support struggling individual SVCs/VLCs who require counseling, time off, or relief from or assistance with their caseload. The Navy VLC Program Chief of Staff speaks with each VLC individually, on a quarterly basis, to assess their well-being, while regional managers provide day-to-day support and mentoring.⁸⁴ Marine VLCs receive similar support from their leadership—both RVLCs and the CVLC—who maintain regular communication concerning their difficult cases and their personal well-being. Regional managers were also cited by Army SVCs and Air Force VCs as valuable sources of support.

SVCs/VLCs may seek behavioral health care through the same channels as all Service members. Many SVCs/VLCs said they felt the psychological impact of their work by the time their assignments were over. SVCs/VLCs knew that behavioral health care was available; however, many elected not to pursue it because of the stigma attached to it, or because they did not want risk seeing a client at a clinic or seek care from those with whom they interacted professionally.⁸⁵

⁸⁰ An SVC/VLC who served a two-year tour told the DAC-IPAD staff, "Anyone who says they didn't [experience burnout] isn't doing their job or is lying to you." That SVC/VLC found support and understanding from leadership to be critical to their making it through the last few difficult months of their assignment. Other SVCs/VLCs shared their coping mechanisms, which included "lots of tears and yelling in the job" and physical exercise to relieve stress. Some found it helpful to talk about their issues with more experienced SVCs/VLCs, including one who relied on a regional SVC/VLC and sexual assault response coordinator (SARC) for support.

⁸¹ One civilian victim advocate also opined that SVCs/VLCs are not adequately trained on safety issues that their clients face, and are putting the victims at risk by not fully understanding what is at stake for them.

⁸² See Appendix I, Service Responses to RFI 1, Questions 10, 19.

⁸³ Interview with Army SVC Program Manager (Dec. 10, 2021); interview with Marine Corp VLC Program Manager (Dec. 13, 2021).

⁸⁴ Interview with Navy VLC Program Manager (Dec. 22, 2021).

⁸⁵ Although some noted that leadership is pushing for cultural change, at least one SVC/VLC from each Service except the Navy said they never even considered seeking mental health care because of the stigma attached to it.

Most SVCs/VLCs said they would benefit from dedicated behavioral health support to address the psychological impact of their work, proposing in-house counseling, referrals to off-base resources, or a readily accessible anonymous hotline staffed by professionals. The Navy and Air Force have attempted to secure streamlined access to behavioral health services for their VLCs/VCs; however, this system is not yet in place, largely because the military's behavioral health system is already overburdened.⁸⁶

b. Individual Professional Development

SVC/VLC programs are too new to determine whether and how an SVC/VLC billet impacts a judge advocate's promotion potential. The Army, Air Force, and Marines do not collect statistics regarding promotion rates for SVCs/VLCs, and those three Services stated that the SVCs/VLCs who have served since the program's inception in 2013 are not yet eligible for selection for promotion to O-6.⁸⁷ The Navy has tracked VLC promotions and promotion rates since 2013 and reported that two reservists who were activated to serve as VLCs were selected for promotion to O-6 during their VLC tour. Most current and former active duty Navy VLCs are not yet eligible to be considered for promotion to O-6.⁸⁸

Despite the absence of data showing that an SVC/VLC tour is detrimental to a judge advocate's career, many SVCs/VLCs cited concerns for their professional development and promotion potential as reasons to limit tour lengths.⁸⁹ These concerns were voiced most often by Army and Marine SVCs/VLCs, who said it is not a desirable billet because it is not considered a litigation position, due to the SVC/VLC's limited ability to participate in court-martial proceedings. Army and Marine SVCs/VLCs worried that longer tours lead to professional stagnation and limit their chances to attend schools and rotate through other billets to enhance their own development and improve their promotion potential. This group suggested that shorter tours, of 18 months or less, would attract the best candidates and protect career progression.

The SVC/VLC billet is viewed more favorably in the Air Force and Navy, where it is seen as providing diversity of experience and promotion potential.⁹⁰ Navy VLCs observed that judge advocates were worried in the early days of the program that a VLC would be more social worker than attorney; however, effective messaging from Navy leadership overcame their initial hesitancy, showing that it was a robust program for experienced, highly qualified judge advocates. The Navy enhanced the status of the VLC billet by recognizing it as a qualifying billet for judge advocates on the Navy's Military Justice Career Track.⁹¹ Still, Navy and Air Force VLCs/VCs recognize a need to move on to other billets after two to three years to gain experience in different areas.

⁸⁶ Interview with Navy VLC Program Manager (Dec. 22, 2021); interview with Air Force VC Program Manager (Dec. 14, 2021).

⁸⁷ Appendix I, Service Responses to RFI 1, Question 18.

⁸⁸ See Appendix I, Navy Response to RFI 1, Question 18.

⁸⁹ See examples of SVC/VLC comments at Appendix K.3.

⁹⁰ *Id.*

⁹¹ One Navy VLC who sat on selection boards confirmed that judge advocates on the Military Justice Career Track benefited from time in a VLC billet because it is seen as providing litigation experience.

c. SVC/VLC Perspectives on Tour Lengths

When asked about a possible two-year minimum assignment length, SVCs/VLCs had varied responses.⁹² Some SVCs/VLCs said two years should be a ceiling, not a floor. Most Army and Marine SVCs/VLCs preferred 18-month assignments to enable SVCs/VLCs to hone their skills, see more cases to completion, stay within the normal assignment cycle, and not suffer an undue emotional toll. Navy and Air Force VLCs/VLCs identified two years as the appropriate tour length, with most of the Air Force VCs viewing two years as the upper limit and most Navy VLCs suggesting that two to three years is reasonable.

C. Recommendation

DAC-IPAD Recommendation 1: All of the Services should adopt an 18-month minimum assignment length for SVC/VLC serving in their first tour as a judge advocate, and a 24-month minimum for all other SVCs/VLCs, with appropriate exceptions for personal or operational reasons.

The Secretary of Defense mandated the establishment of SVC/VLC programs by each of the Services to ensure that military sexual assault victims are represented by qualified judge advocates who advise and advocate for them in military justice proceedings.⁹³ The Services adapted to the requirement by creating SVC/VLC billets that fit within their existing assignment processes, without formally designating minimum tour lengths. Thus, first-tour Army and Marine judge advocates assigned to an SVC or VLC billet would split their initial orders with another billet, resulting in an SVC assignment of 18 months or less. The Navy and Air Force would assign more experienced judge advocates to two- to three-year VLC and VC tours, pursuant to the routine detailing process for all military justice billets.

In recent months, the Army and Marine Corps have modified their SVC/VLC tour lengths: the Army has mandated an 18-month minimum, and the Marine Corps has declared a goal of 24-month tours. These longer tours better serve the victims for whom the SVC/VLC programs were created, enabling SVCs/VLCs to serve more victims from beginning to end, decrease victims' stress, minimize delay and inefficiencies in the military justice process, increase client satisfaction, and allow judge advocates the time to develop the skills and expertise necessary to effectively advocate for their clients.

On June 21–22, 2022, the Committee discussed the draft report findings and concluded that the Services should adopt an 18-month minimum assignment length for SVC/VLC serving in their first tour as a judge advocate, and a 24-month minimum for all other SVCs/VLCs, with appropriate exceptions for personal or operational reasons. The Committee concluded that mandatory minimum assignment lengths for SVCs/VLCs would be a positive departure from recent past practice. Taking into account the competing considerations raised by SVCs/VLCs, their clients, and the Services, the Committee concluded that a two-track approach would accommodate 18-month developmental assignments for first-tour judge advocates while retaining more experienced judge advocates in the SVC/VLC role for 24 months or longer. The Services retain the flexibility to address unanticipated issues through exceptions, which should be narrowly defined to ensure that victims receive the most effective legal representation possible.

⁹² See examples of SVC/VLC comments at Appendix K.3.

⁹³ SecDef Memo, *supra* note 21.

IV. Army SVC Rating Chain

On November 2, 2021, the DoD GC requested a study of the Army SVC rating chain, including:

- An assessment of the rating chain for Army SVC officer evaluation reports.
- A comparison of that rating chain with those used in the other Military Services' SVC/VLC programs.
- An evaluation of whether the rating chain for Army SVCs creates an actual or apparent limitation on those SVCs' independence or ability to zealously represent their clients.
- Any recommendations for change based on the study's findings.⁹⁴

The term "SVC rating chain" encompasses the supervisory structure and professional officer evaluation reporting system for Army judge advocates who serve as SVCs. Army officer evaluation reports (OERs) completed by raters and senior raters are a critical part of an Army judge advocate's career management.⁹⁵

This section describes the rating structures for SVCs/VLCs at the initiation of the Services' programs, compares the Army's SVC rating chain with those used by the other Services, evaluates and assesses the Army SVC rating chain, and provides recommendations for change.

A. Army SVC Rating Structure and Other Services' Structures

1. Initiation of the Services' SVC/VLC Programs

In January 2013, the Air Force's new SVC Pilot Program operated as a part of base legal office functions. Judge advocates in the rank of captain, supervised and rated within those offices, provided victims' counsel representation to sexual assault victim clients as an additional duty. Air Force SJAs, rated and supervised by commanders serving as general court-martial convening authorities, maintained supervisory and rating authority over all local VCs.⁹⁶

In June 2013, the Air Force transferred VCs from its base legal office supervisory and rating structure to one independent of the local command.⁹⁷ Air Force VCs were assigned to stand-alone VC Offices with a supervisory and rating chain through regional VC Offices to the Air Force Legal Services Agency.⁹⁸ There were no local SJAs or commanders in the rating chain.⁹⁹

⁹⁴ See Rating Chain Memo, *supra* note 10. This study was requested in conjunction with the Tour Length study.

⁹⁵ See Department of the Army Pamphlet 600-3, *Officer Professional Development and Career Management*, Ch. 3 (Apr. 3, 2019). The Army OER "rating chain" includes an immediate supervisor ("rater") and a higher level supervisor ("senior rater"). In OSJAs, the senior rater is usually the SJA. The Army evaluation process requires raters and senior raters to produce OERs annually, or more frequently if there is a triggering event, for all SVCs they supervise. An Army officer's OER is significant for determining retention, promotion, and future assignments.

⁹⁶ See Lagano et al., *supra* note 17, at 32.

⁹⁷ *Id.*

⁹⁸ JUDICIAL PROCEEDINGS PANEL INITIAL REPORT 56 (Feb. 2015) [JPP INITIAL REPORT], available at https://dacipad.whs.mil/images/Public/10-Reading_Room/04_Reports/01_JPP_Reports/01_JPP_InitialReport_Final_20150204.pdf.

⁹⁹ *Id.* This rating chain is considered "independent" because the SVC's supervisors or rating officials are not part of the local convening authority or base legal office rating chain. Independent military rating systems are often referred to as "stovepiped" (see *infra* note 106).

Victims and Congress had an overwhelmingly positive response to the Air Force’s SVC Pilot Program.¹⁰⁰ In August 2013, the Secretary of Defense directed all Services to fully establish victims’ counsel programs by January 1, 2014.¹⁰¹ The short timeline required the Services to quickly create fully operational SVC/VLC programs without the benefit of any additional resources or personnel.¹⁰² Following the Air Force model, the Navy and Marine Corps initiated their programs with independent supervisory and rating chains for their VLCs through their supervisory regional or area managers.¹⁰³

When the Army created its SVC program in November 2013, it established a full-time SVC Program Manager position at its headquarters level, but did not create an independent supervisory and rating chain structure for its SVCs.¹⁰⁴ The Army relied on judge advocates assigned to legal assistance sections within the installation OSJA to provide eligible sexual assault victims with immediate access to this new service. The new Army SVCs remained part of the local command under the supervision and rating of local Chiefs of Legal Assistance and SJAs.¹⁰⁵

Many factors likely influenced the Army’s initial decision to imbed SVCs within installation OSJA legal assistance offices: there were no billets for dedicated SVCs; the SVC Program authority derived from an amendment to legal assistance legislation; eligibility for SVC services was tied to legal assistance eligibility; and sexual assault victims’ issues were best addressed by judge advocates with expertise in legal assistance services. In addition, the Army legal assistance program represented more clients in more areas than did the other Services’ programs. Finally, this option enabled the Army, with numerous, geographically dispersed installations, to provide immediate face-to-face SVC services to as many victims as possible.

In its review of the Services’ SVC/VLC programs, the Judicial Proceedings Panel (JPP) Initial Report commented on the Army’s unique approach to the SVC program structure:

Unlike the other Services, the Army did not establish a separate stovepiped chain of command¹⁰⁶ for SVCs and does not designate judge advocates to serve solely as SVCs. Instead, SVC services in the Army are provided through legal assistance offices, where judge advocates assist soldiers with personal legal matters and adverse personnel actions, such as letters of reprimand, negative evaluation reports, or other actions taken against the soldier by the command.

¹⁰⁰ FY14 SAPRO REPORT, *supra* note 18, at 33.

¹⁰¹ SecDef Memo, *supra* note 21.

¹⁰² A retired Army official who was instrumental in establishing the Army SVC Program described the process as “like building an airplane while in flight” (interview with Mr. John Meixell, former Chief of the Army Legal Assistance Division, Office of The Judge Advocate General, U.S. Army, Dec. 17, 2021).

¹⁰³ *See* Lagano et al., *supra* note 17, at 34–35.

¹⁰⁴ The head of the Army SVC Program was initially called the “SVC Program Manager,” but the Army later changed this title to “Chief, SVC Program.” *See* U.S. Army, SPECIAL VICTIM COUNSEL HANDBOOK ¶1-2a (5th ed. Oct. 2020) [Army SVC HANDBOOK].

¹⁰⁵ *See* JPP INITIAL REPORT, *supra* note 98, at 57.

¹⁰⁶ In a “stovepiped” rating chain, the local SJA and commander have no supervisory or rating responsibilities, similar to the current rating structure for judge advocates assigned to U.S. Army Trial Defense Service positions. *See* Lieutenant Colonel John R. Howell, *TDS: The Establishment of the US Army Trial Defense Service*, 100 MILITARY LAW REVIEW 4, 19 (Spring 1983).

In the Army, legal assistance attorneys provide service to individual clients on confidential matters and routinely establish attorney-client relationships. In the other military Services, by contrast, legal offices provide legal assistance as an additional duty, but do not work with clients on adverse personnel actions, such as unfavorable evaluations or administrative reprimands, which are instead referred to designated defense counsel.¹⁰⁷

In late 2013, the FY14 NDAA mandated that the Services provide SVC/VLC representation when requested by eligible victims of military sexual offenses.¹⁰⁸ By the time the legislation took effect, the Services had already initiated SVC/VLC programs based on the earlier Secretary of Defense direction. The legislation standardized eligibility, scope of services, and reporting requirements across the Services; but it did not specify the rating chain, independent or local, for SVCs/VLCs—that issue was left to the Services’ discretion. While Congress has amended the statutory authority for SVCs/VLCs multiple times since 2014, it has not required the Services to implement independent rating chains for SVCs/VLCs.¹⁰⁹ None of the Services has significantly modified its rating and supervisory structure for SVCs/VLCs since 2013.¹¹⁰

In 2018, the Army identified two problems within its SVC program: (1) a need to cross-level workloads between SVC locations, in order to relieve pressure on overburdened SVCs, and (2) a need to detail the closest available SVC to victims with no SVCs at their location. In response, the Army designated five experienced SVCs to act as Program Regional Managers (RMs) with the authority to detail clients to other SVCs within their region.¹¹¹ RMs did not have supervisory or rating authority over any SVCs, except—and only if the local SJA approved of that role—those assigned to their same location. RMs continue to be supervised and rated by their local SJAs.¹¹² The Army SVC Program Manager has no OER rating role or supervisory authority over RMs or SVCs in the field.¹¹³

¹⁰⁷ JPP INITIAL REPORT, *supra* note 98, at 57.

¹⁰⁸ FY14 NDAA, *supra* note 22, at §1716(b), codified at 10 U.S.C. § 1044e (*available at* Appendix H).

¹⁰⁹ See FY14 NDAA, *supra* note 22, at §1702; FY15 NDAA, *supra* note 24, at §534; FY16 NDAA, *supra* note 25, at §1081; and FY20 NDAA, *supra* note 27, at §548, discussing expanded SVC/VLC representation of children, victims of domestic violence, and DoD civilians, and a victim’s right to have an SVC/VLC present during a defense interview.

¹¹⁰ Services’ Responses to RFI 1, Question 5, at Appendix I.

¹¹¹ TJAG and DJAG Special Announcement 40-04, *Announcement of Decisions on Strategic Initiatives* (Apr. 20, 2018). See Appendix O for a map depicting the Army SVC RM regions.

¹¹² Army SVC HANDBOOK, *supra* note 104, at ¶1-3c.

¹¹³ *Id.* at ¶1-2b.

2. Current Army SVC Rating Structure

In 2017, the Army established 24 authorized billets specifically designated for SVCs, and since that time it has periodically added more.¹¹⁴ Army SVC billets are within the OSJA under the supervision and rating schemes of SJAs, with the local SVCs usually supervised and rated by the Chief of Legal Assistance and SJAs as their senior raters on their OERs.¹¹⁵ Senior commanders who are general court-martial convening authorities are the senior raters for their SJA legal advisors and have UCMJ and administrative command authority over all personnel in their command's OSJA, including the SJA and all SVCs. Army OER ratings have a direct and consequential effect on the rated officers' future career opportunities, promotion potential, and retention in the Service.

3. Comparison with Other Services' SVC/VLC Rating Structures

A notable difference among Services' SVC/VLC programs is in their supervisory and professional rating structures. Unlike the Army, the other Services use an independent rating chain for their SVCs/VLCs.¹¹⁶ Army SVCs are assigned to the OSJA, and they report to and are rated by OSJA personnel within the supervisory and rating structure of the local command who are not part of the Army SVC Program.¹¹⁷ The other Services' supervisors and raters of their SVCs/VLCs are independent of the local legal office and command.¹¹⁸ A key reason for keeping these programs' rating scheme separate from the local command's SJA is to avoid undue influence from within the local command that could undermine the SVCs/VLCs' independent and zealous representation of their clients.¹¹⁹

The other Services' SVCs/VLCs are grouped into regions. Each region has a supervisory SVC/VLC who either serves as the first-line rater for the SVCs/VLCs in their region or provides rating input to the higher-level independent rater in the program. In the other Services, the designated Program Manager is a senior rating official for all SVCs/VLCs.¹²⁰ In the Army, the Chief, Army SVC Program, has no supervisory or rating role for any SVCs or RMs.¹²¹

¹¹⁴ According to the Chief, Army SVC Program, by the end of FY22 the Army will have 91 billets designated for SVCs; 24 of these are characterized as MTOE (Modification Table of Organizational Equipment) authorizations and the rest as TDA (Table of Distribution and Allowances) positions. All are part of installation OSJAs.

¹¹⁵ Army SVC RMs are also assigned to SVC billets that are part of OSJAs.

¹¹⁶ See Services' Responses to RFI 1, Question 2, at Appendix I.

¹¹⁷ See Army Response to RFI 1, Question 5, at Appendix I; Army SVC HANDBOOK, *supra* note 104, at ¶1-2b.

¹¹⁸ *Id.*

¹¹⁹ See United States Coast Guard, *U.S. Coast Guard Special Victims' Counsel Program*, <https://www.uscg.mil/Resources/legal/LMA/SVC/> (accessed Mar. 21, 2022) ("No one in a victim's chain of command or the accused's chain of command will influence an SVC in providing legal support to a victim."). Also, *United States Air Force Victims' Counsel Program* (Jan. 3, 2018), available at https://www.aflag.af.mil/Portals/77/documents/SVC/CLSV_Handout_2018.pdf?ver=2018-05-16-091142-727, produced to publicize the VC Program to potential clients, includes the following assurance: "[Air Force] SVCs are supported by Special Victim Paralegals (SVPs). Together, their primary duty is to represent the victim. The SVC/SVP chain of command is independent from every base chain of command."

¹²⁰ See Appendix L, for diagrams depicting the Services' SVC/VLC rating structures.

¹²¹ *Id.*

The other Services' SVCs/VLCs never fall under the command authority of anyone at their assigned location. However, they may receive logistical or administrative support or funding from the local command, installation, and legal office; and they may interact with their local legal office at training and social or professional development events.

In February 2015, the JPP assessed the Services' SVC/VLC programs when they had been in effect for less than two years. While noting the distinction between the Army's local rating chain and the other Services' independent rating schemes, the JPP deferred making a recommendation until it could acquire more information. The JPP observed that "an SVC's ability to represent a client's interest free from command influence is of utmost importance," and that "SVCs must be allowed to advocate candidly and forthrightly on behalf of their clients to the maximum extent possible, including placing their clients' priorities above those of the Service, without fear of harm to their career, retribution, or retaliation."¹²²

Drawing on seven more years of data on SVC/VLC programs since the JPP's assessment, this report analyzes and evaluates the positive and negative consequences of employing a local rating chain for Army SVCs, and provides a recommendation for change.

B. Assessment and Evaluation of the Army SVC Supervisory and Rating Chain

To assess and evaluate the Army approach to supervising and rating SVCs, the study used interviews with 20 Army SVCs and 17 SVCs from the other Services.¹²³ SVCs were asked about the advantages and disadvantages of having a supervisory chain within the OSJA, and whether they experienced any actual or potential conflicts in zealously representing their clients.¹²⁴

Another 6 sexual assault survivors represented by Army SVCs and 12 survivors represented by SVCs/VLCs from the other Services were interviewed.¹²⁵ Discussion topics included whether they had to change counsel, how that change was handled, how the change affected them, their opinion of their counsel, and whether their counsel was "zealous" or inhibited.¹²⁶

1. Advantages of the Current Army Rating Structure

a. Tradition of Professional Independence

In a memorandum to the DoD GC, The Judge Advocate General of the Army described the advantages of the current rating system, emphasizing the professional independence of SVCs and noting that Army SVCs are typically directly supervised by Chiefs of Legal Assistance Offices within the OSJA, offices that have a tradition of representing clients in personal legal matters "in opposition to their commands."¹²⁷

¹²² See JPP INITIAL REPORT, *supra* note 98, at 58.

¹²³ The Army sample included 12 current and 8 former SVCs.

¹²⁴ See list of questions used for interviews with Army SVCs at Appendix M.

¹²⁵ The Army Chief, SVC Program Office, provided the names and contact information for victims to interview after ensuring that these victims were willing to discuss their representation by Army SVCs.

¹²⁶ See list of questions used for interviews with victims who were represented by SVCs/VLCs at Appendix N.

¹²⁷ Memorandum from Lieutenant General Stuart W. Risch, USA, The Judge Advocate General, to General Counsel of the Department of Defense, *Rating Chain for Army Special Victims' Counsel*, available at Appendix G.

The Army also noted that all SVCs are trained on and aware of the requirement to report any improper influence or pressure through their SVC RMs and Program Office. To date, the SVC Program Office has never received any formal report of attempted, perceived, or actual pressure from their OSJAs.¹²⁸ None of the Army SVCs interviewed personally experienced any direction from an SJA to defer or take any specific actions in their representation of clients under an explicit threat that not doing so would be held against them on their OER ratings.

b. Support for SVCs and Their Clients

Although the Army JAG Corps continues to evaluate and assess Army SVC practice, senior Army JAG Corps leaders meeting as a “board of directors” recently advised against changing the Army SVC rating system. They pointed to the benefits of the current structure, including

- The holistic approach for survivors achieved when SVCs work in conjunction with legal assistance attorneys under the supervision of Chiefs of Legal Assistance.
- SVCs’ access to immediate resources from senior colleagues that are available when the SVCs work within an OSJA.
- Better integration into the legal community, which benefits the SVCs and can improve the overall acceptance of their role as counsel for specific clients.
- Local supervision for SVCs, which enables SJAs to select the most qualified judge advocates to fill this role and to nominate part-time SVCs to relieve the burden on full-time SVCs. Local supervision also enables SJAs to address the possible removal of SVCs from their position for reasons such as poor performance or burnout.¹²⁹

Army SVCs may also draw on the technical knowledge and experience of their SVC RM or the SVC Program Manager’s Office for advice and support on issues related to representation.¹³⁰ Some SVCs noted their perceived advantage of being rated within their OSJA: when their rater is co-located, they are more visible and are better able to make a positive impression.¹³¹ SVCs get to know the SJA through extra duties, training, and office functions. An independent rating chain could lead SVCs to feel isolated—particularly very junior SVCs, some of whom come directly from the officer basic course with no military justice experience. Junior SVCs benefit from the mentorship and support of the SJA and broader installation legal community.

¹²⁸ *Id.* Although there is no evidence that an SVC has ever submitted a formal complaint, the Army does not solicit anonymous comments or survey SVCs about negative experiences with command influence.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ See examples of Army SVC comments at Appendix K.4.

2. Disadvantages of the Current Army Rating Structure

a. Inherent Effects on the Independence of SVCs and Their Zealous Advocacy

Despite these stated advantages, the comments of some Army SVCs interviewed suggest that the current Army rating structure has an inherent impact on SVC independence and zealous advocacy, even in the absence of explicit threats.¹³² Situations arise in which the victim's interests do not align with those of the command, SJA, or government. In such cases, the SVC must zealously advocate for their client's interests without concern for personal or professional consequences. Some SVCs noted that they are viewed, and view themselves, as part of the SJA team and thus should reflect the SJA's philosophy in their work.¹³³

SVCs who describe themselves as independent and zealous advocates fear that their advocacy could "burn bridges" with their performance raters. Some SVCs feel pressure to warn their office leadership about issues that might embarrass them or the commanders.¹³⁴ These comments reflect the conflict experienced by SVCs between their duty to independently and zealously represent their clients and the pressure to support their OSJA raters, who are a part of and support the local command.

Several Army SVCs identified circumstances that may exacerbate the pressures they face, including their involvement in domestic violence cases, the SVC's junior status or lack of experience, and representation of clients from a different command. Domestic violence cases tend to be complicated, and the clients are less likely than victims of other crimes to cooperate with the government in pursuing a case.¹³⁵ A junior or less experienced SVC, especially when they have high-profile cases, can feel pressure from more experienced counsel, or even the SJA, when opinions differ on what the victim should or should not do.¹³⁶ Finally, SVCs can experience resistance when they must request and explain extended temporary duty travel to represent victims that have transferred to other locations, especially overseas.¹³⁷

¹³² One Army SVC noted that, in general, SVCs may feel the need to reflect the philosophy of their senior rater and leadership. For the pros and cons of independent rating, he described leaving the SVC "truly independent" as a pro, but removal from the rating at the cost of weakening the SVC's ability to build the good relationship between the victim and the government as a con. The SVC was also aware of the concern about subtle pressure on junior SVCs who lacked experience or emotional intelligence. *See* examples of Army SVC comments at Appendix K.6.

¹³³ *Id.*

¹³⁴ One SVC noted that they would caution their clients against taking actions that are "needlessly aggressive." *See* examples of Army SVC comments at Appendix K.8.

¹³⁵ For example, as one Army SVC noted, if an SVC has to advocate for charges to be dismissed, doing so can lead to tension between the SVC and the local command.

¹³⁶ One SVC said they believed that SJAs are more comfortable pressuring young SVCs.

¹³⁷ Army SVCs often must represent clients at other locations when SVC work is cross-leveled between installations, clients move to a new location, or conflicts with local SVCs prevent representation. The Army's decision to assign SVCs to the local legal assistance office can itself create conflicts that prevent local SVC representation, because client conflict rules prohibit opposing parties to the legal action from having attorneys in the same legal assistance office. Some Army SVCs, especially those overseas, have many or even most of their clients in areas away from their assigned duty location. Some SVCs noted the pressure they felt when explaining to their local rating chain why they must be absent so often from their assigned OSJA. *See* examples of Army SVC comments at Appendix K.7.

There were no examples of an SJA explicitly demanding an SVC's compliance under the threat of a poor performance rating; however, the rating relationship makes some Army SVCs reluctant to oppose the SJA because they perceive the possibility of intimidation or retribution. These perceptions are based on factors such as the SJA's personality, the SVC's experience level, and their cases.

Army SVCs were split on whether their rating chain should be local or independent.¹³⁸ Other Services' SVCs/VLCs unanimously expressed support for their independent rating chain outside the local OSJA and command; they noted that the interests of the SVC/VLC and the SJA do not always align, and that when the SVC/VLC had to take a position unwelcome to the government or SJA, the SVC/VLC could reassure the client that they did not report to the command. These SVCs/VLCs expressed concern about the challenges Army SVCs may face in maintaining impartiality and independence if they are worried about their professional evaluation rating.¹³⁹ Other Services' SVCs/VLCs also generally described positive interaction with the installation legal offices at their assignment locations and feeling included in the local legal community.¹⁴⁰

Half of the sexual assault victims interviewed who were represented by Army SVCs were dissatisfied with certain aspects of their SVC representation.¹⁴¹ Several victims speculated that a lack of zealous advocacy could be explained by the supervisory structure, in which the SVCs were supervised and rated within the local chain of command.¹⁴²

b. Limitations on the SJA's Ability to Rate SVCs

In addition to the inherent conflict affecting independence and zealous advocacy, several Army SVCs felt that the local OSJA rating structure was not optimal because the SJA could not fairly evaluate the SVC's performance, pointing out that SJAs cannot know the details of their work in representing clients.¹⁴³ Many Army SVCs commented that they could not discuss their cases with the SJA even as their SJA routinely discussed cases and other details with their trial counsel, administrative law attorneys, and operational law specialists. Some SVCs would prefer to have their RM as their rater, since the RM is more involved in the SVC's cases and could provide a more accurate assessment and rating for future progression.¹⁴⁴

¹³⁸ Seven of the 20 Army SVCs interviewed expressed a preference for independent rating for SVCs, and 6 expressed support for local rating. Seven others had no preference or no opinion. Those who supported an independent SVC rating chain generally pointed to the benefit of SVC independence. Those in favor of local rating mostly cited the benefit of having a local rating chain whose members would get to know them personally, and some observed that being part of the OSJA enables them to fully engage in office training and activities.

¹³⁹ See examples of other Services' SVC/VLC comments at Appendix K.10.

¹⁴⁰ See examples of other Services' SVC/VLC comments at Appendix K.12.

¹⁴¹ See examples of comments from victims who had been represented by Army SVCs at Appendix K.9.

¹⁴² For example, one Army victim was represented by four consecutive Army SVCs over the course of 17 months. This victim felt that two of the SVCs were inhibited by their deference to the command when one SVC would not advocate for prosecution of the case and another SVC would not advocate for an expedited transfer.

¹⁴³ See examples of Army SVC comments at Appendix K.11.

¹⁴⁴ Some Army SVCs satisfied with their rater already had their co-located RM as their rater. One noted that SVCs are more akin to Army defense counsel, who are rated independently of their local OSJA because of their need to act without fear of reprisal from their rater, and also to preserve confidentiality in their attorney-client communications.

c. Insufficient Supervisory Authority for Army SVC Regional Managers

This report has identified several areas of persistent problems that hamper the Army SVC Program's services to clients, such as poor communication with clients, especially during SVC transitions; too many transitions; clients' perception of a lack of zealous advocacy; and lack of experience among SVCs. In 2018, the Army designated five SVCs as RMs. SVC RMs are in a better position to closely monitor SVCs' work than is the local OSJA supervisory rating chain, with the added benefit of overseeing SVC operations in their region. With increased authority to supervise and oversee the work of all SVCs in their region, RMs could help resolve these recurring issues by monitoring work performance, balancing workloads, managing transitions, and correcting deficiencies.¹⁴⁵ SVCs and their clients would benefit from the greater involvement of RMs serving as supervisors. As the middle link in an independent Army SVC rating chain, RMs would also alleviate any concerns about an SVC's independence and zealous advocacy on behalf of their clients, regardless of the local command's interests.

C. Recommendation

DAC-IPAD Recommendation 2: The Army should establish an independent supervisory rating structure for SVCs outside of the OSJA and local command.

The Army SVC Program exists to provide legal advice, support, and advocacy for sexual assault victims and other victims of crime. Statutory authority requires all Army SVCs to form attorney-client relationships with the victims they represent.¹⁴⁶ SVCs are therefore bound by all provisions of their state bar and Army ethical standards that address competence, diligence, client confidentiality, conflicts of interest, and other duties to their clients.¹⁴⁷ These include the obligation to provide zealous advocacy for their clients' stated interests and adherence to the idea that loyalty and independent judgment are essential elements in a lawyer's relationship with their client.¹⁴⁸ Army regulations specifically direct SVCs to competently represent their clients throughout the military justice process and to advocate for their clients' stated interests, even when those interests do not align with the government's; they inform each SVC that their primary duty as an Army lawyer is to their client.¹⁴⁹

¹⁴⁵ See Army SVC HANDBOOK, *supra* note 104, at chap. 1-3c (limiting Army SVC RM authority to the following: supervising and rating SVCs who are co-located with them, with the SVC's permission (while the RM remains in the rating chain of the SJA); detailing local or outside clients to SVCs within their region; providing technical advice and mentorship to SVCs in their region; planning and executing annual training for SVCs in their region; serving as expert facilitators in SVC certification training; collecting statistical data about SVC representation and providing that to the SVC Program Office; addressing professional responsibility complaints made by or against SVCs; forwarding requests for exception of client eligibility to the SVC Program Office; assisting SVCs in filing appellate writs; recommending statutory or regulatory change to the SVC Program Office that would improve the SVC program; assisting SJAs to nominate judge advocates to become SVCs; and moderating disagreements or disputes between SVCs and local command or legal personnel).

¹⁴⁶ 10 U.S.C. § 1044e, *available* at Appendix H.

¹⁴⁷ Army Response to RFI 1, ¶3 at Appendix I; *see also* Army Regulation 27-26, *Rules of Professional Conduct for Lawyers* 15 (June 28, 2018) (The comment to Rule 1.3, Diligence, explains that "a lawyer should also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.").

¹⁴⁸ *Id.*

¹⁴⁹ Army SVC HANDBOOK, *supra* note 104, at chap. 1.

Victims of sexual assault or domestic violence may have individual interests that are in conflict with the interests of the commander, the SJA, and the members of the prosecution team, who also work for and receive their OER ratings from the SJA.¹⁵⁰ For example, when a victim is subjected to unfair, arbitrary, abusive, or illegal actions by their command, their SVC must zealously advocate on their behalf against the command's actions.

The Army rating structure creates an inherent conflict, because at times SVCs must advocate zealously for their clients against the position of their professional supervisor and rater, whose evaluation of and commentary on their work performance have a direct and consequential impact on their future professional progress.¹⁵¹ This inherent conflict created by the Army's rating structure can limit an Army SVC's independence and effective advocacy. Even when Army SVCs do not experience overt pressure in the form of intimidation or threats from their professional raters, they still often feel the need to adjust their behavior to adhere to the philosophy and interests of those who rate their performance.

On June 21–22, 2022, the DAC-IPAD discussed the staff's findings and draft report on the Army SVC rating system; it recommends that Army SVCs should have an independent supervisory rating chain, in order to avoid any SVC conflicts of interest that could inhibit their zealous representation of their clients. Army SVCs should be rated by supervisors within their SVC program who can better understand their responsibilities and more accurately assess their job performance. The Army SVC RMs are better positioned to know if SVCs are meeting the standards required in representing their clients and to hold them accountable if they fail to do so. Establishing Army SVC RMs as the immediate raters for all SVCs in their regions, with the Army SVC Program Manager serving as the senior rater, will ensure that the SVCs are completely focused on the welfare of their clients.

None of the advantages of the current system cited by the Army—including access to legal assistance services for victims and more support and resources for SVCs—actually require SVCs to be supervised or rated locally within the OSJA. As the other Services' SVCs/VLCs demonstrate, an independent rating chain does not prevent SVCs/VLCs from being a part of the legal community where they are assigned. SVCs/VLCs from other Services commented that they have good working relationships with local legal offices and are integrated into them for social functions, training, and administrative matters. Similarly, Army SVCs with independent supervisory and rating chains who are co-located with the OSJA still could and should be included within that legal community, participate in OSJA physical and professional development training, reach out to OSJA personnel for advice on non-confidential matters, and work closely with the local legal office on all client matters.¹⁵² SJAs should still mentor and support co-located SVCs, even if they do not supervise or rate them.

¹⁵⁰ For example, victims may be pressured to provide evidence; participate in meetings, interviews, or proceedings; or respond to allegations of collateral misconduct.

¹⁵¹ There are limits to this requirement; SVCs are not required to participate in actions that are illegal or unethical.

¹⁵² One Army SVC commented that serving in the legal assistance office creates unnecessary conflicts with potential clients, since a conflict within the legal assistance office was imputed to the SVC as well.

V. Conclusion

The Committee recommends that the Military Services should implement an 18-month minimum assignment length for SVC/VLC serving in their first tour as a judge advocate, and a 24-month minimum for all other SVCs/VLCs, with appropriate exceptions for personal or operational reasons. The Committee further recommends that the Army should establish an independent supervisory rating structure for Army SVC outside of the OSJA and local command.

The Committee forwards these recommendations to the General Counsel of the Department of Defense for further coordination and action by the Military Departments.



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

OCT 05 2021

GENERAL COUNSEL

MEMORANDUM FOR STAFF DIRECTOR, DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE OF
SEXUAL ASSAULT IN THE ARMED FORCES

SUBJECT: Request to Study the Tour Lengths of Special Victims' Counsel/Victims' Legal
Counsel

I request that the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) study the issue of tour lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and assess whether it is practical to adopt a minimum assignment length with appropriate exceptions for operational concerns. If it is practical to adopt such a minimum assignment length, please recommend what that minimum should be. I request a report addressing these issues within six months of the date of this memorandum.

A June 14, 2021, letter from Senator Gillibrand and Representative Speier (attached) noted, "One of the top complaints we have heard from military sexual trauma survivors is that they had to work with multiple SVC/VLC on their case due to personnel turnover." They further observed that "in the Navy and the Air Force the average assignment duration for an SVC/VLC is two to three years, while in the Army and the Marine Corps the average assignment duration is twelve to fifteen months." Senator Gillibrand and Representative Speier recommended that the Secretary of Defense direct the Military Services to "revise their SVC/VLC assignment policies and procedures with the objective of 2-year minimum assignment lengths, in most cases."

The Inter-Service SVC/VLC Coordination Committee (ICC) reviewed the letter from Senator Gillibrand and Representative Speier and provided an assessment (attached). The ICC confirmed that the Navy and Air Force typically assign SVCs/VLCs to a two- or three-year tour, while Army and Marine Corps SVC/VLC assignments are typically 12 to 18 months.

The ICC recommended that DoD not mandate any reform. The ICC's memorandum states, "The Army's legal leadership has balanced the need to train judge advocates to effectively prosecute crime, defend accused, and represent victims throughout the court-martial process. Balancing those interests would not be possible with mandatory two-year tours for any of those positions." It is not readily apparent why it is possible for the Air Force and Navy to balance those interests while providing two-to-three year tours for SVCs/VLCs but it is not possible for the Army to do so. Accordingly, I request that the DAC-IPAD study this issue and provide its assessment to me through the Senior Deputy General Counsel/Deputy General Counsel for Personnel and Health Policy.

Appendix A. General Counsel of the Department of Defense Memorandum, Oct. 5, 2021

Thanks to you and your staff for your invaluable work. I look forward to continuing to benefit from your insightful analysis.



Caroline Krass
General Counsel

Attachments:
As stated



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

NOV 02 2021

MEMORANDUM FOR STAFF DIRECTOR, DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE OF
SEXUAL ASSAULT IN THE ARMED FORCES

SUBJECT: Request to Study Rating Chain of Army Special Victims' Counsel

I request that, in conjunction with the study of tour lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) requested by my memorandum of October 5, 2021 ("tour length report"), the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) study the rating chains of Army SVCs. Concerns about that rating chain are addressed by the two attachments to my October 5th memorandum. Attached is one additional relevant document: an undated memorandum from The Judge Advocate General of the Army that I received on October 15, 2021, addressing the issue.

Please include the following in the tour length report:

- An assessment of the rating chain for Army SVC officer evaluation reports.
- A comparison of that rating chain with those used in the other Military Services' SVC/VLC programs.
- An evaluation of whether the rating chain for Army SVCs creates an actual or apparent limitation on those SVCs' independence or ability to zealously represent their clients.
- Any recommendations for change based on the study's findings.

The Department highly values and greatly benefits from the DAC-IPAD's reports. Thank you for your assistance with this matter.

A handwritten signature in black ink, appearing to read "Caroline Krass".

Caroline Krass
General Counsel

Attachment:
As stated



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1 600 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1600

APR 21

GENERAL COUNSEL

MEMORANDUM FOR CHAIR, DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE OF
SEXUAL ASSAULT IN THE ARMED FORCES (DAC-IPAD)

SUBJECT: Request to Review Report on Tour Lengths and Rating Chain Structure for Services' Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) Programs

In response to my request of October 5, 2022, the Defense Legal Services Agency staff attorneys who support the DAC-IPAD prepared the attached report on tour lengths of special victims' counsel and the supervisory rating chain of Army special victims' counsel. That request was the result of a letter that Senator Gillibrand and Representative Speier sent to the Secretary of Defense expressing concern that frequent transfers of special victims' counsel interfere with the continuity of representation of their clients and that the Army's unique performance evaluation structure for special victims' counsel impinges on those counsel's independence. That letter is reproduced at Appendix C of the attached report.

I request that the DAC-IPAD review the staff report and provide me with an assessment of the report's ten recommendations, as well as any additional recommendations from the DAC-IPAD. Please provide me with the result of your examination within 120 days of the date of this memorandum.

If you have any questions concerning this request, please contact Dwight Sullivan of my office, who is the DAC-IPAD's Designated Federal Officer. You can reach him at dwight.h.sullivan.civ@mail.mil.

I am grateful to you and to all of the DAC-IPAD members for sharing your expertise with the Department. The DAC-IPAD's analysis has been instrumental in the Department's ongoing efforts to address the scourge of sexual assault in the military.

A handwritten signature in black ink, appearing to read "Caroline Krass".

Caroline Krass
General Counsel

Enclosure:
As stated



Congress of the United States
Washington, DC 20515

June 14, 2021

The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Austin,

Since the program's creation in 2013, the Special Victims' Counsel program has provided much-needed access to support to survivors of military sexual trauma. Special Victims' Counsel (SVC) and Victims' Legal Counsel (VLC) assist survivors in navigating their rights in the military justice system, and military entitlements more generally, in their hour of need. The military owes these survivors consistent, high-quality advocacy to begin to address the harm that has been done to them under the military's watch.

There are uniform statutory requirements for the SVC/VLC programs that cover minimum services to be provided and basic qualification requirements, but the services have retained the ability to shape many aspects of their program implementation. While this no doubt allows the services to address some unique needs and challenges, these service differences have also revealed gaps and best practices.

Additionally, in our oversight work as the leaders of the House Armed Services Military Personnel Subcommittee and the Senate Armed Services Personnel Subcommittee and in serving constituents, we have heard from many survivors about their experiences with their SVCs/VLCs. Through these conversations there have been several consistent concerns regarding the independence and continuity of counsel, which varies between military services with disparate results for clients.

Further examination into these concerns reveals the vastly different approaches and outcomes in the services. For example, the SVC/VLC in the Army and the Marine Corps maintain closer relationships with installation legal offices, whereas those in the Air Force and Navy have more independence in terms of supervision and support.

While we certainly appreciate the need to retain some flexibility to adapt to the unique considerations of each service, we also firmly believe that there is room for more uniform implementation across military services that will improve the service provided to military sexual trauma survivors. In that spirit, we offer the following suggestions for where you, at the department level, can enhance uniformity and better meet the needs of survivors.



1. Establish Uniform Guidance Mandating a Minimum 2-year assignment duration for SVC/VLC.

One of the top complaints we have heard from military sexual trauma survivors is that they had to work with multiple SVC/VLC on their case due to personnel turnover. Each time a survivor has to change counsel, they have to re-tell their story and suffer the learning curve of a new advocate as they become acquainted with the case. There is also a loss of continuity with ongoing actions, since many military justice proceedings for sex-related offenses take more than one year.

While the services have all taken steps to ensure a thorough transition between incoming and outgoing SVC/VLC, not all have done enough to reduce the amount of turnover. For example, in the Navy and the Air Force the average assignment duration for an SVC/VLC is two to three years, while in the Army and the Marine Corps the average assignment duration is twelve to fifteen months. Further, the common practice in the Army and Marines is to treat SVC/VLC assignments as part of a rotation while assigned to an installation, rather than a dedicated tour. We understand the need to rotate personnel for various reasons, but twelve to eighteen months is simply not enough time for a counsel to build relationships, develop experience and see actions through to completion. We ask you to direct the military services to revise their SVC/VLC assignment policies and procedures with the objective of 2-year minimum assignment lengths, in most cases, for these critical client-focused positions. While the Army and Marine Corps currently treat SVC/VLC assignments as but one of multiple assignments within a tour, generating shorter times in the position, we ask that you challenge them to think creatively about treating SVC/VLC positions as independent tours without another job to fit in, or about extending some tour lengths to allow for longer durations in both an SVC/VLC role and any other roles within the tour. A lack of creativity about how to approach assignment lengths should not hinder the assistance available to victims.

2. Establish Uniform Guidance Mandating Independent Supervisory Chains for SVC/VLC.

The SVC/VLC program exists to represent the interest of military sexual trauma survivors, even when those interests are at odds with the interests of the chain of command. In this respect, SVC/VLC are similar to military Trial Defense Counsel who are charged to represent their clients against the government's prosecution. While Trial Defense Counsel are uniformly assigned to independent chains of command to preserve their independence from local chains of command, the same is not always true for SVC/VLC.

The Air Force, Navy, and Marines have established independent supervisory chains for the SVC/VLC. Though unique in specifics, all share the key characteristic that (1) SVC/VLC are supervised for guidance and evaluative purposes through a legal services chain that is centralized within the service, and (2) the individual SVC/VLC does not rely on any member of the chain of command at their installation for performance evaluations. The Army is an outlier in this regard because Army SVC are evaluated by local Staff Judge Advocates, who in turn are evaluated by the chain of command. We are concerned that this arrangement creates the potential to constrain the independence of SVC and their ability to zealously advocate for their survivor clients. We ask that you issue uniform guidance mandating a minimum amount of independence for SVC/VLC that prohibits the local chain of command from being in the rating chain of an SVC/VLC, or that counsel's supervisor.

Appendix D. Congressional Letter to the Secretary of Defense, June 14, 2021

We hope that you share our concern with improving the quality of the SVC/VLC program that is such an important resource for those who have already had to endure the betrayal of trust and trauma of military sexual violence. The steps we propose are simple and will address the concerns from many survivors and advocates. Thank you for your attention to this important issue.

Sincerely,



Jackie Speier
Member of Congress



Kirsten Gillibrand
United States Senator



UNITED STATES MARINE CORPS
VICTIMS' LEGAL COUNSEL ORGANIZATION
JUDGE ADVOCATE DIVISION
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

August 11, 2021

The Honorable Beth George
Acting DoD General Counsel
General Counsel of the Department of Defense
1600 Defense Pentagon
Washington, DC 20301-1600

Dear Ms. George,

Thank you for your letter of June 22, 2021, concerning whether changes should be made to policy to minimize disruption caused by the transfer of Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) or to enhance the professional independence of SVC/VLC. The Interservice SVC/VLC Coordination Committee (ICC) officially received your letter on July 16, 2021, and have reviewed it in detail along with the letter from Senator Gillibrand and Representative Speier concerning the Military Services' SVC/VLC programs, which was attached to your letter. Based on our review, we respectfully submit the following for your consideration.

Bottom Line Up Front.

At this time, the ICC recommends allowing each Military Service to retain flexibility and independent authority to build and shape its SVC/VLC program, to include assignment of personnel and establishment of supervisory chain of command. Permitting the Services to retain flexibility will allow them to address their own unique issues and challenges while also enabling them to execute their SVC/VLC mission by providing the best service and representation possible to survivors. The ICC will continue to work with each Services' SVC/VLC programs to make both process and operational improvements to enhance assistance provided to survivors and minimize potential disruption to services provided to survivors. The ICC will make further recommendations to the Department of Defense for policy changes, if needed.

Mandatory Minimum Two (2) Year SVC/VLC Assignment.

The ICC understands the importance of minimizing disruption to services provided to survivors. The ICC recommends permitting the Services to continue their current SVC/VLC assignment process. Should the Department of Defense direct the Services to assign SVC/VLC for the proposed minimum period of time, the Army and Marine Corps anticipate there may be a significant negative impact on the professional development of their judge advocates, other military justice functions, and the overall assignment process.

The Navy and the Air Force's current SVC/VLC assignment process allows them to assign a qualified judge advocate to a SVC/VLC billet to between a two (2) and three (3) years on average while the Army and the Marine Corps' SVC/VLC assignment currently ranges from twelve (12) to eighteen (18) months. All Services have taken steps to ensure a thorough transition between incoming and outgoing SVC/VLC to minimize any disruption to services provided to survivors. Each Service further provides guidance and instructions to its SVC/VLC that minimize any re-victimization by a survivor (e.g., a new SVC/VLC will not ask a survivor to re-tell his or her story, but rely on the survivor's previous statements to a military criminal investigative organization).

In the case of the Marine Corps, its VLC must have prior military justice experience as a trial counsel or defense counsel. This experience is often obtained immediately prior to the Marine judge advocate assuming their responsibilities as a VLC. Substantial military justice experience, to include litigation of at least one contested general court martial, is instrumental for the Marine VLC in assisting, counseling, and representing a survivor throughout the military justice process. If a Marine VLC is required to spend at least two (2) years of a three (3) year tour as a VLC, a Marine judge advocate will then receive at most twelve (12) months in another assignment – limiting the experience the Marine VLC will have as trial or defense counsel prior to becoming a VLC. This in turn is detrimental to the survivors represented as they will be represented by less experienced VLC. For the Marine Corps, the gold standard for VLC assignment is an eighteen (18) months (within a three (3) year tour), whenever possible.

Similarly, the Army attempts to ensure that its judge advocates are well-rounded and have broad experiences including military justice experience, whenever possible, to ensure that survivors receive the best service and representation possible from a SVC. The Army's legal leadership has balanced the need to train judge advocates to effectively prosecute crime, defend accused, and represent victims throughout the court-martial process. Balancing those interests would not be possible with mandatory two-year tours for any of those positions. To ensure victims are not overly burdened by transfers of their case to new SVC, the Army mandates a multi-step process where the outgoing and incoming SVC meet, share files, and fully discuss the case and needs of the victim before both meeting with the victim to complete the case transfer. This process alleviates most of the burden that could result from a case transfer and allows for the full development of Army judge advocates.

A two (2) year minimum SVC/VLC requirement will seriously impact the Army and Marine Corps professional development process for judge advocates and will further hamper other military justice requirements – particularly trial services. The Army and the Marine Corps must ensure trial and defense services are adequately manned by personnel with appropriate experience. A mandatory two (2) year SVC/VLC assignment minimum would significantly curtail the Army and Marine Corps in developing judge advocates to serve as a trial or defense counsel, and would reduce other opportunities to gain professional experience that can only improve a judge advocate's ability to represent survivors as an SVC/VLC. Given a standard three (3) year assignment tour, a judge advocate may only serve as a trial or defense counsel for less than a year before or after having completed a SVC/VLC tour. Inexperienced trial counsel may result in ineffective prosecution of cases for our survivors. Therefore, allowing the Services

Appendix E. Interservice SVC/VLC Coordination Committee (ICC) Letter, Aug. 11, 2021

to manage their own SVC/VLC assignment process will not only help them to better serve survivors, but also assist in developing judge advocates who may serve in other assignments that impact the survivors' cases.

The ICC understands that stabilization of SVC/VLC assignments or longer SVC/VLC assignments may benefit survivors. The ICC also acknowledges the potential to increase vicarious trauma experienced by SVC/VLC with increased assignment lengths. However, Services should be given the flexibility and independence to manage its assignment processes. The ICC will continue to work with each Services' SVC/VLC programs to make both process and operational improvements to enhance assistance provided to survivors and minimize potential disruption to services provided to survivors.

Mandating Independent Supervisory Chain of Command for SVC/VLC.

The ICC supports enhancing the professional independence of SVC/VLC. It is important for the Services' SVC/VLC programs to ensure that an SVC/VLC best represents the interests of the survivors, even when those interests are in conflict with the interests of the chain of command.

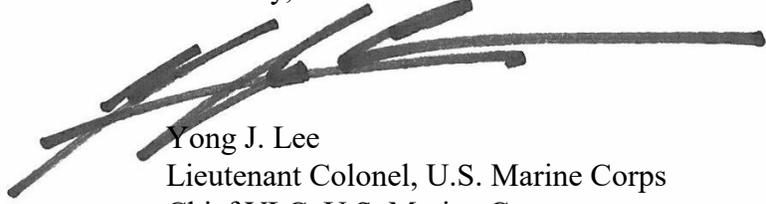
The Air Force, Navy, and Marine Corps SVC/VLC programs have established separate, independent supervisory chains of command responsible for both operational control of and functional supervision (including evaluation responsibilities) over their respective SVC/VLC. The Army's SVC program retains functional supervision of all its SVC separate from the chain of command, however Army SVC are also evaluated by the local staff judge advocates. As noted in the Senator Gillibrand and Representative Speier's letter, these staff judge advocates are then evaluated by the local chain of command.

Despite Army SVC being rated by the local staff judge advocates, the independence of Army SVC to properly represent survivors is not limited or hampered. Army SVCs are managed locally by their Chiefs of Soldier and Family Legal Services (SFLS). Each SFLS office is dedicated to representing the needs of Soldiers, family members, and retirees independently from the needs of the command. These offices have been supervised by their local SJAs for decades without improper command influence; Army SVCs now enjoy the same independence. Additionally, the Army has broken its SVC teams into regions with regional managers who provide additional independent technical supervision and guidance. Those regional managers then report and receive guidance directly from the Army's SVC program. However, understanding that there are concerns with the possibility of the constrain on the independence of Army SVC, the Army SVC program will examine and reassess whether the local staff judge advocates should remain in the evaluative chain of command, and take appropriate actions as needed in the future.

Appendix E. Interservice SVC/VLC Coordination Committee (ICC) Letter, Aug. 11, 2021

Again, thank you for the opportunity to review and respond. If the ICC can be of any further assistance, please let us know by contacting the undersigned at (703) 693-9524; yong.j.lee@usmc.mil.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Yong J. Lee', is written over a series of horizontal lines that serve as a background for the signature.

Yong J. Lee
Lieutenant Colonel, U.S. Marine Corps
Chief VLC, U.S. Marine Corps
Interim Chair, ICC



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

SEP 02 2016

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
CHIEFS OF THE MILITARY SERVICES
CHIEF OF THE NATIONAL GUARD BUREAU
COMMANDERS OF THE COMBATANT COMMANDS
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
ASSISTANT SECRETARY OF DEFENSE FOR LEGISLATIVE
AFFAIRS
ASSISTANT TO THE SECRETARY OF DEFENSE FOR PUBLIC
AFFAIRS
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Special Victims' Counsel/Victims' Legal Counsel Programs

Providing effective representation to victims of alleged sex-related offenses in our Armed Forces is a top priority for the Department. This effort requires our absolute and sustained commitment to the Military Departments' victims' counsel programs, and the sustained commitment of those programs to representing the needs and interests of the victims of alleged sex-related offenses in our Armed Forces. Therefore, consistent with the attachment, I direct the Secretaries of the Military Departments to implement the following Guiding Principles to enhance oversight of special victim legal counsel programs and to ensure the continued effectiveness of the various programs. These Guiding Principles:

- Establish the fundamental purposes to be served by each Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) program.
- Standardize baselines for selection, assignment, training, professional development, and certification of personnel to serve in SVC/VLC programs consistent with the responsibilities of the Judge Advocates General (TJAGs) and the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) found in Article 6, Uniform Code of Military Justice.



OSD000006-18/CMC000000-18

Appendix F. Deputy Secretary of Defense Memorandum, Sept. 2, 2016

- Standardize baselines for selection, assignment, training, professional development, and certification of administrative legal support personnel who provide services to, or who support counsel providing services to, victims of alleged sex-related offenses.
- Standardize performance measures to evaluate effectiveness of the SVC/VLC programs.
- Establish governance principles and mechanisms consistent with the role of the TJAGs and the SJA to CMC in the military justice system, their responsibility to direct the members of their respective organizations, and their responsibility to provide independent legal advice.

The Military Departments will continue to implement appropriate policies, procedures, and regulations to ensure the above requirements are satisfied. As the result of collaboration with the Department of Homeland Security, I understand that the Secretary of Homeland Security intends to issue similar guidance applicable to the United States Coast Guard that will promote appropriate alignment among the Military Services and consistency of legal support to victims of alleged sex-related offenses.

The DoD General Counsel will convert the attachment to a DoD Instruction, at which time the attachment will lapse.

A handwritten signature in black ink, appearing to read "R. Stumpf", is written over the text of the memorandum.

Attachment:
As stated

cc:
Secretary of Homeland Security

ATTACHMENT

IMPLEMENTATION PROCEDURES:
SPECIAL VICTIMS' COUNSEL/VICTIMS' LEGAL COUNSEL (SVC/VLC) PROGRAMS

1. THE PURPOSES OF SVC/VLC AND LEGAL SUPPORT PROGRAMS. In accordance with 10 U.S.C. §1044e, each Service will designate legal counsel for the purpose of providing legal assistance to eligible victims of alleged sex-related offenses in violation of the Uniform Code of Military Justice (UCMJ) who choose to form an attorney-client relationship with such counsel, regardless of whether any report of such an alleged offense is restricted or unrestricted. Each Service retains the option to provide representation to individuals not included within 10 U.S.C. §1044e(a)'s scope. An SVC/VLC's duties include providing legal consultation and representation to his or her clients as authorized by 10 U.S.C. §1044e(b) in a manner consistent with the SVC/VLC's governing rules of professional conduct.

2. ESTABLISHMENT OF STANDARDS FOR THE SELECTION, CERTIFICATION, AND ASSIGNMENT OF SVC/VLC AND LEGAL SUPPORT PERSONNEL.

a. In accordance with 10 U.S.C. §1044e and 10 U.S.C. §1565b and under the authority of Article 6, Uniform Code Military Justice (UCMJ), the Judge Advocates General (TJAGs) and the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) will:

(1) Oversee selection and certification criteria for SVC/VLC. SVC/VLC should possess litigation skills, professionalism, maturity, judgment, and interest in providing high-quality legal representation to clients.

(2) Ensure new SVC/VLC attend a certification course that meets the requirements below, prior to representing clients.

(3) Assign SVC/VLC to locations in order to maximize the opportunity for face-to-face communication between counsel and clients.

(4) Provide effective means of communication to permit counsel and client interactions when face-to-face communication is not feasible.

b. Consistent with 10 U.S.C. § 1044e(e)(2), each Military Department will submit periodic reports to the General Counsel of the Department of Defense indicating the manner in which each of these requirements is implemented, and the General Counsel of the Department of Defense will evaluate those reports and transmit a copy of such reports along with his or her assessment of the performance of the various programs to the Under Secretary of Defense for Personnel and Readiness. Those reports will be submitted quarterly commencing no later than November 1, 2016, and then annually commencing on November 1, 2017. The annual reports will contain data for the fiscal year ending the previous September 30.

3. SVC/VLC TRAINING PROGRAMS.

a. The Military Departments will jointly, and in consultation with the General Counsel of the Department of Defense, develop comprehensive and integrated SVC/VLC program training, that at a minimum:

(1) Consists of in-residence certification courses ensuring SVC/VLC are competent to provide clients with a comprehensive understanding of their rights, including legal advice necessary to make informed decisions during the investigative, administrative, and court-martial processes. SVC/VLC will be trained on the following topics:

- A. Applicable Military Rules of Evidence and case law.
- B. Victims' rights in accordance with Article 6b, UCMJ, and other applicable laws, regulations, and policies.
- C. Identification of all sexual offense response and military justice stakeholders and methods of effective advocacy.
- D. Understanding effective interviewing techniques and the impact of trauma on memory.
- E. Legal issues and sensitivities associated with victims alleging sex-related offenses.
- F. Professional responsibility rules pertaining to the role of an SVC/VLC, including confidentiality, conflicts of interest, competence, declining/terminating representation, professional independence, and candor rules.

(2) Maximizes attendance at trial advocacy courses and workshops focusing on litigating sex-related cases, on-the-job training, distance learning, and periodic refresher training.

(3) Promotes methods of interacting with and supporting clients to ensure their rights are understood and respected.

(4) Trains SVC/VLC to identify support needs of clients and resources available to address those needs.

(5) Educates SVC/VLC on representation issues pertaining to DoD civilian clients.

(6) Promotes meaningful collaboration between the SVC/VLC and Sexual Assault Response Coordinators (SARCs) and Sexual Assault Prevention and Response Victim Advocates (SAPR VAs) to ensure seamless victim services and educates SVC/VLC on the role of the SARC and SAPR VA.

(7) Educates SVC/VLC on the appropriate response to any harassment, intimidation, retaliation, reprisal, and/or coercion allegations made by the client.

b. Each Service retains the option to require additional training consistent with that Service's provision of legal services to clients, and to adjust the training to meet the needs of the Service.

4. STATISTICS AND MEASUREMENTS OF PERFORMANCE AND EFFECTIVENESS.

a. The TJAGs and the SJA to CMC will supervise and inspect SVC/VLC programs in accordance with Article 6 of the UCMJ and applicable Service regulations. At a minimum, they will:

(1) Review and analyze data and identify trends from SAPRO survey results to implement improvements to SVC/VLC programs; and

(2) Collect statistics and develop and review measures of performance and effectiveness to objectively assess Service programs, policies, training, and services.

b. The Military Departments will provide the following Service-level review measures to the General Counsel of the Department of Defense with quarterly Service data through the report due by November 1, 2017, and annual fiscal year data thereafter:

(1) Total number of clients represented by SVC/VLC in the reporting period who filed an unrestricted report.

(2) Total number of clients represented by SVC/VLC in the reporting period who filed a restricted report.

(3) Total number of clients represented by SVC/VLC who initially made a restricted report who chose in the reporting period to proceed with an unrestricted report. This information is to be provided for informational purposes only and is not to be considered as a measurement of performance and effectiveness.

c. Consistent with 10 U.S.C. § 1044e(e)(2), the General Counsel of the Department of Defense will evaluate the information provided under subparagraph 2.b and this paragraph. Further, the General Counsel of the Department of Defense will evaluate the reports required by subparagraph 2.b and transmit a copy of such reports along with an assessment of the performance of the various programs to the Under Secretary of Defense for Personnel and Readiness.

5. INTERSERVICE SVC/VLC COORDINATION COMMITTEE. While the Services will operate their individual SVC/VLC programs under the supervision of the TJAGs, SJA to CMC, and Secretaries of the Military Departments, designated SVC/VLC personnel from each Service will periodically meet collectively with a representative of the General Counsel of the Department of Defense and of the Under Secretary of Defense for Personnel and Readiness. This group, called the Interservice SVC/VLC Coordination Committee, will meet on no less than

Appendix F. Deputy Secretary of Defense Memorandum, Sept. 2, 2016

a quarterly basis. The function of this Committee is to review the implementation of the requirements established by this Attachment, to examine best practices from the Services' SVC/VLC programs, and to recommend any improvements of the SVC/VLC programs, including changes to statutes or the Manual for Courts-Martial (MCM), if appropriate. The General Counsel will forward any of the Interservice SVC/VLC Coordination Committee's recommended amendments to the Uniform Code of Military Justice or the MCM to the Joint Service Committee on Military Justice for analysis and a recommendation. Any recommendations for legislation or executive orders with which the General Counsel concurs will be processed and coordinated in compliance with the current edition of Department Defense Directive 5500.01, "Preparing, Processing, and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony." The TJAGs of the Army, Navy, and Air Force and the SJA to CMC will each designate the head of the Service's SVC/VLC organization or the SVC/VLC program manager as a member of the committee. The General Counsel of the Department of Defense will designate a chair of the committee. The Under Secretary of Defense for Personnel and Readiness, the United States Coast Guard, and the National Guard Bureau will each be invited to designate one advisor to the committee.



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON, DC 20310-2200

DAJA-ZA

MEMORANDUM FOR General Counsel of the Department of Defense, 1600 Defense Pentagon, Washington, DC 20301-1600

SUBJECT: Rating Chain for Army Special Victims' Counsel

1. Thorough and regular oversight of the Army's Special Victims' Counsel (SVC) Program indicates our SVCs must remain supervised within their local Offices of the Staff Judge Advocate (OSJA). This local supervision has allowed the program to independently represent clients, while also benefitting from on-the-ground supervision and support. The Army Judge Advocate General's Corps continues to review and assess the program for areas that could be improved, however, there has been no indication that the chain of command has in any way restricted any SVC from fully and independently representing their clients.
2. Staff Judge Advocates (SJAs) nominate SVCs. Once trained and certified by The Judge Advocate General (TJAG), SVCs typically work under the direct supervision of the installation's Chief of Legal Assistance (CLA).¹ The Army SVC Program provides a separate technical chain of supervision and is organized into five geographic regions. Each region is supervised by a Regional Manager (RM) - a senior SVC with substantial military justice experience. Regional Managers provide technical support to the SVCs within their regions and are responsible for detailing SVCs to victims who request SVC services. The SVC Program Office, a division of the Office of The Judge Advocate General (OTJAG), provides program oversight and technical supervision to the RMs and SVCs in the field. If any SVC were confronted with pressure from their SJA or command, this would be reported through the RM and SVC Program Office directly to TJAG.
3. The CLA supervises both SVCs and Legal Assistance Attorneys (LAAs). Unlike the other Military Services, the Army's Legal Assistance Program includes robust representation of clients in substantive matters in opposition to their commands. For example, clients may request assistance filing an Article 138 complaint against their commander, rebutting allegations in an investigation or reprimand, or any other number of matters where the client's interests are directly opposed to the command interests. Despite this apparent opposition, OSJAs fully support the legal assistance attorney role. The well-established role of a LAA is to represent individual Soldiers rather than representing an organization – the Army or the command, for example. Lawyers representing the command and those representing individual Soldier and civilian clients are bound by ethical standards to represent clients and protect privileged communications.

¹ Chiefs of Legal Assistance is synonymous with Chief, Client Services and Chief, Soldier and Family Legal Services.

Appendix G. The Judge Advocate General of the U.S. Army Memorandum

DAJA-ZA

SUBJECT: Rating Chain for Army Special Victims' Counsel

4. I continue to evaluate and assess our SVC practice. In September, I directed my "Board of Directors,"² to assess whether SVCs should be removed from OSJAs. These senior leaders strongly advised against this move and listed the many benefits of retaining SVCs within Client Services, including:

a. Legal Assistance attorneys work in conjunction with SVCs to provide support to victims. Legal Assistance attorneys provide support to victims of domestic violence with respect to the victim's family law needs and other traditional legal assistance services. The LAAs then commonly seek support from their SVC teammates if/when a victim's case requires victim advocacy within the military justice system. Placing the two sections that provide victim support together reinforces a holistic approach to legal services and improves quality of care for the victim.

b. Residing within the OSJA provides SVCs with direct, immediate resources from senior colleagues who can provide guidance and support. The service SVCs provided their clients was often improved because at times more junior counsel were able to draw upon more experienced advocates who knew the local resources and the commands in the areas in which they serve.

c. As part of the Legal Assistance Office, SVCs are included in a legal community of lawyers and paralegals who similarly represent individual Soldiers. Retaining SVCs within this community enhances their sense of belonging and community and the overall acceptance of their role as counsel to a specific client.

d. Local supervision of SVCs allows experienced SJAs to select those best suited for these positions, move those who are not performing to the standard our clients deserve out of the position, and to move and care for those SVCs suffering from burnout – a very real concern. This also allows SJAs to select and nominate personnel to be part-time SVCs³ from within their offices to support the SVC mission and reduce the work-load being managed by the full-time SVCs. Having leaders on the ground with the SVCs provides invaluable oversight and care to our advocates as they work through some of the toughest challenges of their careers.

5. Special Victims' Counsel are required to report any pressure to compromise their representation of a client by any member of their OSJA through their RM to the SVC Program Manager. This requirement is emphasized at our annual training and reemphasized at our regional SVC training. Thus far, the program has received zero

² The JAG Corps Board of Directors is composed of senior judge advocates appointed by TJAG based on their proven leadership and experience. The Board of Directors reviews proposed initiatives designed to address identified capability gaps in legal services or manning and provide candid feedback and recommendations on the proposals for senior leadership decision and execution.

³ Part-time SVCs are nominated, vetted, trained, and certified to the same standard as full-time SVCs.

Appendix G. The Judge Advocate General of the U.S. Army Memorandum

DAJA-ZA

SUBJECT: Rating Chain for Army Special Victims' Counsel

reports of attempted, perceived, or actual pressure from their OSJA from SVCs. The program manager has also received no complaints from victim clients regarding the independence of their dedicated SVCs.

6. I will continue to review reports from SVCs, to consider all feedback from victim clients, to conduct and personally participate in regional training with SVCs, to seek ideas and suggestions from our sister services, and to ask our leaders for their thoughts as they supervise and support our SVCs in their important mission. Thus far, nothing in our practice has indicated a need to remove SVCs from the local OSJAs.

7. The point of contact for this action is LTC Carol A. Brewer, Chief, SVC Program, at (571) 256-7997 and carol.a.brewer12.mil@army.mil.



STUART W. RISCH
Lieutenant General, USA
The Judge Advocate General

Appendix H. Title 10 United States Code §1044e

10 USC 1044e: Special Victims' Counsel for victims of sex-related offenses

Text contains those laws in effect on March 22, 2022

From Title 10-ARMED FORCES

Subtitle A-General Military Law

PART II-PERSONNEL

CHAPTER 53-MISCELLANEOUS RIGHTS AND BENEFITS

Jump To:

[Source Credit](#)

[Miscellaneous](#)

[References In Text](#)

[Amendments](#)

[Effective Date](#)

§1044e. Special Victims' Counsel for victims of sex-related offenses

(a) DESIGNATION; PURPOSES.--(1) The Secretary concerned shall designate legal counsel (to be known as "Special Victims' Counsel") for the purpose of providing legal assistance to an individual described in paragraph (2) who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

(2) An individual described in this paragraph is any of the following:

(A) An individual eligible for military legal assistance under section 1044 of this title.

(B) An individual who is-

(i) not covered under subparagraph (A);

(ii) a member of a reserve component of the armed forces; and

(iii) a victim of an alleged sex-related offense as described in paragraph (1)-

(I) during a period in which the individual served on active duty, full-time National Guard duty, or inactive-duty training; or

(II) during any period, regardless of the duty status of the individual, if the circumstances of the alleged sex-related offense have a nexus to the military service of the victim, as determined under regulations prescribed by the Secretary of Defense.

(C) A civilian employee of the Department of Defense who is not eligible for military legal assistance under section 1044(a)(7) of this title, but who is the victim of an alleged sex-related offense, and the Secretary of Defense or the Secretary of the military department concerned waives the condition in such section for the purposes of offering Special Victims' Counsel services to the employee.

(b) TYPES OF LEGAL ASSISTANCE AUTHORIZED.--The types of legal assistance authorized by subsection (a) include the following:

(1) Legal consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services.

(2) Legal consultation regarding the Victim Witness Assistance Program, including-

(A) the rights and benefits afforded the victim;

(B) the role of the Victim Witness Assistance Program liaison and what privileges do or do not exist between the victim and the liaison; and

(C) the nature of communication made to the liaison in comparison to communication made to a Special Victims' Counsel or a legal assistance attorney under section 1044 of this title.

(3) Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator, a unit or installation Sexual Assault Victim Advocate, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.

(4) Legal consultation regarding the potential for civil litigation against other parties (other than the United States).

(5) Legal consultation regarding the military justice system, including (but not limited to)-

(A) the roles and responsibilities of the trial counsel, the defense counsel, and investigators;

(B) any proceedings of the military justice process in which the victim may observe;

(C) the Government's authority to compel cooperation and testimony; and

(D) the victim's responsibility to testify, and other duties to the court.

(6) Representing the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.

(7) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services;

Appendix H. Title 10 United States Code §1044e

(8) Legal consultation and assistance-

(A) in personal civil legal matters in accordance with section 1044 of this title;

(B) in any proceedings of the military justice process in which a victim can participate as a witness or other party;

(C) in understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders; and

(D) in understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in section 1059 of this title, section 1408(h) of this title, and other State and Federal victims' compensation programs.

(9) Legal consultation and assistance in connection with-

(A) any complaint against the Government, including an allegation under review by an inspector general and a complaint regarding equal employment opportunities;

(B) any request to the Government for information, including a request under section 552a of title 5 (commonly referred to as a "Freedom of Information Act request"); and

(C) any correspondence or other communications with Congress.

(10) Legal consultation and assistance in connection with an incident of retaliation, whether such incident occurs before, during, or after the conclusion of any criminal proceedings, including-

(A) in understanding the rights and protections afforded to victims of retaliation;

(B) in the filing of complaints; and

(C) in any resulting military justice proceedings.

(11) Such other legal assistance as the Secretary of Defense (or, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) may authorize in the regulations prescribed under subsection (i).

(c) NATURE OF RELATIONSHIP.-The relationship between a Special Victims' Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.

(d) QUALIFICATIONS.-(1) An individual may not be designated as a Special Victims' Counsel under this section unless the individual-

(A) meets the qualifications specified in section 1044(d)(2) of this title; and

(B) is certified as competent to be designated as a Special Victims' Counsel by the Judge Advocate General of the armed force in which the judge advocate is a member or by which the civilian attorney is employed, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.

(2) The Secretary of Defense shall-

(A) develop a policy to standardize the time period within which a Special Victims' Counsel receives training; and

(B) establish the baseline training requirements for a Special Victims' Counsel.

(e) ADMINISTRATIVE RESPONSIBILITY.-(1) Consistent with the regulations prescribed under subsection (i), the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary concerned, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for the establishment and supervision of individuals designated as Special Victims' Counsel.

(2) The Secretary of Defense (and, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) shall conduct a periodic evaluation of the Special Victims' Counsel programs operated under this section.

(3) The Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating, shall establish-

(A) guiding principles for the Special Victims' Counsel program, to include ensuring that-

(i) Special Victims' Counsel are assigned to locations that maximize the opportunity for face-to-face communication between counsel and clients; and

(ii) effective means of communication are available to permit counsel and client interactions when face-to-face communication is not feasible;

(B) performance measures and standards to measure the effectiveness of the Special Victims' Counsel program and client satisfaction with the program; and

(C) processes by which the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating will evaluate and monitor the Special Victims' Counsel program using such guiding principles and performance measures and standards.

(f) AVAILABILITY OF SPECIAL VICTIMS' COUNSEL.-(1) An individual described in subsection (a)(2) who is the victim of an alleged sex-related offense shall be offered the option of receiving assistance from a Special Victims' Counsel upon

Appendix H. Title 10 United States Code §1044e

report of an alleged sex-related offense or at the time the victim seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, a trial counsel, a healthcare provider, or any other personnel designated by the Secretary concerned for purposes of this subsection.

(2) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims' Counsel shall be provided to an individual described in subsection (a)(2) before any military criminal investigator or trial counsel interviews, or requests any statement from, the individual regarding the alleged sex-related offense.

(3) The assistance of a Special Victims' Counsel under this subsection shall be available to an individual described in subsection (a)(2) regardless of whether the individual elects unrestricted or restricted reporting of the alleged sex-related offense. The individual shall also be informed that the assistance of a Special Victims' Counsel may be declined, in whole or in part, but that declining such assistance does not preclude the individual from subsequently requesting the assistance of a Special Victims' Counsel.

(4)(A) Subject to subparagraph (B), if a Special Victims' Counsel is not available at a military installation for access by a member of the armed forces who requests access to a Special Victims' Counsel, a Special Victims' Counsel shall be made available at such installation for access by such member by not later than 72 hours after such request.

(B) If the Secretary concerned determines that, due to exigent circumstances related to military activities, a Special Victims' Counsel cannot be made available to a member of the armed forces within the time period required by subparagraph (A), the Secretary concerned shall ensure that a Special Victims' Counsel is made available to such member as soon as is practical under such circumstances.

(g) STAFFING CASELOAD LEVELS.-Commencing not later than four years after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, each Secretary concerned shall ensure that the number of Special Victims' Counsels serving in each military department (and with respect to the Coast Guard) is sufficient to ensure that the average caseload of a Special Victims' Counsel does not exceed, to the extent practicable, 25 cases any given time.

(h) ALLEGED SEX-RELATED OFFENSE DEFINED.-In this section, the term "alleged sex-related offense" means any allegation of-

(1) a violation of section 920, 920b, 920c, or 930 of this title (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice); or

(2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice).

(i) REGULATIONS.-The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall prescribe regulations to carry out this section.

(Added Pub. L. 113-66, div. A, title XVII, §1716(a)(1), Dec. 26, 2013, 127 Stat. 966 ; amended Pub. L. 113-291, div. A, title V, §§531(c), 533, 534(a), Dec. 19, 2014, 128 Stat. 3364 , 3366, 3367; Pub. L. 114-92, div. A, title V, §§532-534(a), 535(a), (b), Nov. 25, 2015, 129 Stat. 815 , 816; Pub. L. 115-91, div. A, title X, §1081(c)(2)(D), Dec. 12, 2017, 131 Stat. 1599 ; Pub. L. 116-92, div. A, title V, §§541, 542(a), Dec. 20, 2019, 133 Stat. 1374 , 1375; Pub. L. 116-283, div. A, title X, §1081(a)(22), Jan. 1, 2021, 134 Stat. 3872 ; Pub. L. 117-81, div. A, title X, §1081(a)(15), Dec. 27, 2021, 135 Stat. 1920 .)

EDITORIAL NOTES

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2020, referred to in subsec. (g), is the date of enactment of Pub. L. 116-92 which was approved Dec. 20, 2019.

AMENDMENTS

2021-Subsecs. (b)(11), (e). Pub. L. 116-283 substituted "subsection (i)" for "subsection (h)".

Subsec. (g). Pub. L. 117-81 substituted "number of Special Victims' Counsels" for "number of Special Victims' Counsel".

2019-Subsec. (b)(8)(D). Pub. L. 116-92, §541(a), substituted ", section 1408(h) of this title, and other" for "and other".

Subsec. (b)(10), (11). Pub. L. 116-92, §541(b), added par. (10) and redesignated former par. (10) as (11).

Subsec. (f)(4). Pub. L. 116-92, §542(a), added par. (4).

Subsecs. (g) to (i). Pub. L. 116-92, §541(c), added subsec. (g) and redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

2017-Subsec. (g)(1). Pub. L. 115-91 substituted "920b, 920c, or 930" for "920a, 920b, 920c, or 925" and "120b, 120c, or 130" for "120a, 120b, 120c, or 125".

2015-Subsec. (a)(2)(C). Pub. L. 114-92, §532, added subpar. (C).

Subsec. (b)(9), (10). Pub. L. 114-92, §533, added par. (9) and redesignated former par. (9) as (10).

Appendix H. Title 10 United States Code §1044e

Subsec. (d). Pub. L. 114–92, §535(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

Subsec. (e)(3). Pub. L. 114–92, §535(b), added par. (3).

Subsec. (f)(2), (3). Pub. L. 114–92, §534(a), added par. (2) and redesignated former par. (2) as (3).

2014-Subsec. (a). Pub. L. 113–291, §533(a), amended subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary concerned shall designate legal counsel (to be known as 'Special Victims Counsel') for the purpose of providing legal assistance to an individual eligible for military legal assistance under section 1044 of this title who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted."

Subsec. (b)(4). Pub. L. 113–291, §531(c)(1), substituted "the United States" for "the Department of Defense".

Subsec. (b)(6). Pub. L. 113–291, §534(a), substituted "Representing the victim" for "Accompanying the victim".

Subsec. (d)(2). Pub. L. 113–291, §531(c)(2), inserted ", and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps" before period at end.

Subsec. (e)(1). Pub. L. 113–291, §531(c)(3), inserted "concerned" after "jurisdiction of the Secretary".

Subsec. (f). Pub. L. 113–291, §533(b), substituted "described in subsection (a)(2)" for "eligible for military legal assistance under section 1044 of this title" in pars. (1) and (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

CIVILIAN POSITIONS TO SUPPORT SPECIAL VICTIMS' COUNSEL

Pub. L. 117–81, div. A, title V, §546, Dec. 27, 2021, 135 Stat. 1712, provided that:

"(a) CIVILIAN SUPPORT POSITIONS.-Each Secretary of a military department may establish one or more civilian positions within each office of the Special Victims' Counsel under the jurisdiction of such Secretary.

"(b) DUTIES.-The duties of each position under subsection (a) shall be-

"(1) to provide support to Special Victims' Counsel, including legal, paralegal, and administrative support; and

"(2) to ensure the continuity of legal services and the preservation of institutional knowledge in the provision of victim legal services notwithstanding transitions in the military personnel assigned to offices of the Special Victims' Counsel.

"(c) SPECIAL VICTIMS' COUNSEL DEFINED.-In this section, the term 'Special Victims' Counsel' means Special Victims' Counsel described in section 1044e of title 10, United States Code, and in the case of the Navy and Marine Corps, includes counsel designated as 'Victims' Legal Counsel'."

NOTIFICATION OF SIGNIFICANT EVENTS AND DOCUMENTATION OF PREFERENCE FOR PROSECUTION JURISDICTION FOR VICTIMS OF SEXUAL ASSAULT

Pub. L. 116–92, div. A, title V, §538, Dec. 20, 2019, 133 Stat. 1363, provided that:

"(a) NOTIFICATION TO VICTIMS OF EVENTS IN MILITARY JUSTICE PROCESS.-

"(1) NOTIFICATION REQUIRED.-A member of the Armed Forces who is the victim of an alleged sexual assault by another member of the Armed Forces shall receive notification of each significant event in the military justice process that relates to the investigation, prosecution, and confinement of such other member for such assault.

"(2) DOCUMENTATION.-Appropriate documentation of each notification made pursuant to paragraph (1) shall be created and maintained in an appropriate system of records of the military department concerned.

"(b) DOCUMENTATION OF VICTIM'S PREFERENCE FOR PROSECUTION JURISDICTION.-In the case of a member of the Armed Forces who is the victim of an alleged sexual assault committed by another member of the Armed Forces who is subject to prosecution for such offense both by court-martial under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), and by a civilian court under Federal or State law, appropriate documentation of the preference, if any, of such victim for prosecution of such offense by court-martial or by a civilian court as provided for by Rule for Courts-Martial 306(e) (as set forth in the

Appendix H. Title 10 United States Code §1044e

Manual for Courts-Martial, 2019 edition, or any successor rule), shall be created and maintained in an appropriate system of records of the military department concerned.

"(c) REGULATIONS.-Not later than 180 days after the date of the enactment of this Act [Dec. 20, 2019], the Secretary of Defense shall prescribe regulations implementing this section."

TRAINING FOR SPECIAL VICTIMS' COUNSEL ON CIVILIAN CRIMINAL JUSTICE MATTERS IN THE STATES OF THE MILITARY INSTALLATIONS TO WHICH ASSIGNED

Pub. L. 116–92, div. A, title V, §550C, Dec. 20, 2019, 133 Stat. 1382 , provided that:

"(a) TRAINING.-

"(1) IN GENERAL.-Except as provided in subsection (c), upon the assignment of a Special Victims' Counsel (including a Victim Legal Counsel of the Navy) to a military installation in the United States, such Counsel shall be provided appropriate training on the law and policies of the State or States in which such military installation is located with respect to the criminal justice matters specified in paragraph (2). The purpose of the training is to assist such Counsel in providing victims of alleged sex-related offenses with information necessary to make an informed decision regarding preference as to the jurisdiction (whether court-martial or State court) in which such offenses will be prosecuted.

"(2) CRIMINAL JUSTICE MATTERS.-The criminal justice matters specified in this paragraph, with respect to a State, are the following:

"(A) Victim rights.

"(B) Prosecution of criminal offenses.

"(C) Sentencing for conviction of criminal offenses.

"(D) Protective orders.

"(b) ALLEGED SEX-RELATED OFFENSE DEFINED.-In this section, the term 'alleged sex-related offense' means any allegation of-

"(1) a violation of section 920, 920b, 920c, or 930 of title 10, United States Code (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice); or

"(2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of title 10, United States Code (article 80 of the Uniform Code of Military Justice).

"(c) EXCEPTION.-The requirements of this section do not apply to a Special Victims' Counsel of the Coast Guard."

SPECIAL VICTIMS' COUNSEL TRAINING REGARDING THE UNIQUE CHALLENGES OFTEN FACED BY MALE VICTIMS OF SEXUAL ASSAULT

Pub. L. 115–91, div. A, title V, §536, Dec. 12, 2017, 131 Stat. 1392 , provided that: "The baseline Special Victims' Counsel training established under section 1044e(d)(2) of title 10, United States Code, shall include training for Special Victims' Counsel to recognize and deal with the unique challenges often faced by male victims of sexual assault."

ENHANCEMENT OF VICTIMS' RIGHTS IN CONNECTION WITH PROSECUTION OF CERTAIN SEX-RELATED OFFENSES

Pub. L. 113–291, div. A, title V, §534(b)–(e), Dec. 19, 2014, 128 Stat. 3367 , 3368, provided that:

"(b) CONSULTATION REGARDING VICTIM'S PREFERENCE IN PROSECUTION VENUE.-

"(1) CONSULTATION PROCESS REQUIRED.-The Secretary of Defense shall establish a process to ensure consultation with the victim of an alleged sex-related offense that occurs in the United States to solicit the victim's preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

"(2) CONVENING AUTHORITY CONSIDERATION OF PREFERENCE.-The preference expressed by the victim of an alleged sex-related offense under paragraph (1) regarding the prosecution of the offense, while not binding, should be considered by the convening authority in making the determination regarding whether to refer the charge or specification for the offense to a court-martial for trial.

"(3) NOTICE TO APPROPRIATE JURISDICTION OF VICTIM'S PREFERENCE FOR CIVILIAN PROSECUTION.-If the victim of an alleged sex-related offense expresses a preference under paragraph (1) for prosecution of the offense in a civilian court, the convening authority described in paragraph (2) shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution.

"(4) NOTICE TO VICTIM OF STATUS OF CIVILIAN PROSECUTION WHEN VICTIM EXPRESSES PREFERENCE FOR CIVILIAN PROSECUTION.-Following notification of the civilian authority with jurisdiction over an alleged sex-related offense of the preference of the victim of the offense for prosecution of the offense in a civilian court, the convening authority shall be responsible for notifying the victim if the convening authority

Appendix H. Title 10 United States Code §1044e

learns of any decision by the civilian authority to prosecute or not prosecute the offense in a civilian court.

"(c) MODIFICATION OF MANUAL FOR COURTS-MARTIAL.-Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], Part III of the Manual for Courts-Martial shall be modified to provide that when a victim of an alleged sex-related offense has a right to be heard in connection with the prosecution of the alleged sex-related such offense, the victim may exercise that right through counsel, including through a Special Victims' Counsel under section 1044e of title 10, United States Code (as amended by subsection (a)).

"(d) NOTICE TO COUNSEL ON SCHEDULING OF PROCEEDINGS.-The Secretary concerned shall establish policies and procedures designed to ensure that any counsel of the victim of an alleged sex-related offense, including a Special Victims' Counsel under section 1044e of title 10, United States Code (as amended by subsection (a)), is provided prompt and adequate notice of the scheduling of any hearing, trial, or other proceeding in connection with the prosecution of such offense in order to permit such counsel the opportunity to prepare for such proceeding.

"(e) DEFINITIONS.-In this section:

"(1) The term 'alleged sex-related offense' has the meaning given that term in section 1044e(g) [now 1044e(h)] of title 10, United States Code.

"(2) The term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of such title."

IMPLEMENTATION

Pub. L. 113-66, div. A, title XVII, §1716(a)(4), Dec. 26, 2013, 127 Stat. 969 , provided that: "Section 1044e of title 10, United States Code, as added by paragraph (1), shall be implemented within 180 days after the date of the enactment of this Act [Dec. 26, 2013]."

ENHANCED TRAINING REQUIREMENT

Pub. L. 113-66, div. A, title XVII, §1716(b), Dec. 26, 2013, 127 Stat. 969 , provided that: "The Secretary of each military department, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, shall implement, consistent with the guidelines provided under section 1044e of title 10, United States Code, as added by subsection (a), in-depth and advanced training for all military and civilian attorneys providing legal assistance under section 1044 or 1044e of such title to support victims of alleged sex-related offenses."

**Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces**

Request for Information from Service Judge Advocates General

5 November 2021

**Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs)
and Rating Chains of Army SVCs**

I. Purpose

In response to a Congressional Inquiry, and on behalf of the Secretary of Defense, the DoD General Counsel requested in memoranda dated 5 October 2021 (attached with enclosures) and 2 November 2021 (attached with enclosure) that the Defense Advisory Committee on the Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) provide a report on the following topics by 5 April 2022:

1. Whether it is practical to adopt a minimum assignment length for SVC/VLC with appropriate exceptions for operational concerns.
2. Assess the rating chain for Army SVC officer evaluation reports; compare the Army SVC rating chains and those used in other Military Services' SVC/VLC programs; evaluate whether the rating chain for Army SVCs create an actual or apparent limitation on those SVCs' independence or ability to zealously represent their clients.
3. Provide any recommendations for change based on these studies.

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 DAC-IPAD 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 Staff Director requests the assistance of the Military Services to provide the requested information by the suspense dates indicated below to facilitate the DAC-IPAD's statutory requirement of providing advice to the Secretary of Defense on matters related to sexual assault in the armed forces.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

III. Suspense:

| Suspense | RFI | Proponent – Military Services |
|---------------|------------------------------|--|
| 29 Nov 2021 | Narrative Responses | Services' SVC/VLC Program Managers responses to questions in Section IV.1. |
| 29 Nov 2021 | SVCs/VLCs List | Services' SVC/VLC Program Managers responses to requested list in Section IV.2. |
| 29 Nov 2021 | Victims List | Services' SVC/VLC Program Managers responses to requested list in Section IV.3. |
| 6-17 Dec 2021 | Zoom Discussions | Services' SVC/VLC Program Managers |
| 6-17 Dec 2021 | Zoom Discussions | Current students with SVC/VLC experience at Services' JAG schools or civilian institutions |
| 6-17 Dec 2021 | Zoom Discussions | Current SVCs/VLCs practicing in the field |
| 6-17 Dec 2021 | Zoom or Telephone Interviews | Current or former military sexual assault victims who were represented by SVC/VLC |

IV. Information Requested

1. Questions for Services' SVC/VLC Program Managers

(S: 29 November 2021)

In addition to any general comments about this study, please respond to the following questions:

| | |
|---|--|
| 1 | Does your Service's SVC/VLC Program have minimum tour lengths for assigned SVCs? |
| 2 | <p>a. If there is a minimum tour length, what is the length?</p> <p>b. What directive or policy sets forth the length?</p> <p>c. What exceptions are available to end an SVC/VLC tour prior to the minimum?</p> <p>d. Who is the approval authority for making an exception?</p> |
| 3 | If there is no minimum tour length, what are the reasons your Service has not implemented minimum tour lengths? |
| 4 | What factors impact or influence the length of time a judge advocate can be assigned to serve as an SVC/VLC? |

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

| | |
|---|--|
| 5 | <p>a. Please describe the organizational supervisory and professional rating structure for SVC/VLC.</p> <p>b. Are supervisory and rating officials part of the local command where SVC/VLC are assigned or perform duties?</p> |
| 6 | <p>a. How are SVC/VLC selected and certified for assignment?</p> <p>b. What prerequisite experience must a judge advocate possess to serve as an SVC/VLC?</p> |
| 7 | What factors affect the availability of judge advocates to be assigned as SVC/VLC? |
| 8 | <p>a. How many judge advocates currently provide SVC/VLC services as their primary duty?</p> <p>b. Are they subject to other work assignments apart from their SVC/VLC duties?</p> <p>c. What are their current assignment locations (and how many at each location)?</p> <p>d. How many judge advocates currently provide SVC/VLC services as an additional or part-time duty?</p> <p>e. What are their current assignment locations (and how many at each location)?</p> |

1. Questions for Services' SVC/VLC Program Managers (cont.)

| | |
|----|---|
| 9 | What is the average rank/grade and time in service of SVC/VLC when they are selected? |
| 10 | <p>a. Please describe any training programs required before SVC/VLC are allowed to be certified to represent clients?</p> <p>b. What follow-on training do SVC/VLC receive?</p> |
| 11 | What metrics about SVC/VLC representation are routinely collected by each service or at the local level? |
| 12 | <p>a. Is SVC/VLC client satisfaction data collected/maintained?</p> <p>b. If collected, how many clients have reported dissatisfaction with the number of SVC/VLC representation changes they have experienced?</p> |
| 13 | <p>a. How is attorney-client representation by SVC/VLC initiated?</p> <p>b. How is it terminated?</p> <p>c. Are these actions memorialized or documented in some way?</p> |
| 14 | <p>a. Can SVC/VLC continue representation of a client after leaving an SVC/VLC billet?</p> <p>b. Under what circumstances?</p> |

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

| | |
|----|---|
| 15 | What is the average length of total representation time, from initiation to termination? |
| 16 | a. What is the average number of SVC/VLC assigned to each victim during the period of representation? b. How many clients does each SVC/VLC represent at a time, on average? |
| 17 | How often do represented clients dismiss their SVC/VLC and/or request a new counsel? |
| 18 | a. What statistics do you collect to track SVC/VLC potential for and success at promotion? b. How many former SVCs have achieved the rank of O-6? |
| 19 | a. How is the impact of vicarious trauma on SVC/VLC measured? b. How is the impact of vicarious trauma on SVC/VLC addressed, whether through services and support provided to the counsel or assignment considerations? c. How many SVC/VLCs in your Service have reported trauma? d. For those that reported vicarious trauma, what was their tour length and number of cases handled? e. Does your Service have a Subject Matter Expert that you have consulted on vicarious trauma as it pertains to SVCs/VLCs? f. If so (for Question 19e), did your SME render an opinion on the primary factor for vicarious trauma, whether the tour length, the number of cases, or a combination of both? |

2. SVCs/VLCs By Name Lists

(S: 29 November 2021)

Please provide the requested information in one Word document with three separate sections:

- a. Identify Service SVC/VLC Program Managers and provide their contact information;
- b. Identify all active duty judge advocates who were certified to provide SVC/VLC services, provided SVC/VLC representation in the past, and are currently attending courses at the Services' schools or at a civilian institution. Provide name of institution attending and contact information for each individual; and
- c. Identify all active duty judge advocates certified to provide SVC/VLC services and currently providing SVC/VLC representation to clients. Provide current billet location, time in position as SVC/VLC, and contact information for each individual.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

3. Victims Represented By SVC/VLC

(S: 29 November 2021)

Please provide the requested information in a Word document:

Identify four current or former military sexual assault victims from each Service who were represented by a SVC/VLC and are willing to be interviewed about their experience with their SVC/VLC. The interview will be conducted on an individual basis and occur in a non-attribution Zoom or telephone meeting. Provide current contact information including phone and/or email.

4. Information Sharing Discussions/Interviews

(S: 6 through 17 December 2021)

a. Group discussions will be held via Zoom in a non-attribution setting with the following three categories of judge advocates. These sessions will be scheduled by Mr. Pete Yob, DAC-IPAD staff project lead, during the first two weeks of December 2021. General topics/questions will be provided to the participants as an attachment to the Zoom invite:

(1) Military Services' SVC/VLC Program Managers;

(2) Students with SVC/VLC experience currently attending courses at the Army, Navy, and Air Force Justice Schools or a civilian institution;

(3) Current SVC/VLC practicing in the field.

b. Individual interviews will be held via Zoom or telephone with identified current or former military sexual assault victims. The interviews will be scheduled by Mr. Pete Yob, DAC-IPAD staff project lead, during the first two weeks of December 2021.

RFI 1 - Army Response



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON, DC 20310-2200

DAJA-ZA

1 December 2021

MEMORANDUM FOR Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

1. The Army's Special Victims' Counsel (SVC) are providing excellent representation to victims of sexual assault and domestic violence. Over the eight years that the SVC program has existed, it has continually improved and adjusted to provide the best service possible to our clients. To meet that goal, I have set a minimum tour length of 18 months for our SVCs. Additionally, I believe that local supervision combined with a technical chain of supervision provides the best training and support for SVCs and, as such, the best representation to our clients.
2. It is critically important that local Offices of the Staff Judge Advocate (OSJA) supervise our SVCs. This local supervision has allowed the program to independently represent clients, while also benefitting from on-the-ground supervision and support. At all SVC training, leaders emphasize the duty of the SVC to zealously and independently represent their clients. The SVC handbook's opening page states: "It is your primary duty to competently represent your client, even if his or her interests do not align with those of the government." (emphasis added) Their leadership receives the same training. The Judge Advocate General's Corps leadership from my office all the way down to the Chiefs of Legal Assistance¹ reinforce the message that that any concern SVCs have that their rating chain might hold their representation against them because their client's interests are not aligned with the Government's interests, must be reported through their technical chain to the SVC Program Manager. There has been no indication that the OSJA leadership or the chain of command has in any way restricted any SVC from fully and independently representing their clients.
3. Local Supervision: The Chief of Legal Assistance (CLA) supervises both SVCs and Legal Assistance Attorneys (LAAs). Unlike some of our sister Services, the Army's Legal Assistance Program includes robust representation of clients in substantive matters in opposition to their commands. For example, clients may request assistance filing an Article 138 complaint against their commander, rebutting allegations in an investigation or reprimand, or any other number of matters where the client's interests are directly opposed to the command interests. Despite this opposition, OSJAs fully support the legal assistance attorney's role. The well-established role of an LAA is to represent individual Soldiers rather than representing an organization – the Army or the command, for example. Lawyers representing the command and those representing individual Soldier and civilian clients are bound by ethical standards to represent clients and protect privileged communications. It is outlined in our professional responsibility regulation, AR 27-26.

¹ Offices call this position by several names: Chief of Legal Assistance; Chief of Client Services, or Chief, Soldier and Family Legal Services. They are interchangeable within this response.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

4. Technical Chain of Supervision. The Army SVC Program is organized into five geographic regions. Each region is supervised by a Regional Manager (RM), a senior SVC with military justice experience. Regional Managers provide technical support to the SVCs within their regions and are responsible for detailing SVCs to victims who request SVC services. The SVC Office of the Program Manager, a division of the Office of The Judge Advocate General (OTJAG), provides program oversight and technical supervision to the RMs and SVCs in the field. The SVC Program Manager reports to the Director, Soldier and Family Legal Services – a Senior Executive Service position within OTJAG.

5. The dual supervision of our SVCs provides benefits that cannot be replicated by either supervisory chain alone, as indicated below.

a. Local Legal Expertise. Residing within the OSJA provides SVCs with direct, immediate resources from senior colleagues who can provide guidance, mentorship, and support. The service SVCs provide their clients is often improved because more junior counsel are able consult with more experienced advocates who know the local resources and the commands in the areas in which they serve.

b. Client Relationship Expertise. As part of the Legal Assistance Office, SVCs are included in a legal community of lawyers and paralegals who similarly represent individual Soldiers, Retirees, and military dependents. No other legal organization within our military provides the robust and varied services as does the Army's LAAs. Thus, for decades these legal professionals have specialized in providing legal advice to our client population regardless of the interests of the local command. This expertise in addressing the concerns of both their military and civilian clients cannot be replicated and is critical to the mentorship and professional development of our SVCs. Retaining SVCs within this community enhances their sense of belonging.

c. Dual Representation. Legal Assistance Attorneys work in conjunction with SVCs to provide legal advice to victims. LAAs provide support to victims of domestic violence with respect to the victim's family law needs and other traditional legal assistance services. The LAAs then commonly seek support from their SVC teammates if/when a victim's case requires victim advocacy within the military justice system. Placing the two divisions that provide victim support together reinforces a holistic approach to legal services and improves quality of advice to the victim.

d. Accurate Assessment. Local supervision of SVCs allows experienced SJAs to select those best suited for these positions, move those who are not performing to standard out of the position, and to move and care for those suffering from burnout. This also allows SJAs to select and nominate personnel to be part-time SVCs from within their offices to support the SVC mission and reduce the work-load being managed by the full-time SVCs. Having leaders on the ground with the SVCs provides invaluable care to our advocates as they work through some of difficult situations and also allows for rapid and responsive decision making

6. Special Victims' Counsel are required to report any pressure to compromise their representation of a client by any member of their OSJA through their RM to the SVC Program

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

Manager. This requirement is emphasized at our annual and regional SVC training. Thus far, the program has received zero reports of attempted, perceived, or actual pressure from their OSJA.

7. The following information has been provided by our SVC Program team in response to the questions posed:

| | |
|---|---|
| 1 | Does your Service's SVC/VLC Program have minimum tour lengths for assigned SVCs? Yes. |
| 2 | <p>a. If there is a minimum tour length, what is the length? 18 months.</p> <p>b. What directive or policy sets forth the length? Army JAG Publication 1-1 includes this minimum tour length (pending publication).</p> <p>c. What exceptions are available to end an SVC/VLC tour prior to the minimum? Personal circumstances of the SVC or the needs of the Army provide exceptions to this minimum tour length.</p> <p>d. Who is the approval authority for making an exception? On behalf of TJAG, The SVC Program Manager and Chief of the Personnel, Plans, and Training Office are the approval authority to move an SVC prior to end of their assignment for compelling reasons.</p> |
| 3 | If there is no minimum tour length, what are the reasons your Service has not implemented minimum tour lengths? N/A |
| 4 | What factors impact or influence the length of time a judge advocate can be assigned to serve as an SVC/VLC? Personal and professional circumstances such as schooling, PCSing, level of performance, and career development are factors that may impact or influence tour length. The highest concerns when considering an early move of an SVC are their clients' needs and the SVC's health and well-being, which may be impacted by vicarious trauma or burn out. |

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

| | |
|---|--|
| 5 | <p>a. Please describe the organizational supervisory and professional rating structure for SVC/VLC. Regional Managers, experienced attorneys, provide technical supervision, mentorship, and training to SVCs. These Regional Managers also communicate directly with the SVC Program team regarding policy and any needed support. Chiefs of Legal Assistance (CLA) also supervise and evaluate SVCs. SVCs benefit from the CLA's experience forming and maintaining attorney-client relationships with both military and civilian personnel.</p> <p>b. Are supervisory and rating officials part of the local command where SVC/VLC are assigned or perform duties? The CLA and Regional Manager are rated by their SJA. Commanders are not involved in rating SVCs; SVCs are rated by the same legal professionals who mentor and supervise them.</p> |
| 6 | <p>a. How are SVC/VLC selected and certified for assignment? Under AR 27-3, SJAs nominate JAs who have demonstrated the maturity and good judgment to represent victims of sex-related offenses and/or domestic violence. All nominated JAs are vetted by the Professional Responsibility Branch for any pending or completed adverse actions or state bar actions. After completion of a Certification Course, The Judge Advocate General certifies individual JAs to represent victims.</p> <p>b. What prerequisite experience must a judge advocate possess to serve as an SVC/VLC? Under AR 27-3, JAs must possess prior military justice or civilian criminal law experience, or relevant experience that demonstrates the JA is the best qualified available officer to serve as an SVC. Upon assignment to an installation, SVCs receive additional training on criminal law in the local jurisdiction in order to advise clients who are entitled to submit jurisdictional preference opinions to the General Court-Martial Convening Authority.</p> |
| 7 | <p>What factors affect the availability of judge advocates to be assigned as SVC/VLC? Prior to nominating JAs to serve as SVC, SJAs take into account the long-term manning of their offices to meet all of their varied missions, the capabilities and experience levels of the JAs either assigned to or expected to join their offices, the interests expressed by those potential nominees, and any pending professional responsibility investigations regarding those same personnel. Professional responsibility allegations will postpone and/or prevent a JA from serving as an SVC.</p> |
| 8 | <p>a. How many judge advocates currently provide SVC/VLC services as their primary duty? The Army JAG Corps has 51 JAs providing SVC services to clients as their primary duty.</p> <p>b. Are they subject to other work assignments apart from their SVC/VLC duties? Generally, full-time SVCs are not tasked to take on non-SVC duties. However, in jurisdictions with low client populations, SVCs may take on other duties to gain broader experience.</p> |

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

c. What are their current assignment locations (and how many at each location)?

Full time SVCs are located at the following installations/locations:

1. Alaska (1)
2. Europe (3)
3. Fort Benning (1)
4. Fort Bliss (4)
5. Fort Bragg (4)
6. Fort Campbell (2)
7. Fort Carson (3)
8. Fort Drum (2)
9. Fort Gordon (1)
10. Fort Hood (5)
11. Fort Huachuca (1)
12. Fort Irwin (1)
13. Fort Leavenworth (1)
14. Fort Lee/Eustis (1)
15. Fort Leonard Wood (1)
16. Fort Polk (2)
17. Fort Riley (1)
18. Fort Sill (1)
19. Fort Stewart (2)
20. Hawaii (3)
21. Japan (1)
22. Joint Base Lewis McChord (4)
23. Joint Base San Antonio (1)
24. Korea (2)
25. Kuwait (1)
26. Military District of Washington (1)
27. US Military Academy (1)

d. How many judge advocates currently provide SVC/VLC services as an additional or part-time duty? **The Army JAG Corps has 30 JAs providing SVC services to clients as an additional duty.**

e. What are their current assignment locations (and how many at each location)?

1. Europe (10)
2. Fort Benning (1)
3. Fort Bragg (1)
4. Fort Campbell (1)
5. Fort Hood (1)
6. Fort Jackson (1)
7. Fort Knox (4)
8. Fort Riley (1)
9. Fort Rucker (1)
10. Fort Sill (1)
11. Korea (7)
12. US Military Academy (1)

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

| | |
|----|---|
| 9 | <p>What is the average rank/grade and time in service of SVC/VLC when they are selected? The average rank of an SVC is CPT/O3. The SVC Office of the Program Manager does not currently track time in service of SVCs.</p> |
| 10 | <p>a. Please describe any training programs required before SVC/VLC are allowed to be certified to represent clients? All approved JAs must complete the Special Victims' Counsel Certification Course (1 week) before they are authorized to represent adult sex-related or domestic violence victim clients. They must also complete the child certification course (1 week) before taking on child clients. This two-week course includes: blocks of instruction taught by law professors on substantive law such as rules of evidence impacting victims' privacy, panel discussions led by former victim clients about how their SVC impacted their experience, panel discussions led by former SVCs sharing lessons learned, panel discussion led by other stakeholders in the investigative and support process such as criminal investigators and Family Advocacy Program providers, and expert speakers about the impacts of trauma on victim clients and on child development. Students leave the course with resources enabling them to provide premier representation to their clients.</p> <p>b. What follow-on training do SVC/VLC receive? SVCs must also complete training about the state-specific resources and practices relevant to their duty assignment location and online training on the CATCH program. Additionally, SVCs are required to attend annual regional training. This regional training is organized by the Regional Managers and thus able to address the needs of that region and to include the stakeholders from within that region. Recent training included classes from mental health providers, judges, SJAs, defense counsel, investigators, and prosecutors all sharing their insights from experience at their installations. The regional training also provided emphasis on complicate areas of practice such as filing motions to protect their clients' mental health records. This regional training ensures SVCs are continuing to learn about the resources available to themselves and their clients.</p> |
| 11 | <p>What metrics about SVC/VLC representation are routinely collected by each service or at the local level? See attached sample SVC Quarterly Regional Report.(Enclosure 1)</p> |

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

| | |
|----|---|
| 12 | <p>a. Is SVC/VLC client satisfaction data collected/maintained? Yes. All client provided feedback is maintained by both the Regional Manager and SVC Program Office (SVOPM). Prior to termination of representation, clients are provided with an optional electronic exit survey on their experience with their SVC. Clients submit completed surveys to the SVCOPM through the Regional Manager. The SVCOPM is currently developing an online survey that clients may complete by following a customized URL and submitting directly to the SVCOPM. The online survey is projected to go live during 2d Quarter in FY22.</p> <p>b. If collected, how many clients have reported dissatisfaction with the number of SVC/VLC representation changes they have experienced? No client who has submitted a survey response has indicated any dissatisfaction with SVC representation.</p> |
| 13 | <p>a. How is attorney-client representation by SVC/VLC initiated? All personnel authorized to receive a report, medical, investigative, or victim support personnel, inform victims of their right to consult with a SVC. As soon as a victim requests a SVC, the support SVC team is notified and a detailed SVC contacts the victim client within 72 hours. The attorney-client relationship is then memorialized by a scope of representation as described in the SVC Handbook, 5th ed. Chapter 4.</p> <p>b. How is it terminated? Once all investigative and military disposition processes are completed, the SVC meets with the client to ensure they are still receiving necessary services, understand the processes that are now completed, and then explains A letter of termination is given to the client as described in the SVC Handbook, 5th ed. Chapter 11.</p> <p>c. Are these actions memorialized or documented in some way? Yes.</p> |
| 14 | <p>a. Can SVC/VLC continue representation of a client after leaving an SVC/VLC billet? Yes.</p> <p>Under what circumstances? SVCs with a pending PCS or reassignment may wish to continue representing a client after transitioning out of the SVC position. For example, a client's court-martial may be scheduled for soon after the SVC's planned reassignment. These situations are rare and require an exception to policy request submitted through the SVC's current SVC RM and approved by the Chief, SVC Program. Exceptions to policy are granted on a case-by-case basis after consultation with the SVC's SJA.</p> |
| 15 | <p>What is the average length of total representation time, from initiation to termination? to protect attorney-client privilege, the SVCOPM does not track client information and this data is not available. However, with examples from each region of a recently terminated post-trial client, the average representation time was 10 months. Additionally, please see attached chart showing normal representation timelines. (Enclosure 2)</p> |

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

| | |
|----|--|
| 16 | <p>a. What is the average number of SVC/VLC assigned to each victim during the period of representation? As the SVCOPM does not track client information, this data is not available. However, with examples from each region of a recently terminated post-trial client, the average number of SVCs detailed to each client was 2. The average number of months each client was represented by the SVC program was 10 months.</p> <p>b. How many clients does each SVC/VLC represent at a time, on average? While the number of clients represented by any one SVC fluctuates, at the end of FY21, the average clients per SVC at that time was roughly 18. Total clients being represented on 30 September 2021 was 1455, represented by 78 different SVCs who had anywhere from 1 client to 49 clients. This represents a snapshot and does not account for the great variance in activity across the Army.</p> |
| 17 | <p>How often do represented clients dismiss their SVC/VLC and/or request a new counsel? This matter is normally handled by regional managers and chiefs of client services. However, a survey of regional managers indicated that over the course of FY21, 10 clients requested new counsel or dismissed their SVC. This represents about 2% of the clients represented in FY21.</p> |
| 18 | <p>a. What statistics do you collect to track SVC/VLC potential for and success at promotion? We do not collect statistics regarding promotion rates of SVCs within the SVC Program. However, TJAG stresses to SJAs across our force that to recruit our best officers for these positions, they must emphasize the importance of the position and how it is part of a path towards success. SJAs also strive to provide the evaluations and support necessary for great follow-on assignments and promotion for those officers as they complete their tour as an SVC.</p> <p>b. How many former SVCs have achieved the rank of O-6? At this stage, no SVCs have been eligible for promotion to O6. However, a review of all those certified as SVC since 2013 (Enclosure 3) shows the vast majority have been promoted to major or lieutenant colonel. Serving as an SVC is a career enhancing assignment.</p> |
| 19 | <p>a. How is the impact of vicarious trauma on SVC/VLC measured? This matter is handled at the lowest level possible and not tracked to avoid any stigmatization, fear of getting help, or violations of privacy protections.</p> <p>b. How is the impact of vicarious trauma on SVC/VLC addressed, whether through services and support provided to the counsel or assignment considerations? SVCs are provided resources and training and the support of their supervisory chain in the field. Supervision through the local OSJA and Client Services Offices ensures that experienced senior legal leaders regularly observe and "check-in" with SVCs. Without this local supervision, the 79 SVCs spread across the world would not have that local senior leader available to monitor them and offer support and services when needed.</p> |

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

c. How many SVC/VLCs in your Service have reported trauma? **See 19a above.**

d. For those that reported vicarious trauma, what was their tour length and number of cases handled? **See 19a above.**

e. Does your Service have a Subject Matter Expert that you have consulted on vicarious trauma as it pertains to SVCs/VLCs? We do not consult on a case by case basis due to privacy concerns and to avoid any stigmatization, fear of getting help, or violations of privacy protections. However, as part of certification and annual training, experts speakers provide training on vicarious trauma and burn out, the sign of these impacts, coping mechanisms, and available sources for help and treatment. Further, the JAG Corps, who is focused on its people and their wellness, recently fielded a survey designed to assess the wellness of military justice practitioners. This survey will guide and shape broader efforts across the JAG Corps to ensure we are taking the best care of all of our people by developing initiatives and providing resources responsive to the needs of our personnel.

f. If so (for Question 19e), did your SME render an opinion on the primary factor for vicarious trauma, whether the tour length, the number of cases, or a combination of both? **N/A**

8. Below is contact information for personnel meeting the requirements for requested interviews by DAC-IPAD members.

a. Army SVC Program Manager:

LTC Carol Brewer
571-256-7997
carol.a.brewer12.mil@army.mil

b. All active-duty Army Judge Advocates certified to provide SVC services in the past currently attending either schooling at The Judge Advocate General's Legal Center and School, a civilian master's program, or serving as faculty at The Judge Advocate General's Legal Center and School are listed in Enclosure 4.

c. All active-duty Army Judge Advocates certified to provide SVC services and currently providing SVC representation to clients are listed in Enclosure 5.

d. Four current or former military sexual assault victims who were represented by an Army SVC and are willing to be interviewed about their experience with their SVC/VLC and their current contact information is included at Enclosure 6.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

9. I will continue to review reports from SVCs, to consider all feedback from victim clients, to conduct regional trainings with SVCs, to seek ideas and suggestions from our sister services, AJSs, and Chief of Client Services, and to ask all our leaders for their thoughts as they supervise and support our SVCs in their important mission. Thus far, nothing in our practice has indicated a need to remove SVCs from the local OSJAs.

10. The point of contact for this action is LTC Carol A. Brewer, Chief, SVC Program, at (571) 256-7997 and carol.a.brewer12.mil@mail.mil.



STUART W. RISCH
Lieutenant General, USA
The Judge Advocate General

Encs

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

RFI 1 – Air Force Response

1. Questions for Services' SVC/VLC Program Managers

In addition to any general comments about this study, please respond to the following questions:

1. Does your Service's SVC/VLC Program have minimum tour lengths for assigned SVCs? No, Victims' Counsel (VCs) have no minimum tour length. However, it is standard practice to assign qualified JAGs as VCs for 2-3 year tours.

2a. If there is a minimum tour length, what is the length?

The Judge Advocate General (TJAG) has sole authority to assign judge advocates (JAGs) to their positions in accordance with 10 USC 806 and 9037. It is standard practice to assign qualified JAGs as VCs for 2-3 year tours.

2b. What directive or policy sets forth the length?

There is no directive setting forth the length of tour for a JAG, VC or otherwise. TJAG has sole authority to assign JAGs to their positions in accordance with 10 USC 806 and 9037. It is standard practice to assign qualified JAGs as VCs for 2-3 year tours.

2c. What exceptions are available to end an SVC/VLC tour prior to the minimum?

As stated above there is no minimum, but standard practice is to assign a JAG to a 2-3 year VC tour. TJAG has sole authority to end a tour whenever the need arises.

2d. Who is the approval authority for making an exception?

TJAG has sole assignment decision authority.

3. If there is no minimum tour length, what are the reasons your Service has not implemented minimum tour lengths?

There are no minimum tour lengths in order to allow maximum flexibility for TJAG to make assignment decisions based on mission needs, the needs of the Air Force, and the needs of individual VCs (e.g., personal and professional development, separation or retirement, burn-out avoidance).

4. What factors impact or influence the length of time a judge advocate can be assigned to serve as an SVC/VLC?

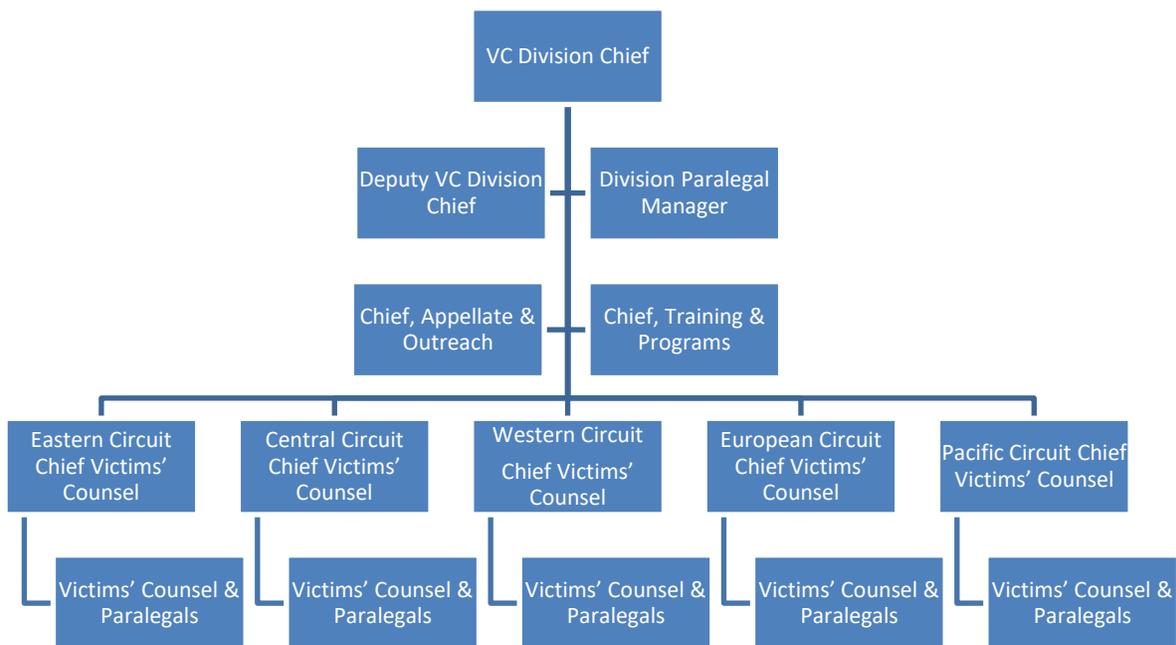
There are several factors that may impact/influence the length of time a JAG can be assigned to serve as VC. Factors may include: personal needs (e.g., Exceptional Family Member Program/medical needs of family members/Join Spouse requests); professional development needs for both the current VC and the JAG Corps as a whole (e.g., the need to allow more JAGs to become VCs and gain experience and cultivate their skills; sending

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

graduated VCs to assignments where they will have more responsibilities and be expected to lead and mentor junior JAGs); burn-out avoidance/mitigation (i.e. vicarious trauma); and separation or retirement of the VC from the Air Force.

5a. Please describe the organizational supervisory and professional rating structure for SVC/VLC.

All Victims' Counsel Division (VCD) personnel are assigned or detailed to the Military Justice and Discipline/Victims' Counsel Division (JAJS; an O-6); who reports to The Director, Military Justice and Discipline (AF/JAJ; an O-7); who reports to The Judge Advocate General (AF/JA; an O-9). The structure of the Division is as follows:



5b. Are supervisory and rating officials part of the local command where SVC/VLC are assigned or perform duties?

VCs and victims' paralegals (VPs) operate independently from the local supervisory chain of command. However, as tenant units, VCs and VPs receive an annual budget, which covers their operating costs, and certain other administrative and logistical support from the host installation.

6a. How are SVC/VLC selected and certified for assignment?

JAGs who are interested and/or appear to be the best-qualified candidates to become VCs are identified by their current/past supervisors, and nominated to be assigned to a VC position. All of the nominations follow a standard format, and answer standard questions about aptitude and readiness to take on such a demanding and skillful job. Those nominations are sent to the AF JAG Corps Office of Professional Development where they are consolidated and sent to the Chief of the VC program (an O-6 AF JAG) for evaluation and vetting. Candidates

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

identified through that process as possessing the right skills, maturity, and demeanor, among other traits, are then forwarded back to the Office of Professional Development who take the candidates that made the quality cut to TJAG for consideration. TJAG makes the decision on whether the specific person meets the “best qualified” standard to be a VC and, if TJAG believes they do, they are assigned to be a VC.

In accordance with 10 USC 1044e(d) and DAFI 51-201 (incorporating Guidance Memorandum 2021-02, dated 15 April 2021, paragraph 24.3.1), TJAG designates and certifies JAGs as competent to perform the duties of a CCVC or VC. VCs are certified for assignment if they (1) have been certified as trial and defense counsel under Article 27(b), UCMJ, and (2) have successfully completed a DoD SVC certification course that complies with all guidance promulgated by the DoD regarding SVC training requirements. Each incoming VC and CCVC completes either the Air Force or Army SVC course prior to representing clients.

6b. What prerequisite experience must a judge advocate possess to serve as an SVC/VLC?

The AF JAG Corps takes a comprehensive approach to evaluating whether a JAG possesses the requisite qualities to be a VC. Among those are: court-martial experience; interpersonal qualities, leadership qualities, and training. We seek the best-qualified candidates to serve in VC positions. A “best qualified” candidate is one who possesses excellent character and fitness, has demonstrated a firm grasp of the military justice process, and has the ability to handle the demands of representing geographically separated clients on highly sensitive matters while responsibly managing an office with limited oversight. This standard requires the candidate to demonstrate strong organization and time management skills, reliability, maturity, civility, professionalism, and leadership while working in an autonomous environment. Any allegations of sub-standard performance or inappropriate behavior must be specifically addressed in detail, and provided to the AF JAG Corps’ Office of Professional Development when submitting the nomination for the candidate. Substantiated allegations are a disqualifier for these highly selective positions.

7. What factors affect the availability of judge advocates to be assigned as SVC/VLC?

All of the factors listed above affect the availability of judge advocates to be assigned as VCs. Additionally, the finite number of positions available at any given time limits the number of JAGs who can be assigned as a VC.

8a. How many judge advocates currently provide SVC/VLC services as their primary duty?

Fifty-seven total: 51 VCs, 5 CCVCs, and 1 civilian.

8b. Are they subject to other work assignments apart from their SVC/VLC duties?

No VCs are subject to other work assignments apart from VC duties.

8c. What are their current assignment locations (and how many at each location)?

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

| | |
|---|------------------------------------|
| Aviano AB, Italy: 1 VC | Minot AFB, ND: 1 VC |
| Barksdale AFB, LA: 1 VC | Moody AFB, GA: 1 VC |
| Beale AFB, CA: 1 VC | Mountain Home AFB, ID: 1 VC |
| Cannon AFB, NM: 1 VC | Nellis AFB, NV: 1 VC |
| Davis-Monthan AFB, AZ: 1 VC | Offutt AFB, NE: 1 VC |
| Dover AFB, DE: 1 VC | Osan AB, Korea: 1 VC |
| Ellsworth AFB, SD: 1 VC | Peterson-Schriever GAR, CO: 2 VCs |
| Goodfellow AFB, TX: 1 VC | RAF Lakenheath, UK: 1 VC |
| Hill AFB, UT: 1 VC | Ramstein AB, Germany: 1 CCVC, 1 VC |
| Holloman AFB, NM: 1 VC | Robins AFB, GA: 1 VC |
| Hurlburt Field, FL: 2 VCs | Scott AFB, IL: 1 VC |
| JB Elemendorf-Richardson, AK: 1 VC | Seymour Johnson AFB, NC: 1 VC |
| JB Lewis-McChord, WA: 1 VC | Shaw AFB, SC: 1 VC |
| JB McGuire-Dix-Lakehurst: 1 VC | Sheppard AFB, TX: 1 VC |
| JB Pearl Harbor-Hickam, HI: 1 VC | Tinker AFB, OK: 1 VC |
| JB San Antonio-Fort Sam Houston, TX: 1 VC | Travis AFB, CA: 1 CCVC, 1 VC |
| JB San Antonio-Lackland, TX: 2 VCs | Tyndall AFB, FL: 1 VC |
| JB San Antonio-Randolph, TX: 1 CCVC | US Air Force Academy, CO: 1 VC |
| Kadena AB, Japan: 1 CCVC, 1 VC | Vandenberg AFB, CA: 1 VC |
| Keesler AFB, MS: 1 VC | Whiteman AFB, MO: 1 VC |
| Kirtland AFB, NM: 1 VC | Wright-Patterson AFB, OH: 1 VC |
| Little Rock AFB, AR: 1 VC | Yokota AB, Japan: 1 VC |
| MacDill AFB, FL: 1 VC | |
| Malmstrom AFB, MT: 1 VC | |

8d. How many judge advocates currently provide SVC/VLC services as an additional or part-time duty?

Air Force VCs do not provide services in an additional or part-time capacity.

8e. What are their current assignment locations (and how many at each location)?

Not applicable.

9. What is the average rank/grade and time in service of SVC/VLC when they are selected?

As described above, the JAG Corps take a comprehensive approach to evaluating whether a JAG possesses the requisite qualities to be a VC. Typically, VCs are O-3s/O-4s with 3-6 years in service at the time of selection.

10a. Please describe any training programs required before SVC/VLC are allowed to be certified to represent clients?

Before representing clients, VCs are required to successfully complete a DoD SVC certification course that complies with all guidance promulgated by the DoD regarding SVC

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

training requirements. The Air Force SVC Course is a 10-day course taught at the Air Force JAG School, Maxwell Air Force Base, AL. The Air Force SVC Course provides detailed and comprehensive training on subjects such as the Attorney-Client relationship, child representation, victim reporting options, the Air Force Office of Special Investigations (law enforcement) interview and investigation, client disposition and jurisdiction preferences, referral of charges, preliminary hearings, referral of charges, alternate dispositions, VC trial practice, post-trial representation, administrative actions, and victim support services. This course focuses on victims of sexual assault and domestic violence.

10b. What follow-on training do SVC/VLC receive?

VCs attend yearly training at the Circuit Advocacy Training (CAT), a 4-day training program hosted in each of the Air Force trial circuits (Eastern, European, Central, Pacific, and Western) for VCs, Area Defense Counsel (ADCs) and Trial Counsel. The CAT program consists of VC-only training on current topics relevant to VC practice, appellate updates, and joint presentations (with ADCs and Trial Counsel) on issues of common concern, such as Professional Responsibility and feedback by Military Judges.

Approximately 15 VCs a year also receive training at the US Army Military Police School Special Victims Unit Investigations Course (USAMPS SVCC) in Fort Leonardwood, Missouri. This is a 10-day in-person course that includes lessons on the legal aspects of Article 120, UCMJ, sexual offenders, alcohol-facilitated sexual assaults, the impact of sexual assault, male victimization, male sexual assault, collecting forensic psychophysiological evidence, and overcoming the consent defense. Special focus is on the forensic experiential trauma interview (FETI) technique. The course includes a FETI demonstration and practical exercises.

VCs and VPs attend a number of different trainings offered both through the military and civilian community, these include, the National Crime Victim Law Institute's (NCVLI) conference, annual Joint Appellate Advocacy Training (JAAT), Training by Reservists in Advocacy and Litigation course, Sex Crimes Investigator Training Program, Advanced Sexual Assault Litigation Course (ASALC), the Victim Witness Assistance Program Symposium, and Navy Crime Victim Training.

The VC Division also conducts training via on-line platforms on a monthly basis to ensure continued proficiency and enhancement of knowledge and skills. Monthly training topics included Domestic Violence Clients Lessons Learned, Expedited Transfers, Professional Development, Pre-Trial Confinement, The Office of Disability Counsel and The Disability Evaluation System, and Practical Pointers after One Year as a VC/VP. Each monthly training is recorded and made available to Division personnel who are unable to attend the live broadcast.

11. What metrics about SVC/VLC representation are routinely collected by each service or at the local level?

The Air Force JAG Corps' Military Justice Law and Policy Division (JAJM) conducts outgoing surveys on victim satisfaction rates with the military justice system. As a part of that, data collected on VC representation includes: number of clients represented by VC; length of

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

time from requested representation to VC contact; whether VC explained scope of representation; issues VC assisted victim with; satisfaction with VC at various hearings; and whether victim would recommend other victims to request a VC.

12a. Is SVC/VLC client satisfaction data collected/maintained?

Yes, by the Military Justice Law and Policy Division (JAJM).

12b. If collected, how many clients have reported dissatisfaction with the number of SVC/VLC representation changes they have experienced?

The VC Division does not have specific data on clients who have been dissatisfied with VC representation changes. Representation changes are very rare to begin with, and there are no survey questions or reporting requirements directly related to this issue.

13a. How is attorney-client representation by SVC/VLC initiated?

Upon detail, a Victims' Counsel meets with the client and advises on the Scope of Representation and executes the scope of representation.

13b. How is it terminated?

Based on the facts and circumstances of a case, Victims' Counsel will complete a termination memorandum with the client.

13c. Are these actions memorialized or documented in some way?

Yes, both actions are documented in memoranda and signed by both Victims' Counsel and client.

14a. Can SVC/VLC continue representation of a client after leaving an SVC/VLC billet?

Yes, under limited circumstances, VC may continue representation of a client after leaving the VC assignment.

14b. Under what circumstances?

Generally speaking, when it is to the client's benefit and the client requests the VC to continue representing the client, a VC will continue representation as long as no conflict exists. Positions where a conflict could occur include an assignment as a senior prosecutor, a defense counsel, an appellate counsel, or a military judge.

15. What is the average length of total representation time, from initiation to termination?

This data is not collected.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

16a. What is the average number of SVC/VLC assigned to each victim during the period of representation?

All efforts are made to ensure a client only has one VC during their representation; however, when conflicts arise every effort is made to ensure only one additional VC is assigned. It is rare for a single client to have more than one or two VCs.

16b. How many clients does each SVC/VLC represent at a time, on average?

On average, VCs represent 22-25 clients at any given time.

17. How often do represented clients dismiss their SVC/VLC and/or request a new counsel?

This data is not collected.

18a. What statistics do you collect to track SVC/VLC potential for and success at promotion?

The Air Force JAG Corps does not collect any statistics for any prior/current assignments as they relate to potential for promotion. Success at promotion boards results from the application of the whole-person concept to assess all factors in an officer's record that bear on promotion potential. The Memorandum of Instruction (and attachments) provided by SecAF to all promotion board members includes specific language on the importance of SVCs.

18b. How many former SVCs have achieved the rank of O-6?

The Department of the Air Force SVC Program was introduced as a pilot program on 28 January 2013 with 60 part-time Special Victims' Counsel who were still assigned to and performing duties in installation-level legal offices. On 1 June 2013, the program was fully implemented with 24 full-time SVCs under an independent chain of command. Of the personnel who have served as full-time SVCs, none have been eligible to meet their O-6 board based on their time in service.

19a. How is the impact of vicarious trauma on SVC/VLC measured?

The impact of vicarious trauma is not measured. Addressing and assisting with vicarious trauma and the effects of burnout are regularly taught at all training events.

19b. How is the impact of vicarious trauma on SVC/VLC addressed, whether through services and support provided to the counsel or assignment considerations?

The Division participates in vicarious trauma training, and provides instruction on vicarious trauma during the SVC Course. Division members are encouraged to seek help if experiencing issues related to stress or trauma, and work schedules and/or client loads may be adjusted as needed to assist in recovery. Further, Chief Circuit Victims' Counsel must routinely check-in with subordinate VCs and VPs, and up-channel any mission impacts or need for additional resources. While each installation will have its own local self-care and resilience

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

resources, common resources include Military One Source, Mental and Behavioral Health, community resources, and the supervisory chain.

19c. How many SVC/VLCs in your Service have reported trauma?

Members are encouraged to seek help for vicarious trauma, however, the Division does not mandate reporting or retain reports of vicarious trauma through the JAJIS supervisory chain.

19d. For those that reported vicarious trauma, what was their tour length and number of cases handled?

Members are encouraged to seek help for vicarious trauma, however, the Division does not mandate reporting or retain reports of vicarious trauma through the JAJIS supervisory chain.

19e. Does your Service have a Subject Matter Expert that you have consulted on vicarious trauma as it pertains to SVCs/VLCs?

Yes, the Air Force Office of Special Investigations has psychologists who specialize in vicarious trauma and trauma-informed care. AFOSI teaches at the annual SVC certification course.

19f. If so (for Question 19e), did your SME render an opinion on the primary factor for vicarious trauma, whether the tour length, the number of cases, or a combination of both?

This has not been discussed with the SME.

2. SVCs/VLCs By Name Lists

Please provide the requested information in one Word document with three separate sections:

a. Identify Service SVC/VLC Program Managers and provide their contact information;

[REDACTED]

b. The following are names of active duty judge advocates who were previous SVCs and are currently attending school:

- [REDACTED] – Air Command and Staff College, Maxwell AFB
[REDACTED]
- [REDACTED] – Air Command and Staff College, Maxwell AFB
[REDACTED]
- [REDACTED] – Air Command and Staff College, Maxwell AFB
[REDACTED]
- [REDACTED] – George Washington University (LL.M. program)
[REDACTED]

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

- [REDACTED] – The Army Judge Advocate General’s Legal Center and School (LL.M. program) [REDACTED]
- [REDACTED] – George Washington University (LL.M. program) [REDACTED]
- [REDACTED] – George Washington University (LL.M. program) [REDACTED]
- [REDACTED] – The Army Judge Advocate General’s Legal Center and School (LL.M. program) [REDACTED]
- [REDACTED] – The Army Judge Advocate General’s Legal Center and School (LL.M. program) [REDACTED]
- [REDACTED] – The Army Judge Advocate General’s Legal Center and School (LL.M. program) [REDACTED]

c. Identify all active duty judge advocates certified to provide SVC/VLC services and currently providing SVC/VLC representation to clients. Provide current billet location, time in position as SVC/VLC, and contact information for each individual.

Please see attached.

3. Victims Represented By SVC/VLC

Please provide the requested information in a Word document:

Identify four current or former military sexual assault victims from each Service who were represented by a SVC/VLC and are willing to be interviewed about their experience with their SVC/VLC. The interview will be conducted on an individual basis and occur in a non-attribution Zoom or telephone meeting. Provide current contact information including phone and/or email

[Not included here to protect personal privacy]

| Primary or Alternate | VC | Client’s Name and Status | Client’s contact Info | Nature of Offense |
|-----------------------------|-----------|---------------------------------|------------------------------|--------------------------|
| Primary | | | | |
| Alternate | | | | |

4. Information Sharing Discussions/Interviews

a. Group discussions will be held via Zoom in a non-attribution setting with the following three

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

categories of judge advocates. These sessions will be scheduled by Mr. Pete Yob, DAC-IPAD staff project lead, during the first two weeks of December 2021. General topics/questions will be provided to the participants as an attachment to the Zoom invite:

(1) Military Services' SVC/VLC Program Managers;

[REDACTED]

(2) Students with SVC/VLC experience currently attending courses at the Army, Navy, and Air Force Justice Schools or a civilian institution;

- [REDACTED] – Air Command and Staff College, Maxwell AFB
- [REDACTED] – Air Command and Staff College, Maxwell AFB
- [REDACTED] – Air Command and Staff College, Maxwell AFB
- [REDACTED] – George Washington University (LL.M. program)
- [REDACTED] – The Army Judge Advocate General's Legal Center and School (LL.M. program)
- [REDACTED] – George Washington University (LL.M. program)
- [REDACTED] – George Washington University (LL.M. program)
- [REDACTED] – The Army Judge Advocate General's Legal Center and School (LL.M. program)
- [REDACTED] – The Army Judge Advocate General's Legal Center and School (LL.M. program)
- [REDACTED] – The Army Judge Advocate General's Legal Center and School (LL.M. program)

(3) Current SVC/VLC practicing in the field.

Primary:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

Alt:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

RFI 1 – U.S. Marine Corps Response



UNITED STATES MARINE CORPS
VICTIMS' LEGAL COUNSEL ORGANIZATION
JUDGE ADVOCATE DIVISION
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:
5800
VLCO
29 Nov 21

From: Chief Victims' Legal Counsel of the Marine Corps
To: Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

Subj: RESPONSE TO REQUEST FOR INFORMATION

Ref: (a) DAC-IPAD ltr of 5 Nov 21

Encl: (1) Narrative Responses
(2) List of SVC/VLC by Name
(3) List of Represented Victims

1. This is in response to the request for information in paragraph 2 of the reference.
2. Enclosure (1) is the narrative responses to the questions in paragraph IV.1 of enclosure (3) of the reference.
3. Enclosure (2) is the list of SVC/VLC by name as requested in paragraph IV.2 of enclosure (3) of the reference.
4. Enclosure (3) is the list of victims represented by SVC/VLC as requested in paragraph IV.3 of enclosure (3) of the reference.
5. Point of contact is the undersigned at (703) 693-9524; yong.lee@usmc.mil.

LEE.YONG.JOON.1 Digitally signed by
242551628 LEE.YONG.JOON.1242551628
Y. J. LEE Date: 2021.11.29 19:40:51 -05'00'

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

MARINE CORPS VICTIMS' LEGAL COUNSEL ORGANIZATION ENCLOSURE (1): NARRATIVE RESPONSES PARAGRAPH IV.1. QUESTIONS FOR SERVICES' SVC/VLC PROGRAM MANAGERS

Question 1. Does your Service's SVC/VLC Program have minimum tour lengths for assigned SVCs?

Response: While there is no mandatory minimum tour length for a Marine VLC at this time, the Marine Corps strives to assign a qualified and certified Marine judge advocate (JA) to serve as a VLC for two years to the extent practicable.

Questions 2a-d (below).

Question 2a. If there is a minimum tour length, what is the length?

Response: Please see response to question 1 above.

Question 2b. What directive or policy sets forth the length?

Response: Marine Corps Order 5800.16 (Legal Services and Administration Manual) with Change 7, Volume 4 (Victims' Legal Counsel Organization), as revised on 26 August 2021, at paragraph 010801, sets out the Service's goal to assign a qualified and certified Marine JA to serve as a VLC for two years.

Question 2c. What exceptions are available to end an SVC/VLC tour prior to the minimum?

Response: A Marine JA's VLC tour may end prior to achieving two years in the billet for various reasons, including reassignment based on the needs of the Marine Corps and other circumstances (e.g., being selected for resident PME, curtailment of orders based on the VLC's request, or the VLC resigning commission to leave active duty).

Question 2d. Who is the approval authority for making an exception?

Response: If circumstances arise that require curtailment of a VLC assignment, the Officer in Charge (OIC) of the responsible Legal Services Support Section (LSSS) or Legal Services Support Team (LSST) will coordinate with the responsible Regional Victims' Legal Counsel (RVLC) and Chief Victims' Legal Counsel of the Marine Corps (CVLC) to establish a new end of tour date and determine the way ahead, including identification of Marine JA nominee(s) to replace the outgoing VLC.

Question 3. If there is no minimum tour length, what are the reasons your Service has not implemented minimum tour lengths?

Response: As noted above, the Marine Corps strives to assign a qualified and certified Marine JA to serve as a VLC for two years to the extent practicable. However, this goal

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

has not yet been mandated, because there are various factors that influence the length of time a Marine JA can be assigned to serve as a VLC. Please see response to question 4 below.

Question 4. What factors impact or influence the length of time a judge advocate can be assigned to serve as an SVC/VLC?

Response: Various factors impact or otherwise influence the length of time a Marine JA can be assigned to serve as an SVC/VLC. This includes:

- The Marine JA's rank, experience, expertise, and suitability for specialized, overseas or CONUS assignment(s).
- The Marine JA's assignments prior to being nominated to serve as a VLC (e.g., a Marine JA may be assigned as a legal assistance attorney and not have the necessary qualifications and training completed to be certified to serve as a VLC.)
- The time needed for a Marine JA to obtain qualifications and training necessary to serve as a VLC. The Marine JA will need to get the necessary qualifications and training to become a VLC (e.g., Marine VLC must have at least six months of litigation experience, including at least one contested case, and must have attended an approved certification course.)
- The Marine JA's remaining time on station (TOS) upon his or her being nominated and ultimately becoming certified to serve as a VLC (e.g., the Marine JA may have less than two years remaining on TOS prior to becoming eligible for PCS/PCA.)
- The Marine JA being selected for resident PME and/or other boards (e.g., command), which may require the Marine JA to PCS/PCA early.
- The Marine JA's request for curtailment of orders based on personal reasons.
- The Marine JA's remaining active duty contractual obligation, which may be less than two years upon assignment as a VLC (i.e., the Marine JA may request to resign his or her commission to leave active duty prior to completing a two year tour as a VLC).
- Needs of the Marine Corps (e.g., need to fill other critical military justice billets or deployment requirements.)

Questions 5a-b (below).

Question 5a. Please describe the organizational supervisory and professional rating structure for SVC/VLC.

Response: On behalf of the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC), the CVLC serves as the OIC of the Marine Corps Victims' Legal Counsel Organization (VLCO) and is responsible for the delivery of victims' legal services throughout the Marine Corps. Marine Corps victims' legal services are performed under the supervision of the CVLC and provided by commissioned officers who are licensed attorneys, certified under Article 27(b) and sworn under Article 42(a) of the Uniform Code of Military Justice (UCMJ), assigned to VLCO billets, and certified by the SJA to CMC in accordance with 10 U.S.C. § 1044e as qualified to serve as VLC. The

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

VLC serve at locations throughout the Marine Corps and are administratively attached to LSSSs/LSSTs. The VLC are under the functional supervision of, and responsible and accountable to, the CVLC and the responsible RVLC for the delivery of victims' legal services within their respective regions.

The VLC's reporting senior is the RVLC and the reviewing officer is the CVLC.

The RVLC's reporting senior is the CVLC and the reviewing officer is the Deputy SJA to CMC (DSJA to CMC).

The SJA to CMC serves as both the reporting senior and reviewing officer for the CVLC.

Question 5b. Are supervisory and rating officials part of the local command where SVC/VLC are assigned or perform duties?

Response: No.

Questions 6a-b (below).

Question 6a. How are SVC/VLC selected and certified for assignment?

Response: The OICs of LSSSs/LSSTs nominate a Marine JA to serve as a VLC based on performance, experience, and demeanor. The nominated Marine JA must meet certain requirements as noted in response to question 6b below and must also undergo a sensitive screening process. The sensitive screening process includes, at a minimum, a review of the Officer Disciplinary Notebook and the nominee's Official Military Personnel File. The nominee must also be interviewed by the responsible RVLC, with a follow on interview conducted by HQ, VLCO. The nominee must also successfully complete one of the approved SVC/VLC certification courses and be certified as VLC in writing by the SJA to CMC prior to assignment as VLC.

Question 6b. What prerequisite experience must a judge advocate possess to serve as an SVC/VLC?

Response: The nominee must be serving in or selected to the grade of O-3/Captain, have at least six months of military justice experience, and must have tried at least one contested court-martial. Waiver of any of these requirements requires a Critical Information Requirement report to the SJA to CMC. The nominee must also undergo a sensitive screening process as noted in response to question 6a above.

Question 7. What factors affect the availability of judge advocates to be assigned as SVC/VLC?

Response: Various factors affect the availability of a Marine JA to be assigned as a VLC. A nominated Marine JA who does not pass the sensitive screening process will not be assigned as a VLC. The Marine Corps' need to staff other mission critical billets, including trial and defense counsel billets, impacts the number of Marine JAs available to

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

be assigned as a VLC. The current Marine JA O-3/Captain total end strength (less than 70% of the required personnel inventory) and retention rates further impacts the availability of Marine JAs to be assigned as a VLC. Additional factors impacting the number of Marine JAs available to serve as a VLC (for two years) include, the inability to obtain the required military justice experience based on previous or current assignments, remaining TOS, selection by various boards, and remaining active duty contractual obligations.

Questions 8a-e (below).

Question 8a. How many judge advocates currently provide SVC/VLC services as their primary duty?

Response: There are currently 20 active duty Marine JAs serving in VLCO billets – VLC (fourteen), RVLC (four), Deputy OIC, VLCO (one), and CVLC (one). Of these 20 Marine JA's serving in VLCO billets, there are eighteen (18) line VLC/RVLC who provide direct client victims' legal services as their primary duty. The VLCO expects to add another VLC in January 2022, which would increase the total number of line VLC/RVLC from eighteen (18) to nineteen (19), and the overall VLCO billet number to 21. The VLCO is further working to add two (2) more VLC by summer/fall 2022.

Question 8b. Are they subject to other work assignments apart from their SVC/VLC duties?

Response: VLC generally perform routine non-VLC military duties, such as unit PT, training, and standing duty. Any collateral military duties assigned cannot have a military justice connection nor can they conflict with a VLC's statutory and ethical duties and obligations to their clients.

Question 8c. What are their current assignment locations (and how many at each location)?

| Duty Title | How Many | Region | Location |
|------------|----------|-------------------------|------------------------|
| CVLC | 1 | HQMC, JAD (VLCO) | Arlington, VA |
| Deputy OIC | 1 | HQMC, JAD (VLCO) | Arlington, VA |
| RVLC-NCR | 1 | National Capital Region | Quantico, VA |
| VLC-NCR | 1 | National Capital Region | Quantico, VA |
| RVLC-West | 1 | West | Camp Pendleton, CA |
| VLC | 2 | West | Camp Pendleton, CA |
| VLC | 2 | West | MCAS Miramar, CA |
| VLC | 1 | West | 29 Palms, CA |
| VLC | 1 | West | MCAS Yuma, AZ |
| RVLC-East | 1 | East | Camp Lejeune, NC |
| VLC | 2 | East | Camp Lejeune, NC |
| VLC | 1 | East | MCAS Cherry Point, NC |
| VLC | 1 | East | MCRD Parris Island, SC |
| RVLC-PAC | 1 | Pacific | Okinawa, Japan |
| VLC | 1 | Pacific | Okinawa, Japan |
| VLC | 1 | Pacific | Iwakuni, Japan |
| VLC | 1 | Pacific | Kaneohe Bay, HI |

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

Question 8d. How many judge advocates currently provide SVC/VLC services as an additional or part-time duty?

Response: Two (2) VLC currently provide VLC services as an additional or part-time duty. One (1) Marine JA currently serves as an Auxiliary VLC (AVLC) as an additional duty in Kaneohe Bay, HI and provide VLC services to conflict clients and others as needed. The subject AVLC previously served as a primary duty VLC in Kaneohe Bay, HI prior to being reassigned as a Legal Assistance Attorney. The Deputy OIC, VLCO, also provides limited scope VLC services as an additional duty.

Question 8e. What are their current assignment locations (and how many at each location)?

| Duty Title | How Many | Region | Location |
|------------|----------|------------------|-----------------|
| Deputy OIC | 1 | HQMC, JAD (VLCO) | Arlington, VA |
| AVLC | 1 | Pacific | Kaneohe Bay, HI |

Question 9. What is the average rank/grade and time in service of SVC/VLC when they are selected?

Response: Captain/O-3 with between 18-36 months in service.

Questions 10a-b (below).

Question 10a. Please describe any training programs required before SVC/VLC are allowed to be certified to represent clients?

Response: A Marine JA nominated to serve as a VLC must attend and successfully complete one of the approved SVC/VLC certification courses (e.g., Marine Corps VLC Course, Air Force SVC Course, and/or Army SVC and Child and Domestic Victim Course.)

Question 10b. What follow-on training do SVC/VLC receive?

Response: Marine VLC participate in the Annual VLCO Symposium, which is held every February. The symposium is an excellent opportunity for Marine VLC to receive substantive training and for them to share information and lessons learned.¹ Vicarious trauma and resiliency training sessions are conducted during the symposium. Throughout any given year, Marine VLC also have the opportunity to participate in various other Government/civilian in-person and virtually training, and further have access to National Alliance of Victims' Rights Attorneys and Advocates Group Continuing Legal Education Pass which gives VLC access to a full catalog of live and on demand training designed to enhance the VLC's knowledge and competency. Further, Marine VLC participate in

¹ Symposium training include updates to case law and victims' rights, professional responsibility, discovery, restraining/protective orders, appeal and parole process, administrative process and victim benefits, suicide screening and behavior health resources, conducting effective communication with victim and various stakeholders, family law, and various other topics and practical exercises.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

quarterly local regional training conducted by their respective RVLC. Every year, Marine VLC must receive refresher training on the criminal justice law and policies of the State or States in which the VLC's assigned military installation is located.

Question 11. What metrics about SVC/VLC representation are routinely collected by each service or at the local level?

Response: Regional VLCO offices prepare weekly and monthly reports that are collected by HQ, VLCO. These reports include case numbers as well as narrative reports regarding challenges, accomplishments, and new issues. Through this regular reporting process, program leadership maintains an up-to-date view of individual case-loads and issues, including numbers of clients or cases that are not local to their respective VLC offices.

Questions 12a-b (below).

Question 12a. Is SVC/VLC client satisfaction data collected/maintained?

Response: The VLCO has not previously collected any formal comprehensive client satisfaction data through a survey or other recording methods. However, since August 2021, the VLCO has been coordinating with the HQMC, Survey Program Office, to establish and execute a comprehensive client survey program that meets the necessary regulatory and legal requirements to conduct a survey.

Question 12b. If collected, how many clients have reported dissatisfaction with the number of SVC/VLC representation changes they have experienced?

Response: Not applicable.

Questions 13a-c (below).

Question 13a. How is attorney-client representation by SVC/VLC initiated?

Response: Most VLCO clients are referred by the responsible Sexual Assault Response Coordinators (SARC), Sexual Assault Victim Advocates, Family Advocacy Program (FAP) Victim Advocates, and various other persons and entities that operate within the military justice system to include military criminal investigators, victim/witness liaisons, trial counsel and health care providers. These persons and entities are statutorily required to notify members of the Armed Forces and dependents who are victims of sexual assault of the availability of VLC services.

Often, Sexual Assault Prevention and Response (SAPR) or FAP civilian victim advocates or military SAPR Uniformed Victim Advocates (UVA) accompany persons who have made a restricted or unrestricted report of sexual assault to our offices for an initial meeting with VLC. Prospective clients may also contact a VLCO office by phone or email to schedule an intake meeting or they may physically walk-in to an office and receive initial/emergency services without an appointment. Many of the Marine Corps'

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

VLCO offices are in close proximity to, or even in the same building as the SAPR offices, which allows easy access to VLC for persons who have made a sexual assault report.

Prior to meeting with a VLC, a VLCO paralegal will have the prospective client complete a prospective client intake form and the paralegal will then run a conflict check through the VLCO's case data management system to ensure no conflict of interest will arise if the client is detailed a particular VLC as their attorney. After the conflict check, an initial meeting between a VLC and prospective client(s) takes place to determine eligibility for VLC services and to explain to the prospective client(s) what a VLC is and does. If a prospective client meets statutory eligibility requirements and requests VLC representation, the RVLC will formally detail a VLC to represent the client. The detailed VLC provides a scope of representation letter to the client and will provide a Notice of Representation letter to law enforcement, the client's command, the cognizant SJA, as well as the military judge and Trial and Defense Counsel.

Question 13b. How is it terminated?

Response: The attorney-client relationship normally lasts until the VLC is released by the client, the military justice or military administrative legal aspects of the client's case have concluded, or per other exceptions. Generally, military specific legal aspects of a client's case will conclude shortly after a disposition decision is made by the appropriate disposition authority and the execution of any administrative action, such as an administrative separation board. In the case of a court-martial, representation ends: (1) if there is a conviction, upon entry of judgment; or (2) if no conviction, at the conclusion of the trial proceedings.

If the client transfers to a new duty station and the case remains active with military authorities at the client's prior duty station, the VLC may continue representation at the client's request. The client may also request a replacement VLC at his or her new duty station, subject to approval by the detailing authority.

If the VLC transfers or leave military service before completion of the client's case, the VLC will continue to protect the client's interests as best as possible, including giving the client a reasonable notice of the VLC's transfer/separation, assisting the client in acquiring a new VLC to serve as the new VLC, and completing a turnover of the case with the new VLC to assure continuity of legal services.

If unforeseen legal or ethical obligations arise, the VLC may need to seek a release from the client or from an appropriate authority to withdraw from the attorney-client relationship.

Question 13c. Are these actions memorialized or documented in some way?

Response: Yes. They are documented in the detailing letter/email, scope of representation letter and termination letter.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

Questions 14a-b (below).

Question 14a. Can SVC/VLC continue representation of a client after leaving an SVC/VLC billet?

Response: Yes. However, continued representation of the client will depend upon the type of billet the former VLC currently occupies. As noted above, we have a Marine JA currently serving as a Legal Assistance Attorney in Kaneohe Bay, HI, also serving as an AVLIC.

Question 14b. Under what circumstances?

Response: As long as there is no non-waivable conflict of interest or statutory prohibition and there is a need for the AVLIC to continue to provide service to client, the Marine JA will be permitted to continue to represent the client as an AVLIC.

Question 15. What is the average length of total representation time, from initiation to termination?

Response: On average, VLC representation generally lasts between 12-18 months but there are cases that may end VLC representation earlier or extend VLC representation much longer depending on the case type and issues involved. For example:

- *Cases with Little/Minimal Client Participation.* In cases where the client does not want to participate or participates minimally with a law enforcement investigation or subsequent efforts to prosecute, VLC representation in these cases is much less than 12 months.
- *Sexual Assault Cases with Client Participation.* In these cases, representation can typically last more than 18 months because the investigative process and subsequent prosecution (or administrative proceeding(s)) often take more than 18 months to complete – in some cases more than two or three years.

Questions 16a-b (below).

Question 16a. What is the average number of SVC/VLC assigned to each victim during the period of representation?

Response: Between one (1) and two (2) VLC. The majority of our clients have only one (1) VLC during the period of representation, but some clients can have two (2) or more VLC assigned in longer/extreme cases.

Question 16b. How many clients does each SVC/VLC represent at a time, on average?

Response: As of 1 November 2021, a Marine VLC had 26 clients on average at any given time.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

Question 17. How often do represented clients dismiss their SVC/VLC and/or request a new counsel?

Response: Very rarely, but an exception is when the client transfers to a new duty station and requests a local VLC.

Questions 18a-b (below).

Question 18a. What statistics do you collect to track SVC/VLC potential for and success at promotion?

Response: No active ongoing formal VLC promotion statistic collection is conducted at this time. However, the VLCO may be able to conduct an *ad hoc* review of past promotion board statistics and determine which of its VLC/prior VLC were successfully promoted.

Question 18b. How many former SVCs have achieved the rank of O-6?

Response: Not applicable. The VLCO was established on 1 November 2013 and Marine JAs who previously served as VLC are not yet in zone for promotion to the rank of colonel/O-6. However, four Marine JAs who were colonels/colonel-selects have served as the CVLC/OIC, VLCO since the establishment of the Marine Corps' VLCO program.

Questions 19a-f (below).

Question 19a. How is the impact of vicarious trauma on SVC/VLC measured?

Response: Beginning in November 2020, each RVLC conducts vicarious trauma discussions with VLC during their respective regional quarterly training sessions to allow VLC to share and express their emotions in order to assess what impact, if any, vicarious trauma may have on the individual VLC and/or VLCO operations.

Question 19b. How is the impact of vicarious trauma on SVC/VLC addressed, whether through services and support provided to the counsel or assignment considerations?

Response: The VLCO is committed to the well-being of its personnel and to responding effectively to vicarious trauma and its impacts. To this end, the CVLC instituted a formal policy in November 2020 affirming the organization's commitment to becoming a better vicarious trauma-informed organization and established several goals and lines of effort (LOEs) to effectively address vicarious trauma and its impacts. Specifically, five LOEs were identified to keep the organization informed about the causes and symptoms of vicarious trauma and to assist its members, including VLC, paralegals, and Marine enlisted legal services specialists, with vicarious trauma and related issues. The LOEs to address vicarious trauma include: (1) Leadership, (2) Management and Supervision, (3) Employee Empowerment and Work Environment, (4) Training and Professional Development, and (5) Staff Health and Wellness.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

Through its formal policy on addressing vicarious trauma, the VLCO provides management and supervision that is supportive of staff health and wellness, and further empowers the VLC and the work environment. The VLCO seeks to foster supportive relationship with its personnel – a supportive relationship that is based on inclusivity, mutual respect, and trust. The VLCO seeks to promote and maintain a healthy working environment through team cooperation and by establishing a culture of support where members of the VLCO can turn to each other for support. To the extent possible, VLC workloads are managed to ensure the equal distribution of cases involving particularly difficult issues or subject matter. Moreover, the VLCO fully supports its personnel who may need time to cope with vicarious trauma or any other related issues, by providing for maximum leave and flexible work schedule whenever feasible that allow VLCO personnel to seek help, debrief, or find time to relax and regroup. Further, Marine VLC are rarely assigned to consecutive assignments in VLCO billets unless specifically requested by the officer and/or consecutive assignments are warranted by the needs of the Marine Corps.

As noted in response to question 19a above, the RVLC further incorporate vicarious trauma discussion into their regional quarterly training sessions. Vicarious trauma training includes structured lectures and discussions with mental health professionals and related experts, small group discussions, and participation in virtual online courses. All VLCO personnel receive training on vicarious trauma at least twice annually.

Question 19c. How many SVC/VLCs in your Service have reported trauma?

Response: (0) None.

Question 19d. For those that reported vicarious trauma, what was their tour length and number of cases handled?

Response: Not applicable.

Question 19e. Does your Service have a Subject Matter Expert that you have consulted on vicarious trauma as it pertains to SVCs/VLCs?

Response: The VLCO previously relied upon a Navy mental health professional/SME (Commander Chris Blair) who taught and led discussions relating to stressors and trauma's impact on the mental and emotional health of those advocating on behalf of victims of violent crime. However, fortunately, the VLCO has never had to consult with Commander Blair (or any other mental health professional/SME) regarding any specific VLC/case.

Question 19f. If so (for Question 19e), did your SME render an opinion on the primary factor for vicarious trauma, whether the tour length, the number of cases, or a combination of both?

Response: Not applicable. Please see response to question 19e above.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

RFI 1 – U.S. Navy Response

NAVY VICTIMS' LEGAL COUNSEL PROGRAM
DAC-IPAD RFI (1)
VLC/SVC Tour Lengths and Independent Chain of Command
November 2021

(1) In response to the Defense Advisory Committee on the Investigation, Prosecution and Defense of Sexual Assault in the Armed Forces (DAC-PAD) Request for Information regarding individual Special Victims' Counsel (SVC)/Victims' Legal Counsel (VLC) tour lengths and SVC/VLC independence of chains of command, dated 5 November 2021, the Navy Victims' Legal Counsel (VLC) Program provides the following:

Question 1. Does your Service's SVC/VLC Program have minimum tour lengths for assigned SVCs?

Yes.

Question 2.

a. If there is a minimum tour length, what is the length?

VLC are issued orders that last two to three years. As such, the VLC minimum tour length is two years. This is similar to the typical length of orders for other Navy judge advocates assigned to Naval Legal Service Command (NLSC) after their first tour, including Trial Counsel and Defense Counsel. All CONUS-based VLC receive three-year orders, as do most overseas VLC.

b. What directive or policy sets forth the length?

There is no specific directive or policy regarding Navy VLC tour length since VLC are assigned as part of the routine detailing process for all NLSC billets, including Trial Counsel and Defense Counsel.

c. What exceptions are available to end an SVC/VLC tour prior to the minimum?

Exceptions where a tour length might be shorter than two years include overseas locations whose billet lengths may be limited across the Navy due to the remoteness or conditions of the location. The VLC Program currently only has one such billet, which is in Bahrain, where the Navy limits the VLC tour length to 18 months. However, when a VLC is co-located with a Navy spouse or accompanied by his or her dependents in Bahrain, the tour length can be extended to two years, which has occurred in the past. Aside from Bahrain, all Navy VLC are issued orders for three years with reduction to two years in specific overseas locations if the officer is not accompanied by family (such as Guam, Japan, Italy, and Spain).

Navy VLC may also be granted an exception and allowed to end their tours after two years when there is a distinct career advantage for the officer to do so. Additionally, with a constant eye on vicarious trauma, compassion fatigue, and burn-out, exceptions have been made to allow Navy

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

VLC to end a tour prior to the end his or her orders where that individual officer may be struggling with such difficulties. This exception has been granted twice in the eight years since the VLCP was established.

d. Who is the approval authority for making an exception?

All exceptions to tour lengths are made on a case-by-case basis by Commander, Naval Legal Service Command (CNLSC) with input from the Chief, Navy VLC Program and with support from the Judge Advocate General of the Navy (JAG). As a general rule, such exceptions are made only where an appropriate relief can be identified and trained in time to avoid any significant gap in services.

Question 3. If there is no minimum tour length, what are the reasons your Service has not implemented minimum tour lengths?

As noted above, the Navy VLC billets are subject to the routine tour length minimums, similar to those imposed in other Navy judge advocate detailing.

Question 4. What factors impact or influence the length of time a judge advocate can be assigned to serve as an SVC/VLC?

As noted above, Navy VLC tours are treated similarly to those of their counterpart Trial Counsel and Defense Counsel. The factors noted above are taken into account when exceptions to VLC tour length are made on a case-by-case basis but VLC tours are typically two to three years in length with very few exceptions.

Question 5.

a. Please describe the organizational supervisory and professional rating structure for SVC/VLC.

The Navy VLC Program is an independent organization led by a post command senior O-6 "Chief," who is appointed by and reports directly to CNLSC who, in turn, reports directly to the Chief of Naval Operations and the Judge Advocate General of the Navy. The Chief, Navy VLC Program supervises and evaluates the performance of all VLC in the Program. This includes signing all fitness reports, providing personal fitness report debriefs to all officers, and providing mid-term counseling during the reporting period. Officers in charge (OICs) who are immediate supervisors for VLC in the field, provide substantive input to the Chief to assist in his personal evaluations of each VLC.

b. Are supervisory and rating officials part of the local command where SVC/VLC are assigned or perform duties?

No. As noted above, the Chief, Navy VLC Program reports directly to CNLSC and is not a part of the chain of command for any offender, victim, Trial Counsel, Defense Counsel or Staff Judge Advocate. The Chief, Navy VLC Program is entirely independent, overseeing only the VLC Program.

Question 6.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

a. How are SVC/VLC selected and certified for assignment?

Navy VLC are hand-selected for their billets. An initial slate of VLC candidates is developed by Navy JAG Corps detailers with an emphasis on those volunteering for the VLC Program. This initial candidate list is provided to the Chief, Navy VLC Program along with officer records and biographies for review of individual records for relevant experience. The Chief personally interviews each candidate and speaks to former commanding officers or other senior supervisors in order to ascertain if each candidate has the maturity, judgment, and demeanor required to serve as VLC. If after the record review and interview, the Chief recommends the candidate for a VLC billet, the candidate is referred to CNLSC for a personal interview. If approved by CNLSC, the candidate is personally interviewed by the Judge Advocate General of the Navy, who serves as the final approval authority for all VLC candidates.

b. What prerequisite experience must a judge advocate possess to serve as an SVC/VLC?

Although there is an emphasis on military justice litigation experience as a prerequisite to serving as a Navy VLC, in the eight years of the Program, legal assistance and Staff Judge Advocate experience has also been shown to be highly valuable in working with and advocating for clients, many of whose cases do not ultimately go to trial. As noted above, the requisite maturity, judgment, and demeanor are extremely important factors contributing to a successful and satisfying VLC tour and an important consideration along with other relevant prior experience.

Question 7. What factors affect the availability of judge advocates to be assigned as SVC/VLC?

The routine detailing challenges of matching open billets with available judge advocates who satisfy the prerequisites noted above are the only factors affecting the VLC detailing process. Generally, VLC candidates go through the record review and interview process prior to many of the remaining NLSC billets being detailed, resulting in priority of detailing for VLC billets in many instances.

Question 8.

a. How many judge advocates currently provide SVC/VLC services as their primary duty?

42. There are a total of 44 field VLC billets in the Navy providing client services, two of which are currently in the detailing process, one of which will be filled in December 2021 (Norfolk, VA) and the other will be filled by May 2022 (Everett, WA). Every Navy VLC's primary duties are providing VLC services and supporting the VLCP.

b. Are they subject to other work assignments apart from their SVC/VLC duties?

No. Navy VLC are not assigned collateral duties outside the VLC Program. However they may be occasionally allowed to contribute to Navy JAG Corps-wide projects or operational exercises that do not interfere with their ability to fulfill their VLC duties and that contribute to their

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

professional development as attorneys and Naval officers.

c. What are their current assignment locations (and how many at each location)?

See attached map.

d. How many judge advocates currently provide SVC/VLC services as an additional or part-time duty?

None. All Navy VLC are full-time VLC.

e. What are their current assignment locations (and how many at each location)?

Not applicable.

Question 9. What is the average rank/grade and time in service of SVC/VLC when they are selected?

Not including the O-6 Chief and the O-5 Operations Officer at the VLC Program level, the ranks and time in service of the 42 current VLC providing client services are broken out as follows:

1 O-6 – time in service is 24 years (activated Reservist recently selected and promoted to O-6 during VLC tour).

4 O-5s – time in service ranging from 12 to 20 years (this includes two activated Reservists, one of whom has extensive civilian criminal litigation experience as a prosecutor in addition to military justice experience).

10 O-4s – time in service ranging from six to 18 years (this includes one activated Reservist with civilian criminal litigation experience as a prosecutor).

27 O-3s – time in service ranging from three to five years.

Question 10.

a. Please describe any training programs required before SVC/VLC are allowed to be certified to represent clients?

All Navy VLC are required to complete a VLC/SVC certification course prior to being certified by JAG in writing before assuming the duties of a VLC. Certification courses have historically been offered by the Army and Air Force JAG schools, where Navy VLC have been welcomed and trained. In April 2022, the Navy and Marine Corps will begin offering a VLC certification course at the Naval Justice School in Newport, Rhode Island.

b. What follow-on training do SVC/VLC receive?

The Navy VLC Program conducts monthly virtual training on substantive topics (e.g., motions practice, litigation strategies, child client representation, etc.), administrative topics (e.g., processes and considerations for clients at the Navy Discharge Review Board, Board for Correction of Naval Records, Veterans' Administration, etc.), and career topics (mentorship, coping strategies for vicarious trauma/burn-out, etc.). The topics are developed internally by a

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

team of VLC who are the Training Officers for the entire Program and develop the monthly sessions based on direct VLC input.

Annually, the VLC Program holds an “all hands” weeklong training symposium that is usually in-person but has been held virtually for the past two years due to COVID-19 restrictions. The training symposium seeks to bring geographically disparate VLC together in order to build team cohesion and support while providing elevated curriculum of training by seasoned VLC and outside experts in various fields to augment the certification course.

Navy VLC are routinely sent to local and national non-military training such as the annual conference of the National Crime Victim Law Institute, which is a preeminent organization involved in the evolving area of victims’ rights advocacy in the law. In addition, Navy VLC are sent to career-enhancing non-VLC related courses whenever possible, in order to ensure that judge advocates maintain a well-rounded exposure to areas of the law that will allow them to succeed after a VLC tour.

Question 11. What metrics about SVC/VLC representation are routinely collected by each service or at the local level?

The Navy VLC Program collects detailed metrics on individual VLC caseloads and workloads, to include but not limited to numbers of cases, types of clients, types of offenses reported by clients, case proceedings, and outreach briefs conducted. This data is collected through weekly reports submitted by each VLC to Program leadership and shared with CNLSC in a monthly report.

Locally, each OIC oversees case assignments while supervising and monitoring VLC practice, challenges, and needs in the field.

Question 12.

a. Is SVC/VLC client satisfaction data collected/maintained?

Yes. When cases are concluded, all clients are provided a link to an online, anonymous and voluntary survey. The survey is specific to a client’s experiences with VLC services and does not collect data regarding experiences with other services (Victim Advocates, Sexual Assault and Response Coordinators (SARCs), etc.) or the military justice process in general.

b. If collected, how many clients have reported dissatisfaction with the number of SVC/VLC representation changes they have experienced?

One client (out of approximately 181 survey respondents) has expressed dissatisfaction with having changed from one VLC to another during the life of the case. It is worth noting that former client response to the VLC Program satisfaction survey is relatively low (less than 4% of former clients have completed the survey since it began being offered in 2015). The low response rate is possibly owing to victims generally desiring to “move on” with their lives after their case has concluded.

Question 13.

a. How is attorney-client representation by SVC/VLC initiated?

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

A majority of clients are referred to VLC by either SARCs, in the case of sexual offense cases, or Family Advocacy Program (FAP) personnel in the case of domestic violence cases. Once referred, a VLC meets with the victim to provide a general consultation and information about VLC services available. If a victim desires VLC services, the attorney-client relationship is formed and memorialized using a standard VLC Program Scope of Representation letter, which is reviewed with the client and signed and retained by both the client and the VLC.

b. How is it terminated?

Cases are generally terminated when there remains no further legal action to be taken in a case. However, cases are all different and VLC work with each client to understand when a legal case has concluded and whether any future actions (such as appellate review) might trigger further VLC services. Case termination is memorialized using the VLC Program standard Termination Letter which is provided to the client and retained by the VLC. VLC and this standard Termination Letter emphasize that if related legal issues arise going forward, the client can seek additional services from the VLCP.

c. Are these actions memorialized or documented in some way?

Yes, these actions are memorialized using the standard VLC Program documents noted above.

Question 14.

a. Can SVC/VLC continue representation of a client after leaving an SVC/VLC billet?

Yes, although this practice is uncommon. Ideally, a VLC is able to represent a client from the beginning through the conclusion of a case. However, that is not always possible given many factors, including case processing times and prosecution scheduling. When a VLC is transferring out of a VLC billet, he or she advises all clients of the impending transfer and oversees an introduction (known as a “warm hand off”) and development of a relationship with a new VLC who has either replaced the outgoing VLC or is already stationed in the same location as the client. Although we have only limited survey data, we believe we have been successful in terms of client satisfaction, mainly due to the emphasis on ensuring incoming and outgoing VLC overlap and face-to-face turnover which, in turn, facilitates the professional transfer of cases with a personal touch.

b. Under what circumstances?

When a client requests to retain a VLC with whom he or she has developed a strong and trusting relationship, such as in the case of a court-martial scheduled for shortly after the outgoing VLC is to transfer, the VLC Program leadership works hand-in-hand with the gaining Commanding Officer in order to ensure the VLC is able to remain on the case to its conclusion. This may mean the VLC transfers while continuing to manage the case, or it may mean a delay in the VLC’s transfer. This scenario has occurred on several occasions since the inception of the VLC Program and has worked seamlessly to support both the client’s needs and the gaining command’s requirements. This practice is not foreign within the Navy JAG Corps, as it is similar to situations where Defense Counsel are occasionally required to retain a case after transfer where they have an attorney-client relationship but the case has not concluded.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

Question 15. What is the average length of total representation time, from initiation to termination?

Providing an average length of representation time would be arbitrary and not reflective of the wide variety of case types, disposition options, and client outcome desires. Cases where a victim requires limited advice and ultimately declines to participate in an investigation can take only a few weeks to a few months. Cases where the client is participating in an investigation but the case is not ultimately taken to court-martial can take from a few months to over a year, depending on whether there are alternative dispositions exercised by the command (such as administrative separation or non-judicial punishment). More complex cases where domestic violence and safety concerns exist and/or that are tried by court-martial can take several years to complete and may even involve follow-on appellate practice.

Question 16.

a. What is the average number of SVC/VLC assigned to each victim during the period of representation?

Only one VLC is typically assigned to each client at a time. Over the course of a client's case, most clients will work with one VLC. However some are transferred to a second VLC if the first VLC transfers to another billet before the end of the client's case. In less frequent cases, clients may work with more than two VLC across the life of their cases, which is determined by the type of case and the investigation and processing times.

b. How many clients does each SVC/VLC represent at a time, on average?

Currently, the average caseload for Navy VLC across the Program is 22 cases per counsel. However, almost one third of VLC carry caseloads higher than that, with caseloads in fleet concentration areas being the highest overall. The FY20 National Defense Authorization Act (NDAA) mandates a SVC/VLC caseload maximum of 25 cases per counsel by December 2023. The 11 new Navy VLC billets authorized in late 2020 and filled in 2021 have been located strategically to help alleviate higher caseloads.

Question 17. How often do represented clients dismiss their SVC/VLC and/or request a new counsel?

Since VLC Program inception, there have been fewer than five instances of clients dismissing VLC. There are times when a client may request a new VLC for a variety of personal reasons unrelated to any dissatisfaction with specific VLC performance. These occasions are generally managed by OICs in order to support the individual needs of clients, and may not necessarily be tracked at the headquarters level.

Question 18.

a. What statistics do you collect to track SVC/VLC potential for and success at promotion?

VLC promotions and promotion rates have been tracked since the inception of the Navy VLC Program in 2013.

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

b. How many former SVCs have achieved the rank of O-6?

Not including the original Program Deputy Chief of Staff, who promoted to O-6 immediately following serving in his critical role in standing up the Navy VLC Program, two officers serving as field VLC have promoted to the rank of O-6 to date. Both are Navy Reservists who were activated to serve as VLC and both were selected for promotion to O-6 during their VLC tour.

On the active duty side, most VLC and former VLC have not yet reached the level of seniority to be considered for promotion to O-6 since the VLC Program is only in its eighth full year of existence, having been created at the end of 2013. Officers at the rank of O-3 and O-4 are typically at each rank for at least five years before promoting to the next rank. However, promotion data thus far indicates that Navy VLC have not suffered any negative impacts to promotion due to having served as a VLC.

Question 19.

a. How is the impact of vicarious trauma on SVC/VLC measured?

Vicarious trauma is the trauma experienced as a result of working closely with a victim of direct trauma. This may occur in one or more cases where the circumstances of the case have an emotional impact on the VLC. Compassion fatigue (or burn-out) is a result of working with and assisting many victims who have suffered a variety of traumas, and can result in VLC feeling overwhelmed or lacking energy and empathy for their clients. Both conditions are of concern to Navy VLC Program and JAG Corps leadership, however the impact of each is difficult to measure, per se, since everyone responds differently to these challenges.

The Navy VLC Program begins to address these concerns by cultivating a culture of understanding and openness. From the Chief, VLC Program down, all leaders and subordinates across the Program are encouraged to reach out and speak up if they or a colleague is being affected by a case or their general workload. The consistent message across the Program is that physical and emotional self-care is a big part of the professional responsibility for VLC Program personnel. OICs personally speak with all their VLC and enlisted administrative staff members weekly, fostering close relationships across their regions which encourages an openness with leadership. The Chief, VLC Program frequently discusses the importance of self-care and encourages individuals to raise any difficulties they are having through the chain or directly to him. OICs are required to meet with VLC at the six-month mark after a new VLC has joined the Program to specifically assess the new VLC's emotional and professional adjustment and well-being, formally confirming this assessment to the Chief, VLC Program.

Due to the culture of openness and discussion about vicarious trauma and compassion fatigue, Navy VLC Program leadership is able to measure the impact of these challenges through conversations individuals are having with their colleagues, OICs, and other members of leadership.

b. How is the impact of vicarious trauma on SVC/VLC addressed, whether through services and support provided to the counsel or assignment considerations?

All VLC (and support staff) are advised of and encouraged to seek mental health services as they may need. Where such services are limited, such as in remote locations where there may be

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

concerns about seeking services in the same office where clients seek services, VLC Program leadership has explored virtual support options.

VLC are routinely advised that if they encounter any personal difficulties during their tours, including vicarious trauma or compassion fatigue as well as issues unrelated to their duties, they should raise the issue through their chain of command for assistance. Assistance may involve providing some short or long-term relief from caseloads, for example. Due primarily to the detailing emphasis on volunteers to the Program, more senior and experienced counsel coming to the Program, and a thorough hand-selection process at the time of assignment, the Navy VLC Program has only had two VLC experience significant challenges requiring a need to leave the Program before the end of the tour.

c. How many SVC/VLCs in your Service have reported trauma?

This is an unknown number as some VLC have undoubtedly reported trauma or fatigue to colleagues or OICs who were able to support the VLC successfully through less serious difficulties, therefore not requiring more senior leadership involvement. During training sessions including at the annual training symposium, VLC routinely take the opportunity to generally discuss difficult cases that have affected them and strategies for addressing periods of overwhelming workloads. When a VLC experiences serious difficulties with vicarious trauma or compassion fatigue, even where the VLC does not make a direct report of the issues, OICs and colleagues who are local to the VLC can easily observe the concerns and raise the issue informally to ensure leadership involvement in any support efforts. As noted above, only two VLC have required more formal assistance and support in the form of early departure from the Program.

d. For those that reported vicarious trauma, what was their tour length and number of cases handled?

As noted above, given the various levels of those reporting anything from mild to serious vicarious trauma or compassion fatigue, this data point is not tracked or known. Anecdotally, almost all VLC serve for two to three years as VLC and carry an average of 22 cases across the Program. It is important to note that significant vicarious trauma can be caused by one case and is not necessarily related to how long a VLC is serving. Compassion fatigue may be more closely related to caseloads and/or length of tour. The two VLC who detached from the Program before the end of their tours also suffered from other personal issues not related to but exacerbated by VLC duties.

e. Does your Service have a Subject Matter Expert that you have consulted on vicarious trauma as it pertains to SVCs/VLCs?

Yes. Given our internal requirement for vicarious trauma/empathy fatigue training annually (which is actually conducted at least twice per year – once in-person and once virtually), the Navy VLC Program has engaged a variety of Subject Matter Experts from both military and civilian organizations. Military experts have included psychologists and therapists from Navy hospitals who specialize in the effects of trauma and burn-out. Civilian experts have included professors from the Naval War College who study the effects of trauma within the ranks, as well as specialists from local and national organizations who study and provide resources for those

Appendix I. DAC-IPAD SVCs VLCs Request For Information 1 and Services' Responses

suffering from vicarious trauma. In an effort to keep training in vicarious trauma and compassion fatigue current and relevant to the VLC Program, a significant effort is made to diversify the presenters and information provided, instead of relying on one specific expert, as a variety of perspectives has been a benefit in addressing concerns and questions for various individuals.

f. If so (for Question 19e), did your SME render an opinion on the primary factor for vicarious trauma, whether the tour length, the number of cases, or a combination of both?

No. As noted above, vicarious trauma can be caused by one difficult case and not be related to tour length, while compassion fatigue can be caused by workload at a particular time or over time. Other factors can also contribute to vicarious trauma and compassion fatigue, such as unrelated personal challenges, medical issues for the VLC or a family member, etc. The SME's who have worked with and supported the VLC Program in addressing vicarious trauma and compassion fatigue have not indicated that there is one thing that causes these difficulties across the board but rather a host of factors that may affect individuals differently.

**Defense Advisory Committee on Investigation, Prosecution, and Defense
of Sexual Assault in the Armed Forces**

Supplemental RFI from Service Judge Advocates General

14 December 2021

**Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs)
and Rating Chains of Army SVCs**

I. Purpose

In response to a Congressional Inquiry, and on behalf of the Secretary of Defense, the DoD General Counsel requested in memoranda dated 5 October 2021 (previously provided) and 2 November 2021 (previously provided) that the Defense Advisory Committee on the

Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) provide a report on the following topics by 5 April 2022:

1. Whether it is practical to adopt a minimum assignment length for SVC/VLC with appropriate exceptions for operational concerns.
2. Assess the rating chain for Army SVC officer evaluation reports; compare the Army SVC rating chains and those used in other Military Services' SVC/VLC programs; evaluate whether the rating chain for Army SVCs create an actual or apparent limitation on those SVCs' independence or ability to zealously represent their clients.
3. Provide any recommendations for change based on these studies.

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 DAC-IPAD 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 Staff Director requests the assistance of the Military Services to provide the requested information by the suspense dates indicated below to facilitate the DAC-IPAD's statutory requirement of providing advice to the Secretary of Defense on matters related to sexual assault in the armed forces.

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

III. Suspense:

| Suspense | RFI | Proponent – Military Services |
|-------------|----------------|---|
| 15 Jan 2022 | SVCs/VLCs List | Services' SVC/VLC Program Managers responses to requested data in Section IV. |

DAC-IPAD Supplemental RFI

Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs

IV. Information Requested

1. SVCs/VLCs by Initials with Tour Length

(S: 15 January 2022)

In a Word document or spreadsheet, please identify (by initials) all active duty judge advocates from your Service who concluded their SVC/VLC assignment after January 1, 2018. Please indicate the month and year they began their SVC/VLC assignment, and the month and year their SVC/VLC assignment ended. For each individual SVC/VLC listed, please indicate whether they served as a full-time or part-time SVC/VLC. Please do not include on this list the currently serving SVC/VLC judge advocates whose tours are not yet complete.

2. SVCs/VLCs by Initials with Assignment Order

(S: 15 January 2022)

In the same Word document or spreadsheet, please indicate whether the active duty judge advocate identified in Question 1 served as SVC/VLC in their first, second, third, or fourth assignment after completing the Judge Advocate Officer Basic Course (OBC). For example, if the SVC/VLC tour was the judge advocate's initial duty assignment after OBC, indicate with the number 1. If the SVC/VLC tour was the judge advocate's second, third, or fourth assignment after serving in another position—for example as a legal assistance attorney, trial counsel, or defense counsel—indicate with the number 2, 3, or 4.

RFI 2 - Army Response



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON, DC 20310-2200

DAJA-ZA

11 March 2022

MEMORANDUM FOR Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs – RFI Part 3

1. In response to your request on 1 March 2022 and RFI dated 14 December 2021, the following information is provided to assist your study of Special Victims' Counsel (SVC).
2. The enclosed chart includes:
 - a. All active duty Army Judge Advocates (JA) who served as SVCs after 1 January 2018. Only those who are no longer serving in that position were included.
 - b. The month and year each JA began their SVC assignment and the month and year their SVC assignment ended.
 - c. Whether each SVC served as a full-time or part-time SVC.
 - d. Prior assignments of each SVC numbered in the order each position was held. The chart then lists the number their SVC assignment was within their assignment history.
3. The point of contact for this action is COL Carol A. Brewer, Chief, SVC Program, at (571) 256-7997 and carol.a.brewer12.mil@army.mil.

A handwritten signature in black ink, appearing to read "S. Risch".

STUART W. RISCH
Lieutenant General, USA
The Judge Advocate General

Encl

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

DAJA-ZA

SUBJECT: Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs – RFI Part 3

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|----------|----------------|--------------|----------|-----------|----------------|--|--|---------------|------------------------|---------------------|---------------|
| █ | 2015 | CPT | MAJ | PT | May-11 | Litigation Firm Clerkship | 1-Legal Assistance 2-Trial Counsel 3-Chief, Legal Assistance 4-Defense Counsel 5-Chief, Legal Assistance | 6 | Jul-18 | Jun-19 | 12 |
| █ | 2015 | 1LT | CPT | FT | May-15 | Internship | 1-Legal Assistance Attny 2-Claims Attny 3-Chief, Legal Assistance | 4 | Jun-18 | Jun-19 | 12 |
| █ | 2015 | CPT | CPT | PT | Oct-14 | Law Firm Associate | Admin Law Attny | 2 | Jul-15 | Oct-18 | 39 |
| █ | 2016 | 1LT | CPT | PT | Sep-16 | 1-Internships 2-Employment Law 3-Educational Law 4-Criminal Defense | Legal Assistance | 2 | Jul-18 | Jul-19 | 12 |
| █ | 2016 | CPT | MAJ | PT | Feb-15 | FLEP Summer Internships | 1-Legal Assistance Attny 2-Trial Counsel | 3 | Sep-16 | Jul-18 | 22 |
| █ | 2016 | 1LT | CPT | PT FT | Feb-16 | 1-Civilian Litigation Firm (2 yrs) 2-County Attny -Family Law | Trial Counsel | 2 | Jun-20 | Jun-21 | 12 |
| █ | 2017 | CPT | CPT | PT | Feb-17 | Appellate SSI/SSD position | Legal Assistance Attny | 2 | Aug-17 | Jun-19 | 22 |
| █ | 2017 | CPT | CPT | PT | Oct-14 | 1-Federal Judicial Intern 2-Environmental Law Firm | 1-Admin Law Attny 2-Operational Law Attny 3-SAUSA | 4 | Dec-17 | Jun-19 | 18 |
| █ | 2017 | CPT | CPT | FT | May-13 | Deputy Prosecutor (18 months) | 1-Trial Counsel 2-Defense Counsel | 3 | Jul-17 | Apr-18 | 9 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|----------|----------------|--------------|----------|-----------|----------------|--|---|---------------|------------------------|---------------------|---------------|
| █ | 2017 | CPT | MAJ | FT PT | Jun-11 | Internship law firm | 1-Legal Assistance Attny 2- Admin Law Attny 3-Trial Counsel 4-Legal Advisor- Military Commissions | 5 | Jun-17 | Jun-19 | 24 |
| █ | 2017 | CPT | CPT | PT | May-16 | Criminal Defense Attny | 1-Legal Assistance Attny 2-Tax Center OIC | 3 | Aug-17 | Jul-19 | 23 |
| █ | 2017 | 1LT | CPT | PT | May-17 | Private Practice (3 yrs) | Legal Assistance Attny | 2 | Aug-17 | Feb-18 | 6 |
| █ | 2017 | CPT | CPT | FT | May-14 | 1-Internships/clerkships 2-Family Law Attny (2 yrs) | Trial Counsel | 2 | Aug-17 | Aug-18 | 12 |
| █ | 2017 | 1LT | CPT | PT | May-17 | | Legal Assistance Attny | 2 | Aug-17 | Jul-18 | 11 |
| █ | 2017 | CPT | MAJ | PT | Sep-09 | 6 yrs Civil Litigation | 1-Legal Assistance 2-Tort Claims-Magistrate 3-SAUSA 4-Trial Counsel 5-Administrative Law Attny 6-Defense Counsel 7-Brigade Judge Advocate | 8 | Jun-17 | Jul-18 | 12 |
| █ | 2017 | MAJ | MAJ | FT PT | Feb-12 | | 1-Trial Counsel 2-Chief, Admin Law 3-Chief, Military Justice 4-Chief, Client Services | 5 | Jul-17 | Oct-19 | 27 |
| █ | 2017 | CPT | CPT | PT | Mar-16 | | Admin Law Attny | 2 | Apr-17 | Dec-17 | 8 |
| █ | 2017 | CPT | CPT | PT | Jun-17 | Signal Officer | Legal Assistance Attny | 2 | Jan-18 | Jun-18 | 5 |
| █ | 2018 | CPT | MAJ | PT | Feb-17 | | 1-Legal Assistance Attny 2-Trial Counsel | 3 | Mar-18 | Jul-19 | 15 |
| █ | 2018 | CPT | CPT | PT | May-16 | | 1-Legal Assistance Attny 2-Trial Counsel | 3 | Jun-18 | Jun-19 | 12 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|------------|----------------|--------------|----------|-----------|----------------|---|---|---------------|------------------------|---------------------|---------------|
| [REDACTED] | 2018 | CPT | MAJ | FT | Sep-10 | Prosecutor | 1-Legal Assistance Attny 2-Admin Law Attny 3-Trial Counsel 4-BJA | 5 | Jul-18 | Jul-19 | 12 |
| [REDACTED] | 2018 | CPT | CPT | PT | Sep-16 | | 1-Legal Assistance Attny 2-NSL Attny 3-Admin Law Attny | 4 | Nov-18 | May-19 | 6 |
| [REDACTED] | 2018 | 1LT | CPT | FT | May-18 | | Legal Assistance Attny | 2 | Nov-18 | Jun-20 | 19 |
| [REDACTED] | 2018 | CPT | CPT | FT | Feb-17 | | Admin Law Attny | 2 | Jan-18 | Jun-19 | 17 |
| [REDACTED] | 2018 | 1LT | CPT | PT | Aug-18 | Defense Attny | | 1 | Sep-18 | Jun-20 | 21 |
| [REDACTED] | 2018 | 1LT | CPT | PT | May-18 | Philadelphia ADA | 1-Legal Assistance 2-Operational Law | 3 | Aug-18 | Jun-19 | 10 |
| [REDACTED] | 2018 | CPT | MAJ | PT | Nov-12 | | 1-Legal Assistance Attny 2-Admin Law Attny 3-Trial Counsel 4-Contract & Fiscal Law Attny | 5 | Jul-18 | Jul-20 | 24 |
| [REDACTED] | 2018 | CPT | CPT | FT | Feb-18 | International law | Legal Assistance Attny | 2 | Apr-18 | Aug-20 | 28 |
| [REDACTED] | 2018 | 1LT | CPT | FT | Sep-17 | 1-Police Officer 2-Legal Counsel for Non-Profit | Admin Law Attny | 2 | May-18 | Jun-19 | 13 |
| [REDACTED] | 2018 | 1LT | CPT | PT | May-18 | 1-Law Clerk in firm 2-Corporate Law Extern 3-County State's Attny Office 4-Student Attny | Legal Assistance Attny | 2 | Aug-18 | Nov-18 | 3 |
| [REDACTED] | 2018 | 1LT | CPT | FT | Feb-18 | Personal injury | | 1 | Aug-18 | Dec-19 | 16 |
| [REDACTED] | 2018 | CPT | MAJ | FT | Jun-15 | 27D | 1-Admin Law Attny 2-Trial Counsel 3-Military Justice Advisor | 4 | Aug-18 | Jul-20 | 23 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|------------|----------------|--------------|----------|-----------|----------------|-------------------------------|--|---------------|------------------------|---------------------|---------------|
| [REDACTED] | 2018 | CPT | MAJ | PT | Mar-13 | | 1-Legal Assistance Attny 2-Trial Counsel, Defense Counsel 3-Admin Law Attny 4-Labor counselor | 5 | Mar-18 | Jun-19 | 18 |
| [REDACTED] | 2018 | CPT | MAJ | FT | Feb-11 | | 1-Trial Counsel 2-NSL Attny 3-Admin Law Attny 4-Defense Counsel 5-Command Judge Advocate | 6 | Jul-18 | Jul-19 | 12 |
| [REDACTED] | 2018 | 1LT | CPT | PT | May-18 | Prosecutor | Legal Assistance Attny | 1 | Aug-18 | May-19 | 9 |
| [REDACTED] | 2018 | CPT | MAJ | FT | Oct-12 | Defense Attny | 1-Admin Law Attny 2-Trial Counsel 3-Chief of Justice 4-SAUSA 5-Defense Counsel | 6 | Sep-18 | Jul-20 | 22 |
| [REDACTED] | 2018 | CPT | CPT | FT | May-18 | | | 1 | Aug-18 | Aug-20 | 24 |
| [REDACTED] | 2018 | 1LT | CPT | PT | May-18 | Clerkship | Admin Law Attny | 2 | Sep-18 | Jul-19 | 10 |
| [REDACTED] | 2018 | 1LT | CPT | PT | May-18 | Clerkship | Admin Law Attny | 2 | Jul-20 | May-21 | 10 |
| [REDACTED] | 2018 | CPT | CPT | FT | May-18 | Defense Attny | | 1 | May-18 | May-19 | 12 |
| [REDACTED] | 2018 | CPT | CPT | FT | Feb-15 | | 1-Trial Counsel 2-Legal Assistance Attny | 3 | Jun-18 | Jun-19 | 12 |
| [REDACTED] | 2018 | CPT | MAJ | FT | Feb-16 | | 1-Legal Assistance Attny 2-Trial Counsel | 3 | May-18 | May-19 | 12 |
| [REDACTED] | 2018 | CPT | CPT | FT | May-16 | | 1-Admin Law Attny 2-NSL Attny 3-Trial Counsel | 4 | Jan-18 | Sep-19 | 20 |
| [REDACTED] | 2018 | 1LT | CPT | FT | May-18 | Internships | Legal Assistance Attny | 2 | Nov-18 | Jun-20 | 19 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|------------|----------------|--------------|----------|-----------|----------------|-------------------------------|--|---------------|------------------------|---------------------|---------------|
| [REDACTED] | 2019 | CPT | MAJ | PT | Oct-12 | | 1-Legal Assistance Attny 2-Chief, Legal Assistance 3-Trial Counsel 4-Defense Counsel 5-Admin Law Attny 6-Chief of Justice | 7 | Feb-19 | Jan-20 | 11 |
| [REDACTED] | 2019 | CPT | CPT | FT | May-18 | Litigation associate | Legal Assistance Attny | 2 | Feb-19 | May-21 | 27 |
| [REDACTED] | 2019 | 1LT | CPT | PT | Feb-19 | Law Clerk in immigration firm | Legal Assistance Attny | 2 | Mar-19 | Jul-20 | 16 |
| [REDACTED] | 2019 | 1LT | CPT | PT | May-19 | | Legal Assistance Attny | 2 | Aug-19 | Aug-20 | 12 |
| [REDACTED] | 2019 | 1LT | CPT | PT | May-19 | | Legal Assistance Attny | 2 | Aug-19 | Jul-20 | 11 |
| [REDACTED] | 2019 | CPT | CPT | FT | Feb-19 | | Legal Assistance Attny | 2 | Jul-19 | Sep-20 | 14 |
| [REDACTED] | 2019 | CPT | CPT | PT | Feb-19 | | Legal Assistance Attny | 2 | Aug-19 | Feb-20 | 6 |
| [REDACTED] | 2019 | 1LT | CPT | FT | May-19 | | Admin Law Attny | 2 | Aug-19 | Jul-20 | 11 |
| [REDACTED] | 2019 | CPT | CPT | PT | May-19 | Prosecutor | Legal Assistance Attny | 2 | Jul-19 | Jun-20 | 11 |
| [REDACTED] | 2019 | CPT | CPT | PT | May-16 | Litigation associate | 1-Admin Law Attny 2-NSL Attny 3-Trial Counsel | 4 | Aug-19 | Jul-20 | 11 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|----------|----------------|--------------|----------|-----------|----------------|--|--|---------------|------------------------|---------------------|---------------|
| | 2019 | MAJ | LTC | FT | Sep-04 | 1-Intern State Torts Div (1yr) 2-Legal Clerk law firm (2 yrs) | 1 – PEB Soldiers Counsel 2 – Legal Assistance Attny 3 – Trial Counsel 4 – Admin Law Attny 5 – Group Judge Advocate 6 – Command Judge Advocate 7 – Trial Attny, Government Appellate Division 8 – Deputy Staff Judge Advocate 9 – Trial Attny, Contract Fiscal Law Division 10 – Deputy Chief of Administrative Law 11 – Chief, Admin Law | 12 | Sep-19 | Jun-20 | 9 |
| | 2019 | CPT | CPT | FT & PT | May-18 | | 1-Claims 2-Legal Assistance Attny | 3 | Mar-19 | Jun-21 | 27 |
| | 2019 | CPT | CPT | FT | May-17 | | 1-Legal Assistance Attny 2-Trial Counsel | 3 | Aug-19 | Dec-20 | 16 |
| | 2019 | CPT | CPT | PT | Feb-18 | Solo Practitioner (3yrs-Crim Defense) | 1-Admin Law Attny/PTMM 2-Trial Counsel 3-Labor Law Attny | 4 | Feb-20 | Jun-20 | 4 |
| | 2019 | CPT | CPT | FT | May-16 | | 1-Admin Law Attny 2-Tax Center OIC 3-Trial Counsel (division) 4-Trial Counsel (brigade) | 5 | Mar-19 | Jul-20 | 16 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|------------|----------------|--------------|----------|-----------|----------------|-------------------------------|---|---------------|------------------------|---------------------|---------------|
| [REDACTED] | 2019 | CPT | MAJ | FT | May-11 | | 1-Legal Assistance Attny 2-Admin Law Attny 3-NSL Attny 4-Trial Counsel | 5 | Jul-19 | May-20 | 10 |
| [REDACTED] | 2019 | CPT | CPT | FT | May-17 | | 1-NSL Attny 2-Trial Counsel | 3 | Oct-19 | Jul-20 | 9 |
| [REDACTED] | 2019 | 1LT | CPT | FT | Feb-19 | Judicial clerkship | Legal Assistance Attny | 2 | Mar-19 | Jun-20 | 15 |
| [REDACTED] | 2019 | CPT | CPT | PT | Aug-18 | | 1-Legal Assistance Attny 2-Admin Law Attny | 3 | Mar-20 | Sep-20 | 6 |
| [REDACTED] | 2019 | 1LT | CPT | PT | May-19 | | Legal Assistance Attny | 2 | Aug-19 | Jun-20 | 10 |
| [REDACTED] | 2019 | CPT | CPT | PT | May-18 | | Admin Law Attny | 2 | May-19 | Jun-19 | 1 |
| [REDACTED] | 2019 | CPT | MAJ | PT | May-12 | | 1-Admin Law Attny / PTMM 2-Legal Assistance Attny / Tax Center OIC 3-Trial Counsel 4-Defense Counsel 5-Training Officer, DCAP | 6 | Aug-19 | Jul-20 | 11 |
| [REDACTED] | 2019 | CPT | CPT | PT | Feb-17 | Litigation associate | Admin Law Attny | 2 | Sep-19 | May-20 | 8 |
| [REDACTED] | 2019 | 1LT | CPT | PT | May-19 | Law firm associate | Legal Assistance Attny | 2 | Aug-19 | Jul-20 | 11 |
| [REDACTED] | 2019 | CPT | CPT | PT | Aug-18 | | Admin Law Attny | 2 | Apr-19 | Jun-21 | 26 |
| [REDACTED] | 2019 | CPT | CPT | PT | Aug-18 | | 1-Legal Assistance Attny 2-Defense Counsel 3-Contract & Fiscal Law Attny 4-Military Justice Advisor | 5 | Sep-20 | Jul-21 | 10 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|------------|----------------|--------------|----------|-----------|----------------|---|---|---------------|------------------------|---------------------|---------------|
| [REDACTED] | 2019 | CPT | MAJ | PT | Oct-14 | | 1-Legal Assistance Attny 2-Admin Law Attny 3-Trial Counsel 4-Chief of Justice | 5 | Aug-19 | Nov-19 | 3 |
| [REDACTED] | 2019 | 1LT | CPT | FT | May-19 | Defense Attny | Legal Assistance Attny | 2 | Aug-19 | Jun-21 | 22 |
| [REDACTED] | 2019 | CPT | CPT | FT | May-18 | Internships & clinics | 1-Legal Assistance Attny 2-Chief LA | 3 | Apr-19 | May-20 | 13 |
| [REDACTED] | 2019 | CPT | MAJ | FT & PT | Nov-12 | General Practice | 1-Trial Counsel 2-Deputy BJA 3-Chief of Justice 4-Admin Law Attny | 5 | Aug-19 | Jul-20 | 11 |
| [REDACTED] | 2020 | CPT | CPT | PT | Dec-19 | | Legal Assistance Attny | 2 | Aug-20 | Jul-21 | 11 |
| [REDACTED] | 2020 | CPT | CPT | FT | May-19 | 1-Law firm 2-Internships w/ Army and Air Force | 1-Admin Law Attny 2-NSL Attny | 3 | Jul-20 | Aug-21 | 13 |
| [REDACTED] | 2020 | 1LT | CPT | PT | May-20 | Prosecutor | Legal Assistance Attny | 2 | Aug-20 | May-21 | 9 |
| [REDACTED] | 2020 | CPT | CPT | FT | Dec-19 | General practice | Legal Assistance Attny | 2 | Aug-20 | Jun-21 | 10 |
| [REDACTED] | 2020 | CPT | CPT | FT | Dec-19 | Transactional Attny | | 1 | Aug-20 | Aug-21 | 12 |
| [REDACTED] | 2020 | 1LT | CPT | FT | May-20 | Judicial clerkship | 1-Legal Assistance Attny 2-Claims | 1 | Jul-20 | Jun-21 | 11 |
| [REDACTED] | 2020 | CPT | MAJ | FT | Feb-14 | 1-Paralegal at Bank 2-27D in ARNG 3-Law Clerk NJ Superior Ct/Family Ct 4-Law Clerk law firm 5-Civil Justice Clinic 6-Law Clerk NJ Supreme Ct | 1- Legal Assistance Attny 2- Trial Counsel and SAUSA 3- Administrative Law Attny 4- Federal Litigation 5- Special Victims Litigator 6- Senior Military Justice Advisor | 7 | Jun-20 | Jul-21 | 13 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|------------|----------------|--------------|----------|-----------|----------------|--|---|---------------|------------------------|---------------------|---------------|
| [REDACTED] | 2020 | CPT | CPT | FT | May-17 | Internships w/ USCG, Army, & Court | 1-Legal Assistance Attny 2-Admin Law Attny 3-Military Justice Advisor | 4 | Aug-20 | Jun-21 | 10 |
| [REDACTED] | 2020 | 1LT | CPT | PT | May-20 | Defense Attny | Legal Assistance Attny | 2 | Aug-20 | Feb-21 | 6 |
| [REDACTED] | 2020 | CPT | CPT | PT | Dec-19 | | Legal Assistance Attny | 2 | Aug-20 | Aug-21 | 12 |
| [REDACTED] | 2020 | CPT | CPT | PT | May-18 | IP | Admin Law Attny | 2 | Aug-20 | Jan-21 | 5 |
| [REDACTED] | 2020 | 1LT | CPT | PT | May-20 | Judicial clerkship | | 1 | Aug-20 | Jun-21 | 10 |
| [REDACTED] | 2020 | CPT | CPT | PT | Feb-19 | Private practice (10yrs) | 1-Legal Assistance Attny 2-NSL Attny | 3 | Aug-20 | Jul-21 | 11 |
| [REDACTED] | 2020 | CPT | CPT | PT | Oct-14 | Environmental litigation | 1-Legal Assistance Attny 2-Trial Counsel 3-NSL Attny 4-Group JA | 5 | Dec-20 | Jun-21 | 6 |
| [REDACTED] | 2020 | 1LT | CPT | FT | May-20 | Personal injury | | 1 | Aug-20 | Jul-21 | 11 |
| [REDACTED] | 2020 | CPT | CPT | PT | Feb-18 | 1-Fed District Law Clerk 2-Senate Judiciary Committee Law Clerk | 1-Legal Assistance Attny 2-Chief Client Services | 3 | Mar-20 | Mar-21 | 12 |
| [REDACTED] | 2020 | CPT | CPT | FT | May-19 | Judicial clerkship | 1-Legal Assistance Attny 2-Admin Law Attny | 3 | Aug-20 | Jul-21 | 11 |
| [REDACTED] | 2020 | 1LT | CPT | FT | Jul-20 | Firm associate | Legal Assistance Attny | 2 | Aug-20 | Sep-21 | 13 |
| [REDACTED] | 2020 | 1LT | CPT | FT | Jul-20 | Violent Crime Prosecutor | | 1 | Aug-20 | Jul-21 | 11 |
| [REDACTED] | 2020 | CPT | MAJ | PT | Feb-18 | | 1-NSL Attny 2-Trial Counsel (18 months) 3-Senior Trial Counsel (8 months) | 4 | Aug-20 | Jul-21 | 11 |
| [REDACTED] | 2020 | CPT | CPT | PT | May-18 | | 1-Legal Assistance Attny 2-Trial Counsel 3-Admin Law Attny | 4 | Aug-20 | Jun-21 | 10 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Year Certified | Rank at time | Rank now | SVC FT/PT | month/year OBC | Legal Experience prior to OBC | Assignments prior to SVC | SVC Assign. # | Month/year took on SVC | Month/year left SVC | Months as SVC |
|----------|----------------|--------------|----------|-----------|----------------|-------------------------------|--------------------------|---------------|------------------------|---------------------|---------------|
| █ | 2020 | CPT | CPT | PT | May-19 | | Chief, Legal Assistance | 2 | Aug-20 | Jun-21 | 10 |

Summary:

- 96 entries (18 new entries)
- SVC was third assignment, on average
- Average time spent as SVC was 13 months

Included in 21 JAN 22 Response

New entry

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

RFI 2 – Air Force Response



DEPARTMENT OF THE AIR FORCE
OFFICE OF THE JUDGE ADVOCATE GENERAL
MILITARY JUSTICE AND DISCIPLINE

Military Justice and Discipline
The Judge Advocate General's Corps
1500 W. Perimeter Road
Joint Base Andrews, MD 20762

Colonel Jeff A. Bovarnick, USA
DAC-IPAD
875 N. Randolph Street, Suite 150
Arlington, Virginia 22203

Colonel Bovarnick,

On November 5, 2021, in response to a Congressional Inquiry, and on behalf of the Secretary of Defense, the DoD General Counsel requested the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) provide a report with findings and recommendations on a series of questions pertaining to tour lengths of SVCs/VLCs and the rating chain of Army SVCs. On December 14, 2021, you requested our assistance in providing responses to a Supplemental Request for Information for Study of Tour Lengths of Special Victims' Counsel/Victims' Legal Counsel (SVCs/VLCs) and Rating Chains of Army SVCs.

I have attached the requested information. Should you have questions or concerns, my point of contact regarding this matter is Colonel Tracy A. Park. She may be reached at 240-612-4824 or tracy.park@us.af.mil.

Sincerely,

A handwritten signature in black ink, appearing to read "Rebecca R. Vernon", is positioned above the typed name.

REBECCA R. VERNON
Brigadier General, USAF
Director, Military Justice and Discipline

Attachment:
Air Force Response

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Initials | Month Start | Year Start | Month End | Year End | Assignment # | Full/part-time |
|----------|-------------|------------|-----------|----------|--------------|----------------|
| █ | January | 2015 | January | 2018 | 3 | Full-time |
| █ | July | 2015 | July | 2018 | 2 | Full-time |
| █ | July | 2015 | July | 2018 | 8 | Full-time |
| █ | June | 2016 | June | 2018 | 5 | Full-time |
| █ | July | 2016 | July | 2018 | 2 | Full-time |
| █ | July | 2016 | July | 2018 | 2 | Full-time |
| █ | July | 2016 | August | 2018 | 3 | Full-time |
| █ | July | 2016 | July | 2018 | 3 | Full-time |
| █ | July | 2016 | July | 2018 | 3 | Full-time |
| █ | July | 2016 | July | 2018 | 2 | Full-time |
| █ | July | 2016 | July | 2018 | 2 | Full-time |
| █ | July | 2016 | July | 2018 | 2 | Full-time |
| █ | July | 2016 | July | 2018 | 2 | Full-time |
| █ | July | 2016 | July | 2018 | 3 | Full-time |
| █ | July | 2016 | July | 2018 | 3 | Full-time |
| █ | July | 2016 | July | 2018 | 3 | Full-time |
| █ | July | 2016 | July | 2018 | 3 | Full-time |
| █ | June | 2017 | July | 2019 | 3 | Full-time |
| █ | June | 2017 | July | 2019 | 3 | Full-time |
| █ | June | 2017 | June | 2019 | 2 | Full-time |
| █ | June | 2017 | July | 2020 | 9 | Full-time |
| █ | June | 2017 | July | 2019 | 2 | Full-time |
| █ | July | 2017 | August | 2019 | 3 | Full-time |
| █ | July | 2017 | August | 2019 | 3 | Full-time |
| █ | July | 2017 | July | 2019 | 3 | Full-time |
| █ | July | 2017 | July | 2019 | 4 | Full-time |
| █ | July | 2017 | July | 2020 | 8 | Full-time |
| █ | July | 2017 | June | 2019 | 2 | Full-time |
| █ | July | 2017 | September | 2020 | 4 | Full-time |
| █ | July | 2017 | July | 2019 | 2 | Full-time |
| █ | July | 2017 | July | 2019 | 2 | Full-time |
| █ | July | 2017 | July | 2019 | 2 | Full-time |
| █ | July | 2017 | July | 2019 | 2 | Full-time |
| █ | September | 2017 | July | 2019 | 3 | Full-time |
| █ | October | 2017 | June | 2019 | 4 | Full-time |
| █ | December | 2017 | October | 2020 | 3 | Full-time |
| █ | March | 2018 | June | 2020 | 2 | Full-time |
| █ | June | 2018 | July | 2020 | 3 | Full-time |
| █ | July | 2018 | July | 2020 | 2 | Full-time |
| █ | July | 2018 | September | 2020 | 2 | Full-time |
| █ | July | 2018 | October | 2020 | 3 | Full-time |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| | | | | | | |
|---|----------|------|-----------|------|---|-----------|
| █ | July | 2018 | September | 2020 | 3 | Full-time |
| █ | July | 2018 | August | 2020 | 2 | Full-time |
| █ | July | 2018 | June | 2020 | 6 | Full-time |
| █ | July | 2018 | July | 2020 | 2 | Full-time |
| █ | July | 2018 | June | 2020 | 2 | Full-time |
| █ | July | 2018 | September | 2020 | 8 | Full-time |
| █ | July | 2018 | July | 2020 | 2 | Full-time |
| █ | July | 2018 | July | 2020 | 2 | Full-time |
| █ | July | 2018 | October | 2020 | 2 | Full-time |
| █ | July | 2018 | October | 2020 | 3 | Full-time |
| █ | July | 2018 | September | 2020 | 2 | Full-time |
| █ | August | 2018 | July | 2020 | 3 | Full-time |
| █ | December | 2018 | July | 2021 | 2 | Full-time |
| █ | May | 2019 | June | 2021 | 2 | Full-time |
| █ | June | 2019 | June | 2021 | 3 | Full-time |
| █ | June | 2019 | June | 2021 | 2 | Full-time |
| █ | June | 2019 | June | 2021 | 3 | Full-time |
| █ | June | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | April | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | June | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2019 | 4 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 3 | Full-time |
| █ | July | 2019 | June | 2021 | 3 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |
| █ | July | 2019 | July | 2021 | 2 | Full-time |

RFI 2 – U.S. Marine Corps Response



UNITED STATES MARINE CORPS
VICTIMS' LEGAL COUNSEL ORGANIZATION
JUDGE ADVOCATE DIVISION
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO
5800
VLCO
10 Jan 22

From: Chief Victims' Legal Counsel of the Marine Corps
To: Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

Subj. RESPONSE TO SUPPLEMENTAL REQUEST FOR INFORMATION

Ref: (a) DAC-IPAD ltr of 14 Dec 21

Encl: (1) List of VLC by Initials with Tour Length and Assignment Order

1. This is in response to the supplemental request for information in the reference.
2. The enclosure is a spreadsheet, which lists all Marine Corps active duty judge advocates (JAs) who concluded their VLC assignments after 1 January 2018. The enclosure identifies the JAs by their initials, provides the month and year they began and ended their VLC assignment, whether they served as a full-time or part-time VLC, and their respective VLC assignment order.
3. The enclosure also provides the following:
 - (a) In total, there were 50 JAs who concluded their VLC assignments after 1 January 2018. Specifically, there were 47 full-time VLC and three (3) part-time VLC.
 - (b) The average VLC tour length for a full-time VLC was about 15.79 months.
 - (c) The average VLC tour length for a part-time VLC as about 18.67 months.
 - (d) All 50 JAs began their VLC assignments after having served in at least one or more different assignments.
 - (e) The average VLC assignment order for full-time VLC was about 3.32 after completing officer basic course.
 - (f) The average VLC assignment order for part-time VLC was about 4.67 after completing officer basic course.
4. Point of contact is the undersigned at (703) 693-9524, yong.lee@usmc.mil.

LEE.YONG.JOON
.1242551628
Y. J. LEE

Digitally signed by
LEE.YONG.JOON.1242551628
Date: 2022.01.10 10:26:36 -05'00'

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| Enclosure (1) to Marine Corps VLCO's Response to DAC-IPAD's Supplemental RFI of 14 Dec 21 | | | | | | | |
|--|------------|-----------|-----------|--------------------------------|--------------------------------|-----------------------------------|----------------------------|
| VLC by Initials with Tour Length and Assignment Order - All VLC Who Concluded Assignment After 1 January 2018 Only | | | | | | | |
| # | VLC (Int.) | Full-Time | Part-Time | Month/Year Assignment Began | Month/Year Assignment Ended | VLC Assignment Order after OBC | Time as VLC (in months) |
| 1 | | | X | June-16 | June-18 | 5 | 25 |
| 2 | | X | | August-18 | July-20 | 2 | 24 |
| 3 | | X | | June-18 | June-19 | 2 | 13 |
| 4 | | | X | July-19 | June-21 | 3 | 24 |
| 5 | | X | | April-18 | July-19 | 4 | 16 |
| 6 | | X | | August-17 | September-18 | 2 | 14 |
| 7 | | X | | June-19 | July-20 | 3 | 14 |
| 8 | | X | | March-17 | July-19 | 2 | 29 |
| 9 | | X | | July-18 | July-19 | 2 | 13 |
| 10 | | X | | August-19 | June-20 | 3 | 11 |
| 11 | | X | | August-18 | July-19 | 2 | 12 |
| 12 | | X | | May-19 | July-20 | 2 | 15 |
| 13 | | X | | July-17 | July-19 | 2 | 25 |
| 14 | | X | | March-19 | July-20 | 3 | 17 |
| 15 | | X | | July-20 | August-21 | 3 | 14 |
| 16 | | X | | July-19 | May-20 | 2 | 11 |
| 17 | | X | | May-20 | June-21 | 2 | 14 |
| 18 | | X | | August-19 | June-21 | 4 | 23 |
| 19 | | X | | August-18 | December-19 | 3 | 17 |
| 20 | | X | | June-17 | August-18 | 2 | 15 |
| 21 | | X | | July-18 | July-19 | 5 | 13 |
| 22 | | X | | June-17 | July-18 | 2 | 14 |
| 23 | | X | | June-19 | June-20 | 3 | 13 |
| 24 | | X | | June-20 | November-21 | 5 | 18 |
| 25 | | X | | July-20 | July-21 | 3 | 13 |
| 26 | | X | | November-20 | May-21 | 4 | 7 |
| 27 | | X | | October-17 | June-18 | 4 | 9 |
| 28 | | X | | August-19 | May-20 | 2 | 10 |
| 29 | | X | | February-18 | August-19 | 2 | 19 |
| 30 | | X | | February-21 | December-21 | 4 | 11 |
| 31 | | X | | May-18 | August-19 | 3 | 16 |
| 32 | | X | | July-17 | September-18 | 2 | 14 |
| 33 | | X | | July-20 | July-21 | 8 | 13 |
| 34 | | X | | July-18 | July-19 | 3 | 13 |
| 35 | | X | | July-19 | July-20 | 3 | 13 |
| 36 | | X | | July-18 | October-19 | 2 | 16 |
| 37 | | X | | June-17 | June-19 | 3 | 25 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

| | | | | | | |
|----|--|---|-------------|-------------|-----|-----|
| 38 | | X | July-17 | July-18 | 4 | 13 |
| 39 | | X | July-20 | May-21 | 5 | 11 |
| 40 | | X | July-19 | June-21 | 7 | 24 |
| 41 | | X | June-20 | December-21 | 2 | 19 |
| 42 | | X | December-19 | May-21 | 5 | 18 |
| 43 | | X | June-21 | December-21 | 6 | 7 |
| 44 | | X | July-19 | August-20 | 3 | 14 |
| 45 | | X | June-19 | July-21 | 3 | 26 |
| 46 | | X | July-18 | August-19 | 3 | 14 |
| 47 | | X | July-20 | August-21 | 2 | 14 |
| 48 | | X | July-19 | November-21 | 14 | 29 |
| 49 | | X | June-17 | June-18 | 3 | 12 |
| 50 | | X | June-19 | July-20 | 2 | 14 |
| | | | | | 170 | 798 |

| RELEVANT STATISTICS | |
|---|-------------|
| Total # of IAs who concluded VLC assignments after 1 Jan 18 | 50 |
| Total # of full-time VLC | 47 |
| Total # of part-time VLC | 3 |
| The average VLC tour length for both full-time and part-time VLC | 15.96 |
| The average VLC tour length for a full-time VLC | 15.78723404 |
| The average VLC tour length for a part-time VLC | 18.66666667 |
| The average VLC assignment order for both full-time and part-time VLC | 3.4 |
| The average VLC assignment order for a full-time VLC | 3.319148936 |
| The average VLC assignment order for a part-time VLC | 4.666666667 |

| FOR CALCULATION PURPOSES | |
|--|-----|
| Total # of months as VLC (full-time/part-time combined) | 798 |
| Total # of months as VLC (full-time only) | 742 |
| Total # of months as VLC (part-time only) | 56 |
| Total # of assignment order after OBC (full-time/part-time combined) | 170 |
| Total # of assignment order after OBC (full-time only) | 156 |
| Total # of assignment order after OBC (part-time only) | 14 |

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

RFI 2 – U.S. Navy Response



DEPARTMENT OF THE NAVY
NAVY VICTIMS' LEGAL COUNSEL PROGRAM
NAVAL BASE SAN DIEGO
3005 CORBINA ALLEY, BUILDING 259
SAN DIEGO CA 92136-5190

CUI

5800
Ser CHF/003
13 Jan 22

From: Chief, Victims' Legal Counsel Program
To: The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC IPAD)

Subj: RESPONSE TO SUPPLEMENTAL REQUEST FOR INFORMATION DATED 14 DECEMBER 2021

Ref: (a) DAC IPAD Supplemental Request for Information dtd 14 Dec 21

Encl: (1) Navy Victims' Legal Counsel Program Spreadsheet

1. In response to reference (a), enclosure (1) is provided.
2. My point of contact for this information is Ms. Charlotte E. Cluverius, Deputy Chief, Victims' Legal Counsel Program. She can be reached at charlotte.e.cluverius.civ@us.navy.mil or (202) 961-0123.

Daniel Cimmino
D. CIMMINO

Appendix J. DAC-IPAD SVCs VLCs Request For Information 2 and Services' Responses

Navy VLC Program Supplemental Response – Former VLC Tour Status

| Initials | Month/Year (came to VLCP) | Month/Year (tour ended) | Length of Tour (months) | FT/PT (Full Time/Part Time) | Tour | Comments |
|----------|---------------------------|-------------------------|-------------------------|-----------------------------|------|---|
| | Jul-19 | Jul-21 | 24 | FT | 4 | |
| | Jul-18 | Jul-21 | 36 | FT | 2 | |
| | Jul-19 | Jul-21 | 24 | FT | 3 | |
| | Aug-19 | Jul-21 | 23 | FT | 4 | |
| | Feb-16 | May-21 | 46 | FT | 3 | |
| | Jun-19 | Jun-21 | 24 | FT | 3 | |
| | Jul-18 | Jul-21 | 36 | FT | 2 | |
| | Sep-18 | Nov-21 | 38 | FT | 2 | |
| | Jun-20 | Jun-21 | 12 | FT | 3 | One-year unaccompanied tour overseas (Navy tour length requirement) |
| | Sep-18 | Sep-20 | 24 | FT | 6 | Activated reservist; senior officer; 2nd VLC tour |
| | Jul-17 | Nov-20 | 40 | FT | 5 | |
| | Oct-17 | Oct-20 | 36 | FT | 3 | |
| | Jul-17 | Jul-20 | 36 | FT | 3 | |
| | Jun-18 | Nov-20 | 29 | FT | 4 | |
| | Jun-18 | Jun-20 | 24 | FT | 3 | |
| | Jun-17 | Aug-20 | 38 | FT | 3 | |
| | Jun-18 | Jul-20 | 25 | FT | 2 | |
| | Jun-18 | Sep-20 | 27 | FT | 4 | |
| | Jun-16 | Jul-20 | 49 | FT | 6 | |
| | Aug-16 | Aug-19 | 36 | FT | 4 | |
| | Jul-17 | Aug-19 | 26 | FT | 3 | |
| | Sep-16 | Sep-19 | 36 | FT | 5 | |
| | Mar-17 | Jun-19 | 28 | FT | 2 | |
| | Aug-16 | Aug-19 | 36 | FT | 5 | |
| | Aug-16 | Aug-19 | 36 | FT | 3 | |
| | Jul-17 | Jul-19 | 24 | FT | 6 | |
| | Jul-17 | Jul-19 | 24 | FT | 3 | |
| | Feb-17 | Jun-19 | 28 | FT | 3 | |
| | Apr-17 | Apr-19 | 24 | FT | 3 | |
| | Apr-17 | Jun-19 | 26 | FT | 3 | |
| | May-16 | May-19 | 36 | FT | 3 | |
| | Sep-15 | Sep-18 | 36 | FT | 5 | Activated reservist; senior officer; former civilian state prosecutor |
| | Sep-16 | Sep-18 | 24 | FT | 2 | |
| | Oct-16 | Jul-18 | 22 | FT | 3 | |
| | Jul-16 | Jul-18 | 24 | FT | 3 | |
| | Jun-16 | Jun-18 | 24 | FT | 3 | |
| | May-16 | Jul-18 | 26 | FT | 3 | |
| | Feb-16 | Jul-18 | 29 | FT | 3 | |
| | May-16 | Aug-18 | 27 | FT | 3 | |
| | Apr-15 | Jul-18 | 39 | FT | 3 | |
| | Apr-17 | Jun-18 | 14 | FT | 3 | One-year unaccompanied tour overseas (Navy tour length requirement) |

* All Navy VLC serve in a full time capacity.

Appendix K. Interviewee Comments

1. **Victims who were represented by SVC/VLC stated that changing counsel during a case was inherently stressful, especially if they had to repeat their stories.** Examples of victim comments on SVC/VLC turnover include:

- No transfer conversations between current and new SVC were conducted with me present. I carried hard copies of my records with me to new base and gave to new SVC. I was never part of a transition meeting. “I had a lot of anxiety, and had concerns about professionalism in the court room with the first SVC, and was anxious about changing to a new one. But it has been an incredible experience with the new SVC.”
- Victim who went through three SVC/VLC learned of each transfer by phone call from incoming SVC/VLC. SVC 3 helped explain the transition, but there was never a conversation with the outgoing and incoming together about the transition. She had to retell her story each time. It was very stressful to have the SVC change, especially since trial counsel changed as well. It was hard to have to keep retelling her story.
- Describing transition to third SVC/VLC, after first two were not engaged, “Having to go through the first two, who didn’t really care, left a mark. It’s hard to have to tell your story, when you’re so vulnerable, to people who don’t really care.”
- Changing SVC/VLC created new trauma because victim had to re-tell what happened. Client felt re-victimized by having to retell story over and over to four different SVC/VLC. It bothered her that there was not a good handoff from one SVC/VLC to another. She “felt re-victimized” when she had to keep telling her story over and over. She knows other victims who have had this problem with SVC/VLC as well and also not being told what is going on. If the last SVC/VLC had not been so good, she would have given up.
- Client felt self-conscious about the change of SVC/VLC and worried it was because her case was a problem or they didn’t believe her. SARC helped explain what was happening. Having to go over the circumstances of the assault again was difficult, but second SVC/VLC was better at explaining things. Continuity of SVC/VLC should be prioritized because you are trying to build trust in the individual.
- The transition to new SVC/VLC wasn’t good. Client received notice of the transition by email with some forms. She could not get hold of new SVC/VLC for a long time. When she reached him months later, he was nonchalant, careless, uncommunicative. He said he did not have her contact information. She obtained civilian attorney. She thinks the military should try to mitigate the number of SVC/VLC transitions so the client doesn’t have to start over building trust and reliving the event. Hard on client to have to get to know and trust new person, and then have to do it over and over again.
- Victim who is on fourth SVC/VLC got notice of each transition by text message from incoming SVC/VLC. Victim did not have to retell story, but each new SVC/VLC had to start from scratch with the file, which slowed things down.

Appendix K. Interviewee Comments

2. The challenges of transitioning from one SVC/VLC to another increased when the new SVC/VLC was not communicative or lacked substantial military justice experience.

Victim comments on how they were impacted by the experience and communicativeness of their SVC/VLC include:

- SVC/VLC who had worked all sides – defense, prosecution, and other roles - was helpful in preparing for the case. Client had the sense he knew from all perspectives what was going on. She had a lot of questions and he was able to answer all of them and gave her confidence in his advice and abilities. Experienced SVC/VLC is important and made a difference in her case. Court is intimidating and knowing SVC/VLC was experienced made it easier.
- Victim would reach out to SVC/VLC for updates when a month or more would pass without communication, and he would say there was nothing to report. She would have preferred that he reach out at least once a month, even if there was nothing to report, just to check in and ask how she was doing.
- SVC/VLC was supportive and provided resources to help me better understand the process. She was passionate and informed about the case, much better than trial counsel. A lot of evidence wasn't presented because trial counsel never countered. SVC was my advocate and was passionate about the timid approach of the prosecution not helping my case. Trial counsel's demeanor hurt my case. My SVC was more versed in the law than the prosecution.
- Victim wished there had been better communication at the end of the case. There was a period of time when she wasn't sure if defendant was still in the service. Victim wanted to know more about the long term ramifications of guilty plea, and defendant's ability to appeal a less than honorable discharge.
- The VLC had worked previously in prosecutor's office and had a lot of experience. He explained everything and every form before she signed; went with her to NCIS and explained everything that was happening; and prepared her for trial. She had confidence in the VLC to be her advocate. The VLC helped direct the prosecutor, who was new, on how to handle particular issues. VLC did a great job, and was supportive through the whole process. He would check in on her wellbeing outside of the case.
- SVC/VLC had less time in the military than victim did. She felt the lack of experience when she would ask questions or at trial and saw the SVC/VLC referring to the code book to know what was going on and being talked about. It was terrifying to see him consulting his legal bible every time she asked a question or something came up at trial. If civilian attorney had not taken her case, she would have dropped out of participation.
- She thought the accused would know when she unrestricted her report, but the SVC hadn't shared with her how the process would work. She felt insecure and fearful for a long time. She didn't know for the longest time that he would be placed on a stop movement.
- Victim's second SVC/VLC didn't help. Victim felt she had to do his job. He told her that it wouldn't be possible to get BAH to relocate out of the barracks. Third SVC/VLC got it done even though the CO said no. Pre-trial discussion with the prosecution about potential not guilty verdict and what to expect after the trial was very beneficial. Case returned a not guilty verdict, but she was mentally prepared for that. It is good that SVC and prosecution were optimistic, but important to be realistic, too. She had a lot of questions about what would happen if not guilty verdict was returned, like whether the accused could take her to court, would she get in trouble at work, would she face charges?

Appendix K. Interviewee Comments

- Junior, Inexperienced SVC/VLC did not advocate for client: one SVC/VLC did not push back when military decided to take jurisdiction on eve of civilian trial, and next SVC/VLC did not push to have client released as witness after she testified so she could observe proceedings.
- Victim who transferred did not hear from new SVC/VLC, so she had to go to SVC/VLC office to sort it out.
- Victim who went through four different SVC/VLC experienced long stretches of time where she was between SVC/VLC and not being told what was going on. She felt like nothing was happening. There was no paralegal involved to give her updates. Months went by and no SVC would contact her. She had to reach out and contact her SVC for updates. There was no explanation of why nothing seemed to be happening. It would have been very helpful for someone to check in at least once a month just to check in and give an update.

3. SVC/VLC comments on tour lengths

a. Army SVCs commented on tour lengths:

- Tours should be at least 18 months, and two years is preferred due to the client relationship. Going beyond two years doesn't allow for development in other areas.
- Eighteen months is a fair minimum and maximum because the job can take an emotional toll.
- An SVC agrees with the 18-month requirement because it benefits the client to have the same SVC. Having a benchmark helps manage the SVC's expectations and also planning. Any longer can create burnout.
- There is an impression that SVC is not looked on as highly as other positions because they are not actively participating in the military justice process. SVCs worry about their career progression. Tours should be less than two years because of the nature of the job. Clients do not have boundaries, and call at all hours. Eighteen-month tours would enable SVCs to see many clients through the whole process, reducing the number of transitions. But the culture within the JAG Corps would have to change to make sure it won't hurt progression. Because of the nature of the work, you're not able to go to other courses like Ranger School or Airborne School, so you can't get experiences you need for your career path.
- An SVC who completed SVC certification during a 12-month SVC tour said that 18 months would be right to sync with the life cycle of a case. Minimum tour lengths are a good idea for any military justice position because handoffs create inefficiencies. Transitions are challenging, so SVCs should be trained before they arrive in the SVC job.
- An SVC thinks the tour length should not exceed the typical 12-month rotation in the JAG Corps. One consideration is the well-being of the SVC. The cases are traumatic events and dealing with them every day continuously is mentally and emotionally draining. Also, it's not conducive to developing as an attorney because you are not practicing. If you're a prosecutor you have power in the role, but as an SVC you do not. On the professional side, it develops people skills, but on the lawyer side you are not developing legal skills. Opportunities to litigate motions are few and far between. The job could be handled by a civilian attorney to provide continuity or by a well-trained victim advocate (VA). A VA could do the job, because there is nothing required until a motion is required and that could be handled by an attorney in the OSJA. That would be a better use of resources to allow JAGs to do prosecution and defense work. The SVC is a stagnating position.

Appendix K. Interviewee Comments

- Thirteen to 14 months is good. It's a steep but short learning curve, so you get there quickly and then you're ready to move on. After a year of dealing with the psychological aspect of the job, you're ready to move. The new 18-month policy is too inflexible, and won't attract enough people.
- The advantage of an 18-month tour as SVC is that it would avoid interruptions for the victims. The number one complaint of victims is the slow pace of the military justice system. The problem with two-year tour lengths in the Army is that you wouldn't have time to rotate through multiple assignments.
- If domestic violence clients were not included, SVCs could easily do two years. The domestic violence clients are five times the workload and emotional drain.
- A year is reasonable, not more than two years.
- An SVC who served two years said that was too long, but 18 months would work.
- Twelve months should be the maximum because it is emotionally exhausting.
- Two-year minimum is good, but must have a community of support. Eighteen-month terms are too short to develop skills.
- An SVC who left after 16 months because the work was so stressful said that 18 months is appropriate. 12 months would be too short and 2 years would be the upper limit for tour length.

b. Marine VLC comments included the following:

- A year is long enough to finish clients' cases and transfer only a small amount of cases. Any longer and you are sacrificing career progression. Eighteen months should be the longest reasonable time. It would add continuity, but it should be aspirational, not mandatory.
- There should be a minimum tour length to provide continuity for clients, but 18 months to two years is too long. Until VLC is considered litigation time, it would be crushing to career progression.
- Twenty-four to 36 months gives continuity for the clients and mentoring the younger VLCs.
- Optimal tour is 18–24 months. Two years is a good amount of time to handle case from cradle to grave, but after 18 months, "there is some burn on the counsel." Better for them to move on, get new experiences that make them better SJAs.
- A VLC who served two years said, "In my last 3 months, I was dying." At some point the vicarious trauma becomes an issue. Two years should be the maximum. Three years is too much.
- It should be mandatory minimum 12 months. That would make it easier to attract people to the job, and allow flexibility to pull in the best people for the job even if they don't have 18 months left on station, which will improve retention.

c. Some of the Navy VLCs commented:

- Two years is ideal, with two- to three-year range. Rotations bring in fresh blood, new energy.
- Two to three years is good. Military justice is slow, so that would let VLCs follow cases from start to finish. Longer tours would not be beneficial to the attorneys' upward mobility, and would create stagnation.
- Two years provides the full experience. Three years is too long; it hurts career progression because you don't get enough different experiences.

Appendix K. Interviewee Comments

d. Air Force VCs commented:

- Two years should be minimum and maximum, to provide continuity. First year is a learning curve and second year is hitting your stride. It would be difficult going longer due to the nature of the work. It gets wearing and reduces empathy.
- Two years is ideal. Eighteen months is too short given the length of investigations and trials.
- A VC agrees with a two-year policy and believes that more than two years would be tough.
- Two years is the right length, but it should not be mandatory. The VC was bored at the end of two years. If someone has to take off-ramp before then, it looks bad for the promotion board.
- Two years should be the maximum. The ideal tour length depends, because of vicarious trauma. While two years would be good for getting good at the job, the VC struggled with vicarious trauma and was exhausted.

4. Some Army SVC did not describe any pressure on them in performing their job, or minimal pressure that didn't affect their clients' interests. Comments from SVCs included the following:

- The SVC hasn't felt constrained in his zealous representation.
- The SVC hasn't experienced his advocacy being inhibited. His leadership has been supportive and allowed him to handle his cases as he wants.
- The SVC never heard of an SVC getting a low rating because they pushed back on the command.
- The SVC had no issues and never experienced any pushback. When there was disagreement, the SVC was allowed to advocate for clients without retribution.
- At times there has been some pressure the SVC perceived from the government against zealous advocacy for the client, but this was not often and has never impacted the SVC's ability to fully represent the client.

5. Perceived benefits of local rating by the SJA expressed by some Army SVCs were tied not to better rating of their SVC work but only to the SVC's other duties such as participation in physical training, extra duty, and office functions. Comments from SVCs included the following:

- The SVC liked seeing the SJA regularly and having the SJA know him well. The SVC was seen when he took on extra duties like teaching classes. The SJA also knew the SVC through PT and office functions.
- The advantage with the SJA rating is that the local office sees him more and knows when and how he works.
- Because of confidentiality, the SJA won't know everything he is doing, but local leadership at least has better visibility over what he is doing.
- There are pros and cons to local rating. Regional managers could rate actual SVC work better, but they aren't located locally and wouldn't know the other work done outside their SVC duties.

Appendix K. Interviewee Comments

6. Some Army SVCs spoke about inherent or potential pressure from the SJA senior rater. Other Army SVCs commented on pressure they were aware of that was or could be put on other SVCs. Comments from Army SVCs included the following:

- There is “inherent” pressure that could be removed by changing the SVC rating structure (but at a cost of weakening the SVC’s ability to build a relationship between the client and the government that the government needs). The SVC never personally experienced a problem with representing his clients, but the SVC was aware of concern about subtle pressure on junior VLCs who lack experience or emotional intelligence.
- An SVC said their SJA liked the prosecution to win cases and was aligned with the trial counsel. The SVC had to be the “bad guy” at times in the eyes of the SJA when his client’s interest interfered with the government’s.
- The SVC has a good SJA and he never had a problem with independence or advocacy, but added that objectively, there is a concern about conflicts of interest when SJAs rate SVCs, which would be especially true if you didn’t have a good SJA.
- The SVC experienced no hindrance from the rating chain, but the SVC could see how other individuals could have been intimidated.
- The problem is that SVCs need independence to do their job properly but are also part of the SJA’s team. It is a challenge for an SVC to have independence, and still be a member of the SJA’s team. The SVC thought stovepiped rating was a good idea, so long as SVCs were not left isolated and without support.
- Since SVCs are within the SJA’s rating chain, they may feel they have to reflect the philosophy of or please the senior leader and other leadership within the office.
- One Army SVC represented the wife of her own commander, who remained in the command position. The SVC was concerned because the commander had access to the SVC’s personal official information, the commander tried to convince the SVC to advise the client to take certain actions, and the commander did not seem to understand the role of the SVC.

7. Some Army SVCs, especially those overseas, have the majority of their clients in other areas away from their assigned duty location. Many of the Army SVCs interviewed commented on this issue. Some noted the conflict between independently and zealously representing these clients away from the SVC’s assigned location and explaining to their local rating chain why they have to be absent so often from the OSJA. Comments from Army SVC included the following:

- There have been conflicts with local SJAs over the need to be away from their assigned installation to represent other clients.
- There was an issue within the SVC’s OSJA about the amount of temporary duty travel time the SVC had been taking.¹ The SJA spoke to the SVC’s immediate supervisor, who then made the SVC have the client get a second SVC at the client’s location, meaning she would be dual represented by two SVCs. The client did not request or want dual representation. The supervisor was concerned about the SJA making an issue about how much TDY the SVC was taking to help her client, and chose to have the client take on another SVC. This caused the client to have to start over with a second SVC and retell her story to another person.

¹ The issue was time away, not funding; SVC travel to represent clients is provided by the Army SVC Program Office.

Appendix K. Interviewee Comments

- Independent rating would support the independence of SVCs to manage their own schedule and this would enable them to support clients who are not co-located with them.
- 8. There are other Army SVCs who say that there is no pressure or concern about their rating from their local supervisors, but at the same time described measures they take to minimize conflict. These actions by the SVCs would likely not occur but for the rating chain structure. These actions do not appear to be taken in support of clients' interests, but instead support the relationship between the SJA and local raters. Army SVC comments included the following:**
- One current Army SVC said they haven't had any rating chain issues or concerns about being fairly evaluated by the raters. The SVC said that communicating and advocating zealously without "burning bridges" allows the raters to know that the SVC is doing their job. The SVC added that filing a congressional or IG complaint is a last resort, and advises clients of other options to solve problems.
 - Another current Army SVC indicated that their leadership makes it clear it is acceptable for the SVC to look out for the client. The SVC went on to say there were some instances when a client wanted to do something that would embarrass the OSJA. The SVC did not want to be seen as the kind of person who would do that, so he called the Deputy SJA and Chief of Military Justice to make them aware. He said he believed the issue was resolved quickly after he alerted senior personnel in his OSJA. The SVC said he felt he had to handle it that way because of the rating chain issue. He said he felt clients often wanted him to be needlessly aggressive, and he believes it is always better to handle things in a way that will not embarrass anyone. The SVC said in egregious circumstances that warrant an IG complaint or congressional inquiry, it always helps to warn the higher-ups first.
- 9. Comments from represented victims included reports of high satisfaction with their SVC's independence and zealously from some, as well as dissatisfaction from others, with some concern expressed over their perception of their SVC's lack of independence and zealously in challenging the command:**
- One Army victim, whose case began 17 months ago, was represented by a series of four Army VLCs. Her first SVC attended a CID meeting with her, but provided no advice and did no advocacy for her. The second SVC emphasized the limited scope of her representation. Her second SVC attended a meeting with the prosecutor with her, and even though the client had asked this SVC to push for prosecution of the case, the SVC did not advocate for it. The client speculated that this was out of deference to the chain of command. She had no comments about her third SVC. She believed her fourth SVC was smart and a good person, but she was unsure he had her best interests at heart. She wanted to receive an expedited transfer, but her SVC would not advocate for it to her command. She hired a civilian SVC who did advocate for an expedited transfer, which was never approved. She speculates that her fourth SVC was inhibited by his chain of command, because he experienced pushback from the local command when he tried to assist with getting her CID personnel file and when he had pointed out that she was being retaliated against in response to a whistleblower complaint.
 - An Army victim was represented by three Army SVCs in series. Although her second SVC did not help her much, her first SVC supported her through the investigation phase and gave her good advice. Her third SVC helped her through the trial process. The SVC had a good relationship with the prosecution team, backed her up, and zealously represented her interests as he advocated for her.

Appendix K. Interviewee Comments

- A civilian victim was represented by two Army SVCs in series over a five-month period. The victim had a good experience with the military justice process and both of her SVCs. Both communicated well with her, both met with her in person, and there was a smooth transition from one representing her to the other. Both of her SVCs were “awesome.” Her first SVC was very supportive of her and there didn’t seem to be any pressure from the command. The SVC’s main concern was for the victim and the case. She was in constant communication and she felt in good hands. Her second SVC was just as supportive as the first and backed her up. The SVC didn’t seem under anyone’s control. She was very knowledgeable and not timid. She stood up for her. They were both captains and knew what they were doing. Her second SVC was recently promoted to captain and was new to the SVC role. Both zealously represented the victim’s interests.
- A civilian victim of an Army accused who now works as a victim advocate was represented by two SVCs in series and a civilian victim counsel, not affiliated with the military. She was not comfortable with her first SVC and did some research into civilian options. Her first SVC was later called into court to testify when the military judge decided that some of their communications were not protected. When she retained a civilian counsel, she received appointment of a new SVC. Her second SVC worked with the civilian she retained. This SVC was very good and helpful due to his knowledge of military law. In her opinion, based on her experience, rank is an issue for some Army SVCs providing zealous representation. In high-profile cases or those involving higher-ranking accused, SVCs are not as zealous and their voices are more muted.
- An Army victim engaged the first of five Army SVCs in September 2016. She released her first SVC after one week because he didn’t have knowledge of the local civilian court system, where her case began. She felt he was incompetent and led her astray. Her fourth SVC was new to the Army and this was her first assignment. The SVC was with the victim when the local prosecutors met with the military prosecutors to see if the case would be transferred to military court. Her SVC never explained what was happening in that meeting or advocated for her. Her fourth SVC filed a successful motion for immunity for the victim, but left representation shortly before the trial. The victim received a fifth SVC whom she met for the first time a few days before trial. He was very inexperienced compared to the trial and defense counsel. The victim feels that all the SVCs were inadequate because they were part of the chain of command and lacked experience.
- An Army NCO was represented by four SVCs. Her first SVC was very helpful, and her last one was with her for the trial, and she characterized them both as “outstanding.” Her second and third SVCs were disappointing because the transitions were poor, they were uncommunicative, and they never advised her of the possibility of getting dual representation, which she would have wanted after she changed duty stations and the trial was pending at another location. She does not feel any of her SVCs had a conflict of interest or were not being zealous. She would like to have someone in the SVC chain higher up to contact if she wasn’t hearing from her SVC, which happened to her several times. There should at least be another SVC point of contact if you can’t get hold of your SVC. Having a good final SVC was “extremely helpful with [her] mental health and ability to go forward with a trial.” Her SVC gave her a better perspective on the military and she really feels the program worked and gave her faith in the legal system. It showed her the system is not a joke like a lot of people say; instead, there are good people who really care.

Appendix K. Interviewee Comments

10. Current and former SVCs from the other Services were unanimously in favor of having an independent rating chain outside the local OSJA and command. Their comments included the following:

- Likes the independent rating chain and thinks it works well.
- Thinks employing a local rating chain would be a conflict. The VLC may have to fight against the government and/or the SJA professionally, and at times it doesn't go well. It's beneficial to be able to reassure the client that the VLC doesn't report to them. The VLC doesn't know how you could be impartial if you are worried about your FITREP (professional evaluation rating).
- Agrees that the rating chain should be independent. In the Air Force, SVCs are still fighting for legitimacy and the SJA offices are a big challenge because their interests don't align. She is "very glad" she's not rated by her SJA.
- Thinks there's nothing in his independent rating chain that is in his way to state the interest of the client. The government sometimes can provide additional context to what the result of that desire might be.
- "Hell yes" it should be an independent rating chain and the VLC 100% believes in the Marine Corps stovepiped system. He "cannot imagine" being rated by the command structure and "arguably" sees it as an ethical problem if the command/SJA rated him.
- The VLC would not want to be rated by the SJA. He has pissed off the SJA a few times, and called on his VLC Program Manager to back him up. He likes that his rater is a lieutenant colonel and within the VLC program because that gives him cover. "I can't imagine the career implications if I didn't have that protection."
- The VLC said he needs to be as independent as the defense counsel and advocating for his clients.
- Liked that the rating system was based on peers and what the program was doing rather than what all JAGs were doing. It is hard to measure tangible benefits to time spent with clients. Not the same as TC/DC work, so it's better to be compared to your VLC peers, and to be rated by someone who has done the job before.
- The SVC understands that the SVC program is the best to rate performance, even if not on the ground at the same location with the rated SVC.
- It would be difficult with the SJA as the rater, especially with the wrong SJA who could be annoyed with zealous representation.
- If the SJA was my rater, it would have changed how I advocated. Should not have to choose between advocacy and your own career.
- Stovepipe is necessary. VLCs answer to Regional VLC, but interacts daily with TC, DC. Regular training at the local legal office is for everyone, with breakouts for specialized groups, so VLCs are integrated into office.
- Stovepiping is good for independence. VLCs are still connected to the legal community, for things like PT. Better to have stovepipe structure, to avoid unprofessional discussion of cases. LSSS compartmentalizes people, but they still have unit functions, and VLCs can seek advice from people outside their lane.

Appendix K. Interviewee Comments

11. Other comments from Army SVCs critical of rating within the OSJA included:

- Rating chain influence isn't the problem. The issue is that you cannot discuss cases with the SJA. The SVC was shocked that they received a high rating on the SVC's OER performance review, because the SJA did not know or review her work.
- Thinks having the RM as the rater would be better because they are more involved with the cases and the clients and the SVC's work. The RM would provide a more valuable rating for future progression.
- Being rated by the SJA is a concern for one SVC because the SVC is being compared to the trial team, and the SVC isn't high on that board. The SVC office is physically separate from the OSJA, so what they are doing cannot be seen. The old SJA never came around to the SVC location, but the new SJA stops in regularly now.
- Questions how accurately the local office can rate her without directly working with her. She does not see how they can make an analysis of her SVC product. There is concern about how her new leadership will rate her after it changes over this summer.
- The SJA doesn't know the cases or even what an SVC does on a day-to-day basis. The current SJAs haven't been SVCs, so they don't fully appreciate the job, and the SVC cannot fully explain to the SJA (due to privilege).

12. As noted by other Services' SVCs and VLCs, their independent rating chain does not prevent them from being a part of the legal community where they are assigned.

SVCs/VLCs said:

- An Air Force VC noted she has a good working relationship with the local legal office even though she was rated independently.
- A Navy VLC noted he was integrated into the local legal office for administrative matters like general training and urinalysis.
- Another Navy VLC said he was professionally and socially integrated and felt like he was a part of the local legal community. He also liked to be on his own as the VLC, separated from the trial and defense counsel.
- A Navy VLC said he works closely with a civilian legal assistance attorney in the local legal office who provides assistance with obtaining civilian restraining orders and other legal matters.
- A VLC in the Marine Corps feels integrated into the local legal office by interacting daily with the trial and defense counsel and doing regular training with them.

13. Paralegal support. Army SVCs said:

- The SVC has a civilian paralegal part-time. She sits in on interviews and clients feel comfortable with her. She provides continuity to the clients. She has the same privileged confidentiality as the SVC. The SVC thinks civilian paralegals would make a huge difference in SVC offices.
- Another SVC does not have paralegal support but thinks it would be very helpful. The SVC has consistently asked for paralegal support. Administrative tasks take a large amount of time and could be done by a paralegal. Paralegals could provide updates to client on their cases and be helpful in providing continuity if the SVC changes. An experienced paralegal could provide a new SVC with information about support services for victims and contacts with providers.
- Paralegals make a huge positive difference in the amount of work an SVC shop can get done.

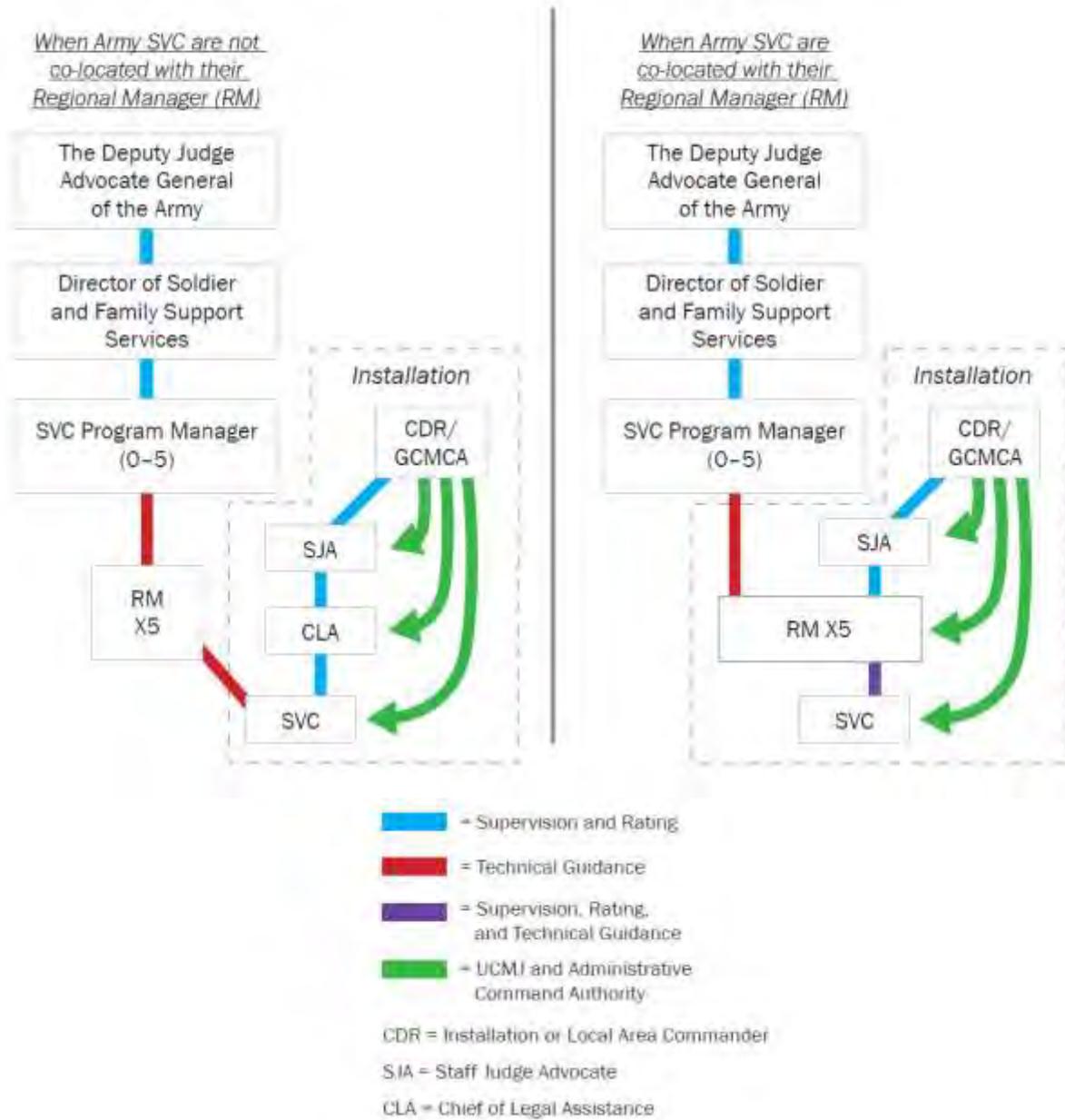
Appendix K. Interviewee Comments

14. Army SVC comments about experience included the following:

- Most Army SVCs are not experienced enough or trained in making the process work. When the SVC was a trial counsel, he said it was very frustrating working with inexperienced SVCs.
- The Army SVC Program is not in a bad spot. It would be better with more experienced SVCs. They need trial experience. SVCs have to develop confidence and assertiveness to confront others for their clients.
- The criteria for evaluation of future SVCs should be to find someone who has a clear idea of justice and the rules as a prosecutor and can accurately guide someone through the justice process. The critical ingredient is understanding the military justice system with experience. We have overvalued empathy. I don't know how you can advise your client if you don't know what happens in the military justice system.
- It is tough for SVCs to be effective and challenge the government or defense if the SVC is not experienced.
- A current Army SVC – I have no military justice or criminal law experience.
- Another SVC – No military justice experience prior to the assignment as an SVC.

Appendix L. Diagrams of the Services' Rating Chain Structures

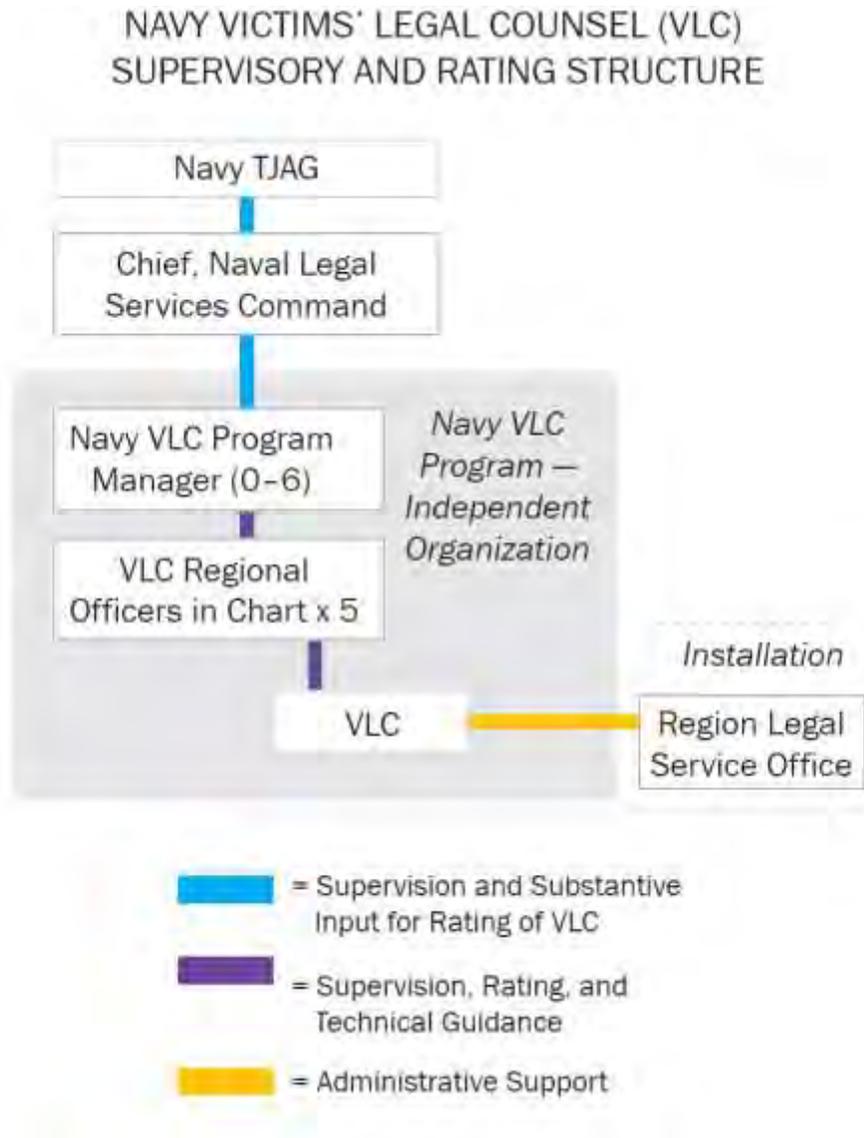
ARMY SPECIAL VICTIMS' COUNSEL (SVC) SUPERVISION AND RATING STRUCTURE



Appendix L. Diagrams of the Services' Rating Chain Structures

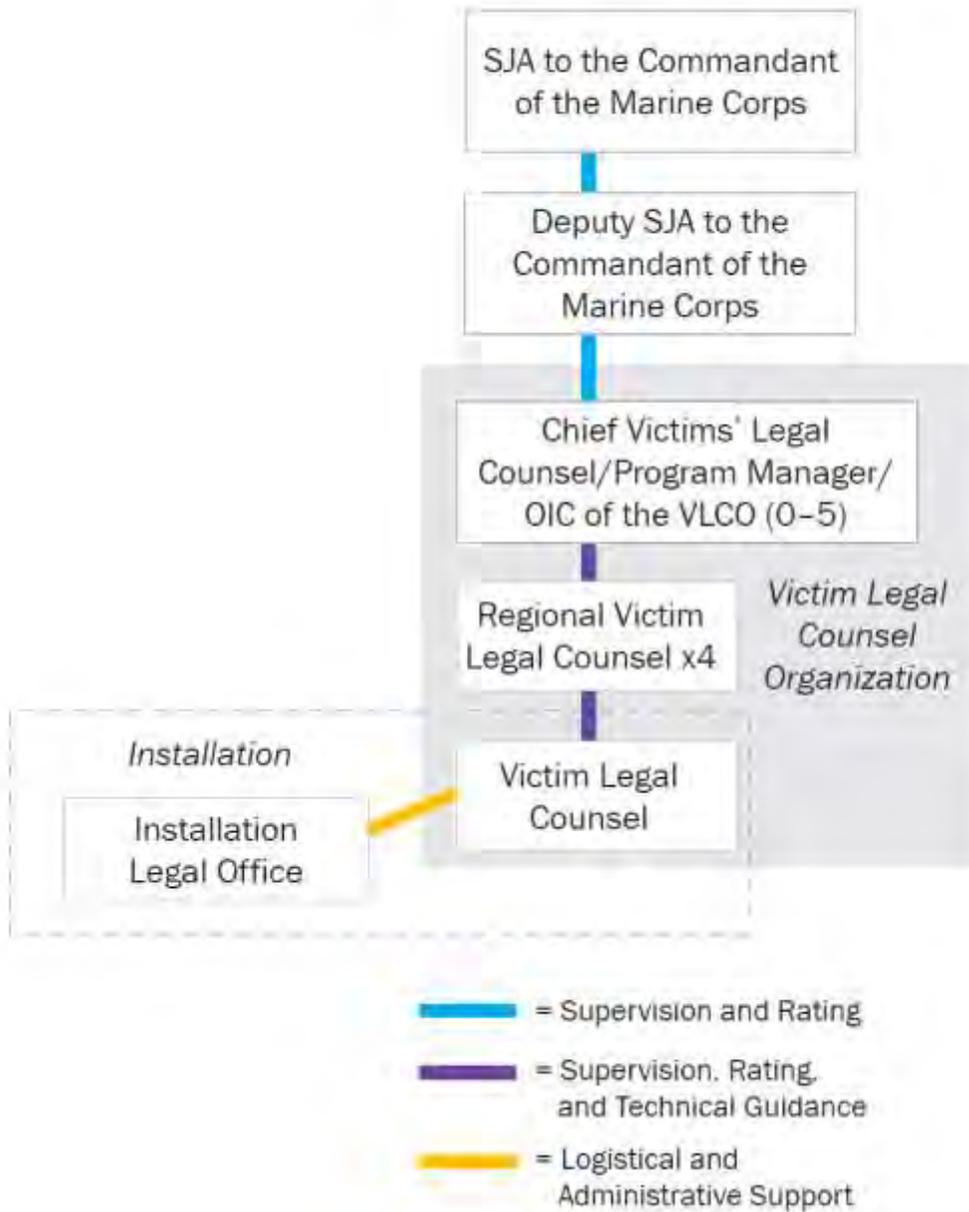


Appendix L. Diagrams of the Services' Rating Chain Structures



Appendix L. Diagrams of the Services' Rating Chain Structures

U.S. MARINE CORPS VICTIMS' LEGAL COUNSEL (VLC) SUPERVISORY AND RATING STRUCTURE



Appendix M. Questions for Current SVCs/VLCs and Questions for SVCs/VLCs With Prior Experience

Questions matrix for current SVC/VLC

Inform them of who you are, purpose of project, that we obtained contact info from their Program Managers, and that the interview is conducted under non-attribution policies.

| | |
|---|--|
| 1. How long have you been serving as an SVC/VLC? How long do you anticipate your tour length will be when this service concludes? | |
| 2. Where are you serving? How many other SVC/VLC are at your location? | |
| 3. What prior experience did you have before beginning your service as an SVC/VLC? (in terms of number of tours, prior duties, military justice experience, criminal law experience, and prior experience working with clients/victims of sexual assault or other crimes) | |
| 4. How many clients do you represent at a given time? (or how many are you currently representing?) | |
| 5. How many of your clients are local, allowing for easy face-to-face representation, as opposed to at another location? | |
| 6. What is the average length of representation for a given client? | |
| 7. What is the appropriate minimum tour length for an SVC/VLC and why? | |
| 8. Describe your rating chain? Do you have a separate “technical” chain for SVC/VLC issues? | |
| 9. What is your relationship with your local/installation legal office? | |
| 10. (for Army) – what are the advantages of having a supervisory chain within the local legal office? What are the disadvantages? | |

Appendix M. Questions for Current SVCs/VLCs and Questions for SVCs/VLCs With Prior Experience

| | |
|---|--|
| <p>11. Are there any actual or potential conflicts for you in zealously representing your clients if their interests are inconsistent with the government (prosecution) or interests of the local command? Anything that makes you pause? Please explain.</p> | |
| <p>12. How many clients have to change SVC/VLC and why? Are there ways you use to minimize the impact on victims when they have to change SVC/VLC? Are there ways you don't use that could be employed?</p> | |
| <p>13. Are behavioral health services readily available for access by SVC/VLC?</p> | |
| <p>14. Do you get feedback from former clients about SVC/VLC representation? How? What are their main concerns?</p> | |
| <p>15. What other aspects of SVC/VLC programs can be improved?</p> | |
| <p>Thank you!</p> | |

Appendix M. Questions for Current SVCs/VLCs and Questions for SVCs/VLCs With Prior Experience

Matrix for interviews with Army Judge Advocates with prior SVC experience

| | |
|--|--|
| 1. When did you begin service as an SVC? Where did you serve as an SVC? | |
| 2. Were you full time or part time? | |
| 3. When did you stop serving as an SVC? Why did you depart from that position? | |
| 4. What experience did you have that was relevant to SVC duties, prior to your selection to be an SVC? | |
| 5. What training and preparation did you receive prior to beginning your duties as an SVC? While you were performing duties as an SVC? | |
| 6. How many clients did you carry as an SVC at a given time? | |
| 7. How many of your clients had multiple SVC? Why? What was the transition process like? | |
| 8. What was your rating chain? Who were your supervisors? What was your technical chain? | |
| 9. Did you ever feel your ability to zealously represent your client was hindered in any way? To what do you attribute that? | |
| 10. Based on your experience, what changes would you make to the Army SVC Program? | |
| 11. Other issues discussed or raised - | |

Appendix N. Questions for Victims

SVC/VLC Project Interview with Victim

NAME:

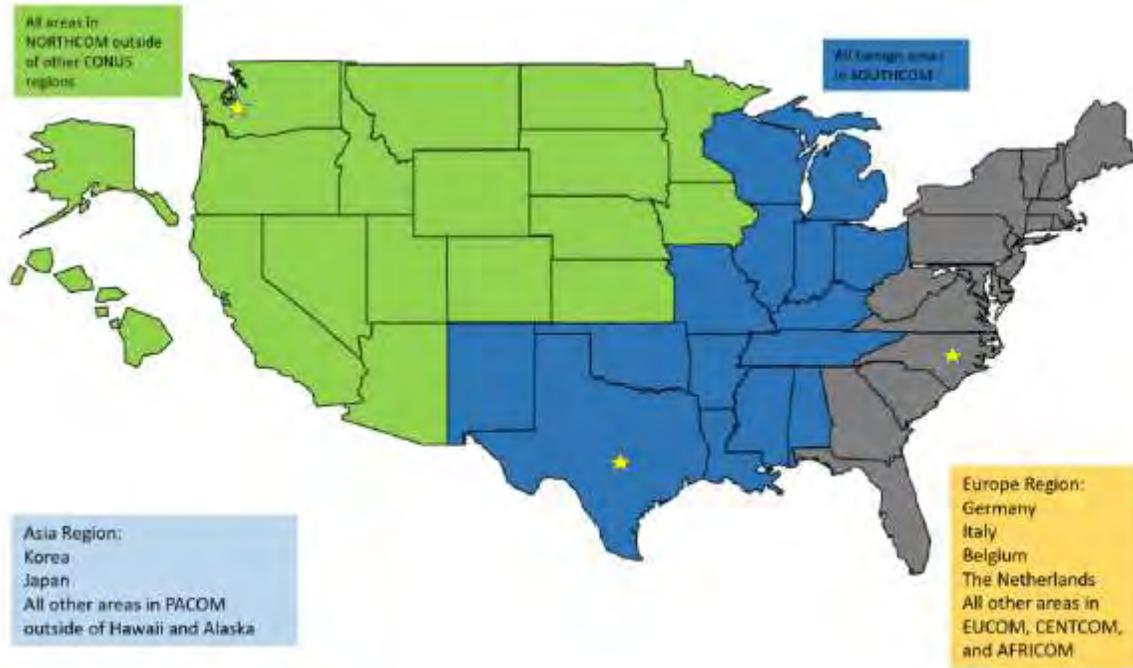
DATE:

1. introductions
2. purpose of the meeting, then open ended question about
3. when they were represented,
4. how they initiated representation
5. length of time they were represented,
6. whether they had to change SVC/VLC,
7. how that change was done
8. how that change affected them
9. what was their opinion of SVC/VLC
10. whether their counsel was “zealous” or seemed inhibited
11. what can be done to improve the system.

(NOTE: No questions about how, when, or by who were they assaulted, what behavioral health challenges they have had, or the current status of their case, unless they offer that information)

12. THANK YOU

Appendix O. Map of Army SVC Regions



Appendix P. Coast Guard Special Victim Counsel (SVC) Program

Coast Guard Special Victim Counsel (SVC) Program

As noted in the Introduction section,¹ this report does not include assessment, evaluation, or recommendations for the Coast Guard's SVC Program, due to its alignment under the Department of Homeland Security and limited size.

This should not create the impression that the Coast Guard does not have an effective victims' counsel program that supports the needs of its service members and provides a valuable response measure for all eligible victims who are represented.

Structure and Personnel: The Coast Guard currently has 13 SVC assigned to offices at four Operating Locations. Included in this number are Coast Guard officers who specialize in disability law, and an (O-4) level officer at each location who serves as the Chief of Operating Location. The Chiefs have military justice backgrounds, typically as both a trial and defense counsel, and they oversee the work of SVC and disability counsel at their location. The Coast Guard plans to add a fifth Operating Location Office during the summer of 2022, which will increase their SVC billets to a total of 16.² The Coast Guard has one civilian employee (GS-14) who has significant military justice and SVC experience. This civilian is a mentor to more junior SVC, and represents clients, especially child clients, as a Coast Guard SVC. The SVC Program Manager is a GS-15 civilian and the Deputy Manager is an O-5 grade officer, both of whom work at Coast Guard Headquarters in Washington, DC.³

Supervision and Professional Rating: Coast Guard SVC report to and are evaluated by their Chief of Operating Location. The Chiefs of Operating Locations report to and are evaluated by the Deputy Program Manager, and the Deputy reports to and is rated by the Program Manager. Coast Guard SVC are not supervised or rated/evaluated by any personnel outside of the SVC Program.⁴

Tour Lengths: The Coast Guard requires SVC to serve a minimum of two years in their assignments. This assignment length may be curtailed under rare circumstances, involving personal hardship of the SVC, issues associated with dual-military spouses, or urgent needs of the Service. First tour SVC (including funded legal education counsel in their initial tour after law school) are represent clients in conjunction with more experienced counsel as the lead for three to six months before they can act as lead SVC. Therefore, these first tour SVC may remain in an SVC assignment for three years.⁵

¹ *Supra*, report note 2.

² The current operating locations for Coast Guard SVC are Washington DC (pending a possible move to Norfolk, VA), The US Coast Guard Academy in New London, CT, Alameda, CA, and Seattle, WA. The fifth location will be in Miami, FL.

³ Coast Guard Response to RFI #1, Nov. 22, 2021.

⁴ *Id.*

⁵ *Id.*; Interview with Coast Guard Program Manager, Dec. 15, 2021.

Appendix P. Coast Guard Special Victim Counsel (SVC) Program

Coast Guard SVC Key Policy Issues: The Coast Guard SVC leadership coordinates with the Defense Services' SVC/VLC Program Managers through the ICC to exchange ideas on best practices and coordinate on legislative proposals.⁶

1. In the Coast Guard, SVC co-counsel are often assigned. This makes transitions easier for clients if one of the SVC has to terminate representation.⁷
2. The Coast Guard SVC Program has close association with disability law counsel. Both specialties work in the same offices, and disability counsel can also become certified and take SVC clients, if they desire to do so. Cross training is beneficial because many SVC clients have disability concerns, cross-training SVC and disability makes counsel more well-rounded, and a diversity of work may lessen the likelihood of burnout.⁸
3. The Coast Guard has considered SVC assignments as developmental, but is now looking to make them part of a career track. This could make SVC positions more sought after, as there would be a clear path to additional military justice and leadership positions that would go through an SVC assignment.⁹
4. The Coast Guard SVC Program does not include any paralegal support, but there the Program Manager intend to request some level of civilian paralegal support.¹⁰

⁶ Interview with Coast Guard Program Manager, *supra*, note 5.

⁷ *Id.*

⁸ Coast Guard Response to RFI #1, *supra*, note 3.

⁹ Interview with Coast Guard Program Manager, *supra*, note 5.

¹⁰ *Id.*

NAVY-MARINE CORPS TRIAL JUDICIARY
EASTERN JUDICIAL CIRCUIT
GENERAL COURT-MARTIAL

| | |
|---|--|
| <p>UNITED STATES</p> <p>v.</p> <p>ERIC S. GILMET HMC, E-7, U.S. Navy</p> | <p>Ruling on Defense Motion to Dismiss for Unlawful Command Influence</p> <p>9 February 2022</p> |
|---|--|

1. Nature of Motion and Procedural Posture

On 10 December 2021, the Defense moved this Court to dismiss all charges and specifications with prejudice.¹ The Defense alleged that Colonel (Col) Christopher Shaw, USMC while acting in his capacity as Judge Advocate Division’s Deputy Director, committed unlawful influence on this Court Martial. On 17 December 2021, the Government responded, urging this Court to deny this Defense’s motion.² The Defense submitted a reply brief on 19 December 2021.³

Prior to the initial Article 39(a) session to address this matter, the Court provided notice to the parties that the Court preliminarily found, based on the Defense’s submissions, that they had raised “some evidence” that, if true constituted UCI. The Court notified the parties that it had, therefore, shifted the burden to the Government. This was done preemptively so that the parties could properly focus their efforts and argument with trial dates looming.⁴

Also, the Court notified the parties that, based on the Defense's motion and affidavits, the Court planned to have a discussion with each of the military counsel and the Accused - on the record - to address their respective positions regarding the alleged conflict. The Court referenced *United States v. Watkins*, 80 M.J. 253 (C.A.A.F. 2020)

At the hearing on 21 December 2021, the Court asked each military defense counsel if they believed there was a conflict of interest. Both indicated that after consultation with their state bar and with conflict-free supervisory counsel, they believed that there was an irreconcilable conflict of interest. As such, they each moved the Court to withdraw from their representation of HMC Gilmet. The Court then afforded HMC Gilmet a recess to consult with

¹ Appellate Exhibit LXXXV (85)

² Appellate Exhibit LXXXVII (87)

³ Appellate Exhibit LXIX (89)

⁴ At the hearing, and at the request of the Government, the Court also entered specific findings into the record regarding this first prong. The Court also takes the opportunity now to supplement its oral findings.

Appendix Q. United States v. Eric S. Gilmet Ruling

conflict-free counsel and his civilian counsel on whether or not he consented to their withdrawal from the case. After this consultation, HMC Gilmet reluctantly consented to their withdrawal, stating, in essence, “I want the Captain Thomas and Captain Riley of three weeks ago.” HMC Gilmet explained this reluctance to the Court and is discussed further in this ruling.

Captains Thomas and Riley were then excused from further participation from the case.

Based on this turn of events, the Court continued the trial and granted the parties additional time to provide any supplemental briefs and evidence in support of their respective positions.

The Court further instructed the parties to focus their efforts on the following areas:

1. Has the withdrawal of counsel materially prejudiced the Accused in this case? Or, once he is provided with conflict-free counsel—and based on his consent to release his counsel—has the issue been resolved and/or mooted?

2. If it has been mooted, is there still a 6th Amendment right to counsel? If so, what is the standard the Court must apply (e.g. structural error, etc . . .)? If that has been interfered with, what are the available remedies?

3. Now that Col Shaw has been removed, does Article 37 still apply? Have the government’s remedial measures (along with their submissions) met their burden?

*4. Assuming, but not deciding, that UCI has occurred and that it has materially affected these proceedings, what other remedies are available short of dismissal with prejudice?*⁵

The Government filed AE 103 and the Defense filed AE 105.

The Court then held an Article 39(a) session on 20 January 2022.⁶ At this hearing, the Government provided additional evidence, specifically AE 104, which was the unreleased Command Investigation conducted into the allegations raised by the Defense against Col Shaw.⁷ Because the Defense had just been disclosed this investigation, the Court allowed the Defense until 26 January 2022 to address any new issues that were raised as a result of this discovery.

The Defense filed AE 107 on 26 January 2022 with additional enclosures contained in AE 108.

No witnesses were called at any of the Article 39(a) hearings regarding the UCI.

The Court now **GRANTS** the Defense’s motion as discussed below. All charges and specifications are **DISMISSED with prejudice**.

⁵ The Court indicated that this prong was mainly aimed at the Government for their response.

⁶ The Court had initially scheduled the Article 39(a) for 21 January 2022, but based on inclement weather in the forecast, the parties asked for an earlier session of Court.

⁷ At the time of this hearing, this Command Investigation had not been endorsed or acted upon by the Commander who directed the investigation.

2. Findings of Fact.

In reaching these findings of fact and conclusions of law, the Court has considered all legal and competent evidence presented by the parties, reasonable inferences to be drawn from the evidence, allied papers and documents, and the Court has resolved all issues of credibility.

Chief Gilmet's Defense Counsel

The Accused lead defense counsel is a civilian, Mr. Colby Vokey; Mr. Vokey established an attorney client relationship with HMC Gilmet in January of 2019. HMC Gilmet pays Mr. Vokey an hourly rate.⁸ During the usual course of business, on 28 September 2019, Captain Charles D. Strauss, USMC was detailed as the accused's detailed military defense counsel. However, on 25 March 2020, the accused submitted an Individual Military Counsel Request for Captain Matthew Thomas, UMC. This request was approved on 20 April 2020 and Captain Thomas was detailed as the accused's IMC. As a result, Captain Strauss was subsequently excused as detailed military defense counsel. Capt Riley was also detailed as the accused's military counsel.

In March 2020, HMC Gilmet's case was continued indefinitely due to COVID-19 and witness unavailability.⁹

Captain Thomas and Captain Riley had spent time interviewing witnesses who had not spoken with civilian counsel. They were each handling specific portions of the trial or specific witnesses. Trial was scheduled to commence in the beginning of January 2022.

Colonel Christopher Shaw, USMC

Colonel Shaw served as the Deputy Director Community Management and Oversight of Judge Advocate Division and held this position until 19 November 2021.

Until 19 November 2021, in his capacity as Deputy Director, Col Shaw oversaw the slating and assignment process for all Marine judge advocates.

Colonel Shaw has served in the USMC on active duty since 1994 and is a judge advocate.

⁸ While the actual retainer agreement was not provided to the Court, the Court simply notes this fact as the Accused has mentioned the financial impact his releasing of military counsel will have - and has had - on him.

⁹ Much of the lengthy delay in this case is due to the unavailability of a key government witness, Major Wiestra, who is a Canadian national and not subject to the compulsory process. Despite the government's significant efforts to secure his presence at trial, they were unable to do so. Instead, a deposition (which still required significant government coordination and execution) was conducted in the fall of 2021. The parties were set to argue the admissibility of that deposition, as well as any objections to the contents of that deposition, at our scheduled hearing in 21 December 2021.

Appendix Q. United States v. Eric S. Gilmet Ruling

Deputy Director for Community Management and Oversight, Judge Advocate Division

Per section 010306 of the MCO 5800.16-V 1 Legal Support Administration Manual (“LSAM”), the Deputy Director, Judge Advocate Division (JAD)(Military Justice and Community Development) is responsible:

“to the SJA to CMC for military justice matters and for the legal community planning and development to ensure the Marine Corps provides high-quality legal support across the entire spectrum to commanders, Marines, Sailors, and their families. The DepDir, MJCD oversees the Military Justice Branch; the Community Development, Strategy, and Plans Branch; and the Legal Assistance Branch.”

On 18 November 2021, Col Shaw served as the Deputy Director, Judge Advocate Division (JAD) for Community Management and Oversight (Dep Dir CMO) at Headquarters Marine Corps. One of his billet responsibilities was to prepare the assignment slate for USMC judge advocates who are scheduled to execute permanent change of station (PCS) orders. Dep Dir CMO supervises the preparation of the proposed assignment slate that is presented to the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC), who makes the final recommendation on the judge advocate assignment slate. JAD forwards the assignment slate recommendation to the monitors at Marine Corps Manpower Management who make the final assignment decisions for USMC judge advocates.

Judge Advocate Division Visit to Camp Lejeune

From 15 through 18 November 2021, members of the Judge Advocate Division, to include Col Shaw, traveled to Parris Island South Carolina, Cherry Point North Carolina, and Camp Lejeune North Carolina to meet with judge advocates and legal services specialists in all three locations. The purpose of these visits was to assist the SJA to CMC with the oversight and supervision of the provision of legal advice and legal services support within the Marine Corps, and to set the conditions for annual Legal Support Inspections in 2022. Col Shaw and Master Gunnery Sergeant Williams met with personnel assigned to the Legal Services Support Teams at Parris Island, Cherry Point, and Camp Lejeune. Col Shaw was at each location in his official capacity as the Deputy Director for Community Management.

Colonel Shaw’s Meeting with Defense Counsel

On 18 November 2021, Colonel Shaw held a meeting with Camp Lejeune’s Defense Service Office in Building 64B-2. The meeting commenced at 1300 and concluded at 1500.

In attendance were: Major Kurt Sorensen, Captain Matt Thomas, Captain

Appendix Q. United States v. Eric S. Gilmet Ruling

Michael Blackburn, Captain Jon Bunker, Captain Laura Brewer, Captain Tom Persico, First Lieutenant Steven Trottier, and Captain Cameron McAlister.¹⁰

Col Shaw introduced himself with a synopsis of his career. He explained his current position at JAD included providing input regarding billet and duty station assignments for judge advocates.

During this meeting, Col Shaw discussed some of the proposals contained in the FY22 NDAA, including an explanation of a new billet where a senior judge advocate, rather than a commander, will be the convening authority for serious criminal allegations. Capt Thomas asked, "What is being done to protect the attorney in that position from outside influences such as political pressures, media pressure and general societal pressures?" or words to that effect. The impetus seemed to be regarding what measures would be put in place to protect that senior judge advocate from improper influences when making referral decisions. Capt Thomas referenced the present protections created for attorneys in the Defense Services Organization (DSO), specifically, having their fitness reports authored by other Defense Counsel within the DSO.

In response, Col Shaw stated that the defense attorneys "may think they are shielded, but they are not protected," and continued to say, "You think you are protected but that is a legal fiction," or words to that effect. Col Shaw then directly squared his shoulders and chair towards Capt Thomas and he did not break eye contact with him as he made further remarks. During that time, Col Shaw specifically stated, "Captain Thomas, I know who you are and what cases you are on, and you are not protected." Col Shaw followed up by stating, "...the FITREP process may shield you, but you are not protected. Our community is small and there are promotion boards and the lawyer on the promotion board will know you," or words to that effect. Col Shaw reiterated comments such as "shielded but not protected," multiple times. Those present at the meeting commented that before responding to questions, Col Shaw took time to reflect on his answers, commenting at one time before answering, "I want to make sure I'm saying what I am allowed to say," or words to that effect.

To further his point, Col Shaw referenced judge advocates who had served as defense counsel for extended periods of time on high profile courts-martial involving allegations of war crimes committed at Haditha and Hamdania in Iraq. He stated there were secondary effects or consequences to spending five or six year in defense, and again referenced promotion boards, the small judge advocate community, and the fact the lawyer on the promotion board will know what "you did." He confirmed the belief that some people who served as defense counsel were not promoted who should have been promoted.

¹⁰ There was evidence that Captain Brewer and Captain McAlister were also present, but not for the entire meeting.

Appendix Q. United States v. Eric S. Gilmet Ruling

During this brief, Col Shaw also mentioned that Congress was not happy with the courts-martial results and resources were going to change to get to the “right result,” or words to that effect.

Col Shaw’s pointed answers to Capt Thomas concerned Capt Thomas about his continued role as a defense counsel, and more specifically, his role as a defense counsel for HMC Gilmet. Capt Thomas feared that his continued representation of HMC Gilmet and zealous advocacy of clients accused of sexual assaults would be detrimental to his career. Specifically, Capt Thomas became concerned that JAD would positively or negatively affect his career through manipulation of billet assignment and the PCS process based on his role as a defense counsel. Capt Thomas told HMC Gilmet about the meeting and Col Shaw’s comments, which created a rift between he and his client, as Col Shaw’s comments caused HMC Gilmet to question Capt Thomas’ undivided loyalty to him and his defense.

The Aftermath

Word quickly spread through the DSO chain of command and various senior officers within the Camp Lejeune Marine judge advocate community regarding Col Shaw’s comments.¹¹ Most were shocked at what had been relayed to junior defense attorneys. On 19 November 2021, Major General Bligh (MajGen), the Staff Judge Advocate to the Commandant of the Marine Corps, became aware of the comments Colonel Shaw made. After learning of these alleged comments, MajGen Bligh took swift action and temporarily removed Col Shaw from his duties as Deputy Director of the Plans and Innovation Branch at Judge Advocate Division. This was done pending the completion of an investigation into the matter.¹²

A Command Investigation was ordered on 30 November 2021 and Colonel Peter D. Houtz, USMC was appointed as the investigating officer.¹³ The investigation was submitted to the Commanding General, Marine Corps Installation Command on 30 December 2021. In this investigation, Col Houtz determined that, while Col Shaw’s comments to the young defense attorneys were “ill-advised and lacked proper context and background,” they did not warrant, in the Investigating Officer’s opinion, any further action.¹⁴

As this investigation was ongoing, litigation in the *United States v. Draher/Negron*, companion cases to the present case, intensified. In support of its UCI motion, on 13 Dec 2021,

¹¹ The Court is aware from the submissions from the parties, to include the Command Investigation, that Col Shaw was alleged to have made several unprofessional statements to other Marine judge advocates during other briefs during this trip. As those allegations have no bearing on any of the issues in this case, the Court declines to include them.

¹² MajGen Bligh indicated that even if Col Shaw were to return to JAD in some capacity, he would no longer be involved in the slating or assignment process for Marine judge advocates.

¹³ Col Houtz was assigned to JAD in 2016-2017 and is currently an appellate judge at NMCCA.

¹⁴ The Court is reluctant to mention the findings and recommendations of the IO, as they are not binding on any of the issues this Court must address and resolve. The Court highlights this investigation to show that (a) it was ordered (b) it was completed (c) to utilize the investigation’s enclosures for facts that may not have been previously provided by the parties in the UCI litigation and (d) to address the curative efforts by the Government.

Appendix Q. United States v. Eric S. Gilmet Ruling

the Government submitted a signed statement from Col Shaw regarding his interactions with the defense attorneys on 18 November 2021. In this statement, among other things, Col Shaw stated that “[he did] not know Captain Thomas, nor [did he] recall speaking with him.” At the end of this statement, Col Shaw indicated that, if called as a witness in any criminal proceeding regarding his comments to the young defense counsel, he would invoke his Article 31(b) rights and remain silent.

Before the hearing in the *Draher/Negron* UCI motion, the Government counsel disclosed to the *Draher/Negron* Defense Teams text messages from Col Shaw that clearly showed internal inconsistencies within Colonel Shaw’s initial statement. Namely, text messages were discovered to the Defense team where Colonel Shaw directly texted with his subordinates regarding Captain Thomas hours before his meeting with Captain Thomas and other Marine defense counsel.¹⁵ In his subsequent statements of 14 and 15 December, Col Shaw attempted to explain this inconsistency.¹⁶ In his 15 December 2021 statement, Col Shaw reiterated that if he were called to testify at these criminal proceedings, he would invoke his right to remain silent under Article 31(b).

On 17 December 2021, the Government submitted an affidavit from MajGen Bligh, the SJA to CMC. MajGen Bligh declared that Col Shaw’s comments were improper as they do not reflect MajGen Bligh’s views or guidance; MajGen Bligh praised defense work as vital to the success of the military justice system, encouraged vigorous advocacy by defense counsel and stated service as a defense counsel will in no way be detrimental to an individual’s career. He also discussed the Marine Corps’ need to develop litigation expertise.

During the Article 39(a) session on 21 December 2021, the Court asked each military defense counsel if they believed there was a conflict of interest. Both indicated that after consultation with their state bar and with conflict-free supervisory counsel, they believed that there were irreconcilable conflicts of interest. As such, they each moved the Court to withdraw from their representation of HMC Gilmet. The Court afforded HMC Gilmet a recess to consult with his civilian counsel and conflict-free counsel on whether or not he consented to their withdrawal from the case. After this consultation, HMC Gilmet reluctantly consented to their withdrawal. Captains Thomas and Riley were then excused from further participation from the case.

Reflecting on his decision, HMC Gilmet stated

“Up until November 2021, I had confidence that I had military defense counsel who would fight hard for me and would do everything legal and ethical to defend me. But that

¹⁵ There is also evidence that Col Shaw, while meeting with Col Fifer, had spoken with the Senior Defense Counsel, Major Sorensen, the morning of 18 November specifically requesting information regarding Capt Thomas’s billet considerations. Again, this directly contradicts Col Shaw’s initial statement.

¹⁶ Col Shaw’s statement of 14 December was not provided to the Defense until the Command Investigation was disclosed on 21 January 2022.

all changed when this Colonel Shaw made his threatening comments to Captain Thomas. His comments had a significant impact on Captain Thomas and Captain Riley [...]. Captain Thomas and Captain Riley were no longer able to provide me legal representation without looking over their shoulder. I wanted Captain Thomas and Captain Riley to represent me at trial but the influence from Colonel Shaw made this impossible.

Both Captain Thomas and Captain Riley made motions to withdraw from representing me. I was hurt and confused and angry. We were just over two weeks away from trial and I was losing 2/3 of my legal team. Captain Thomas was THE military defense counsel who I wanted to represent me and was the person I requested as my IMC.”

When reflecting on the questions from this Court regarding the continued representation of his military counsel, HMC Gilmet added,

“I did not know what to do. I did not feel like I had much of a choice. It was a Hobson's choice. I could keep military defense counsel who had a conflict and whose representation was being influenced by Colonel Shaw's comments and the possible impact of that representation on their careers. Or I could agree to release the two military attorneys who I had trusted completely and had spent considerable time preparing me and the case for trial. There was no real choice. Based on their fears of reprisal for staying on the case, I ultimately had to release them from the case. These last several years have been the scariest of my life. But, I took comfort in the fact that I had Captain Thomas and Captain Riley there to defend me and ensure I received a fair trial. I don't believe that a fair trial is possible any longer.”

“The loss of Captain Thomas and Captain Riley really hurts me. Based on the evidence of this UCI, I do not believe that any Marine defense counsel can represent me in this trial without the possibility of feeling that career pressure. I realize that, if given new military defense counsel, I will likely be given a judge advocate from another service. I feel like this may put me in a disadvantage in a Marine Corps court-martial.”

The Court supplements additional facts where necessary in its analysis below.

3. Principles of Law

Unlawful command influence (UCI) is the “mortal enemy of military justice.”¹⁷ Article 37, of the Uniform Code of Military Justice (UCMJ) prohibits commanders and convening authorities from attempting “to coerce, or by unauthorized means, influence the action of a court-martial [...] in reaching the findings or sentence in any case.”¹⁸ UCI rises from the improper use, or perception of use, of superior authority to interfere with the court-martial process.¹⁹ UCI

¹⁷ *United States v. Thomas*, 22 MJ 388, 393 (C.M.A. 1986)

¹⁸ Article 37(a), UCMJ.

¹⁹ Gilligan and Lederer, COURT-MARTIAL PROCEDURE, Volume 2 §18-28.00, 153 (2d Ed. 1999)

Appendix Q. United States v. Eric S. Gilmet Ruling

“may consist of interference with the disposition of charges, with judicial independence, with the obtaining or presentation of evidence, or with the independence and neutrality of members.”²⁰

Traditionally, when assessing whether UCI exists in a particular case, the court must consider the potential impact of actual UCI and apparent UCI. The military judge must take affirmative steps to ensure that both forms of UCI are eradicated from the court-martial in question.²¹ The key to the court’s UCI analysis is the effect on the proceedings, not the knowledge or intent of the government actors whose actions are in question.²² In a recent opinion, the C.A.A.F. stated that

“the plain language of [Article 37, UCMJ] does not require one to operate with the imprimatur of command.”²³ In *Barry*, the C.A.A.F. reinforced the fundamental principle that a military court must “protect court-martial processes from improper command influence and to prevent interference from non-command sources as well in order to foster public confidence in the actual and apparent fairness of the military system of justice.”²⁴

“Actual UCI occurs when there is an improper manipulation of the criminal justice system which negatively effects the fair handling and/or disposition of a case.”²⁵ In *United States v. Biagase*, C.A.A.F. set forth the analytical framework to be applied to allegations of UCI at trial.²⁶ The initial burden on the defense to raise the issue by “some evidence.”²⁷ To meet the “some evidence” standard, the Defense must show some facts which, if true, would constitute UCI.²⁸ The Defense must then show that such evidence has a “logical connection” to the court-martial at issue in terms of potential to cause unfairness in the proceedings.²⁹ While the initial burden is “low,” the Defense is required to present more than an allegation or speculation.³⁰ Where the Defense has satisfied its initial burden, the burden shifts to the Government to:

²⁰ *Id.* at 154-55.

²¹ *United States v. Lewis*, 63 M.J. 405, 413 (C.A.A.F. 2006). *See also Rosser*, 6 M.J. at 271 (stating that once UCI is raised, “it is incumbent on the military judge to act in the spirit of the Code by avoiding even the appearance of evil in his courtroom and by establishing the confidence of the general public in the fairness of the court-martial proceedings.”).

²² *Boyce*, 76 M.J. at 251.

²³ *U.S. v. Barry*, 78 M.J. 70 at 76 (C.A.A.F. 2017).

²⁴ *Id.*

²⁵ *Id.* at 247.

²⁶ 50 M.J. 143, 150 (C.A.A.F. 1999)

²⁷ *Id.*

²⁸ *Id.* at 150

²⁹ *Id.*

³⁰ *United States v. Ashby*, 68 M.J. 108, 128 (C.A.A.F. 1998)(noting that “mere speculation that UCI occurred because of a specific set of circumstances is not sufficient”); *see also United States v. Johnston*, 39 M.J. 242, 244 (C.M.A. 1991)(“The threshold for triggering further inquiry should be low, but it must be more than a bare allegation or mere speculation.”).

Appendix Q. United States v. Eric S. Gilmet Ruling

- (1) disprove “the predicate facts upon which the allegation of UCI is based,”
- (2) persuade the court that the facts do not constitute UCI, or
- (3) prove that the UCI will not affect these specific proceedings.³¹

“Whichever tactic the government chooses; the required quantum of proof is beyond a reasonable doubt.”³²

To establish apparent UCI, the accused must demonstrate:

- (1) facts, if true, that constitute UCI, and
- (2) the UCI placed an intolerable strain on the public’s perception of the military justice system because “an objective, disinterested observer, fully informed of all of the facts and circumstances, would harbor a significant doubt about the fairness of the proceeding.”³³

In *Lewis*, CAAF explained that the “objective test for the appearance of UCI is similar to the tests we apply in reviewing questions of implied bias on the part of court members or in reviewing challenges to military judges for an appearance of a conflict of interest.”³⁴

In *United States v. Boyce*, the Court of the Appeals for the Armed Forces [CAAF], reversed the findings and sentence in a sexual assault case on the basis of apparent UCI, despite finding no prejudice suffered by the appellant.³⁵ In dissent, Judge Ryan expressed her disagreement with the majority, reasoning, “I posit that Congress had good reason to tether appellate relief to Article 59(a)’s requirement of prejudice to the accused...”³⁶

Less than three years after CAAF issued its opinion in *Boyce*, Congress amended Article 37, UCMJ, (“Command influence”) to require a showing of material prejudice to the substantial rights of the accused before a finding or sentence of a court-martial may be held incorrect on the ground of a violation of that section. (“No finding or sentence of a court-martial may be held incorrect on the ground of a violation of this section unless the violation materially prejudices the substantial rights of the accused.”³⁷ The effective date of this amendment to Article 37, UCMJ, was 20 December 2019.³⁸ Accordingly, N.M.C.C.A. has held that the revised Article 37, UCMJ, requires a showing of material prejudice to the substantial rights of the accused.³⁹ Further, trial courts are statutorily barred from holding the findings or sentence of the case to be incorrect on

³¹ *Biagase*, 50 M.J. at 151.

³² *United States v. Stoneman*, 57 M.J. 35, 41 (C.A.A.F. 2002)(citing *Biagase*, 50 M.J. at 151).

³³ *Boyce*, 76 M.J. at 249; see also *Stoneman*, 57 M.J. at 42.

³⁴ 63 M.J. at 415.

³⁵ *Boyce*, 76 M.J. at 253

³⁶ *Id.* at 256.

³⁷ 10 U.S.C. 837(c)

³⁸ National Defense Authorization Act 2020, Pub. L. No. 116-92, § 532(c), 133 Stat. 1361 (2019).

³⁹ *United States v. Gattis*, 81 M.J. 748, 757 (N.M.C.C.A 2021).

Appendix Q. United States v. Eric S. Gilmet Ruling

the grounds of apparent UCI without a showing of material prejudice to the substantial rights of the accused.⁴⁰

If the defense meets that burden, then UCI is raised at the trial level, and consequentially, a presumption of prejudice is created.⁴¹ To affirm in such a situation, a reviewing court must be convinced beyond a reasonable doubt that the UCI had no prejudicial effect on the court-martial.⁴² “[P]rejudice is not presumed until the defense produces evidence of proximate causation between the acts constituting [UCI] and the outcome of the court-martial.”⁴³

If the court finds either actual or apparent UCI, the court “has broad discretion in crafting a remedy to remove the taint of unlawful command influence.”⁴⁴ The court should attempt to take proactive, curative steps to remove the taint of UCI and, therefore, ensure a fair trial.⁴⁵ C.A.A.F has long recognized that, once UCI is raised “...it is incumbent on the military judge to act in the spirit of the UCMJ by avoiding even the appearance of evil in his courtroom and by establishing the confidence of the general public in the fairness of the court-martial proceedings.”⁴⁶

Additional principles of law are provided below, where necessary.

4. Analysis and Conclusions of Law

As the Court mentioned several times in these hearings: despite the promptings from both sides, this Court is not here to litigate ghosts of promotions past or future within the USMC judge advocate general corps, nor the career viability of being a defense counsel in the USMC. This ruling only addresses the specific actions of a specific senior officer regarding a specific junior officer. It is not an indictment on the Judge Advocate Division, nor a comment on how the USMC views defense counsel work.

The facts in this case can be boiled down to a simple advert: a senior judge advocate who occupied a position of authority over the futures of young judge advocates made threatening comments to a young judge advocate about his career while this young judge advocate was assigned as IMC to a HIVIS case,⁴⁷ creating an intolerable tension and conflict between an accused and his specifically requested military counsel. His actions constitute actual and apparent UCI.

⁴⁰ *Id.*

⁴¹ *Douglas*, 68 M.J. at 354

⁴² *Id.*

⁴³ *Biagase*, 50 M.J. at 150.

⁴⁴ *United States v. Douglas*, 68 MJ 349, 354 (C.A.A.F. 2010)(quoting *United States v. Houser*, 36 M.J. 392, 397 (C.M.A. 1991))

⁴⁵ *Id.*

⁴⁶ *United States v. Gore*, 60 MJ 178, 186 (C.A.A.F. 2004).

⁴⁷ Even before this UCI litigation made “the news,” the case had already received attention in publications such as The Washington Post based solely on the charges and allegations.

Has the Defense Presented Some Evidence in Support of their Motion?

The Court finds that the Defense has presented some facts, which, if true, would constitute both actual and apparent UCI. Specifically, the Defense presented evidence that Col Shaw, acting in his capacity as the SJA to CMC's representative for development of the Marine Corps judge advocate community, made statements to junior defense counsel which left them with the distinct impression that their service as defense counsel was harmful to their career progression. Through the affidavits of those present, and more specifically of Capt Thomas, the Defense has shown some evidence of how Col Shaw's statements directly impacted Capt Thomas' ability to represent HMC Gilmet and thus the fairness of the court-martial proceedings.

Thus, the Court shifts the burden to the Government.

Has the Government introduced evidence that disproves, beyond a reasonable doubt, "the predicate facts upon which the allegation of UCI is based?"

The Government has not introduced sufficient evidence to disprove the predicate facts. Instead, there is ample evidence that these comments were made, that they had an impact on those involved, and that the senior leadership within JAD found the comments to be so problematic that Col Shaw was quickly removed from his position, an investigation was ordered, and the Commandant's SJA felt compelled to assure Defense Counsel they would not face retaliation for their zealous advocacy. Further, Col Shaw's statements provided to this Court by the government were internally inconsistent, self-serving and directly contradicted by multiple officers. Compounded by these multiple inconsistent submissions, Col Shaw indicated he would invoke his Article 31(b) rights if he were called during this pending litigation.⁴⁸ As such, Col Shaw was never called as a witness.

The Government has failed to carry its burden under this theory.

Has the Government introduced evidence that persuades this court, beyond a reasonable doubt, that the facts don't constitute UCI?

The Government has not provided or introduced sufficient evidence that the facts in this case do not constitute UCI. In support of their position, the Government included multiple affidavits from individuals that indicate that these comments from Col Shaw were isolated, misguided and not based in reality. Because of this, they argue, a defense counsel fully armed

⁴⁸ Since he was never called as a witness, Col Shaw's decision to invoke his right to remain silent were he to be called as a witness was not fully litigated during the Article 39(a) hearing. The Defense did urge this Court to not consider any of his statements. While not dispositive or central to the Court's analysis, the Court finds the language in Mil. R. Evid. 301(e)(1) persuasive in how to handle Col Shaw's multiple statements followed by a blanket invocation clause if called as a witness: "If a witness asserts the privilege against self-incrimination on cross-examination, the military judge, upon motion, may strike the direct . . . , in whole or in part, unless the matters to which the witness refuses to testify are purely collateral." The Court is mindful that this was testimony for an Article 39(a) session. The Court simply uses the above framework as one way – *of many* - to determine how much weight to afford Col Shaw's multiple statements.

Appendix Q. United States v. Eric S. Gilmet Ruling

with these facts from multiple reliable sources would not and should not harbor any concerns about zealously representing clients as a defense counsel.

However, this fails to address what actually occurred in this case and the dramatic effect that it had.⁴⁹

First, the Court notes that this was a very junior audience being addressed by a very senior officer, who by his billet at the time would have been viewed as an authority on advancement and success within the judge advocate community. This senior officer was directly commenting on evaluations, assignments and promotions within the USMC judge advocate corps generally, but then addressed those topics and how they affect a defense counsel, specifically. Further, these comments appeared to be directed at Capt Thomas.

Article Art 37(b) of the UCMJ addresses the protection of those who zealously represent clients at a court martial in their own evaluation, advancement and assignment:

In the preparation of an effectiveness, fitness, or efficiency report, or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces or in determining whether a member of the armed forces should be retained on active duty, no person subject to this chapter may, in preparing any such report [...] (2) give a less favorable rating or evaluation of any member of the armed forces because of the zeal with which such member, as counsel, represented any person in a court-martial proceeding.⁵⁰

The Court finds the prohibition contained in Article 37(b) particularly instructive. Pursuant to this Article, one cannot blatantly and openly negatively affect a career of an officer through the evaluation or fitness report process just because they were a zealous advocate. The concern is that a supervising officer could “kill” a career directly because they did not approve of a defense counsel’s zealous advocacy. This would be a brazen flouting of established concepts of fairness in the court martial process. What the Court is facing in the present scenario is equally as dangerous, just more pernicious.

Through the affidavits of the junior defense counsel who were present at Col Shaw’s brief, the Defense has presented direct evidence of what Col Shaw said and the effect his words had on them. The evidence clearly establishes that Col Shaw was in a position of power and speaking under a color of authority at JAD. By a result of his position, Col Shaw had a significant and direct impact on the future of a young judge advocate. His opinions, and how he chose to express them to senior officers, could make a significant difference at those micro-intersections of a young judge advocate’s career, opening doors for some, closing them for

⁴⁹ The Court does not need to delve into a long parade of horrible, *reduction ad absurdum* arguments to show how comments from someone speaking under a color of authority, even if misguided and not based in reality, could still result in the harm contemplated under UCI caselaw.

⁵⁰ Article 37(b), U.C.M.J.

others.⁵¹ The Court considers Col Shaw's role in the preparation of the assignment slate for USMC judge advocates who are scheduled to execute PCS orders to be similar to a "document used in whole or in part" for determining the assignment or transfer of counsel as contemplated under Article 37(b).⁵² In such an important role, when asked a genuine question from a young judge advocate, he stated, "Captain Thomas, I know who you are and what cases you are on, and you are not protected," and the "FITREP process may shield you, but you are not protected," or words to that effect. Col Shaw further commented about the smallness of the USMC judge advocate community and how those senior officers sitting on that promotion board will "know what you did." Each of these comments directly addresses Capt Thomas's zealous representation of Chief Gilmet.

In this brief, Col Shaw commented on Capt Thomas' assignments, his service reputation, and his promotability. These statements were tied directly to Capt Thomas's role as a defense counsel and his then-current status as IMC to HMC Gilmet. This, coupled with Col Shaw's position and authority, created an untenable position for Capt Thomas, a young marine judge advocate, attempting to navigate, and already concerned about, his future within the USMC. Does he take Col Shaw at his word and worry about how his representation of HMC Gilmet may later affect him? Or, does he take the government at its word now that this was all "a tale [...] full of sound and fury, signifying nothing." As the Court has reviewed this evidence multiple times, the Court comes back to the same question: whether or not Col Shaw's statements are true or not, how is a young junior officer like Capt Thomas in a position to evaluate the truth of Col Shaw's statements? Col Shaw placed this young Marine in an unworkable situation.

Capt Thomas was faced with the choice to either zealously represent this client and sacrifice the potential for advancement in the USMC or protect his nascent career. This, in turn, created a difficult choice for HMC Gilmet: he must either proceed with a conflicted attorney; or effectively be deprived of his choice of individually chosen military counsel given the conflict the government created.⁵³

Has the Government proven beyond a reasonable doubt that the UCI will not affect these proceedings?

The Government argues if the Court finds UCI that they have shown beyond a reasonable doubt that any UCI will not affect these proceedings. They say this because the Government took "immediate corrective actions to cure and remove the taint of any UCI."⁵⁴ Further, the Government states that since conflict-free counsel will be appointed and the Court has granted an

⁵¹ There is a common gallows humor trope within the military where one junior person did something to displease a senior officer and is shortly found in an undesirable duty location because of that offense.

⁵² The Court is mindful that Col Shaw's role was advisory in nature and that he was not the ultimate decider of billet assignments, but the Court cannot ignore the significant impact of "he who prepares the initial spreadsheet and slate."

⁵³ On brief and during oral argument, the Defense and HMC Gilmet referred to this decision as a "Hobson's Choice," which the Court interpreted as an "illusion of choice" where really only one choice was tenable. HMC Gilmet would never have released his counsel but for Col Shaw's actions.

⁵⁴ See *Gattis*, at 754 - 757 (a significant factor in determining the existence of actual and apparent UCI was whether any potential prejudice caused by the UCI was later cured).

Appendix Q. United States v. Eric S. Gilmet Ruling

indefinite continuance for that new counsel to become prepared, that the effect of the UCI has been removed. The Court finds, however, that the Government has not met its burden to show that the UCI above will not - and has not - affected these proceedings.

The caselaw is replete with examples of curative Government action. This includes the removal of the leader who made inappropriate comments regarding rehabilitative witnesses from the unit, thus eliminating the offender from the rating chain of any prospective witnesses; liberal continuances; “all hands” calls to correct allegations of UCI; and a “blanket approval” of all defense witnesses.⁵⁵ Other such examples are direct correspondence from the commanding officer (after a subordinate forbade witnesses from speaking with defense attorneys), educating all hands on UCI and encouraging them to speak with defense counsel.⁵⁶ Other such praised actions have been “admonishment of the offender by his superior in front of those improperly influenced” and an apology.⁵⁷

In the present case, the Government cites to its *sua sponte* efforts. Specifically, they highlight to the Court that Col Shaw was immediately removed from his job as Deputy Director for Community Management and Oversight. Because of this action, the Government argues that JAD has effectively ensured that Col Shaw will have no role in the detailing and slating process for Marine Corps Judge Advocates. Further, the Government offered several statements from officials within JAD to explain how Col Shaw’s statements were not an accurate reflection of how promotions and assignments work within the USMC. Any future concerns, the Government argues, are not justified or reasonable.

In response, the Defense, in essence, simply points at its table: Three attorneys once sat, and then there was one. (It is not lost on the Court that the remaining attorney is a civilian.)

The Court applauds the immediate action of MajGen Bligh as it relates to the temporary removal of Col Shaw from JAD and his permanent removal from the assignment and slating process of judge advocates. This was quick and decisive and it reflects the seriousness with which Col Shaw’s comments were viewed and further illustrates the pernicious harm that such statements can sow into a process that demands fairness. Further, MajGen Bligh’s affidavit regarding his view of the importance of defense counsel work was an important message that had to be sent to this Defense team and the Marine Corps’ Defense Bar in general. However, by the time MajGen Bligh issued his affidavit, weeks had passed and the damage had already been done. It did little to restore the confidence and trust needed by this defense team. Nor did it do

⁵⁵ See *U.S. v. Sullivan*, 26 M.J. 442 (C.M.A. 1988). While the certified issue in *Sullivan* was if the trial judge had abused its discretion in denying a defense continuance to investigate potential UCI, C.M.A. praised the trial judge’s efforts to deal with leadership’s inappropriate comments regarding witness participation in a courts martial. C.M.A. did not address if these actions were sufficient in a UCI context.

⁵⁶ See *Gattis*, 81 M.J. at 754

⁵⁷ See *U.S. v. Roser*, 21 M.J. 883, 884 (A.C.M.R. 1986) which involved three officers who had provided favorable character evidence at an Article 32. Afterwards, their company commander threatened them that if they continued to provide such testimony at trial that their careers would be negatively affected. In response, the curative actions in that case involved a strong, stern public rebuke by the immediate superior in command in front of these witnesses that countermanded the improper comments. The ISIC also required the company commander to apologize.

Appendix Q. United States v. Eric S. Gilmet Ruling

anything to assuage the concerns of the Accused. Further, this affidavit is not qualitatively the same as the actions of the senior officers in *Sullivan* or *Roser*. In both cases, the subsequent remedial measures were able to ensure that the accused had the benefit of witnesses that would have been impacted by the UCI. Here, the Defense Counsel not only had to concern themselves with their own careers based on Col Shaw's statements, but also the ethical concerns of their respective State Bar Associations.

As footnoted above, the Court is reluctant to mention the command investigation conducted into this matter as it is not relevant on the issues this Court must ultimately decide. However, the Government provided this report of investigation in support of its burden and therefore, a few comments are necessary. While, the Court does not adopt the "whitewashing" term used by Defense counsel, it does note that this investigation does little to weed out the harm caused by Col Shaw's comments to junior counsel. Instead of addressing their valid concerns and their perceptions, the IO instead states,

"The majority of the comments at issue were in response to questions posed by defense counsel who have an obligation to advocate for their clients. Their assessment of the context of the comments are naturally shaped to bring the most benefit to their clients."

In essence, the IO is saying whomever reviews this investigation and provides an endorsement should take the significant concerns and substantial statements from the young defense counsel with a grain of salt, because, well, they're defense counsel who will do anything to benefit their client. In contrast, Col Shaw's inconsistent statements go unmentioned. His declaration to this Court that he would invoke his right to remain silent if called as a witness do not even merit a footnote in the investigation. The Court is mindful that this investigation has a much different purpose and scope than this ruling, along with different standards of proofs and limitations of what cannot be commented upon. However, the tone-deafness of the above lends credence to the Defense's articulated concern: this investigation has made things worse for the defense team, and, if the endorsement concurs with the IO's findings, then no further action will be taken and Col Shaw may be reassigned to JAD.⁵⁸

Apparent UCI

Having found actual UCI, the Court next turns to the issue of whether Col Shaw's comments created apparent UCI and whether they resulted in a material prejudice to the substantial rights of the accused.⁵⁹ The Court finds that they have.

Addressing the first prong under apparent UCI, the Court adopts its findings above regarding the particular acts that constitute UCI. As outlined in its actual UCI analysis, the Court

⁵⁸ The Government cannot have it both ways. From an evidentiary standpoint, this investigation seemingly contradicts the affidavit from MajGen Bligh, who highlighted the inappropriateness of Col Shaw's statements and now, on the other hand, the Government says through this investigation that these statements amount to nothing more than inflated concerns of Defense Counsel.

⁵⁹ As cited above, the Court is aware of the controlling precedent from N.M.C.C.A. in *Gattis*. However, the C.A.A.F. has not yet addressed the continued viability of apparent UCI claims without a showing of material prejudice.

finds that the Government has failed to prove beyond a reasonable doubt that the relevant facts do not exist, that these facts do not constitute UCI or that the UCI has not affected these proceedings. The Court further finds that the Government has failed to prove beyond a reasonable doubt that the UCI, left unaddressed, has not placed an intolerable strain on the public's perception of the military justice system.

In assessing this last prong, the court finds that at this point in the proceeding, an “objective, disinterested observer, fully informed of all of the facts and circumstances, would harbor a significant doubt about the fairness of the proceeding,” based, in particular, on the facts as outlined above. Namely, Col Shaw is a senior officer in the USMC and occupied, at the time these statements were made, a significant position of authority and influence over the young judge advocates in attendance at this meeting. Capt Thomas, one of these young judge advocates in the meeting, had asked a question which prompted the responses highlighted above. These comments created a cascade of events that ultimately caused HMC Gilmet to face a difficult choice: keep the counsel he wanted, but who had a conflict of interest,⁶⁰ or release the counsel who he had specifically chosen to be by his side, representing him at trial. The Court notes that this really was not a choice. HMC Gilmet would not have released his IMC and detailed defense counsel but for Col Shaw's comments. These comments from Col Shaw, weeks before a HIVIS court-martial was set to begin after two years of preparation, would cause an objective person to legitimately question the fairness of these proceedings. Can there be a fair proceeding when the government, through one of its actors, created a conflict of interest which forced a defense counsel to move to withdraw from a client he has represented for close to two years?

As discussed above, the UCI resulted from Col Shaw's comments interfering with the Accused's right to the counsel of his choice. Not only is this actual UCI, but it is apparent UCI. The fact that Col Shaw caused the Accused's IMC to question his ability to zealously advocate for his client and accordingly caused the Accused to question the abilities of his IMC has placed an intolerable strain on the public's perception of the military justice system. What occurred would confirm the fears of some members of the public that the military justice system is stacked against the Accused and designed to come to the result the military desires.

The Government's Actions Materially Prejudiced the Substantial Rights of the Accused

The Court finds that the actions of the government have materially prejudiced the accused's right to an IMC and his right to detailed counsel.

Under the Sixth Amendment to the Constitution, the accused in a criminal proceeding has the right to establish an attorney-client relationship and obtain committed and zealous representation by that attorney.⁶¹ “Protection of that right is so central to the military justice system that Congress has guaranteed the accused the right to representation by qualified counsel

⁶⁰ As discussed above, the Court has found Capt Thomas had a significant fear that the small USMC judge advocate community would remember what he did as a defense counsel and hold it against him.

⁶¹ U.S. Const. amend VI; *see, e.g., Argersinger v. Hamlin*, 407 U.S. 25, 31, 32 L. Ed. 2d 530, 92 S. Ct. 2006 (1972); [**64] *Gideon v. Wainwright*, 372 U.S. 335, 344, 9 L. Ed. 2d 799, 83 S. Ct. 792 (1963).

Appendix Q. United States v. Eric S. Gilmet Ruling

at Government expense, regardless of financial need, in all general courts-martial.”⁶² Article 38(b) of the UCMJ states that “an accused has the right to detailed military counsel, military counsel of choice if reasonably available and, at his own expense, civilian counsel of choice. It has been a long-standing tradition that a military accused “has the right to select a particular military counsel in limited circumstances.”⁶³

A hallmark of this fairness is that the accused “be defended by the counsel he believes to be best.” Despite adequate representation by counsel, if it is not the accused’s counsel of choice and if he is erroneously prevented from being represented by the lawyer he wants, then the right has been violated.⁶⁴ In *Watkins*, the regional trial counsel, who was not counsel of record, had heated discussions with the civilian defense counsel and, according to the civilian defense counsel, made implicit and explicit threats. As a result of these threats, civilian defense counsel made a motion to withdraw from the case because he felt that the regional trial counsel’s actions had created a conflict of interest. The accused also informed the judge that, because of this entanglement with the RDC, he wanted to be represented by another civilian attorney. The military judge denied the request and the accused was convicted. In reversing the conviction, the C.A.A.F. ruled that the military judge erred by neither considering nor conducting the proper balance of the accused’ right to choice of counsel against other important considerations. The standard the Court used was one of “structural error,” and not requiring the harmless error analysis.⁶⁵ C.A.A.F. stated,

Harmless error analysis under such circumstances would be a "speculative inquiry into what might have occurred in an alternate universe." To compare two attorneys, one whose services were denied, would require a court to speculate upon what different choices or different intangibles might have been between the two.⁶⁶

“Defense counsel are not fungible items. Although an accused is not fully and absolutely entitled to counsel of choice, he is absolutely entitled to retain an established relationship with counsel in the absence of demonstrated good cause.”⁶⁷ In *Baca*, a case involving drunken driving and vehicular manslaughter, the C.M.A. set aside the appellant’s conviction because the military judge had inappropriately severed the attorney client relationship. Even though the attorney in question had only been *Baca*’s attorney for five months, the C.M.A. declined to engage in “nice calculations as to the existence of prejudice.”⁶⁸

In *United States v. Allred*, N.M.C.C.A presumed material prejudice in a case that dealt with the severance of the attorney-client relationship without good cause and an improper denial of the IMC request.⁶⁹ In setting aside the conviction, the appellate court cited to its inherent

⁶² Article 27, UCMJ and *United States v. Rodriguez*, 60 M.J. 239, 259 (C.A.A.F. 2004)

⁶³ *U.S. v. Spriggs*, 52 M.J. 235, 237-38 (C.A.A.F. 2000)

⁶⁴ *U.S. v. Watkins*, 80 M.J. 253, 258 (C.A.A.F. 2020) (internal citations omitted)

⁶⁵ *Id.* At 258

⁶⁶ *Id.*

⁶⁷ *United States v. Baca*, 27 M.J. 110, 119 (C.M.A. 1998).

⁶⁸ *Id.*

⁶⁹ *United States v. Allred*, 50 M.J.795, 801 (N.M.C.C.A. 1999)

Appendix Q. United States v. Eric S. Gilmet Ruling

authority under Article 59(a) to set aside errors of law if that “error materially prejudices the substantial rights of the accused.”⁷⁰ Similarly, in *United States v. Eason* the C.M.A. found “prejudice in the government's frustration of the continuance of a proper attorney-client relationship, and such action constitutes a denial of due process ... [because] the accused should be afforded the services of his military defense counsel.”⁷¹

In *United States v. Hutchins*, the C.A.A.F. examined the accused’s Sixth Amendment right to counsel after the detailed defense counsel left the case and active duty without being released by the client and without proper inquiry from the military judge.⁷² In that case, the C.A.A.F. ultimately denied the accused any relief, stating that the procedural deficiencies in terminating the attorney-client relationship were in error but holding that the errors in the case could be tested for prejudice and the errors did not materially prejudice the substantial rights of the accused.⁷³ The Court cited a number of factors in deciding to apply the standard of prejudice. Most significantly, the Court noted “the personnel action leading to the severance in the present case resulted from a request initiated by the assistant defense counsel, not by the prosecution or the command. In that context, the case before us does not involve a violation of Appellee’s Sixth Amendment right to counsel.”⁷⁴

In analyzing the facts of the present case, the Court finds this similar to *Baca* and *Allred* and finds the facts distinguishable from *Hutchins*. In the present case, the nature of the charges are just as serious as in *Baca*, which involved drunk driving and vehicular manslaughter. If found guilty, the Accused faces the chance of significant confinement and a punitive discharge. Just a few weeks before his trial was set to begin, HMC Gilmet lost two thirds of his trial defense team as a result of the comments of a senior officer acting in his official capacity. Capt Thomas had been representing Chief Gilmet for almost two years and was the attorney that HMC Gilmet had specifically requested. Capt Riley was the detailed defense counsel and had been representing HMC Gilmet for about one year. His defense had become a cohesive team, with each counsel responsible for different parts of the trial. No doubt the final preparations for trial had been completed and they were awaiting the assembly of the court-martial so that they could begin the defense of HMC Gilmet.

The Court finds that the Accused was not really presented with a choice when his counsel sought to withdraw from the case. Granted, unlike *Allred*, the Accused ultimately consented to the withdrawal of Capt Thomas and Capt Riley. However, as discussed at length above, it is clear to this Court that HMC Gilmet would *never* have sought, or consented to, the release of his

⁷⁰ *Id.* The *Allred* Court presumed prejudice “because the appellant was made to forgo the services of [his IMC] without good cause and without his consent.”

See also *U.S. v. Cooper*, 2018 CCA LEXIS 114, aff’d on other grounds, 2021 CAAF LEXIS (Dec. 13, 2021) where the appellate court found that the accused suffered material prejudice because of the detailed defense counsel’s mere failure to simply submit and forward a request for the accused’s IMC to the appropriate chain of command for action.

⁷¹ *United States v. Eason*, 45 C.M.R. 109, 112 (U.S. C.M.A. 1972)

⁷² *Hutchins*, 69 M.J. 282 (2011).

⁷³ *Id.*

⁷⁴ *Id.* at 291 (*emphasis added*).

Appendix Q. United States v. Eric S. Gilmet Ruling

two military counsel but for Col Shaw's comments and the effect they had on Capt Thomas. Further, the Court finds that Capt Thomas and Riley would *never* have sought to withdraw from the case but for the actions of Col Shaw. Like *Allred*, this Court finds that the Accused was required to forego the services of Capt Thomas and Capt Riley because of government action; in this case, the actions of Col Shaw.

The deprivation of his right to Capt Thomas to serve as his IMC and Capt Riley to serve as his detailed defense counsel has materially prejudiced HMC Gilmet's substantial right to counsel. Losing two attorneys who had been engaged in defense of a client for such a significant period of time, and so close to trial, substantially prejudiced the Accused's rights in this case. The Court will not engage in fanciful speculation and attempt to assess what future IMC or future detailed counsel might bring to HMC Gilmet's defense team. Even if the Court were so inclined, it would be impossible to address the intangible benefits of one group of military defense counsel over others. Nor would such an assessment accurately value the impact of a further continuance of this court-martial. More importantly, HMC Gilmet does not want other military counsel. He wants the Captain Thomas and Captain Riley that existed before Col Shaw traveled to Camp Lejeune, NC and addressed a group of young Marine defense counsel. However, because of Col Shaw's actions, such a request is impossible to grant. Col Shaw's actions cannot be unwound and their taint cannot be removed from Capt Thomas and Capt Riley, and ultimately, this court-martial.

Dismissal is the Appropriate Remedy

The Court is mindful that even with a finding of UCI, dismissal is a drastic remedy and courts must look to see whether alternative remedies are available.⁷⁵ The Court is acutely aware that any action taken has to be "tailored to the injury suffered" and "when an error can be rendered harmless, dismissal is not an appropriate remedy."⁷⁶ Dismissal is a last resort, and "if and only if the trial judge finds that command influence exists . . . and finds, further, that there is no way to prevent it from adversely affecting the findings or sentence beyond a reasonable doubt should the case be dismissed."⁷⁷ Further, dismissal with prejudice is appropriate where a rehearing would effectively validate Government impropriety.⁷⁸

This is the grave position the Court finds itself in. In taking this action, the Court has carefully considered and weighed all of the various options available to it and suggested by the Government. In each instance, the Court finds the other remedies wanting.

Government funding of civilian counsel.

The Court finds that this particular remedy is insufficient. While it is creative in countering the financial strain that yet another lengthy continuance will inevitably cause, coupled

⁷⁵ See *United States v. Gore*, 60 M.J. at 187 and *United States v. Cooper*, 35 M.J. 417, 422 (C.M.A. 1992); see also *United States v. Pinson*, 56 M.J. 489, 493 (C.A.A.F. 2002)

⁷⁶ See *Gore*, 60 M.J. at 187 (citing *United States v. Mechanik*, 475 U.S. 66 (1986)).

⁷⁷ *United States v. Jones*, 30 M.J. 849, 854 (N.M.C.M.R. 1990).

⁷⁸ *United States v. Salyer*, 72 M.J. 415 (C.A.A.F. 2013)(authorizing a rehearing would have indirectly provided the Government with the result it had improperly sought – replacement of the detailed military judge.)

Appendix Q. United States v. Eric S. Gilmet Ruling

with the unknown man-hours that will have be invested by this specific civilian defense counsel to properly educate a new team of military defense lawyers, it still does not address the harm of losing Capt Thomas, the IMC, due to government action. Further, there has been evidence presented about the long-reaching effects of Col Shaw's comments that extend well beyond *United States v. Gilmet* and, the argument that is unlikely that local Marine defense counsel will be willing to sit on this case. This remedy would not address the loss of two military defense counsel.

Dismissal with prejudice of the two specifications charged under Article 92.

This remedy, likewise, is insufficient. In crafting this remedy, the Government concedes that Col Shaw's comments were prejudicial to good order and discipline and since these Article 92 offenses are military specific,⁷⁹ their dismissal, they argue, would remove the taint of UCI in this case. However, the Court does not know, nor can it divine, which parts of the trial Capt Thomas and Capt Riley would have defended and assisted. Further, these are the more minor charges on the charge sheet that will take up the least amount of court time, compared to the gravamen of this general court martial. Like above, the time and energy that will be necessary for a new set of defense counsel to be brought up to speed on the remaining charges is significant. This also fails to address the harm created by this UCI.

Disqualify one or more of the currently detailed trial counsel.

This remedy is akin to forcing right-handed fencers to sword fight with their non-dominant hand, as to handicap the stronger and level the playing field for those who have been harmed. This "eye for an eye" proposal also fails to address the harm in this case. While it may make opposing counsel somewhat relieved for a brief period of time, it does little to assuage HMC Gilmet's loss of his military counsel of choice.⁸⁰

Voir Dire of the members to ensure they are untainted by Col Shaw's comments.

This remedy is insufficient and does not address the reason for the prejudice in this case. Col Shaw is a lawyer. While the junior members of the judge advocate community in attendance at his briefs were reasonable in their apprehension and concern with his remarks, it is very unlikely that a venire of members, composed of line officers and non-JAG staff officers, would be affected by something a senior lawyer of JAD said about junior Marine judge advocates. Additionally, it would introduce an otherwise irrelevant line of questions into what is likely an already complex voir dire process. The members are presumably unaware of anything Col Shaw said to defense counsel and therefore could not be tainted by Col Shaw's comments. The prejudice here is not that the members are tainted but that the defense counsel are now conflicted.

⁷⁹ The accused is charged with violation of a general order for consumption of alcohol and dereliction of duty for breaking curfew

⁸⁰ Moreover, trial counsel are commonly referred to as "fungible." Disqualifying trial counsel does not remedy the specific harm in this case.

Require the Accused to be represented by two IMCs of his own selection.

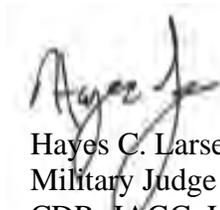
This remedy highlights the harm in this case and how anything short of a dismissal is insufficient. Further, it does not address the prejudice of the further continuance of this case, as discussed above. In making this ruling, the Court simply cannot assess whether or not HMC Gilmet will be getting “better” attorneys when compared to the attorney that HMC Gilmet specifically requested and was granted. Neither potential replacement attorneys will be Capt Thomas or Capt Riley. Being unable to make that assessment, there is no way for this Court to prevent this UCI from adversely affecting the findings or sentence beyond a reasonable doubt. As such, the only appropriate remedy is dismissal with prejudice.

5. Ruling

The Court now **GRANTS** the Defense’s motion as discussed above.

All charges and specifications are **DISMISSED with prejudice**.

So ordered, this 9th day of February 2022.



Hayes C. Larsen
Military Judge
CDR, JAGC, USN

Appendix R. Sources Consulted

1. U.S. Legislative Sources

10 U.S.C. § 1044 (Legal Assistance)

10 U.S.C. § 1044e (Special Victims' Counsel for Victims of Sex-Related Offenses)

Department of Defense Authorization Act of 1985, Pub. L. No. 98-525, 98 Stat. 2549 (1984)

10 U.S.C. §§ 801(1) (Uniform Code of Military Justice)

10 U.S.C. § 1565b (Victims of sexual assault: access to legal assistance and services of Sexual Assault Response Coordinators and Sexual Assault Victim Advocates)

Department of Defense Authorization Act of 1985, Pub. L. No. 98-525, 98 Stat. 2492 (1984) National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, 125 Stat. 1298 (2011) National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 966 (2013) Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291 128 Stat. 3292 (2014)

National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92 129 Stat. 726 (2015)

National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 130 Stat. 2000 (2016)

National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92 133 Stat. 1198 (2019)

National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81 135 Stat. 1541 (2022)

2. Judicial Decisions

LRM v. Kastenberg, 72 M.J. 364 (C.A.A.F. 2013)

United States v. Eric S. Gilmet (Navy-Marine Corps Trial Judiciary February 9, 2022)

United States v. Horne, 2022 CAAF LEXIS 356

United States v. Sanchez, 2017 CCA LEXIS 203

3. Rules and Regulations

U.S. Department of the Navy, Office of the Judge Advocate General, Naval Legal Service Command Instruction 5817.2, *Special Victim Investigation and Prosecution Policy* (May 22, 2019)

U.S. Army Regulation, 27-26, *Rules of Professional Conduct for Lawyers*, Rule 1.3 (June 2018)

Appendix R. Sources Consulted

4. U.S. Department of Defense Policy

JALS Personnel Policies ¶5-6(c) [Army JAG Pub 1-1] (December 2021)

U.S. Marine Corps Order 5800.16, vol. 16, Legal Support and Administration Manual, Military Justice Organization, Personnel, and Qualifications ¶010801 (June 19, 2020; rev. Aug. 26, 2021)

5. U.S. Agency Reports, Publications and Press Releases

Lieutenant Colonel Rhea A. Lagano et al, The Reporter, *The Air Force SVC Program: The First Five Years*, (December 7, 2017)

GAO Report 21-289, *Domestic Abuse: Actions Needed to Enhance DOD's Prevention, Response, and Oversight* (May 2021)

Judicial Proceedings Panel, *JPP Initial Report*, (February 2015)

U.S. Department of Defense, *Report on Implementation of Section 1716 of the National Defense Authorization Act for Fiscal Year 2014*, (April 4, 2014)

U.S. Department of Defense, *Department of Defense Fiscal Year 2014 Annual Report on Sexual Assault in the Military*, (April 29, 2015)

Department of the Army Pamphlet 600-3, *Officer Professional Development and Career Management*, (Apr. 3, 2019)

Department of the Army, TJAG and DJAG Special Announcement 40-04, *Announcement of Decisions on Strategic Initiatives* (Apr. 20, 2018).

6. Scholarly Articles

David A. Schlueter, *Reforming Military Justice: An Analysis of the Military Justice Act of 2016*, 49 St. Mary's Law Journal (2017)

Lieutenant Colonel John R. Howell, *TDS: The Establishment of the US Army Trial Defense Service*, Military Law Review (Spring 1983)

7. Internet Resources

United States Coast Guard, *U.S. Coast Guard Special Victims' Counsel Program*, <https://www.uscg.mil/Resources/legal/LMA/SVC/>

Office for Victims of Crime, "Glossary of Terms," *The Vicarious Trauma Toolkit: Blueprint for a Vicarious Trauma-Informed Organization*, <https://ovc.ojp.gov/program/vtt/glossary-terms>

8. News Articles

Capt. Josh Bell, *Understanding the Special Victims' Counsel Program*, [U.S.] Army.mil (January 30, 2020)

David DeKunder, *Program Provides Legal Services for Survivors of Interpersonal Violence, Sexual Assault*, Joint Base San Antonio-Fort Sam Houston News (May 4, 2021)

Appendix S. Acronyms and Abbreviations

| | |
|-----------------|---|
| C.A.A.F. | Court of Appeals for the Armed Forces |
| CID | Army Criminal Investigation Command |
| CVLC | Chief Victims' Legal Counsel |
| DAC-IPAD | Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces |
| DC | defense counsel |
| DoD | Department of Defense |
| DoD GC | Department of Defense Office of the General Counsel |
| FITREP | Fitness Report |
| FY | fiscal year |
| ICC | Interservice SVC/VLC Coordination Committee |
| IG | inspector general |
| JPP | Judicial Proceedings Panel (Judicial Proceedings Since 2012 Amendments Panel) |
| JAG | judge advocate general |
| LSSS | Legal Services Support Section |
| LSST | Legal Services Support Team |
| NCO | noncommissioned officer |
| NDAA | National Defense Authorization Act |
| NLSC | Naval Legal Service Command |
| OER | officer evaluation report |
| OIC | Officer in Charge |
| PCS | permanent change of station |
| PME | professional military education |
| PT | physical training |
| RFI | request for information |

Appendix S. Acronyms and Abbreviations

| | |
|---------------|-------------------------------------|
| RVLC | regional victims' legal counsel |
| RM | regional manager |
| SARC | sexual assault response coordinator |
| SJA | staff judge advocate |
| SVC | special victims' counsel |
| TC | trial counsel |
| TDY | temporary duty |
| TJAG | The Judge Advocate General |
| UCMJ | Uniform Code of Military Justice |
| U.S.C. | United States Code |
| VA | victim advocate |
| VC | victims' counsel |
| VLC | victims' legal counsel |

Appendix T. DAC-IPAD Professional Staff

PROFESSIONAL STAFF

Colonel Jeff A. Bovarnick, USA, JAG Corps, Executive Director

Ms. Julie K. Carson, Deputy Director

Mr. Dale L. Trexler, Chief of Staff

Ms. Audrey Critchley, Attorney-Advisor

Ms. Theresa Gallagher, Attorney-Advisor

Ms. Nalini Gupta, Attorney-Advisor

Ms. Amanda Hagy, Senior Paralegal

Mr. R. Chuck Mason, Attorney-Advisor

Ms. Marguerite McKinney, Analyst

Ms. Meghan Peters, Attorney-Advisor

Ms. Stacy Powell, Senior Paralegal

Ms. Stayce Rozell, Senior Paralegal

Ms. Terri Saunders, Attorney-Advisor

Ms. Kate Tagert, Attorney-Advisor

Ms. Eleanor Magers Vuono, Attorney-Advisor

Mr. Pete Yob, Attorney-Advisor

COMMITTEE CONSULTANTS

Dr. Alice Falk, Editor

Ms. Laurel Prucha Moran, Graphic Designer

Dr. William "Bill" Wells, Criminologist