Appendix D: Independent Judiciary Report of the Joint Service Committee on Military Justice

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GENERAL COUNSEL

FEB 12 2001

The Honorable Susan J. Crawford
Chief Judge, U. S. Court of Appeals for the Armed Forces
450 E Street, NW
Washington, D.C. 20442

Dear Chief Judge Crawford:

Then-Chief Judge Walter T. Cox, III, writing on behalf of the Code Committee, requested the Department of Defense General Counsel to initiate a review by the Joint Service Committee on Military Justice (JSC) of whether the creation of an "independent judiciary" is either feasible or desirable. Chief Judge Cox provided several issues the Code Committee thought should be considered. The General Counsel requested the Chair, JSC, study this issue as one of several reviews the Code Committee proposed. To conduct this study, the JSC was augmented with an *ad hoc* Independent Judiciary Working Group. This working group was comprised of 10 trial and appellate military judges and a judge advocate assigned to the Navy Appellate Government Division. All Services were represented.

The enclosed Independent Judiciary Working Group's report represents its year-long review of the issues, including its survey of the Services' then-sitting trial and appellate military judges. This report is forwarded for the Code Committee's consideration.

Sincerely,

Daniel J. Dell'Orto

Daniel J. Dell'Orto
Acting

Enclosure

DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

10 JAN 2001

The Honorable Douglas A. Dworkin
Department of Defense General Counsel
Washington, D.C. 20301

Dear Mr. Dworkin:

We are pleased to submit the attached report of the DoD Joint Service Committee on Military Justice (JSC) that examines the desirability and the feasibility of an "independent judiciary."

This report reflects twelve months of work by an *ad hoc* working group to the JSC composed of active duty trial and appellate judges. Their report concludes that an "independent judiciary" is desirable and feasible and currently exists. The JSC believes, consistent with their report, that it is not necessary to make Legislative measures to protect judges from unlawful command influence. Nor do we believe that MCM amendments are needed. We do note that the report recommends that the Services, to the extent feasible, implement set terms for their judges.

Very respectfully,

James W. Russell, III, Colonel, USAF
Chair, DoD Joint Service Committee
on Military Justice

DEPARTMENT OF THE AIR FORCE
AIR FORCE LEGAL SERVICES AGENCY (AFLSA)

18 September 2000

MEMORANDUM FOR DoD JOINT SERVICE COMMITTEE ON MILITARY JUSTICE

FROM: AFLSA/JAJT
112 Luke Avenue, Ste 301
Bolling AFB DC 20332-5113

SUBJECT: **Independent Judiciary Report**

I. EXECUTIVE SUMMARY

a. Establishment. On 20 August 1999, Col James R. Van Orsdol, USAF, Acting Chair, DoD Joint Service Committee (JSC) on Military Justice, appointed Colonel Michael B. McShane, USAF, Chief Trial Judge, as chairman of an *ad hoc* JSC working group.

b. Purpose. The *ad hoc* JSC working group was created to study whether the creation of an "independent judiciary" is either feasible or desirable. The purpose of this *ad hoc* working group was, in part, to examine whether the existing measures adequately protect the independence of the trial and appellate judges serving in the United States Armed Forces. The *ad hoc* working group had its birth when The Honorable Walter T. Cox, III, served as Chief Judge of the Court of Appeals of the Armed Forces, and raised this issue for consideration. Interest in the issue is not confined to the military as the issue is being debated by the public as well, and may well reflect the current interest in Congress in the mechanism of panel selection and similar issues.

At the completion of the study, the *ad hoc* JSC working group was required to report its findings and recommendations. This is the Final Report.

c. Specific Objectives. The group began its work by reviewing the Charter provided by the JSC (Atch 1). The group then gathered information in an effort to address the objectives and the description of duties stated in the Charter. Specifically, the group's fundamental objective was to determine the desirability and feasibility of an "independent judiciary." The group was to review the present state of the law; gather the present structures and rules pertaining to each service's trial and appellate judiciary; address the need for and desirability of an independent judiciary; research the feasibility of an independent judiciary with potential solutions, if any, to include a merit selection process; fixed terms of office; independent promotion system based upon longevity rather than order of merit; procedures for handling grievances and misconduct; and the feasibility of an "all service" judiciary. Finally, if appropriate, the working group was to provide draft proposed legislation or regulations.

d. Group Composition. The group consisted of five voting members and six non-voting members. The voting members were: Colonel Michael B. McShane, Chief Trial Judge, USAF

Trial Judiciary; Colonel Larry S. Merck, Appellate Judge, United States Army Legal Services Agency (USALSA), Army Court of Criminal Appeals; Captain Peter J. McLauglin, Chief Trial Judge, Navy-Marine Corps Trial Judiciary; Captain Lane I. McClelland, Chief, Coast Guard Office of Claims and Litigation, and Appellate Judge, Coast Guard Court of Criminal Appeals; and Lt Colonel Kip J. Naugle, USMC, Appellate Judge, Navy-Marine Corps Court of Criminal Appeals. The non-voting members were: Colonel Linda Strite Murnane, USAF, Trial Judge, Eastern Judicial Circuit; Lt Colonel Barbara G. Brand, USAF, Deputy to the Chief Trial Judge; Colonel Gary Smith, Chief Trial Judge, USA Trial Judiciary; Colonel Gary Casida, Appellate Judge, USALSA, Army Court of Criminal Appeals; Colonel Charles Trant, Appellate Judge, USALSA, Army Court of Criminal Appeals; and Lieutenant Jan O'Grady, JAGC, USN, Appellate Government Division.

e. Findings. An "independent judiciary" is desirable and feasible. The working group members agree it currently exists. Within the Uniform Code of Military Justice, there are specific protections in place for the independence of the judiciary. It is not necessary to take further Legislative measures to protect the judges from potential unlawful command influence, as existing statutory provisions provide more than adequate protections to ensure a fair and impartial judiciary.

f. Recommendations. Services that currently do not have a set term for judges implement one, if feasible.

II. REPORT

a. Establishment. See above.

b. Purpose. See above.

c. Specific Objectives. See above.

d. Group Composition. See above.

e. Methodology, Information and Products.

1. The Independent Judiciary Working Group (IJWG) met monthly, with, at a minimum, all the services represented. Generally, meetings involved discussion of old business, new business and assignments for the future meetings. They averaged 90 minutes (Atch 2).

2. Meetings began in October 1999, when Col Russell, Air Force Legal Services Agency (AFLSA)/JAJM and Chair of the DoD Joint Service Committee (JSC) on Military Justice, explained the tasking for this working group. The Charter, which was provided to all attendees, was reviewed (See Atch 1). Col McShane became the working group chair. Each service had one equal vote on issues. The focus of the IJWG was to look at the feasibility and desirability of

an independent judiciary. If necessary, the IJWG would provide draft legislative proposals. Reporting requirements included quarterly updates be provided to Col Russell or Lt Col Jaster, AFLSA/JAJM. A final report from the Group was due 1 Nov 2000 (contrary to the date included in the tasking letter of 20 Aug 1999).

3. The IJWG generally met monthly over the course of the year. Initially, each service worked on providing information and regulations that answered the first two objectives which were to review the present state of the law, and gather the present structures and rules pertaining to each service's trial and appellate judiciary. The IJWG then addressed the issue of determining the desirability and feasibility of an "independent judiciary."

4. Law review articles, former Process Action Team (PAT) reports, and The Military Justice Act of 1983 Advisory Commission Report were researched and reviewed. The 1983 report examined very similar questions and included responses from judges, commanders and Staff Judge Advocates (SJA). Following this, sample questionnaires were drafted and analyzed. Discussions were held on determining the relevance of the questions and the exact target audience. Finally, a questionnaire was developed, approved and distributed to all the services' appellate and trial judges, both active and reserve (Atch 3). The questionnaires were collected and the results were grouped according to service, rank and experience (Atch 4).

5. The IJWG reviewed the data gathered from the questionnaire and discussed at length exactly what conclusions might legitimately be drawn from the data. Based upon the data, the IJWG reached conclusions contained in this report.

f. Resources. The IJWG used their individual staffs to conduct the required research. In addition, input was received from all trial and appellate judges, both active and reserve, through their responses to the questionnaire. Meetings were hosted by the Air Force and conducted monthly in the AFLSA conference room located at Bolling AFB, D.C.

III. FINDINGS.

a. REVIEW OF THE PRESENT STATE OF THE LAW AND MILITARY JUDGES

1. Uniform Code of Military Justice

The military judge and the appellate military judge came into existence in 1969. Military Justice Act, Pub.L.No.90-632, §§ 2(9) and 2(28), 82 Stat. 1336-37, 1341 (Oct. 24, 1968).

The term "military judge" means an official of a general or special court-martial detailed in accordance with section 826 of this title (article 26). Article 1(10), Uniform Code of Military Justice (UCMJ).

A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The

Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. Article 26(a), UCMJ.

A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by The Judge Advocate General of the armed force of which the military judge is a member. Article 26(b), UCMJ; Rule for Courts-Martial (RCM) 502(c).

The military judge of a general court-martial shall be designated by The Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under Article 26(a), UCMJ. Article 26(c), UCMJ.

The military judge shall be detailed, in accordance with regulations of the Secretary concerned, by a person assigned as a military judge and directly responsible to The Judge Advocate General or The Judge Advocate General's designee. The authority to detail military judges may be delegated to persons assigned as military judges. A military judge from one armed force may be detailed to a court-martial convened in a different armed force when permitted by The Judge Advocate General of the armed force of which the military judge is a member. RCM 503(b).

Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. Article 26(c), UCMJ.

No authority convening a general, special or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercises of its or his functions in the conduct of the proceedings. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching findings or sentence in any case, or the action of any convening, approving or reviewing authority with respect to his judicial acts. Article 37 (a), UCMJ.

The military judge is the presiding officer in a court-martial. The military judge shall determine the time and uniform for each session of a court-martial; ensure that the dignity and decorum of the proceedings are maintained; subject to the Code and the Manual, exercise reasonable control over the proceedings to promote the purposes of the rules and the Manual; rule on all interlocutory questions and all questions of law raised during the court-martial; and instruct the members on questions of law and procedure which may arise. RCM 801(a).

No court-martial proceeding, except the deliberations of the members, may take place in the absence of the military judge, if detailed. RCM 805(a).

Each Judge Advocate General shall establish a Court of Criminal Appeals which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. Appellate military judges who are assigned to a Court of Criminal Appeals may be commissioned officers or civilians, each of whom must be a member of a bar of a Federal court or the highest court of a State. The Judge Advocate General shall designate as chief judge one of the appellate military judges of the Court of Criminal Appeals established by him. Article 66(a), UCMJ.

No member of a Court of Criminal Appeals shall be required, or on his own initiative be permitted, to prepare, approve, disapprove, review, or submit, with respect to any other member of the same or another Court of Criminal Appeals, an effectiveness, fitness, or efficiency report, or any other report documents 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 shall be retained on active duty. Article 66(g), UCMJ.

The President shall prescribe procedures for the investigation and disposition of charges, allegations, or information pertaining to the fitness of a military judge or military appellate judge to perform the duties of the judge's position. To the extent practicable, the procedures shall be uniform for all armed forces. Article 6a(a), UCMJ

Each Judge Advocate General is responsible for the professional supervision and discipline of military judges and appellate military judges. RCM 109.

2. Caselaw

As early as 1976, the then Court of Military Appeals (CMA)[1] was called upon to resolve whether a military judge was subjected to unwarranted command control in violation of Article 37, UCMJ, based upon his alleged imposition of lenient sentences in three cases. *United States v. Ledbetter*, 2 M.J. 37 (C.M.A. 1976). CMA declined to engage in an official inquiry to question or justify any judge's decisions unless the inquiry was made by an independent judicial commission established in accordance with the guidelines provided in the American Bar Association (ABA) Standards, The Function of the Trial Judge § 9.1(a) (1972). However, the

[1] In 1994, Congress changed the name of the military appellate courts. The United States Court of Military Appeals (CMA) is now the United States Court of Appeals for the Armed Forces (CAAF) and the Courts of Military Review are now the Courts of Criminal Appeals. *See* Pub. L. No. 103-337, § 924, 108 Stat. 2663 (1994).

Court did imply that congressional action providing for some type of tenure for all military judges would eliminate any appearance of judicial tampering.

Following *Ledbetter*, and based upon a general concern about the appearance of unlawful command influence on military justice, The Military Justice Act of 1983 provided for the establishment of an Advisory Commission to study and make recommendations on several military justice issues, including "whether military judges, including those presiding at special and general courts-martial and those sitting on the Courts of Military Review, should have tenure." THE MILITARY JUSTICE ACT OF 1983, ADVISORY COMMISSION REPORT, COMMISSION RECOMMENDATIONS 2 (1984). Ultimately, the Commission rejected the notion of tenure for these judges, with dissents.

In *NMCMR v. Carlucci*, 26 M.J. 328 (C.M.A. 1988), The Judge Advocate General of the Navy ordered the Chief Judge to make the court's commissioners available for questioning by the Inspector General of the Department of Defense to answer questions regarding improper influence allegedly exerted against the judges in their review of a court-martial conviction. NMCMR petitioned the CMA for extraordinary relief in the nature of an injunction requesting the CMA to enjoin the Inspector General from unduly interfering with its member judges' deliberative processes. Citing the ABA Code of Judicial Conduct, Canon 1 (1972), the CMA observed that the first duty of judges is to uphold the independence and integrity of their courts. Equally important for the effective discharge of duties of a judge is confidentiality of judicial communications. The CMA expressed concern that the proposed investigation would violate the judicial privilege protecting confidential communications among the member judges and with their staff. In resolving the issue, the Court appointed an associate judge of the CMA to act as special master for the Court. The special master was authorized to enter such orders as he deemed necessary to assure that the Inspector General's investigation remained within permissible areas and did not improperly invade NMCMR's qualified judicial privilege, thereby maintaining the independence and integrity of the NMCMR.

While holding that judicial independence is a necessary component of due process required for judges in criminal cases, the CMA has previously held that the Due Process Clause of the Fifth Amendment of the United States Constitution does not require fixed terms of office for military trial or appellate judges. *United States v. Graf*, 35 M.J. 450 (C.M.A. 1992). Rather, the Court concluded that the UCMJ provides the requisite independence for all military judges to meet the Fifth Amendment requirement without a fixed term of office. Among the provisions in the UCMJ for substantial independence and protection for military judges, the Court noted the availability of the following: (1) an administrative method of complaint against interfering superiors within the uniformed service itself (Article 138); (2) the preferral of charges and possible court-martial of any servicemember regardless of rank or grade, who improperly influences or attempts to influence a judge's findings or sentence (Article 98); and (3) petitioning to the CMA under the All Writs Act (28 U.S.C. § 1651(a)). Moreover, the Court specifically held that, based on Supreme Court precedent, the absence of fixed terms of office for military

judges did not offend traditional notions of fundamental fairness. However, the Court did recommend, should the President and Congress deem it appropriate to inquire into methods to improve the independence of military judges, that such an inquiry include confidential interviews of present or retired officers who serve or have served as military judges. In addressing whether military judges were actually independent since they served at the will of The Judge Advocate General, the Court concluded that exercise of the power to decertify or transfer a military judge based on a perception of the appropriateness of his findings and/or sentences violates Articles 26 and 37 of the UCMJ. As an aside, the Court recognized a substantial difference between the words "tenure" and "term," stating that "tenure" generally indicates the right to hold office for an indefinite time, while "term" refers to holding office for a period of time within fixed limits.

In *Weiss v United States,* 510 U.S. 163 (1994), the United States Supreme Court held that the lack of a fixed term of office for military judges does not violate the Due Process Clause of the Fifth Amendment. The historical fact that military judges in the Anglo-American system have never had tenure is a factor that must be weighed in this calculation. Moreover, the applicable provisions of the UCMJ, and corresponding regulations, sufficiently insulate military judges from the effects of command influence. Thus, neither history nor current practice supports an assumption that a military judge who does not have a fixed term lacks the independence necessary to ensure impartiality. The Court held that "Congress has achieved an acceptable balance between independence and accountability" by placing Judge Advocates General, who have no interest in the outcome of a case, in control of judges. In his concurring opinion, Justice Scalia commented, "a fixed term of office for a military judge never has been a part of the military justice tradition . . .. Courts-martial . . . have been conducted in this country for over 200 years without the presence of a tenured judge."

In *United States v. Mitchell*, 39 M.J. 131 (C.M.A. 1994), the Court of Military Appeals held, consistent with its prior decision in *United States v. Graf*, 35 M.J. 450 (C.M.A. 1992), that (1) the fact that The Judge Advocate General of the Navy prepares and signs Navy-Marine Corps Court of Military Review judges' fitness reports did not deprive the Court of independence or an appearance of independence so as to violate due process; and (2) judges of the Navy-Marine Corps Court of Military Review were not required to *sua sponte* disqualify themselves pursuant to RCM 902(a). Specifically, the Court determined that the fitness report evaluations complained of were authorized by Department of the Navy regulations; such regulations were not new; and Congress was clearly aware of such regulations when it amended Article 66(a), UCMJ in 1968, and created a court including appellate military judges. Regarding the Constitutional appearance of fairness claim, the Court found that the Supreme Court has required this issue to be decided from the perspective of a "reasonable judge," and upon a showing of a direct, rather than a speculative or remote, pecuniary interest in deciding the case unfairly. The Court also sensed dissatisfaction in the Navy appellate judges with respect to their officer fitness report system, but noted that any relief must come by way of legislation from Congress or by way of executive regulation from the President.

Most recently, in *United States v. Norfleet,* 53 MJ 262 (CAAF 2000), the United States Court of Appeals for the Armed Forces held although the military judge's commander was involved in processing the charges and the request for discharge in lieu of court-martial, the actions taken by officers in the chain of command above both the military judge and the appellant created no risk that the military judge would fail to perform his normal judicial duties.

The Court recognized there might be tension created by placement of the military judiciary within the officer personnel structure and military judges must be sensitive to particular circumstances that may require recusal. However, the fact that a judge may issue a ruling adverse to the interests of superior officers does not in and of itself preclude those judges from exercising independence in their judicial rulings.

b. THE PRESENT STRUCTURES AND RULES PERTAINING TO EACH SERVICE'S TRIAL AND APPELLATE JUDICIARY

ALL BRANCHES. Article I, § 8 of the United States Constitution provides, "The Congress shall have the Power . . . To make Rules for the Government and Regulation of the land and naval Forces." Article 66, UCMJ, requires each Judge Advocate General to establish a Court of Criminal Appeals, and to refer to that court the record of trial in each case tried by court-martial in which the sentence extends to death, punitive discharge, or confinement of one year or more. The Judge Advocates General are required to prescribe rules of procedure for the Courts of Criminal Appeals.

Statutory Basis. The Military Justice Act of 1968 and amendments created the position of military judge that is now codified in Article 26, Uniform Code of Military Justice (Atch 5).

1. Air Force. Appellate Judges. The Chief Appellate Judge heads the appellate division, JAA. The Chief Appellate Judge and each of the appellate judges are rated by TJAG and report directly to him. There are seven active duty appellate judges and three reserve appellate judges. There are no appellate judges from the Air National Guard. The Chief Appellate Judge is responsible for assigning cases to panels. The Senior Appellate Judges are the heads of each panel. Currently, there are six panels consisting of three judges per panel.

Trial Judges. The trial judiciary is divided into five judicial circuits. The Chief Trial Judge, who reports to AFLSA/JAJ, Director of the Judiciary, heads the trial judiciary, JAJT. Each Chief Circuit Military Judge reports to the Chief Trial Judge. Trial judges in each circuit report to their respective Chief Circuit Military Judge. The Director of the Judiciary is also the reporting official for the Appellate Defense and Appellate Government divisions and for the Defense Services division.

Currently, there are twenty-two active duty judges and five reserve judges throughout the trial judiciary. There are no trial judges in the Air National Guard.

All judges are selected on a best-qualified basis by TJAG. Tour lengths are generally three years but there is no set term. In addition to applicable Uniform Code of Military Justice and Manual for Courts-Martial provisions, the Air Force military judges are governed by Air Force Instruction 51-201 (Atch 6) and Air Force Manual 51- 204 (Atch 7).

2. Army. Appellate Judges. The procedures and requirements for selection and assignment of judges to the Army Court of Criminal Appeals are contained in JAG PUB 1-1, *Office of The Judge Advocate General, Dep't of the Army, JAGC Personnel and Activity Directory and Personnel Policies*, Appendix Personnel Policies, para. 7-5, (Atch 8). Army Regulation (AR) 27-10, Legal Services: Military Justice, para. 13-12 (24 Jun. 1996)(C1, 20 Aug. 1999, effective 20 Sep. 1999) provides tenure for Army appellate judges for a period of three years (Atch 9).

At present, the Army Court of Criminal Appeals is composed of three panels (Panels 2-4) and a fourth panel (Panel 1) that is composed of the Court sitting en banc. At present, Panel 1 is composed of the Chief Judge and nine active duty appellate military judges. Panels 2-4 are each composed of one senior judge and two associate appellate military judges.

All the active duty appellate military judges on the Army Court of Criminal Appeals are commissioned officers. Except for the Chief Judge, The Assistant Judge Advocate General (TAJAG) rates and senior rates all appellate military judges. The Chief Judge is rated by TAJAG and senior rated by The Judge Advocate General of the Army (TJAG). Additionally, there is one individual mobilization augmentee (IMA) reserve component (RC) chief judge, and two IMA RC appellate military judges assigned to the Court who serve during periods of active duty (usually fifteen consecutive days per year and 192 additional hours).

Rule for Courts-Martial 109 places the responsibility for the professional supervision and discipline of appellate military judges on TJAG. It also requires TJAG to investigate allegations of judicial misconduct or unfitness. AR 27-10, chap. 16, Section III provides the reasons for suspension of a military judge (Atch 10), and AR 27-1, Legal Services: Judge Advocate Services, chap. 7 establishes guidance for professional conduct inquiries of military judges (Atch 11).

Trial Judges. AR 27-10 implements Article 26. Para. 1-4 makes the Chief Trial Judge designee of TJAG for supervision and administration of the U.S. Army Trial Judiciary and the Military Magistrate Program (Atch 12). Chapter 8 sets out rules and procedures regarding the Army Trial Judiciary and Military Judge Program (Atch 13). AR 623-105, para. D-2 requires that rating officials of military judges be only members of the Army Judiciary, TAJAG, and TJAG (Atch 14).

Organization. To meet Article 26 requirements, all active Army judges are assigned to the USALSA with duty at various locations worldwide. There are currently twenty-four active

military trial judge requirements on the Table of Distribution and Allowances of USALSA. There are eighteen authorizations for those positions with eighteen officers currently assigned (Atch 15).

United States Army Reserve (USAR). There are currently thirteen USAR military judges, and these judges are assigned to troop program units (TPU) throughout the United States. There is also one Individual Mobilization Augmentee military judge who is an augmentee to USALSA. TJAG has provided additional direction for USAR military judges that is contained in a memorandum and places responsibility for professional supervision in the Chief Trial Judge (Atch 16). The TPU judges are not currently authorized to preside at general courts-martial because they are not under Article 26(c) "assigned and directly responsible" to TJAG or his designee. All USAR military judges are certified and preside at special courts-martial. Detailing is by the active general court-martial judge responsible for providing judicial services at the installation concerned. The Chief Trial Judge affiliates each USAR military judge with a judicial circuit for training, duty, and evaluation. A recently created 150th Legal Support Organization (LSO) (Military Judge), with an effective establishment date of 1 October 2000, will include a commander, who is a military judge, and six military judge and six senior military judge groups (one judge per group). The current plan is to incorporate the existing USAR TPU judges into the Military Judge LSO, with no change in the number of USAR military judges.

National Guard. Some states have designated military judges within the state's National Guard; some do not. These judges preside over courts-martial under authority and procedures of State codes, and individual states have additional certification requirements. National Guard military judges are nominated by the State Judge Advocate and selected by the Chief Trial Judge; trained at the Military Judge Course, TJAGSA; and then certified, if otherwise qualified, by TJAG. In the event of mobilization, FM 27-100 provides for properly certified and currently trained National Guard military judges to be used under direction of the Chief Trial Judge (Atch 17).

Selection, training, and certification. Selection, training, and certification policies and procedures for active and reserve component military judges are set out in Section VII, Appendix Personnel Policies, *JAGC Personnel and Activity Directory and Personnel Policies* (Atch 18).

Tenure. Military judges are tenured for a period of at least three years. The Army's tenure policy is set out in Chapter 8, AR 27-10, and the personnel policies directory mentioned above.

Misconduct and Professional Responsibility. Article 6a, UCMJ, and Rule for Courts-Martial 109, Manual for Courts-Martial, provide procedures for the professional supervision of military judges and for handling complaints against military judges and inquiries into allegations of judicial misconduct. Section III, AR 27-10, provides procedures for suspension of military judges for misconduct; judicial misconduct or unfitness; or violations of the Code of Judicial Conduct, the Army Rules of Professional Conduct for Lawyers (AR 27-26), or other applicable standards. Army military judges are governed by the 1972 American Bar Association Code of

Judicial Conduct (*see* AR 27-1, para. 7-2). Chapter 7, AR 27-1, provides procedures for investigation of complaints against military judges regarding professional responsibility (See Atch 11).

3. Navy-Marine Corps. Appellate Judges. The Chief Appellate Judge heads the Navy-Marine Corps Court of Criminal Appeals. The Chief Appellate Judge assigns the appellate judges to panels, and cases are assigned to the panels in accordance with the rules of court. A senior judge heads each panel. The Chief Appellate Judge promulgates the Rules of Practice for the judges and counsel. The Chief Appellate Judge is barred by statute (Article 66, UCMJ) from reporting on the performance of the other judges. The Judge Advocate General of the Navy signs the fitness reports of the appellate judges.

Trial Judges. The Chief Trial Judge is the officer-in-charge of the Navy-Marine Corps Trial Judiciary. Each of the thirteen Circuit Judges reports to the Chief Trial Judge. The Circuit Judges detail trial judges to courts-martial in their circuits. The Judge Advocate General of the Navy signs the fitness report of the Chief Trial Judge. For Navy Circuit Judges and any Navy Captain Trial Judge, the Chief Trial Judge signs the fitness reports and The Judge Advocate General of the Navy endorses the recommendation for promotion (or changes it). The Circuit Judges sign fitness reports on their subordinates, except as noted above. For Marine Corps Circuit Judges, the Chief Trial Judge is the Reporting Senior and The Judge Advocate General is the Reviewing Officer. Marine Corps Circuit Judges are the Reporting Senior for their subordinates and the Chief Trial Judge is the Reviewing Officer.

There are nineteen Navy and fifteen Marine Corps active duty judges. In the reserves, there are twelve Naval reserve and nine Marine Corps reserve judges.

Although the Navy and Marine Corps have a unified judiciary, under Art 6, UCMJ, Navy judges and Marine Corps judges are made available for duty with the judiciary through their respective personnel assignment branches and not by The Judge Advocate General of the Navy. This may complicate any uniform approach to set terms of duty for the Navy-Marine Corps Trial Judiciary.

In addition to applicable Uniform Code of Military Justice and Manual for Courts-Martial provisions, the Trial Judiciary is established and governed under Secretary of the Navy Instruction (SECNAVINST) 5400.40 (Atch 19), Judge Advocate General Instruction (JAGINST) 5813.4E (ch. 3) (Atch 20), and JAGINST 5803.1B (Atch 21). The Navy-Marine Corps Court of Criminal Appeals is established by statute and governed by its rules of court published in the Military Justice Reporters. The Appellate and Trial Judge candidates are selected by the personnel managers of Navy and Marine Corps judge advocates from qualified individuals in consultation with The Judge Advocate General, screened by a board in accordance with JAGINST 5817.1 (Atch 22) and JAGINST 5817.5D (Atch 23), and personally certified by The Judge Advocate General of the Navy under Art. 26(b), UCMJ, after completion of the Military Judge Course at the Army Judge Advocate General's School.

4. Coast Guard. Appellate Judges. The Coast Guard Court of Criminal Appeals consists of a Chief Judge, who is a civilian GS-15 having this as his full-time duty, and at least two (presently five) other judges, civilian or military, who serve on the court as a collateral duty. The judges are arranged in various combinations to form panels of three judges each. The Chief Judge position has for over 21 years been filled by a retired Navy appellate judge (three different people during that period). The other civilian judges have been retired Coast Guard officers who had served on the court while on active duty. The military judges have been law specialists serving as office chiefs under the Coast Guard Chief Counsel (in offices with no UCMJ responsibilities) or in other Coast Guard Headquarters offices or nearby units.

The Chief Counsel recommends candidates for The Judge Advocate General of the Coast Guard to assign as appellate judges.

The Chief Judge's performance evaluations are written by the civilian Deputy Chief Counsel. The Deputy Chief Counsel serves as Acting Chief Counsel in the absence of the Chief Counsel, and in that capacity may refer cases to the CCA. He also evaluates, as supervisor, the Chief of Military Justice, who supervises appellate government counsel. The military appellate judges who serve under the Chief Counsel have the Deputy Chief Counsel as supervisor and the Chief Counsel as reporting and reviewing officer. Any military judge who does not serve under the Chief Counsel is rated entirely by persons with no responsibilities under the UCMJ. At present the only civilian judge besides the Chief Judge is rated by a military office chief (a person with no responsibilities under the UCMJ), then the Deputy Chief Counsel. Any civilian judge who was an office chief would have the same rating chain as the Chief Judge. The statutory protections of Article 66(g) are observed in letter and spirit: no person on the court rates another person on the court, whether military or civilian.

Trial Judges. The Coast Guard trial judiciary consists of the Chief Trial Judge, an O-6 billet, and a number (presently eight) of collateral duty special court-martial judges. The latter are SJAs, assistants of SJAs, and headquarters staff attorneys, who preside over trials in locations other than their own AORs. The Chief Trial Judge receives all docketing requests for special and general courts-martial and details a judge to each case, which may be himself or herself; in a special court-martial case, one of the special court-martial judges; or a judge of another service.

The Coast Guard Military Justice Manual, at Article 6.D.1 (Atch 22), sets forth procedures and standards for selection of new military judges. The Chief Trial Judge and the Chief, Office of Legal Policy & Program Development review applications and consider the number of new military judges to be certified. Based on their input, the Chief Counsel of the Coast Guard recommends candidates for certification to the Coast Guard's Judge Advocate General, the Department of Transportation General Counsel. The Chief Counsel, who is the designee for this and most other UCMJ purposes of The Judge Advocate General of the Coast Guard, designates a certified military judge as Chief Trial Judge.

A merit selection process --

There is a merit selection process currently in place based upon the best qualified being selected by the service TJAGs.

It is important to know the opinion of the target audience (military trial and appellate judges) concerning their prospects for promotion. The majority (66%) disagreed with the statement that assignment as a military judge has a positive impact on career progression. Further, an overwhelming 96% disagreed that an O-6 assignment as a full-time trial judge was considered career enhancing for competition to flag or general officer rank. As to O-6 assignment as an appellate judge, 94% disagreed that it was career enhancing for flag or general rank. Additionally, 77% agreed that an O-6 assignment as trial judge was detrimental for competition to flag or general rank, while 75% had the same opinion as to appellate judge assignments.

In determining who should select military judges for assignment, 68% agreed it should be the TJAGs. Eighty-one percent (81%) disagreed that an independent board of line and JAG officers should make the decision. If an independent board was used, however, then 88% agree the board should select from a list of candidates provided by the TJAGs.

As far as the need for uniformity of the selection processes within the services, the majority disagreed with the concept – 64% of trial judges and 61% of appellate judges.

The vast majority, 89%, agreed published minimum qualifications for military judges should be available.

Finally, 80% agreed that the current military judge selection process, within their service, works.

Fixed terms of office --

Set terms of office for military judges would create a more independent and fair judiciary (59%); would contribute to a more professionally competent military judiciary (54%); would not create a significant risk of protecting incompetent/irresponsible judges (76%); and would not significantly increase the potential for judges to abuse the office (90%).

Set terms of office would attract highly qualified lawyers (volunteers) to the judiciary (50%) and it would favorably affect the military judges' view of judge assignments (55%).

Sixty-six percent (66%) agree that there should be set terms of office for trial judges and 69% agree for appellate judges, with the most frequently suggested term being three years, followed closely by a suggestion of five years. If a set term of office was implemented, new judges should

IF ANY, TO INCLUDE: A MERIT SELECTION PROCESS; FIXED TERMS OF OFFICE; INDEPENDENT PROMOTION SYSTEM BASED UPON LONGEVITY RATHER THAN ORDER OF MERIT; PROCEDURES FOR HANDLING GRIEVANCES AND MISCONDUCT; AND THE FEASIBILITY OF AN "ALL SERVICE" JUDICIARY.

It goes without saying that we need an independent-minded judiciary. The question is, to what extent does the judiciary need structural independence?

As a human institution, our judiciary can never be perfect; no system or structure can guarantee that every judge will be independent-minded. However, the survey shows that present military judges overwhelmingly feel independent and have confidence in the independence of the judiciary as a whole.

It is also true that no system or structure can guarantee immunity against perceptions of lack of independence. Nevertheless, reductions in the possibilities for such perceptions through increased structural independence would be beneficial.

Increased structural independence would have disadvantages. The specifics of these disadvantages would depend on the structural characteristics. A reasonable structure would serve to minimize appearance of any such pressures, without imposing large burdens or artificial constraints.

The IJWG considered the possible structural changes set forth in its charter: merit selection process; fixed terms of office; independent promotion system based upon longevity rather than merit; procedures for handling grievances and misconduct; and the feasibility of an "all service" judiciary. In this section, discussion of these five possibilities is presented.

Merit selection process. Each of the services has a process that includes consideration of merit, described in the Findings portion of this report. In each service the process culminates in certification by The Judge Advocate General, in accordance with Article 26. To the extent the IJWG's charter contemplated a process in which a person or entity other than TJAG would make a final decision on certification, we discern little or no benefit to such an arrangement. The survey does not support it, and the process lacks visibility to the public so that any change is unlikely to have much impact on the appearance of independence. The disadvantage lies in the impact on traditional military structure, with TJAG at the head of and having responsibility for the services' attorneys.

Fixed terms of office: some loss of flexibility. Issues could vary widely depending on the rigidity of the policy. As noted above, the survey revealed differing levels of support for exceptions to fixed terms based on needs of the service (74%); military exigencies (90%); and a judge's consent to early transfer (94%). There are correspondingly different levels of problems

associated with these exceptions. The services likely have differing abilities to accommodate these issues, depending on the size of the judge corps relative to the whole JAG corps or population of law specialists, among other things.

Promotion based upon longevity: negative impact in relationships with non-judge peers. Each of the services is constrained by legislation and implementing regulations affecting the numbers of officers that may be in active service in each grade. Within the Army, Air Force, and the Navy, selections for promotions occur within the judge advocate staff corps of each of those services.

Within the Marine Corps and Coast Guard, however, there is no judge advocate or law specialist corps. In these smaller services, judge advocates and law specialists compete for promotion with the unrestricted line community and are selected for promotion by the same boards that select officers in the line community for promotion. It is likely that the negative impact of promotion incentives focused on support for an independent judiciary will be more pronounced and widespread within these services than in services wherein selection for promotion occurs within the judge advocate community.

In either environment, all agree the potential negative impact exceeds the potential benefit to judicial independence.

Guidance for grievance and misconduct procedures is uniform under Art 6(a) and RCM 109. Implementation is under service specific regulations.

All-service judiciary: difficulties of integrating assignments and logistic arrangements, plus issues of having judges unfamiliar with accused's service, including traditions, customs, and service specific regulations. The IJWG discussions have focused on the very noticeable differences among the services, specifically the missions and environments. Each member of the IJWG agrees that supplying judges in special circumstances to sister services does work, but the multitude of problems that would surface in the making of a "purple" judiciary militate against such a revolutionary change. It should be noted, too, that the judicial independence inherent in a judge who is not a part of the service of the convening authority carries with it an estrangement from the community, including the accused. Both the onlooking community and, in some cases, even the accused may have less confidence in the judge of another service than in a judge of their own service, which may undermine confidence in the military justice process – a result that would be thoroughly counterproductive.

IV. RECOMMENDATIONS

The survey strongly supports the conclusion that the judiciary is independent. At the same time, the survey supports establishment of fixed terms of office. This item could be expected to

16. Memo – USAR Military Judges
17. FM 27-100
18. Sec VII. Appendix Personnel Policies
19. SECNAVINST 5400.40
20. JAGINST 5813.4E
21. JAGINST 5803.1B
22. JAGINST 5817.1
23. JAGINST 5817.5D
24. COMDTINST M5810.1D

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON, DC

20 Aug 99

MEMORANDUM FOR THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
THE JUDGE ADVOCATE GENERAL OF THE ARMY
THE JUDGE ADVOCATE GENERAL OF THE NAVY
THE SJA TO THE COMMANDANT OF THE MARINE CORPS
THE CHIEF COUNSEL, US COAST GUARD

FROM: AF/JAJ

SUBJECT: DoD Joint Service Committee on Military Justice (JSC) "Independent Judiciary Study"

The DoD Joint Service Committee on Military Justice requests your support in identifying one or more members of your organization to staff an *ad hoc* JSC working group to study whether the creation of an "independent judiciary" is either feasible or desirable.

On 12 Dec 96, Chief Judge Cox, on behalf of the Code Committee, forwarded to the DoD General Counsel a letter requesting the JSC study this issue. On 31 Jan 97, the General Counsel referred the proposal to the JSC indicating that the issues merited study. Although, the JSC has been adequately manned to perform its primary mission of reviewing the Manual for Courts-Martial on an annual basis under DoD Directive 5500.17, it has not been sufficiently staffed to undertake this large study without sacrificing its primary role. As you all know, the JSC has also been working a number of other special projects. We believe that with your help we should now turn our attention to this important matter. In order to conduct the study, the JSC requests your support in identifying appropriate individuals (not currently tasked to the JSC) who have experience as a military judge or are otherwise qualified and who can participate in the study on a part-time basis for a one year period beginning 1 Sep 99. A copy of the proposed charter is attached.

JAMES R. VAN ORSDOL, Colonel, USAF
Acting Chair, DoD Joint Service Committee
on Military Justice

Attachments:
1. Proposed Charter
2. DoD/GC Ltr, 31 Jan 97
3. Code Committee Ltr, 12 Dec 96

CHARTER

DoD Joint Service Committee Independent Judiciary Working Group

A. **Official Designation**: DoD Joint Service Committee Independent Judiciary Working Group. This is a one-year ad hoc subgroup of the Joint Service Committee established per the general authority of DoD Directive 5500.17.

B. **Objectives and Scope of Activities**: To study and provide findings and recommendations concerning the desirability and feasibility of an independent judiciary.

C. **Composition**: The subgroup will consist of 5 voting members. Each Armed Force shall nominate a voting member. and can nominate other non-voting members as appropriate.

D. **Chairman**: The Air Force nominee shall serve as the chair.

E. **Description of Duties**: The Working Group shall study and prepare a comprehensive report with findings and recommendations on the desirability and feasibility of an independent judiciary. The report will include:

(1) A review of the present state of the law;

(2) The present structures and rules pertaining to each service's trial and appellate judiciary;

(3) The need for and desirability of an independent judiciary;

(4) The feasibility of an independent judiciary with potential solutions, if any, to include a merit selection process; fixed terms of office; independent promotion system based upon longevity rather than order of merit; procedures for handling grievances and misconduct; and the feasibility of an "all service" judiciary; and

(5) Any draft proposed legislation or regulations.

F. **Estimated Number and Frequency of Meetings**: The Working Group shall meet at least every month or more often as necessary, at the call of the chair.

G. **Time Period**: The Working Group must render its final report one-year after its creation.

H. **Report**: The subgroup shall report its findings and recommendations, in writing, to the Voting Group of the DoD Joint Service Committee on Military Justice. The Working Group will vote on all recommendations by simple majority with each Armed Force having one vote.

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D.C. 20301-1600

31 JAN 1997

MEMORANDUM FOR CHAIR, JOINT SERVICE COMMITTEE ON MILITARY JUSTICE

SUBJECT: Code Committee Proposals

In the attached letter, dated December 12, 1996, Chief Judge Cox requests that the JSC study several proposals recently considered by the Code Committee. I have reviewed the proposals and agree that they merit study by the JSC.

Please study the Code Committee's proposals and report your recommendations to me. You may include all proposals in one report or, if you find it more convenient, you may report on each separately. I realize some of these proposals will require extensive review by JSC members and their principals. I would appreciate periodic progress reports, so that I may keep Chief Judge Cox informed. If you have any questions, please call Colonel Tom Becker, at 695-1055.

Judith A. Miller

Attachment

UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES
450 E STREET, NORTHWEST
WASHINGTON, D.C. 20442

WALTER T. COX III
CHIEF JUDGE

TELEPHONE 202-761-1469
FAX 202-761-7001

December 12, 1996

The Honorable Judith A. Miller
General Counsel
Department of Defense
The Pentagon
Washington, D.C. 20301-1600

Dear Ms. Miller:

On September 30, 1996, the Uniform Code of Military Justice Committee met at this Court. I was asked to transmit several requests to you for consideration by the Department of Defense Joint Service Committee on Military Justice. Representatives from the Joint Services Committee were present and are aware of the requests.

First, we would request that the Joint Services Committee take a serious look at whether the creation of an "independent judiciary" is either feasible or desirable. We did not discuss at length what the concept of an independent judiciary might include, but the idea would incorporate consideration of some or all of the following: A merit selection process; fixed terms of office; an independent promotion system based upon longevity rather than order of merit; and procedures for handling grievances and misconduct. The study might also include consideration of whether or not the time is ripe for an "all service" judiciary rather than a separate judiciary for each branch of service.

Second, we would request that the Joint Service Committee do a complete study of Article 15, UCMJ, 10 USC § 815. Again, we did not discuss at length what might be ripe for consideration, but some comments pointed toward the revision of Article 15 authority, creating a more useful "disciplinary system" for commanders to supplement and complement the "judicial system."

Professor Fred Lederer of the Marshall Wythe School of Law is interested in furnishing ideas for consideration by the committee. I am certain that he is well-known by the committee members.

From a different source, an *ad hoc* study group of court law clerks and commissioners, I have been requested to ask the military services to consider the desirability of establishing uniform standards for the content and format of records of trial. Enclosed is a copy of a letter I sent to the Judge Advocates General of the services discussing the proposal. Although I received prompt and optimistic responses, I do not know if any follow-up was accomplished. On reflection, it

would seem the Joint Services Committee would be a good forum to discuss the relative advantages and disadvantages to uniform records of trial. I urge the Committee to look at the Air Force instructions regarding records.

Lastly, for your information, I have asked the Honorable Andrew S. Effron to chair a subcommittee to consider the role of the Code Committee in future years. If you or any of your staff have ideas regarding the appropriate role of the Committee, please feel free to share them with Judge Effron. Your support of the Committee has been most appreciated.

Most sincerely,

WALTER T. COX III

Encl.(a/s).

Copies to:
Members, Code Committee

SECTION

2

1 Nov 99

MEMORANDUM FOR COL MCSHANE

FROM: AFLSA/JAJT

SUBJECT: INDEPENDENT JUDICIARY WORKING GROUP, MINUTES 25 OCT 99

1. The initial session of the Independent Judiciary Working Group (IJWG) convened at 0930 on 25 Oct 99. Members in attendance were Col McShane, USAF; Col Merck, USA; Capt McLaughlin, USN; Lt Col Brand, USAF; and Maj Frank, USMC.

2. Col Russell, AFLSA/JAJM and Chair of the DoD Joint Service Committee (JSC) on Military Justice, explained the tasking for this working group. The Charter, which was provided to all attendees, was reviewed. Col McShane, as the Air Force voting member, will be the working group chair. Each service will have one equal vote on issues. The focus of the group is to look at the feasibility and desirability of an independent judiciary. If necessary, the group will provide draft legislation proposals. Reporting requirements include quarterly updates provided to Col Russell or Lt Col Jaster, AFLSA/JAJM. Final report from the Group is due 1 Nov 00 (contrary to the date included in the tasking letter, dated 20 Aug 99).

3. The Group discussed whether the Group was representing the individual services or the individual experience of the members. It was determined the Group was a filter for JSC and that all reports go to the JSC. Differences between the services as to appointment of judges, rating chains, and outlook for promotions were discussed.

4. Immediate taskings for each service representative include compiling a history of the judiciary in each service, gathering pertinent service regulations, and defining the particular rating chains. Additionally, Col Merck will track down a germane Law Review article from William and Mary. Capt McLaughlin will secure the PAT report. Col McShane will review the survey completed in 1984 and gather information for a proposed questionnaire. The questionnaire will be distributed to sitting judges NLT Jan/Feb 00, and will be discussed at the Interservice Military Judges' Seminar.

5. The next scheduled meeting is 22 Nov 99 at 0930 in the AFLSA conference room, Carpenter Building, Bolling AFB D.C. The meeting was adjourned at 1100.

Barbara G. Brand, Lt Col, USAF

22 Nov 99

MEMORANDUM FOR COL MCSHANE

FROM: AFLSA/JAJT

SUBJECT: INDEPENDENT JUDICIARY WORKING GROUP, MINUTES 22 Nov 99

1. The second session of the Independent Judiciary Working Group (IJWG) convened at 0930 on 22 Nov 99. Members in attendance were Col McShane*, USAF; Col Merck*, USA; Capt McLaughlin*, USN; Capt McClelland*, USCG; Col Murnane, USAF; Lt Col Naugle*, USMC; Lt Col Brand, USAF; and Lt O'Grady, USN. (*Voting members)

2. One correction was noted in the minutes from the previous meeting. Information concerning the first two taskings - present state of the law and service specific structures - was provided to the group. The Coast Guard, Navy and Air Force will provide further detail at the next meeting.

3. The main topic of this meeting was formulating a focus for future meetings and the final report. After a very interactive and informative discussion, it was determined the focus of this group would center on the trial and appellate judges' view on the independence of the judiciary and the correlating issues.

4. Pertinent comments from the 83-84 study were provided to the group, along with a sample questionnaire taken from the same study. Col Murnane provided insight on possible areas of questions to be added or tailored in the questionnaire based upon previous exposure to the public views on the same issue (Judicial Independence) in the civilian sector. She has agreed to provide those questions to the group prior to the next scheduled meeting.

5. Immediate taskings for each service representative include reviewing the sample questionnaire and questions provided by Col Murnane and determine relevance and to which group, trial or appellate judges, they apply; expanding or refining the current service system (the Army has completed theirs); and reviewing the information provided by each service, with special focus on the Law Review article from William and Mary.

5. The next scheduled meeting is 13 Dec 99 at 0930 in the AFLSA conference room, Carpenter Building, Bolling AFB D.C. The meeting was adjourned at 1100.

Barbara G. Brand, Lt Col, USAF

23 Dec 99

MEMORANDUM FOR COL MCSHANE

FROM: AFLSA/JAJT

SUBJECT: INDEPENDENT JUDICIARY WORKING GROUP, MINUTES 13 Dec 99

1. The third session of the Independent Judiciary Working Group (IJWG) convened at 0930 on 13 Dec 99. Members in attendance were Col McShane*, USAF; Col Merck*, USA; Capt McLaughlin*, USN; Capt McClelland*, USCG; Col Murnane, USAF; Col Casida, USA; Col Trant, USA; Lt Col Brand, USAF; and Lt O'Grady, USN. (*Voting members)

2. The minutes from the previous meeting were adopted.

3. The main topic of this meeting was the questionnaire. Capt McLaughlin had taken Col Murnane's questions and reworked them so they would be in questionnaire form. The group then went over all the questions, those taken from the 83-84 study and Col Murnane's/Capt McLaughlin's. A potential questionnaire was compiled.

4. Immediate taskings for each service representative included securing the rules for diciplining judges. These are to be discussed in Jan 00. Lt Col Brand will consolidate all the inputs to the questionnaire.

5. The next scheduled meeting is 10 Jan 00 at 0930 in the AFLSA conference room, Carpenter Building, Bolling AFB D.C. The meeting was adjourned at 1120.

Barbara G. Brand, Lt Col, USAF

10 January 2000

MEMORANDUM FOR WORKING GROUP MEMBERS

FROM: AFLSA/JAJT

SUBJECT: INDEPENDENT JUDICIARY WORKING GROUP, MINUTES 10 Jan 2000

1. The fourth session of the Independent Judiciary Working Group (IJWG) convened at 0930 on 10 January 2000. Members in attendance were Col McShane*, USAF; Col Merck*, USA; Capt McLaughlin*, USN; Capt McClelland*, USCG; and Col Trant, USA. (*Voting members.)

2. The minutes from the previous meeting were adopted.

3. Each service provided rules for disciplining military judges. The rules were discussed. Basically, R.C.M. 109 provides guidance for investigating judicial misconduct by sitting judges; each service follows R.C.M. 109 either specifically or in practice. The consensus was that a criminal investigation of a military judge, as opposed to an investigation of judicial conduct of a military judge, would run as a parallel investigation to an R.C.M. 109 investigation.

4. The latest version of the questionnaire was passed out and each member will respond by e-mail by COB 18 January 2000 with suggested changes. A brief discussion of whether each service needed to contact its survey-approval office resulted in the decision to have only the Air Force seek such approval. The Air Force is acting as executive agent for the DoD working group and coordination with three or four other offices could result in delay or other obstacles. Air Force representatives will contact the office that assists with proper design of survey questions.

5. Colonel Merck will look for a special instruction given to Army promotion board members regarding military judges.

6. Future working group activities will include sending the finalized questionnaire out to judges and analyzing the results.

The next scheduled meeting is 22 February 2000 at 0930 in the AFLSA conference room, Carpenter Building, Bolling AFB D.C. The meeting was adjourned at 1030.

MICHAEL B. McSHANE, Colonel, USAF
Chair, Working Group

There was no meeting held in February due to conflicts in schedules.

22 Mar 00

MEMORANDUM FOR COL MCSHANE

FROM: AFLSA/JAJT

SUBJECT: INDEPENDENT JUDICIARY WORKING GROUP, MINUTES 20 Mar 00

1. This session of the Independent Judiciary Working Group (IJWG) convened at 0930 on 20 Mar 00. Members in attendance were Col McShane*, USAF; Col Merck*, USA; Capt McLaughlin*, USN; Capt McClelland*, USCG; Col Murnane, USAF; Col Casida, USA; Lt Col Brand, USAF; Lt Col Naugle*, USMC and Col Gary Smith, USA. (*Voting members)

2. The minutes from the previous meeting were adopted.

3. The main topic of this meeting was the results of the questionnaire. Lt Col Brand provided charts that broke the results out according to branch of the service, rank, time in the service and time on the bench. Additionally, the answers were provided to each question, grouping the *strongly agree* and *agree* responses together and the *strongly disagree* and *disagree* responses together.

4. After reviewing the responses, the members discussed the material. There appeared to be major differences between responses by the active duty members and the reserve members of each branch. There was discussion of justice being Job 1 and the different promotion systems. There was a general consensus that the services usually get better judges if they are moved in and out of the judiciary. There are exceptions. There was also a consensus that we had targeted the correct audience with our questionnaires when reviewing our tasking sent down from the JSC. The committee was informed that Col McShane and Capt McLaughlin would brief the results at the Interservice Military Judges' Seminar at Maxwell AFB AL on 10 April 2000. The members requested Lt Col Brand forward a copy of the questionnaire with the *agree* and *disagree* answers electronically.

5. The focus of future meetings will be preparing an answer to the JSC directive, as the data has now been collected.

6. The next scheduled meeting is 24 April 2000 at 0930 in the AFLSA conference room, Carpenter Building, Bolling AFB D.C. The meeting was adjourned at 1100.

Barbara G. Brand, Lt Col, USAF

27 Apr 00

MEMORANDUM FOR COL MCSHANE

FROM: AFLSA/JAJT

SUBJECT: INDEPENDENT JUDICIARY WORKING GROUP, MINUTES 24 Apr 00

1. This session of the Independent Judiciary Working Group (IJWG) convened at 0930 on 24 Apr 00. Members in attendance were Col McShane*, USAF; Col Merck*, USA; Capt McLaughlin*, USN; Capt McClelland*, USCG; Lt Col Brand, USAF; Lt Col Naugle*, USMC and LT O'Grady, USN. (*Voting members)

2. The minutes from the previous meeting were adopted.

3. The main topic of this meeting was the preparation of the final report to be submitted to the JSC. After analyzing the tasking which contains 5 paragraphs that are to be in the final report, the Working Group divided up the initial responsibilities. Lt O'Grady will prepare a summary reviewing the present state of the law, paragraph one. Each voting member will prepare a synopsis of their service's present structures and rules pertaining to the trial and appellate judiciary, including attachments, paragraph two. For the third paragraph, each voting member will prepare a summary addressing the "need for and desirability" of an independent judiciary. Lt Col Brand will review the questionnaires and summarize the information as it pertains to the fourth paragraph dealing with potential solutions. The fifth paragraph "proposed legislation or regulations" will be handled after the other four paragraphs are finalized.

4. The next scheduled meeting is 22 May 2000 at 0930 in the AFLSA conference room, Carpenter Building, Bolling AFB D.C. The meeting was adjourned at 1100.

Barbara G. Brand, Lt Col, USAF

26 May 00

MEMORANDUM FOR COL MCSHANE

FROM: AFLSA/JAJT

SUBJECT: INDEPENDENT JUDICIARY WORKING GROUP, MINUTES 22 May 00

1. This session of the Independent Judiciary Working Group (IJWG) convened at 0930 on 22 May 00. Members in attendance were Col McShane*, USAF; Col Merck*, USA; Capt McLaughlin*, USN; Capt McClelland*, USCG; Col Smith, USA; Col Murnane, USAF; Lt Col Brand, USAF; and Lt Col Naugle*, USMC. (*Voting members)

2. The minutes from the previous meeting were adopted.

3. The main topic of this meeting was the preparation of the final report to be submitted to the JSC. The Coast Guard, Army and Air Force provided copies of input for the report to the members. The Navy and the Marine Corps will send their input electronically and Lt Col Brand will forward it to all the members (completed 24 May 2000). Discussion on the individual inputs and the differences in philosophy (particularly with the Marines) was held. Questions were asked about a judge voluntarily leaving a judge assignment and whether that affected the independence of the judiciary. A possible format for the final report was suggested by Col McShane and tacitly accepted by the Group. Future meetings were discussed. The meeting in June was cancelled due to scheduling conflicts. Before the next meeting in July, all Group members will review all the inputs and provide additional comments/input to Lt Col Brand. She will compile a very rough draft report and disperse it to the members NLT 10 July 2000 for review prior to the next scheduled meeting, 17 July 2000. It was agreed that there would be a need for meetings in Aug and Sep. (Those have tentatively been set up for 21 Aug and 18 Sep.)

4. The next scheduled meeting is 17 Jul 2000 at 0930 in the AFLSA conference room, Carpenter Building, Bolling AFB D.C. The meeting was adjourned at 1030.

Barbara G. Brand, Lt Col, USAF

25 July 00

MEMORANDUM FOR COL MCSHANE

FROM: AFLSA/JAJT

SUBJECT: INDEPENDENT JUDICIARY WORKING GROUP, MINUTES 17 July 00

1. This session of the Independent Judiciary Working Group (IJWG) convened at 0930 on 17 Jul 00. Members in attendance were Col McShane*, USAF; Col Merck*, USA; Capt McClelland*, CG; Col Murnane, USAF; Lt Col Brand, USAF; and Lt Col Naugle*, USMC. (*Voting members)

2. The minutes from the previous meeting were adopted.

3. The main topic of this meeting was the preparation of the final report to be submitted to the JSC. Lt Col Brand previously sent a rough draft to all committee members for their review. At the meeting there was a great deal of discussion on the format and content of the report. There were inputs from all members present, to include how some services could "beef up" their inputs. It was decided the statistical data, prepared previously by Lt Col Brand, would be an attachment to the final report. Each member was encouraged to "scrub" the report and send all changes to Lt Col Brand as soon as possible.

4. The group discussed how to prepare recommendations and it was decided Capt McClelland would draft the first rendition and forward it to each of the voting members for input.

5. Additionally, Capt McClelland agreed to check the references in the history for accuracy and forward those to Lt Col Brand.

6. The next scheduled meeting is 21 Aug 2000 at 0930 in the AFLSA conference room, Carpenter Building, Bolling AFB D.C. The meeting was adjourned at 1030.

Barbara G. Brand, Lt Col, USAF

23 Aug 00

MEMORANDUM FOR COL McSHANE

FROM: AFLSA/JAJT

SUBJECT: INDEPENDENT JUDICIARY WORKING GROUP, MINUTES 21 Aug 2000

1. This session of the Independent Judiciary Working Group (IJWG) convened at 0930 on 21 Aug 00. Members in attendance were Col McShane*, USAF; Col Merck*, USA; Capt McClelland*, CG; Capt McLaughlin*, USN; Col Smith, USA; Lt Col Brand, USAF; and Lt Col Naugle*, USMC. (*Voting members)

2. The minutes from the previous meeting were adopted.

3. The entire meeting was spent reviewing the second draft of the report. Numerous corrections and additions were made. Lt Col Brand will make the changes after receiving further input from Capt McClelland, Capt McLaughlin and Lt Col Naugle. She will distribute draft #3 by the week's end.

4. The next scheduled meeting is 18 Sep 2000 at 0930 in the AFLSA conference room, Carpenter Building, Bolling AFB D.C. The meeting was adjourned at 1145.

Barbara G. Brand, Lt Col, USAF

SECTION

3

QUESTIONNAIRE

DEMOGRAPHICS:

1. What is your grade?

O-4 O-5 O-6

2. How many years total active service?

8-10 11-15 16 or more

3. What is your branch of service?

Air Force Army Coast Guard Marines Navy

4. How many years have you been in your current assignment?

0-3 4-5 6-8 9 or more

(For Questions 5,6,9 and 13 - if you have performed functions described below as a collateral duty or part-time, do not attempt to convert your answer to a full-time equivalent. Simply answer the Questions as though you had performed them full-time.)

5. How many tours have you been a military judge, either trial or appellate?

1 tour 2 tours 3 tours 4 tours or more

6. How long have you been a military judge (cumulative)?

0-3 years 4-6 years 7-10 years 11 or more

7. How many years, if any, of non-judge advocate military experience do you have?

Not Applicable 1-5 6-10 over 10

8. Number of years as trial/defense counsel at any time in career?

1-3 4-6 6-9 10 or more

9. What types of courts are you authorized to preside over?

Special only General & Special Appellate

10. If your service has an established probationary period, are you currently serving a probationary period?

Not Applicable Yes No

11. How many courts have you tried - SpCMs? GCMs? Lead Judge on Appellate cases?

_____SpCMs _____GCMs _____Appellate

12. Do you believe you have ever been non-selected for promotion because you were or are a judge? (If so, please explain at Question #64)

Yes No

13. Have you ever been considered and selected for promotion while serving as a judge?

Yes No

USING A SCALE OF 1 - 5 with --- (1) strongly disagree (2) disagree (3) no opinion (4) agree (5) strongly agree ---Please answer the following -

_____14. Set terms of office for full-time military judges would create a more independent and fair military judiciary.

_____15. Set terms of office for full-time military judges would contribute to a more professionally competent military judiciary.

_____16. Set terms of office for full-time military judges create a significant risk of protecting incompetent/irresponsible judges.

_____17. Set terms of office for full-time military judges significantly increase the potential for judges to abuse the office.

_____18. Assignment as a military judge has a positive impact on career progression.

_____19. An O-6 assignment to full-time military trial judge duty is considered the type of duty that is career enhancing for competition for selection to flag or general officer rank.

_____20. An O-6 assignment to full-time military trial judge duty is considered the type of duty that is detrimental for competition for selection to flag or general officer rank.

_____21. An O-6 assignment to duty at the Court of Criminal Appeals is considered the type of duty that is career enhancing for competition for selection to flag or general officer rank.

_____22. An O-6 assignment to duty at the Court of Criminal Appeals is considered the type of duty that is detrimental for competition for selection to flag or general officer rank.

_____23. Set terms of office would attract highly qualified lawyers (volunteers) to the judiciary.

_____24. If a set term of office provision were enacted, new judges should be required to complete a probationary period.

_____25. A set term of office would favorably affect your view of military judge assignments.

_____26. Competent service as a military judge should require selection for promotion from the primary zone.

_____27. A mandatory selection provision would adversely affect the general relationship between judge advocates and other officers.

_____28. A mandatory selection provision would adversely affect the general relationship among the judge advocates who are judges and those who are non-judges.

_____29. A mandatory selection provision would attract highly qualified volunteers to the judiciary.

_____30. There should be a provision for set terms of office for military trial judges.

_____31. There should be a provision for set terms of office for Court of Criminal Appeals judges.

_____32. Military trial judge appointments should be done uniformly in all services.

_____33. Military appellate judge appointments should be done uniformly in all services.

_____34. In determining who should be selected as a military judge, the JAG should have sole discretion in appointing military judges.

_____35. An independent board of line and JAG officers should make judge appointments, similar to promotion boards.

_____36. If an independent board is used, the independent board should choose from a list of candidates, compiled by the respective JAG.

_____37. Published minimum qualifications for military judges should be available.

_____38. Military exigencies should be an exception to the set term of office.

_____39. Needs of the service should be an exception to the set term of office.

_____40. A judge's consent to shortening a set term should be an exception to a set term of office.

_____41. An officer must always be a volunteer to serve a set term as a military judge.

_____42. A judge's consent to extending a set term should be an exception to a set term of office.

_____43. The involuntary change of a judge's term should be appealable.

_____44. The mechanism for a judge to be relieved for cause should be uniform among all service branches.

*To give depth to this survey, please provide input on each of the following questions.

45. If military judges had set terms, what should "term" mean as it applies to "set term"? A 3 year tour of duty; 15 year appointment, unless good cause shown; other?

46. Other than "for cause" relief, how many tours can a judge in your service expect to serve (one tour, two tours, more?) How is that decision made? Do you, as a judge, have some impact on the decision to either stay on the bench or be reassigned?

47. Please give your opinion, if any, on whether the mechanism for a judge to be relieved for cause should be uniform among all service branches? What mechanism would you recommend?

48. Please give your opinion, if any, on whether there should be promotion based upon longevity for judges? If so, should it be uniform among all service branches?

49. Do you personally believe you have ever experienced a circumstance where a commander, staff judge advocate or convening authority attempted to influence you improperly? Do you have any anecdotal information involving another judge who may have believed this happened to them? Explain.

50. Are you aware of any instances in which a convening authority, a subordinate commander, or staff officer acting for a commander has criticized a military judge directly, indirectly, or through the military judge's superior for court related decisions? How often? Did it relate to the judge's action on findings, sentencing or other grounds? Do you think the criticism affected the judge's subsequent decisions? Explain.

51. Have you ever been threatened with reassignment or actually been reassigned because of a court-martial decision or appellate opinion? Explain.

52. Are you aware of any instances on which a military judge has ever been threatened with reassignment or actually been reassigned because of a court-martial decision? Explain.

53. Would a "set term of office" improve your performance as a judge?

54. Would "promotion based upon longevity" improve your performance as a judge?

55. Would a "set term of office" make you feel that you have greater independence as a judge?

56. Would a "promotion based upon longevity" make you feel that you have greater independence as a judge?

57. Do you perceive any significant benefit that may be derived from giving military judges set terms?

58. Do you perceive any significant benefit that may be derived from giving military judges promotion based upon longevity?

59. Please give your opinion, if any, on the current military judge selection process in your service.

60. Have you had adequate installation support? If not, is there any indication that the lack of such support is related to any ruling by any military judge in your district or circuit?

61. What perception related to judicial independence, if any, do you believe the installation population has if that support comes from the installation convening authority?

62. Please give your opinion, if any, whether we should have an "all service" judiciary, trial or appellate. (If you have relevant experience, please explain.)

63. Do you believe the current system of judicial appointment within your JAG department or Corps works? Is there a perception that it doesn't work? If so, specifically why? If you think the system is broken what do you propose as a solution?

64. Additional Comments:

SECTION

4

RESULTS

USING A SCALE OF 1 - 5 with --- (1) strongly disagree (2) disagree (3) no opinion (4) agree (5) strongly agree ---Please answer the following -

_A__14. Set terms of office for full-time military judges would create a more independent and fair military judiciary. 71 (A) – 50 (D)

_A__15. Set terms of office for full-time military judges would contribute to a more professionally competent military judiciary. 64 (A) – 55 (D)

_D _16. Set terms of office for full-time military judges create a significant risk of protecting incompetent/irresponsible judges. 93 (D) – 29 (A)

_D__17. Set terms of office for full-time military judges significantly increase the potential for judges to abuse the office. 113 (D) – 13 (A)

_D__18. Assignment as a military judge has a positive impact on career progression. 61 (D) – 32 (A)

_D__19. An O-6 assignment to full-time military trial judge duty is considered the type of duty that is career enhancing for competition for selection to flag or general officer rank. 107 (D) – 5 (A)

_A__20. An O-6 assignment to full-time military trial judge duty is considered the type of duty that is detrimental for competition for selection to flag or general officer rank. 82 (A) – 24 (D)

_D__21. An O-6 assignment to duty at the Court of Criminal Appeals is considered the type of duty that is career enhancing for competition for selection to flag or general officer rank. 92 (D) – 6 (A)

_A__22. An O-6 assignment to duty at the Court of Criminal Appeals is considered the type of duty that is detrimental for competition for selection to flag or general officer rank. 78 (A) – 26 (D)

_tie_23. Set terms of office would attract highly qualified lawyers (volunteers) to the judiciary. 35 (A) – 34 (D)

_A__24. If a set term of office provision were enacted, new judges should be required to complete a probationary period. 96 (A) – 25 (D)

_A__25. A set term of office would favorably affect your view of military judge assignments. 56 (A) – 45 (D)

_D__26. Competent service as a military judge should require selection for promotion from the primary zone. 71 (D) – 43 (A)

_A__27. A mandatory selection provision would adversely affect the general relationship between judge advocates and other officers. 70 (A) – 49 (D)

_A__28. A mandatory selection provision would adversely affect the general relationship among the judge advocates who are judges and those who are non-judges. 77 (A) – 34 (D)

_A__29. A mandatory selection provision would attract highly qualified volunteers to the judiciary. 78 (A) – 33 (D)

_A__30. There should be a provision for set terms of office for military trial judges. 81 (A) – 41 (D)

_A__31. There should be a provision for set terms of office for Court of Criminal Appeals judges. 82 (A) – 36 (D)

_D__32. Military trial judge appointments should be done uniformly in all services. 64 (D) – 35 (A)

_D__33. Military appellate judge appointments should be done uniformly in all services. 63 (D) – 40 (A)

_A__34. In determining who should be selected as a military judge, the JAG should have sole discretion in appointing military judges. 81 (A) – 39 (D)

_D__35. An independent board of line and JAG officers should make judge appointments, similar to promotion boards. 100 (D) – 24 (A)

_A__36. If an independent board is used, the independent board should choose from a list of candidates, compiled by the respective JAG. 105 (A) – 14 (D)

_A__37. Published minimum qualifications for military judges should be available. 114 (A) – 14 (D)

_A__38. Military exigencies should be an exception to the set term of office. 117 (A) – 13 (D)

_A__39. Needs of the service should be an exception to the set term of office. 93 (A) – 33 (D)

_A__40. A judge's consent to shortening a set term should be an exception to a set term of office. 124 (A) – 8 (D)

_A__41. An officer must always be a volunteer to serve a set term as a military judge. 92 (A) – 33 (D)

_A__42. A judge's consent to extending a set term should be an exception to a set term of office. 117 (A) – 12 (D)

_A__43. The involuntary change of a judge's term should be appealable. 73 (A) – 46 (D)

_A__44. The mechanism for a judge to be relieved for cause should be uniform among all service branches. 80 (A) – 41 (D)

*To give depth to this survey, please provide input on each of the following questions.

45. If military judges had set terms, what should "term" mean as it applies to "set term"? A 3 year tour of duty; 15 year appointment, unless good cause shown; other?

3 YEARS (57) 5 YEARS (26)

46. Other than "for cause" relief, how many tours can a judge in your service expect to serve (one tour, two tours, more?) How is that decision made? Do you, as a judge, have some impact on the decision to either stay on the bench or be reassigned?

2 TOURS (46) JA/PERSONNEL YES (53)

47. Please give your opinion, if any, on whether the mechanism for a judge to be relieved for cause should be uniform among all service branches? What mechanism would you recommend?

YES (58) NO (44)

48. Please give your opinion, if any, on whether there should be promotion based upon longevity for judges? If so, should it be uniform among all service branches?

NO (78) YES (32)

49. Do you personally believe you have ever experienced a circumstance where a commander, staff judge advocate or convening authority attempted to influence you improperly? Do you have any anecdotal information involving another judge who may have believed this happened to them? Explain.

NO (110) YES (15)

50. Are you aware of any instances in which a convening authority, a subordinate commander, or staff officer acting for a commander has criticized a military judge directly, indirectly, or through the military judge's superior for court related decisions? How often? Did it relate to the judge's action on findings, sentencing or other grounds? Do you think the criticism affected the judge's subsequent decisions? Explain.

NO (99) YES (26)

51. Have you ever been threatened with reassignment or actually been reassigned because of a court-martial decision or appellate opinion? Explain.

NO (123) YES (0)

52. Are you aware of any instances on which a military judge has ever been threatened with reassignment or actually been reassigned because of a court-martial decision? Explain.

NO (118) YES (7)

53. Would a "set term of office" improve your performance as a judge?

NO (101) YES (27)

54. Would "promotion based upon longevity" improve your performance as a judge?

NO (89) YES (15)

55. Would a "set term of office" make you feel that you have greater independence as a judge?

NO (76) YES (47)

56. Would a "promotion based upon longevity" make you feel that you have greater independence as a judge?

NO (87) YES (37)

57. Do you perceive any significant benefit that may be derived from giving military judges set terms?

YES (73) NO (53)

58. Do you perceive any significant benefit that may be derived from giving military judges promotion based upon longevity?

NO (76) YES (49)

59. Please give your opinion, if any, on the current military judge selection process in your service.

WORKS (91) BROKEN (23)

60. Have you had adequate installation support? If not, is there any indication that the lack of such support is related to any ruling by any military judge in your district or circuit?

YES (101) NO (12) NO (46) YES (1)

61. What perception related to judicial independence, if any, do you believe the installation population has if that support comes from the installation convening authority?

NO AFFECT (104) POOR (15)

62. Please give your opinion, if any, whether we should have an "all service" judiciary, trial or appellate. (If you have relevant experience, please explain.)

NO (75) YES (24)

63. Do you believe the current system of judicial appointment within your JAG department or Corps works? Is there a perception that it doesn't work? If so, specifically why? If you think the system is broken what do you propose as a solution?

YES (109) NO (13) NO (41) YES (12)

	Air Force	Army	Coast Guard	Marines	Navy	TOTAL
DEMOGRAPHICS						
What is your grade?						
O-4	1	0	1	8	2	12
O-5	10	16	6	7	7	46
O-6	15	28	5	5	23	76
How many years total active service?						
8 to 10	1	5	1	0	5	12
11 to 15	5	0	0	7	3	15
16 or more	19	40	11	12	19	101
What is your branch of service?						
	26	45	12	20	32	135
How many years in your current assignment?						
0 to 3	23	33	12	18	25	101
4 to 5	1	6	0	2	7	16
6 to 8	0	5	0	0	0	5
9 or more	2	1	0	0	0	3
How many tours as a judge?						
1 tour	12	21	6	16	22	[illegible]
2 tours	7	12	4	3	6	[illegible]
3 tours	4	10	2	1	3	[illegible]
4 tours or more	3	2	0	0	1	[illegible]
How long have you been a military judge (cumulative)?						
0 to 3 years	13	22	7	15	17	[illegible]
4 to 6 years	9	12	3	4	11	[illegible]
7 to 10 years	1	9	1	1	3	[illegible]
11 or more years	2	2	1	0	1	[illegible]
How many years, if any, of non-judge advocate military experience do you have?						
not applicable	13	20	0	7	13	[illegible]
1 to 5 years	9	14	2	7	10	[illegible]
6 to 10 years	3	8	7	3	2	[illegible]
over 10 years	1	3	3	3	7	[illegible]
Number of years as trial/defense counsel at any time in career?						
1 to 3 years	5	19	3	6	13	46
4 to 6 years	7	12	6	7	15	[illegible]

6 to 9 years	12	9	3	4	2	30
10 or more years	1	5	0	2	2	10
What types of court are you authorized to preside over?						
Special	0	14	9	4	5	32
Special & General	20	19	1	13	21	74
Appellate	6	12	2	3	5	28
If your service has probationary period, are you currently serving a probationary period?						
not applicable	24	44	10	14	19	111
yes	0	0	1	0	1	2
no	2	1	1	6	12	22
How many courts have you tried? (see questionnaires)						
Do you believe you have ever been non selected for promotion because you were/are a judge?						
yes	4	5	0	1	2	12
no	22	40	12	18	29	121
Have you ever been considered and selected for promotion while serving as a judge?						
yes	8	17	4	6	7	42
no	18	30	8	14	23	93

	Air Force	Army	Coast Guard	Marines	Navy	[redacted]
Question						[redacted]
Q14- Set terms of office for full-time military judges would create a more independent/fair mi						[redacted]
Strongly disagree	2	0	0	2	4	[redacted]
Disagree	10	18	3	4	7	[redacted]
No opinion	2	3	4	3	3	[redacted]
Agree	8	19	5	8	12	[redacted]
Strongly agree	4	5	0	4	6	[redacted]
Q15-Set terms would contribute to a more professionally competent judiciary.						[redacted]
Strongly disagree	2	0	1	2	5	[redacted]
Disagree	9	18	4	6	8	[redacted]
No opinion	4	4	4	3	2	[redacted]
Agree	3	17	1	7	10	[redacted]
Strongly agree	8	6	2	3	7	[redacted]
Q16-Set terms create a significant risk of protecting incompetent/irresponsible judges.						[redacted]
Strongly disagree	2	4	0	4	4	[redacted]
Disagree	14	29	7	9	20	[redacted]
No opinion	4	4	3	1	2	[redacted]
Agree	6	8	2	7	5	[redacted]
Strongly agree	0	0	0	0	1	[redacted]
Q17-Set terms significantly increase the potential for judges to abuse the office.						[redacted]
Srongly disagree	5	10	2	6	8	[redacted]
Disagree	17	27	9	10	19	[redacted]
No opinion	2	4	0	2	2	[redacted]
Agree	2	4	1	3	2	[redacted]
Strongly agree	0	0	0	0	1	[redacted]
Q18-Assignment as a judge has a positive impact on career progression.						[redacted]
Stongly disagree	3	8	0	0	4	[redacted]
Disagree	5	14	2	5	20	[redacted]
No opinion	13	10	6	9	5	[redacted]
Agree	4	11	4	6	3	[redacted]
Strongly agree	1	2	0	1	0	[redacted]
Q19 An O-6 assignment as trial judge is considered career enhancing for competition to gen						[redacted]
Stongly disagree	13	22	2	4	15	[redacted]
Disagree	10	12	6	9	14	[redacted]
No opinion	3	10	3	5	3	[redacted]
Agree	0	1	1	3	0	[redacted]
Strongly agree	0	0	0	0	0	[redacted]
Q20 An O-6 assignment as trial judge is considered detrimental for competition to gen/flag						[redacted]
Stongly disagree	1	7	0	1	0	[redacted]
Disagree	1	4	3	4	3	[redacted]
No opinion	3	15	7	8	5	[redacted]
Agree	13	14	2	7	13	[redacted]
Strongly agree	8	12*	0	1	12*	[redacted]
Q21 An O-6 assignment as appellate judge is considered career enhancing					ion to gen/flag.	[redacted]
Stongly disagree	12	19	2	4	9	[redacted]
Disagree	9	11	3	8	15	[redacted]
No opinion	4	13	5	8	7	[redacted]
Agree	0	2	2	1	0	[redacted]

Strongly agree	1	0	0	0	0	[redacted]
Q22 An O-6 assignemnt as appellate judge is considered detrimental for competition to gen/flag officer						[redacted]
Stongly disagree	1	0	1	0	0	[redacted]
Disagree	0	15	4	2	3	[redacted]
No opinion	4	13	6	10	9	[redacted]
Agree	11	14	1	7	11	[redacted]
Strongly agree	10	13	0	2	9	[redacted]
Q23 Set terms would attract highly qualified lawyers to the judiciary.						[redacted]
Stongly disagree	2	1	0	3	2	[redacted]
Disagree	7	8	4	7	10	[redacted]
No opinion	8	17	7	6	9	[redacted]
Agree	6	15	1	5	11	[redacted]
Strongly agree	3	4	0	0	0	[redacted]
Q24 If set term enacted, new judges should be required to complete probationary period.						[redacted]
Stongly disagree	0	0	0	0	1	[redacted]
Disagree	3	9	2	3	7	[redacted]
No opinion	2	7	1	1	4	[redacted]
Agree	15	25	8	14	15	[redacted]
Strongly agree	6	4	1	3	5	[redacted]
Q25 Set term would favorably affect your view of judge assignments.						[redacted]
Stongly disagree	2	1	1	3	2	[redacted]
Disagree	7	12	3	6	8	[redacted]
No opinion	8	9	5	5	8	[redacted]
Agree	7	19	3	6	12	[redacted]
Strongly agree	2	4	0	1	2	[redacted]
Q26 Competent service as judge should require selection for promotion from primary zone.						[redacted]
Stongly disagree	4	11	2	3	2	[redacted]
Disagree	10	13	7	6	13	[redacted]
No opinion	1	9	2	4	6	[redacted]
Agree	6	8	1	4	6	[redacted]
Strongly agree	5	4	0	4	5	[redacted]
Q27 Mandatory selection provision would adversely affect relationship between JA and other officers						[redacted]
Stongly disagree	4	12	0	1	5	[redacted]
Disagree	6	13	0	2	6	[redacted]
No opinion	5	10	6	1	5	[redacted]
Agree	10	15	4	12	12	[redacted]
Strongly agree	1	5	2	5	4	[redacted]
Q28 Mandatory selection provision would adversely affect relationship between judges and other JA						[redacted]
Stongly disagree	2	2	0	0	4	[redacted]
Disagree	4	10	1	5	6	[redacted]
No opinion	3	12	4	1	5	[redacted]
Agree	15	11	5	11	13	[redacted]
Strongly agree	2	10	2	4	4	[redacted]
Q29 Mandatory selection provision would attract highly qualified volunteers to the judiciary.						[redacted]
Stongly disagree	1	0	1	1	2	[redacted]
Disagree	9	7	2	3	7	[redacted]
No opinion	2	9	6	5	3	[redacted]
Agree	9	20	3	5	13	[redacted]
Strongly agree	5	9	0	7	7	[redacted]

Strongly agree	1	0	0	0	0	[redacted]
Q22 An O-6 assignemnt as appellate judge is considered detrimental for competition to gen						[redacted]
Stongly disagree	1	0	1	0	0	[redacted]
Disagree	0	15	4	2	3	[redacted]
No opinion	4	13	6	10	9	[redacted]
Agree	11	14	1	7	11	[redacted]
Strongly agree	10	13	0	2	9	[redacted]
Q23 Set terms would attract highly qualified lawyers to the judiciary.						[redacted]
Stongly disagree	2	1	0	3	2	[redacted]
Disagree	7	8	4	7	10	[redacted]
No opinion	8	17	7	6	9	[redacted]
Agree	6	15	1	5	11	[redacted]
Strongly agree	3	4	0	0	0	[redacted]
Q24 If set term enacted, new judges should be required to complete probationary period.						[redacted]
Stongly disagree	0	0	0	0	1	[redacted]
Disagree	3	9	2	3	7	[redacted]
No opinion	2	7	1	1	4	[redacted]
Agree	15	25	8	14	15	[redacted]
Strongly agree	6	4	1	3	5	[redacted]
Q25 Set term would favorably affect your view of judge assignments.						[redacted]
Stongly disagree	2	1	1	3	2	[redacted]
Disagree	7	12	3	6	8	[redacted]
No opinion	8	9	5	5	8	[redacted]
Agree	7	19	3	6	12	[redacted]
Strongly agree	2	4	0	1	2	[redacted]
Q26 Competent service as judge should require selection for promotion from primary zone.						[redacted]
Stongly disagree	4	11	2	3	2	[redacted]
Disagree	10	13	7	6	13	[redacted]
No opinion	1	9	2	4	6	[redacted]
Agree	6	8	1	4	6	[redacted]
Strongly agree	5	4	0	4	5	[redacted]
Q27 Mandatory selection provision would adversely affect relationship between JA and othe						[redacted]
Stongly disagree	4	12	0	1	5	[redacted]
Disagree	6	13	0	2	6	[redacted]
No opinion	5	10	6	1	5	[redacted]
Agree	10	15	4	12	12	[redacted]
Strongly agree	1	5	2	5	4	[redacted]
Q28 Mandatory selection provision would adversely affect relationship between judges and						[redacted]
Stongly disagree	2	2	0	0	4	[redacted]
Disagree	4	10	1	5	6	[redacted]
No opinion	3	12	4	1	5	[redacted]
Agree	15	11	5	11	13	[redacted]
Strongly agree	2	10	2	4	4	[redacted]
Q29 Mandatory selection provision would attract highly qualified volunteers to the judiciary.						[redacted]
Stongly disagree	1	0	1	1	2	[redacted]
Disagree	9	7	2	3	7	[redacted]
No opinion	2	9	6	5	3	[redacted]
Agree	9	20	3	5	13	[redacted]
Strongly agree	5	9	0	7	7	[redacted]

Q30 There should be a provision for set terms of office for military trial judges.						
Stongly disagree	2	4	2	0	3	
Disagree	5	7	3	8	7	
No opinion	2	4	4	3	1	
Agree	13	21	3	8	18	
Strongly agree	4	9	0	2	3	
Q31 There should be a provision for set terms of office for appellate judges.						
Stongly disagree	2	3	1	0	3	
Disagree	8	6	2	5	6	
No opinion	2	4	4	5	1	
Agree	10	23	5	9	18	
Strongly agree	4	7	0	2	4	
Q32 Trial judge appointments should be done uniformly in all services.						
Stongly disagree	4	1	2	2	1	
Disagree	9	16	8	8	13	
No opinion	8	17	2	2	8	
Agree	3	9	0	5	6	
Strongly agree	2	2	0	4	4	
Q33 Appellate judge appointments should be done uniformly in all services.						
Stongly disagree	4	2	2	1	1	
Disagree	9	16	8	8	13	
No opinion	7	16	1	3	6	
Agree	4	9	1	6	7	
Strongly agree	2	3	0	3	5	
Q34 The JAG should have sole discretion in appointing military judges.						
Stongly disagree	1	2	0	4	1	
Disagree	1	9	3	8	10	
No opinion	1	5	2	3	5	
Agree	19	21	7	6	9	
Strongly agree	4	8	0	0	7	
Q35 Independent board of line and JAG officers should make judge appointments.						
Stongly disagree	11	16	0	2	8	
Disagree	12	23	6	10	12	
No opinion	1	2	5	0	4	
Agree	2	4	1	8	6	
Strongly agree	0	0	0	1	2	
Q36 If independent boards are used, they choose from candidates compiled by JAG.						
Stongly disagree	2	0	0	1	1	
Disagree	1	3	0	3	3	
No opinion	1	2	5	1	3	
Agree	15	30	7	16	17	
Strongly agree	5	7	0	0	8	
Q37 Published minimum qualifications for military judges should be available.						
Stongly disagree	0	0	0	0	0	
Disagree	5	2	0	4	3	
No opinion	3	4	0	0	1	
Agree	12	28	11	12	15	
Strongly agree	6	11	1	5	13	
Q38 Military exigencies should be an exception to the term of office.						

Q37 Published minimum qualifications for military judges should be available.																		
Stongly disagree	0	0	0	0	0	[redacted]	0	0	0	[redacted]	0	0	0	[redacted]	0	0	0	0	[redacted]
Disagree	5	2	0	4	3	[redacted]	2	4	8	[redacted]	1	3	10	[redacted]	8	1	2	1	[redacted]
No opinion	3	4	0	0	1	[redacted]	0	3	5	[redacted]	1	1	5	[redacted]	4	3	1	0	[redacted]
Agree	12	28	11	12	15	[redacted]	6	28	38	[redacted]	8	8	55	[redacted]	40	26	3	1	[redacted]
Strongly agree	6	11	1	5	13	[redacted]	4	7	22	[redacted]	2	4	23	[redacted]	17	8	7	4	[redacted]
Q38 Military exigencies should be an exception to the term of office.																			
Stongly disagree	1	0	0	1	1	[redacted]	1	1	1	[redacted]	0	1	1	[redacted]	2	0	1	0	[redacted]
Disagree	1	5	0	2	2	[redacted]	0	2	7	[redacted]	0	1	7	[redacted]	6	1	1	1	[redacted]
No opinion	2	1	0	0	3	[redacted]	0	2	4	[redacted]	1	0	4	[redacted]	4	1	1	0	[redacted]
Agree	16	32	9	11	18	[redacted]	5	28	46	[redacted]	10	8	59	[redacted]	40	28	6	4	[redacted]
Strongly agree	6	7	3	7	8	[redacted]	6	9	15	[redacted]	1	6	22	[redacted]	17	8	4	1	[redacted]
Q39 Needs of the service should be an exception to the set term office.																			
Stongly disagree	4	1	0	2	2	[redacted]	1	5	3	[redacted]	0	2	6	[redacted]	4	3	2	0	[redacted]
Disagree	2	10	2	3	9	[redacted]	1	4	19	[redacted]	3	3	16	[redacted]	16	4	3	1	[redacted]
No opinion	2	2	1	1	2	[redacted]	0	2	5	[redacted]	1	0	6	[redacted]	5	0	1	1	[redacted]
Agree	14	29	7	11	12	[redacted]	7	25	40	[redacted]	8	8	50	[redacted]	32	27	4	3	[redacted]
Strongly agree	4	3	2	4	7	[redacted]	3	6	11	[redacted]	0	3	15	[redacted]	12	4	3	1	[redacted]
Q40 Judge's consent to shortening a set term should be an exception to set term of office.																			
Stongly disagree	0	1	0	2	2	[redacted]	1	1	2	[redacted]	0	1	2	[redacted]	3	0	0	1	[redacted]
Disagree	1	0	0	1	1	[redacted]	1	1	1	[redacted]	0	1	2	[redacted]	2	1	0	0	[redacted]
No opinion	0	2	1	0	1	[redacted]	0	2	2	[redacted]	0	0	3	[redacted]	2	2	0	0	[redacted]
Agree	18	32	10	12	20	[redacted]	6	31	48	[redacted]	10	10	63	[redacted]	47	26	7	4	[redacted]
Strongly agree	7	10	1	6	8	[redacted]	4	7	20	[redacted]	2	4	23	[redacted]	15	9	6	1	[redacted]
Q41 Officer must always be a volunteer to serve a set term as judge.																			
Stongly disagree	1	2	0	1	1	[redacted]	1	0	3	[redacted]	0	0	3	[redacted]	4	0	0	1	[redacted]
Disagree	5	12	1	4	6	[redacted]	0	8	19	[redacted]	2	2	21	[redacted]	11	10	3	3	[redacted]
No opinion	1	3	4	0	3	[redacted]	0	2	9	[redacted]	1	0	10	[redacted]	4	5	2	0	[redacted]
Agree	12	14	4	10	12	[redacted]	5	22	23	[redacted]	5	7	35	[redacted]	29	15	3	0	[redacted]
Strongly agree	7	14	3	6	10	[redacted]	6	10	20	[redacted]	4	7	24	[redacted]	21	8	5	2	[redacted]
Q42 Judge's consent to extending a set term should be an exception to a set term.																			
Stongly disagree	0	1	0	0	1	[redacted]	0	1	1	[redacted]	0	0	2	[redacted]	2	0	0	0	[redacted]
Disagree	4	2	1	1	2	[redacted]	1	2	7	[redacted]	2	1	8	[redacted]	3	6	0	1	[redacted]
No opinion	2	2	0	2	1	[redacted]	1	1	4	[redacted]	1	1	4	[redacted]	4	0	1	0	[redacted]
Agree	15	31	10	11	21	[redacted]	5	32	45	[redacted]	9	9	57	[redacted]	46	24	7	4	[redacted]
Strongly agree	5	9	1	7	7	[redacted]	5	6	16	[redacted]	0	5	21	[redacted]	14	8	5	1	[redacted]

Stongly disagree	1	0	0	1	1	[redacted]
Disagree	1	5	0	2	2	[redacted]
No opinion	2	1	0	0	3	[redacted]
Agree	16	32	9	11	18	[redacted]
Strongly agree	6	7	3	7	8	[redacted]
Q39 Needs of the service should be an exception to the set term office.						
Stongly disagree	4	1	0	2	2	[redacted]
Disagree	2	10	2	3	9	[redacted]
No opinion	2	2	1	1	2	[redacted]
Agree	14	29	7	11	12	[redacted]
Strongly agree	4	3	2	4	7	[redacted]
Q40 Judge's consent to shortening a set term should be an exception to set term of office.						
Stongly disagree	0	1	0	2	2	[redacted]
Disagree	1	0	0	1	1	[redacted]
No opinion	0	2	1	0	1	[redacted]
Agree	18	32	10	12	20	[redacted]
Strongly agree	7	10	1	6	8	[redacted]
Q41 Officer must always be a volunteer to serve a set term as judge.						
Stongly disagree	1	2	0	1	1	[redacted]
Disagree	5	12	1	4	6	[redacted]
No opinion	1	3	4	0	3	[redacted]
Agree	12	14	4	10	12	[redacted]
Strongly agree	7	14	3	6	10	[redacted]
Q42 Judge's consent to extending a set term should be an exception to a set term.						
Stongly disagree	0	1	0	0	1	[redacted]
Disagree	4	2	1	1	2	[redacted]
No opinion	2	2	0	2	1	[redacted]
Agree	15	31	10	11	21	[redacted]
Strongly agree	5	9	1	7	7	[redacted]
Q43 Involuntary change of a judge's term should be appealable.						
Stongly disagree	0	6	0	0	3	[redacted]
Disagree	10	12	3	5	7	[redacted]
No opinion	4	5	3	4	1	[redacted]
Agree	8	17	6	6	17	[redacted]
Strongly agree	4	5	0	6	4	[redacted]
Q44 Mechanism for a judge to be relieved for cause should be uniform among all services.						
Stongly disagree	2	4	0	1	1	[redacted]
Disagree	6	12	3	4	8	[redacted]
No opinion	2	5	2	2	3	[redacted]
Agree	11	19	6	8	10	[redacted]
Strongly agree	5	5	0	6	10	[redacted]
[redacted]						
Q45 If set terms, what should set term mean?						
3 years	11	29	2	6	9	[redacted]
4 years	3	6	2*	1	2	[redacted]
5 years	2	3	5	3	13	[redacted]
6 years	2	2	0	2	1	[redacted]

10 years	1	2	0	2	1	[redacted]
15 years	2	3	1*	2	2	[redacted]
Q46 How many tours can a judge expect to serve? How decision made? Judge have impact?						
one tour	3	9	2*	5	3	[redacted]
two tours	4	10	0	10	22	[redacted]
more than two tours	1	23	8	0	0	[redacted]
						[redacted]
JA	10	9	0	8	10	[redacted]
personnel	0	10	0	8	10	[redacted]
volunteer	13	0	3	0	3	[redacted]
qualifications	1	0	0	0	0	[redacted]
other	1	TJAG 29	2	0	1	[redacted]
						[redacted]
yes	1	41	5	4	2	[redacted]
no	0	1	0	0	1	[redacted]
Q47 Mechnism for relief for cause uniform among services?						
yes	10	19	4	13	12	[redacted]
no	9	23	2	3	7	[redacted]
Q48 Promotion based upon longevity for judges?						
yes	5	12	1	6	8	[redacted]
no	15	28	8	9	18	[redacted]
no opinion	1	2	2	3	1	[redacted]
Q49 Ever experience a circumstance where a CC, SJA or CA attempted to influence you?						
yes	6	2	0	6	1	[redacted]
no	19	43	11	12	25	[redacted]
Q50 Instances where CA, CC or other criticized a judge directly, indirectly, or through channels?						
yes	0	0	0	13	13	[redacted]
no	24	45	12	5	13	[redacted]
Q51 Ever threatened with reassignment or reassigned because of decision or appellate opinion?						
yes	0	0	0	0	0	[redacted]
no	24	42	12	18	27	[redacted]
Q52 Aware of any instances on which judge has been threatened or reassigned because of decision?						
yes	1	2	0	1	3	[redacted]
no	24	42	12	16	24	[redacted]
Q53 Would set term of office improve your performance as a judge?						
yes	5	9	2	4	7	[redacted]
no	21	36	10	14	20	[redacted]
Q54 Would promotion based upon longevity improve your performance?						
yes	4	3	0	4	4	[redacted]
no	22	41	12	14	0	[redacted]
Q55 Would set term make you feel you had greater independence?						
yes	10	14	1+3SORT	7	12	[redacted]
no	15	30	8	11	13	[redacted]
Q56 Would promotion based upon longevity make you fell you had greater indepence as judge?						
yes	9	11	1 SORT OF	5	11	[redacted]
no	17	33	9	13	15	[redacted]
Q57 Perceive any significant benefit that may be derived from giving judges set terms?						
yes	15	33	2 +2PR	7	14	[redacted]
no	11	12	8	10	12	[redacted]

Q58 Any benefit derived from giving judges promotion based upon longevity?						
yes	13	15	2PR	7	12	49
no	12	29	9	11	15	76
Q59 Opinion on current judge selection process in your service -						
works	15	34	6	13	23	91
broken	5	9	3	4	2	23
Q60 Adequate installation support? If not, related to your rulings?						
yes	23	39	7	11	21	101
no	2	5	0	1	4	12
			NOT APP 4			
yes	0	1	0	0	0	1
no	4	32	3	3	4	46
Q61 Installation population perception of judicial independence if support from CA?						
no affect	23	42	or posit 4	14	21	104
poor perception	2	2	not app 7	3	1	15
Q62 Should we have an "all service" judiciary?						
yes	2	9	2	1	10	24
no	22	35	6	16	16	95
Q63 Current system of appointment works within your service? Perception it doesn't?						
yes	23	36	10	15	25	109
no	2	7	1	2	1	13
yes	1	8	0	1	2	12
no	1	33	1	3	3	41

	AF	AR	CG	MR	NAV		O-4	O-5	O-6		8*10	11*15	16*up		0*3	4*6	7*10	11*up	
Question							RANK				YEARS IN SERVICE				TIME ON THE BENCH				
							12	42	73	[illegible]	12	16	93	[illegible]	69	38	13	6	[illegible]
Q14- Set terms of office for full-time military judges would create a more independent/fair mil judiciary.																			
Strongly disagree	2	0	0	2	4	[illegible]	1	3	4	[illegible]	0	0	8	[illegible]	6	2	0	0	[illegible]
Disagree	10	18	3	4	7	[illegible]	4	17	18	[illegible]	2	7	29	[illegible]	22	9	5	2	[illegible]
No opinion	2	3	4	3	3	[illegible]	0	6	8	[illegible]	2	1	11	[illegible]	7	7	0	0	[illegible]
Agree	8	19	5	8	12	[illegible]	5	12	31	[illegible]	7	5	34	[illegible]	26	13	6	3	[illegible]
Strongly agree	4	5	0	4	6	[illegible]	2	4	12	[illegible]	1	3	11	[illegible]	8	7	2	1	[illegible]
Q15-Set terms would contribute to a more professionally competent judiciary.																			
Strongly disagree	2	0	1	2	5	[illegible]	1	4	5	[illegible]	0	0	9	[illegible]	7	1	2	0	[illegible]
Disagree	9	18	4	6	8	[illegible]	6	16	20	[illegible]	6	8	28	[illegible]	24	8	6	3	[illegible]
No opinion	4	4	4	3	2	[illegible]	1	4	11	[illegible]	0	1	15	[illegible]	9	7	0	0	[illegible]
Agree	3	17	1	7	10	[illegible]	3	12	20	[illegible]	5	3	25	[illegible]	21	10	3	1	[illegible]
Strongly agree	8	6	2	3	7	[illegible]	1	6	17	[illegible]	1	4	16	[illegible]	8	12	2	2	[illegible]
Q16-Set terms create a significant risk of protecting incompetent/irresponsible judges.																			
Strongly disagree	2	4	0	4	4	[illegible]	2	4	6	[illegible]	0	2	8	[illegible]	7	2	3	0	[illegible]
Disagree	14	29	7	9	20	[illegible]	7	25	43	[illegible]	10	7	53	[illegible]	40	21	7	5	[illegible]
No opinion	4	4	3	1	2	[illegible]	0	4	8	[illegible]	0	1	12	[illegible]	6	6	1	0	[illegible]
Agree	6	8	2	7	5	[illegible]	3	9	14	[illegible]	2	6	18	[illegible]	14	9	2	1	[illegible]
Strongly agree	0	0	0	0	1	[illegible]	0	0	2	[illegible]	0	0	2	[illegible]	2	0	0	0	[illegible]
Q17-Set terms significantly increase the potential for judges to abuse the office.																			
Srongly disagree	5	10	2	6	8	[illegible]	4	9	15	[illegible]	4	3	16	[illegible]	16	5	2	3	[illegible]
Disagree	17	27	9	10	19	[illegible]	7	28	44	[illegible]	8	11	59	[illegible]	44	24	8	2	[illegible]
No opinion	2	4	0	2	2	[illegible]	0	4	4	[illegible]	0	1	7	[illegible]	4	2	2	0	[illegible]
Agree	2	4	1	3	2	[illegible]	1	1	9	[illegible]	0	1	10	[illegible]	5	7	1	1	[illegible]
Strongly agree	0	0	0	0	1	[illegible]	0	0	1	[illegible]	0	0	0	[illegible]	0	0	0	0	[illegible]
Q18-Assignment as a judge has a positive impact on career progression.																			
Stongly disagree	3	8	0	0	4	[illegible]	0	3	11	[illegible]	0	0	14	[illegible]	6	4	4	1	[illegible]
Disagree	5	14	2	5	20	[illegible]	3	11	31	[illegible]	4	6	31	[illegible]	22	17	4	3	[illegible]
No opinion	13	10	6	9	5	[illegible]	5	18	14	[illegible]	6	8	24	[illegible]	29	6	1	1	[illegible]
Agree	4	11	4	6	3	[illegible]	3	8	16	[illegible]	1	2	22	[illegible]	13	8	2	1	[illegible]
Strongly agree	1	2	0	1	0	[illegible]	1	2	1	[illegible]	1	0	2	[illegible]	1	1	2	0	[illegible]
						[illegible]				[illegible]				[illegible]					[illegible]
						[illegible]				[illegible]				[illegible]					[illegible]

Q19 An O-6 assignment as trial judge is considered career enhancing for competition to gen/flag officer																	
Stongly disagree	13	22	2	4	15	[redacted]	2	12	35	[redacted]	0	4	45	[redacted]	19	17	9	4	[redacted]
Disagree	10	12	6	9	14	[redacted]	5	17	25	[redacted]	6	12	29	[redacted]	29	15	1	2	[redacted]
No opinion	3	10	3	5	3	[redacted]	3	10	11	[redacted]	3	0	14	[redacted]	17	4	2	0	[redacted]
Agree	0	1	1	3	0	[redacted]	2	3	1	[redacted]	0	0	5	[redacted]	3	2	1	0	[redacted]
Strongly agree	0	0	0	0	0	[redacted]	0	0	1	[redacted]	0	0	0	[redacted]	0	0	0	0	[redacted]
Q20 An O-6 assignment as trial judge is considered detrimental for competition to gen/flag officer.																	
Stongly disagree	1	7	0	1	0	[redacted]	0	1	1	[redacted]	0	0	2	[redacted]	0	1	1	0	[redacted]
Disagree	1	4	3	4	3	[redacted]	2	5	6	[redacted]	0	2	10	[redacted]	7	4	1	1	[redacted]
No opinion	3	15	7	8	5	[redacted]	4	14	17	[redacted]	8	3	21	[redacted]	24	10	2	0	[redacted]
Agree	13	14	2	7	13	[redacted]	6	14	24	[redacted]	4	10	30	[redacted]	26	13	3	1	[redacted]
Strongly agree	8	12	0	1	12	[redacted]	0	8	25	[redacted]	0	1	30	[redacted]	12	10	6	4	[redacted]
Q21 An.O-6 assignment as appellate judge	ion to gen/flag.																
Stongly disagree	12	19	2	4	9	[redacted]	0	10	32	[redacted]	0	2	39	[redacted]	17	13	8	4	[redacted]
Disagree	9	11	3	8	15	[redacted]	3	14	27	[redacted]	5	8	31	[redacted]	25	15	3	2	[redacted]
No opinion	4	13	5	8	7	[redacted]	9	15	13	[redacted]	7	5	20	[redacted]	25	9	2	0	[redacted]
Agree	0	2	2	1	0	[redacted]	0	2	1	[redacted]	0	0	3	[redacted]	1	1	0	0	[redacted]
Strongly agree						[redacted]				[redacted]				[redacted]					[redacted]
Q22 An O-6 assignment as appellate judge is considered detrimental for competition to gen/flag officer.																	
Stongly disagree	1	0	1	0	0	[redacted]	0	1	1	[redacted]	0	1	1	[redacted]	0	0	1	0	[redacted]
Disagree	0	15	4	2	3	[redacted]	1	4	8	[redacted]	0	2	10	[redacted]	7	5	0	1	[redacted]
No opinion	4	13	6	10	9	[redacted]	6	15	16	[redacted]	8	3	22	[redacted]	24	11	3	0	[redacted]
Agree	11	14	1	7	11	[redacted]	5	14	22	[redacted]	4	9	28	[redacted]	26	12	2	1	[redacted]
Strongly agree	10	13	0	2	9	[redacted]	0	8	26	[redacted]	0	1	32	[redacted]	12	10	7	4	[redacted]
Q23 Set terms would attract highly qualified lawyers to the judiciary.																	
Stongly disagree	2	1	0	3	2	[redacted]	1	3	3	[redacted]	0	1	6	[redacted]	4	0	1	1	[redacted]
Disagree	7	8	4	7	10	[redacted]	4	13	18	[redacted]	6	7	22	[redacted]	23	8	2	2	[redacted]
No opinion	8	17	7	6	9	[redacted]	4	15	25	[redacted]	2	3	37	[redacted]	25	12	6	1	[redacted]
Agree	6	15	1	5	11	[redacted]	3	8	23	[redacted]	3	4	24	[redacted]	14	16	2	2	[redacted]
Strongly agree	3	4	0	0	0	[redacted]	0	3	4	[redacted]	1	1	5	[redacted]	3	2	2	0	[redacted]
Q24 If set term enacted, new judges should be required to complete probationary period.																	
Stongly disagree	0	0	0	0	1	[redacted]	1	0	1	[redacted]	0	0	1	[redacted]	1	0	1	0	[redacted]
Disagree	3	9	2	3	7	[redacted]	3	5	16	[redacted]	4	1	18	[redacted]	17	3	3	1	[redacted]
No opinion	2	7	1	1	4	[redacted]	0	6	8	[redacted]	1	1	10	[redacted]	6	5	1	1	[redacted]
Agree	15	25	8	14	15	[redacted]	8	24	37	[redacted]	5	12	51	[redacted]	36	26	4	3	[redacted]
Strongly agree	6	4	1	3	5	[redacted]	0	7	11	[redacted]	2	2	13	[redacted]	9	4	4	1	[redacted]

Q43 Involuntary change of a judge's term should be appealable.																		
Stongly disagree	0	6	0	0	3	[redacted]	0	1	6	[redacted]	0	0	6	[redacted]	3	1	2	1	[redacted]
Disagree	10	12	3	5	7	[redacted]	4	12	20	[redacted]	3	4	25	[redacted]	21	12	2	0	[redacted]
No opinion	4	5	3	4	1	[redacted]	1	5	9	[redacted]	0	1	13	[redacted]	10	3	2	0	[redacted]
Agree	8	17	6	6	17	[redacted]	3	19	31	[redacted]	9	8	36	[redacted]	26	15	7	5	[redacted]
Strongly agree	4	5	0	6	4	[redacted]	4	5	7	[redacted]	0	3	13	[redacted]	9	7	0	0	[redacted]
Q44 Mechanism for a judge to be relieved for cause should be uniform among all services.																			
Stongly disagree	2	4	0	1	1	[redacted]	1	2	4	[redacted]	0	2	3	[redacted]	4	1	0	2	[redacted]
Disagree	6	12	3	4	8	[redacted]	2	10	21	[redacted]	4	5	23	[redacted]	19	7	4	2	[redacted]
No opinion	2	5	2	2	3	[redacted]	1	5	6	[redacted]	2	1	10	[redacted]	5	5	2	0	[redacted]
Agree	11	19	6	8	10	[redacted]	3	18	28	[redacted]	6	5	36	[redacted]	27	16	4	2	[redacted]
Strongly agree	5	5	0	6	10	[redacted]	5	6	14	[redacted]	1	3	20	[redacted]	14	9	3	0	[redacted]

Q25 Set term would favorably affect your view of judge assignments.																	
Stongly disagree	2	1	1	3	2	[illegible]	1	4	4	[illegible]	0	1	8	[illegible]	5	3	1	0	[illegible]
Disagree	7	12	3	6	8	[illegible]	5	11	16	[illegible]	4	7	20	[illegible]	2	5	2	2	[illegible]
No opinion	8	9	5	5	8	[illegible]	0	12	22	[illegible]	2	3	29	[illegible]	16	10	6	1	[illegible]
Agree	7	19	3	6	12	[illegible]	5	11	26	[illegible]	6	3	29	[illegible]	20	17	3	3	[illegible]
Strongly agree	2	4	0	1	2	[illegible]	1	4	5	[illegible]	0	2	7	[illegible]	5	3	1	0	[illegible]
Q26 Competent service as judge should require selection for promotion from primary zone.																	
Stongly disagree	4	11	2	3	2	[illegible]	1	2	18	[illegible]	1	1	13	[illegible]	11	6	2	2	[illegible]
Disagree	10	13	7	6	13	[illegible]	3	21	23	[illegible]	5	8	34	[illegible]	29	12	3	1	[illegible]
No opinion	1	9	2	4	6	[illegible]	3	4	12	[illegible]	4	0	16	[illegible]	11	8	1	0	[illegible]
Agree	6	8	1	4	6	[illegible]	2	7	15	[illegible]	0	3	19	[illegible]	10	8	4	2	[illegible]
Strongly agree	5	4	0	4	5	[illegible]	3	8	5	[illegible]	2	4	10	[illegible]	8	4	3	1	[illegible]
Q27 Mandatory selection provision would adversely affect relationship between JA and other officers.																	
Stongly disagree	4	12	0	1	5	[illegible]	2	4	5	[illegible]	0	1	9	[illegible]	6	3	2	0	[illegible]
Disagree	6	13	0	2	6	[illegible]	1	14	10	[illegible]	2	4	17	[illegible]	12	7	2	3	[illegible]
No opinion	5	10	6	1	5	[illegible]	2	9	13	[illegible]	5	2	17	[illegible]	13	11	1	0	[illegible]
Agree	10	15	4	12	12	[illegible]	4	12	34	[illegible]	5	8	35	[illegible]	26	14	7	2	[illegible]
Strongly agree	1	5	2	5	4	[illegible]	3	3	11	[illegible]	0	1	14	[illegible]	12	3	1	1	[illegible]
Q28 Mandatory selection provision would adversely affect relationship between judges and other JA.																	
Stongly disagree	2	2	0	0	4	[illegible]	0	3	4	[illegible]	0	1	6	[illegible]	3	2	2	0	[illegible]
Disagree	4	10	1	5	6	[illegible]	3	9	12	[illegible]	1	2	17	[illegible]	13	5	2	3	[illegible]
No opinion	3	12	4	1	5	[illegible]	2	12	8	[illegible]	7	3	12	[illegible]	14	7	2	0	[illegible]
Agree	15	11	5	11	13	[illegible]	4	15	33	[illegible]	3	9	39	[illegible]	26	17	6	2	[illegible]
Strongly agree	2	10	2	4	4	[illegible]	3	3	16	[illegible]	1	1	19	[illegible]	13	7	1	1	[illegible]
Q29 Mandatory selection provision would attract highly qualified volunteers to the judiciary.																	
Stongly disagree	1	0	1	1	2	[illegible]	1	1	3	[illegible]	0	1	3	[illegible]	3	1	0	1	[illegible]
Disagree	9	7	2	3	7	[illegible]	2	6	19	[illegible]	5	3	19	[illegible]	14	8	3	1	[illegible]
No opinion	2	9	6	5	3	[illegible]	2	9	13	[illegible]	4	3	16	[illegible]	16	5	3	0	[illegible]
Agree	9	20	3	5	13	[illegible]	3	14	28	[illegible]	1	4	38	[illegible]	20	16	6	3	[illegible]
Strongly agree	5	9	0	7	7	[illegible]	4	12	10	[illegible]	2	5	17	[illegible]	14	8	1	1	[illegible]
Q30 There should be a provision for set terms of office for military trial judges.																	
Stongly disagree	2	4	2	0	3	[illegible]	0	2	7	[illegible]	0	0	8	[illegible]	6	2	0	1	[illegible]
Disagree	5	7	3	8	7	[illegible]	6	16	8	[illegible]	4	7	19	[illegible]	22	7	0	1	[illegible]
No opinion	2	4	4	3	1	[illegible]	1	7	5	[illegible]	1	1	11	[illegible]	9	3	1	0	[illegible]
Agree	13	21	3	8	18	[illegible]	4	12	43	[illegible]	5	7	42	[illegible]	27	20	8	3	[illegible]
Strongly agree	4	9	0	2	3	[illegible]	1	5	10	[illegible]	2	1	13	[illegible]	5	6	4	1	[illegible]

Q31 There should be a provision for set terms of office for appellate judges.																		
Stongly disagree	2	3	1	0	3	[illegible]	0	1	7	[illegible]	0	0	7	[illegible]	5	2	0	1	[illegible]
Disagree	8	6	2	5	6	[illegible]	4	16	7	[illegible]	2	7	18	[illegible]	18	7	0	1	[illegible]
No opinion	2	4	4	5	1	[illegible]	2	9	4	[illegible]	2	2	10	[illegible]	13	2	1	0	[illegible]
Agree	10	23	5	9	18	[illegible]	4	12	45	[illegible]	6	5	46	[illegible]	27	21	9	3	[illegible]
Strongly agree	4	7	0	2	4	[illegible]	2	4	10	[illegible]	2	2	12	[illegible]	6	6	3	1	[illegible]
Q32 Trial judge appointments should be done uniformly in all services.																			
Stongly disagree	4	1	2	2	1	[illegible]	2	4	6	[illegible]	1	3	8	[illegible]	9	1	1	1	[illegible]
Disagree	9	16	8	8	13	[illegible]	4	16	30	[illegible]	6	8	35	[illegible]	30	13	3	3	[illegible]
No opinion	8	17	2	2	8	[illegible]	2	11	20	[illegible]	1	2	29	[illegible]	14	11	5	2	[illegible]
Agree	3	9	0	5	6	[illegible]	2	8	11	[illegible]	3	3	12	[illegible]	11	9	1	0	[illegible]
Strongly agree	2	2	0	4	4	[illegible]	2	3	6	[illegible]	1	0	9	[illegible]	5	4	3	0	[illegible]
Q33 Appellate judge appointments should be done uniformly in all services.																			
Stongly disagree	4	2	2	1	1	[illegible]	0	4	6	[illegible]	1	3	7	[illegible]	8	1	1	1	[illegible]
Disagree	9	16	8	8	13	[illegible]	4	13	31	[illegible]	5	8	34	[illegible]	28	13	3	3	[illegible]
No opinion	7	16	1	3	6	[illegible]	3	13	16	[illegible]	2	2	26	[illegible]	16	8	5	2	[illegible]
Agree	4	9	1	6	7	[illegible]	4	9	13	[illegible]	3	3	16	[illegible]	13	11	1	0	[illegible]
Strongly agree	2	3	0	3	5	[illegible]	1	3	7	[illegible]	1	0	10	[illegible]	4	5	3	0	[illegible]
Q34 The JAG should have sole discretion in appointing military judges.																			
Stongly disagree	1	2	0	4	1	[illegible]	2	2	4	[illegible]	0	1	7	[illegible]	4	2	2	0	[illegible]
Disagree	1	9	3	8	10	[illegible]	5	9	14	[illegible]	5	6	15	[illegible]	13	9	4	2	[illegible]
No opinion	1	5	2	3	5	[illegible]	3	4	9	[illegible]	1	2	12	[illegible]	8	5	2	0	[illegible]
Agree	19	21	7	6	9	[illegible]	2	24	31	[illegible]	3	6	47	[illegible]	33	18	4	2	[illegible]
Strongly agree	4	8	0	0	7	[illegible]	0	3	14	[illegible]	3	1	11	[illegible]	11	3	1	2	[illegible]
Q35 Independent board of line and JAG officers should make judge appointments.																			
Stongly disagree	11	16	0	2	8	[illegible]	2	8	24	[illegible]	3	2	26	[illegible]	18	8	3	4	[illegible]
Disagree	12	23	6	10	12	[illegible]	4	24	31	[illegible]	5	8	43	[illegible]	37	16	6	0	[illegible]
No opinion	1	2	5	0	4	[illegible]	1	4	6	[illegible]	1	1	8	[illegible]	4	6	1	0	[illegible]
Agree	2	4	1	8	6	[illegible]	5	5	9	[illegible]	3	5	11	[illegible]	8	6	3	2	[illegible]
Strongly agree	0	0	0	1	2	[illegible]	0	1	2	[illegible]	0	0	3	[illegible]	2	1	0	0	[illegible]
Q36 If independent boards are used, they choose from candidates compiled by JAG.																			
Stongly disagree	2	0	0	1	1	[illegible]	1	1	2	[illegible]	0	1	2	[illegible]	3	1	0	0	[illegible]
Disagree	1	3	0	3	3	[illegible]	0	2	8	[illegible]	0	0	7	[illegible]	3	5	2	0	[illegible]
No opinion	1	2	5	1	3	[illegible]	1	4	8	[illegible]	2	0	12	[illegible]	7	4	2	0	[illegible]
Agree	15	30	7	16	17	[illegible]	7	30	41	[illegible]	9	12	56	[illegible]	46	23	6	3	[illegible]
Strongly agree	5	7	0	0	8	[illegible]	2	5	14	[illegible]	1	3	16	[illegible]	10	5	3	3	[illegible]

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his authority under this subsection to his staff judge advocate or legal officer or to any other principal assistant.

§ 826. Art. 26. Military judge of a general or special court-martial

(a) A military judge shall be detailed to each general court-martial. Subject to regulations of the Secretary concerned, a military judge may be detailed to any special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he has been detailed.

(b) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court or a member of the bar of the highest court of a State and who is certified to be qualified for duty as a military judge by the Judge Advocate General of the armed force of which such military judge is a member.

(c) The military judge of a general court-martial shall be designated by the Judge Advocate General, or his designee, of the armed force of which the military judge is a member for detail in accordance with regulations prescribed under subsection (a). Unless the court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of his staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to his performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he is assigned and directly responsible to the Judge Advocate General, or his designee, of the armed force of which the military judge is a member and may perform duties of a judicial or nonjudicial nature other than those relating to his primary duty as a military judge of a general court-martial when such duties are assigned to him by or with the approval of that Judge Advocate General or his designee.

(d) No person is eligible to act as military judge in a case if he is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(e) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may he vote with the members of the court.

§ 827. Art. 27. Detail of trial counsel and defense counsel

(a)(1) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The Secretary concerned shall prescribe regulations providing for the manner in which counsel are detailed for such courts-martial and for the persons who are authorized to detail counsel for such courts-martial.

(2) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) the accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under section 827(b) of this title (article 27(b)) unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(2) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(3) if the trial counsel is a judge advocate or a member of the bar of a Federal court or the highest court of a State, the defense counsel detailed by the convening authority must be one of the foregoing.

§ 828. Art. 28. Detail or employment of reporters and interpreters

Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may detail or employ interpreters who shall interpret for the court or commission.

§ 829. Art. 29. Absent and additional members

(a) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(b) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(c) Whenever a special court-martial, other than a special court-

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Chapter 5

COURT-MARTIAL COMPOSITION AND PERSONNEL, REPORTERS, CONVENING COURTS-MARTIAL

Section A--Composition and Personnel

5.1. Detail of Military Judges (RCM 503[b]):

5.1.1. **Chief Trial Judge.** The Judge Advocate General's designee for detail of military judges to courts-martial within the Air Force is the Chief Trial Judge, USAF Trial Judiciary (AFLSA/JAJT),172 Luke Avenue, Suite 343, Bolling AFB, DC 20332-5113.

5.1.2. **Detailing Military Judges.** The Chief Trial Judge, USAF Trial Judiciary, details military judges to SPCMs and GCMs. The Chief Trial Judge may delegate this authority to any person assigned as an Air Force military judge. A military judge with the authority to detail military judges may detail himself or herself as military judge to a court-martial. Orders detailing military judges may be oral, written, or in message form. Attach written orders or messages, if any, to the record of trial (ROT). Announce all orders detailing the military judge at trial.

5.1.2.1. A military judge from another Armed Force may be detailed to Air Force courts-martial according to the Armed Force's regulation applicable to military judges and with the approval of the Chief Trial Judge, USAF Trial Judiciary.

5.1.2.2. The Chief Trial Judge is TJAG's designee with authority to make Air Force military judges available for detail to trials convened by another Armed Force.

5.2. Detail of Counsel (RCM 503[c]):

5.2.1. **Procedure:**

5.2.1.1. A Chief Circuit Defense Counsel (CCDC), Circuit Defense Counsel (CDC), or the Chief or Deputy Chief, Trial Defense Division (AFLSA/JAJD), 172 Luke Avenue, Suite 343, Bolling AFB, DC 20332-5113, may detail defense counsel, assistant defense counsel, and associate defense counsel to any court-martial. The order detailing counsel may be oral, written, or in message form. Announce orders detailing counsel at trial. Attach written or message orders, if any, to the ROT.

5.2.1.2. An SJA, Chief Circuit Trial Counsel (CCTC), Circuit Trial Counsel (CTC), or the Chief or Deputy Chief, Government Trial and Appellate Counsel Division (AFLSA/JAJG) may detail trial counsel or assistant trial counsel to any court-martial. The order detailing trial counsel may be oral, written, or in message form. Announce orders detailing counsel orally on the record at trial. Attach written or message orders, if any, to the ROT.

5.2.1.3. RCM 503(c)(3) and other Armed Forces' regulations govern detailing counsel from other Armed Forces to Air Force courts-martial.

5.2.1.4. The Chief, Military Justice Division (AFLSA/JAJM), is TJAG's designee with authority to make Air Force counsel, with the exception of those assigned to AFLSA/JAJD, available for detail to trials convened by another Armed Force. AFLSA/JAJD exercises this authority over area defense counsel (ADC), CDCs and CCDCs.

5.2.2. **Qualifications:**

5.2.2.1. **General Court-Martial.** Attorneys detailed as trial counsel, defense counsel, or associate defense counsel for a GCM must be certified according to Article 27(b), UCMJ. Any person detailed as assistant trial counsel or assistant defense counsel must be designated as a judge advocate under 10 U.S.C. 8067(g) and AFI 51-103, **Designation and Certification of Judge Advocates**.

5.2.2.2. **Special Court-Martial.** Attorneys detailed as defense counsel for an SPCM must be certified according to Article 27(b), UCMJ. Any person detailed as trial counsel, assistant trial counsel, or assistant defense counsel for a SPCM must be designated as a judge advocate under 10 U.S.C. §8067(g) and AFI 51-103. In no event will a court-martial be legally constituted unless, before an Article 39(a) session or assembly of the court-martial, the accused has been afforded the opportunity to be represented by counsel qualified under Article 27(b) unless such counsel cannot be obtained because of physical conditions or military exigencies. (Article 27[c][1], UCMJ.)

5.2.2.3. **Air Force Reserve Members.** The requirements of certification and designation set out in 5.2.2.1 and 5.2.2.2 apply to reserve judge advocates. Only those reservists assigned as circuit trial or defense counsel may be certified annually. Other reserve judge advocates are certified according to AFI 51-103.

SECTION

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BY ORDER OF THE SECRETARY OF THE AIR FORCE

AIR FORCE MANUAL 51-204

1 JULY 1995

Law

UNITED STATES AIR FORCE JUDICIARY

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OPR: AFLSA/JAJM (Col Robert E. Reed)

Supersedes AFR 111-1, Chapter 18, 30 September 1988.

Certified by: HQ AFLSA/CC (Col Olan J. Waldrop, Jr.)

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This manual describes the organization, function, and operation of the Judge Advocate General's Department, Directorate of the Air Force Judiciary (AFLSA/JAJ). It also enumerates certain duties of key USAF Judiciary personnel but the list of duties is not exclusive. Refer to AFI 51-201, *Administration of Military Justice*, for guidance on detailing judiciary personnel to courts-martial.

SUMMARY OF REVISIONS

This manual contains information on the structure of the USAF Judiciary originally contained in AFR 111-1, *Military Justice Guide*.

1. Organization and Personnel:

1.1. The Judge Advocate General (TJAG) exercises overall responsibility for the USAF Judiciary through the Commander, Air Force Legal Services Agency (AFLSA). TJAG designates geographical areas as USAF Judiciary Circuits (Circuits), and assigns military judges, counsel to circuit offices and to AFLSA. Unless otherwise stated, all personnel mentioned hereafter are judge advocates appointed or assigned by TJAG.

1.2. The Director, USAF Judiciary (AFLSA/JAJ) exercises overall supervisory responsibility for the Air Force Judiciary, including the Field Judiciary. The Field Judiciary includes all members assigned to AFLSA who are detailed to perform full-time duties as a chief circuit military judge (CCMJ), military judge (MJ), chief circuit trial counsel (CCTC), circuit trial counsel (CTC), chief circuit defense counsel (CCDC), circuit defense counsel (CDC), area defense counsel (ADC), defense paralegal (DP), circuit court superintendent (CtS) or assistant circuit court superintendent (ACtS). The Field Judiciary is not an organizational element.

1.2.1. Air Force Trial Judiciary. The Trial Judiciary includes all military judges assigned to AFLSA detailed to perform full-time duties as military judges. It is not an organizational element.

1.3. The Chief Trial Judge, USAF Trial Judiciary (AFLSA/JAJT), is a military judge designated by TJAG under Article 26(c), Uniform Code of Military Justice (UCMJ), whose duties include supervising military judges and detailing them to courts-martial.

1.4. The Chief, Government Trial and Appellate Counsel Division (AFLSA/JAJG), supervises all CCTCs and CTCs. This individual may detail CCTCs and CTCs to courts-martial and supervises all Air Force appeals before the Air Force Court of Criminal Appeals (AFCCA), the U.S. Court of Appeals for the Armed Forces (USCAAF), and the U.S. Supreme Court. This individual may delegate authority to the CCTC of each circuit to detail himself/herself to courts-martial within the circuit.

1.5. The Chief, Trial Defense Division (AFLSA/JAJD), supervises all CCDCs, CDCs and ADCs. Duties also include detailing CCDCs, CDCs and ADCs to courts-martial, and serving as the appellate authority on individual military defense counsel requests made under AFI 51-201, *Administration of Military Justice*. This individual may delegate authority to the CCDC of each circuit to detail himself/herself to courts-martial within the circuit.

1.6. The Chief, Appellate Defense Division (AFLSA/JAJA), supervises all appeals before the AFCCA, USCAAF, and the U.S. Supreme Court made by active duty Air Force members after their court-martial convictions.

1.7. The Chief, Military Justice Division (AFLSA/JAJM), is responsible for providing field support of ongoing cases, development and dissemination of Air Force military justice policy, and supervision of reviews and other UCMJ actions required of the Office of The Judge Advocate General. For all purposes under the UCMJ, AFLSA/JAJM is considered a component of the Office of The Judge Advocate General.

1.8. The Chief, Clemency, Corrections and Officer Review Division (AFLSA/JAJR), recommends Secretary of the Air Force action on court-martial sentences that include a dismissal and TJAG and Secretary of the Air Force action on cases in which sentence clemency is appropriate.

1.9. The Chief Court Superintendent assists and advises the Director, USAF Judiciary, on all enlisted matters affecting circuit court superintendents, assistant circuit court superintendents and all defense paralegals.

2. Responsibilities:

2.1. Chief Circuit Military Judge. The military judge designated as the chief judge of a circuit and who is the immediate supervisor of all military judges and CtSs assigned to that circuit. The CCMJ's secondary duty is to serve as a military judge. The CCMJ is the administrative chief of the circuit and may detail military judges to courts-martial. Except as provided elsewhere in this manual, the CCMJ is responsible for the administrative support of all functional areas within the circuit.

2.2. Military Judge. A judge advocate designated as a military judge according to Article 26(b) or (c), UCMJ, and assigned to a designated circuit or to the Chief Trial Judge. Military judges may detail themselves to courts-martial, if delegated such authority. In addition to their duties in courts-martial, judges may perform the following duties, subject to availability as determined by the CCMJ:

2.2.1. Serve as legal advisors for administrative boards convened under AFI 36-3206, *Administrative Discharge Procedures*; AFI 36-3207,; AFI 36-3207, *Administrative Separation of Commissioned Officers*; and AFI 36-3208, *Administrative Separation of Airmen*.

2.2.2. Serve as Article 32, UCMJ, investigating officers. Courts-Martial and administrative boards under AFI 36-3206 take precedence.

2.2.3. Serve as legal advisors on other administrative discharge boards. Courts-Martial, boards under AFI 36-3206 and Article 32 investigations take precedence.

2.2.4. Serve as hearing officer for contingent confinement hearings as provided for in AFI 51-201.

2.2.5. Upon the request of a convening authority, serve as pretrial confinement hearing officers.

2.2.6. With the consent of the Chief Trial Judge, conduct other investigations.

2.2.7. With the approval of the Chief Trial Judge, perform administrative law functions, such as presiding officer at draft environmental impact statement hearings, Superfund Amendment and Reauthorization Act hearings, and other administrative actions.

2.3. Chief Circuit Trial Counsel. The CCTC supervises the CTCs in each circuit. The CCTC's duties are to perform CTC duties and to detail CTCs to courts-martial. The CCTC may detail herself/himself to courts-martial if delegated that authority.

2.4. Circuit Trial Counsel. A judge advocate certified under Article 27(b)(2), UCMJ, whose primary duties include the following in order of priority:

2.4.1. Serve as trial counsel in general courts-martial (GCM) and administrative boards convened under AFIs 36-3206 and 36-3207 when requested.

2.4.2. Serve as trial counsel in special courts-martial (SPCM) when requested.

2.4.3. Train, advise, and assist other personnel involved in the prosecution of courts-martial.

2.4.4. Serve as the government representative in Article 32, UCMJ, investigations when requested by a staff judge advocate (SJA) as other duties permit.

2.4.5. Serve as recorder for administrative boards convened under and AFI 36-3208, as other duties permit.

2.4.6. Detail other CTCs as trial counsel for courts-martial, in the CCTC's absence.

2.4.7. SJAs will use the expertise and services of the CCTC and the CTCs to the maximum extent possible. SJAs have overall responsibility for each court-martial. Trial counsel (TC) represents the SJA in fulfilling that responsibility on particular cases to which the TC is detailed.

2.5. Chief Circuit Defense Counsel. The CCDC supervises all defense personnel within each circuit or region, as applicable, and details CDCs and ADCs to courts-martial. The CCDC's secondary duty is to perform CDC duties as time allows. CCDCs may detail themselves to courts-martial if delegated that authority.

2.6. Circuit Defense Counsel. A judge advocate certified under Article 27(b)(2), UCMJ, whose primary duties include the following:

2.6.1. Serve as defense counsel in courts-martial.

2.6.2. Train, advise, and assist other defense personnel in the circuit.

2.6.3. Assist the CCDC with the administration of defense services in the circuit, including detailing other CDCs and ADCs if delegated that authority.

2.6.4. Serve as respondent's counsel in administrative boards convened under AFIs 36-3206, 36-3207 or 36-3208.

2.6.5. Detail defense counsel to courts-martial in the absence of the CCDC.

2.7. Area Defense Counsel. A judge advocate certified under Article 27(b)(2), UCMJ, and assigned to a designated ADC office within a circuit. An ADC is responsible for providing all defense services at the base where assigned, unless disqualified or another counsel is detailed to represent a particular individual. The senior ADC is also responsible for the administration of the office. ADC duties include the following in order of priority:

2.7.1. Serve as counsel in all actions under the UCMJ, such as:

2.7.1.1. General courts-martial.

2.7.1.2. Special courts-martial.

2.7.1.3. Article 32, UCMJ, investigations.

2.7.1.4. In interrogation situations.

2.7.1.5. Nonjudicial punishment actions under Article 15, UCMJ.

2.7.2. Serve as counsel in administrative discharge actions; such as:

2.7.2.1. Administrative discharge boards convened under AFIs 36-3206, 36-3207, and 36-3208.

2.7.2.2. Administrative discharge notification actions.

2.7.3. Serve as military legal advisor in foreign criminal jurisdiction cases.

2.7.4. Pursuant to AFI 44-109, *Mental Health Evaluations*, provide advice to members referred for other than emergency mental health evaluations.

2.7.5. Represent Air Force members in other adverse actions, such as reports of survey, administrative demotions and flying evaluation boards in which counsel for an individual is required or authorized.

2.7.6. ADCs are encouraged to perform nonconflicting duties for the base SJA's office, as workload permits.

2.8. Circuit Court Superintendent (CtS). The senior noncommissioned officer assigned to the circuit, whose primary duty is to assist the CCMJ in docketing courts-martial and circuit administration. The CtS is the immediate supervisor of all ACts assigned to a circuit. The CtS also provides training as appropriate for defense paralegals within the circuit.

2.9. Assistant Circuit Court Superintendent (ACtS). A noncommissioned officer assigned to the circuit, whose primary duty is to assist the CtS docket courts-martial and provide general administrative services for the circuit.

2.10. Defense Paralegal (DP). An airman, noncommissioned officer, or civilian employee assigned to the ADC office, whose primary duty is to support the ADC in the management and operation of the ADC office.

2.10.1. The active duty DP must participate in a proficiency training program in the base SJA's office a minimum of 16 hours per month. Active duty DP's in upgrade training are required to per-

form 24 hours training in the SJA's office each month. The law office manager (LOM) of the base office manages the proficiency training and formal on-the-job training for skill level upgrade. The LOM prepares a semi-annual training plan for each DP assigned to the base, coordinates the plan with the senior ADC, and ensures the training objectives are satisfied. SJAs and ADCs will cooperate to provide the DP proficiency in all facets of base legal office operations, while arranging training to avoid the fact and appearance of a conflict of interest on any particular case.

3. Assignment and Jurisdiction:

3.1. All personnel designated to perform Field Judiciary services are assigned to AFLSA.

3.2. All personnel assigned to AFLSA are attached to the 11th Wing (11 WG), Bolling AFB DC, for court-martial jurisdiction, actions under Article 15, UCMJ, and various administrative actions, including, but not limited to actions under AFI 36-3206 and 36-3207. The Commander, AFLSA, retains concurrent authority with 11 WG/CC to take Article 15, UCMJ, and administrative action against personnel assigned to AFLSA, with the exception of military judges. See also AFI 25-201, *Nonjudicial Punishment.*

4. Administrative and Logistical Support:

4.1. Installation commanders where a judiciary field office is located is responsible for the administrative and logistical support of Field Judiciary personnel. In particular, support of ADC offices will be no less than the support of units assigned to the host command. Host commanders will provide support to the Field Judiciary, as set forth in AFI 25-201. This support includes, but is not limited, to the following:

4.1.1. Private office space, including necessary furniture and supplies and access to law library facilities, clearly designated an AFLSA Field Judiciary or ADC office, for each of the judiciary functional areas--judicial, prosecution, defense, and court administration. ADC offices shall be physically separated from the offices of the SJA and the convening authority, unless it is not possible to do so. AFI 32-1024, *Standard Facility Requirements*, sets forth minimum space requirements.

4.1.2. Class A telephone services, including direct dial capability where possible.

4.1.3. Military transportation support. Military transportation support of the Field Judiciary is a "mission essential" function.

4.1.4. Military family housing on the same basis as other personnel of like grade, rank, and responsibility.

4.1.5. Processing travel vouchers and leave authorizations.

4.1.6. Civilian personnel services normally provided by the Civilian Personnel Office (CPO).

4.1.7. Publications support normally furnished tenant units.

4.1.8. Funding for necessary nonexpendable and expendable supplies.

4.1.9. Suitable office space, administrative assistance, transportation, and private quarters for Field Judiciary members on temporary duty (TDY) to the installation.

4.2. AFLSA furnishes travel costs and per diem. AFLSA/JAJ provides blanket travel orders to Judiciary personnel when necessary.

4.3. SJAs assist in obtaining appropriate support for Field Judiciary personnel performing TDY at their bases by arranging appropriate lodging, messing, and transportation in advance to ensure TDY Field Judiciary personnel may devote full attention to their duties.

5. Supervision of Personnel. Although the Field Judiciary is divided into three main divisions of responsibility, the organizational and functional structure of each circuit office requires the CCMJ, CCTC, and CCDC to coordinate the circuit activities with one another to manage the mission effectively and economically.

NOLAN SKLUTE, Maj General, USAF
The Judge Advocate General

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on the same basis as any other JA. School assignments are not considered intervening assignments for purposes of determining eligibility for a subsequent assignment as a trial judge.

7-5. Selection and Assignment of Appellate Military Judges.

a. General. Assignments of appellate military judges to the U.S. Army Court of Criminal Appeals are made by TJAG upon recommendation of the Chief Judge in coordination with the Chief, PP&TO.

b. Grade Requirements. Appellate judges will normally be in grade of colonel. Exceptional lieutenant colonels with at least two years time in grade may be considered for a waiver of the grade requirement.

c. Experience Requirements. Appellate judges should have at least two years of experience as a GCM trial judge, previous service as an appellate judge, two years of experience as an SJA of a general court-martial jurisdiction, or two years of experience as a regional defense counsel. Appellate judges should also have at least two years of criminal law experience as a trial counsel, chief of military justice, criminal law instructor, or trial defense counsel.

d. Military Education Requirements. Appellate judges must be a graduate of the Command and General Staff College or its equivalent.

7-6. Tenure for Military Judges.

a. Trial Judges. Judge Advocates are certified as military judges by TJAG and assigned to the Trial Judiciary for a minimum of three years, except under any of the following circumstances:

(1) The military judge is assigned to the Sixth Judicial Circuit (Republic of Korea), or such other area where officers are normally assigned for a short tour of one or two years: in such cases the military judge will be appointed for a one or two year term;

(2) The military judge voluntarily requests to be reassigned to other duties, and TJAG approves such reassignment;

(3) The military judge retires or otherwise separates from military service;

(4) The military judge is reassigned other duties by TJAG based on the needs of the service in a time of war or national emergency; or

(5) The officer's certificate as a military judge is withdrawn by TJAG for good cause.

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Headquarters
Department of the Army
Washington, DC
20 August 1999

AR 27-10
Change 1

Effective 20 September 1999

Legal Services

MILITARY JUSTICE

History. AR 27-10 was published 24 June 1996. This change publishes Change 1 to AR 27-10.

Summary. This change provides for tenure for military trial and appellate judges. This provision was not included at the time of publication.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Office of The judge Advocate General, ATTN: DAJA-CLD, 2200 Army Pentagon, Washington, DC 20310-2200.

1. AR 27-10, 24 June 1996 is changed as follows:

Page 36, Add Paragraph 8-1g.

8-1g. *Tenure for military trial judges.* Judge Advocates are certified as military judges by TJAG and assigned to the Trial Judiciary for a minimum of three years, except under any of the following circumstances:

(1) The military judge is assigned to the Sixth Judicial Circuit (Republic of Korea), or such other area where officers are normally assigned for a short tour of one or two years; in such cases the military judge will be appointed for a one or two year term;

(2) The military judge voluntarily requests to be reassigned to other duties, and TJAG approves such assignment;

(3) The military judge retires or otherwise separates from military service;

(4) The military judge is reassigned to other duties by TJAG based on the needs of the service in a time of war or national emergency;

(5) The officer's certification as a military judge is withdrawn by TJAG for good cause. See Section III, Chapter 16, Suspension of Military Judges.

Page 58, Add Paragraph 13-12.

13-12. Tenure for military appellate judges
Judge Advocates are certified as military judges by TJAG and assigned to the United States Army Court of Criminal Appeals for a minimum of three years, except under any of the following circumstances:

a. The military judge voluntarily requests to be reassigned to other duties, and TJAG approves such assignment;

b. The military judge retires or otherwise separates from military service;

c. The military judge is reassigned to other duties by TJAG based on the needs of the service in a time of war or national emergency;

d. The officer's certification as a military judge is withdrawn by TJAG for good cause. See Section III, Chapter 16, Suspension of Military Judges.

2. Post these changes per DA Pam 25-40.

3. File this change in front of the publication.

Louis Caldera
Secretary of the Army

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before courts-martial or as appellate counsel may be initiated when other available remedial measures, including punitive action—

(1) Are inappropriate.

(2) Have failed to induce proper behavior.

b. Remedial measures. Full consideration will be given to the appropriateness and effectiveness of such measures as—

(1) Admonition.

(2) Instruction.

(3) Temporary suspension.

(4) Proceedings in contempt.

(5) Nonjudicial punishment under Article 15, UCMJ.

(6) Trial by court-martial.

(7) Relief of the person from duties as appointed counsel, assistant counsel, or appellate counsel.

c. By a court-martial. The trial judge or court-martial without a trial judge may determine initially and on his or her or its own motion whether a person is qualified to act as counsel before the court-martial in a particular case. If a counsel is guilty of misconduct, the trial judge or a court-martial without a trial judge may admonish him or her. If the misconduct is contemptuous, the trial judge or court-martial may punish him or her (Article 48, UCMJ; R.C.M. 109). If admonition or punishment is inappropriate or fails to achieve the desired standard of behavior, the court should adjourn and report the fact to the supervising staff or command judge advocate or Regional Defense Counsel for processing according to AR 27–1.

d. By an appellate court. Action to suspend a person acting as appellate counsel will be referred to the supervising JA for processing according to AR 27–1.

16–6. Action to suspend civilian counsel

The procedures and actions set forth above for suspending military counsel or civilian counsel within the Judge Advocate Legal Service (JALS) will also apply insofar as practicable against civilian counsel who represent the accused or are likely to represent the accused at courts-martial or other proceedings governed by the UCMJ or the MCM.

16–7. Modification or revocation of suspension or decertification

TJAG may (on petition of a person who has been suspended or decertified as counsel (Article 27(b), UCMJ), and on good cause shown) modify or revoke a prior order to suspend or decertify.

16–8. Removal of counsel or reassignment of duties

Nothing in this chapter will prevent the military judge or other appropriate official from removing a counsel from acting in a particular court-martial, nor prevent the permanent reassignment or assignment temporarily to different duties prior to, during, or subsequent to proceedings conducted under the provisions of this chapter.

Section III
Suspension of Military Judges

16–9. General

Action may be initiated to suspend or revoke the certification to act as military judge (Article 26, UCMJ; R.C.M. 109) when a person acting or about to act as trial or appellate judge—

a. Is or has been guilty of professional, personal, or judicial misconduct of or unfitness of such a serious nature as to show that the individual is lacking in integrity or judicial demeanor, or

b. Is otherwise unworthy or unqualified to perform the duties of a military judge.

16–10. Grounds

A military judge may be censured, suspended from acting as military judge, or removed from the judicial role by revocation of his or her certification (Article 26, UCMJ) for actions that—

a. Constitute misconduct, or constitute judicial misconduct or unfitness, or

b. Violate the Code of Judicial Conduct, the Army Rules of Professional Conduct for Lawyers, or other applicable standards.

16–11. Removal of a military judge

a. Action to suspend a person from acting as military judge, or to revoke his or her certification as military judge, may be initiated when other available remedial measures are inappropriate or have failed to induce proper behavior. Accordingly, consideration will be given to other measures such as—

(1) Relief from duties as military judge.

(2) Censure.

(3) Admonition.

(4) Instruction.

(5) Other sanctions, including punitive ones, as may be warranted.

b. In appropriate cases, TJAG or the Chief Judge, U.S. Army Judiciary, may temporarily suspend military judges from participation in the trial of cases until completion of the inquiry. In appropriate cases, TJAG may temporarily suspend military judges from participating in the trial of cases or appellate judges from participating in the appellate review of cases until completion of the inquiry.

16–12. Procedure

Information on alleged judicial misconduct or unfitness will be reported to the Chief Trial Judge in the case of trial judges or the Chief Judge, U.S. Army Judiciary, in the case of appellate judges, for processing according to AR 27–1.

16–13. Modification or revocation of suspension or decertification

TJAG may (on petition of a person who has been suspended or decertified as a military judge (UCMJ, Article 26) and on good cause shown) modify or revoke a prior order to suspend or decertify, on the advice of the Chief Judge, USACCA. TJAG may (on petition of a person who has been suspended or decertified as a military judge (Article 26, UCMJ) and on good cause shown) modify or revoke a prior order to suspend or decertify on the advice of the Chief Judge, U.S. Army Judiciary.

Chapter 17
Custody Policies Overseas

17–1. General

This chapter establishes the authority and procedures for exercise of custody over U.S. military personnel subject to the criminal jurisdiction of foreign courts. The authority to exercise appropriate forms of custody over such military members pending the outcome of foreign criminal proceedings (pursuant to provisions of Status of Forces Agreements (SOFAs)) does not abrogate, in any manner, the authority of the commander granted under the UCMJ.

17–2. Custody policies

a. It is U.S. policy to seek the release from foreign custody of soldiers pending final disposition of their criminal charges under foreign law. (Final disposition of foreign criminal charges incorporates all stages of the host country's criminal proceedings, including appeals, up to commencement of any sentence to confinement resulting from conviction on the foreign criminal charges.) Release from foreign custody will be sought through—

(1) The exercise of U.S. custody rights under applicable international agreements.

(2) The posting of bail.

(3) The exercise of other rights under local law.

b. U.S. Army personnel charged with offenses in foreign courts will not be transferred or removed from the jurisdiction of foreign courts without approval of the commanding officer or country representative until final disposition of the charges. In cases of serious offenses (for example, felonies), TJAG's approval is required if transfer or removal, including authorized leave, involves the return

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(d) Advice and assistance regarding the legal issues associated with Army counter-drug activities.

(e) Advice and assistance on security assistance matters and personnel exchanges.

(8) Reporting the initiation of legal proceedings, preparing investigative reports concerning litigation in which the United States has an interest, and maintaining liaison with and furnishing assistance to U.S. attorneys in connection with Army activities involved in litigation and legal proceedings. (See AR 27–40.)

(9) Operating the—

(a) Command's Legal Assistance Program (See AR 27–3.)

(b) Command's Claims Program, which includes several areas: the investigation of claims and incidents that may result in claims; the settlement of claims by and against the United States within delegated authority; and the recovery from carriers, warehousemen, and other third parties for loss of or damage to soldiers' personal property while transported or stored at Government expense; implementing the Army Medical Care Recovery Program and the program for settlement and waiver of claims in favor of the United States for damage to, loss of, or destruction of Army property, within his or her designated area. In conducting these programs, heads of area claims offices will supervise claims processing offices. (See AR 27–20.)

(c) Command's Procurement Fraud Program, including appointment of a procurement fraud advisor. (See AR 27–40, chap 8.)

(10) Supervising the—

(a) Operation of the Federal Magistrate Court Program within the command. (See AR 190–29.)

(b) Training in military justice, including providing technical advice and assistance for all military justice instruction.

(11) Assisting in implementing mutual support training programs for RC officers and JAGSO units during annual training (AT) and inactive duty training (IDT) that includes the performance of legal duties as JA officers. The supervisory JA of a command evaluates JA Officer Reserve training performed at his or her installation.

(12) Advising on matters relating to the conduct of intelligence activities.

(13) Establishing and providing overall supervision for the Victim/Witness Assistance Program. (See AR 27–10, chap 18.)

b. Technical assistance. The supervisory JA of any command may communicate directly with the supervisory JA of a superior or subordinate command or with TJAG (UCMJ, Art. 6(b) (10 USC 806(b)). He or she may receive and give technical guidance through these channels. The supervisory JA is, however, primarily a staff officer, responsible to his or her commander, and is subject to his or her command just as any other command member. Technical guidance is designed only to make the supervisory JA a more effective staff officer.

c. Military justice. The supervisory JA of any command provides commanders and convening authorities legal advice concerning military justice. In this capacity, the supervisory JA must balance the needs of good order and discipline in the command and the rights of the accused to ensure justice is done in every case. In performing these duties, the supervisory JA must be vigilant to recognize, reveal, and take steps to correct the actual occurrence or appearance of unlawful command influence. Additionally, the supervisory JA must ensure that military justice is administered fairly, without regard to race, color, religion, gender, or national origin. Duties of an SJA include those prescribed by the UCMJ, Art. 6, 34, and 60 (10 USC 806, 834, and 860(d)) and RCM 406 and 1106, MCM, 1984.

5–3. Preventive law

As staff officers, JAs will be aggressive and innovative in disseminating information to soldiers and their families that is responsive to potential legal problems and issues in such areas as legal assistance, military justice, and claims. An effective preventive law effort will enhance soldiers' morale, discipline, and effectiveness and save JAs a great amount of time and effort that would otherwise be expended in addressing legal problems after they occur.

Chapter 6
Agency Legal Officer

6–1. General Duties

a. TJAG is responsible for developing policies that will be implemented by DA legal offices.

b. HQDA (DAJA–PT) is responsible for authorizing the establishment of such offices.

6–2. Establishment, Modification, and Elimination of Legal offices and Positions

a. The responsibility of TJAG as legal advisor (para 2–1) does not preclude the existence of integral legal offices in DA agencies that require such offices to carry out their responsibilities. Such authorized legal offices will provide legal services according to policies developed by TJAG. Novel questions of law of far-reaching significance, such as those involving the interpretation of statutes or affecting other agencies, will be coordinated with TJAG.

b. Before establishing a legal office, a new position of legal advisor, or a civilian attorney position under the qualifying authority of TJAG, the agency head concerned will forward to HQDA (DAJA–PT), 2200 Army Pentagon, WASH DC 20310–2200, a request for authority to establish the office or position. The request will contain a justification for the special services the proposed office or position would perform and a statement that TJAG cannot perform such services.

c. As required by AR 570–4, any proposed addition, deletion, or modification of a TDA or MTOE authorization coded for MOS 55A or 55B, or for civilian job series 905 or 1222, must be coordinated with OTJAG (DAJA–PT) prior to effecting such addition, deletion, or modification.

6–3. Staffing

Available members of the JAGC will be placed in these legal offices whenever practicable. Assignment of officers will be made by TJAG in coordination with the agency head concerned.

Chapter 7
Professional Conduct Inquiries

7–1. General

a. This chapter establishes procedures for processing alleged or suspected violations of the Army Rules of Professional Conduct for Lawyers (app B, AR 27–26) or other applicable ethical standards by JAs, civilian attorneys subject to this regulation, or other attorneys who are subject to the disciplinary authority of TJAG pursuant to RCM 109, MCM, 1984. To the extent it does not conflict with the UCMJ, the MCM, directives, regulations or rules, the 1972 ABA Code of Judicial Conduct applies to all JAs and civilian attorneys performing judicial functions, including all trial and appellate MJs and military magistrates. Whenever processing alleged or suspected violations on the part of trial or appellate MJs, the provisions of RCM 109, MCM, 1984, should also be considered.

b. Nothing in this chapter limits the authority of TJAG to issue or withdraw any certification of qualification to act as a MJ or any certification of competency to act as counsel before courts-martial, or to suspend any JA or civilian attorney from performing duties pending resolution of an allegation that, if substantiated, would reflect adversely on fitness for duties as a lawyer. Further, nothing in this chapter prevents TJAG from referring a case to command channels for consideration of disciplinary action.

c. Chapter 8 of this regulation prescribes procedures for handling allegations of mismanagement, unless coupled with an allegation of a violation of professional ethical standards (See para 8–2).

7–2. General Duties

a. TJAG and supervisory lawyers (as defined in glossary, AR 27–26) are responsible for making reasonable efforts to ensure that

all attorneys in the JALS conform to the Army Rules of Professional Conduct for Lawyers, the 1972 ABA Code of Judicial Conduct and other applicable ethical standards.

b. Supervisory lawyers at all levels are responsible for reviewing all alleged or suspected violations of the Army Rules of Professional Conduct for Lawyers, the 1972 ABA Code of Judicial Conduct, or other applicable ethical standards by subordinates who come to their attention. They will report through technical channels, any credible alleged or suspected violation that raises a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects to the Chief, Standards of Conduct Office (SOCO), OTJAG, for action under this chapter. An alleged or suspected violation is "credible" if the information received provides a reasonable belief that a violation occurred. If a supervisory lawyer, upon initial review, determines that a third party complaint of a violation is not credible, a copy of any response to the complainant, with all associated documentation, will be retained in accordance with applicable filing regulations.

c. Supervisory lawyers at the office or higher level are responsible for ensuring that all Army lawyers under their jurisdiction receive annual training on the Army Rules of Professional Conduct for Lawyers, the 1972 ABA Code of Judicial Conduct and other applicable ethical standards, as appropriate. At a minimum, a total of three hours of training will be conducted each year. The Commandant, TJAGSA, will assist by making available educational materials on the Army Rules of Professional Conduct for Lawyers. The Chief, U.S. Army Judiciary, will provide training materials in support of training under the 1972 ABA Code of Judicial Conduct for all MJs. Supervisory lawyers are encouraged to make maximum use of TDY to allow Army lawyers to attend civilian ethics training courses.

d. Standards of Conduct Office, TJAG, is responsible for the management of TJAG's professional responsibility program, to include the formulation of policy and guidance, oversight of preliminary screening inquiries, professional responsibility advice to TJAG, TAJAG and the AJAGs, and administrative support to the Professional Responsibility Committee (PRC).

e. All members of the JALS are responsible for knowing and complying with all applicable ethical standards, for meeting training requirements imposed by their licensing authorities, and for reporting violations of ethical standards to their superiors or to SOCO in compliance with the Army Rules of Professional Conduct for Lawyers.

7–3. Policies

a. Credible alleged or suspected violations of the Army Rules of Professional Conduct for Lawyers, the 1972 ABA Code of Judicial Conduct or other applicable ethical standards that raise a substantial question as to a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects will be informally investigated by means of a preliminary screening inquiry (PSI). Tasking documents and other administrative directions related to a PSI will be issued by SOCO, OTJAG, on behalf of TJAG.

b. A PSI normally will not be conducted if the alleged or suspected violation—

(1) Is being investigated as criminal misconduct by the attorney, punishable under the UCMJ, until initial action adjudicating guilt or administrative action tantamount thereto is completed;

(2) Involves conduct for which there exists a clear avenue of review that does not interfere with TJAG's supervision of lawyers under his or her jurisdiction, for example, appellate review of a court-martial conviction, on-going civil litigation, or the contesting of an efficiency report, until that review has occurred;

(3) Involves purely discretionary conduct of an administrative nature, for example, an award recommendation; or

(4) Has been thoroughly investigated under another procedure, in which case the investigation will be provided to the Senior Supervisory JA for action under paragraph 7–5. (This will often occur in cases falling under (1) and (2), above.)

c. Whenever a supervisory lawyer has credible evidence of conduct which falls under *b* above, and believes that the facts involve a matter of significance to the military practice of law, he or she will refer the evidence to OTJAG, ATTN: DAJA–SC, for review and decision by TAJAG (or TJAG) as to the propriety of a PSI.

d. In arriving at their findings, PSI officers, senior supervisory JAs, and the PRC will use a preponderance of the evidence standard of proof. Under this standard, findings must be supported by a greater weight of the evidence than supports a contrary conclusion, that is, the evidence points to a particular conclusion as being more credible and probable than any other conclusion.

e. If an alleged or suspected violation of professional standards involves conduct of a National Guard JA not committed while performing federal duties under Title 10, US Code, it will be referred to the Office of the Judge Advocate, National Guard Bureau, for action.

7–4. Preliminary screening inquiry (PSI)

a. Scope. The purpose of the PSI is to assist senior supervisory JAs in determining whether the questioned conduct occurred and, if it did, whether it constituted a violation of the Army Rules of Professional Conduct for Lawyers, the 1972 ABA Code of Judicial Conduct, or other applicable ethical standards, and to recommend appropriate action in cases of substantiated violations. The PSI is not intended to constitute an ethical investigation that most licensing authorities normally require lawyers to report to them. Nevertheless, it is the responsibility of the subject of the PSI to know and comply with the reporting requirements of his or her licensing authority.

b. Senior Supervisory JA.

(1) *General.* The senior supervisory JA is the MACOM SJA or other JA in an equivalent supervisory position.

(2) *RC Personnel—Title 10, Mobilization, or IMA Status.* The senior supervisory JA for alleged or suspected violations involving RC personnel is the MACOM SJA or equivalent supervisory JA having responsibility for the installation or activity at which the training or duty was conducted if the RC JA was serving—

(a) Pursuant to orders issued under Title 10, U.S. Code, during AT, active duty for training, or extended active duty;

(b) Pursuant to mobilization orders; or

(c) In an individual mobilization augmentee (IMA) status.

(3) *RC Personnel—TPU Members.* The senior supervisory JA for alleged or suspected violations (except as stated in (2) above) involving RC Troop Program Unit (TPU) members is the SJA of the appropriate superior headquarters—

(a) Eighth U.S. Army;

(b) U.S. Forces Command;

(c) U.S. Army Europe;

(d) U.S. Army Pacific; or

(e) U.S. Army Special Operations Command.

(4) *RC Personnel—IRR Members.* The senior supervisory JA for alleged or suspected violations (except as stated in (2) above) involving members of the Individual Ready Reserve (IRR) is the Center Judge Advocate, U.S. Army Reserve Personnel Center.

c. Appointment. Normally, upon receipt of a tasking memorandum or oral approval from OTJAG, the senior supervisory JA will appoint a PSI officer. In unusual cases, or cases where there is no clearly identifiable senior supervisory JA, the PSI officer will be appointed by TAJAG. The PSI officer for an inquiry involving a trial or appellate MJ will be a current MJ. Unless impracticable, the PSI officer will be senior to the subject of the inquiry.

d. Procedure.

(1) The PSI will be conducted according to the procedures set forth in this regulation. Where this regulation is silent, the PSI officer will follow the rules governing informal investigations under the provisions of AR 15–6.

(2) The PSI officer will determine the facts and circumstances of the alleged or suspected violation. A subordinate officer may be detailed to gather the facts, for example, question individuals and collect pertinent documents, but the PSI officer must independently review the facts.

(3) The PSI officer will provide the senior supervisory JA with a written report which will summarize the facts, provide conclusions

as to whether a violation occurred, and, as appropriate, recommend corrective or disciplinary action. (See para 7–3*d*.) The PSI officer's report may, in some instance, contain conclusions, observations, or recommendations concerning a subject's conduct or performance which is unrelated to an alleged or suspected violation which is the focus of the inquiry. Such conclusions, observations, or recommendations that a reasonable person would consider to be adverse to the subject will be included only when substantiated by a preponderance of the evidence, and then only insofar as such matters are relevant to the subject's service in the JALS. Copies of documentary evidence and witness statements will be attached as exhibits.

7–5. Senior Supervisory JA action

a. Upon receipt of the PSI report, the senior supervisory JA will determine if the report is complete. If not, he or she will return it to the PSI officer for further inquiry. Once satisfied that the report is complete, the senior supervisory JA will take one of the following actions.

(1) If the report concludes that no violation has occurred, the senior supervisory JA will coordinate with the Chief, SOCO, and close the case (see *b* below). The senior supervisory JA will inform the subject and complainant, if any, of this action in writing, and will provide a copy of the PSI report and subsequent correspondence to TJAG, ATTN: DAJA–SC.

(2) If the report shows that only a minor or technical violation occurred, the senior supervisory JA may determine that counselling is appropriate. In this case, the senior supervisory JA will coordinate with the Chief, SOCO, and refer a copy of the PSI report to the subject for comment (see *b* below). Thereafter, the senior supervising JA will ensure that the counselling takes place, will inform the complainant, if any, in writing that final action under this chapter has been taken, and will provide a copy of the PSI report and subsequent correspondence to TJAG, ATTN: DAJA–SC. The finding of even a minor or technical violation may trigger a reporting requirement imposed by subject's licensing authority, even if initiation of a PSI did not require a report by the subject to his or her licensing authority. It is the responsibility of the subject to know and comply with the reporting requirements of his or her licensing authority.

(3) If the report shows that more than a minor or technical violation occurred, the senior supervisory JA will refer the PSI report to TJAG, ATTN: DAJA–SC, for further action.

b. At the time a case is coordinated with the Chief, SOCO, under *a*(1) or (2) above, OTJAG may assume the case and take further action, as deemed appropriate under the circumstances.

7–6. Action at OTJAG

a. If action is to be taken at OTJAG, a copy of the PSI file will be referred to the subject for comment. The subject will be given a reasonable time (normally 14 to 21 days) to provide comments; the Chief, SOCO, may grant extension(s) for good cause, for example, for reasons beyond the subject's control. Failure to provide comments in the time provided, or any extension thereof, will constitute waiver of the opportunity to comment.

b. In any case in which action is to be taken at OTJAG, the Chief, SOCO will provide the file, with a memorandum of advice, to TAJAG or, in his absence, an AJAG (as designated by TAJAG). TAJAG, or the designated AJAG, can:

(1) Return the file to the senior supervisory JA for further inquiry or consideration;

(2) Appoint a new inquiry officer for a supplemental inquiry;

(3) Determine there was no violation and return to the Chief, SOCO, to close and notify the subject of such action;

(4) Determine that the violation is minor or technical and either take appropriate action or direct referral to the appropriate senior supervisory JA or other supervisory lawyer for specified action;

(5) Determine that a substantial violation is clearly shown, take appropriate action on that violation, and then refer the file to TJAG for possible referral to a state or local bar; or,

(6) Determine that a substantial violation appears to have been committed and refer the file to the PRC for opinion; upon receipt of an opinion, take action, as appropriate, under (3) thru (5) above.

c. The subject lawyer will be advised by the Chief, SOCO, of the referral to TJAG under *b*(5) above, or to the PRC under *b*(6) above, in order to provide the attorney with the opportunity to comply with any applicable reporting requirements of his or her licensing authority.

d. Upon completion of action at HQDA, the Chief, SOCO, will advise the complainant, if any, that an inquiry was conducted.

7–7. Professional Responsibility Committee (PRC)

a. Mission.

(1) A PRC may be convened to advise TJAG on alleged or suspected violations of professional ethical standards. When performing this function, the PRC has no investigative powers and will neither allow appearances by, nor communicate directly with, the subject attorney, counsel or witnesses. The PRC will report any attempts by such parties to communicate with it to the Chief, SOCO.

(2) A PRC may be convened to provide an advisory opinion to TJAG or a member of the JALS. A PRC advisory opinion is not an authoritative Army interpretation of the Army Rules (Rule 9.1(a), app B, AR 27–26), but is binding on personnel under TJAG's jurisdiction until an authoritative opinion is issued by the DA Professional Conduct Council. Requests for advisory opinions by a member of the JALS should be forwarded through technical channels to OTJAG, ATTN: DAJA–SC. Forwarding JAs will provide their recommendations as to whether the request should be submitted to the PRC. TAJAG (or TJAG) will make the final decision on referral to the PRC and publication of the resulting opinion. This procedure will be followed when an Army lawyer under TJAG's jurisdiction desires an authoritative interpretation of the Army Rules by the DA Professional Conduct Council (Rule 9.1(e)–(f), app B, AR 27–26).

b. Composition. The PRC will consist of six "permanent" members appointed by TJAG for terms of two years and of any ad hoc members appointed by TAJAG (or TJAG) for a particular case.

(1) The permanent members will be JAs in pay grades 06 or 05. Permanent members of the PRC will not be detailed to conduct a PSI during their tenure on the PRC.

(2) Ad hoc members will be appointed to a PRC when they possess expertise in a particular legal field or other expertise relevant to the matter being presented to the PRC normally not possessed by a permanent member of the PRC.

(3) When a case is referred to the PRC for advice or opinion, a panel of three members will be designated by the Chief, SOCO, from among the permanent members. If special expertise requiring an ad hoc member is required, the Chief, SOCO will select two permanent members and obtain appointment of the ad hoc member by TAJAG (or TJAG). When the conduct of a MJ is being considered, the majority of the PRC will be MJs. If a MJ is to be placed on the PRC as an ad hoc member, the Chief, SOCO, will request nominations from the Chief, U.S. Army Judiciary. In the case of refusal, illness or military necessity, a member may be replaced by the authority who originally placed him or her on the panel.

(4) If practicable, the members of the PRC asked to review the alleged or suspected violation of the ethical standards by an attorney should be senior to that attorney, for example, the officers should be senior in rank to an officer under review and a civilian member should be in a higher pay grade than a civilian under review.

(5) When asked for an advisory opinion, the members do not have to be senior to the person requesting the opinion.

(6) In unusual circumstances, TAJAG (or TJAG) may appoint a special panel of the PRC to consider a single case.

(7) Each panel will have an executive secretary, appointed from SOCO, to ensure administrative support to the panel.

c. Procedures. The senior permanent member on the panel will serve as President; two members, including the President, constitutes a quorum. The panel will meet at the call of the President, who will assign responsibilities for research and writing to panel members, and establish other operating procedures necessary to accomplish the panel's mission within the time prescribed.

d. Opinions.

(1) Advisory opinions will be in memorandum form and addressed through TAJAG to TJAG.

(2) Opinions on alleged or suspected violations of professional ethical standards will be in the format prescribed by the Chief, SOCO, will make specific findings and recommendations, and will be addressed thru the Chief, SOCO, to TAJAG. A member dissenting from the opinion of the other two members may file a minority opinion in any case.

(3) If the PRC determines that it has insufficient information on which to base an opinion, it will so advise the Chief, SOCO. If available, the needed information will be obtained and provided to the PRC.

7–8. Action by The Judge Advocate General

a. General.

(1) Advisory opinions prepared by the PRC will be reviewed by TJAG, who will decide if and how the opinions will be published.

(2) Upon receipt of an opinion related to alleged or suspected violations of professional ethical standards and the PSI file, TJAG will determine the appropriate action to be taken. In this regard, TJAG is not bound by the findings or recommendations of the PSI officer, the senior supervisory JA, a subordinate within OTJAG or the PRC. Before reporting an attorney's conduct to his or her licensing authority, or taking any action which does not, under other regulations, provide for notice and the opportunity to comment, TJAG will advise the subject attorney of the contemplated action and give him or her not more than ten days to show cause why TJAG should not take such action. Once decided, TJAG will announce his or her decision in an appropriate form.

b. Finality. Any action taken by TJAG is final and not subject to appeal unless such action is under the purview of another regulation which provides for an appeal.

c. Report to bar. Upon determining that a violation of professional ethical standards has occurred, TJAG may cause the Chief, SOCO to report that fact to the licensing authorities of the attorney concerned, if warranted by the seriousness of the violation.

7–9. Release of Information

a. Professional conduct files contain sensitive personnel information which is compiled for the purpose of internal management, administration, and regulation of the delivery of legal services by offices under the jurisdiction of TJAG. Requests for information will be processed according to AR 25–55 and AR 340–21; releases of information will be coordinated with HQDA (DAJA–SC). The Chief, SOCO has been delegated the initial denial authority by TJAG for all professional conduct files.

b. Every substantiated allegation under this chapter, and any other substantiated information that is determined by TAJAG (or TJAG) to be relevant to an individual's potential as a member of the JALS, will be documented (normally by a final action document) in the individual's Career Management Individual File (CMIF). Such documents will be available to assignment managers and TJAG for all future personnel actions, subject to constraints imposed by the Secretary with regard to HQDA selection boards.

c. The requirements of AR 600–37, paragraph 3–6 (for example, referral of information to the subject, [to include notice of the intended location for filing of the information], and rebuttal or acknowledgment), will be complied with in any case in which documentation relating to professional conduct is to be filed in the CMIF of a member of the JALS.

7–10. Reporting requirements

a. Any attorney governed by this regulation will promptly report to OTJAG, ATTN: DAJA–SC, upon being notified that he or she is being investigated by his or her licensing authority under circumstances which could result in the attorney being disciplined as an attorney or a judge. Reportable discipline does not include censure by a judge during a judicial proceeding unless made a matter of record in the proceeding.

b. In a matter that involves the U.S. Army, prior to reporting any alleged or suspected violation of ethical standards to the governing body of an attorney, any member of the JALS will inform OTJAG, ATTN: DAJA–SC, through normal technical channels, regardless of whether the attorney concerned is subject to the Army Rules of Professional Conduct for Lawyers.

Chapter 8
Mismanagement Inquiries

8–1. General

This chapter establishes the procedures for processing allegations of mismanagement in Army legal offices which are under the technical supervision of TJAG.

8–2. Scope

a. Mismanagement involves any action or omission, either intentional or negligent, which adversely affects the efficient and effective delivery of legal services, any misuse of government resources (personnel and material), or any activity contrary to operating principles established by Army regulations or TJAG policy memoranda. Mismanagement does not include mere disagreements over management "styles," or isolated instances of matters which have their own clear course of appeal and resolution (for example, an OER or NCOER appeal) or which are purely discretionary (for example, an award recommendation).

b. Allegations of mismanagement will only be considered if made against a member of the JALS who, at the time of the alleged mismanagement, was actually serving in a supervisory capacity. It includes commissioned and warrant officers, enlisted personnel and civilian personnel who meet the above criteria.

c. If a complaint of mismanagement made against an attorney subject to this regulation is coupled with an allegation of a violation of professional ethical standards, any inquiry will be governed by the procedures set forth in chapter 7 of this regulation.

8–3. Procedures

a. Complaints. Supervisory lawyers at all levels are responsible for reviewing complaints of mismanagement to determine if they meet the criteria of paragraph 8–2 above, and are credible (see para 7–2*b* above). If so, the complaint will be reported to the Executive, OTJAG.

b. Inquiry. Upon receipt of a credible complaint of mismanagement, the Executive will refer it to the Chief, SOCO for inquiry.

(1) As the designee of TJAG, the Chief, SOCO is authorized to task one or more JAs as inquiry officer(s) to conduct (or cause to be conducted) an inquiry into the complaint, using the informal procedures of AR 15–6, as modified herein.

(2) Normally, complaints of mismanagement will be referred by SOCO to the appropriate MACOM SJA for purposes of conducting the inquiry. The MACOM SJA may appoint a subordinate as a fact-finder for this inquiry.

(3) The inquiry officer should normally be senior to the subject of the inquiry, and have had a recent assignment in a supervisory position. When the conduct of a trial or appellate MJ is being investigated, the inquiry officer will be a current MJ.

(4) The inquiry officer will conduct a complete inquiry of the complained activities; the statements of witnesses, at a minimum, will be preserved in summarized form, signed by either the witness or the inquiry officer. Findings will be based on a preponderance of the evidence standard of proof. Under this standard, findings must be supported by a greater weight of the evidence than supports a contrary conclusion, that is, the evidence points to a particular conclusion as being more credible and probable than any other conclusion.

(5) The report of the inquiry officer will be forwarded through technical channels to TJAG, ATTN: DAJA–SC, except as provided in *c* below.

c. Action below HQDA. If the inquiry officer's report concludes that the complaint against a supervisor, other than a staff or command judge advocate or the deputy of such officer, is unfounded or

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Chapter 1
Introduction

1–1. Purpose
This regulation prescribes the policies and procedures pertaining to the administration of military justice and implements the Manual for Courts-Martial, United States, 1984; hereafter referred to as the MCM and the Rules for Courts-Martial (R.C.M.) contained in the MCM.

1–2. References
Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms
Abbreviations and special terms used in this regulation are explained in the glossary. See also R.C.M. 103 for definitions of terms used in the MCM.

1–4. Responsibilities
a. The Judge Advocate General (TJAG) is responsible for the overall supervision and administration of military justice within the Army.

b. The Chief Trial Judge, U.S. Army Judiciary, as designee of TJAG, is responsible for the supervision and administration of the U.S. Army Trial Judiciary and the Military Magistrate Program.

c. The Chief, U.S. Army Trial Defense Service (USATDS), as designee of TJAG, is responsible for the detail, supervision, and control of defense counsel services within the Army.

Chapter 2
Investigation and prosecution of crimes over which the Department of Justice and the Department of Defense have concurrent jurisdiction

2–1. General
a. This chapter implements a Memorandum of Understanding (MOU) (August 1984) between the Department of Defense (DOD) and the Department of Justice (DOJ) delineating the areas of responsibility for investigating and prosecuting offenses over which the two departments have concurrent jurisdiction. The text of the memorandum is quoted in paragraph 2–7 of this regulation.

b. The MOU applies only within the United States and its possessions and only to those offenses that are triable in the U.S. district courts.

c. Notwithstanding any other provisions of this chapter, paragraph 2–4*d* of this regulation shall apply within and outside the United States and its possessions.

2–2. Local application
Decisions with respect to the provisions of the MOU will, whenever possible, be made at the local level between the responsible DOJ investigative agency and the local military commander (para D.1. of the MOU). If an agreement is not reached at the local level, the local commander will (if he or she does not exercise general court-martial (GCM) jurisdiction) promptly advise the commander exercising GCM jurisdiction over his or her command. If the commander exercising GCM jurisdiction (acting through his or her staff judge advocate (SJA)) is unable to effect an agreement, the matter will be reported to Headquarters, Department of the Army, Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200.

2–3. Action by convening authority
Before taking any action with a view toward court-martial, courts-martial convening authorities will ensure that Federal civilian authorities are consulted under the MOU in cases likely to be prosecuted in the U.S. district courts.

2–4. Grants of immunity
a. General. Grants of immunity may be made under the Uniform Code of Military Justice (UCMJ), R.C.M. 704, and directives issued by the Secretary of the Army (SA), subject to the guidance set forth in this paragraph.

b. Persons subject to the UCMJ. The authority of courts-martial convening authorities extends only to grants of immunity from action under the UCMJ. However, even if it is determined that a witness is subject to the UCMJ, the convening authority should not grant immunity before determining under the MOU that the DOJ has no interest in the case.

c. Persons not subject to the UCMJ. If a prospective witness is not subject to the UCMJ or if DOJ has an interest in the case, the grant of immunity must be issued under 18 USC §6001–6005. In those instances, the following procedures are applicable:

(1) Draft a proposed order to testify for the signature of the GCM convening authority (GCMCA). Include in the requisite findings that the witness is likely to refuse to testify on Fifth Amendment grounds and that the testimony of the witness is necessary to the public interest. Forward the unsigned draft to the Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200 for coordination with DOD and DOJ, and approval by the Attorney General.

(2) Include the following information in the request, if available:

(a) Name, citation, or other identifying information of the proceeding in which the order is to be used.

(b) Name and social security number of the individual for whom the immunity is requested.

(c) Name of the employer or company with which the witness is associated.

(d) Date and place of birth of the witness.

(e) Federal Bureau of Investigation (FBI) number or local police number, if any.

(f) Whether any State or Federal charges are pending against the prospective witness and the nature of the charges.

(g) Whether the witness is currently incarcerated and if so, under what conditions and for what length of time.

(h) Military status and organization.

(i) Whether the witness would be likely to testify under a grant of immunity thus precluding the use of the testimony against him or her.

(j) Factual basis supporting the finding that the witness is likely to refuse to testify on Fifth Amendment grounds.

(k) General nature of the charges to be tried in the proceeding at which the witness' testimony is desired.

(l) Offenses, if known, to which the witness' testimony might tend to incriminate the witness.

(m) The anticipated date on which the order will be issued.

(n) A summary of the expected testimony of the witness concerning the particular case in issue.

(3) If the Attorney General has authorized a grant of immunity, furnish the following information through Criminal Law Division, The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310–2200, to the Witness Record Unit, Criminal Division, Department of Justice, Washington, DC 20530, after the witness has testified, refused to testify, or the proceedings have been terminated without the witness being called to testify:

(a) Name, citation, or other identifying information of the proceeding in which the order was requested.

(b) Date of the examination of the witness.

(c) Name and address of the witness.

(d) Whether the witness invoked the privilege against self-incrimination.

(e) Whether the immunity order was issued.

(f) Whether the witness testified pursuant to the order.

(g) If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded.

d. Cases involving threats to U.S. national security. A proposed

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(c) Preside over each court-martial to which they have been detailed, to include performance of all judicial duties imposed or authorized by the UCMJ or the MCM.

(2) The military judge's judicial duties include, but are not limited to—

(a) Calling the court into session without the presence of members to hold the arraignment.

(b) Receiving pleas and resolving matters that the court members are not required to consider (Art. 39(a), UCMJ).

(c) Entering findings of guilty based upon providently entered pleas of guilty immediately without a vote.

(d) Ruling on requests for continuances.

(e) Conducting post-trial sessions under R.C.M. 1102.

(3) The purpose of an Article 39(a), UCMJ, session is to dispose of all matters not requiring the attendance of the members of the court. To achieve the maximum use of such a session, the military judge must ensure that counsel have due notice of the session and sufficient time to prepare for the disposition of matters that must or should be considered.

(4) Military judges assigned to the U.S. Army Trial Judiciary may—

(a) Perform magisterial duties according to chapter 9 of this regulation.

(b) Issue authorizations on probable cause under chapter 9 of this regulation.

(c) After DOD approval of a request for authorization, receive applications for nonconsensual wire and oral communication intercept authorization orders and determine whether to issue such orders, according to AR 190–53.

(d) Conduct hearings pursuant to AR 190–47 to determine whether an inmate at the USDB suffers from a mental disease or defect that requires inpatient psychiatric care or treatment beyond that available at the USDB.

(e) Conduct training sessions for trial and defense counsel.

(f) Serve as fact finders in debarment and suspension proceedings involving Government contracts.

(g) Conduct investigations, hearings, or similar proceedings as may be directed by TJAG.

b. Summary courts-martial. A military judge may be detailed a SCM if made available by the Chief Trial Judge or Chief Trial Judge's designee.

c. Courts-martial composed of a military judge only.

(1) A military judge who is detailed to a court-martial must be satisfied that an accused's request for trial by a court-martial consisting only of a military judge has been made knowingly and voluntarily. After a full inquiry into the accused's understanding of the request, the military judge should grant the request, absent unusual circumstances. If the trial counsel desires to contest the appropriateness of a trial by military judge alone, the military judge should hear arguments from trial and defense counsel before deciding the issue (R.C.M. 903).

(2) In addition to duties and functions performed when sitting with members (except those relating to instructions), the military judge, when sitting as a court consisting of only a military judge, will—

(a) Rule on all questions of fact arising during the proceedings.

(b) Determine the guilt or innocence of the accused in the form of general findings (and will make special findings when required or otherwise appropriate (Art. 51(d)).

(c) If the accused is convicted, adjudge an appropriate sentence.

d. Administrative responsibilities. Each military judge is responsible for—

(1) Maintaining an orderly trial calendar that will make efficient use of available time and provide to the maximum extent possible for scheduling of trials as requested by convening authorities.

(2) Submitting required reports, including the prompt, accurate, and complete submission of the Military Judge Case Report (JAG–72) to the Clerk of Court (ATTN: JALS-CC), Nassif Building, Falls Church, VA 22041–5013.

(3) Cooperating closely with SJAs and military judges in the circuit. The military judge must exercise every legitimate and appropriate effort to assist convening authorities in the expeditious handling of court-martial cases, while taking care to avoid any act that may be a usurpation of the powers, duties, or prerogatives of a convening authority or the convening authority's staff.

(4) Seeking necessary assistance through the judicial administrative channels specified in paragraph 8–6*b* in case of conflict in trial dates or in any other situation when another military judge may be required. In addition, the military judge with primary responsibility for a GCM jurisdiction will detail a judge within such a military judge's area of responsibility to preside over cases referred for trial in each subordinate SPCM jurisdiction. The military judge with primary responsibility for a GCM jurisdiction will, when necessary, obtain the detail of military judges by conferring with the chief circuit military judge as provided in paragraph 8–6*b* below.

8–5. Responsibilities of the chief circuit military judge

The chief circuit military judge is the senior military judge in a judicial circuit or other judge designated by the Chief Trial Judge and is responsible for—

a. General administration of the Military Judge Program within the judicial circuit.

b. Recommendations to the Chief Trial Judge relating to the operation of the program within the circuit.

c. Determining which GCM jurisdictions will be the primary responsibility of the GCM military judges within the circuit.

d. Obtaining and detailing a replacement military judge assigned to the U.S. Army Trial Judiciary and located within the circuit. If none is available, making an immediate request for a replacement to the Chief Trial Judge when the military judge assigned to the U.S. Army Trial Judiciary primarily responsible for a court-martial jurisdiction is temporarily unavailable.

e. Determining the rater, intermediate rater, and senior rater as required for OERs concerning military judges and, where appropriate, for magistrates within the circuit.

f. Designating supervising military judges for part-time military magistrates (chap. 9) and SPCM military judges.

g. Ensuring that individual mobilization augmentee military judges receive adequate assistance in performing annual training.

8–6. Detailing of military judges

a. Authority to detail military judges (R.C.M. 503(b)). The Chief Trial Judge is authorized to detail military judges for courts-martial. This authority may be delegated to GCM military judges (see para 5–3).

b. Detail of military judges within GCM jurisdictions.

(1) The GCM military judge who is designated as primarily responsible for a GCM jurisdiction (para 8–5*c*) will—

(a) Normally be detailed to preside over the GCM convened in that jurisdiction.

(b) Be responsible for arranging for a replacement or additional judge support if he or she is unavailable or determines that a need exists for assistance in disposing of court-martial cases referred to trial.

(2) When the GCM military judge is unavailable as a point of contact, the convening authority or the convening authority's delegate will request the chief circuit military judge to provide and detail a replacement. If the chief circuit military judge is unable to satisfy the request from the military judges within the circuit, the chief circuit military judge will request a replacement from the Chief Trial Judge. The judge who details the replacement judge will cause the convening authority to be informed immediately, normally through the SJA, of the name of the replacement judge and the date of availability.

(3) For cases of SPCM—

(a) The GCM military judge designated as primarily responsible for a GCM jurisdiction (para 8–5*c*) will designate himself or herself or another military judge (assigned to the U.S. Army Trial Judiciary within that GCM military judge's area of responsibility) as primarily

responsible for each SPCM jurisdiction included in the GCM jurisdiction. The military judge so designated will normally be detailed to preside over the SPCMs convened in the jurisdiction.

(b) When the designated military judge is not available, the GCM judge who designated the unavailable military judge will select and detail a replacement from the military judges assigned to the U.S. Army Trial Judiciary within the GCM judge's area of responsibility. If no such replacement judge is available within the area, the GCM judge will request that the chief circuit military judge provide a replacement. If the chief circuit military judge is unable to find and detail an available judge among the military judges assigned to the U.S. Army Trial Judiciary within the chief circuit military judge's circuit, the circuit judge will request a replacement from the Chief Trial Judge. The Chief Trial Judge will endeavor to find and detail a replacement from judges assigned to the U.S. Army Trial Judiciary.

c. Processing requests for replacement judges. Requests and responses to requests will be transmitted by the quickest available means, normally by telephone.

d. Docketing. The GCM military judge designated as primarily responsible for a GCM jurisdiction pursuant to paragraph 8–5c above will oversee docketing and calendar management within that jurisdiction. As part of the docketing responsibility, the GCM military judge will record anticipated leaves and other foreseeable absences of military judges so as to permit requests for replacements as soon as possible.

e. Cross-servicing.

(1) Nothing in this regulation precludes the detail of a military judge from another armed service who has been made available for detail to either a GCM or SPCM, provided that such military judge has been certified by the Judge Advocate General of the military judge's armed service. For administrative control, the concurrence of the Chief Trial Judge will be obtained before the judge is detailed.

(2) Army military judges may preside at courts-martial of other services, under R.C.M. 201(e)(4). For administrative control, the concurrence of the Chief Trial Judge should be obtained before the judge is detailed.

8–7. Administrative and logistical support

a. Duty station. Commands selected as duty stations will provide administrative and logistical support for military judges to include—

(1) Permanent quarters for each military judge and the judge's family members to the same degree as are provided regularly assigned officers of like grade and similar responsibility.

(2) Preparation of pay vouchers and payment of military judges.

(3) Assistance and maintenance of military personnel records, officer qualification records, and all other personnel requirements.

b. Duty and other stations. Commands selected as duty stations and commands at or near a location where a military judge is to preside over a trial will provide such administrative and logistical support for military judges as may be necessary in the performance of the judge's duties, including—

(1) Private office space.

(2) Office furniture, equipment, and supplies.

(3) Access to legal research publications and facilities.

(4) Class A telephone service.

(5) Stenographic, clerical, and administrative assistance as required for the expeditious performance of duties (chief circuit judges will be provided a clerk from the U.S. Army Trial Judiciary).

(6) Army transportation facilities, including aircraft, as far as is practicable.

(7) Issuance of such TDY orders, at the request of the military judge concerned, as may be necessary in the exercise of the judge's duties, as follows:

(a) Authority for commanders to issue TDY orders for travel of military judges within Continental United States (CONUS) and to issue TDY orders involving travel of military judges from locations within CONUS to destinations outside CONUS is governed by AR 600–8–105.

(b) Where AR 600–8–105 does not delegate authority to commanders to issue TDY orders for military judges assigned to the U.S. Army Trial Judiciary for travel from locations within CONUS to areas outside CONUS, orders will be issued by HQDA when travel to destinations outside CONUS is necessary.

(c) Orders for travel outside CONUS will direct use of military aircraft when available and authorize use of other modes in case military aircraft is not available. When a court-martial case has been scheduled for trial on a certain date, the military judge who has been detailed to preside at the trial must arrange travel so as to arrive in sufficient time before commencement of the trial. Military aircraft generally will be considered not available whenever such aircraft cannot arrive at the place of the trial within a reasonable time before the date of the trial, usually 1 day preceding such date. The military judge concerned should be authorized commercial air transportation under such circumstances.

(d) Orders will state that authority is granted to make such changes in itinerary and to proceed to such additional places as may be necessary to accomplish the assigned mission.

(e) Travel costs and per diem for all military judges assigned to the U.S. Army Trial Judiciary will be budgeted and funded by USALSA.

c. Leaves and passes.

(1) Request for leaves and passes by military judges assigned to the U.S. Army Trial Judiciary will be forwarded within judicial administrative channels as follows:

(a) By military judges within a circuit to the chief circuit military judge or the chief circuit judge's designee.

(b) By chief circuit military judges to HQDA (JALS-TJ), Nassif Building, Falls Church, VA 22041–5013.

(2) In emergency situations, clearance may be obtained by electronically transmitted message or telephone. It will be assumed, unless affirmatively noted, that a requested absence will not interfere with the timely administration of military justice.

8–8. Rules of court

TJAG authorizes the Chief Trial Judge under R.C.M. 108 to promulgate local or general rules of court. This authority may be delegated by the Chief Trial Judge to chief circuit judges.

Chapter 9
Military Magistrate Program

Section I
General

9–1. Scope

a. This chapter establishes the Army-wide Military Magistrate Program. It authorizes and specifies procedures for the appointment and assignment of military magistrates and for their use to review pretrial confinement (R.C.M. 305(c)). It implements the Military Rules of Evidence (MRE), Rules 315 and 316, Part III, MCM and R.C.M. 302(e)(2), by authorizing military judges and magistrates to issue necessary search and seizure authorizations on probable cause.

b. There is no relationship between the Military Magistrate Program and DA's implementation of the Federal Magistrate System to dispose judicially of uniform violation notices and minor offenses committed on military installations (AR 190–29).

c. The Military Magistrate Program is an Army-wide program for review of pretrial confinement and the issuance of search and seizure authorizations, on probable cause, by neutral and detached magistrates.

d. A military magistrate is a JA empowered to direct the release of persons from pretrial confinement, or to recommend release from confinement pending final disposition of foreign criminal charges, on a determination that continued confinement does not meet legal requirements, and to issue search and seizure authorizations on probable cause.

e. An assigned military magistrate is a JA appointed by TJAG or

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(2) Religious education.
(3) Pastoral counseling.
(4) Staff writing.
(5) Staff officer.
(6) Supervision of other chaplains and staff.
(7) Staff and parish development.
(8) Pastoral visitation of troops and families.
(9) Human relations and small group ministry.
(10) Program or project management.
(11) Administration.
(12) Civilian community relations.
(13) Reserve component chaplain coordinator.
(14) Resource management.
(15) Unit ministry team leader.

c. Parts Vb, VI, VIIc. If the rated chaplain is well qualified for advanced professional (civilian) training, identify no more than two areas for which he or she should be recommended using the list in paragraph a above.

d. Parts Vb, VI, VIIc. If appropriate, cite instances of the chaplain's specific performance using paragraph C-7.

e. Chaplains participating in the CPE or Family Life Chaplain Training Supervisory in Training (SIT) program will receive an AER for the first year in the SIT program and OERs for subsequent evaluations during the SIT program.

Appendix D
Special Considerations for Rating JAGC Officers

D–1. Overview.

Judge Advocate General's Corps (JAGC) officers perform unique duties within the Army. They are officer lawyers and are subject to the same evaluation concepts as other officers. When being evaluated, they should be viewed under a "whole officer" concept and not as a "lawyer only." JAGC officers are staff officers and perform duties as advisors and advocates or counsel. In providing professional legal advice or service, judge advocates must at times advance opinions that are contrary to the views of others. As lawyers, they are bound by a strict code of professional responsibility that provides standards for the legal profession. Rating officials must be mindful of these responsibilities and evaluate JAGC officers accordingly.

D–2. Evaluation of JAGC officers

a. Only The Judge Advocate General (TJAG), The Assistant Judge Advocate General (TAJAG), and commissioned officers of the US Army judiciary may serve as rater, intermediate rater, or senior rater of a JAGC officer assigned to the US Army judiciary as a military judge or to the US Army Legal Services Agency as a military magistrate.

b. No convening authority or any member of his or her staff may evaluate a JAGC officer assigned additional duties as a military judge or as military magistrate on the performance of his or her duties in that capacity.

c. No rating official will give an adverse or less favorable rating or comment regarding a rated officer because he or she zealously represented as counsel any accused or respondent before court-martial or administrative board proceedings.

D–3. Evaluating officer detailed to on-the-job training

a. Officers attending law school under TJAG's Funded Legal Education Program must be evaluated for periods of on-the-job training, as described in paragraph 3-49. When evaluating these officers, consider their grade, experience, and schooling. They must not be compared with experienced lawyers.

b. For officers taking part in the Funded Legal Education Program, the following entry will be placed in part IIIe of DA Form 67-9: "Officer is a full-time, active-duty student attending law school at Government expense under AR 27-1. On-the-job training continues in the summer when school is not in session."

D–4. Initial tour of extended active duty (See para 3-47)

A report will be rendered upon completion of 120 duty days as a JAGC officer, regardless of prior service in other than JAGC, in a principal duty assignment under a single rater. This applies only if no report has been made during the current period of service. This applies to officers who complete law school under TJAG's Funded Legal Education Program (AR 27-1). Officers programmed for attendance at an officer basic course will not be rated under this paragraph before attending the course.

D–5. JAGC officers assigned to the US Army Trial Defense Service.

These officers are not considered to be under dual supervision (para 2-22).

Appendix E
Evaluation of U.S. Army Medical Department Officers

E–1. The OER has a unique purpose when used to evaluate the performance and potential of Medical Corps (MC), Dental Corps (DE), Veterinary Corps (VC), Army Nurse Corps (AN), Medical Specialist Corps (SP), Medical Service Corps (MS) resident, intern, and fellowship students in graduate health education. Therefore, it should be given primary emphasis in the evaluation process. Special instructions for rating MC, DE, VC, AN, SP, and MS residents, interns, and fellowship students are specified below.

a. The evaluation forms will be completed as prescribed in chapter 3 unless indicated otherwise in this appendix.

b. DA Form 67-9-1, OER Support Form:

(1) Part I will be completed by the PSB or administrative office. The duty title should be specific (e.g., intern, first year surgical resident, dietetic intern, dental general practice resident, veterinary preceptorship, clinical pathology).

(2) Part II will be completed by the PSB or administrative office. The duty AOC for this assignment will reflect the specialty for which the rated officer is being trained.

(3) Part III should describe the program goals (to include academic and practicum requirements) and achievements during the rating period.

(4) Part IV will include comments by the rater and intermediate rater (if any) for the senior rater.

c. DA Form 67-9 will be completed in accordance with section IV of chapter 3.

(1) Part I, item f. Designated Specialty. This entry will be the specialty for which the ratedofficer is being trained.

(2) Part II, Authentication. Complete in accordance with paragraph 3-17.

(3) Part III, Duty Description.

(a) Item a, Principal Duty title. The duty title should parallel the duty title shown on the DA Form 67-9-1.

(b) Item b, Duty AOC. Enter the specialty for which the rated officer is being trained.

(c) Item c, Place an "X" in the applicable box.

(d) Item d, Leave blank.

(e) Item e, Duty Description. This portion allows the rater to describe the rated officer's program, to include academic and practicum requirements during the rated period. Most raters will use Part IIIa of DA Form 67-9-1 to help them complete this section. This information is particularly important to DA selection boards; therefore, raters will record it with thought and detail.

(4) Part IV, Performance Evaluation-Professionalism.

(a) Item a, Army Values. The rater completes this item. It lists values that define professionalism for the Army officer (para 3-19). Evaluation of each value should be in the context of the graduate

USALSA TDA - FACES AND SPACES

14-Oct-1999

PARALINE	DYTITLE	NAME	AUTHGR	MOS	BB	AMS	MDEP	REQ	AUTH	REMARKS
004B										
004B 00	RECORDS CONTROL BRAN									
004B 01	SUPV CLK COURT EXAM		10	00945	GS	43521200BYA	FAJA	1	1	TS
004B 02A	LEGAL TECH (OA)	SILVA, NANCY M.	07	00986	GS	43521200BYA	FAJA	5	4	TX
004B 02B	LEGAL TECH (OA)	GRAHAM, JOAN	07	00986	GS	43521200BYA	FAJA			TX
004B 02C	LEGAL TECH (OA)	FOUNTAIN, MAUREEN A.	07	00986	GS	43521200BYA	FAJA			TX
004B 02D	LEGAL TECH (OA)	POINTER, PATRICIA C.	07	00986	GS	43521200BYA	FAJA			TX
004B 03	CODING CLERK	HASTY, GINA M.	05	00357	GS	43521200BYA	FAJA	2	1	TX
004B 04	LEGAL CLERK	MURDOCK, BRUCE	05	00986	GS	43521200BYA	FAJA	3	1	TX
								11	7	
005										
005 00	TRIAL JUDICIARY									
005 01	CHIEF	SMITH, GARY W.	06	55B00	JA	43609900BYA	FAJA	1	1	TS
005 02	MILITARY JUDGE	JOHNSTON, PAUL L.	06	55B00	JA	43609900BYA	FAJA	1	1	TA
005 03	MILITARY JUDGE	WILKINS, DONNA L.	05	55B00	JA	43609900BYA	FAJA	2	1	TA
005 04	CHIEF, LEGAL NCO	TZUL, GERALDINE M.	E8	71D50	NC	43609900BYA	FAJA	1	1	TA
005 04Z	EXCESS (90 Day Loss)									
005 05	SR LEGAL NCO		E7	71D40	NC	43609900BYA	FAJA	4	0	TA
005 06	LEGAL ASSISTANT	GOICO, ESPERANZA	07	00986	GS	43609900BYA	FAJA	1	1	TX
								10	5	

USALSA TDA - FACES AND SPACES

14-Oct-1999

PARALINE	DYTITLE	NAME	AUTHGR	MOS	BR	AMS	MDEP	REQ	AUTH	REMARKS
005A										
005A 00	JUD FIELD									
005A 01A	MILITARY JUDGE	HOLLAND, GARY J.	06	55B00	JA	43609900BYA	FAJA	24	15	TA
005A 01B	MILITARY JUDGE	SAYNISCH, STEPHEN V.	06	55B00	JA	43609900BYA	FAJA			
005A 01C	MILITARY JUDGE	PARRISH, PATRICK J.	06	55B00	JA	43609900BYA	FAJA			
005A 01D	MILITARY JUDGE	PANGBURN, KENNETH D.	06	55B00	JA	43609900BYA	FAJA			
005A 01E	MILITARY JUDGE	HIGGINS, NANCY A.	06	55B00	JA	43609900BYA	FAJA			
005A 01F	MILITARY JUDGE	HENLEY, STEPHEN R.	06	55B00	JA	43609900BYA	FAJA			
005A 01G	MILITARY JUDGE	DIXON, THEODORE E.	06	55B00	JA	43609900BYA	FAJA			
005A 01G	MILITARY JUDGE	CLEVENGER, KENNETH H.	06	55B00	JA	43609900BYA	FAJA			
005A 01H	MILITARY JUDGE	HOLLAND, ROBERT F.	06	55B00	JA	43609900BYA	FAJA			
005A 01I	MILITARY JUDGE	SMITH, JAMES J.	06	55B00	JA	43609900BYA	FAJA			
005A 01J	MILITARY JUDGE	HODGES, KEITH H.	06	55B00	JA	43609900BYA	FAJA			
005A 01K	MILITARY JUDGE	CLERVI, FERDINAND D.	06	55B00	JA	43609900BYA	FAJA			
005A 01L	MILITARY JUDGE	GALLIGAN, JOHN P.	06	55B00	JA	43609900BYA	FAJA			
005A 01M	MILITARY JUDGE	BARTO, WILLIAM T.	06	55B00	JA	43609900BYA	FAJA			
005A 01N	MILITARY JUDGE	WHITE, RONALD W.	06	55B00	JA	43609900BYA	FAJA			
005A 01O	MILITARY JUDGE	WRIGHT, DONNA M.	06	55B00	JA	43609900BYA	FAJA			
								24	15	
006.										
006 00	EXAM NEW TRIALS DIV									
006 01	CHIEF EXAM NEW TRIALS		14	00905	GS	43521200BYA	FAJA	1	1	TS
006 01Z	CHIEF EXAM NEW TRIALS	MILLER, JOEL D.	06	55A00	JA	43521200BYA	FAJA	0	0	TS
006 02	SENIOR EXAMINER	COSGROVE, CHARLES A.	05	55A00	JA	43521200BYA	FAJA	1	0	TA
006 03	EXAMINER		03	55A00	JA	43521200BYA	FAJA	1	0	TA
006 04	SECRETARY (OA)		06	00318	GS	43521200BYA	FAJA	1	1	TX
								4	2	

SECTION

15

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

REPLY TO
ATTENTION OF

29 November 1993

DAJA-ZA

MEMORANDUM FOR COMMANDER, FORCES COMMAND, ATTN: FCJA, FORT MCPHERSON, GA 30331-5099

SUBJECT: Training, Employment, and Assignment Policy for Military Judge Teams

1. With the adoption of the L Series TOE, the number of USAR Training Program Unit (TPU) Military Judge Team positions increased from four to 45 in September 1993. Upon mobilization, Military Judge Teams will be employed as directed by the Chief Trial Judge, U.S. Army Trial Judiciary. During non-mobilization periods, these units are assigned to an Army Reserve Command (ARCOM) as subordinate functional teams of a Legal Support Organization (LSO). The Chief Trial Judge exercises technical supervision over Military Judge Teams.

2. The following policies are intended to establish clear lines of authority for administrative and operational requirements of Military Judge Teams:

a. General. Military Judge teams should be trained as they will be utilized upon mobilization. Every effort should be made to detail Reserve Military Judges to trials when practical.

(1) The Chief Trial Judge is delegated the authority to promulgate administrative, training, and assignment guidance. As subordinate units of an LSO, Military Judge Teams will comply with all administrative, training and assignment policies of their LSO/ARCOM to the extent those policies do not conflict with this memorandum.

(2) Military Judge Teams assigned to the Contingency Forces Pool (CFP) will receive priority training. Military Judges assigned to CFP teams should be detailed to preside over cases to the greatest extent practical.

(3) Inactive Duty Training (IDT) for Military Judge Teams will be coordinated with the LSO and Chief Trial Judge.

(4) LSO Commanders will identify potential Annual Training (AT) dates, locations, and missions for the Military Judge Teams assigned to them. The LSO Commander's Annual Training recommendations will be forwarded through the ARCOM Staff Judge Advocate to the CONUSA Staff Judge Advocate who will

not be in the rating chain, and Military Judges will not be placed under dual supervision. Military Judges will be rated by the Chief Trial Judge, Chief Circuit Judge, or a Circuit Judge. Military Judges will be senior rated by a Chief Circuit Judge, the Chief Trial Judge, or Chief Judge/Commander, United States Army Legal Services Agency. The rating officer will consider all active and inactive training periods, to include oral and written reports from Reserve Senior Military Judges, in preparing Officer Efficiency Reports.

3. Compliance with these policies and additional guidance promulgated by the Chief Trial Judge will enhance the mobilization preparedness of our Military Judge Teams.

4. This memorandum supersedes letter, DAJA-PT, 25 February 1987, Subject: Training, Employment, and Assignment Policy for Military Judge Teams (JAGSO Detachment Team KA).

Michael J. Nardotti, Jr.
MICHAEL J. NARDOTTI, JR.
Major General, USA
The Judge Advocate General

CF: Chief Judge/Commander, USALSA
Chief Trial Judge
Director, Guard & Reserve Affairs
SJA, USARC
Chief Judge, ACMR, (IMA, USAR)

comment and forward the packet, along with any appropriate comments and recommendations to the Office of the Chief Trial Judge. Annual training dates, locations, and missions will be determined by the Chief Trial Judge. The AT schedule for Military Judge Teams will be provided to the U.S. Army Reserve Command Staff Judge Advocate who will document the AT on the master annual training schedule published by the command.

b. Selection: As my designee, the Chief Trial Judge, U.S. Army Trial Judiciary, will select officers for assignment as Military Judges to Military Judge Teams. To commence the selection process, the USARC Staff Judge Advocate will ensure that qualified officers, including judge advocates assigned to the Individual Ready Reserve (IRR), receive timely notice of Military Judge Team position vacancies and procedures for submitting applications. After completing the application, candidates will forward the application packet for evaluation through the LSO, ARCOM SJA, USARC SJA, FORSCOM SJA, and the Director, Guard and Reserve Affairs, to the Chief Trial Judge for final action. When a vacancy is scheduled, the application process should be initiated at least six months prior to January of the year in which the vacancy is scheduled to occur. Unscheduled vacancies should be filled as they occur.

c. Certification: Reserve component judge advocates assigned to Military Judge positions must be certified by The Judge Advocate General (TJAG). TJAG certification requires satisfactory completion of the Military Judge Course with a 77 grade average and a favorable recommendation by the Chief Trial Judge. Individuals who do not successfully complete the Military Judge Course, or who complete the course but are not certified by TJAG, will be reassigned. Ordinarily Reserve component Military Judges will not be certified to try General Courts-Martial during non-mobilization periods; however, upon the recommendation of the Chief Trial Judge, TJAG may certify individual Reserve component Military Judges to try General Courts-Martial during such periods.

d. Tenure: During non-mobilization periods, Military Judges will be limited to a three year tenure.

e. Enlisted Support: Assignment of the legal NCO position on each Team will be approved by the Team's Military Judge and coordinated with the LSO Commander.

f. Officer Evaluation Reports: During both non-mobilization and mobilization periods, Military Judges will be rated strictly within judiciary channels. LSO commanders will

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USALSA ORGANIZATION

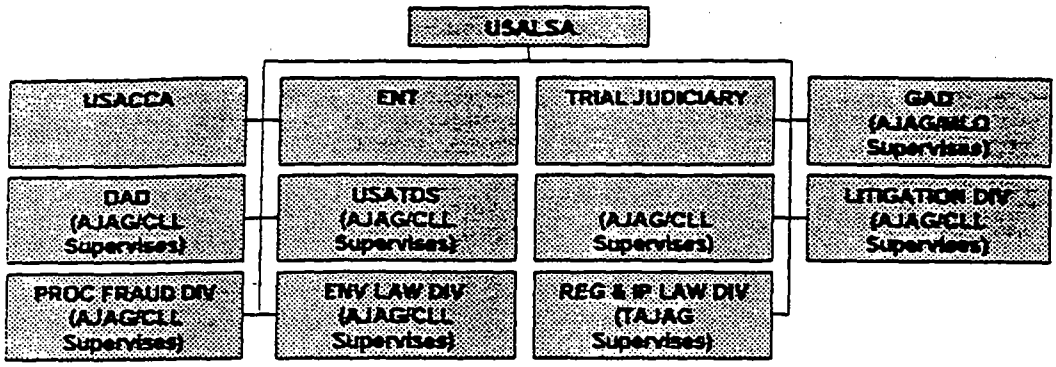

Figure 2-2

The Commander, USALSA, commands the organization, and as Chief, United States Army Judiciary, directly supervises the United States Army Court of Criminal Appeals, the United States Army Trial Judiciary, the Military Magistrate Program, and Examinations and New Trials Branch. USALSA includes:

- The United States Army Court of Criminal Appeals (ACCA). (The Commander, USALSA serves as the ACCA's Chief Judge. There is also an Individual Mobilization Augmentee Chief Judge.) The ACCA performs appellate review of courts-martial pursuant to Article 66, Uniform Code of Military Justice (UCMJ), when the approved sentence includes death, a punitive discharge, or confinement for one year or more, and considers certain petitions for new trials pursuant to Article 73, UCMJ.
- The United States Army Trial Judiciary, an element of the United States Army Judiciary, providing full-time military trial judges to preside over general and special courts-martial. The Chief Trial Judge supervises Military Judges and provides judicial support throughout the Army.
- The military magistrate program.
- Examinations and New Trials Branch, which examines all general courts-martial not reviewed by ACCA, processes petitions for new trials and extraordinary relief, and examines cases involving military commissions and courts of inquiry.
- The Litigating Divisions, which provide legal advice and litigation services in contract law, procurement fraud, environmental law, regulatory law, intellectual property law, civilian and military personnel law, torts, and other areas of law. AJAG/CLL exercises operational control over the Litigating Divisions.
- The United States Army Trial Defense Service (TDS), which provides defense legal services for

advocates support their units' federal mission to maintain properly trained and equipped units that are available for prompt mobilization, and state mission to provide trained and disciplined forces for domestic emergencies or as otherwise required by the state.

The Army National Guard judge advocate's dual status can be useful. For example, an Army National Guard judge advocate in state status could be permitted to provide assistance to civilian authorities when a judge advocate in federal status might be precluded from providing assistance due to the restrictions of the Posse Comitatus Act.

Military judges in the Army National Guard are trained and certified by TJAG similarly to the military judges in the Army and Army Reserve. While in state status, an Army National Guard military judge may, when authorized by applicable state law, preside over courts-martial convened under state law. Upon mobilization and federalization of an Army National Guard military judge, the Chief Trial Judge will review the Army National Guard military judge's training, background, experience, and qualities (demonstrated mature judgment and high moral character) to determine the officer's suitability to serve as a member of the Army Trial Judiciary. Army National Guard officers who qualify for such service may be assigned, as needed, to the Army Trial Judiciary.

2.1.6 U.S. Army Reserve Legal Organizations

Legal support in the U.S. Army Reserve consists of support embedded in U.S. Army Reserve units, such as in the judge advocate sections of Garrison Support Units (GSUs) designed to provide legal services to power projection platforms, and in ***Judge Advocate General Service Organizations (JAGSOs).***

JAGSOs are legal units that provide legal services to troops not otherwise provided organic legal support. Additionally, JAGSOs provide CONUS sustaining base support for mobilization, mobilization sustainment, and demobilization operations. JAGSOs consist of judge advocates, warrant officers, and enlisted legal personnel.

JAGSOs consist of modular teams that provide legal services in all core legal disciplines. JAGSO teams are an integral part of the Total Force and must maintain high standards of professional proficiency and military readiness. TJAG is responsible for the technical supervision, training, and assignment of JAGSO personnel. Training associations between active component and reserve component legal elements ensure quality training and seamless integration during mobilization.

Each type of JAGSO has specific capabilities. The ***Legal Support Organization (LSO)***, which is commanded by a judge advocate, provides operational control and technical supervision for as many as four Legal Services Teams (LST). An LSO will be assigned primary duties as a deploying or mobilization support unit. Those LSOs assigned mobilization support duties are referred to as ***Mobilization Support Organizations (MSO).*** MSOs retain a follow-on, post-mobilization, deployment mission. The LSO is modularly organized, and may be

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VII. SELECTION, CERTIFICATION, AND ASSIGNMENT OF JUDGES

7-1. Selection of Active Duty Military Trial Judges. TJAG selects and certifies officers to serve as military trial judges who will normally meet the following criteria:

(1) have at least two years of trial experience as a court-martial trial or defense counsel; one year of court-martial trial experience and at least one year as chief of criminal law, regional defense counsel, or criminal law instructor; or two years as a staff judge advocate in an active criminal law jurisdiction;

(2) are serving in the grade of colonel, lieutenant colonel or promotable major;

(3) have completed CGSC or the equivalent, or are willing to enroll and complete such a course.

(4) have demonstrated mature judgment and high moral character;

(5) have been nominated for selection by the Chief Trial Judge, USALSA, or a designee, in coordination with the Chief, PP&TO; and

(6) are able to graduate and attain at least a grade of C (77 points) in the Military Judge Course, TJAGSA.

7-2. Selection of USAR Trial Judges.

a. USAR JAs not serving on extended active duty will not be certified as military judges unless serving in an Individual Mobilization Augmentation (IMA) judge position or on a Military Judge Team. Applicants must meet the following criteria: (1) have demonstrated mature judgment and high moral character; (2) serving in the grade of Colonel, Lieutenant Colonel, or Major (P); and have (3) a minimum of one year criminal law experience as: (a) full-time civilian trial or appellate judge, U.S. Magistrate Judge, or administrative law judge; or (b) criminal trial practitioner, with recent extensive experience in federal, state, or military courts, or (c) full-time criminal law instructor in a military or civilian school.

b. Applications for appointment as an IMA judge will be sent through the Director, Guard and Reserve Affairs Division, OTJAG, ATTN: JAGS-GRA, to the Chief Trial Judge on DA Form 2976-R. Applications for appointment as a military judge assigned to a USAR Military Judge Teams will be sent from the Commander of the Legal Support Organization of which the military judge position is a part, through the Director, Guard and Reserve Affairs Division, OTJAG, ATTN: JAGS-GRA, to the Chief Trial Judge for final selection. Applications must be accompanied by the officer's OMPF microfiche and should contain additional information

necessary to demonstrate substantive criminal law experience, maturity of judgment, and unquestionable moral character. Only colonels, lieutenant colonels, and promotable majors will be selected as Military Judge Team Judges.

c. The first AT after selection is spent at the Military Judge Course, TJAGSA. A grade of C (77 points) or higher is a prerequisite to continued assignment to the Trial Judiciary or to a Military Judge Team.

d. Each USAR military judge will be assigned to a judicial circuit for Annual Training (AT). He or she will coordinate AT with the Chief Circuit Judge (or a designee) based upon availability of courts-martial over which he or she is qualified to preside. AT will normally be performed on a fragmented basis to maximize opportunities to perform judicial duties.

7-3. Certification of National Guard (NG) Military Judges.

a. For a NG JA to be certified as a military judge by TJAG, the following criteria must be met: (1) have demonstrated mature judgment and high moral character; (2) be serving in the Army National Guard as a Major(P) or higher, (3) be serving as or nominated to serve as a state military judge; (4) have a minimum of one year criminal law experience as (a) full-time civilian trial or appellate judge, U.S. Magistrate Judge or administrative law judge, or (b) a criminal trial practitioner, with recent extensive experience in federal, state, or military courts, or (c) full-time criminal law instructor in a military or civilian school; and (5) are able to graduate and attain at least a grade of C (77 points) in the Military Judge Course, TJAGSA.

b. NG applications for certification as a military judge must be endorsed by the senior judge advocate or state Staff Judge Advocate, as applicable, and sent through (1) National Guard Bureau, Judge Advocate and (2) Director, Guard and Reserve Affairs, TJAGSA, ATTN: JAGS-GRA ~~for~~*to the* (3) Chief Trial Judge, United States Army Trial Judiciary. Applications must contain additional information necessary to demonstrate substantive criminal law experience, maturity of judgment, and high moral character.

7-4. Trial Judiciary Assignments.

a. Assignments of military judges to the Trial Judiciary are made by TJAG upon the recommendation of the Chief Trial Judge, USALSA, in coordination with the Chief, PP&TO. See the JAGC Personnel and Activity Directory for a complete list of stations where trial judges are currently assigned.

b. As a general rule, officers below the grade of colonel will not receive consecutive trial judge assignments. Upon the completion of a tour as a trial judge, the officer typically will be reassigned to a position related to the field of criminal law such as SJA, Regional Defense Counsel, Deputy SJA, Criminal Law Divisions at OTJAG or TJAGSA, or one of the Appellate Divisions in USALSA. Military judges are eligible and compete for military and civil schooling

on the same basis as any other JA. School assignments are not considered intervening assignments for purposes of determining eligibility for a subsequent assignment as a trial judge.

7-5. Selection and Assignment of Appellate Military Judges.

a. General. Assignments of appellate military judges to the U.S. Army Court of Criminal Appeals are made by TJAG upon recommendation of the Chief Judge in coordination with the Chief, PP&TO.

b. Grade Requirements. Appellate judges will normally be in grade of colonel. Exceptional lieutenant colonels with at least two years time in grade may be considered for a waiver of the grade requirement.

c. Experience Requirements. Appellate judges should have at least two years of experience as a GCM trial judge, previous service as an appellate judge, two years of experience as an SJA of a general court-martial jurisdiction, or two years of experience as a regional defense counsel. Appellate judges should also have at least two years of criminal law experience as a trial counsel, chief of military justice, criminal law instructor, or trial defense counsel.

d. Military Education Requirements. Appellate judges must be a graduate of the Command and General Staff College or its equivalent.

7-6. Tenure for Military Judges.

a. Trial Judges. Judge Advocates are certified as military judges by TJAG and assigned to the Trial Judiciary for a minimum of three years, except under any of the following circumstances:

(1) The military judge is assigned to the Sixth Judicial Circuit (Republic of Korea), or such other area where officers are normally assigned for a short tour of one or two years: in such cases the military judge will be appointed for a one or two year term;

(2) The military judge voluntarily requests to be reassigned to other duties, and TJAG approves such reassignment;

(3) The military judge retires or otherwise separates from military service;

(4) The military judge is reassigned other duties by TJAG based on the needs of the service in a time of war or national emergency; or

(5) The officer's certificate as a military judge is withdrawn by TJAG for good cause.

b. Appellate Military Judges. Assignments of appellate military judges to the U.S. Army Court of Criminal Appeals are made by TJAG upon recommendation of the Chief, Judge, the U.S. Army Court of Criminal Appeals, in coordination with the Chief, PP&TO. Judge Advocates are assigned as appellate military judges for a minimum of three years, except under the following circumstances:

(1) The appellate military judge voluntarily requests to be reassigned to other duties, and TJAG approves such reassignment;

(2) The appellate military judge retires or otherwise separates from military service;

(3) The appellate military judge is reassigned other duties by TJAG based on the needs of the service in a time of war or national emergency; or

(4) The officer is removed from service as an appellate military judge by TJAG for good cause.

SECTION

19

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

IN REPLY REFER TO

SECNAVINST 5400.40
OJAG/Code 05
27 August 1999

SECNAV INSTRUCTION 5400.40

From: Secretary of the Navy
To: All Ships and Stations

Subj: MISSION, ORGANIZATION, FUNCTIONS, AND SUPPORT OF NAVY-MARINE CORPS TRIAL JUDICIARY

Ref: (a) U.S. Navy Regulations, 1990
(b) Manual for Courts-Martial, United States
(c) Title 10, United States Code
(d) OPNAVINST 5400.24D
(e) SECNAVINST 5400.14A (NOTAL)

1. Purpose. To specify the mission, organization, and functions, and to provide for the administration and support to the Navy-Marine Corps Trial Judiciary under reference (a) and renumber the instruction in accordance with current Standard Subject Identification Codes.

2. Cancellation. SECNAVINST 5813.6C.

3. Background. The Navy-Marine Corps Trial Judiciary is responsible for providing military judges for special and general courtsmartial within the naval service. The Navy and Marine Corps have established a unified trial judiciary to carry out that responsibility.

4. Mission. To provide certified military judges for all general and special courts-martial convened within the naval service (except those courts-martial for which the utilization of a certified military judge, not assigned to the Trial Judiciary, is authorized under directions of the Judge Advocate General) and to perform such other functions as may be assigned under the direction of the Judge Advocate General.

5. Organization. The Navy-Marine Corps Trial Judiciary is composed of the Office of the Chief Judge of the Navy-Marine Corps Trial Judiciary and such Judicial Circuits and their Branch Offices as may be established by the Judge Advocate General. The Judge Advocate General may also establish Judicial Areas, each consisting of two or more Judicial Circuits, for the purpose of providing an intermediate level of supervision within the Trial Judiciary. Manning for the Navy-Marine Corps Trial Judiciary will come from current manpower resources as determined by the Chief of Naval Operations, the Commandant of the Marine Corps, and the Judge Advocate General, acting in coordination.

6. Functions

a. To the greatest extent possible, the NavyMarine Corps Trial Judiciary will provide military judges for all general and special courts-martial convened within the naval service.

b. Except as authorized under the direction of the Judge Advocate General, only military judges of the Navy-Marine Corps Trial Judiciary shall sit as military judges of general or special courtsmartial convened within the naval service. When authorized by the Judge Advocate General, however, the following exceptions are permitted:

(1) The cognizant circuit military judge, or the Chief Judge, may authorize the detail of a certified militaryjudge, not assigned to the Trial Judiciary, for the trial of special courtsmartial as may reasonably be required under the attendant circumstances. Such circumstances may include, but are not limited to, periods of increased frequency of special courts-martial referrals and the appointment of special courts-martial to convene at remote locations in which trials by court-martial are relatively infrequent.

(2) The cognizant circuit military judge, or the Chief Judge, may designate for detail as military judge of a general or special court-martial convened within the naval service, a properly certified military judge of another branch of the United States Armed Forces, made available under R.C.M. 503(b)(3) of reference (b), when the exigencies of time and place of trial so dictate, provided, however, that only officers specifically designated by their armed forces as general court-martial military judges may be detailed to general courts-martial convened within the naval service.

7. Authority over Organization, Functions, and Administration The Judge Advocate General is authorized to organize, administer, assign, and reassign functions to the Navy-Marine Corps Trial Judiciary and personnel attached thereto in accordance with reference (c).

8. Command and Support Relationships

a. The Navy-Marine Corps Trial Judiciary in Washington, D.C., is assigned to the Judge Advocate General for command and primary support. The military judges in each of the Judicial Circuits of the Navy-Marine Corps Trial Judiciary are assigned to the Judge Advocate General for command. Area coordination will be exercised in accordance with references (d) and (e). The Chief of Naval Operations or the Commandant of the Marine Corps, as appropriate, acting through district commandants, commanding generals, Marine Corps air station commanders, regional commanders, or regional coordinators in whose jurisdiction the military judges are located, will be

responsible for the provision of administrative support to the maximum extent possible

within the availability of budgeted resources. In the event a military judge is not located at the headquarters of a district commandant, commanding general, Marine Corps air station commander, regional commander, or regional coordinator, the responsibility for providing administrative support will devolve upon the regional coordinator who exercises the authority to convene general courts martial and whose area is served by the military judge. By mutual agreement, the Naval Legal Service Command or one of its offices may assume all or part of this support responsibility.

b. Administrative support will include provision of the following:

(1) Office spaces;

(2) Office equipment, furniture, stationery, and supplies;

(3) Telephone and other communications services;

(4) Access to law library;

(5) Technical support to include technological upgrade; and

(6) Clerical assistance, under permanent assignment, with competence to perform clerical duties including, but not limited to: maintenance of court-martial dockets of the military judge(s); representation of the latter, in their absence, in the scheduling of cases; and provision of essential secretarial services for the military judge(s). (This support item is not required for offices of circuit military judges that have Navy Legalmen or Marine Corps legal service specialists assigned.)

c. Funds for the temporary additional-duty travel and per diem expenses incurred by military judges of the Navy-Marine Corps Trial Judiciary in carrying out its mission will be provided by the Judge Advocate General and Commandant of the Marine Corps. Allocation of the responsibility for such funding shall be made by mutual agreement of the Judge Advocate General and the Commandant of the Marine Corps.

9. <u>Action</u>. The Judge Advocate General shall:

a. Exercise command over the Navy-Marine Corps Trial Judiciary and ensure compliance with paragraphs 5, 6 and 7 of this instruction.

b. Provide a continuing legal education program for military judges of the Navy-Marine Corps Trial Judiciary.

RICHARD DANZIG
Secretary of the Navy

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SECTION

20

CH-3
INCORPORATED
JAGINST 5813.4E
JAG: 05
10 March 1986

DEPARTMENT OF THE NAVY
Office of the Judge Advocate General
200 Stovall Street
Alexandria, VA 22332

JAG INSTRUCTION 5813.4E

From: Judge Advocate General
To: All Ships and Stations

Subj: NAVY-MARINE CORPS TRIAL JUDICIARY

Ref: (a) UCMJ
(b) MCM, 1984
(c) SECNAVINST 5813.6C
(d) JAGINST 5800.7B

Encl: (1) Judicial Circuits

1. **Purpose.** To implement the provisions of references (a) through (d) as regards the Navy-Marine Corps Trial Judiciary (hereinafter referred to as the "Trial Judiciary").

2. **Cancellation.** JAG Instruction 5813.4D.

A) 3. **Mission and Functions.** The Trial Judiciary shall:

a. Provide certified military judges for all general and special courts-martial. The Trial Judiciary has an affirmative duty to ensure that each referred general and special court-martial is speedily tried, to intervene when a case is
A) not being speedily tried, and to take appropriate action to expedite each case. The Trial Judiciary shall coordinate with appropriate authorities with a view to ensuring that all cases referred to trial are received by the Trial Judiciary as soon as possible after referral. Records of trial shall be expeditiously, but carefully, authenticated upon receipt.

b. Provide certified military judges to serve as Article
A) 32 investigating officers in all cases in which competent authority requests such service. But see Article 26(d), reference (a). General and special court-martial trials shall take precedence.

c. When authorized by the circuit military judge in the cognizant judicial circuit, try summary courts-martial
A) which competent authority requests the Trial Judiciary to try. General and special courts-martial and Article 32 investigations shall take precedence.

A) d. Counsel and train trial participants.

A) e. Participate in regional planning regarding the provision of legal services.

A) f. Perform other duties as prescribed by the Chief Judge of the Trial Judiciary.

4. **Authority and Responsibility.** In order to accomplish the mission and functions of the Trial Judiciary, authority and responsibility are prescribed for specified personnel thereof as follows:

a. The Chief Judge of the Navy-Marine Corps Trial Judiciary, (hereinafter referred to as "Chief Judge"), as the Judge Advocate General's representative, is the Officer in Charge of the Trial Judiciary and shall exercise command over the Trial Judiciary. The Chief Judge is also the designee of the Judge Advocate General as that term is used in Article 26 of reference (a) and R.C.M. 108 and R.C.M. 502(c) of reference (b). The Chief Judge shall administer the Trial Judiciary, supervise and coordinate the activities of all of its personnel, ensure the effective interchange of information and services among military judges, and perform such other duties respecting the Trial Judiciary as the Judge Advocate General may direct. The Chief Judge may reassign the responsibilities of other judges on a temporary basis. The Circuit Military Judge for the Atlantic Judicial Circuit shall be the Deputy Chief Judge and, with his staff, shall assist the Chief Judge in the performance of his responsibilities.

b. The circuit military judge of each judicial circuit shall be designated by the Chief Judge. The circuit military judge is responsible for the administration and internal organization of that circuit and shall assist the Chief Judge, as required.

5. **Establishment of Judicial Circuits and Branch Offices.** The judicial circuits of the Trial Judiciary are established to provide military judges within the defined geographical areas of responsibility. The descriptive name, location of the principal office, and the geographical limits of the judicial circuits are as shown in enclosure (1). The geographical limits of the several judicial circuits are established to effect a division of work and responsibility. They shall in no way affect the jurisdiction of any court-martial. The creation or deletion of circuits or the temporary reassignment of areas of responsibility may be accomplished by the Judge Advocate General without change to this directive.

6. **Detailing Military Judges To Courts-martial**

a. Section 0120 of reference (d) states the authority to detail military judges to general and special courts-martial. To be detailed, a Navy or Marine Corps officer must meet the qualifications prescribed in R.C.M. 502(c) of reference (b) and must be assigned permanently or temporarily to the Trial Judiciary. The Chief Judge is authorized to limit further which judge may be detailed to courts-martial and under what circumstances he or she may be detailed.

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b. The circuit military judge (or a designee) who is assigned to a geographical area is the individual who details military judges within that geographical area. If a court-martial is to assemble at a geographical location not within the area of any judicial circuit, the Chief Judge is authorized to assign to a circuit the responsibility for the detailing of a military judge to that court-martial. No one outside the Trial Judiciary may influence the detailing of any military judge to any particular case. Within each judicial circuit, it is the responsibility of the circuit military judge to ensure adherence to this principle.

c. It is vital that the judiciary discourage "judge shopping" and ensure the continuous availability of timely and economical judicial service. Consequently, no military judge shall be detailed to a court-martial that is to convene in a judicial circuit other than the circuit to which the military judge is assigned, except by the direction of the Chief Judge or when there is a mutual agreement between the circuit military judge having cognizance over the trial and the circuit military judge to which the military judge being detailed is assigned. In this latter situation, the permission of the Chief Judge must be obtained unless there is an emergency situation outside CONUS and the Chief Judge reasonably cannot be contacted (e.g., both circuits are located overseas). In such exceptional circumstances, the Chief Judge shall be notified, as soon as practicable, of the circumstances.

d. Noncompliance with subparagraphs b and c of this paragraph shall in no way affect the jurisdiction of any court-martial.

7. **Rules of Court.** The Chief Judge may establish such rules of court as are appropriate for trials throughout the Naval Service and may authorize circuit military judges to implement further those rules to accommodate practice within their circuits. The Chief Judge shall retain local rules of court which are required to be forwarded to the Judge Advocate General by R.C.M. 108 of reference (b).

8. **Training.** The Chief Judge shall establish a program for the continuing education and professional development of members of the Trial Judiciary. This program shall include professionally presented programs of continuing legal education and periodic organizational meetings.

9. **Field Inspections.** The Chief Judge shall make such periodic visits to the principal and branch offices of the various circuits as are considered appropriate.

10. **Funding.** Funds allocated by the Judge Advocate General for the operation of the Trial Judiciary shall be expended at the discretion of the Chief Judge in the furtherance of his responsibilities.

T.E. FLYNN

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JUDICIAL AREAS AND CIRCUITS OF NAVY-MARINE CORPS TRIAL JUDICIARY

NAME OF JUDICIAL CIRCUIT Location of Principal Office	GEOGRAPHIC LIMITS Normal Areas of Responsibility
ATLANTIC Washington, D.C.	Naval District Washington; Marine Corps Combat Development Command, Quantico, VA; Naval Weapons Station, Dahlgren, VA; Maryland; Bermuda and all Atlantic Ocean areas not otherwise assigned to a judicial circuit
NORTHEAST Groton, CT	Maine; New Hampshire; Vermont; Ohio; Massachusetts; Rhode Island; Connecticut; New York; New Jersey; Pennsylvania; Delaware, Iceland; Greenland and Newfoundland
TIDEWATER Norfolk, VA	West Virginia; Virginia (except those places that are within the Atlantic Judicial Circuit); the Caribbean Sea to include Panama, Guantanamo Bay, Cuba and Puerto Rico
PIEDMONT Camp LeJeune, NC	North Carolina and South Carolina (except those places that are within the Southeast Judicial Circuit)
SOUTHEAST Jacksonville, FL	Alabama; Florida; Mississippi; Louisiana; Georgia; and the counties of Charleston, Dorchester, and Berkeley in South Carolina
MIDWEST Great Lakes, IL	Illinois; Michigan; Minnesota; Wisconsin; Indiana; Kentucky; Nebraska; North Dakota; Tennessee; South Dakota; Texas; Oklahoma; Arkansas; Missouri and Kansas

NORTHWEST San Francisco, CA	Alaska; Washington; Oregon; Idaho; Montana; Wyoming; Nevada (except Clark County); Utah; Colorado and those portions of California not assigned to the Southwest or Sierra Judicial Circuits
SIERRA Camp Pendleton, CA	All Marine Corps bases, air stations, camps, depots and logistic bases within the Southwest Judicial Circuit
SOUTHWEST San Diego, CA 92136-5099	Arizona; New Mexico; Clark County Nevada; San Diego, CA and California, south of and including the counties of Santa Barbara, Kern, San Bernardino (except those places that are within the area of responsibility of the Sierra Judicial Circuit)
ISLAND Pearl Harbor, HI	Hawaii; Midway Island; New Zealand and Australia
TRANSATLANTIC Naples, IT	All of Europe; Africa; and the Middle East countries; the Persian Gulf; the Mediterranean and Red Seas
WESTPAC NORTH Yokosuka, JA	Japan (except Okinawa and Iwakuni, Japan); Korea; Asia; the islands (including Guam and the Philippines) and areas of the Pacific and Indian Oceans not included within Island, Northwest, and Transatlantic Circuits; and Diego Garcia
KEYSTONE Okinawa, JA	Okinawa and Iwakuni, Japan
WESTERN PACIFIC JUDICIAL AREA	The Western Pacific Area shall consist of the WESTPAC NORTH and KEYSTONE JUDICIAL CIRCUITS

* U.S. GOVERNMENT PRINTING OFFICE: 1996 — 405 - 191 / 20032

SECTION

21

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON DC 20374-5066

IN REPLY REFER TO

JAGINST 5803.1B
JAG 132
11 February 2000

JAG INSTRUCTION 5803.1B

From: Judge Advocate General

Subj: PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL

Ref: (a) Uniform Code of Military Justice (UCMJ)
(b) Manual for Courts-Martial, United States, 1998 (MCM)
(c) 10 U.S.C. § 1044
(d) SECNAVINST 5430.27 (series)
(e) U.S. Navy Regulations, 1990
(f) SECNAVINST 5211.5 (series)
(g) SECNAVINST 5212.5 (series)

Encl: (1) Rules of Professional Conduct
(2) Complaint Processing Procedures
(3) Outside Part-Time Law Practice of Covered USG Attorneys
(4) Relations With Non-USG Counsel

1. Purpose. In furtherance of references (a) through (e), which require the Judge Advocate General of the Navy (JAG) to supervise the performance of legal services under JAG cognizance throughout the Department of the Navy (DON), this instruction is promulgated:

a. to establish Rules of Professional Conduct (the Rules) for attorneys subject to this instruction;

b. to establish procedures for receiving, processing, and taking action on complaints of professional misconduct made against attorneys practicing under the supervision of JAG, whether arising from professional legal activities in DON proceedings and matters, or arising from other, non-U.S. Government related professional legal activities or personal

misconduct which suggests the attorney is ethically, professionally, or morally unqualified to perform legal services within the DON;

c. to prescribe limitations on, and procedures for processing requests to engage in, the outside practice of law by those DON attorneys practicing under the supervision of JAG; and

d. to ensure quality legal services at all proceedings under the cognizance and supervision of the JAG.

2. **Cancellation**. JAGINST 5803.1A.

3. **Effective Date**

a. This instruction is effective immediately. All conduct that commenced after the effective date is governed by this instruction.

b. Any complaint received after the effective date of this instruction shall be processed in accordance with the procedures set forth in enclosure (2).

4. **Applicability**

a. This instruction applies to all "covered attorneys" as defined herein.

b. "Covered attorneys" include:

(1) The following U.S. Government (USG) attorneys, referred to, collectively, as "covered USG attorneys" throughout this instruction:

(a) All active-duty Navy judge advocates (designator 2500 or 2505) or Marine Corps judge advocates (MOS 4402 or 9914).

(b) All active-duty judge advocates of other U.S. armed forces who practice law or provide legal services under the cognizance and supervision of the JAG.

(c) All civil service and contracted civilian attorneys who practice law or perform legal services under the cognizance and supervision of the JAG.

(d) All Reserve or Retired judge advocates of the Navy or Marine Corps (and any other U.S. armed force), who, while performing official DON duties, practice law or provide legal services under the cognizance and supervision of the JAG.

(e) All other attorneys appointed by JAG (or the Director, Judge Advocate (JA) Division, Headquarters Marine Corps (HQMC), in Marine Corps matters) to serve in billets or to provide legal services normally provided by Navy or Marine Corps judge advocates. This policy applies to officer and enlisted reservists, to active-duty personnel, and to any other personnel who are licensed to practice law by any Federal or state authorities, but who are not members of the Judge Advocate General's Corps or who do not hold the 4402 or 9914 designation in the Marine Corps.

(2) The following non-U.S. Government attorneys, referred to, collectively, as "covered non-USG attorneys" throughout this instruction: all civilian attorneys representing individuals in any matter for which JAG is charged with supervising the provision of legal services. These matters include, but are not limited to, courts-martial, administrative separation boards or hearings, and disability evaluation proceedings.

(3) The term "covered attorney" does not include those civil service or civilian attorneys who practice law or perform legal services under the cognizance and supervision of the General Counsel of the Navy.

c. Professional or personal misconduct unrelated to a covered attorney's DON activities, while normally outside the ambit of these rules, may be reviewed under procedures established herein and may provide the basis for decisions by the JAG regarding the covered attorney's continued qualification to provide legal services in DON matters.

d. Although the Rules do not apply to non-attorneys, they do define the type of ethical conduct that the public and the military community have a right to expect from DON legal personnel. Accordingly, these Rules shall serve as models of ethical conduct for the following personnel when involved with the delivery of legal services under the supervision of the JAG:

(1) Navy legalmen and Marine Corps legal administrative officers, legal service specialists, and legal services reporters (stenotype);

(2) limited duty officers (LAW);

(3) legal interns; and

(4) civilian support personnel including paralegals, legal secretaries, legal technicians, secretaries, court reporters, and others holding similar positions.

Covered USG attorneys who supervise non-attorney DON employees are responsible for their ethical conduct to the extent provided for in Rule 5.3 of enclosure (1).

5. **Policy**

a. Covered attorneys shall maintain the highest standards of professional ethical conduct. Loyalty and fidelity to the United States, to the law, to clients both institutional and individual, and to the rules and principles of professional ethical conduct set forth in enclosure (1) must come before private gain or personal interest.

b. The Rules and related procedures set forth herein concern matters solely under the purview of JAG. Whether conduct or failure to act constitutes a violation of the professional duties imposed by this instruction is a matter within the sole discretion of JAG or officials authorized to act for JAG. The Rules are not substitutes for, and do not take the place of, other rules and standards governing DON personnel such as the Department of Defense Joint Ethics Regulation, the Code of Conduct, the Uniform Code of Military Justice, and the general

precepts of ethical conduct to which all DON service members and employees are expected to adhere. Similarly, action taken per this instruction is not supplanted or barred by, and does not, even if the underlying misconduct is the same, supplant or bar the following action from being taken by authorized officials:

(1) punitive or disciplinary action under reference (a); or

(2) administrative action under references (b) or (e), or under other applicable authority.

c. Inquiries into allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this instruction.

6. **Attorney-Client Relationships**

a. The executive agency to which assigned (DON in most cases) is the client served by each covered USG attorney unless detailed to represent another client by competent authority. Specific guidelines are contained in enclosure (1) at Rule 1.13.

b. Covered USG attorneys will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by competent authority. Wrongfully establishing an attorney-client relationship may subject the attorney to discipline administered per this instruction. See Rule 1.2 of enclosure (1).

c. Employment of a non-USG attorney by an individual client does not alter the professional responsibilities of a covered USG attorney detailed or otherwise assigned by competent authority to represent that client. Specific guidance is set forth in enclosure (4).

7. **Judicial Conduct**. To the extent that it does not conflict with statutes, regulations, or these Rules, the American Bar Association's Code of Judicial Conduct applies to all military and appellate judges and to all other covered USG attorneys performing judicial functions under JAG supervision within the DON.

8. **Conflict**. To the extent that a conflict exists between these Rules and the rules of other jurisdictions that regulate the professional conduct of attorneys, these Rules will govern the conduct of covered attorneys engaged in legal functions under JAG cognizance and supervision. Specific and significant instances of conflict between these Rules and the rules of other jurisdictions shall be reported promptly to the Rules Counsel, via the attorney's supervisory attorney.

9. **Reporting Requirements**. Covered USG attorneys shall report promptly to the Rules Counsel (identified below) any disciplinary or administrative action, including initiation of investigation, by any licensing authority or Federal, State, or local bar, possessing the power to revoke, suspend, or in any way limit the authority to practice law in that jurisdiction, upon himself, herself, or another covered attorney. Failure to report such discipline or administrative action may subject the covered USG attorney to discipline administered per this instruction. See Rule 8.6 of enclosure (1).

10. **Professional Responsibility Committee**

a. Composition. This standing committee will consist of the Assistant Judge Advocate General (AJAG) for Military Justice; the Vice Commander, Naval Legal Service Command (NLSC); the Chief Judge, Navy-Marine Corps Trial Judiciary; and in cases involving Marine Corps judge advocates, the Deputy Director, JA Division, HQMC; and such other personnel as JAG from time-to-time may appoint. A majority of the members constitutes a quorum. The Chairman of the Committee shall be the AJAG for Military Justice. The Chairman may excuse members disqualified for cause, illness, or exigencies of military service, and may request that

JAG appoint additional or alternate members on a temporary or permanent basis.

b. Purpose

(1) When requested by JAG or by the Rules Counsel, the Committee will provide formal advisory opinions to JAG regarding application of the Rules to individual or hypothetical cases.

(2) On its own motion, the Committee may also issue formal advisory opinions on ethical issues of importance to the DON legal community.

(3) Upon written request, the Committee will also provide formal advisory opinions to covered attorneys about the propriety of proposed courses of action under the Rules. If such requests are predicated upon full disclosure of all relevant facts, and if the Committee advises that the proposed course of conduct is not violative of the Rules, then no adverse action under this instruction may be taken against a covered attorney who acts consistent with the Committee's advice.

(4) The Chairman will forward copies of all opinions issued by the Committee to the Rules Counsel.

c. Limitation. The Committee will not normally provide ethics advice or opinions concerning professional responsibility matters (e.g., ineffective assistance of counsel, prosecutorial misconduct, etc.) that are then the subject of litigation.

11. **Rules Counsel**. Appointed by JAG to act as special assistants for the administration of the Rules, the Rules Counsel derive authority from JAG and, as detailed in this instruction, have "by direction" authority. The Rules Counsel shall cause opinions issued by the Professional Responsibility Committee of general interest to the DON legal community to be published in summarized, non-personal form in suitable publications. Unless another officer is appointed by JAG to act in individual cases, the following officers shall act as Rules Counsel:

SECTION

22

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
200 STOVALL STREET
ALEXANDRIA, VA 22332-2400

IN REPLY REFER TO
JAGINST 5817.1
JAG 20
18 NOV 1991

JAG INSTRUCTION 5817.1

From: Judge Advocate General

Subj: JUDICIAL SCREENING BOARD

Ref: (a) UCMJ

1. Purpose. To establish a Judicial Screening Board for screening of prospective trial and appellate military judges in the Navy and Marine Corps.

2. Discussion. Article 26 of reference (a) requires that the Judge Advocate General certify that all officers serving as military judges are qualified for that duty. It further requires that judges of general courts-martial be designated by the Judge Advocate General. The selection of officers for the military bench is among the most important duties of the Judge Advocate General.

3. Membership. A Judicial Selection Board is hereby established. It shall consist of: the Assistant Judge Advocate General (Military Justice), Chairman; the Principal Deputy Assistant Judge Advocate General (Operations and Management); the Deputy Director, Judge Advocate Division, Headquarters Marine Corps; the Chief Judge, Navy-Marine Corps Court of Military Review; the Chief Judge, Navy-Marine Corps Trial Judiciary; and the Principal Deputy Assistant Judge Advocate General (Military Justice). An officer from the Military Personnel Division shall serve as Recorder for the Board.

4. Procedure

a. Meetings. The Board shall meet formally during the annual slating process, or at any other time deemed necessary, at a place designated by the Assistant Judge Advocate General (Military Justice). A majority of the members of the Board shall constitute a quorum for conducting business. Business normally shall be conducted only at meetings of the Board unless, with prior specific approval of the Judge Advocate General, the members consider nominations and the Chairman polls the members individually by telephone or other means. In circumstances described in paragraph 4c and 4d below, however, prior specific approval of the Judge Advocate General is not required for a polling of the members by means other than a formal meeting of the Board.

cate General the appointment of that officer to a judicial billet. The Board will operate according to a selection precept submitted by the Judge Advocate General to the Board on a periodic basis to ensure that highly qualified officers are recommended for assignment.

f. Voting. The Board will consider each officer nominated and will vote whether to recommend to the Judge Advocate General the appointment of that officer to a judicial billet. Voting shall be by voice vote or show of hands. Voting by telephone poll to the Chairman or his designee is authorized as prescribed in paragraph 4c and 4d above. A favorable vote of the majority of the members of the Board present shall constitute a recommendation by the Board that the Judge Advocate General assign the officer concerned to a judicial billet.

g. Report. The Recorder shall prepare a report that summarizes the Board's proceedings for the signature of the Chairman. Reports and their attendant recommendations will be forwarded to the Judge Advocate General via the Deputy Judge Advocate General. These reports shall be maintained by date of the report of the Board in the Office of the Judge Advocate General, Criminal Law Division (Code 20).

5. The report of the Board is advisory in nature and does not restrict whatsoever the statutory authority of the Judge Advocate General to make judicial appointments. The Judge Advocate General's certification or designation will be a separate report also retained by Code 20.

J. E. GORDON

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SECTION

23

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
200 STOVALL STREET
ALEXANDRIA, VA 22332

IN REPLY REFER TO
JAGINST 5817.5D
JAG:62
19 SEP 1985

JAG INSTRUCTION 5817.5D

From: Judge Advocate General

Subj: CERTIFICATION OF INACTIVE DUTY NAVY AND MARINE CORPS OFFICER-LAWYERS AS TRIAL/DEFENSE COUNSEL OR MILITARY JUDGE

1. Purpose. To promulgate the policy of the Judge Advocate General regarding the certification of inactive duty Naval and Marine Corps Reserve officer-lawyers as trial/defense counsel pursuant to Article 27(b) of the Uniform Code of Military Justice (UCMJ), certification of inactive duty officer-lawyers as military judges pursuant to Article 26(b) of the UCMJ, and to set forth procedures to be followed in applying for certification.

2. Cancellation. JAGINST 5817.5C.

3. Background. The UCMJ sets forth qualifications required for individuals detailed to serve as trial and defense counsel for courts-martial (pursuant to Article 27(b) of the UCMJ) and as a general or special court-martial military judge (pursuant to Article 26(b) of the UCMJ). Individuals detailed must be certified competent to perform such duties by the Judge Advocate General.

4. Coverage. This instruction is applicable to inactive duty officer-lawyers of the Naval and Marine Corps Reserves. Coast Guard Reserve officers may take the 2-week basic military justice course for Reserve lawyers, but the prerequisites set forth herein shall not apply unless the Commandant of the Coast Guard shall so direct.

5. Objective and Policy. To utilize fully the professional capabilities of inactive duty officer-lawyers upon their reporting for active duty or active duty for training (ACDUTRA), it is desirable they be certified for court-martial trial/defense counsel duties prior to reporting for duty. Accordingly, it is the policy of the Judge Advocate General to certify as trial/defense counsel inactive duty officer-lawyers who have met the statutory requirements and have achieved a working knowledge of military law and court-martial procedures. Unless they are attached or will be attached to a judicial circuit as a military judge (Marine Corps) or to the Naval Reserve trial judiciary unit (Navy), inactive duty judge advocates will not be certified as military judges.

6. Certification Requirements. Certifications are predicated on statutory compliance and the following shall be considered:

a. Statutory. Articles 27(b) and 26(b), UCMJ.

b. Military Experience. Inactive duty Naval Reserve officer-lawyers without previous active duty Navy service must satisfactorily complete the correspondence course Naval Orientation (NAVEDTRA 16138-H).

c. Academic and ACDUTRA Training. Certification shall be based upon an applicant's membership in the Ready Reserve and having acquired sufficient knowledge and experience in military law and fitness, in the opinion of the Judge Advocate General, for performance of the respective duties.

(1) Trial/Defense Counsel:

(a) An inactive duty officer-lawyer may be certified as a court-martial trial/defense counsel under Article 27(b) of the UCMJ upon recommendation by his or her commanding officer after:

1 satisfactory completion of the regular 8-week Naval Justice School lawyer's course customarily taken by active duty officer-lawyers upon entering active duty, or the 2-week basic military justice course for Reserve lawyers; and

2 satisfactory completion of ACDUTRA, temporary active duty (TEMAC) or special active duty (SPECAC) of at least 2 weeks' duration, performed at a Naval Legal Service Office in the Military Justice Division (if a Naval Reserve officer-lawyer); or in the trial section of a general court-martial command (if a Marine Corps Reserve officer-lawyer).

(b) Prior to attending the 2-week basic military justice course for Reserve lawyers, all inactive duty Naval and Marine Corps Reserve officer-lawyers shall satisfactorily complete the following correspondence courses:

1 *Uniform Code of Military Justice* (NAVEDTRA 10971-B2) and

2 Military Justice in the Navy (NAVEDTRA 10993-C1). Applications for ACDUTRA at the 2-week basic military justice course for Reserve lawyers shall affirm that the applicant has satisfactorily completed the above requirements. Inactive duty Reserve officers who are certified may take the basic military justice course for Reserve lawyers as a refresher, without satisfying the prerequisites set forth above. In such case, the ACDUTRA application shall affirm that the applicant is already certified. These correspondence courses are not prerequisites to attendance at any refresher or advance course.

(2) Military Judge:

(a) An inactive duty officer-lawyer may be certified as a military judge under Article 26(b) of the UCMJ upon recommendation of the Chief Judge, Navy-Marine Corps Trial Judiciary and subject to the following criteria:

1 is designated a judge advocate and certified under Article 27(b), UCMJ;

2 has satisfactorily completed a formal course of instruction for military judges either at the Naval Justice School or at The Judge Advocate General's School within 3 years immediately preceding certification;

3 has participated in pretrial investigation, trial, or review of courts-martial within 3 years immediately preceding certification during periods of inactive duty drills, ACDUTRA, TEMAC, or SPECAC, or has otherwise demonstrated competence and experience in the field of military justice and judicial temperament necessary for service as a military judge; and

4 is a Lieutenant Commander/Major (O-4) or above.

(b) No inactive duty judge advocate will be certified as military judge, unless he or she is a member of the Marine Corps trial judiciary Reserve augmentation unit, the Naval Reserve trial judiciary unit, or has been selected for assignment thereto.

d. Time to Complete Requirements. In the case of Article 27(b) certifications, the maximum period for completing all requirements for certification is 4 years after the date of commissioning or change of designator. There are no time constraints upon Article 26(b) certification after certification under Article 27(b).

e. Waiver. In special circumstances, any requirements contained herein may be waived by the Judge Advocate General upon the showing of those circumstances supported by compelling reason.

7. Procedure. An inactive duty officer-lawyer desiring certification as trial/defense counsel or military judge, or both, shall submit a request for certification to the Judge Advocate General in letter form. The letter shall set forth a detailed description of the applicant's professional and military background, experience, and qualifications. In the case of Naval Reserve officer-lawyers, the request shall be submitted to the Judge Advocate General via (1) the applicant's commanding officer and (2) the commander of the cognizant Readiness Command (Attention: Staff Judge Advocate). A Selected Marine Corps Reserve officer-lawyer's request shall be submitted to the Judge Advocate General via (1) the applicant's commanding officer; (2) the Commanding General, 4th Marine Division or Aircraft Wing, as appropriate; and (3) the Commandant of the Marine Corps (JA). A Marine Individual Ready Reservist's request shall be submitted to the Judge Advocate General via (1) the Director, Marine Corps Reserve Support Center, 10950 El Monte, Overland Park, Kansas 66211, and (2) the Commandant of the Marine Corps (JA). All requests for certification as a military judge shall, in addition to the foregoing be submitted via the Chief Judge, Navy-Marine Corps Trial Judiciary.

8. Action. Addressees are requested to disseminate the contents of this instruction to inactive duty officer-lawyers under their cognizance. In forwarding an application for certification, addressees are requested to include information and recommendations as may be appropriate to guide the Judge Advocate General in determining whether certification of the applicant is warranted. Endorsements should include a statement of whether the applicant is

considered adequately trained in military law and procedure to warrant certification by the Judge Advocate General.

9. Prior Certification. Certifications as trial/defense counsel and military judge issued prior to the date of this instruction remain in effect.

T. E. FLYNN

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SECTION

24

U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

2100 Second Street, SW
Washington, D.C. 20593-0186
Staff Symbol: G-LMJ
Phone: (202) 267-0272

COMDTINST M5810.1D
17 August 2000

COMMANDANT INSTRUCTION M5810.1D

Subj: MILITARY JUSTICE MANUAL

Ref: (a) Uniform Code of Military Justice, 10 U.S.C. §§ 801 – 946 (as amended)
(b) Manual for Courts-Martial (MCM), United States (current edition)

1. PURPOSE. This Manual prescribes the Judge Advocate General of the Coast Guard (General Counsel, Department of Transportation) and Chief Counsel (Commandant G-L)) policies, regulations, and procedures applicable to the administration of military justice in the Coast Guard pursuant to, and in support of, references (a) and (b).

2. ACTION. Coast Guard personnel shall administer the Coast Guard military justice system in accordance with references (a), (b), and this Manual. Staff Judge Advocates [SJAs] and assistants (Coast Guard law specialists performing military justice duties) shall perform duties and provide military justice advice in accordance with references (a), (b), and this Manual. Convening authorities shall ensure the administration of military justice within their chain of command consistent with references (a), (b), and this Manual. General and special courts-martial convening authorities listed in section 3.A of this Manual shall make the contents of this Manual available to all individuals involved in the administration of military justice. The policies, regulations, and requirements of this Manual shall, insofar as is possible, be interpreted consistently with references (a) and (b) and control the application of the military justice system to military members of the Coast Guard except as may be otherwise provided.

3. DIRECTIVES AFFECTED. Military Justice Manual, COMDTINST M5810.1C, of 15 January 1991, as amended by changes 1 - 4, is cancelled.

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3.H. COURT-MARTIAL PERSONNEL

3.H.1. Detailing Military Judges to Courts-Martial

The following procedures shall be followed for detailing military judges for general and special courts-martial.

3.H.1.a. Request for Detail of Military Judges to Courts-Martial

The OEGCMJ, or the convening authority, if trial counsel is on the convening authority's staff, shall request that the Chief Trial Judge detail a military judge by submitting a letter,

e-mail, or message request to Commandant (G-L-4), copy to Commandant (G-LMJ). This request shall contain the following information:

(1) Convening authority and type of court;

(2) Case name;

(3) Trial location;

(4) Preferred trial date, and backup date if any;

(5) Estimated trial duration;

(6) General nature of charges or UCMJ Article numbers;

(7) Names, telephone numbers, facsimile numbers, and email addresses of both trial and defense counsel;

(8) State whether the accused is in pretrial confinement and date confined; and,

(9) Speedy trial deadline under RCM 707.

3.H.1.b. Detail Pursuant to RCM 503(b)(1)

The Chief Trial Judge shall detail military judges to general and special courts-martial. During periods of unavailability due to leave or illness, the next senior general court-martial judge may detail judges. If a next senior general court-martial judge is not assigned, the Chief Counsel will designate a certified military judge to so act.

3.H.1.c. Docket Control

The Chief Trial Judge, with the assistance of Commandant (G-LPD), shall maintain the docket for all general and special court-martial military judges. The Chief Trial Judge will forward a copy of the docket monthly to Commandant (G-LMJ). The Chief Trial Judge (Commandant (G-L-4)) may establish additional procedures for docketing courts-martial.

3.H.1.d. Restrictions

(1) A part-time special court-martial military judge shall not be detailed to a special court-martial if he or she is assigned to the staff of the convening authority or the OEGCMJ over the command of the convening authority or is in the performance evaluation or reviewing chain for any participating counsel.

(2) By policy, a Coast Guard special court-martial must have a military judge detailed.

3.H.1.e. Continuances

Once detailed, the military judge has sole authority to grant continuances.

3.H.1.f. Message Traffic

(1) Message traffic originated by the military judge shall include the phrase "JUDGE [*last name*] SENDS".

(2) Message traffic addressed to the military judge shall include the phrase, "FOR JUDGE [*last name*]".

6.D. CERTIFICATION AND DESIGNATION OF MILITARY JUDGES

6.D.1. Certification of Military Judges

6.D.1.a. General

Law specialists are certified as military judges pursuant to Article 26(b), UCMJ by The Judge Advocate General of the Coast Guard [TJAG] (General Counsel, Department of Transportation). Law specialists are certified as counsel pursuant to Article 27(b), UCMJ, by the Chief Counsel under authority delegated by TJAG [*see*, 49 CFR, Part 1, Appendix A]. RCM 502(c) and (d) prescribe the qualifications of military judges and counsel.

6.D.1.b. Certification

(1) Factors to be Considered

Applicants will be recommended for attendance at a Military Judge Course and certification based upon the following factors:

(a) Certification as counsel for general courts-martial is required, unless waived. Requests for waiver of this requirement should include information on each requirement for certification [*see*, subparagraph 6.D.1.b(2) below].

(b) Military justice experience must include service as lead counsel in at least five special or general courts-martial, including a least one members case, at least one contested case and combined, at least three contested or members cases (or both). Requests for waiver of this requirement should be accompanied by evidence, such as that specified in subparagraph 6.D.1.b(2)(g). that the applicant has exhibited reasonable courtroom competence and knowledge.

(c) Grade must be at least 0-5, unless waived. Requests for waiver of this requirement should be accompanied by evidence, such as that specified in subparagraph 6.D.1.b(2)(g) that the applicant has the requisite presence and judicial bearing.

(d) The applicant must reasonably expect to be available to serve as a military judge at two to three trials per year for at least one year (and preferably two years) following Military Judge Course attendance and certification.

(e) The applicant's Headquarters Personnel Data Record [PDR] will be reviewed to ensure that there is nothing in the applicant's background that would cast doubt on his or her fitness to serve as a military judge.

(f) Information provided in the application package will be considered, with greatest emphasis on information provided pursuant to subparagraphs 6.D.1.b(2)(e)-(h).

(g) Any relevant information provided from other sources, including but not limited to other military judges' comments will also be considered. Information from other sources may be disclosed to the applicant, upon request.

(h) Diversity in the pool of certified military judges, and travel costs associated with the applicant's billet, are additional factors that will be considered.

(i) The number of applicants to be recommended in a given year will depend on the projected needs of the service for replacements of military judges expected to become unavailable.

(j) No applicant will actually be recommended for certification until successful completion of a Military Judge Course. Applicants are required to submit a copy of their Military Judge Course completion certificate to Commandant (G-LPD) immediately following completion of their course.

(2) Procedures

Coast Guard law specialists desiring to attend a Military Judge Course and be certified as a military judge will make letter application, via the chain of command, and the Chief Trial Judge (Commandant (G-L-4)), to Commandant (G-LPD), no later than 31 January annually. The application will include the following information:

(a) Format. [*See*, enclosure (26).]

(b) Education. Include all education after high school (with names of institutions attended and year of graduation) including academic distinctions attained and approximate (if not exactly known) place in class on graduation.

(c) Military Experience. List all military assignments, including primary duties at each.

(d) Date(s) designated a law specialist and certified as counsel for general courts-martial.

(e) Legal Experience other than military justice. Identify all prior legal experience that did not involve military justice. This will include experience gained prior to becoming a member of the Coast Guard, all non-legal assignments significantly law related, and all assignments in legal billets, delineating the primary, nonmilitary justice areas of the law dealt with as required by the billet.

(f) Military Justice Experience. State, in detail, all past experience with military justice, both prior and subsequent to being designated a law specialist. Be as specific as possible in the number, forum, type, and level of review of records of trial.

(g) Evidence of requisite knowledge and temperament to be a military judge. Provide this information in the form of opinion by one or more qualified persons having opportunity to form such opinion by courtroom or other observation. The evidence may consist of extracts from one or more OERs, letter(s) or statement(s), endorsement on the letter application, or a combination of these. For each item, the name, qualifications, and opportunity to observe should be stated either in the item itself or separately. Judicial temperament includes, but is not limited to, patience, forbearance to avoid premature decisions, calm demeanor, respect for others, and projection of an air of authority.

(h) A statement concerning the applicant's expected availability to serve as military judge for the two years following the next Military Judge Course. The statement should cover both the likelihood of remaining in a billet from which the applicant could periodically be spared and any special restrictions on availability within the billet (*e.g.*, any assignment precludes military judge service during the months of July and August).

(i) A PDR Review Authorization enclosure signed and dated by the applicant [*see*, enclosure (26)].

(3) Selection

In consultation with the Chief Trial Judge, Commandant (G-LPD) will review the application for attendance at a Military Judge Course and certification, prepare a recommendation, and forward it to the Chief Counsel. The Chief Counsel may select applicants for attendance at a Military Judge Course who have the requisite basic knowledge, experience. and temperament to be a military judge. Following successful completion of a Military Judge Course the Chief Counsel will forward the application to TJAG recommending certification. Commandant (G-LPD) will notify the applicant when final action is taken and TJAG has signed the Military Judge Certificate of Appointment.

6.D.2. Designation and Assignment of General Court-Martial Military Judges

6.D.2.a. General

General court-martial military judges will be designated by, and located at Coast Guard units, as determined by the Chief Counsel. General court-martial military judges will at all times be assigned to and directly responsible to the Chief Counsel for all purposes. Administrative and logistics support, including office space, office equipment, stationery, and office supplies, telephone and other communication services, access to law library, and clerical assistance, will be provided by the unit where the military judge is located.

6.D.2.b. Officer Evaluation Reports

The Chief Counsel is the assigned supervisor, reporting officer, and reviewing officer for the Chief Trial Judge. [*See*, Article 10.A.2(f)(1)(D), Coast Guard Personnel Manual, COMDTINST M1000.6 (series).]

6.D.2.c. Assignment of Duties

The primary duty of general court-martial military judges is to serve as military judge of general courts-martial. No person may assign them any duties other than that of military judge without prior authorization of the Chief Counsel. The Chief Counsel has determined that general court-martial military judges will be made available for detail as military judge for special courts-martial on a not-to-interfere basis with their primary duty.

6.D.2.d. Leave and Temporary Additional Duty [TAD]

The Chief Counsel shall approve leave and TAD for general court-martial military judges.

6.D.3. Designation of Special Court-Martial Judges

All personnel certified as qualified for duty as military judges by TJAG are designated as part-time special court-martial military judges. Detail of individual judges to specific cases shall be in accordance with the procedures prescribed in paragraph 3.H.1 above.

6.D.4. Procedure for Revocation of Certification of Military Judge or Counsel

[See, section 6.G below.]

6.E. TENURE FOR MILITARY TRIAL AND APPELLATE JUDGES

6.E.1. Military Trial Judges

A military trial judge, including the Chief Trial Judge, is assigned for a minimum of three years, except when he or she:

a. Assumed the duty as trial judge on a less than three-year basis or requests to be reassigned to other duties, and the Chief Counsel approves such assignment;

b. Retires or otherwise separates from military service;

c. Is reassigned to other duties by the Chief Counsel based on the needs of the service in time of war or national emergency;

d. Is reassigned, as a line officer or within the legal program to another billet, under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties; or,

e. Is temporarily, indefinitely, or permanently suspended from practice as a military trial judge by TJAG [General Counsel, Department of Transportation] for good cause [*see*, section 6.G below.].

6.E.2. Appellate Judges

An appellate judge is assigned to the United States Coast Guard Court of Criminal Appeals for a minimum of three years, except when he or she:

a. Assumed the duty as appellate judge on a less than three-year basis or requests to be reassigned to other duties, and the Chief Counsel, in consultation with TJAG, approves such assignment;

b. Retires or otherwise separates from military service;

c. Is reassigned to other duties by the Chief Counsel, in consultation with TJAG, based on the needs of the service in time of war or national emergency;

d. Is reassigned, as a line officer or within the legal program to another billet outside the Washington, DC area, under the normal personnel assignment process based on the needs of the service and without regard to any prior performance of judicial duties; or,

e. Is temporarily, indefinitely, or permanently suspended from practice as an appellate judge by TJAG for good cause [*see*, section 6.G below.].

6.F. CERTIFICATION OF COUNSEL UNDER ARTICLE 27(b), UCMJ

6.F.1. General

In addition to the requirements stated in RCM 502, each attorney is expected to meet the qualifications listed below in order to become certified in accordance with Article 27(b), UCMJ.

6.F.1.a. Designation as Law Specialist

Each attorney serving in a legal program billet is expected to obtain designation as a law specialist. Authority to designate attorneys as law specialists has been delegated to the Chief Counsel. Requests for designation as a law specialist shall be made to the Chief Counsel and shall include the information required by Article 6.A.6, Coast Guard Personnel Manual, COMDTINST M1000.6 (series). Requests may be submitted in writing or may be made online through the Chief Counsel's web site. When requesting certification online, copies of the applicant's law degree and bar license or card must be faxed to G-LPD to complete the application.

6.F.1.b. Basic Lawyer Course

Each law specialist must successfully complete the Basic Lawyer Course conducted by the Naval Justice School or the Basic Judge Advocate Course conducted by the U.S. Army or Air Force. [Note: Designation as a law specialist is not a prerequisite to attend the Basic Lawyer Course.] Waivers of this requirement may be granted on a case-by-case basis and must include a positive recommendation from the SJA requesting the waiver. Waiver requests should also include a listing of all military justice on-the-job training such as assistant counsel at courts-martial, comparable prior trial experience in civilian courts or previous certification in one of our sister services.

6.F.2. Certification

Personnel already designated as law specialists will normally receive Article 27(b), UCMJ certification and be sworn in upon graduation from the Basic Lawyer Course at

the Naval Justice School (or the U.S. Army or Air Force equivalent). Those attorneys who are unable to obtain designation as a law specialist prior to the completion of the Basic Lawyer Course shall seek designation as a law specialist and certification under Article 27(b), UCMJ as soon as the requirements in Article 6.A.6, Coast Guard Personnel Manual, COMDTINST M1000.6 (series) are met.

6.G. PROFESSIONAL SUPERVISION OF MILITARY TRIAL AND APPELLATE JUDGES AND ATTORNEYS PRACTICING IN PROCEEDINGS GOVERNED BY THE UCMJ AND MCM

[See, RCM 109.]

6.G.1. General

Subject to the limitations of Article 37, UCMJ, information as to alleged personal or professional misconduct by Coast Guard attorneys should be reported, together with appropriate supporting information, to the Chief Counsel. For the purpose of this section, "misconduct" is defined as any act or omission that is a violation of an applicable standard of professional responsibility [*see, e.g.*, section 6.C above] or serves to demonstrate the unfitness [*see*, RCM 109(c)(2)] of the respective Coast Guard attorney to perform his or her legal duties. For the purpose of this section, "Coast Guard attorney" is defined as a military trial or appellate judge or an attorney practicing in proceedings governed by the UCMJ and MCM. This section does not affect any other criminal or administrative proceedings arising from the underlying alleged misconduct. This section addresses only the authority of Coast Guard military trial and appellate judges and attorneys to practice as a judge or attorney for the Coast Guard.

6.G.2. Investigation and Discipline of Coast Guard Attorneys

6.G.2.a. General

This section [6.G above] concerns investigation of alleged personal or professional misconduct by and professional supervision of Coast Guard attorneys. These procedures are promulgated pursuant to RCM 109 and are intended to provide supplementary detail to the process set out in that rule. To the extent these processes are determined appropriate by the Chief Counsel or the Judge Advocate General of the Coast Guard [TJAG; General Counsel, Department of Transportation], they may be used to investigate and resolve other issues of Coast Guard attorney professional conduct not associated with military justice.

6.G.2.b. Complaints

The Chief Counsel is designated by TJAG to receive complaints under RCM 109(c)(3). Complaints need not be in any specific form, but, if possible, should be made under oath [*see*, RCM 109(c)(3), Discussion].

6.G.2.c. Initial Action Upon Receipt of a Complaint under RCM 109

The Chief Counsel shall take initial action upon the receipt of a complaint cognizable under RCM 109 as provided by RCM 109(c)(4).

(1) Screening

The process of screening a complaint cognizable under RCM 109 shall be at the discretion of the Chief Counsel. A decision by the Chief Counsel after screening that a complaint does not warrant commencement of an initial inquiry is final and constitutes final agency action.

(2) Notification to TJAG

The Chief Counsel will notify TJAG in all cases before proceeding to an initial inquiry of a military trial or appellate judge. [*See*, RCM 109(c)(4).]

(3) Suspension from Performing Legal Duties Pending Investigation

Notification to TJAG that a complaint has been filed and that an initial inquiry will be conducted shall contain a recommendation as to whether TJAG should temporarily suspend the subject of the complaint (respondent) from performing duties as military trial or appellate judge, if applicable, pending the outcome of further inquiry or investigation. With the exception of military trial or appellate judges, the Chief Counsel may temporarily suspend any Coast Guard attorney from performing legal duties pending further inquiry or investigation.

6.G.2.d. Initial Inquiry under RCM 109

(1) General

The initial inquiry shall follow the procedures for a one-officer standard informal administrative investigation [*see*, Administrative Investigations Manual [AIM], COMDTINST M5830.1 (series)] to the extent practical. All matters associated with the investigation shall be kept confidential. Investigations shall be conducted with reasonable promptness. [*See*, RCM 109(c)(4)-(5).]

(2) Initial Inquiry Officer

The initial inquiry officer shall meet the qualifications of RCM 109(c)(5)(B). The initial inquiry officer shall be assigned by the Chief Counsel and should be senior to the respondent and of similar legal experience (*i.e.* an officer senior to the respondent with current or prior military trial judge experience should be assigned if reasonably available to conduct an inquiry into allegations against a current military trial judge) [*but see*, Article 66(g), UCMJ limitation on appointment of a current sitting appellate judge to investigate another appellate judge]. The initial inquiry officer's written report to the Chief Counsel shall render an opinion as to whether a complaint has been substantiated. A complaint is substantiated upon finding that it is shown by a preponderance of the evidence (*i.e.*, more

likely than not) that the respondent engaged in the alleged acts or omissions constituting professional misconduct or demonstrating unfitness to perform legal duties [*see*, RCM 109(c)(5)(A)]. The initial inquiry officer shall make recommendations for appropriate action in the report to the Chief Counsel.

(3) Due Process

[See, RCM 109(c)(5)(C).]

(a) Notice

The initial inquiry officer will notify the respondent that a professional responsibility inquiry under this section is being conducted, the specific nature of the complaint, and the date by which written material in response to the complaint may be submitted. The notice shall advise the respondent of the rights set out in subparagraph 6.G.2.d(3)(b). Failure to submit a written response waives the opportunity to be heard.

(b) Opportunity to be Heard

The respondent shall be accorded the following rights if he or she chooses to appear before or respond to the initial inquiry officer:

i. To examine any relevant information collected by the initial inquiry officer and to offer written rebuttal to any of that information;

ii. To present, in writing, relevant facts, statements, explanations, documents, and physical evidence to the initial inquiry officer; and,

iii. To submit a written argument on his or her behalf.

6.G.2.e. Chief Counsel's Action Following the Initial Inquiry

(1) Additional Inquiry

The Chief Counsel may order additional inquiry.

(2) Complaint Not Substantiated

If the Chief Counsel determines a complaint against a Coast Guard attorney other than a military trial or appellate judge is not substantiated, the complainant and respondent shall be notified that no further action will be taken. If the Chief Counsel determines a complaint against a military trial or appellate judge is not substantiated, the Chief Counsel shall inform TJAG and recommend notification to the complainant and respondent that no further action will be taken [*see*, RCM 109(c)(5)(D)].

(3) Complaint Substantiated Against a Coast Guard Attorney Other Than a Military Trial or Appellate Judge

In response to a substantiated complaint against a Coast Guard attorney other than a military trial or appellate judge, the Chief Counsel may take no action, order the Ethics Commission [*see*, subparagraph 6.G.2.f below] to consider the complaint and render an opinion and recommendation, take professional disciplinary action, or refer the matter to the appropriate state bar of admissions for disposition. The Chief Counsel shall assure the respondent was afforded the rights set out in subparagraph 6.G.2.d(3) on the full record on which the Chief Counsel takes action, if such action is adverse to the respondent. Professional disciplinary actions include: verbal counseling or a direction to supervising officers to verbally counsel; oral or written (nonpunitive) censure; temporary, indefinite, or permanent suspension from practice in courts-martial; and revocation of Article 27(b) certification.

(4) Complaint Substantiated Against a Military Trial or Appellate Judge

If the Chief Counsel determines a complaint against a military trial or appellate judge is substantiated, the Chief Counsel shall inform TJAG and recommend appropriate action from the options below [*see*, RCM 109(c)(5)(D)]. The Chief Counsel may take no action; take minor professional disciplinary action; order the Ethics Commission to consider the complaint and render an opinion and recommendation; or forward the report, with an endorsement on the findings and recommendations to TJAG. Minor professional disciplinary action is defined as verbal counseling or a direction to supervising officers to verbally counsel or provide oral or written (nonpunitive) censure. The Chief Counsel may approve, disapprove, or modify any findings and recommendations when forwarding the report. Prior to taking action other than to dismiss the complaint, the Chief Counsel shall ensure the respondent was afforded the rights set out in subparagraph 6.G.2.d(3) on the full record on which the Chief Counsel takes an action adverse to respondent or forwards a recommendation to TJAG. [*See*, RCM 109(c)(6)(D).] Only TJAG may take other than minor professional disciplinary action against a military trial or appellate judge pursuant to RCM 109(c)(6) [*see*, subparagraphs 6.G.2.g below and 6.E.1 above]. A copy of the Chief Counsel's decision or recommendation to TJAG shall be provided to the respondent.

6.G.2.f. Ethics Commission

[See, RCM 109(c)(7).]

(1) Membership

The Ethics Commission should normally consist of the Deputy Chief Counsel and two legal program Office Chiefs selected by the Chief Counsel. Members of the Ethics Commission should normally be senior to the respondent and of similar legal experience [*but see*, Article 66(g), UCMJ limitation on appointment of a current sitting appellate judge to investigate another appellate judge]. An initial inquiry officer may not be appointed to an Ethics Commission in the same case. [*See*, RCM 109(c)(7)(A).]

(2) Duties

Normally, the Ethics Commission considers a complaint and provides an opinion whether the respondent's acts or omissions constitute professional misconduct or demonstrate unfitness to perform legal duties. If TJAG or Chief Counsel orders the Ethics Commission to conduct additional inquiry into the complaint, the Commission shall generally follow the procedures for a standard informal administrative board of investigation as contained in the Administrative Investigations Manual, COMDTINST M5830.1 (series). Before making any finding or recommendation regarding the alleged misconduct or unfitness, the Ethics Commission shall ensure the respondent was provided a complete copy of all information the Ethics Commission will consider in making a finding or recommendation. The Ethics Commission shall provide the Chief Counsel, or TJAG, via the Chief Counsel written findings and opinions concerning the alleged misconduct or unfitness. Dissenting opinions, if any, shall be included in providing a report to the Chief Counsel. The Ethics Commission shall identify those applicable provisions of the American Bar Association's Code of Professional Responsibility, Code of Judicial Conduct, Manual for Courts-Martial, or other standard of conduct drawn into question, and state whether, under the circumstances, the applicable standards were violated, with supporting rationale. If misconduct or unfitness to perform duties is found, the Ethics Commission shall recommend an appropriate disposition to the Chief Counsel, or TJAG via the Chief Counsel. [*See*, RCM 109(c)(7)(B).]

6.G.2.g. TJAG Action

[See, RCM 109(c)(6).]

Upon receipt of a report of inquiry with the Chief Counsel's endorsement and recommendation, pursuant to subparagraph 6.G.2.g.(5), TJAG may: dismiss the complaint; order additional inquiry; return the matter to the Chief Counsel or Ethics Committee for additional consideration by the same or different members; refer the matter to the appropriate state bar for disciplinary action; or take professional disciplinary action. Professional disciplinary actions include: verbal counseling or a direction to supervising officers to verbally counsel; oral or written (nonpunitive) censure; temporary, indefinite, or permanent suspension from practice in courts-martial or assignment as a military trial or appellate judge; and/or revocation of Article 26(b) and 27(b), UCMJ certifications. [*See*, RCM 109(c)(6)(B).] Prior to taking professional disciplinary action under this subparagraph, TJAG shall find in writing that respondent engaged in professional misconduct or is otherwise unfit for continued service as a military judge, and that such misconduct or unfitness is established by clear and convincing evidence. [*See*, RCM 109(c)(6)(C).] Prior to taking any action other than to dismiss the complaint, TJAG shall ensure the respondent was afforded the rights set out in subparagraph 6.G.2.d(3) above on the full record on which TJAG makes a decision. [*See*, RCM 109(c)(6)(D).]

6.G.2.h. Professional Disqualification

Notwithstanding the provisions of this section, a temporary, indefinite, or permanent suspension or withdrawal of certification of any Coast Guard attorney under Article 26(b) or (27(b), UCMJ may be ordered by the Chief Counsel, with notification to TJAG, if, after

compliance with subparagraph 6.G.2.d(3) above, a Coast Guard attorney becomes professionally disqualified from practice through due process of law: for example, because of the attorney's disbarment by a state or federal court, or because of his or her suspension by the Judge Advocate General or another armed service. TJAG notification or action is not a prerequisite to the Chief Counsel's action because the member will, by virtue of the loss of his or her license to practice, be unqualified for TJAG certification.

6.G.2.i. Contempt Proceedings

Suspension or withdrawal of certification under subparagraphs 6.G.2.e(3) above or 6.G.2.g above is separate and distinct from any matter involving contempt, as provided by RCM 809, except to the extent that the same conduct may be relevant to both proceedings.