



May 2024

MILITARY JUSTICE

Actions Needed to Help Ensure Success of Judge Advocate Career Reforms

GAO Highlights

Highlights of [GAO-24-106165](#), a report to the Committee on Armed Services, House of Representatives

Why GAO Did This Study

The military justice system depends on skilled and experienced litigators to try cases involving military personnel. However, DOD and a congressional committee have recently raised concerns about litigators' skills, qualifications, and career management, and whether they are sufficient to handle highly complex cases, such as sexual assault cases.

House Report 117-397 includes a provision for GAO to review the military services' military justice communities, including their structure, experience requirements, and the use of military justice career paths. This report examines the extent to which the services have (1) implemented military justice career paths, (2) established experience standards for litigation positions, and (3) established mechanisms to determine the effectiveness of the career paths. GAO reviewed guidance, analyzed program documentation, and interviewed service officials as well as litigators at a nongeneralizable sample of four military installations.

What GAO Recommends

GAO is making 35 recommendations, including that DOD and the military services develop and implement a strategy to communicate the military justice career paths, assess the need for experience standards for key litigation positions, and develop an approach for evaluating career path effectiveness. DOD generally concurred with the recommendations.

View [GAO-24-106165](#). For more information, contact Brenda S. Farrell at (202) 512-3604 or farrellb@gao.gov.

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MILITARY JUSTICE

Actions Needed to Help Ensure Success of Judge Advocate Career Reforms

What GAO Found

In 2021, the Department of Defense (DOD) required the military services to establish career paths in military justice that would allow military attorneys, known as judge advocates, to specialize as litigators (e.g., trial counsel, defense counsel, and military judges). The Navy has had such a program in place since 2007, and by 2022 the Army, the Marine Corps, and the Air Force had submitted plans for their own career paths. However, GAO identified issues that may hinder the success of these judge advocate career reforms. Specifically, the services:

- **Do not have a communication strategy.** The Army, Marine Corps, and Air Force have begun to promote their newly established career paths. However, judge advocates interviewed during this review told GAO that, in general, litigators at these three services do not trust that it will result in department-wide cultural change. Developing and implementing a strategy to communicate the establishment of and leadership support for the career paths may help attract judge advocates and increase litigator experience levels.
- **Have not assessed the need for tailored experience standards for supervisory litigators and defense counsel.** All four services have developed general professional experience requirements—called experience standards—judge advocates must obtain to serve as litigators. The services have also developed specific experience standards for a limited number of positions, such as military judges and victims' counsel. However, they have not assessed the need for tailored experience standards for other key positions, including supervisory litigators and defense counsel. Without assessing the need for tailored experience standards for other litigation positions, and implementing any recommendations from the assessment, the services lack reasonable assurance that they are placing the right judge advocates into potentially critical positions.
- **Lack an approach for evaluating career path effectiveness.** Multiple issues will limit the military services' ability to determine the effectiveness of these paths once fully implemented. First, the services do not collect key data to assess the effectiveness of the career paths, including litigator retention rates, reasons litigators separate from military service, and the number of litigator positions the services have filled. Second, DOD lacks a framework for assessing the effectiveness of the career path that includes performance measures and an evaluation plan. Collecting quality data on the military justice career path, developing a standardized suite of performance measures, and an evaluation plan would help the services measure progress towards achieving their goals and objectives as well as identify and address any challenges.

Without addressing these issues, DOD risks falling short of achieving the objective of its judge advocate career reforms—increasing the experience and competence of military justice litigators.

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Abbreviations

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|------|--|
| DOD | Department of Defense |
| IRC | Independent Review Commission on Sexual Assault in the Military |
| JAG | Judge Advocate General |
| OSTC | Office of Special Trial Counsel |
| UCMJ | Uniform Code of Military Justice |

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May 2, 2024

The Honorable Mike Rogers
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

In fiscal year 2023, the military services tried nearly 1,500 cases involving military personnel.¹ Cases are tried by active-duty attorneys, known as judge advocates, and involve a range of sensitive and consequential issues, including illicit drug use, sexual assault, and murder. The military justice system depends on skilled and experienced judge advocates serving as military justice litigators (hereafter referred to as litigators) to perform the roles of trial counsel (prosecution), defense counsel, and judges, among others. However, in recent years, Department of Defense (DOD) officials and a congressional committee have raised concerns regarding litigators' skills, qualifications, and career management, and whether they are sufficient to handle highly complex special victim cases, such as those involving sexual assault.

In response to concerns regarding the department's handling of incidents of sexual harassment and sexual assault, DOD's Independent Review Commission on Sexual Assault in the Military (IRC) conducted a review in 2021 and published a report that identified issues with the military services' administration of military justice, among other things.² The report found that these issues stemmed from a lack of relevant training and experience among litigators, which it described as "the Achilles' heel of the military justice system." Among other things, the IRC recommended

¹Pursuant to Article 146a, Uniform Code of Military Justice (UCMJ), the Judge Advocates General of the Army, Navy and Air Force, and the Staff Judge Advocate to the Commandant of the Marine Corps, shall each submit a report, with respect to the preceding fiscal year, to Congress, the Secretary of Defense, and the Secretaries of the military departments. According to the military services' fiscal year 2023 reports, they tried 709, 199, 245, and 339 courts-martial (combined general, special, and summary courts-martial) in the Army, the Navy, the Marine Corps, and the Air Force, respectively. Our review included the Army, the Navy, the Marine Corps, and the Air Force (to include the Space Force).

²Independent Review Commission on Sexual Assault in the Military, *Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military* (July 2, 2021).

the creation of professionalized career billets for litigators—that is, a clear career path to encourage the development of experience and competence in litigation. The Secretary of Defense ordered the implementation of this and other recommendations from the report. The need for experienced and competent litigators further increased with the passage of the National Defense Authorization Act for Fiscal Year 2022, which required each service to establish an Office of Special Trial Counsel (OSTC) with exclusive authority to prosecute a series of covered offenses, notably sexual assault.³ Each office is to be staffed by qualified litigators that meet specific standards for education, training, experience, and temperament.

The House Armed Services Committee report accompanying a bill for the National Defense Authorization Act for Fiscal Year 2023 includes a provision for us to review various aspects of the military services' military justice communities, including structure, experience requirements, and the use of military justice career tracks.⁴ This report assesses the extent to which the military services have (1) implemented career paths for military justice litigators, (2) established experience standards for military justice litigation positions, and (3) established mechanisms to determine the effectiveness of their military justice career paths.

For our first objective, we analyzed Army, Navy, Marine Corps, and Air Force plans for implementing military justice career paths. For our second objective, we analyzed required experience levels and standards for litigator positions and assessed any military service plans for evaluating those standards. For our third objective, we obtained and analyzed available military justice staffing data and assessed any mechanisms in place to evaluate the effectiveness of the services' military justice career paths. To support all three objectives, we reviewed relevant military service guidance and documents, interviewed military service officials, and conducted visits to four military installations to interview over 90

³Pub. L. No. 117-81 § 531 (2021), *codified as amended* at 10 U.S.C. § 824a.

⁴H. R. Rep. No. 117-397, at 135 (2022).

litigators across the four services.⁵ For a detailed description of our scope and methodology, see appendix I.

We conducted this performance audit from July 2022 to May 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Military Justice System

The purposes of military law are to promote justice, deter misconduct, facilitate appropriate accountability, assist in maintaining good order and discipline in the armed forces, and promote efficiency and effectiveness in the military establishment.⁶ The Uniform Code of Military Justice (UCMJ) provides the statutory framework of the military justice system and establishes the complete code of military criminal law.⁷ It also outlines the jurisdiction and basic procedure of the military justice system, and provides the legal framework for conducting investigations and prosecutions of allegations of misconduct by service members. All active-duty service members are subject to the UCMJ, as are other individuals, such as members of the National Guard when in federal service or reserves who are performing active-duty service.⁸ When a service member is accused of an offense, military criminal investigators,

⁵We conducted visits to Fort Cavazos, TX (Army); Naval Station Norfolk, VA (Navy); Camp Lejeune, NC (Marine Corps); and Langley Air Force Base, VA (Air Force). We selected these locations based on: (1) documentation regarding their litigation workload and size, (2) a diverse mix of military justice occupations, and (3) a large number of litigators from which to select participants for interviews. Because we did not select locations using a statistically representative sampling method, the comments provided during our interviews with litigators are nongeneralizable and therefore cannot be projected across DOD or a service, or any other installations. While the information obtained was not generalizable, it provided perspectives from litigators regarding their experience, training, and careers.

⁶*Manual for Courts-Martial United States (2024 Edition)*.

⁷10 U.S.C. §§801-946a.

⁸UCMJ jurisdiction also applies to retired members who are entitled to pay and to certain other individuals, but such jurisdiction is rarely invoked and is not a significant source of military justice practice.

commanding officers, and judge advocates have responsibilities related to the investigation and adjudication of the alleged criminal conduct.

Structure of the Military Services' Judge Advocate General (JAG) Corps

The JAG Corps of the Army, Navy, Marine Corps, and Air Force each provides legal support in areas such as military justice, administrative law, operational law, and legal assistance.⁹ Each JAG Corps includes judge advocates, civilian attorneys, and other legal support staff, such as paralegals. The number of judge advocates within each JAG Corps varies across the four services, as shown in table 1.

Table 1: Number of Active-Duty Judge Advocates by Military Service, as of Fiscal Year 2023

| | Army | Navy | Marine Corps | Air Force |
|---------------------------------------|-------|------|------------------|-----------|
| Number of active-duty judge advocates | 1,833 | 978 | 527 ^a | 1,318 |

Source: Army, Navy, and Air Force information derived from each service's 2023 annual report on military justice as required by 10 U.S.C. § 946a (Art. 146a, UCMJ). Marine Corps information provided by the Marine Corps Judge Advocate Division. | GAO-24-106165

^aMarine Corps data was not available for the entire fiscal year 2023. It was only available through August 2023.

In this report we refer to judge advocates assigned to military justice litigation positions—such as trial counsel, defense counsel, and military judges—as military justice litigators. As shown in table 2, there are organizations within each service's JAG Corps that perform the military justice litigation functions for that service. For example, the joint Navy-Marine Corps Trial Judiciary provides judges for cases in both the Navy and the Marine Corps.

Table 2: Military Services' Military Justice Litigation Organizations

| | Army | Navy | Marine Corps | Air Force |
|---|---------------------------------|---------------------------------|--|---------------------------------|
| Top official | Judge Advocate General | Judge Advocate General | Staff Judge Advocate to the Commandant of the Marine Corps | Judge Advocate General |
| Prosecution of certain covered offenses | Office of Special Trial Counsel | Office of Special Trial Counsel | Office of Special Trial Counsel | Office of Special Trial Counsel |

⁹While the Marine Corps does not have a JAG Corps like the other military services, it has a Judge Advocate Division. In this report we use the term "JAG Corps" to refer to this function for all the military services. The Space Force does not have its own JAG Corps or judge advocates; rather, Air Force judge advocates perform these roles on behalf of the service at this time.

| | Army | Navy | Marine Corps | Air Force |
|--------------------------------|---|--|-------------------------------------|---|
| Prosecution of all other cases | Trial Counsel working for Staff Judge Advocates | Naval Legal Service Command Region Legal Service Offices | Trial Services Organization | Trial counsel from the Government Trial and Appellate Counsel Division and/or working for Staff Judge Advocates |
| Defense | Trial Defense Service | Naval Legal Service Command Defense Service Offices | Defense Services Organization | Trial Defense Division |
| Special victims' counsel | Special Victims' Counsel Program | Navy Victims' Legal Counsel Program | Victims' Legal Counsel Organization | Victims' Counsel Division |
| Government appellate | Government Appellate Division | Appellate Government Division | | Government Trial and Appellate Operations Division |
| Defense appellate | Defense Appellate Division | Appellate Defense Division | | Appellate Defense Division |
| Trial judiciary | U.S. Army Trial Judiciary | Navy-Marine Corps Trial Judiciary | | Air Force Trial Judiciary |

Source: GAO analysis of military service guidance and information. | GAO-24-106165

Note: The Navy and the Marine Corps have combined government appellate, defense appellate, and trial judiciary organizations.

Judge Advocate Career Life Cycle

Accession. There are multiple paths to accession—joining the military as an officer—for judge advocates. Attorneys who are already licensed and admitted to the bar in at least one state, commonwealth, or territory, can apply to join one of the military services as a judge advocate. Current law students can also apply to become a judge advocate prior to graduation from law school but must obtain their degree and be admitted to the bar before commissioning as an active-duty judge advocate. Service members in the Army, the Navy, the Marine Corps, and the Air Force can also apply for their respective service’s Funded Legal Education Programs. The services cover the cost of law school for those selected to participate in the program in exchange for service agreements of 2 years for every year the officer spent in law school. The number of service members selected for this program in 2022 ranged from two in the Marine Corps to the statutory limit of 25 in the Army, according to service documentation and officials.¹⁰

¹⁰The Marine Corps and Air Force also have Excess Leave Programs to allow current officers to attend law school under the authorities at 37 U.S.C. § 502(b) and DODI 1327.06. Those selected for this program must bear all costs of attending law school and receive no pay or allowances for the duration of their law school education. The amount of active-duty service commitment incurred after graduation and appointment as a judge advocate varies by service.

Certification. Before judge advocates can serve as trial or defense counsel for a general court-martial, they must be certified as competent to perform those duties by their respective military service's Judge Advocate General.¹¹ The Army and the Navy Judge Advocates General certify judge advocates as competent upon graduation from required judge advocate training courses. In contrast, Air Force judge advocates must demonstrate competence in fundamental litigation skills for the Judge Advocate General to certify them. This generally involves Air Force judge advocates serving as trial counsel or assistant trial counsel in at least three courts-martial and being recommended for certification by their supervisor and a military judge, in addition to completing the judge advocate training course.

Promotion. In the Army, the Navy, and the Air Force, judge advocates compete for promotion with other judge advocates. Judge advocates in the Marine Corps are unique in that they may be assigned to non-legal billets and compete for promotion and command selection with all other Marine Corps officers.

Retention incentives. Each military service offers incentive programs aimed at retaining judge advocates. The Army Judge Advocate Officer Retention Bonus and the Navy, the Marine Corps, and the Air Force Judge Advocate Continuation Pay programs offer eligible judge advocates payments in exchange for additional service agreements. Navy litigators are eligible for an additional bonus in addition to Judge Advocate Continuation Pay.

Judge Advocate Training

Prior to certification, judge advocates must successfully complete training courses offered by the services' judge advocate schools. They must also complete any officer training courses that are required by their respective military service. Figure 1 provides an overview of required training for all judge advocates in each of the four military services.

¹¹10 U.S.C. § 827(b) (Art. 27(b), UCMJ) establishes the legal requirements for judge advocates to be detailed for a general court-martial. Trial counsel, defense counsel, or assistant defense counsel detailed for a general court-martial must (1) 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) be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

Figure 1: Military Services' Required Officer and Judge Advocate Training

Army

| | |
|---|--|
| 6 weeks | 11 weeks |
| Direct Commissioned Officer course at Fort Moore in Georgia | Judge Advocate Officer Basic Course at the Judge Advocate General's Legal Center and School in Charlottesville, Virginia |

Navy

| | | |
|--|---|--|
| 5 weeks | 3 days | 10 weeks |
| Officer Development School course in Newport, Rhode Island | Division Officer Leadership Course at the Naval Justice School in Newport, Rhode Island | Basic Lawyer Course at the Naval Justice School in Newport, Rhode Island |

Marine Corps

| | | |
|---|------------------|---|
| 10 weeks | 6 months | 10 weeks |
| Officer Candidates School in Quantico, Virginia | The Basic School | Navy Basic Lawyer Course at the Naval Justice School in Newport, Rhode Island |

Air Force

| | |
|--|--|
| 8 weeks | 9 weeks |
| Officer Training School at Maxwell Air Force Base in Montgomery, Alabama | Judge Advocate Staff Officer Course at the Judge Advocate General's School in Montgomery, Alabama (or equivalent course offered by another military service) |

Source: GAO analysis of military service information and guidance. | GAO-24-106165

Note: This represents the typical judge advocate training for direct commission officers. Officer training requirements may differ, depending on the service, for judge advocate candidates that follow a different path to entry.

In addition to the training required of all judge advocates, the military services have developed training standards specific to litigators to help ensure competence in the major areas of military justice, including defense, prosecution, victims' counsel, special trial counsel, and the judiciary. Specifically, each service generally requires litigators to successfully complete an initial training course before certification to serve as trial or defense counsel in a military court, as well as specialized courses before serving in roles such as victims' counsel, special trial counsel, and military judge. While the services generally have separate training programs, they sometimes cooperate in the provision of such training. For example, Marine Corps judge advocates attend Navy-provided initial training, and potential judges from all services attend the Army's judicial certification course. Service-specific training includes specific areas of focus, such as leadership within military justice. For example, the Navy provides a 1-week course for senior counsel assuming supervisory roles.

The services also offer litigators the opportunity to attend elective courses to ensure sufficient expertise and enhance professional development. For

example, litigators in any service can apply to attend the graduate course at the Army's school and earn a Master of Laws in Military Law that is recognized by the American Bar Association. Navy litigators can also request to attend courses provided by civilian organizations and institutions, such as the National Advocacy Center at the Department of Justice and the National District Attorney's Association.

Recent Military Justice System Reforms

For nearly a decade, the military justice system has undergone a number of significant reforms. For example, the Military Justice Act of 2016 made changes to the types of punishments permitted with nonjudicial punishments, the required size of panels or juries for courts-martial, and what judicial outcomes are subject to automatic appeal.¹² Most of the Act's provisions became effective on January 1, 2019.

In February 2021, the Secretary of Defense established the IRC as a 90-day review to assess DOD's efforts to address sexual harassment and sexual assault in the military.¹³ The Secretary charged the IRC to assess the department's efforts across various lines of effort, including accountability, prevention, and climate and culture. In its report, the IRC made eight recommendations related to the accountability line of effort to improve the military justice system.¹⁴ One recommendation was that the Secretary of Defense direct the services to establish career litigation billets to cultivate highly skilled and competent litigators and reinforce confidence in the military justice system. The IRC noted that the lack of such billets fuels inexperience and therefore harms both victims and alleged offenders. The IRC's report highlighted the Navy's career track program for judge advocates, which it established in 2007 as a model for developing competent and experienced litigators. In October 2021, the Secretary of Defense approved the IRC's recommendation and directed the services to establish career litigation billets.¹⁵

¹²Military Justice Act of 2016, passed as part of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, §§ 5001-5542 (Dec. 23, 2016).

¹³Secretary of Defense Memorandum, *Immediate Actions to Counter Sexual Assault and Harassment and the Establishment of a 90-Day Independent Review Commission on Sexual Assault in the Military* (Feb. 26, 2021).

¹⁴Independent Review Commission on Sexual Assault in the Military, *Hard Truths and the Duty to Change*.

¹⁵Secretary of Defense Memorandum, *Implementation of Recommendation 1.4 of the Independent Review Commission on Sexual Assault in the Military* (Oct. 6, 2021).

Further, the National Defense Authorization Act for Fiscal Year 2022 amended the UCMJ to remove the decision-making authority to prosecute certain cases from military commanders and place it with independent special trial counsel.¹⁶ Litigators in the OSTC in the Army, the Navy, the Marine Corps, and the Air Force will represent the United States in the investigation and prosecution of cases involving covered offenses. Covered offenses include murder, rape and sexual assault, kidnapping, domestic violence, stalking, and child pornography, among others. DOD announced full operational capability of the services' OSTC in December 2023.

Military Justice Career Paths Face Implementation Challenges and Risk Falling Short of Achieving Objectives

Each of the military services has taken steps to establish a military justice career path and staffing requirements for its respective OSTC. However, the services face cultural barriers in implementing the career paths. In addition, the services' approach to the implementation of military justice career paths risks falling short of achieving its underlying objective of increasing experience levels among litigators.

The Services Have Taken Steps to Establish Military Justice Career Paths and Staffing Requirements for Special Trial Counsel Offices

The Services Have Taken Steps to Establish Military Justice Career Paths

Per a DOD requirement, each service has taken steps to establish a career path that would allow judge advocates to specialize as military justice litigators. Specifically, as previously discussed, following its finding that the lack of specialization in military justice resulted in "perpetual inexperience" among litigators that harmed both victims and alleged offenders, the IRC recommended that the services develop a system of "professionalized career billets," or career paths for military justice litigators.¹⁷ The Secretary of Defense directed each service to implement

¹⁶Pub. L. No. 117-81 §§ 531-539C (2021).

¹⁷Independent Review Commission on Sexual Assault in the Military, *Hard Truths and the Duty to Change*.

the IRC’s recommendation, and the services subsequently submitted plans for doing so in 2022.¹⁸

The Air Force and Marine Corps programs have been formally adopted and implemented, while the Army program had not been formally approved at the time of our review. In February 2024, Army officials stated they expect the program to be approved by May 2024. The Navy established a military justice career path in 2007, and its submission reflected a continuation of its existing program.

The services’ plans are designed to serve as a “roadmap” of increasingly complex experiences and training generally expected of litigators who want to specialize in military justice, and to enable each service to assign litigators to positions that most closely align with their respective skill attainment and developmental needs. Specifically, each service’s career path plans include a series of skill levels or “identifiers” that are awarded to litigators upon completion of relevant training and experience. The services then may use these skill levels to identify individuals who are suited for specific military justice roles or assignments, such as trial and defense counsel, various appellate roles, victims’ counsel, and military judges, based on their knowledge and qualifications.

The services’ career paths differ in their structure and experience requirements and include unique distinguishing features. Table 3 provides a summary of the four services’ career paths.

Table 3: Summary of Military Justice Career Paths

| | Army | Navy | Marine Corps | Air Force |
|--|---|--|--|--|
| Structure | Five progressive skill levels | Three progressive skill levels | Four progressive identifiers (occupational specialties) and one standalone identifier for victims’ counsel | Five progressive skill levels |
| Experience requirement for first skill level or identifier | 12 months in qualifying roles | 4 years of service after graduation from Naval Justice School, including 2 years in qualifying roles | 24 months in qualifying roles | All judge advocates certified to serve as trial or defense counsel |
| Distinguishing features | Standalone additional identifier awarded to recognize experience in courtroom-based roles | Annual limit on number of applicants who are accepted | N/A | Dual identifiers at each skill level to distinguish between experience in general military justice |

¹⁸Secretary of Defense Memorandum, *Implementation of Recommendation 1.4*.

| Army | Navy | Marine Corps | Air Force |
|---|---|--------------|-----------------------------|
| Each skill level includes recommended number of courts-martial or other adversarial proceedings | Each skill level includes recommended number of courts-martial or other adversarial proceedings | | and special victims' issues |

Source: GAO analysis of military service information. | GAO-24-106165

Note: While the Army's military justice career path program has not yet been implemented, we reviewed the draft guidance for the program.

The Services Have Established OSTC Staffing Requirements

The military justice career paths will play a critical role in providing experienced litigators to staff each service's OSTC, and each service has identified the personnel requirements for the standup of its respective OSTC program. While the structures of these offices vary, the services generally used similar planning assumptions. Specifically, the services generally estimated a ratio of one special trial counsel for every 50 to 75 investigations, resulting in approximately seven to 12 courts-martial annually. Service officials stated that they developed these parameters based on their experience with caseload management within the services and by consulting outside experts.

The services' personnel requirements represent needs associated with the initial standup of each OSTC, with varying degrees of future growth (see table 4). Specifically, according to Army officials, the Army's initial requirements call for 159 personnel, representing a net growth of 63 personnel from prior levels. However, these officials stated that while the Army plans to grow the OSTC to 180 personnel by fiscal year 2025, it has not yet determined whether these personnel will come from existing resources or from additional growth. The Air Force's initial requirements call for 40 personnel, with a final size of 82 personnel by fiscal year 2026, according to Air Force officials. The Navy and Marine Corps also expect more resourcing requirements moving forward, according to officials.

Table 4: Initial Office of Special Trial Counsel Personnel Requirements, by Service

| Personnel Type | Army | Navy | Marine Corps | Air Force |
|---------------------------------|------------|-----------|--------------|-----------|
| Officers | 67 | 47 | 33 | 37 |
| Enlisted | 47 | 17 | 16 | 1 |
| Civilians | 45 | 26 | 15 | 2 |
| Total required personnel | 159 | 90 | 64 | 40 |

Source: GAO analysis of military service information. | GAO-24-106165

The Services Face Cultural Barriers in Implementing Military Justice Career Paths

Some Services Have Not Sufficiently Communicated Establishment of and Support for Military Justice Career Paths

The Army, the Marine Corps, and the Air Force have begun efforts to promote the military justice career paths among judge advocates. The services' efforts represent a positive first step. For example, in March 2023, the Air Force provided information about its career path in a newsletter to the JAG Corps. Similarly, in summer 2023, the Marine Corps announced the establishment of a screening board for its career path and encouraged litigators to update their records to reflect their experiences. In interviews, the Judge Advocates General of the Army and the Air Force and the Staff Judge Advocate to the Commandant of the Marine Corps highlighted their own efforts during visits to various installations to communicate the importance of the career path and their strong support for it. However, these efforts may not be enough to overcome the uncertainty among judge advocates that the services' historical preference for generalists in the JAG Corps has sufficiently evolved to support specialization.

The establishment of military justice litigation career paths represents a fundamental change in the career progression options that had typically been available to judge advocates in these services. Litigators in the Army, the Marine Corps, and the Air Force told us that their respective services have not effectively communicated support for the career path. One theme among litigators was concern regarding the career impact of successive assignments in military justice litigation and doubt about the extent to which service leadership truly supported a change that so dramatically departs from the traditional judge advocate career path. Perspectives of each service's litigators are discussed below.

- **Army.** A theme among Army interviewees was the JAG Corps' historical emphasis on "broadly skilled" judge advocates. For example, the Army's 2018 JAG Corps guidance stated that "broadly skilled judge advocates are capable of performing successfully in any core legal discipline, at any location, in roles appropriate for their grade." Litigators we interviewed cited this history as a reason for distrusting the viability of a military justice career path and raised concerns about promotion potential. However, many litigators stated that this challenge had been moderated in recent years. While Army guidance now emphasizes the need for developing skilled litigators, it

may be difficult for the Army to shift the perceptions of those judge advocates who were serving before the military justice career path was established.

- **Marine Corps.** Establishing a military justice career path represents a particular challenge for the Marine Corps. As discussed elsewhere in this report, Marine Corps judge advocates are unlike those serving in other services, in that they are not organized into a JAG Corps. Rather, they are unrestricted line officers who are encouraged to take on non-judge advocate assignments during their career. During our visit to a Marine Corps installation, a common theme among Marine litigators in various roles was that the specialized nature of the military justice career path is at odds with their service's primary and more generalized focus on producing a Marine. Similar to the Army, these litigators also questioned the potential for promotion for litigators—especially in light of its divergence from the Marine Corps' traditional approach to developing its personnel.
- **Air Force.** As with the Army and the Marine Corps, a common theme among Air Force litigators we interviewed during our site visit was the viability of a career path focused on military justice, including its effect on promotion potential, citing the Air Force's historical preference for generalists. The Air Force has explicitly acknowledged the challenge of changing the culture around military justice and promotion potential. Guidance provided to Air Force promotion panels to explain the importance of the career path notes that historically, "the career progression of a JAG was focused on growing leaders who could advise command across a wide spectrum of legal issues across all domains," rather than emphasizing the need to develop specialist military justice litigators.
- **Navy.** Navy litigators we spoke with generally did not express similar concerns; however, the Navy's military justice career path has been in place since 2007.

Standards for Internal Control in the Federal Government states that management should internally communicate the necessary quality information to achieve the entity's objectives.¹⁹ In addition, key practices for organizational transformations include establishing a communication strategy and ensuring that top leadership drives the transformation.²⁰ An

¹⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

²⁰GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, [GAO-03-669](#) (Washington, D.C.: July. 2, 2003).

effective, ongoing communication strategy should include communication early and often to build trust, ensure a consistent message, encourage two-way communication, and provide information that meets the recipients' specific needs.

However, according to service officials, the Army, the Marine Corps, and the Air Force have not developed a strategy that communicates the establishment of and service leadership support for the military justice career path that addresses concerns about career progression. While these services have taken some steps to communicate with judge advocates about the military justice career paths, the paths are a relatively new development that substantially departs from the services' traditional approach to developing judge advocates. By developing and implementing a strategy to communicate the establishment of and service leadership support for military justice career paths, potential candidates may be attracted to the military justice career paths and the services may be better able to achieve their underlying objective of increasing experience levels and litigator competence.

Service Promotion Boards Do Not Require the Inclusion of Individuals with Military Justice Experience

During our site visits for the Army, Marine Corps, and Air Force, one theme among litigators we spoke with was skepticism that career litigators could be competitive in the promotion process. This is in part because the three services do not require individuals with military justice experience to serve on promotion boards. The composition of boards that assess candidates for promotion are guided by a mix of statutory requirements and service-specific processes. However, these services do not require that judge advocates with military justice experience be included on boards evaluating litigators in the military justice career path who are seeking promotion.

Officer promotion boards by law must include at least five officers, including at least one from the "competitive category" concerned, such as judge advocates, when possible. The Army, the Navy, and the Air Force have promotion boards that are solely focused on judge advocates, but service requirements concerning the composition of members of these boards vary. For example, the Air Force requires that judge advocate promotion boards contain less than a majority of members from that occupation, with the remaining members consisting of non-judge advocates.²¹ In contrast, the Navy requires that such boards include at

²¹Department of the Air Force Instruction 36-2501, *Officer Promotions and Selective Continuation* (Jan. 12, 2024).

least one line officer (non-judge advocate), while the remaining members should be judge advocates. The Army does not impose additional requirements beyond the statutory requirement to include at least one judge advocate.²² Army officials noted that it is their practice to include at least three judge advocates on every judge advocate promotion board, with one serving as promotion board president. However, this is not a documented requirement.

Importantly, these boards do not specifically require that litigators be represented on promotion boards. However, litigation entails specific requirements and skill sets and is now recognized as a separate career path within the judge advocate community. Army and Navy officials stated that in practice, their promotion boards always include a judge advocate with significant military justice experience, but they acknowledged that this is not a documented requirement. Further, some Army, Marine Corps, and Air Force litigators we interviewed expressed hesitation regarding whether promotion boards are supportive of litigators seeking promotion. For example, some litigators expressed concern that board members who had advanced in their careers by following the services' emphasis on accepting a variety of assignments both inside and outside of military justice would be skeptical in their evaluation of judge advocates who specialized in military justice.

The Marine Corps does not have a separate promotion process for judge advocates. Rather, all judge advocates—including litigators—must compete for promotion with all other unrestricted officers, such as aviation and infantry personnel. The composition of Marine Corps promotion boards for unrestricted officers is divided into thirds, with equal representation from the aviation, infantry, and “support” functions. The support function includes a wide variety of roles, covering all non-aviation and infantry positions in the Marine Corps, including judge advocates. Marine Corps officials highlighted that the judge advocate community is not guaranteed to have someone selected to represent support positions on the board. Further, officials stated that their inclusion is often the result of advocacy on the part of the Judge Advocate Division and the availability of a suitably qualified judge advocate to participate.

²²Army Regulation 600-8-29, *Officer Promotions* (Sept. 9, 2020).

Navy litigators we interviewed did not express similar concerns about the specific makeup of promotion boards. As discussed, the Navy has had a military justice career path in place since 2007.

As recommended by the IRC, the services have issued guidance to promotion boards highlighting the importance of the military justice career path. While such guidance may help raise awareness about this relatively new career path, it may be insufficient absent broader changes to promotion boards. For example, a theme among Marine Corps litigators we interviewed was skepticism about whether promotion guidance alone was sufficient to elicit board member appreciation for the achievements of those in an unfamiliar career path.

Standards for Internal Control in the Federal Government states that management should demonstrate a commitment to recruit, develop, and retain competent individuals, and to establish expectations of competence for key roles to help the entity achieve its objectives.²³ Competence is the qualification to carry out assigned responsibilities. It requires relevant knowledge, skills, and abilities, which are gained largely from professional experience, training, and certifications.

The Army, the Marine Corps, and the Air Force have not issued guidance requiring individuals with relevant professional experience be included on boards to evaluate litigators for promotion. Individuals with relevant professional experience includes those who understand the extent to which a candidate's experience has prepared them to perform the responsibilities of the position sought. In the case of the Army and the Air Force, this could mean the inclusion of a judge advocate with significant litigation experience or a participant in the service's military justice career path.

Given the lack of separate boards for judge advocates in the Marine Corps, this could mean the inclusion of a judge advocate generally on such boards, with a special responsibility of that individual to highlight the role of military justice in meeting the Marine Corps' mission. This action was recommended for certain unrestricted officer boards in a 2019 comprehensive review of the Department of the Navy's uniformed legal communities. Senior officials from the Army, the Marine Corps, and the Air Force were receptive to the idea of including a judge advocate with

²³[GAO-14-704G](#).

relevant knowledge or experience on promotion boards, noting that it can only improve the process.

By issuing guidance requiring the inclusion of judge advocates with relevant professional experience, such as a participant in the military justice career path for the Army and the Air Force or a judge advocate with litigation experience for the Marine Corps, on boards evaluating litigators in the military justice career paths for promotion, these services would be better positioned to help ensure that the skills and qualifications of military litigators are better understood and appropriately considered during the promotion process. Moreover, doing so would help further demonstrate leadership commitment to ensuring that any organizational impediments to career progression in the military justice career paths are mitigated.

Implementation of Military Justice Career Paths Risks Falling Short of Achieving Objectives

We identified three areas where the services' implementation of the military justice career paths risk falling short of achieving the objective of increasing experience levels among litigators. First, Army and Air Force judge advocates can be assigned to sensitive litigation positions with outdated or degraded skills. Second, the Army does not require litigators to obtain a specific skill level before being assigned to litigation positions. Finally, the inefficient and ineffective use of litigators in all four services poses challenges to their ability to execute the military justice mission.

Army and Air Force Have Not Addressed the Risks Related to Outdated or Degraded Litigation Skills

The Army and the Air Force have taken some steps to help improve the experience levels and competence of their litigators. However, staffing processes may result in judge advocates with potentially outdated skill sets being assigned to sensitive litigation positions. The services allow judge advocates pursuing the military justice career path to spend periods of time in non-litigation roles. For example, the Navy and the Air Force encourage judge advocates to take breaks from litigation roles to pursue career broadening opportunities, such as serving in national security law or as an advisor to a senior level commander, which helps increase familiarity with their service's overall mission and operations outside of military justice.

Various service officials at the headquarters level noted that military justice litigation skills are perishable and can diminish without frequent use. While officials varied in their views of how much time away from the litigation role diminishes skill levels, they agreed that consistent practice is necessary to build a cadre of experienced and competent litigators.

Standards for Internal Control in the Federal Government states that management should design control activities to achieve objectives and respond to risks.²⁴ As noted previously, the Army and the Air Force have established career paths for military justice litigators that emphasize the need for increased experience. However, these services cannot provide reasonable assurance that litigation skills are maintained because they have not addressed the risk of skill degradation when skills are not regularly used. For example, the Army and the Air Force have not set time limits for the recency of experience for skill levels, which may result in judge advocates with potentially outdated skill sets being assigned to sensitive litigation positions.

The Navy and the Marine Corps have also not set such limits, but we identified other factors that help to mitigate this risk. Specifically, Navy career path participants are generally only assigned to litigation positions, and it is therefore unlikely that judge advocates would spend significant amounts of time in outside positions. The Marine Corps' system of occupational specialties incorporates rank, which means that specialties awarded to judge advocates at one level are not applicable to more senior-level assignments. A rank-appropriate occupational specialty is required for litigation positions and, according to Marine Corps officials, can only be waived by the Director, Manpower Management with advisement by the Staff Judge Advocate to the Commandant of the Marine Corps. This helps to ensure that judge advocates have current skills when seeking more senior positions.

Army and Air Force officials stated that they take the recentness of an individual's military justice experience into account when making assignment decisions and that they believed it was unlikely that a litigator would be assigned to a position without the requisite skill set. However, absent guidance specifically addressing this challenge, the risk remains unaddressed. In addition, a theme during our Army site visit was the need to make less than ideal assignment decisions due to staffing constraints, including placing inexperienced judge advocates in positions better filled by someone with a more advanced skill set. Without issuing guidance that addresses the risk that the perishability of litigation skills poses to the career paths, such as setting recency time limits on the validity of military justice skill levels, the Army and the Air Force may assign litigators with diminished skills to positions where such skills are necessary.

²⁴[GAO-14-704G](#).

Army Does Not Require Achievement of Skill Levels to Occupy Positions in Its Career Path

The Army does not require judge advocates to obtain applicable skill levels in its career path before being assigned to litigation positions. The Army's draft plan for its career path includes five such skill levels, which identify experience in military justice throughout a litigator's career. The Army's draft guidance for the career path states that while such skill levels are "strongly considered," they are "not a prerequisite for any assignment." The other services' military justice career paths generally require achievement of skill levels, with limited exceptions. For example, to occupy a level three position in the Air Force's career path, litigators must have previously achieved level two. According to an Air Force official, exceptions to this policy can be granted by the Air Force Judge Advocate General on a case-by-case basis. Similar policies are in place in the Navy and the Marine Corps. In contrast, the Army's career path does not include specified skill level requirements for positions at each successive level that litigators must meet.

Standards for Internal Control in the Federal Government states that management should design control activities to achieve objectives and respond to risks.²⁵ However, the Army has not issued guidance that specifies experience requirements litigators must meet before assignment to certain positions, potentially undermining the career path's primary objective of increasing experience levels. Such requirements need not overly constrain the Army's staffing, and as with the other services, the Judge Advocate General could issue a waiver for a given situation if necessary.

Army officials stated that not requiring a specific skill level allows them flexibility to ensure that an individual litigator is an appropriate fit for a particular position based on its specific context. For example, they noted that the "Chief of Justice" at a small installation and the same role at a large installation require different levels of experience, and that application of a single skill level requirement to that position would be inappropriate. We recognize that the appropriate skill level required for a position may vary based on the context and specific responsibilities of the role. Given this variation, assigning skill levels to specific billets based on the context could provide the Army with reasonable assurance that it has assigned a qualified litigator.

²⁵[GAO-14-704G](#).

Inefficient and Ineffective Use
of Personnel Poses
Challenges to Litigators' Ability
to Execute Their Mission

Litigators from each service told us about their frustration with the significant amount of time they spend performing burdensome collateral duties, which has negatively affected their ability to execute the military justice mission. First, litigators at all four of our site visits stated that they spend significant amounts of time on administrative tasks ranging from fulfilling data collection requirements on the status of cases to making travel arrangements for witnesses. These litigators strongly characterized these tasks as cumbersome administrative items that are typically performed by support staff, but added that there were limited, and in some cases, no support staff available to perform such responsibilities. For example, a litigator at one installation highlighted challenges with the availability of enlisted personnel to assist them, expressing frustration with how frequently personnel were recalled to work in other units or otherwise unavailable to provide support to the legal office.

Second, litigators at all four of our site visits also told us that they have significant collateral duties in addition to their military justice responsibilities. For example, litigators at one site visit said that judge advocates are required to periodically "stand duty" for a 24-hour shift while still maintaining progress on ongoing cases. Litigators at another site visit stated that they spend a significant amount of time performing required collateral duties that are unrelated to military justice, such as overseeing the execution of building services work and maintenance contracts. Further, these litigators described some collateral duties as being so time intensive that they may consume the entire workday.

DOD Directive 1100.4, *Guidance for Manpower Management*, states that existing policies, procedures, and structures shall be periodically evaluated to ensure efficient and effective use of personnel resources.²⁶ Some of the services have reviewed aspects of the military justice process and their uniformed legal communities as a whole. For example, in 2019, the Army implemented a military justice redesign that, among other efforts, created a "military justice advisor" position within non-legal units (e.g. within a battalion) and gave some of the trial counsel responsibilities to those roles. Additionally, the Department of the Navy conducted a review of its uniformed legal communities in 2019 and found that its JAG Corps was underutilizing enlisted legal support personnel. The review recommended that the JAG Corps optimize their inventory

²⁶DOD Directive 1100.4, *Guidance for Manpower Management* (Feb. 12, 2005).

and assignment of litigators through proper military and civilian paralegal utilization.

However, neither of these studies addressed the issues that we identified because the services have not formally evaluated their policies and procedures related to the use of litigators to help ensure they are efficiently and effectively employed. Specifically, litigators at both our Army and Navy site visits indicated that some of the problems discussed in their respective services' studies persist, as evidenced by the amount of time they still spend on tasks better suited for administrative support staff and paralegals.

Officials from all four services acknowledged that ensuring appropriate staffing and support for litigators is a challenge, and some described efforts to help reduce the time litigators spend on work that should be outside their scope of responsibility, such as hiring more paralegals. Further, Army and Air Force officials said they are currently conducting studies of staffing levels across their respective JAG Corps. We acknowledge that these practices are helpful, but without a formal evaluation of the policies and procedures governing the use of litigators, the services will be unable to ensure that they are making the most efficient and effective use of these highly trained, specialized military personnel.

The Services Do Not Periodically Evaluate Existing Experience Standards and Have Not Assessed the Need for Standards for Other Key Positions

The Services Have Established Experience Standards for Some Litigation Positions, but Do Not Periodically Evaluate Them

As discussed previously in this report, the services' military justice career paths established baseline experience standards that apply to most litigation positions. In addition, the services have established tailored experience standards for a limited number of military justice positions, notably for military judges and victims' counsel, but do not periodically evaluate these standards to ensure continued relevancy.

The Services Established Specific Standards for Certain Positions

The experience standards within the services' career paths provide broad baselines across the military justice enterprise, typically requiring a specified number of months or years of practice to occupy a given diverse group of positions. In addition to these standards, the services have established specific experience standards for a limited number of military justice positions, notably for military judges and victims' counsel.

Specifically, the Army requires trial judges to have at least 3 years of trial or other criminal law experience, while the Navy and the Marine Corps require at least 4 years of criminal or civil litigation experience and service in a leadership position in one of these areas, or other comparable military justice experience. For appellate military judge positions, the Army requires at least 2 years of experience as a trial judge or other relevant positions, plus an additional 2 years as senior trial counsel, senior defense counsel, or other specified relevant positions. The Navy and Marine Corps require at least 12 years in the general practice of law, including at least 2 years in litigation positions or other comparable military justice experience.²⁷ The Air Force has not developed specific experience standards for military trial judges and prefers, but does not require, appellate military judges to have prior experience as a military trial judge. However, a senior Air Force official stated that they evaluate candidates for specific positions based on a variety of factors and attempt to place the most suitable candidate into such positions.

For victims' counsel, the Marine Corps generally requires judge advocates to have at least 6 months of military justice experience and at least one contested trial, while the Air Force requires victims' counsel to be recommended by a supervisor based on their military justice experience, among other qualifications. The Army and the Navy also

²⁷Each service has a Court of Criminal Appeals composed of appellate military judges who review court-martial cases. 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 of the highest court of a State. The Navy and Marine Corps have a joint Court of Criminal Appeals. See 10 U.S.C. § 866.

The Services Do Not Periodically Evaluate Existing Standards

require some military justice experience for victims' counsel but will consider relevant civilian litigation experience towards victims' counsel qualification in lieu of this requirement. Specifically, the Army requires victims' counsel to have prior military justice experience, civilian criminal law experience, or other relevant experience. According to Navy officials, the Navy prefers victims' counsel applicants to be in their third tour but will consider second-tour counsel with relevant experience.

The services do not periodically evaluate their experience standards to ensure their continued relevance. Officials told us that the type and complexity of cases seen within the military justice system has evolved substantially over the years. Specifically, officials said the share of cases involving sexual assault has increased over the course of their careers, and that such cases are often contested, complex, and challenging to prosecute and defend. DOD's Sexual Assault Prevention and Response Office has reported that total annual reports of sexual assault made to DOD more than doubled between 2010 and 2022, and that 66 percent of the sexual assault investigations in fiscal year 2022 resulted in commander action, such as a court-martial charge or an administrative discharge.²⁸ However, even as sexual assault has become a central subject across the military justice enterprise, litigation experience standards have not been re-evaluated in light of these changes.

Standards for Internal Control in the Federal Government states that management should periodically review policies, procedures, and related control activities for continued relevance and effectiveness in achieving the entity's objectives or addressing related risks.²⁹ In addition, our prior work has highlighted that high performing organizations stay alert to emerging mission demands and human capital challenges and remain open to reevaluating their human capital practices.³⁰

However, the military services do not regularly review their experience standards for litigation positions because their respective guidance documents do not require a periodic evaluation of those policies. To their credit, some of the services have made changes to their experience standards for litigators in response to various concerns, but such efforts

²⁸Department of Defense, *Department of Defense Annual Report on Sexual Assault in the Military: Fiscal Year 2022* (Apr. 26, 2023).

²⁹[GAO-14-704G](#).

³⁰GAO, *A Model of Strategic Human Capital Management*, [GAO-02-373SP](#) (Washington, D.C.: Mar. 15, 2002).

have been on an ad hoc basis. For example, in 2007, the Navy created its Military Justice Litigation Career Track in response to concerns about low promotion rates for litigators and the perception that spending significant lengths of time in litigation positions, and therefore developing expertise, would impede career progression. In 2011, the Air Force modified its standards for litigators to require a minimum amount of practical experience in trial counsel positions before conferring certification to practice before a court-martial. A senior Air Force official stated that service leaders instituted this process due to concerns regarding the ability of litigators to perform in these roles immediately upon completing initial JAG training, which was the previous practice. Other wide-ranging reviews in the Army and the Navy did not specifically address experience standards for military justice litigators, including in the Army's "military justice redesign" and the Navy's comprehensive review of its uniformed legal communities.³¹

Without issuing guidance to require a periodic evaluation of professional experience standards for litigators, the military services lack reasonable assurance that their existing standards are relevant or effective in achieving their career paths' objectives, particularly in light of the changes to military justice litigation.

The Services Have Not Assessed the Need for Tailored Experience Standards for Key Positions

The services rely on the baseline experience standards established by their military justice career paths in lieu of tailored standards for all positions, including key positions such as supervisory litigators and defense counsel. However, the services have not assessed whether these baseline standards, which apply to groups of diverse positions, are sufficient for key positions or if standards tailored to the responsibilities of specific positions may be necessary.

The experience standards within the services' career paths provide broad baselines across the military justice enterprise, such as a specified number of months or years of practice. These standards apply to broad groups of diverse occupations and are not tailored to the responsibilities

³¹In 2019, the Army implemented a military justice redesign that separated trial counsel's historical roles of trial litigation and command advice into two separate positions: trial counsel and military justice advisors, respectively. In 2019, the Navy conducted a comprehensive review of the Navy JAG Corps and the Marine Corps Judge Advocate communities. The scope of the review included legal community training and professional development; organization and command relationship, including oversight, efficiency, and effectiveness of the delivery of legal services; sufficiency of staffing levels; evaluation of career progression; consideration of any potential effect of the Military Justice Act of 2016; and any matter deemed appropriate.

of individual positions. For example, at one level within the Air Force's career path, the same broad experience requirement applies to headquarters program administrators, senior defense counsel, and counsel serving with the Military Commissions prosecuting cases at Guantanamo Bay. While these positions may be appropriate roles for judge advocates with the same general level of experience, their responsibilities may require individuals with a history of practice and specialization in particular areas of law. However, in the absence of standards for individual positions, the career path baselines are the only experience standard that applies to most of these positions.

There is a wide variety of litigation positions with varying responsibilities and functions across the military justice enterprise. In the course of our analysis of military service guidance and interviews with litigators, we identified two types of positions for which the lack of clear experience standards may pose a risk to the military justice enterprise: (1) supervisory litigators and (2) defense counsel.

Supervisory litigators. To varying degrees, each service lacks experience standards tailored to the roles and responsibilities of key supervisory and other senior litigator roles, such as senior defense counsel and regional trial counsel. Individuals assigned to such positions are responsible for overseeing other counsel practicing in their respective areas of law, and officials generally characterized the judge advocates whom such litigators oversee as junior and relatively inexperienced. During our site visits, a theme among senior litigators was that the oversight and assistance provided by supervisory litigators are key in helping to mitigate any potential risks posed by less-experienced counsel. Officials at the headquarters level echoed this, stating that these litigators work on cases with inexperienced counsel to help build their military justice skills.

Further, some supervisory litigators we interviewed expressed concerns about their own or other supervisory litigators' lack of experience. For example, we interviewed supervisory litigators from two different services who stated that they were responsible for supervising and assisting junior litigators in an area of military justice in which they did not have previous experience. In another interview, a supervisory litigator stated that they generally had less litigation experience than some of the litigators they were supervising. Similarly, the IRC's report on sexual assault in the military cited concerns regarding the quality of prosecution work performed by large numbers of inexperienced litigators within DOD, but

noted that when paired with more seasoned litigators, “the quality of government practice increased exponentially.”³²

Defense counsel. Each service lacks experience standards for defense counsel beyond the minimum statutory standard of certification required to practice in such a role. This certification is conferred upon completion of initial JAG training and does not require practical experience in three of the four services. Specifically, the Air Force generally requires judge advocates to participate in three courts-martial before certification to serve as trial or defense counsel, while the Army, the Navy, and the Marine Corps confer certification upon completion of initial JAG training. Further, while Army guidance states that litigators generally should not be assigned as defense counsel for their first assignment, such guidance is not a blanket prohibition, and officials acknowledged that they assign newer litigators to defense counsel roles to meet staffing needs.³³ Navy officials stressed that the service requires defense counsel to complete certain training before being eligible to be assigned as defense counsel and mandates additional training prior to or upon assignment; however, this training does not substitute for experience.

Defense counsel form an attorney-client relationship with defendants—the success of which is based in part on the trust and confidence that a defendant has in their counsel’s ability to successfully defend them against the offenses with which they have been charged. Officials at the headquarters level and at our site visit locations stated that defense work requires experience to competently represent the client and that once assigned, the attorney-client relationship should not be disrupted. For this reason, officials at the headquarters level and locally at our site visits told us that generally, inexperienced litigators should not be assigned as defense counsel during their initial years of service.

However, during our Army, Navy, and Marine Corps site visits, we found examples of litigators who were assigned as defense counsel immediately after completing required training or shortly thereafter. Supervisory litigators for these defense counsel expressed concern regarding this practice but noted that they try to mitigate the risk of having

³²Independent Review Commission on Sexual Assault in the Military, *Hard Truths and the Duty to Change*.

³³Army Judge Advocate Legal Services Publication 1-1, *Personnel Policies* (May 2023).

inexperienced counsel defend service members by assigning them to less complex cases, when possible.

Senior officials from each service also raised concerns about the newly established Office of Special Trial Counsel (OSTC) and the likelihood that it will exacerbate issues of inexperience within certain litigation positions. Generally, judge advocates are expected to become eligible for assignment to the OSTC after 2 to 4 years of litigation experience. OSTC experience standards, coupled with the limited number of litigators who meet these requirements, will likely force the services to rely on inexperienced litigators to serve as defense counsel or other positions that lack similar requirements. Further, these officials stated that the focus on OSTC experience standards could lead to a potentially significant imbalance in the experience levels of defense and prosecution assigned to litigate the same case.

Standards for Internal Control in the Federal Government states that management should demonstrate a commitment to recruit, develop, and retain competent individuals and should establish expectations of competence for key roles to help the entity achieve its objectives.³⁴ Further, these standards require management to design control activities to achieve objectives and respond to risks. However, the services have not developed experience standards for all military justice litigation positions, including for some supervisory litigator positions and defense counsel. Given that there are at least 160 unique military justice litigation positions across the services, we recognize that developing unique standards for all such positions may not be necessary or practical. By conducting an assessment to determine which individual positions or roles within the military justice enterprise require experience standards beyond those established by their career paths and tailored to their individual responsibilities, the services could focus their efforts on those roles where the lack of clear experience standards may pose a risk to military justice.

Service officials stated that they evaluate candidates for specific positions based on a variety of factors and that they attempt to place the most suitable candidate into such positions based on their experiences and competencies. For example, Navy officials stated that they consider the complexity of a candidate's case experience, not just the number of cases, as well as leadership experience and temperament when

³⁴[GAO-14-704G](#).

determining the most qualified candidate for a position. In addition, senior Army officials described steps to mitigate risks associated with assigning inexperienced litigators to serve as defense counsel, such as stationing them at large installations where there is support available to them. However, without an assessment of the need for experience standards tailored to the responsibilities of individual military justice litigation positions and the implementation of any recommendations from the assessment, the services lack reasonable assurance that their current approach of relying on broad baseline standards ensures they place the right judge advocate into potentially critical positions.

Several Issues Limit the Services' Ability to Determine Effectiveness of Military Justice Career Paths

Several issues limit the services' abilities to determine the effectiveness of their efforts to implement military justice career paths and to address any issues identified in a timely manner. The services do not have data to assess the effectiveness of the military justice career paths. In addition, the services are not positioned to assess career path effectiveness because they lack a framework for such an assessment, including performance measures and an evaluation plan to employ such measures.

The Services Do Not Have Data to Assess the Effectiveness of Military Justice Career Paths

The military services are required to report annually to the armed services committees about the sufficiency of the judge advocate workforce to perform capably military justice functions.³⁵ The military services include information on workload and total personnel levels for the prior fiscal year. However, they do not have data that would assist them in assessing the effectiveness of the military justice career paths in achieving their objective of increased experience levels and competence of litigators, including retention rates, reasons for separating from service, and historical staffing data.

³⁵10 U.S.C. § 946a (Art. 146a, UCMJ) requires the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps to submit a report not later than December 31 each year, with respect to the preceding fiscal year, containing the following: data on the number and status of pending cases; information on the appellate review process; an explanation of measures implemented by the armed force concerned to ensure the ability of judge advocates to participate competently as trial counsel and defense counsel, preside as military judges, and perform the duties of a special victims' counsel; the independent views of each Judge Advocate General and of the Staff Judge Advocate to the Commandant of the Marine Corps as to the sufficiency of resources available within the respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions; and such other matters as may be appropriate.

The Services Do Not Know the Retention Rates of Litigators

The military services have information on the retention of judge advocates in general, but do not know if they have challenges in retaining litigators specifically. For example, the services reported to us that judge advocate loss rates (the number of judge advocates that left military service or the career field) at the O-4 officer level in 2022 ranged from 5 percent in the Army to 10.8 percent in the Marine Corps.³⁶ However, the services stated that retention information specific to litigators is not routinely available. Senior service officials acknowledged that such information is critical to assessing the success of the military justice career paths, specifically whether they have increased litigators' experience levels.

A theme from our interviews with service officials and litigators at the installations we visited was concern regarding each service's ability to retain experienced litigators. Supervisory litigators in two services specifically cited their services' inability to retain litigators as a cause of low levels of litigation experience. However, without data, the military services do not know if they have challenges retaining litigators. Currently, the military services do not have quality information regarding the retention of litigators because they do not routinely collect retention data that identifies litigators—specifically, those participating in their service's military justice career path. Army, Marine Corps, and Air Force officials noted that prior to the introduction of their military justice career paths there was no "litigator" designation that could be applied to any individual judge advocate. *Standards for Internal Control in the Federal Government* states that management should use quality information to achieve the entity's objectives, including by using the entity's objectives to identify the information requirements needed to achieve the objectives.³⁷

We recognize that the litigator designation is new for these services and collecting such information prior to its introduction would not have been possible. Navy officials stated that they have assessed retention of litigators on an ad hoc basis in response to requests or in support of various planning efforts. For example, at the end of our review, Navy officials cited a recent effort to assess retention of lieutenants and a plan for lieutenant commanders in spring 2024. However, they acknowledged the lack of a systematic mechanism to monitor and report on litigator retention.

³⁶O-4 officer ranks include Major in the Army, the Air Force, and the Marine Corps, and Lieutenant Commander in the Navy.

³⁷[GAO-14-704G](#).

The Services Lack Information on Litigators' Separation Decisions

By collecting information on the retention of litigators and considering including the resulting data in their annual judge advocate workforce reports to Congress, the services would be better positioned to assess and report on the sufficiency of their workforces. Additionally, the services would be better positioned to assess the success of their military justice career paths in retaining litigators and increasing their experience levels. Specifically, the services would be able to compare the retention rates of litigators—as identified by their military justice career paths—and non-litigators to determine whether and to what extent there are any challenges specific to retaining litigators.

The Army, the Navy, the Marine Corps, and the Air Force each collect some information on the reasons judge advocates separate from military service, such as through exit surveys and interviews. However, they do not collect quality information specific to litigators.

The Army and the Marine Corps conduct exit surveys specific to judge advocates, but the surveys do not include a mechanism to separately analyze responses from litigators and non-litigators. A senior official with the Army Judge Advocate General's office and a senior Marine Corps Judge Advocate Division official both expressed a willingness to implement such a mechanism in the future.

The Navy and the Air Force conduct exit surveys on a service-wide level. While they are able to separate responses specific to judge advocates, they cannot separate responses from litigators and non-litigators, similar to the Army and the Marine Corps. The Navy JAG Corps also conducts exit interviews with separating and retiring judge advocates, but officials stated that the interviews do not use a standardized set of questions and are conducted as more informal discussions.

Officials across the services highlighted the need to retain litigators to increase the experience levels and competence of those working in military justice and noted that the creation of the OSTC has heightened this need. However, officials were generally only able to provide anecdotal information on the reasons litigators separate from military service. Headquarters-level officials and litigators expressed a generally consistent set of reasons that litigators separate from service. For example, headquarters-level officials across all four services highlighted the geographic stability associated with careers outside the military. Supervisory litigators from all four services highlighted that litigators have skill sets that are highly marketable to other employers, such as private law firms and the Department of Justice. Headquarters-level officials

echoed this concern, with one Navy JAG Corps official stating that attrition is a byproduct of recruiting and developing skilled litigators.

During our interviews with headquarters officials and litigators at our installation visits, interviewees cited additional reasons that litigators may separate from service, including professional opportunities for spouses and the perception that some services were reluctant to allow judge advocates to remain in litigation positions throughout their careers.

Standards for Internal Control in the Federal Government states that management should use quality information to achieve the entity's objectives, including by using the entity's objectives to identify the information requirements needed to achieve the objectives.³⁸ In addition, the *DOD Strategic Management Plan: Fiscal Years 2022-2026* states that one of the department's strategic objectives is to grow "talent to shape an appropriately skilled, resilient, and future ready workforce."³⁹

However, the military services do not have quality information on the reasons litigators separate from service because they have not developed a process to systematically collect that information. Specifically, the Army and the Marine Corps have not adapted their existing judge advocate exit survey processes to include a mechanism for identifying litigators. In addition, the Navy and the Air Force have not adapted existing service-wide exit survey processes or conducted exit surveys that are specific to judge advocates and include a mechanism for identifying litigators.

By developing a process to systematically collect quality information on the reasons litigators separate from military service and considering including such reasons in their annual judge advocate workforce reports to Congress, the services would be better able to address the reasons for separation and to develop programs aimed at retaining litigators, if necessary.

The Services Lack Historical Data on Litigator Staffing Levels

The military services lack historical staffing data on actual staff assigned to positions relative to authorized positions for all judge advocate positions, including litigation positions. Some services noted ad hoc efforts to gather such information or attempted an analysis as a result of our inquiry; however, each military service confirmed that it does not

³⁸GAO-14-704G.

³⁹Department of Defense, *DOD Strategic Management Plan: Fiscal Years 2022-2026* (2023).

routinely maintain such information. Historical information on actual staff assigned to litigation positions relative to authorized positions is important to understanding long-term trends in the sufficiency of resources and the possible effect of the career paths on the military justice system.

Standards for Internal Control in the Federal Government states that management should use quality information to achieve the entity's objectives. It also states that management should design a process that uses the entity's objectives and related risks to identify the information requirements needed to achieve the objectives and address the risks. Further, management should establish and operate monitoring activities to monitor the internal control system and evaluate the results.⁴⁰

The Army, the Navy, the Marine Corps, and the Air Force do not have information on actual staff assigned to litigation positions relative to authorized positions because they do not collect and maintain such information. The services provided various explanations as to why they were unable to provide this information, which were generally technical in nature and concerned the capabilities of existing data systems and methods for tracking of personnel. For example, a senior Marine Corps official discussed a technical fix that would allow the service to monitor and record such information.

By collecting and maintaining information on litigator staffing levels relative to authorized positions and considering including it in their annual judge advocate workforce reports to Congress, the services would be better able to analyze trends in their historical ability to meet current needs and plan for future needs.

The Services Lack a Framework to Assess Military Justice Career Path Effectiveness

Once the career paths are fully implemented and become embedded in the practice of military justice, the services will be unable to determine the extent to which the career paths have achieved desired outcomes, such as increased military justice litigator experience levels and competence. They will not be able to do so because they have not established (1) performance measures, and (2) a systematic process to evaluate their effectiveness.

Performance measures. In September 2021, the Secretary of Defense issued a memo that summarized DOD's plan for implementing the IRC's recommendations and directed development of an Outcome Metrics

⁴⁰[GAO-14-704G](#).

Evaluation Report to track implementation progress and effectiveness. The report, which was issued in May 2022, addressed the status of the military justice career path's implementation. However, it did not include performance measures that would enable DOD and the military services to evaluate the effectiveness of the career path in achieving desired outcomes.

Senior leaders in each service acknowledged they have not developed performance measures as well as the importance of performance measures in assessing the effectiveness of military justice career paths, and several cited three key areas where measures could be used to assess progress. Specifically, service officials stated that measures focused on (1) litigator experience levels, (2) career path promotion rates, and (3) career path retention rates could help demonstrate the extent to which the career path has helped DOD achieve its objective of increased experience and competence among military justice litigators.

Some service officials noted that some of this information had been previously tracked for other purposes, although not in a consistent or systematic manner. For example, the Army maintained information on judge advocate experience levels via its predecessor program to the career path, but Army officials cautioned that such data were self-reported and thus may not reliably represent a litigator's knowledge, skills, and abilities. Similarly, Navy officials stated that they have tracked career path promotion rates on an ad hoc basis when requested, but not consistently over time. *Standards for Internal Control in the Federal Government* states that management should design control activities to achieve objectives and respond to risks, including by establishing and monitoring performance measures and indicators as a means of evaluating the entity's performance in achieving objectives.⁴¹

Without developing a standardized suite of performance measures that measure the desired outcomes of the military justice career paths, the military services will be unable to measure progress towards achieving their goals and objectives. Further, DOD and the services will not have the information necessary to identify what is working and what may need to be revised or eliminated. By ensuring such measures are standardized,

⁴¹Performance measures may be a targeted percentage or numerical values or they may be designed to indicate a level or degree of performance, such as a milestone. [GAO-14-704G](#).

the services will be better able to compare their progress and adopt successful practices from one another.

Evaluation plan. In addition to identifying the need for measures, the Secretary of Defense’s memo also acknowledged the need to periodically evaluate the department’s strategy for and progress toward implementing the IRC’s recommendations more generally. Specifically, the memo noted that the implementation plan allows for iterative evaluations of progress and directed department leadership to formally assess the implementation “roadmap” no less than twice annually. However, it did not address evaluating the effectiveness of individual recommendations, such as the one establishing the military justice career path.

According to leading practices concerning program evaluation planning, agencies should establish evaluation plans.⁴² These leading practices define program evaluation as an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency. Leading practices concerning program evaluations that we have identified define effectiveness as the extent to which a program or intervention is achieving its intended goals, as determined by a program evaluation.⁴³ According to these leading practices, program evaluation and performance measurement are distinct but complementary. Performance measurement can tell an agency how a program is performing. It concerns the ongoing monitoring and reporting of a program’s accomplishments and progress towards pre-established goals.

In interviews, service officials recognized the importance of systematically evaluating the military justice career path as it is implemented. Specifically, each service’s senior leader explicitly acknowledged the

⁴²GAO, *Program Evaluation: Key Terms and Concepts*, [GAO-21-404SP](#) (Washington, D.C.: Mar. 22, 2021); OMB Memorandum No. M-19-23, *Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance* (July 10, 2019); and OMB Memorandum No. M-20-12, *Phase 4 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Program Evaluation Standards and Practices* (Mar. 10, 2020). OMB Memorandum No. M-19-23 instructs federal agencies on how to implement the Foundations for Evidence-Based Policymaking Act of 2018 (Pub. L. No. 115-435 (2019)), which mandated that federal agencies create certain plans and other products on a recurring basis, including evaluation plans. While not necessarily controlling for evaluation plans like the one under discussion here, the memorandum includes best practices for agencies to follow when practicing evidence-based policymaking.

⁴³[GAO-21-404SP](#).

need to assess the success of the military justice and ensure its objectives are achieved. The services' current annual reports to Congress on the sufficiency of the judge advocate workforce to capably perform military justice functions include insightful information, such as data on workload and total personnel levels for the prior fiscal year. However, the services do not currently have plans to evaluate career path implementation because they have not been directed to do so.

By developing and implementing an evaluation plan that employs performance measures to systematically evaluate the effectiveness of the military justice career path, the military services will better know if their efforts are effective in achieving desired outcomes and may provide opportunities to identify and address challenges. Further, by considering incorporating the results of the evaluations in their annual reports to Congress, the services could help to increase visibility over changes to the military justice system to decision-makers within DOD and Congress and enable them to make identify any additional changes that may be needed.

Conclusions

The military justice system depends on skilled and experienced litigators to try cases involving military personnel. DOD and a congressional committee in recent years have raised concerns about whether litigators possess the skills and experience needed to effectively handle complex special victim cases. To help address these concerns, the military services have taken steps to establish career paths that allow judge advocates to specialize as litigators, increasing their litigation experience and competence. However, the Army, the Marine Corps, and the Air Force face cultural barriers in implementing these career paths. By developing and implementing a communication strategy for its approach to a career path as well as ensuring that judge advocates with relevant professional experience are members of the boards evaluating litigators for promotion, these military services can help to address these cultural barriers.

In addition, the Army and the Air Force have not set time limits for recency of obtaining the relevant experience before litigators can occupy specific roles. This could allow judge advocates to be assigned to sensitive positions without having recently obtained relevant experience and training. Without addressing these risks, these services may assign litigators without up-to-date skills to positions where such skills are necessary.

The military services have established experience standards for certain litigation positions, such as for some military judges. However, they do not periodically evaluate those standards for their continued relevance. Without guidance requiring a periodic evaluation of such standards, the military services cannot ensure litigators possess the experience needed to effectively adjudicate increasingly complex cases. In addition, the services have not assessed whether other key positions, such as supervisory litigators and defense counsel, would also benefit from additional experience standards. Without assessing the need for experience standards tailored to the responsibilities of individual military justice litigation positions and implementing any recommendations from the assessment, the services lack reasonable assurance that individuals with the needed experience are serving in critical positions.

Moreover, several issues limit the military services' ability to determine the effectiveness of the military justice career paths in increasing litigator experience and competence, once fully implemented. Specifically, the military services do not have the data needed to evaluate effectiveness, including information on retention rates, reasons for separation from military service, and the services' historical ability to meet litigation staffing needs. Such information could be beneficial in further evaluating whether the military justice career paths are achieving desired outcomes. Further, by considering incorporating such data in their annual reports to Congress, the services can better inform decision-makers about the sufficiency of the judge advocate workforce to perform capably military justice functions. In addition, the military services lack a framework to evaluate effectiveness. Such a framework, including a standardized suite of performance measures and an evaluation plan, would provide DOD and the services with a benchmark to measure actual results against planned targets and the ability to monitor effectiveness over time and take corrective action, if needed.

Recommendations for Executive Action

We are making a total of 35 recommendations, including two to the Secretary of Defense, 10 to the Secretary of the Army, 14 to the Secretary of the Navy, and nine to the Secretary of the Air Force.

The Secretary of the Army should ensure that the Army Judge Advocate General develops and implements a strategy to communicate the establishment of and service leadership support for the military justice career path. (Recommendation 1)

The Secretary of the Navy should ensure that the Staff Judge Advocate to the Commandant of the Marine Corps develops and implements a

strategy to communicate the establishment of and service leadership support for the military justice career path. (Recommendation 2)

The Secretary of the Air Force should ensure that the Air Force Judge Advocate General develops and implements a strategy to communicate the establishment of and service leadership support for the military justice career path. (Recommendation 3)

The Secretary of the Army should issue guidance to require the inclusion of judge advocates with relevant professional experience, such as a participant in the Army's military justice career path, on judge advocate promotion boards. (Recommendation 4)

The Secretary of the Navy should ensure that the Assistant Secretary of the Navy (Manpower and Reserve Affairs), in conjunction with the Commandant of the Marine Corps, issues guidance to require the inclusion of judge advocates with relevant professional experience, such as a judge advocate with significant military justice experience, on Marine Corps unrestricted officer promotion boards. (Recommendation 5)

The Secretary of the Air Force should issue guidance to require the inclusion of judge advocates with relevant professional experience, such as a participant in the Air Force's military justice career path, on judge advocate promotion boards. (Recommendation 6)

The Secretary of the Army should ensure the Army Judge Advocate General issues guidance that addresses the risk that the perishability of litigation skills poses to the use of skill levels for Army litigators, such as specifying the maximum time a recipient may serve in a non-litigation role before the skill level must be reviewed. (Recommendation 7)

The Secretary of the Air Force should ensure the Air Force Judge Advocate General issues guidance that addresses the risk that the perishability of litigation skills poses to the use of skill levels for Air Force litigators, such as specifying the maximum time a recipient may serve in a non-litigation role before the skill level must be reviewed. (Recommendation 8)

The Secretary of the Army should issue guidance requiring specified experience requirements for specific positions which litigators must meet for assignment unless the Judge Advocate General documents a waiver for a given situation. (Recommendation 9).

The Secretary of the Army should ensure that the Army Judge Advocate General formally evaluates Army policies and procedures governing the use of litigators to help ensure their efficient and effective use. (Recommendation 10)

The Secretary of the Navy should ensure that the Navy Judge Advocate General formally evaluates Navy policies and procedures governing the use of litigators to help ensure their efficient and effective use. (Recommendation 11)

The Secretary of the Navy should ensure that the Commandant of the Marine Corps formally evaluates Marine Corps policies and procedures governing the use of litigators to help ensure their efficient and effective use. (Recommendation 12)

The Secretary of the Air Force should ensure that the Air Force Judge Advocate General formally evaluates Air Force policies and procedures governing the use of litigators to help ensure their efficient and effective use. (Recommendation 13)

The Secretary of the Army should ensure that the Army Judge Advocate General issues guidance requiring a periodic evaluation of professional experience standards for Army military justice litigation positions. (Recommendation 14)

The Secretary of the Navy should ensure that the Navy Judge Advocate General issues guidance requiring periodic evaluation of professional experience standards for Navy military justice litigation positions. (Recommendation 15)

The Secretary of the Navy should ensure that the Staff Judge Advocate to the Commandant of the Marine Corps issues guidance requiring a periodic evaluation of professional experience standards for Marine Corps military justice litigation positions. (Recommendation 16)

The Secretary of the Air Force should ensure that the Air Force Judge Advocate General issues guidance requiring a periodic evaluation of professional experience standards for Air Force military justice litigation positions. (Recommendation 17)

The Secretary of the Army should ensure that the Army Judge Advocate General assesses the need for experience standards tailored to the responsibilities of individual Army military justice litigation positions, such

as supervisory litigation positions and defense counsel, and implements any recommendations from the assessment. (Recommendation 18)

The Secretary of the Navy should ensure that the Navy Judge Advocate General assesses the need for experience standards tailored to the responsibilities of individual Navy military justice litigation positions, such as supervisory litigation positions and defense counsel, and implements any recommendations from the assessment. (Recommendation 19)

The Secretary of the Navy should ensure that the Staff Judge Advocate to the Commandant of the Marine Corps assesses the need for experience standards tailored to the responsibilities of individual Marine Corps military justice litigation positions, such as supervisory litigation positions and defense counsel, and implements any recommendations from the assessment. (Recommendation 20)

The Secretary of the Air Force should ensure that the Air Force Judge Advocate General assesses the need for experience standards tailored to the responsibilities of individual Air Force military justice litigation positions, such as supervisory litigation positions and defense counsel, and implements any recommendations from the assessment. (Recommendation 21)

The Secretary of the Army should ensure that the Army Judge Advocate General collects information on retention rates of participants in the Army's military justice career path and considers including such information in the Army's annual Article 146a judge advocate workforce report to Congress. (Recommendation 22)

The Secretary of the Navy should ensure that the Navy Judge Advocate General collects information on retention rates of participants in the Navy's military justice career path and considers including such information in the Navy's annual Article 146a judge advocate workforce report to Congress. (Recommendation 23)

The Secretary of the Navy should ensure that the Deputy Commandant, Manpower and Reserve Affairs collects information on retention rates of participants in the Marine Corps' military justice career path and considers including such information in the Marine Corps' annual Article 146a judge advocate workforce report to Congress. (Recommendation 24)

The Secretary of the Air Force should ensure that the Air Force Judge Advocate General collects information on retention rates of participants in the Air Force's military justice career path and considers including such information in the Air Force's annual Article 146a judge advocate workforce report to Congress. (Recommendation 25)

The Secretary of the Army should ensure that the Army Judge Advocate General develops a process to systematically collect information on the reasons Army military justice litigators separate from service, such as by adapting its existing judge advocate exit survey process to include a mechanism for identifying litigators, and considers including such information in the Army's annual Article 146a judge advocate workforce report to Congress. (Recommendation 26)

The Secretary of the Navy should ensure that the Navy Judge Advocate General develops a process to systematically collect information on the reasons Navy military justice litigators separate from service, such as by adapting its existing service-wide exit survey process to include a mechanism for identifying litigators, and considers including such information in the Navy's annual Article 146a judge advocate workforce report to Congress. (Recommendation 27)

The Secretary of the Navy should ensure that the Deputy Commandant, Manpower and Reserve Affairs, in conjunction with the Commanding General, Training and Education Command develops a process to systematically collect information on the reasons Marine Corps military justice litigators separate from service, such as by adapting its existing judge advocate exit survey process to include a mechanism for identifying litigators, and considers including such information in the Marine Corps' annual Article 146a judge advocate workforce report to Congress. (Recommendation 28)

The Secretary of the Air Force should ensure that the Commander, Air Force Personnel Center, in conjunction with the Air Force Judge Advocate General, develops a process to systematically collect information on the reasons Air Force military justice litigators separate from service, such as by adapting its existing service-wide exit survey processes to include a mechanism for identifying litigators, and considers including such information in the Air Force's annual Article 146a judge advocate workforce report to Congress. (Recommendation 29)

The Secretary of the Army should ensure that the Army Judge Advocate General collects and maintains staffing data on actual staff assigned to

litigation positions compared to authorized positions and considers including such information in the Army's annual Article 146a judge advocate workforce report to Congress. (Recommendation 30)

The Secretary of the Navy should ensure that the Navy Judge Advocate General collects and maintains staffing data on actual Navy staff assigned to litigation positions compared to authorized positions and considers including such information in the Navy's annual Article 146a judge advocate workforce report to Congress. (Recommendation 31)

The Secretary of the Navy should ensure that the Deputy Commandant, Manpower and Reserve Affairs, in conjunction with the Staff Judge Advocate to the Commandant of the Marine Corps, collects and maintains staffing data on actual Marine Corps staff assigned to litigation positions compared to authorized positions and considers including such information in the Marine Corps' annual Article 146a judge advocate workforce report to Congress. (Recommendation 32)

The Secretary of the Air Force should ensure that the Air Force Judge Advocate General collects and maintains staffing data on actual staff assigned to litigation positions compared to authorized positions and considers including such information in the Air Force's annual Article 146a judge advocate workforce report to Congress. (Recommendation 33)

The Secretary of Defense should ensure that the Secretaries of the Military Departments collaborate to develop a standardized suite of performance measures that measure the effectiveness of the military justice career path in achieving desired outcomes. (Recommendation 34)

The Secretary of Defense should ensure that the Secretaries of the Military Departments collaborate to develop and implement an evaluation plan that employs performance measures to systematically evaluate the extent of the effectiveness of the military justice career paths and consider including such information in their annual Article 146a judge advocate workforce reports to Congress. (Recommendation 35)

Agency Comments and Our Evaluation

We provided a draft of this report to DOD for review and comment. DOD, in its written comments (reproduced in appendix II), concurred with 22 of our recommendations and partially concurred with the other 13. We also received technical comments from DOD, which we incorporated as appropriate.

DOD partially concurred with six recommendations to the Navy that concerned the Marine Corps—recommendations 12, 16, 20, 24, 28, and 32—at least in part on concerns regarding the authority of the Navy Judge Advocate General to implement these recommendations within the Marine Corps. These recommendations were originally directed to the Navy Judge Advocate General, given the role of this official as the senior uniformed attorney of the Department of the Navy, including the Marine Corps, with responsibility for the military justice function within the department. According to DOD’s comments, the issue concerned is a matter for the Staff Judge Advocate to the Commandant of the Marine Corps and/or other Marine Corps entity, and we have therefore modified these recommendations to reflect this.

DOD partially concurred with our second recommendation, noting efforts by the Marine Corps to communicate information concerning its career path via updates to judge advocates and visits by the Staff Judge Advocate to the Commandant of the Marine Corps to Marine Corps bases and stations, among other actions. We note some of these efforts in our report and state that they represent a positive first step. However, as we state in the report, these efforts may not be enough to overcome the uncertainty among judge advocates that the services’ historical preference for generalists in the JAG Corps has sufficiently evolved to support specialization. We therefore continue to believe that by developing and implementing a strategy to communicate the establishment of and service leadership support for military justice career paths, potential candidates may be attracted to the military justice career paths and the services may be better able to achieve their underlying objective of increasing experience levels and litigator competence.

DOD partially concurred with our fourth recommendation. In DOD’s comments, it disagreed with a requirement to include a participant in the military justice career path on Army judge advocate promotion boards. However, our recommendation is not this restrictive and instead more broadly recommends including judge advocates with relevant professional experience, noting that a participant in the Army’s military justice career path is one way that this could be operationalized. We therefore continue to believe that by implementing our recommendation, the Army would be better positioned to help ensure that the skills and qualifications of military litigators are better understood and appropriately considered during the promotion process. Moreover, doing so would help further demonstrate leadership commitment to ensuring that any organizational impediments to career progression in the military justice career paths are mitigated.

DOD partially concurred with our fifth recommendation. DOD's comments indicated that while the Marine Corps was supportive of including senior judge advocates on all Marine Corps promotion boards, the comments emphasized that the Staff Judge Advocate to the Commandant of the Marine Corps nominates board members but the Commandant of the Marine Corps or the Assistant Secretary of the Navy (Manpower and Reserve Affairs) assigns them. We have therefore modified our recommendation to reflect this. Our recommendation more broadly suggests the inclusion of a judge advocate with significant military justice experience versus a senior judge advocate. In addition, DOD noted that it may not always be feasible under the Marine Corps' promotion processes to have a member with significant military justice experience. For instance, there are only two general officer billets in the Marine Corps judge advocate community and there is a statutory prohibition on board members serving on successive promotion boards, which limits flexibility in the event that one of the general officers is unavailable to serve on a particular O-6 (colonel) promotion board. We recognize this limitation and the need for any implementing guidance to provide flexibility to the Marine Corps in these or similar circumstances. However, we continue to believe that the recommendation is otherwise generally feasible, particularly in light of the fact that we are recommending inclusion of a judge advocate with significant military justice experience, not necessarily a current participant in the military justice career path. Moreover, this would help ensure that the skills and qualifications of military litigators are better understood and appropriately considered during the promotion process. It would also demonstrate leadership commitment to mitigating any organizational impediments to career progression in the military justice career path.

DOD partially concurred with our sixth recommendation. In DOD's comments, it disagreed with a requirement to include a participant in the military justice career path on Air Force judge advocate promotion boards. However, our recommendation is not this restrictive and instead more broadly recommends including judge advocates with relevant professional experience, noting that a participant in the Air Force's military justice career path is one way that this could be operationalized. We therefore continue to believe that by implementing our recommendation, the Air Force would be better positioned to help ensure that the skills and qualifications of military litigators are better understood and appropriately considered during the promotion process. Moreover, doing so would help further demonstrate leadership commitment to ensuring that any organizational impediments to career progression in the military justice career paths are mitigated.

DOD partially concurred with our 20th recommendation. DOD's comments noted that the Marine Corps requires litigators to complete specific training and that its career path includes experience requirements. However, as we note in the report, training is not a substitute for experience. Further, as we note in the report, the experience standards within the services' career paths provide broad baselines across the military justice enterprise applicable to broad groups of diverse occupations. These experience standards are not tailored to the responsibilities of individual positions. We therefore continue to believe that by assessing the need for experience standards tailored to the responsibilities of individual military justice litigation positions and implementing any recommendations from the assessment, the services will have greater reasonable assurance that their current approach of relying on broad baseline standards ensures they place the right judge advocate into potentially critical positions.

DOD partially concurred with our 29th recommendation. In DOD's comments, it concurred with the utility of adapting existing service-wide exit survey processes to include a mechanism for identifying litigators but noted that the Air Force Personnel Center centrally manages the exit survey process. We have therefore modified our recommendation to address this concern.

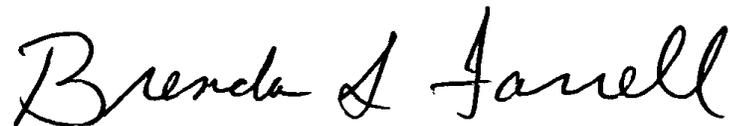
DOD partially concurred with our 34th recommendation. DOD stated that while it is appropriate for the leaders of the military services' judge advocate communities to collaborate on developing performance measures, it is also appropriate for each military service to maintain the discretion to tailor performance measures to its particular judge advocate community. However, our recommendation does not preclude the services from developing performance measures that reflect the unique aspects of their career paths. We maintain that a standardized suite of performance measures, even with an appropriate level of tailoring, where necessary, will better enable the services to compare their progress and adopt successful practices from one another.

DOD partially concurred with our 35th recommendation. Similar to its response to recommendation 34, DOD emphasized the importance of service collaboration in developing performance measures but underscored the need for service discretion in developing an evaluation plan. However, our recommendation does not preclude such discretion. We maintain that by collaborating in the development and implementation of an evaluation plan that employs performance measures to systematically evaluate the effectiveness of the military justice career

path, even where tailored as necessary, the military services will better know if their efforts are effective in achieving desired outcomes and may provide opportunities to identify and address challenges.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, and the Commandant of the Marine Corps. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-3604 or farrellb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix III.

A handwritten signature in black ink that reads "Brenda S. Farrell". The signature is written in a cursive, flowing style.

Brenda S. Farrell
Director, Defense Capabilities and Management

Appendix I: Objectives, Scope, and Methodology

This report assesses the extent to which the military services have (1) implemented career paths for military justice litigators, (2) established experience standards for military justice litigation positions, and (3) established mechanisms to determine the effectiveness of their military justice career paths.

Our review included the Army, the Navy, the Marine Corps, and the Air Force (to include the Space Force). For this report, we refer to judge advocates assigned to military justice litigation positions, including trial counsel, defense counsel, and military judges, as military justice litigators.

Site Visits to Selected Military Installations

For all of our objectives, we conducted visits to four military installations to interview practicing litigators within each service. Specifically, we conducted visits to Fort Cavazos, TX (Army); Naval Station Norfolk, VA (Navy); Camp Lejeune, NC (Marine Corps); and Langley Air Force Base, VA (Air Force). We selected these locations based on documentation regarding their litigation workload and size and through consultation with military service officials. In doing so, we were able to visit locations with a diverse mix of military justice occupations and a large number of litigators from which to select participants for interviews.

Across the four site installations, we interviewed more than 90 litigators individually or as part of group interviews. We interviewed a variety of litigators at each installation, including junior trial and defense counsel, senior trial and defense counsel, Special Victims' Counsel and Victims' Legal Counsel, and military judges. In our report, we use the term "litigator" to refer to all of these litigator types. We interviewed litigators about litigator training, skills, experience levels, and retention; the implementation of military justice career paths; and career progression.

Because we did not select locations using a statistically representative sampling method, the comments provided during our interviews with litigators are nongeneralizable and therefore cannot be projected across the Department of Defense (DOD) or a service, or any other installations. While the information obtained was not generalizable, it provided perspectives from practicing litigators regarding their experience, training, and careers.

Methods Used to Assess Implementation of Military Justice Career Paths

To assess the extent to which the military services have implemented career paths for military justice litigators, we reviewed relevant DOD reports and guidance regarding the development of military justice career paths.¹ We reviewed military justice career path implementation plans for the Army, the Marine Corps, and the Air Force as well as Navy guidance regarding the military justice career path that it established in 2007 and compared their structures, experience requirements, and distinguishing features. Specifically, we reviewed how the services use skill levels or identifiers and what qualifications the services require to attain them. We also obtained and reviewed staffing requirements for the Office of Special Trial Counsel for the Army, Navy, Marine Corps, and Air Force.

In addition, we assessed the extent to which the Army, the Marine Corps, and the Air Force have communicated their military justice career paths with judge advocates through review of service documentation. Additionally, we analyzed military service guidance on promotion panels to determine the extent to which promotion boards include judge advocates with relevant professional experience on boards evaluating litigators for promotion. Further, we assessed the military services' guidance and interviewed practicing litigators as part of our site visits regarding the use of litigators and their participation in non-litigation activities. Moreover, we conducted interviews with knowledgeable military service officials.

We compared the information obtained from our review of service guidance, documentation, and interviews to DOD guidance on personnel management, GAO-identified key practices for organizational transformation, and *Standards for Internal Control in the Federal Government*.² We determined that the control environment, control activities, and information and communication components of internal control were relevant to this objective. Specifically, we identified the underlying principles that management should demonstrate commitment to competence, design control activities to achieve objectives and

¹Independent Review Commission on Sexual Assault in the Military, *Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military* (July 2, 2021) and Secretary of Defense Memorandum, *Implementation of Recommendation 1.4 of the Independent Review Commission on Sexual Assault in the Military* (Oct. 6, 2021).

²DOD Directive 1100.4, *Guidance for Manpower Management* (Feb. 12, 2005); GAO, *Results-Oriented Cultures: Implementation Steps to Assist Mergers and Organizational Transformations*, [GAO-03-669](#) (Washington, D.C.: July 2, 2003); and GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

respond to risks, and internally communicate necessary quality information as relevant to this objective.

Methods Used to Assess Experience Standards

To assess the extent to which the military services have established experience standards for military justice litigation positions, we analyzed relevant military service guidance to evaluate the standards for relevant training and experience litigators must obtain prior to holding litigation positions.³ We also assessed whether each relevant guidance document contained additional experience standards for holding unique litigation positions, such as military judges and defense counsel. Further, we interviewed senior officials at all four services about their respective services' training and experience standards for litigation positions.

Through our review of relevant guidance and documents and interviews with senior service officials, we assessed the extent to which each military service has processes in place to evaluate such experience standards on a periodic basis to ensure their continued relevancy. Further, we analyzed the extent to which the military services have assessed the need for tailored experience standards for key positions such as supervisory litigators and defense counsel.

We compared the information obtained from our review of service guidance and documentation and interviews to GAO-identified practices for strategic human capital management and *Standards for Internal Control in the Federal Government*.⁴ We determined that the control environment and control activities components of internal control were relevant to this objective. Specifically, we identified the underlying principles that management should demonstrate commitment to competence, design control activities to achieve objectives and respond to risks, and implement control activities as relevant to this objective.

³Army Judge Advocate Legal Services Publication 1-1, *Personnel Policies* (May 2023); Commander, Naval Legal Service Command Instruction 5800.1H, *Naval Legal Service Command (NLSC) Manual* (Oct. 3, 2022); Marine Corps Order 5800.16, *Legal Support and Administration Manual* (Feb. 20, 2018); and Department of the Air Force Instruction 51-101, *The Air Force Judge Advocate General's (AFJAG) Corps Operations, Accessions, and Professional Development* (June 20, 2023).

⁴GAO, *A Model of Strategic Human Capital Management*, [GAO-02-373SP](#) (Washington, D.C.: Mar. 15, 2002) and [GAO-14-704G](#).

Methods Used to Assess Mechanisms for Determining Effectiveness of Military Justice Career Paths

To assess the extent to which the military services have mechanisms in place to determine the effectiveness of their military justice career paths, we reviewed the military services' annual reports to the armed services committees on the sufficiency of the judge advocate workforce to capably perform military justice functions.⁵ Specifically, we assessed the reports to determine the extent to which they included data that would assist them in assessing the effectiveness of their military justice career paths, such as: litigator retention rates, litigator reasons for separating from military service, and historical staffing data. We also interviewed officials from each of the military services to understand the extent to which they collect and maintain such data.

In addition, we assessed the services' collection of judge advocate loss rates (the number of judge advocates that left military service or the career field) for each of the military services for fiscal year 2022. We did not assess the reliability of these data because we used them for illustrative purposes only. We also discussed the collection and maintenance of historical staffing data for judge advocates and litigators with military service officials. We determined that the limited data available were not sufficiently reliable for the purposes of our reporting objective.

We also analyzed the military services' exit surveys and related processes to determine the extent to which they capture information specific to litigators' separation from military service. Additionally, as part of our previously discussed interviews with practicing litigators at the four installations we visited and interviews with service officials, we obtained anecdotal information regarding reasons litigators may separate from military service.

Further, we reviewed DOD's May 2022 Outcome Metrics Evaluation Report related to implementation of the Independent Review Commission

⁵10 U.S.C. § 946a (Art. 146a, UCMJ) requires the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps to submit a report not later than December 31 each year, with respect to the preceding fiscal year, containing the following: data on the number and status of pending cases; information on the appellate review process; an explanation of measures implemented by the armed force concerned to ensure the ability of judge advocates to participate competently as trial counsel and defense counsel, preside as military judges, and perform the duties of a special victims' counsel; the independent views of each Judge Advocate General and of the Staff Judge Advocate to the Commandant of the Marine Corps as to the sufficiency of resources available within the respective armed forces, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions; and such other matters as may be appropriate.

on Sexual Assault in the Military's recommendations to determine the extent to which it contained a framework, such as performance measures or an evaluation plan, to assess the effectiveness of the military services' military justice career paths. We also conducted interviews with military service officials regarding any efforts to evaluate the effectiveness of the career paths.

We compared the information obtained from our review of service documentation and interviews to the *DOD Strategic Management Plan: Fiscal Years 2022-2026*, leading practices concerning program evaluation planning, and *Standards for Internal Control in the Federal Government*.⁶ We determined that the control activities, information and communication, and monitoring components of internal control were relevant to this objective. Specifically, we identified the underlying principles that management should design control activities to achieve objectives and respond to risks, use quality information, and perform monitoring activities as relevant to this objective.

We conducted this performance audit from July 2022 to May 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁶Department of Defense, *DOD Strategic Management Plan: Fiscal Years 2022-2026* (2023); GAO, *Program Evaluation: Key Terms and Concepts*, [GAO-21-404SP](#) (Washington, D.C.: Mar. 22, 2021); and [GAO-14-704G](#).

Appendix II: Comments from the Department of Defense



**DEPARTMENT OF DEFENSE
OFFICE OF THE GENERAL COUNSEL**

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

APR 5 2024

Ms. Brenda S. Farrell
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, NW
Washington DC 20548

Dear Ms. Farrell:

I am writing to provide the Department of Defense (DoD) response to GAO Draft Report GAO-24-106165, "Military Justice: Actions Needed to Help Ensure Success of Judge Advocate Career Programs," dated March 22, 2024 (GAO Code 106165).

Attached is DoD's response to the subject report. My point of contact is Dwight Sullivan, who can be reached at dwight.h.sullivan.civ@mail.mil.

Sincerely,

A handwritten signature in black ink that reads "Ruth M.S. Vetter".

Ruth M.S. Vetter
Deputy General Counsel (Personnel &
Health Policy)
Department of Defense Office of General
Counsel

**GAO DRAFT REPORT DATED MARCH 22, 2024
GAO-24-106165 (GAO CODE 106165)**

**“MILITARY JUSTICE: ACTIONS NEEDED TO HELP ENSURE SUCCESS OF JUDGE
ADVOCATE CAREER REFORMS”**

**DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION**

RECOMMENDATION 1: The Secretary of the Army should ensure that the Army Judge Advocate General develops and implements a strategy to communicate the establishment of and service leadership support for the military justice career path.

DoD RESPONSE: Concur. Not later than May 31, 2024, The Judge Advocate General of the Army (Army TJAG) will publish a policy directive that establishes the Military Justice Career Model as part of an updated, overall Judge Advocate Career Model that recognizes legal functional area career path specialization. These changes, including a specialized military justice career path, will be communicated to all judge advocates, reinforced with judge advocate leadership across the Army, and included in career management training and future judge advocate promotion board instructions.

RECOMMENDATION 2: The Secretary of the Navy should ensure that the Staff Judge Advocate to the Commandant of the Marine Corps develops and implements a strategy to communicate the establishment of and service leadership support for the military justice career path.

DoD RESPONSE: Partially concur. The Staff Judge Advocate to the Commandant (SJA to CMC) and Judge Advocate Division (JAD) have consistently communicated the establishment of this career path. This includes SJA to CMC visits to every base and station in the Marine Corps, as well as briefs by the Community Plans Branch (JPI) during Legal Support Inspections (LSI). JAD has issued no fewer than six Community Updates to all 44XX personnel covering the military justice career path as established by the Additional Military Occupational Specialty (AMOS) system. Furthermore, JAD has held four semi-annual AMOS/Office of Special Trial Counsel (OSTC) Screening Boards since September 2022, consistently soliciting applications from interested officers. The SJA to CMC has regulatory authority to identify those best suited for assignments to litigation billets and forwards that information to the Director, Manpower Management (Dir., MM) who has ultimate responsibility for assigning all Marine Corps personnel. Similarly, the SJA to CMC develops and forwards the AMOS criteria to Commanding General, Training and Education Command (TECOM) for approval. Finally, the Assistant Secretary of the Navy for Manpower & Reserve Affairs (ASN(M&RA)) typically signs promotion board precepts, including the portions regarding litigation experience. Accordingly, there are a number of Department of the Navy (DoN), Headquarters Marine Corps (HQMC), and supporting establishment (SE) organizations that would be required to communicate “Service leadership support” for the Marine Corps’ military justice career path.

RECOMMENDATION 3: The Secretary of the Air Force should ensure that the Air Force Judge Advocate General develops and implements a strategy to communicate the establishment of and service leadership support for the military justice career path.

DoD RESPONSE: Concur. The Air Force Judge Advocate General (Air Force TJAG) will formalize a strategy demonstrating use of multiple forums to communicate the establishment of and support for the military justice career path, including quarterly articles in the Air Force TJAG Online News Service and quarterly Air Force TJAG all-call dialogues to the Corps. The formalized strategy will continue to incorporate the Department of the Air Force (DAF) Lead Special Trial Counsel and DAF OSTC personnel in this effort. Within six months of receiving GAO's final report, the Air Force JAG Corps will develop a communication strategy regarding the military justice career path, including leadership support for the path. The Air Force JAG Corps will implement its communication strategy within one year of receiving GAO's final report.

RECOMMENDATION 4: The Secretary of the Army should issue guidance to require the inclusion of judge advocates with relevant professional experience, such as a participant in the Army's military justice career path, on judge advocate promotion boards.

DoD RESPONSE: Partially concur. In accordance with Army policy, all current promotion boards for Regular Army judge advocates include an Army judge advocate general officer as the board president, two judge advocates, and three non-judge advocate officers. In practical terms, under the current Army policy and process for board member composition, the senior judge advocates selected to serve on judge advocate promotion boards possess the relevant professional experience to effectively evaluate and recommend the best qualified officers for promotion, including those with specialization in military justice. While the Army TJAG recognizes the importance of board member professional experience and will continue to nominate board members with professional experience in military justice, the Army does not concur with a requirement that a board member be a participant in the military justice career path. A requirement to include judge advocates with experience in a specialized military justice career path would significantly restrict the pool of judge advocates eligible to serve as promotion board members. Additionally, given that there are multiple specialties in the Army JAG Corps, including contract and fiscal law, administrative and civil law, and national security law, it would not be equitable to require judge advocate promotion board members to come from a single specialization. Likewise, it would not be feasible to require a representative from each specialization, which vary in population size.

RECOMMENDATION 5: The Secretary of the Navy should ensure that the Commandant of the Marine Corps issues guidance to require the inclusion of judge advocates with relevant professional experience, such as a judge advocate with significant military justice experience, on Marine Corps unrestricted officer promotion boards.

DoD RESPONSE: Partially concur. While supportive in concept of including senior judge advocates on all promotion boards, there are two administrative matters with which the Marine Corps must contend. First, not being a JAG Corps, the SJA to CMC can identify Marine judge advocates to serve as Board members, however the Commandant or ASN(M&RA) assigns.

Second, with respect to the Colonel selection board, there are only two general officer billets in the Marine judge advocate community (the SJA to CMC and the Lead Special Trial Counsel). Because a member may not serve on the same promotion board in consecutive years pursuant to 10 U.S.C. § 612(b), this leaves the Marine Corps no flexibility in the event one of these two general officers is unavailable to serve in a particular year.

RECOMMENDATION 6: The Secretary of the Air Force should issue guidance to require the inclusion of judge advocates with relevant professional experience, such as a participant in the Air Force's military justice career path, on judge advocate promotion boards.

DoD RESPONSE: Partially concur. Department of the Air Force Instruction (DAFI) 36-2501, Officer Promotions and Selective Continuation, governs Air Force promotion processes and limits board membership for the judge advocate competitive category to no more than two voting members. The Air Force JAG Corps concurs with assessing changes that are consistent with the law – both as written and applied by courts – to DAFI 36-2501 to ensure inclusion of judge advocates with relevant professional experience on promotion boards. The Air Force JAG Corps does not concur with requiring that a board member be a member of the Air Force's military justice career path. Within six months of receiving GAO's final report, the Air Force JAG Corps will assess Department of the Air Force guidance to ensure it is consistent with this position. TJAG will implement changes to policies and procedures within the JAG Corps' control and will work with various stakeholders and publication owners to change any Air Force-wide policies and procedures as needed.

RECOMMENDATION 7: The Secretary of the Army should ensure that the Army Judge Advocate General issues guidance that addresses the risk that the perishability of litigation skills poses to the use of skill levels for Army litigators, such as specifying the maximum time a recipient may serve in a non-litigation role before the skill level must be reviewed.

DoD RESPONSE: Concur. With the upcoming publication of the Military Justice Career Model, Army TJAG will issue policy guidance regarding the perishability of litigation skills. Such policy guidance will include a requirement for the review of litigation proficiency and an evaluation of litigation recency during the assignment process for all judge advocates considered for military justice litigation positions.

RECOMMENDATION 8: The Secretary of the Air Force should ensure that the Air Force Judge Advocate General issues guidance that addresses the risk that the perishability of litigation skills poses to the use of skill levels for Air Force litigators, such as specifying the maximum time a recipient may serve in a non-litigation role before the skill level must be reviewed.

DoD RESPONSE: Concur. The Air Force JAG Corps will conduct an assessment within six months of receiving GAO's final report to consider the most effective guidance to address the risk that the perishability of litigation skills poses to the use of skill levels for Air Force litigators. The Air Force JAG Corps will implement recommendations from that assessment within one year of receiving GAO's final report.

RECOMMENDATION 9: The Secretary of the Army should issue guidance requiring specified experience requirements for specific positions which litigators must meet for assignment unless the Judge Advocate General documents a waiver for a given situation.

DoD RESPONSE: Concur. With the publication of the Military Justice Career Model, Army TJAG will issue assignment policy guidance requiring consideration of the military justice specialization level and litigation proficiency for each military justice litigation position. Following an initial implementation period, Army TJAG intends to conduct a multi-year review and analysis of the Military Justice Career Model to determine the efficacy and feasibility of implementing a specific position requirement.

RECOMMENDATION 10: The Secretary of the Army should ensure that the Army Judge Advocate General formally evaluates Army policies and procedures governing the use of litigators to help ensure their efficient and effective use.

DoD RESPONSE: Concur. While there is no written requirement for a set periodic review, the JAG Corps continually assesses military justice mission requirements and makes policy, personnel, and resource adjustments to ensure efficiency and effectiveness. With the publication of the Military Justice Career Model, Army TJAG will include policy guidance that formalizes the review and evaluation of military justice processes, resources, and personnel to ensure efficiency and effectiveness.

RECOMMENDATION 11: The Secretary of the Navy should ensure that the Navy Judge Advocate General formally evaluates Navy policies and procedures governing the use of litigators to help ensure their efficient and effective use.

DoD RESPONSE:

Concur. Formal evaluation of Navy policies and procedures was recently completed in 2019 during the Comprehensive Review of Uniformed Legal Services. Regular evaluation continues through the Judge Advocate General's responsibilities under Article 6 of the Uniform Code of Military Justice (10 U.S.C. § 806) and regular performance assessments of litigators.

RECOMMENDATION 12: The Secretary of the Navy should ensure that the Navy Judge Advocate General formally evaluates Marine Corps policies and procedures governing the use of litigators to help ensure their efficient and effective use.

DoD RESPONSE: Partially concur. While supportive in concept, the Navy JAG has no authority or role in these matters. Appropriate employment of Marine Corps officers is a Marine Corps matter, and, depending on the situation, is within the purview of either the SJA to CMC, the Deputy Commandant for Manpower and Reserve Affairs (DC, M&RA), Deputy Commandant for Plans, Policies, and Operations (DC, PP&O), Training and Education Command (TECOM), or other Marine Corps organizations.

(a) With respect to judge advocate performance of administrative tasks, this is as much a staffing issue as anything else. While billets exist to perform these tasks, this does not mean that the

Marine Corps has sufficient personnel. Increased requirements associated with military justice reform came with no attendant growth in the talent pool of available personnel to meet those requirements.

(b) With respect to concerns about collateral duties, or “standing duty,” this is a matter best addressed through a coordination between the SJA to CMC and DC, PP&O. Furthermore, Marine judge advocates are unrestricted line officers and not part of a JAG Corps. The opportunity to serve in non-judge advocate billets is a reason that attorneys may choose to join the Marine Corps as opposed to another Service’s JAG Corps.

(c) With respect to employing judge advocates in facility management roles, the Marine Corps recently realized a complete community reorganization that removes judge advocates from this task, and places it with Chief Warrant Officer (CWO) Law Center Directors. This is part of the Marine Corps’ effort to “get lawyers lawyering.”

RECOMMENDATION 13: The Secretary of the Air Force should ensure that the Air Force Judge Advocate General formally evaluates Air Force policies and procedures governing the use of litigators to help ensure their efficient and effective use.

DoD RESPONSE: Concur. Within six months of receiving GAO’s final report, Air Force TJAG will formally evaluate Air Force policies and procedures governing the use of litigators to help ensure their efficient and effective use. Within one year of receiving GAO’s final report, Air Force TJAG will implement changes to policies and procedures within the JAG Corps’ control and make recommendations to change any Air Force-wide policies and procedures.

RECOMMENDATION 14: The Secretary of the Army should ensure that the Army Judge Advocate General issues guidance requiring a periodic evaluation of professional experience standards for Army military justice litigation positions.

DoD RESPONSE: Concur. With the publication of the Military Justice Career Model, Army TJAG will issue policy guidance that formalizes a requirement for review and evaluation of military processes, resources, and personnel, including professional experience standards for all military justice litigation positions to ensure efficiency and effectiveness.

RECOMMENDATION 15: The Secretary of the Navy should ensure that the Navy Judge Advocate General issues guidance requiring periodic evaluation of professional experience standards for Navy military justice litigation positions.

DoD RESPONSE: Concur.

RECOMMENDATION 16: The Secretary of the Navy should ensure that the Navy Judge Advocate General issues guidance requiring a periodic evaluation of professional experience standards for Marine Corps military justice litigation positions.

DoD RESPONSE: Partially concur. This is beyond the scope of the Navy JAG’s responsibilities and authorities with respect to Marine judge advocates. This is the responsibility of the SJA to

CMC pursuant to Article 6 of the Uniform Code of Military Justice (10 U.S.C. § 806) and SECNAV Instruction 5430.27e, Responsibility of the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps for Supervision and Provision of Certain Legal Services. The mechanism for this periodic review will largely be through revision to MCO 5800.16 W/Ch 1-7, Legal Support and Administration Manual or other Marine Corps publications. The SJA to CMC is the organizational proponent for MCO 5800.16.

RECOMMENDATION 17: The Secretary of the Air Force should ensure that the Air Force Judge Advocate General issues guidance requiring a periodic evaluation of professional experience standards for Air Force military justice litigation positions.

DoD RESPONSE: Concur. Within one year of receiving GAO's final report, Air Force TJAG will ensure guidance is issued requiring a periodic evaluation of professional experience standards for Air Force military justice positions.

RECOMMENDATION 18: The Secretary of the Army should ensure that the Army Judge Advocate General assesses the need for experience standards tailored to the responsibilities of individual Army military justice litigation positions, such as supervisory litigation positions and defense counsel, and implements any recommendations from the assessment.

DoD RESPONSE: Concur. With the publication of the Military Justice Career Model, Army TJAG will issue policy guidance that formalizes the review and evaluation of military justice processes, resources, and personnel, including professional experience standards for military justice supervisory litigation positions and defense counsel to ensure efficiency and effectiveness.

RECOMMENDATION 19: The Secretary of the Navy should ensure that the Navy Judge Advocate General assesses the need for experience standards tailored to the responsibilities of individual Navy military justice litigation positions, such as supervisory litigation positions and defense counsel, and implements any recommendations from the assessment.

DoD RESPONSE: Concur. Current policies and procedures are in place to set experience standards and tailor those to specific litigation positions, like supervisory counsel.

RECOMMENDATION 20: The Secretary of the Navy should ensure that the Navy Judge Advocate General assesses the need for experience standards tailored to the responsibilities of individual Marine Corps military justice litigation positions, such as supervisory litigation positions and defense counsel, and implements any recommendations from the assessment.

DoD RESPONSE: Partially concur. Pursuant to Article 6 of the Uniform Code of Military Justice (10 U.S.C. § 806) and SECNAV Instruction 5430.27e, Responsibility of the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps for Supervision and Provision of Certain Legal Services, this is the responsibility of the SJA to CMC in coordination with TECOM and M&RA, not the Navy JAG. Furthermore, these unique experience standards already exist to some extent in the Marine Corps. For first tour judge advocates, trial counsel, defense counsel, and victims' legal counsel all must complete a

Military Justice Orientation Course (MJOC) specific to their assignment before reporting for duty. The litigation organizations are also responsible for managing their own training and professional development plans, which include tailored courses at Navy, Army, and civilian programs for intermediate and advanced trial advocacy or supervisory roles. Furthermore, the Marine Corps' AMOS structure includes increasing experience requirements for supervisory litigation positions at each grade.

RECOMMENDATION 21: The Secretary of the Air Force should ensure that the Air Force Judge Advocate General assesses the need for experience standards tailored to the responsibilities of individual Air Force military justice litigation positions, such as supervisory litigation positions and defense counsel, and implements any recommendations from the assessment.

DoD RESPONSE: Concur. Within six months of receiving GAO's final report, the Air Force JAG Corps will assess the need for experience standards tailored to the responsibilities of individual Air Force military justice litigation positions, such as supervisory litigation positions and defense counsel. Within one year of receiving GAO's final report, the Air Force JAG Corps will implement any recommendations from its assessment.

RECOMMENDATION 22: The Secretary of the Army should ensure that the Army Judge Advocate General collects information on retention rates of participants in the Army's military justice career path and considers including such information in the Army's annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Concur. With the implementation of the Military Justice Career Model, Army TJAG anticipates the need to collect verifiable data on accession, retention, and promotion of judge advocates in the specialized military justice career path. Accordingly, policy development and planning for specific data collection are underway, including metric identification, increased data collection, increased data analysis personnel, and improved databases and access. In future years, the Army will work to include information regarding the specialized military justice career path in the Annual Report on Military Justice prepared in accordance with Article 146a, UCMJ.

RECOMMENDATION 23: The Secretary of the Navy should ensure that the Navy Judge Advocate General collects information on retention rates of participants in the Navy's military justice career path and considers including such information in the Navy's annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Concur. The Department agrees that retention rates of participants in the Navy's military justice career path should be collected.

RECOMMENDATION 24: The Secretary of the Navy should ensure that the Navy Judge Advocate General collects information on retention rates of participants in the Marine Corps' military justice career path and considers including such information in the Marine Corps' annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Partially concur. The Navy JAG has no role or authority related to information on retention / attrition rates of Marine Corps officers. This is the responsibility of Marine Corps Manpower & Reserve Affairs, Plans and Policy Branch (MPP) in coordination with M&RA's Retention & Release Section (MMOA-3) and JAD. The Marine Corps will consider whether it would be appropriate to include such information in its Article 146a report.

RECOMMENDATION 25: The Secretary of the Air Force should ensure that the Air Force Judge Advocate General collects information on retention rates of participants in the Air Force's military justice career path and considers including such information in the Air Force's annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Concur. Within one year of receiving GAO's final report, the Air Force JAG Corps will coordinate with the Air Force Personnel Center to receive information on retention rates derived from the voluntary exit surveys and consider inclusion of that information in the Air Force's annual Article 146a report to Congress.

RECOMMENDATION 26: The Secretary of the Army should ensure that the Army Judge Advocate General develops a process to systematically collect information on the reasons Army military justice litigators separate from service, such as by adapting its existing judge advocate exit survey process to include a mechanism for identifying litigators and considers including such information in the Army's annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Concur. The Army JAG Corps has collected resignation and retirement survey data in various forms since 2006. Currently, Army TJAG has directed a working group to focus on refining the process for conducting exit surveys to improve the collection and storage of data to inform retention initiative decisions and to respond to anticipated future reporting requirements regarding the specialized career paths, to include the military justice career path.

RECOMMENDATION 27: The Secretary of the Navy should ensure that the Navy Judge Advocate General develops a process to systematically collect information on the reasons Navy military justice litigators separate from service, such as by adapting its existing service-wide exit survey process to include a mechanism for identifying litigators and considers including such information in the Navy's annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Concur. The Department agrees with the collection and processing of survey data related to military justice litigators. The Department of the Navy will consider whether it would be appropriate to include such information in its Article 146a report.

RECOMMENDATION 28: The Secretary of the Navy should ensure that the Navy Judge Advocate General develops a process to systematically collect information on the reasons Marine Corps military justice litigators separate from service, such as by adapting its existing judge advocate exit survey process to include a mechanism for identifying litigators and considers including such information in the Marine Corps' annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Partially concur. This is beyond the scope of the Navy JAG's responsibilities and authorities. Marine Corps M&RA Officer Assignments (MMOA) and TECOM are responsible for administration of the Marine Corps' survey process, and exit / retention interviews. In addition, JAD has coordinated with both organizations to craft a judge advocate specific exit / retention interview instrument, and JAD can work with MMOA and TECOM to update that instrument to capture judge advocates with litigation or OSTC qualifications. The Marine Corps will consider whether it would be appropriate to include such information in its Article 146a report.

RECOMMENDATION 29: The Secretary of the Air Force should ensure that the Air Force Judge Advocate General develops a process to systematically collect information on the reasons Air Force military justice litigators separate from service, such as by adapting its existing service-wide exit survey processes to include a mechanism for identifying litigators and considers including such information in the Air Force's annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Partially concur. The Air Force Personnel Center centrally manages information on retention rates, including exit surveys, and provides that information to the Air Force JAG Corps. Developing a separate process administered by Air Force TJAG would be duplicative and potentially reduce response rates, thereby undercutting the purpose of the recommendation. The Air Force JAG Corps concurs with the utility of adapting existing service-wide exit survey processes to include a mechanism for identifying litigators and will consider including any additional information gained in its annual Article 146a report.

RECOMMENDATION 30: The Secretary of the Army should ensure that the Army Judge Advocate General collects and maintains staffing data on actual staff assigned to litigation positions compared to authorized positions and considers including such information in the Army's annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Concur. Recognizing the Military Justice Career Model necessitates refinements in staffing data, the Army TJAG has initiated policy and personnel changes which will facilitate improved specialization in data collection and tracking. The Army will work to include information regarding the specialized military justice career path in the Annual Report on Military Justice prepared in accordance with Article 146a, UCMJ.

RECOMMENDATION 31: The Secretary of the Navy should ensure that the Navy Judge Advocate General collects and maintains staffing data on actual Navy staff assigned to litigation positions compared to authorized positions and considers including such information in the Navy's annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Concur. The Department agrees that staffing data should be collected and maintained. The Department of the Navy will consider whether it would be appropriate to include such information in its Article 146a report.

RECOMMENDATION 32: The Secretary of the Navy should ensure that the Navy Judge Advocate General collects and maintains staffing data on actual Marine Corps staff assigned to

litigation positions compared to authorized positions and considers including such information in the Marine Corps' annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Partially concur. This is beyond the Navy JAG's scope of responsibilities and authority. Marine Corps M&RA, Officer Assignments (MMOA) has the ability to generate a real-time snapshot of officer staffing (the Officer Staffing Report, or "OSR"). This report can show staffing by organization and MOS/AMOS. As a result, this should be a simple matter of MMOA generating and maintaining 44XX OSRs at designated intervals. The Marine Corps will consider whether it would be appropriate to include such information in its Article 146a report.

RECOMMENDATION 33: The Secretary of the Air Force should ensure that the Air Force Judge Advocate General collects and maintains staffing data on actual staff assigned to litigation positions compared to authorized positions and considers including such information in the Air Force's annual Article 146a judge advocate workforce report to Congress.

DoD RESPONSE: Concur. Within six months of receiving GAO's final report, Air Force TJAG will ensure appropriate guidance is issued to collect and maintain fill-rate data for litigation positions and will consider including such information in the Article 146a report.

RECOMMENDATION 34: The Secretary of Defense should ensure that the Secretaries of the Military Departments collaborate to develop a standardized suite of performance measures that measure the effectiveness of the military justice career path in achieving desired outcomes.

DoD RESPONSE: Partially concur. There are important distinctions in the Military Services' judge advocate communities. Those distinctions may render it inappropriate to adopt a standardized suite of performance measures. For example, it may be appropriate for the Navy JAG Corps to adopt a performance measure tied to its Military Justice Career Litigation Track that does not have a counterpart in the other Military Services' judge advocate communities. Marine Corps judge advocates' status as unrestricted line officers is another factor that may warrant some Service-specific performance measures. It is appropriate for the leaders of the Military Services' judge advocate communities to collaborate concerning performance measures. The Office of the Secretary of Defense will ensure such collaboration occurs. However, it is appropriate for each Military Service to maintain the discretion to tailor performance measures to its particular judge advocate community.

RECOMMENDATION 35: The Secretary of Defense should ensure that the Secretaries of the Military Departments collaborate to develop and implement an evaluation plan that employs performance measures to systematically evaluate the extent of the effectiveness of the military justice career paths and consider including such information in their annual Article 146a judge advocate workforce reports to Congress.

DoD RESPONSE: Partially Concur. For the reasons discussed above in response to recommendation 34, it would be undesirable to adopt a single evaluation plan applicable to all Military Services' judge advocate communities. The Office of the Secretary of Defense will ensure that the leaders of the Military Services' judge advocate communities collaborate concerning an evaluation plan and consider whether such information should be included in the

**Appendix II: Comments from the Department
of Defense**

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annual reports required by Article 146a of the Uniform Code of Military Justice. However, it is appropriate for each Military Service to maintain the discretion to tailor an evaluation plan to its particular judge advocate community.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Brenda S. Farrell, (202) 512-3604 or farrellb@gao.gov

Staff Acknowledgments

In addition to the contact named above, Kimberly Mayo (Assistant Director), Adam Howell-Smith (Analyst in Charge), Vincent M. Buquicchio, Molly Callaghan, Ángela González Yanes, Serena Lo, Lashai McCullough, Sarah Scott, Emily Tucker, and Emily Wilson, made key contributions to this report.

Related GAO Products

Guantánamo Bay: Accessing Detainee Medical Records as Part of Military Commissions' Proceedings. [GAO-22-105810](#). Washington, D.C.: June 28, 2022.

Military Justice: DOD and Coast Guard Improved Collection and Reporting of Demographic and Nonjudicial Punishment Data, but Need to Study Causes of Disparities. [GAO-21-105000](#). Washington, D.C.: August 30, 2021.

Military Training: The Services Need to Ensure That All Commanders Are Prepared for Their Legal Responsibilities. [GAO-21-338](#). Washington, D.C.: July 8, 2021.

Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities. [GAO-20-648T](#). Washington, D.C.: June 16, 2020.

Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities. [GAO-19-344](#). Washington, D.C.: May 30, 2019.

Military Courts: DOD Should Assess the Tradeoffs Associated With Expanding Public Access to and Information About Terrorism Trials. [GAO-19-283](#). Washington, D.C.: February 12, 2019.

Military Justice: Oversight and Better Collaboration Needed for Sexual Assault Investigations and Adjudications. [GAO-11-579](#). Washington, D.C.: June 22, 2011.

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