

Strengthening the Military Justice System by Modifying the Victim Legal Counsel Program

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KEY TAKEAWAYS

Local, state, and federal prosecutors work directly with victims of crime, which the Victim Legal Counsel program in essence prevents.

The VLC program should serve the legal needs of those few victims who, in the Office of Special Trial Counsel's judgment, require additional legal support.

The non-legal victim services portion of the VLC program should be transferred to existing victim services and advocates programs within DOD.

Introduction

For most of our nation's history, uniformed attorneys—called JAGs—in the military services have been generalists.¹ Whether it was advising commanders about the law of armed conflict; handling courts-martial as a prosecutor, defense counsel, trial judge, or appellate judge; conducting official investigations; or advising commanders as a staff judge advocate, JAGs have answered the call to serve for almost 250 years.

Using military law generalists made sense, as the military has been called upon by our country to serve around the globe in myriad capacities, often with only short notice. The JAG Corps, like military doctors, nurses, and chaplains, is part of the staff corps: a component of the armed forces that serves the warfighters.² The warfighters, in that sense, are the clients, and the staff corps adapt to their clients' needs and demand signals.

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As the military evolved and became more complex over time, so did the demands placed on the staff corps, including JAGs, to serve the needs of the client. That evolution resulted in dramatic changes in the JAG Corps. One of the more significant was the creation of career litigation tracks for military attorneys almost 15 years ago. That change came about for two main reasons: First, the services themselves realized that to become experts at litigation, attorneys needed years of experience to handle complex cases just as their civilian counterparts did, and second, increased scrutiny of the perceived and real weaknesses of the military justice system resulted in Congress passing legislation that made structural changes in the system. The three major changes in the military criminal justice system since the era of specialization began are:

- Removing from commanders the ability to refer charges in sex crimes and other delineated offenses to a court-martial and giving that power to JAGs;
- Creating the Victims Legal Counsel (VLC)³ program to provide victims of crimes with their own JAG attorney; and
- Creating the Office of Special Trial Counsel (OSTC) to handle the prosecution of complicated felonies including sex crimes.

Now that the services finally have prosecutors with specialized training to handle complicated sex crimes and other felonies involving victims, the SVC program as it is currently structured is no longer necessary. Prosecutors at the local, state, and federal prosecutor levels work directly with victims of crime, which the VLC program in essence prevents. For the reasons discussed herein, Congress and the services should modify the VLC program and fold those vital victim's services into DOD's existing victim-witness programs.⁴

For the reasons discussed below, the VLC program should be modified to serve the legal needs of those few victims who, in the judgment of the OSTC, require additional legal support. The non-legal victim services portion of the VLC program should be transferred to existing victim services and advocates programs within DOD.

1775 to 2025: From Generalists to Specialists

George Washington is not only considered the “father of our country;” he is also responsible for the creation of the first uniformed military attorneys,

which we now know as the Judge Advocate General (JAG) Corps. In 1775, General Washington asked the Continental Congress to appoint William Tudor to serve as Judge Advocate of the Army.⁵ Tudor had clerked for and studied under John Adams before beginning his own law practice in Massachusetts. A year later, Tudor's title was upgraded to Judge Advocate General.⁶ The Navy JAG Corps traces its beginning back to the Civil War when Secretary of the Navy Gideon Welles directed an Assistant United States Attorney from the District of Columbia, Nathaniel Wilson, to act as prosecutor in a complex court-martial. Welles dubbed Wilson the "Solicitor of the Navy Department."⁷

Over the decades, military commanders and the heads of the services' JAG Corps, called the Judge Advocate General, required lawyers in the JAG Corps to serve anywhere, anytime, and in any capacity across a variety of disciplines to deal with the ever-changing demands of the services. By the time an O-6⁸ JAG officer became eligible to be considered for a flag or general officer billet, that officer had been a Commanding Officer or an Executive Officer, had worked as a staff judge advocate including for generals or admirals, and had acted as a senior military assistant and often in other demanding billets. In other words, the nature of their job was to become highly experienced officer who excelled throughout their careers in myriad areas of the law, becoming highly competent in many areas but often not true experts in any one area of the law.

Well before the services moved to develop a criminal law litigation career track for JAGs, they allowed JAGs to concentrate in other niche areas of the law.⁹ Until recently, however, none of the military departments recognized the need to develop career criminal litigators to act as prosecutors or defense counsel. Instead, they rotated JAGs in and out of prosecution and defense counsel billets early in their careers and then moved them into staff judge advocate or other legal billets to serve the needs of the department. One of the inevitable results of quickly cycling JAGs out of the courtroom was that many lawyers who joined the JAG Corps to get "trial experience" as prosecutors or defense counsel left active duty and joined local district attorney offices or local public defender offices or became federal prosecutors or federal public defenders in order to hone their skills and enjoy a fruitful career in criminal law. Some who left active duty (myself included) joined the reserves to continue to serve in a variety of billets, all the while practicing criminal law as civilians.

Beginning with internal calls for a career litigation track, championed by reformers within and outside the services, the JAG Corps (especially in the Navy) gradually recognized that trial proficiency requires sustained practice

and professional continuity.¹⁰ These developments professionalized both prosecution and defense functions, creating a small cadre of litigators who could spend most of their JAG careers in or around military courtrooms. The result was a significant leap forward in institutional competence.¹¹ By the early 2000s, however, decades after district attorney offices around the country created specialized units with career prosecutors to handle increasingly complex and varied classes of cases, some in the JAG Corps realized that in order to handle increasingly complex courts-martial, there was a need to create a career criminal litigation track for JAGs. The need was obvious for several reasons. Specifically:

- One of the primary statutory duties of the JAG Corps writ large was to handle courts-martial;¹²
- Given the demand signal for generalists, JAGs spent very little time in their careers as prosecutors or defense counsel, often rotating out of those assignments after two or three years, giving them little to no time to develop expertise, especially compared to their civilian counterparts;
- Because of the first two reasons, military prosecutors and defense counsel were forced to investigate and handle complex cases that career civilian prosecutors or defense counsel would never give to anyone but a truly seasoned attorney; and
- Because the volume of criminal cases in the military was so low compared to their civilian counterparts, military prosecutors and defense counsel were not afforded the opportunity to hone their skills across hundreds or thousands of misdemeanor cases before advancing to handling low-level felonies and eventually felonies.

At first, the notion of creating a career litigation track for criminal law specialists in a corps comprised primarily of generalists was not strongly supported. That view, however, failed to consider fully the fact that the practice of law had become increasingly specialized and that the JAG Corps already had specialists in international law, fiscal and contract law, and other areas of the law. Those specialists were in fact highly sought after and valued by the warfighting community, especially by senior leaders in all the services.

The Navy Was First

In 2009, the Judge Advocate General of the Navy directed the creation of a military justice litigation career track in the Navy by issuing what is referred to as an “instruction.”¹³ To kickstart the track, the instruction created two designation levels within the career track: Specialist and Expert.

An active-duty Navy JAG who wanted to qualify as a military justice litigation Specialist had to apply for the position and had to have participated as the lead prosecutor or defense counsel “in at least five contested courts-martial, regardless of forum.” The “regardless of forum” language meant that the case could have been tried before a jury (called “members” in the military) or a judge alone. An active-duty Navy JAG who wanted to qualify as a military justice litigation Expert had to have completed a minimum of three-years duty as a Specialist in one or more required billets and to have served as lead prosecutor or defense counsel in 25 contested courts-martial, regardless of forum. The fact that JAGs had to have tried only five contested courts-martial to become Specialists and only 25 to become Experts reflects the reality that there simply was not a high volume of cases, much less contested cases, in the military justice system at that time, especially when compared to civilian criminal dockets at the county level.¹⁴

The revised instruction notes the obvious: that “the delivery of military justice is both a core competency and a primary mission of the JAG Corps. Good order and discipline enable the operational readiness of the Navy and requires a military justice that is, and is perceived to be, just.”¹⁵ Today, applicants for Specialist I in the Navy JAG Corps have to have participated in at least 10 courts-martial “in any capacity,” applicants for Specialist II (a new category) must have participated in at least 20 courts-martial “in any capacity,” and applicants for Expert must have participated in at least 50 courts-martial “in any capacity.” The use of the word “participation” is telling, both because of what it means and because of what it does not mean. It means, according to the instruction, being “substantially involved” in any way with a court-martial, whether as a prosecutor or as a defense counsel, as a VLC, as an appellate counsel, as a counsel in a non-criminal administrative separation board, or by performing “other advocacy-related tasks.”¹⁶

Participation does not mean prosecuting or defending a case as lead counsel from start to finish, much less trying a contested case before a jury or judge, but in the civilian criminal justice system, state prosecutors and defense counsel measure litigation experience by the actual number of cases a person has tried in a contested trial. Jury trial experience is given more weight than cases tried before a judge even though both are important.

It would not dawn on state career prosecutors or public defenders—or their bosses—to count cases that novice litigators “participated” in as a proxy for actual trial experience.¹⁷ However, given the low number of cases across the services, there is not enough contested court-martial work to go around, so JAG leaders had to (1) design a program that incentivized eager JAGs who wanted to enter the career track and (2) craft realistic “participation” levels commensurate with the few cases spread across the services.

Shortly after the Navy established a career litigation track for JAGs, the other services followed suit.

Prosecutors Work with Victims to Achieve Justice

Prosecutors across the country at the local, state, and federal levels work directly with victims of crime.¹⁸ Many states have statutes and some have constitutional provisions related to crime victims’ rights and the duties of prosecutors as they relate to crime victims. Although prosecutors do not represent the victim *per se*, they interview, advise, guide, and help victims to navigate the process with the assistance of professional victim-witness experts. Prosecutors shape their cases and file appropriate charges to comport with the evidence provided by the victims, witnesses, and law enforcement officials. When appropriate, prosecutors file pretrial motions to admit inculpatory evidence against the accused, file motions to exclude irrelevant or prohibited or unduly prejudicial evidence against a victim, and protect the rights of all victims in the case. This is a core function of all prosecutors. It is, for lack of a better term, a best practice.

In the civilian sector, every major prosecution advocacy group and state prosecution association endorses the practice of prosecutors working directly with victims. The Department of Justice,¹⁹ National District Attorneys Association,²⁰ Association of Prosecuting Attorneys,²¹ and state prosecution associations all consider it a core function (i.e., a best practice) for prosecutors to work directly with victims. Each conducts annual trainings on how to work with victims of various crimes, from sexual assault to domestic violence to elder abuse to child abuse. But because of the VLC program, JAGs are prohibited from doing the very thing that other prosecutors in the United States do: work directly with victims.

Creation of the VLC Program

Victims’ legal counsel were introduced into the military justice system as a temporary stopgap in response to perceived high rates of sexual assault

and harassment. The National Defense Authorization Act (NDAA) of 2012 forced the military departments to provide “legal assistance to victims of sexual assault.”²²

In November 2012, the DOD Office of General Counsel stated in a legal opinion that the 2012 NDAA, read in the context of other federal laws, permitted judge advocates to provide legal representation to victims of sexual assault in criminal proceedings.²³ With this legal green light, the Air Force began to work on its VLC²⁴ program, which was implemented on January 28, 2013, less than three months after the DOD memorandum was issued. This program was the first within the military to offer legal representation to victims of crime with accompanying attorney–client privilege.²⁵ As the first program to advocate solely for and represent victims as legal counsel, the VLC was soon challenged. In *L.R.M. v. Kastenberg*, L.R.M.’s VLC asked the military trial judge, Joshua Kastenberg, to reserve the VLC’s right to present arguments on the victim’s behalf.²⁶ Kastenberg denied the request, ruling that the victim lacked standing to have her VLC present legal arguments regarding Military Rule of Evidence (MRE) 412, 513, and 514.²⁷

This ruling was perceived to undermine the *raison d’être* of the reform: Having a legal representative in court who is able to advocate for victims was the essential purpose of the VLC program. Up until that point, military prosecutors had handled motions related to the rape shield law (MRE 412); the psychotherapist–patient privilege (MRE 513); and victim–advocate privilege (MRE 514). The Air Force envisioned that the VLC, not the prosecutor, would speak in court on behalf of the victim to protect his or her rights under those rules of evidence.

The judge’s ruling was appealed to the Air Force Court of Criminal Appeals (AFCCA) through a writ of mandamus. AFCCA denied this request, but the issue was certified for review by the Court of Appeals for the Armed Forces (CAAF), the top military appeals court. In *Kastenberg*, the CAAF held that the AFCCA erred in denying the request, citing lack of subject-matter jurisdiction, and that the military judge erred in holding that the victim “would not have standing to be represented through counsel during applicable hearings arising from the M.R.E.”²⁸ While the victim’s “right to be heard through counsel is not absolute,” the CAAF returned the case to the trial judge, ordering that the victim be heard through the VLC on the MRE 412 and 513 issues.²⁹

Kastenberg set the precedent that victims are entitled to present arguments through a VLC—their legal representative and advocate—specifically for issues pertaining to MRE 412 and 513. The decision clarified that VLCs could serve as counsel for victims, a vulnerable group whose rights deserve

respect and protection. When *Kastenberg* was decided, the Air Force stood alone in providing sexual assault victims access to their own legal counsel; the appellate defense offices for the Navy, Marine Corps, Coast Guard, and Army filed *amicus* briefs in *Kastenberg* opposing the appeal.³⁰

In March 2013, however, victim impact surveys reflected the success of the Air Force’s Victims’ Legal Counsel program: 92 percent of victims reported that their VLC helped them to understand the legal process and effectively advocated on their behalf, the remaining 8 percent were “satisfied,” and 97 percent of respondents said they would recommend that other victims request a VLC.³¹

Two months later, in May 2013, Senators on the Senate Armed Services Committee introduced the Combating Military Sexual Assault Act of 2013, which promised to “address a number of gaps in current law and policy” and “build upon the positive steps” already taken by the government.³² The bill’s primary goal was to “expand the successful Air Force program to all service branches by providing victims of sexual assault with a [Victims’ Legal Counsel].”³³ Senator Patty Murray (D-WA) acknowledged that legislators “have not taken meaningful steps to give victims a place to turn” and that the armed forces need “a system where the protection and safety of victims is unquestionable.”³⁴

Later that year, on August 14, 2013, Secretary of Defense Chuck Hagel ordered each service branch to implement similar advocacy programs. “Secretaries of the Military Departments,” Hagel’s directive stated, “shall establish a special victim’s advocacy program best suited for that Service that provides legal advice and representation to the victim throughout the justice process.” Furthermore, “Each Service will identify and periodically share best practices and will establish an initial operating capability not later than November 1, 2013, and a fully established program by January 1, 2014.”³⁵ Given the political winds at the time, no one pointed out that it was absolutely not a “best practice” to provide victims of sexual assault—or any victim for that matter—with a government attorney who formed an attorney–client relationship with the victim.

Expansion Across Other Branches

On July 15, 2013, the Coast Guard became the second branch of the military to adopt a VLC program.³⁶ The Navy was next, announcing its Victim Legal Counsel program in August 2013.³⁷ It began with about 30 JAGs regionally assigned to 23 different locations and grew to 48 attorneys stationed at 28 locations worldwide by its 10-year anniversary.³⁸ The Marine

Corps' equivalent program, the Victims' Legal Counsel Organization, was launched on November 1, 2013.³⁹ Its original four offices have since grown to nine offices worldwide.⁴⁰

The Army did not formally announce its program until November 1, 2013, but it began to plan much earlier. The Army JAG Corps' Personnel, Plans, Training and Operations Division started to map out the Army's VLC program in July 2013.⁴¹ Following Secretary Hagel's directive, the Judge Advocate General of the Army put forward guidelines in October 2013 for the Special Victim Advocate Program and the role of Special Victim Advocates (SVAs). One policy specifically addressed the program's role as representative for victims above all else, stating that VLCs would advocate for their client's interests and desires even when they conflicted with the government's interests.⁴² Though the original announcement called their advocates SVAs, the Army has since referred to them as VLCs.

Eventually, Congress passed the Combatting Military Sexual Assault Act of 2013 on December 26, 2013, as part of the 2014 NDAA, codifying the directive and ensuring a permanent place for VLCs in the services.⁴³ Noticeably absent from the services' adoption and Congress's codification of the VLC program was any discussion of whether it was prudent in the first place or a "best practice."

No prosecutor's office in the country, whether at the local, state, or federal level, was prevented from contacting, communicating, or working directly with victims as they developed their cases. Nowhere in the country were victims of violent crime provided with attorneys paid by the government to represent them. Nowhere in the country were prosecutors required to ask permission of a victim's government attorney before he could speak with the victim. And nowhere in the country was the prosecutor, by design, pitted against the victim to "protect" the victim. Yet the VLC program did exactly that.⁴⁴

There was little to no evidence that JAG prosecutors were not handling MRE 412, 513, and 514 motions (among others) professionally as a whole or that victims were not satisfied with how their cases were handled.⁴⁵ Yet the services and Congress ignored best practices and created a program that has driven a wedge between military prosecutors and victims for no reason other than the perception that something "needed to be done" for victims.

The Office of Special Trial Counsel and Victims

In 2009, when the Navy was considering creation of the first military justice litigation track, there was a discussion about whether it should create

prosecution-only and defense-only tracks in order to create career prosecutors and criminal defense attorneys. The argument for that approach was simple: Some people are prosecutors at heart, and others are defense attorneys. We should let JAGs choose what they really want, the argument went, because that's what happens in the civilian world. Because the concept of a career litigation track itself was unprecedented and novel, however, and because leaders thought there was utility in JAGs acting as prosecutors and defense attorneys, the Navy decided to create a generic career litigation track; but as time went by, the need for specialized prosecutors became more and more obvious.

The National Defense Authorization Act for Fiscal Year 2022 implemented one of the most significant military justice system reforms in recent memory: the creation of Offices of Special Trial Counsel (OSTCs) within each of the armed services.⁴⁶ The establishment of the OSTCs indicates that Congress has recognized that our military services have evolved beyond a system run by generalist judge advocates⁴⁷ to a system that is staffed by specialized, professional trial litigators.⁴⁸ These offices investigate and prosecute “covered offenses,” including sexual assault, domestic violence, murder, and other major felonies.⁴⁹ In mandating this reform, Congress transferred the power to decide whether to prosecute such cases from non-lawyer commanders to career military prosecutors with specialized training and experience.⁵⁰ The 2022 NDAA also required services to establish staffing, training, and promotion structures to sustain these specialized offices and to report regularly to Congress on their implementation and performance.

The creation of the OSTC is a significant milestone in the military justice system. As this specialization continues to make headway, military justice will continue to resemble the best practices of its civilian counterparts more closely. Unlike prior practice in which convening authorities referred cases to courts-martial, the OSTC exercises independent charging discretion.⁵¹ The shift mirrors the natural evolution of civilian justice systems, whereby independence and specialization have replaced diffuse, command-driven models. Now that OSTCs exist, it is an opportune time to consider whether other aspects of the military justice system should be modified.

Substantially Reduced Caseloads Demand Best Practices

The small number of criminal cases in the military justice system makes it all the more important for practitioners in the military to utilize time-tested practices from professional career prosecutors and criminal defense

attorneys. A prosecutor's core function is working directly with the victims of crime. It is regrettable that the VLC program, when it was on the drawing board, ignored this obvious fact, and it is inexcusable that Congress failed to hold hearings or hear from professional career prosecutors and victim-witness specialists before creating the only criminal justice system in America that deprives prosecutors of the ability to work directly with victims.

A quick look at the number of cases that flow through the military justice system each year underscores the importance of adopting best practices from systems that have vastly more experience with such matters.

Pursuant to Article 146a of the Uniform Code of Military Justice (UCMJ), the Judge Advocates General (and the Staff Judge Advocate to the Commandant of the Marine Corps) are required to submit an annual report on the state of military justice in their respective services, including the number of courts-martial completed. The Joint Service Committee (JSC) for Military Justice compiles those reports and publishes them. According to the JSC:

- In fiscal year (FY) 2022, across the entire U.S. Navy, there were 181 courts-martial.⁵² Of those 181 cases, only 81 were general courts-martial (GCMs). General courts-martials are felonies. The remaining 100 were special courts-martial, or misdemeanors. Thirty-five of those courts-martials were jury trials. Since 2022, the numbers have declined further. In 2024, the Navy handled 158 contested cases, 62 of which were GCMs.⁵³ The Navy's number of courts-martial in FY 2022 was similar to those of the other departments.
- In 2022, the Marine Corps had 206 courts-martial, 93 of which were GCMs. Only 28 cases were tried before a jury.⁵⁴ The 2024 numbers were lower at 185 courts-martial, 75 of which were GCMs.⁵⁵
- In 2022, the Army, the largest of the services, had 478 courts-martial, 242 of which were GCMs.⁵⁶ Of the 153 fully contested cases that year, 107 were tried before a jury. The Army had 142 career track JAGs that year, which means that if the caseload was evenly distributed among those career litigators, each handled, on average, one contested case that year. In 2024, the Army had 460 courts-martial, 321 of which were GCMs.⁵⁷ Only 72 cases were tried before a jury that year.⁵⁸
- In 2022, the Air Force had 314 courts-martial, 161 of which were GCMs.⁵⁹ Of the 314 courts-martial, 113 were jury trials. The 2024 numbers are even lower: 282 courts-martial, 169 of which were GCMs.⁶⁰

To put the decline of courts-martial in perspective, the Air Force had approximately the same number of JAGs in FY 2022 that it had in FY 1990, yet in FY 1990, the Air Force handled 1,480 courts-martial.⁶¹

To further illustrate the issue, consider the volume of criminal cases handled by district attorneys' offices in counties with a population similar to the population of the armed forces.

The Department of Defense currently has a total force of approximately 1.3 million active-duty military personnel and 765,000 reservists in the U.S. armed forces.⁶² Military members subject to the UCMJ are those on active duty, cadets and midshipman, reservists when on inactive-duty training, and members of the Army or Air National Guard only when in federal service.⁶³

San Diego County has a population of 3.1 million residents, about a million more than the active-duty and reserve components combined.⁶⁴ The San Diego District Attorney's Office has around 351 prosecutors, or about half the size of just the Navy JAG Corps.⁶⁵ In 2024, the office filed about 40,000 criminal cases, or 113 per attorney.⁶⁶ Of those 40,000 cases, 11,488 were felonies, including 193 homicides or attempted homicides, 389 sex offenses, and 135 arsons.⁶⁷ Put another way, in 2024, the San Diego District Attorney's Office tried more homicides than all of the felonies tried by the Air Force, more sex offenses than all of the felony cases tried by the Army, and more arson cases than twice the number of felonies tried by the entire Navy.

Then there is Miami-Dade County, which has a population of about 2.8 million residents.⁶⁸ The Miami-Dade County State's Attorney's Office handled 10,000 felony cases in 2024 alone, not counting the tens of thousands of misdemeanors the office routinely handles each year.⁶⁹

Even smaller county prosecutor offices handle more total cases than any of the services and considerably more per prosecutor. Frederick County, Maryland, is an hour northwest of Washington, D.C. It has a population of about 300,000 people. The Frederick County State's Attorney's Office has 29 line prosecutors (not including four who handle juvenile cases).⁷⁰ In 2023, the office filed a total of 3,719 cases, including 1,190 felonies, for an average of 128 cases per prosecutor.⁷¹ That number does not include the number of cases the office investigated and decided not to pursue. In 2019, the same office filed charges in 5,235 cases, including 1,472 felonies.⁷²

Other large, medium, and smaller district attorney offices around the country handle a similar volume of cases per prosecutor. Prosecutors in those offices handle hundreds or even thousands of misdemeanor cases in their careers and hundreds of complex felonies over the course of a 20-year

or 30-year career.

The point is not to disparage or downplay the importance of the work JAGs are doing or to dishonor their service to our country. They serve a vital role in the armed forces. Rather, the point is that since the JAG Corps has so few criminal cases each year, it makes sense for them to adopt best practices from their civilian counterparts who have exponentially more experience in order to maximize their efficacy on the few cases they do handle.

Due Process Flaws in the VLC Program

From its inception, the VLC system was unnecessary, imperfect, and—most important—structurally unsound. The structural problems are an immutable part of the program. Under the attorney–client relationship created by the program, the VLC is duty bound to protect the confidential communications gleaned from the victim, whereas if the VLC had been the prosecutor in the case, he would have been duty bound in certain circumstances to turn the statements over to the defense. This harms the defendant and arguably violates his right to discovery and due process. It also perverts the administration of justice by allowing otherwise discoverable statements to be kept in the “black box” of the VLC attorney–client relationship.

Normally, when the government comes into possession of specific types of evidence, the prosecutor is required to turn over that evidence to the defendant’s counsel through the discovery process. This exchange of information during the discovery phase of a case is standard operating procedure for every judicial venue. The introduction of VLCs carved out an exception for sexual assault cases brought in the military justice system.

What About *Brady*, *Jencks*, and *Giglio*?

The pertinent Supreme Court decisions relating to the rules of discovery—*Brady v. Maryland*,⁷³ *Giglio v. U.S.*,⁷⁴ and *Jencks v. U.S.*⁷⁵—bind lawyers in both the civilian and military justice systems. Each case clarified disclosure rules, answering the question: What evidence does the prosecution have to disclose to the defendant before trial?

In *Jencks v. United States*, the Supreme Court of the United States ruled that prosecutors must disclose prior statements (“Jencks material”) made by government witnesses that relate to their testimony. The Jencks Act, codified at 18 U.S.C. § 3500, requires the prosecution to provide such statements to the defense upon the defendant’s motion. Rule for Court-Martial 914 codifies the Jencks Act rule and applies in all courts-martial.

In *Brady*, decided six years after *Jencks*, the Court held that the prosecution must disclose material evidence that is “favorable to an accused” if the evidence is requested by the defense.⁷⁶ “Brady material,” therefore, refers to potentially exculpatory evidence in possession of the prosecution. Military prosecutors are required to turn over Brady material even if it has not been requested by the defense.

Giglio extended *Jencks* and *Brady* to information relating to witness credibility—specifically, deals offered by the government to a witness in a criminal case. “Giglio material” refers to evidence that could impeach the credibility of the prosecution’s witnesses. Military prosecutors are required to turn over Giglio material.

Even though only one of these decisions (*Jencks*) was eventually codified, the prosecution in any criminal case understands the ramifications of ignoring these procedures. A trial judge who finds that the prosecution failed to turn over *Brady*, *Giglio*, or *Jencks* material will hold the government accountable by keeping out the evidence, including witness testimony, or in some instances will grant a motion for a mistrial. Depending on whether the omission was intentional or not, the judge could refer the prosecutor to his state bar for an ethics investigation.

These evidentiary rules protect a defendant’s right to due process, uphold the presumption of innocence, and require prosecutors to play by the rules. They are integral to maintaining a fair justice system. All criminal cases in the civilian and military justice systems are governed by these rules, but these rules do not apply to VLCs.⁷⁷ VLCs effectively leave these constitutional guarantees at the door by exploiting a loophole in the Rules for Courts-Martial⁷⁸ and the Supreme Court decisions. This end-around results in a flawed system concealed by the veil of attorney–client privilege.

To illustrate how easily these structural problems could play out in practice, consider the following hypothetical scenario. Sergeant First Class Emily Wagner was in a long-term rocky relationship with her partner, Major Trenton. After a heated argument with Major Trenton at his apartment during dinner, SFC Wagner broke up with him and returned to her barracks and passed out.

When SFC Wagner woke up the next day for work, she noticed a sharp pain in her vaginal area. She could not remember exactly what happened at Trenton’s apartment the night before but seemed to recall that they drank a lot of alcohol and that he threatened to kill her if she broke up with him. SFC Wagner knew from experience that the base hospital down the street performed sexual assault forensic exams (rape kits); she had been there supportively alongside two friends in the past. As she walked down the street

the next morning toward work, she decided she wasn't sure whether she should go in for an exam, so she kept walking.

Later that day, she decided to tell her commanding officer that she thought her ex-boyfriend might have sexually assaulted her the night before and gave him hazy details of the dinner and their drinking. Her CO told her about the VLC program and gave her a number to call. She called, spoke briefly to a VLC, and the next day went to the VLC's office and told her what she thought had happened. The VLC told Wagner her rights and recommended that she make an official report to Army investigators, which she did later that day. Army investigators took her statement and interviewed Major Trenton. Trenton said that they had dinner that night, that Wagner was drunk and acting weird, and that when they started to kiss, she accused him of cheating on her, screamed at him, and staggered out of the apartment. Army investigators sent the report to Army prosecutors, who filed charges in the case.

The day before trial, SFC Wagner pulled her VLC aside to confess something. Everything she told the prosecution was true, she said, but she left out some details and now feared they would surface on the stand. SFC Wagner had just received her five-year-sober chip from Alcoholics Anonymous but relapsed the night of the breakup. She stopped at a bar on the way back to her barracks, drank enough to black out, and did not remember how she got home. The last thing she remembered was furiously calling Major Trenton. She did not remember that conversation, how she got home, or whether she told Trenton to come over that night, although she could not imagine inviting him over or willingly having sex with him—not after that fight. Maybe it was possible she told him to come over, she said, but she knew she would not have called him for sex.

But that was not all. The morning after the fight and sexual assault, SFC Wagner found an unmarked prescription bottle in her jacket pocket with half a white pill at the bottom. She did not know where it came from or what it was. Fearing the potential reputational and occupational damage from her relapse, SFC Wagner left all of this out of her report to her CO and her statement to the police and prosecutors.

Her VLC asked whether any evidence of this existed. Not really, she said. She had flushed the pill and tossed the bottle in her neighbor's trash can. The blood test at the hospital during the sexual assault examination might have detected a prescription drug. Prosecutors had not asked for Wagner's or Trenton's cell phone records, so they were not turned over to the defense. The VLC kept this information to herself.

It is not hard to imagine other hypotheticals, or even real cases, where victims of a crime tell inconsistent versions of what happened, add or delete

information as time goes on, or refute aspects of prior statements. The fact that this happens all the time does not necessarily undercut the credibility of the victim's main complaint: that a crime was perpetrated against her or him. But before the VLC program was created, it was often required that those inconsistencies, if they came to the attention of the prosecution, must be turned over to the defense. In some instances, inconsistencies result in charges not being filed, charges being withdrawn, or not-guilty findings. That is what justice requires to ensure fundamental fairness and due process.

How to Modify the VLC Program

Victims had rights and services well before the creation of the VLC program and will continue to enjoy those rights and services when and if the program is modified.

The non-legal aspect of VLC services can be folded into existing DOD victim service programs. In fact, virtually all of the non-legal advice-related services that VLCs provide are already available to victims of sexual assault and violent crime in the military, and maintaining and potentially expanding offices that provide that support will be crucial if the VLC program is modified.

Victim services are spread across the DOD and in each of the services. The Pentagon has an office that is dedicated entirely to preventing sexual assault in the military and providing services to victims of sexual assault. The DOD Sexual Assault Prevention and Response Office (SAPRO) exists to provide “unparalleled warfighter support, advocacy, and recovery assistance—anytime, anywhere.”⁷⁹ The SAPRO's operational portfolio includes a wide array of services and service providers; some are on active duty, and others are civilian providers. They include the DOD Sexual Assault Advocate Certification Program that provides a required professional certification for all Sexual Assault Response Coordinators (SARCs) and SAPR Victim Advocates (VAs). For FY 2024, the DOD has 1,648 full-time and 18,897 part-time employees working in the sexual assault response workforce (SARCs plus SAPR VAs).⁸⁰ The full-time workforce is projected to increase in the next two years to 2,600.⁸¹

Victim Advocates in the military provide information, guidance, and support to victims.⁸² They are specially trained to respond to incidents of domestic violence 24 hours a day, seven days a week.⁸³ Victim Advocates provide emotional support, advise victims of their rights, explore resources and services in both civilian and military communities, and accompany victims to medical visits and legal proceedings.⁸⁴ The services they provide to survivors

of sexual assault are no different from and in some cases are more appropriate than the services offered by VLCs, except that VLCs are attorneys. Notably, most victim-witness professionals are not attorneys, but rather have degrees in social work, counseling, or other relevant fields that apply directly to victim support. Lawyers are not trained social workers and typically do not have the same skills that professional victim-witness advocates have.

Each of the services that victim advocates provide to victims of sexual assault and other crimes is considered a “best practice” from the civilian criminal justice system. For example, a typical description of a civilian prosecutor’s victim advocacy program is as follows:

The goal of the District Attorney Victim Advocate is to provide or arrange for services to meet the material, emotional and informational needs experienced by victims and witnesses thereby allowing for faster and more complete recovery from the effects of crime.... [A]dvocates must demonstrate an understanding of victim’s rights, the dynamics of victimization, crisis intervention, cultural, ethnic and special needs assessment and the Victim’s Compensation Program.⁸⁵

The SAPRO Office already has a mandate to provide victims of sexual assault with all of the services they need to navigate their material, emotional, and informational needs.

Conclusion

If the military needed the VLC program at one point, those reasons are no longer present with the advent of the OSTC. To be sure, the VLC program has provided a benefit to victims at a time when the JAG Corps did not have career prosecutors. As lawyers trained to focus like a laser on one client and her rights, VLCs brought a degree of professionalism to their task that gave victims of crime in the military more confidence in the system.

Today, most victim cases can be handled professionally and properly by well-trained military prosecutors who understand victims’ rights, victim dynamics, and the services available to victims in the military. The DOD has a vast array of professional victims’ services spread across the military that are fully capable of addressing their non-legal needs. For the most part, the professionals providing those services have backgrounds that are far more appropriate for providing counseling and support services to victims of crime than are the skillset and experience of attorneys.

All of the VLC program’s non-legal counseling and support features of the job should be moved to existing victims’ services in the DOD, and the

OSTC, not the VLC, should be the primary entity that works directly with and on the behalf of victims. The OSTC, consistent with common practice in the civilian sector, should be responsible for filing all pretrial motions, including those related to MRE 412 and 513, on behalf of victims. In the rare instance where, in the judgment of the OSTC, a VLC's legal services are required, the OSTC should be given the responsibility to refer cases to a VLC.

Finally, modifying the VLC program will save the services money that can be used to enhance the OSTC and other essential services provided by the JAG Corps.

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Endnotes

1. The acronym JAG stands for Judge Advocate General. Each of the four branches of the military services has members of the Judge Advocate General's Corps. The leaders of each JAG Corps are called the Judge Advocate General. The United States Coast Guard, which is part of the Department of Homeland Security, has a JAG Corps and its own Judge Advocate General. Members of the JAG Corps are graduates of college and law school and members of at least one state bar. Each has graduated from his or her service's officer indoctrination school and a specialized military law school. All JAGs are officers in their respective armed services.
2. The Coast Guard and Marine Corps do not have separate JAG Corps; officers who serve as Judge Advocates may also be assigned to other non-legal billets.
3. The Army and Air Force refer to JAGs who perform this role as "Special Victim's Counsel," or SVCs. This *Legal Memorandum* refers to JAGs who advocate for and are assigned to victims of crime as VLCs.
4. On September 5, 2025, President Donald J. Trump signed an executive order authorizing the Secretary of Defense to use a secondary title of Secretary of War in official correspondence, public communications, ceremonial contexts, and non-statutory documents within the executive branch. See Restoring the United States Department of War, 90 Fed. Reg. 43893 (Sept. 10, 2025), <https://www.govinfo.gov/content/pkg/FR-2025-09-10/pdf/2025-17508.pdf>. The statutory (legal) name remains the Department of Defense, as evidenced by the most recent National Defense Authorization Act for FY 2026 released on December 7, 2025. This *Legal Memorandum* uses the statutory name.
5. See U.S. Army JAG Corps, *The U.S. Army JAG Corps: Celebrating 250 Years, Early Years*, at <https://www.jagcnet.army.mil/Home/public/jagcHistory.html> (last accessed Nov. 19, 2025).
6. *Id.*
7. See U.S. Navy JAG Corps, *History*, at <https://www.jag.navy.mil/about/history/> (last accessed Nov. 19, 2025).
8. Officer ranks in the military are delineated by name and number. The lowest-ranking officer by number is referred to in all of the services as an O-1. The highest-ranking officer in all of the services is a O-11, or five-star general or admiral. The term "flag officer" or "general officer" refers to an O-7 or higher in the services; a Rear Admiral (Lower Half) in the Navy; or a Brigadier General in the Army, Air Force, Marine Corps, or Space Force.
9. The Army JAG Corps, the largest of the services' legal officer corps, provides legal expertise in contract and fiscal law. The Judge Advocate General's Legal Center and School in Charlottesville, Virginia, has an academic department that is dedicated entirely to contract and fiscal law. It also has departments dedicated entirely to national security law and administrative and civil law. See The Judge Advocate General's Legal Center and School, *Academic Departments and Student Services*, at <https://tjagls.army.mil/Departments-Directorates/School>. Army JAGs can and do spend their careers in the niche practice areas of contract and fiscal law, as those disciplines are highly technical, and it takes years of experience to acquire true expertise. The Naval Justice School, where Navy, Marine, and Coast Guard lawyers are trained, also offers specialized training in the law of armed conflict, international law, administrative law, and legal assistance. The Air Force Judge Advocate General's School, located in Montgomery, Alabama, offers, in addition to its basic lawyer course, courses in environmental law, operational law, space law, and labor and employment law, among other areas. See Air Force Judge Advocate General's Corps, *Judge Advocate General's School, Academics*, at https://www.afjag.af.mil/Portals/77/documents/AFJAGS/CS_FY26v3r.pdf?ver=w7zh5l8s2VlbyqmA3CrbOg%3d%3d (last accessed Nov. 24, 2025). The Office of the Navy General Counsel (OGC), the civilian law firm for the Department of the Navy, handles contract and fiscal law. Additionally, the Navy OGC, comprised of hundreds of attorneys, handles employment and labor law, intellectual property law, complex civil litigation, intelligence law, and environmental law. See Dep't of the Navy, Off. of Gen. Couns., *Practice Areas*, at <https://www.secnv.navy.mil/OGC/Pages/Our-Attorneys.aspx>.
10. Charles D. Stimson, *A Career Litigation Track Is Necessary for Army and Air Force JAGs*, *The Daily Signal* (May 12, 2016), <https://www.dailysignal.com/2016/05/12/a-career-litigation-track-is-necessary-for-army-and-air-force-jags/>.
11. *Id.*
12. See 10 U.S.C. § 7037, Judge Advocate General of the Army, Deputy Judge Advocate General, and General Officers of the Judge Advocate General, Appointment and Duties, at <https://www.law.cornell.edu/uscode/text/10/7037>. See also 10 U.S.C. § 8088, Judge Advocate General's Corps, Office of the Judge Advocate General, at <https://www.law.cornell.edu/uscode/text/10/8088>.
13. I was tasked, along with an active-duty O-6 Navy JAG, to draft the instruction. The result was JAG Instruction 1150.2, "Military Justice Litigation Career Track." The purpose was "to establish a military justice litigation career track, and establish procedures for recruiting, identifying, selecting, retaining and promoting military justice litigation specialists and experts in the Navy Judge Advocate General's (JAG) Corps, both active and reserve." The instruction acknowledged that "although the number of Navy courts-martial has decreased in recent years, criminal litigation has become more complex and specialized." Since its creation in 2009, the Navy's military justice litigation career track has evolved and, like many government programs, become more bureaucratic, cumbersome, and complicated, despite the fact that the number of cases (including contested cases) has gone down dramatically across the services since 2009.
14. This is true for several positive reasons including that the military does not hire (recruit) people with serious criminal records or people known to be criminals. Military personnel usually follow the rules and don't commit crimes, and minor infractions are dealt with outside of court-martial channels.
15. See Navy JAGINST 1150.2F(3)(a), Jan. 26, 2022.

16. *Id.* at encl. (2).
17. Sitting second chair or handling preliminary hearings or grand jury work matters, as does handling thousands of misdemeanors over a course of years before graduating to felonies. But that “participation” is only an on-ramp to—and great preparation for—actual felony contested trial work.
18. There are approximately 2,347 elected county prosecutors in the United States who, as of 2020, employed around 35,120 attorneys. See U.S. Dep’t of Just., Bureau of Just. Stat., *Prosecutors in State Courts 2020*, Nov. 14, 2024, at <https://bjs.ojp.gov/press-release/prosecutors-state-courts-2020> (last accessed Nov. 25, 2025). There are 93 United States Attorneys in 94 districts across the 50 states, the District of Columbia, and the territories who employ approximately 5,000 Assistant United States Attorneys. See U.S. Dep’t of Just., Offs. of the United States Att’y’s, *About the U.S. Attorney’s Offices*, at <https://www.justice.gov/usao> (last accessed Nov. 25, 2025). Over the decades, prosecutors at the local, state, and federal levels have had to adapt to new laws, new technologies, new forensic capabilities, more sophisticated crimes, and other changing circumstances, but one thing has not changed over the centuries: Prosecutors must have the ability to work directly with and on behalf of victims of crime.
19. See, e.g., Off. on Violence Against Women (OVW), U.S. Dep’t of Just., *Framework for Prosecutors to Strengthen Our National Response to Sexual Assault and Domestic Violence Involving Adult Victims*, May 2024, at <https://www.justice.gov/ovw/media/1352371/dl?inline>.
20. See, e.g., Nat’l Dist. Att’y’s Ass’n, Victim Advocacy, Tools & Resources to Support Victims of Crime, *Working with Victims of Crime During the Early Stages of a Case*, Mar. 11, 2025, at <https://www.ndaa.org/news/working-with-victims-during-the-early-stages-of-a-case>.
21. See Ass’n of Prosecuting Att’y’s, *Victims’ Rights & Resources*, at <https://www.apainc.org/victims-rights-resources/>.
22. Nat’l Def. Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 581 (2011), <https://www.congress.gov/112/plaws/publ81/PLAW-112publ81.pdf>.
23. Col. Louis P. Yob, *The Special Victim Counsel Program at Five Years: An Overview of Its Origins and Development*, 2019 *The Army Lawyer* 42, <https://tjagcs.army.mil/Periodicals/The-Army-Lawyer/tal-2019-issue-1/Post/5854/No-4-The-Special-Victim-Counsel-Program-at-Five-Years>.
24. The Air Force originally called its program Special Victims’ Counsel (SVC). To avoid confusion with the distinct Special Trial Counsel (STC), this *Legal Memorandum* uses the acronym VLC instead, although SVC and VLC are otherwise interchangeable.
25. U.S. Air Force, *Special Victim Counsel FAQ*, https://www.jbsa.mil/Portals/102/Documents/Legal%20Services/SVC_FAQ.pdf.
26. *L.R.M. v. Kastenberg*, 72 M.J. 364 (C.A.A.F. 2013).
27. MRE 412—the “rape shield” rule—generally bars evidence of a victim’s sexual history; MRE 513 protects the confidentiality of behavioral health records; and MRE 514 establishes a privilege for communications between a victim and his or her advocate.
28. *Kastenberg*, 72 M.J. at 367.
29. *Id.* at 371.
30. United States Air Force Court of Criminal Appeals, Order, *Airman First Class (E-3) L.R.M., USAF, Misc. Dkt. No. 2013-05 v. Lt. Col. Joshua E. Kastenberg*, USAF, Panel No. 2, Procedural Background, https://afcca.law.af.mil/content/afcca_opinions/cp/daniels-order-2013_05.pet.pdf.
31. Air Force Special Victims’ Counsel Program, *Victim Impact Survey* (Mar. 2013), at https://web.archive.org/web/20170518234803/http://jpp.whs.mil/Public/docs/03_Topic-Areas/04-SVC_VictimAccess/20141114/04_USAF_SVCProgram_VictimImpactSurvey_201303.pdf.
32. Off. of U.S. Senator Patty Murray, Press Release, *Air Force Chief of Staff Praises Special Victims’ Counsel Pilot Program* (June 4, 2013), at <https://web.archive.org/web/20210329135346/https://www.murray.senate.gov/public/index.cfm/newsreleases?ID=AAF3E8E1-BB79-49D6-8EA2-620A94836E8A>.
33. *Id.*
34. *Id.*
35. U.S. Secretary of Defense, *Memorandum for Secretaries of the Military Departments et al.* (Aug. 14, 2013), U.S. Dep’t of Def., at https://web.archive.org/web/20250206210935/https://www.sapr.mil/public/docs/news/SECDEF_Memo_SAPR_Initiatives_20130814.pdf.
36. Jocelyn C. Stewart, *Special Victim Counsel*, at <https://www.ucmj-defender.com/special-victim-counsel/>.
37. Defense Media Activity–Navy, Press Release, *SAPR: Navy Creates Victims’ Legal Counsel* (Aug. 14, 2013), https://www.militarynews.com/norfolk-navy-flagship/news/top_stories/sapr-navy-creates-victims-legal-counsel/article_519e9186-5f53-532f-8d9f-cac29378bdfa.html.
38. Natalie Morehouse, *Navy Victims’ Legal Counsel Program Marks 10th Anniversary*, DVIDS (Aug. 29, 2023), <https://www.dvidshub.net/news/454726/navy-victims-legal-counsel-program-marks-10th-anniversary>.
39. Stewart, *supra* note 36.
40. U.S. Marine Corps, *LSSS–Victims Legal Counsel*, <https://www.quantico.marines.mil/Offices-Staff/Law-Center/Victims-Legal-Counsel/>.
41. Yob, *supra* note 23.
42. *Id.*
43. Nat’l Def. Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 966-70 (2013) (codified at 10 U.S.C. § 1044e), <https://www.congress.gov/bill/113th-congress/house-bill/3304/text>.

44. In 2008, California passed Proposition 9, the California Victims' Bill of Rights Act of 2008, otherwise known as Marsy's Law. The law was named after Marsalee Ann Nicholas, a student at the University of California at Santa Barbara who was stalked and murdered by her ex-boyfriend in 1983. The law seeks to give crime victims a voice throughout the entire criminal proceeding. According to the website dedicated to increasing the number of states that pass crime victim laws or state constitutional amendments for crime victims, Marsy's Law enshrine the right of victims (1) to be treated with dignity and respect throughout criminal proceedings; (2) to be notified of his or her rights as a crime victim; and (3) to be notified of specific public proceedings throughout the criminal justice process and to be present and heard during those proceedings. See Marsy's Law, *Frequently Asked Questions*, <https://www.marsyslaw.us/faqs>. To date, 12 states have passed Marsy's Laws. Of note, Marsy's Laws give victims standing and allow them to have their own attorney to advocate on issues identified in the state victim's bill of rights. Marsy's Laws are not without their critics. The ACLU and the National Association of Criminal Defense Attorneys object to the laws because, to them, they put the rights of victims on a par with constitutionally protected rights of an accused. See Nat'l Ass'n of Crim. Def. Att'ys, News Release, *New Report from Nation's Criminal Defense Bar Outlines How Marsy's Law Undermines the Criminal Legal System*, Aug. 13, 2024, at <https://www.nacdl.org/newsrelease/News-Release---Marsy-s-Law-Report>. See also Jeanne Hruska, Pol. Dir., ACLU of N.H., "Victims' Rights' Proposals Like Marsy's Law Undermine Due Process," May 3, 2018, at <https://www.aclu.org/news/criminal-law-reform/victims-rights-proposals-marsys-law-undermine-due-process>. The VLC program's "revolution" was making the victims' attorney free and paid for by the government.
45. In a handful of cases before the VLC program was created, victims felt they had been steamrolled and that the prosecutors did not adequately argue MRE 412 and 513 motions. This is not surprising given the public attention to sexual assault in the military, in the press, and in Congress as well as the pressure that was exerted on commanders to refer cases to courts-martial where the likelihood of success on the merits was low. Now that the OSTC exists and the prosecutors working in that program are properly trained and have the sole responsibility to make charging decisions, there are experienced, competent prosecutors who are fully capable of filing appropriate MRE 312, 513, 514 and other pretrial motions that protect the victims of crime.
46. Nat'l Def. Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, div. A, tit. V, subtit. D, pt. I, 135 Stat. 1541, 1561 (2021), <https://www.congress.gov/117/plaws/publ81/PLAW-117publ81.pdf>.
47. The JAG Corps in several services long maintained a culture of producing generalists—rotating officers rapidly through billets in legal assistance, operational law, command services, and brief stints in military justice—such that many became “jack[s] of all trades, but master[s] of none.” This structure often prevented judge advocates from developing litigation expertise and incentivized early departure by those who wanted to make courtroom work a career. See, e.g., Cully [Charles] Stimson, *Army and Air Force JAG Corps Need a History Lesson (and Career Litigators)*, The Daily Signal (May 10, 2016), <https://www.dailysignal.com/2016/05/10/army-and-air-force-jag-corps-need-a-history-lesson-and-career-litigators/>.
48. David A. Schlueter & Lisa Schenck, *Transforming Military Justice: The 2022 and 2023 National Defense Authorization Acts*, 231 Mil. L. Rev. 1, 11 (2023), https://scholarship.law.gwu.edu/faculty_publications/1740/.
49. David A. Schlueter & Lisa M. Schenck, *Recent Legislative Developments: The 2022 National Defense Authorization Act*, 2022 Continuing Legal Education and Training Program of the U.S. Court of Appeals for the Armed Forces (July 2022), <https://www.armfor.uscourts.gov/ConfHandout/2022ConfHandout/SchenckSchlueterRecentLegisDevelopmentsRR.pdf>.
50. Charles D. Stimson & Thomas W. Spoehr, *Congress, Biden Appear Determined to Undermine U.S. Military Justice System*, Heritage Found. Commentary (July 23, 2021), <https://www.heritage.org/crime-and-justice/commentary/congress-biden-appear-determined-undermine-us-military-justice-system>.
51. 10 U.S.C. § 824a(c)(2)(A) (2024) (granting the special trial counsel “exclusive authority to determine if a reported offense is a covered offense”).
52. See Report to Congress, *U.S. Navy Report on Military Justice for Fiscal Year 2022*, App., p. 16, Dec. 31, 2022, at [https://jsc.defense.gov/Portals/99/Article%20146%20reports/All%20Service's%20Article%20146a%20reports%20for%20FY22%20\(binder\)_1.pdf?ver=tVcbOvX6wTCZQfGYHhpsWg%3d%3d](https://jsc.defense.gov/Portals/99/Article%20146%20reports/All%20Service's%20Article%20146a%20reports%20for%20FY22%20(binder)_1.pdf?ver=tVcbOvX6wTCZQfGYHhpsWg%3d%3d).
53. See Report to Congress, *U.S. Navy Report on Military Justice for Fiscal Year 2024*, The Office of the Judge Advocate General of the Navy, App., p. 17, Dec. 31, 2024, at https://jsc.defense.gov/Portals/99/Combined%20Service%20FY24%20146a%20Reports_1.pdf.
54. See Report to Congress, *U.S. Marine Corps Report on Military Justice for Fiscal Year 2022*, App., p. 13, Dec. 31, 2022, at [https://jsc.defense.gov/Portals/99/Article%20146%20reports/All%20Service's%20Article%20146a%20reports%20for%20FY22%20\(binder\)_1.pdf?ver=tVcbOvX6wTCZQfGYHhpsWg%3d%3d](https://jsc.defense.gov/Portals/99/Article%20146%20reports/All%20Service's%20Article%20146a%20reports%20for%20FY22%20(binder)_1.pdf?ver=tVcbOvX6wTCZQfGYHhpsWg%3d%3d).
55. See Report to Congress, *U.S. Marine Corps Report on Military Justice for Fiscal Year 2024*, App., p. 12, Dec. 31, 2024, at https://jsc.defense.gov/Portals/99/Combined%20Service%20FY24%20146a%20Reports_1.pdf.
56. See Report to Congress, *U.S. Army Report on Military Justice for Fiscal Year 2022*, App., p. 16, Dec. 31, 2022, at [https://jsc.defense.gov/Portals/99/Article%20146%20reports/All%20Service's%20Article%20146a%20reports%20for%20FY22%20\(binder\)_1.pdf?ver=tVcbOvX6wTCZQfGYHhpsWg%3d%3d](https://jsc.defense.gov/Portals/99/Article%20146%20reports/All%20Service's%20Article%20146a%20reports%20for%20FY22%20(binder)_1.pdf?ver=tVcbOvX6wTCZQfGYHhpsWg%3d%3d).
57. See Report to Congress, *U.S. Army Report on Military Justice for Fiscal Year 2024*, App., p. 16, Dec. 31, 2024, at https://jsc.defense.gov/Portals/99/Combined%20Service%20FY24%20146a%20Reports_1.pdf.
58. *Id.*
59. See Report to Congress, *Department of the Air Force Report on the State of Military Justice for Fiscal Year 2022*, Section VII., App., p. 19, Dec. 31, 2022, at [https://jsc.defense.gov/Portals/99/Article%20146%20reports/All%20Service's%20Article%20146a%20reports%20for%20FY22%20\(binder\)_1.pdf?ver=tVcbOvX6wTCZQfGYHhpsWg%3d%3d](https://jsc.defense.gov/Portals/99/Article%20146%20reports/All%20Service's%20Article%20146a%20reports%20for%20FY22%20(binder)_1.pdf?ver=tVcbOvX6wTCZQfGYHhpsWg%3d%3d).

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60. See Report to Congress, *Department of the Air Force Report on the State of Military Justice for Fiscal Year 2024*, App., p. 28, January 2025, at https://jsc.defense.gov/Portals/99/Combined%20Service%20FY24%20146a%20Reports_1.pdf.
 61. See Nat'l Inst. of Mil. Just., CAAFlog, *By the Numbers 2022*, Jan. 17, 2023, at https://www.nimj.org/caaflog/by-the-numbers-2022#.
 62. See USAFacts, Defense and Security, *How Many People Are in the US Military? A Demographic Overview*, Jun. 22, 2025, at <https://usafacts.org/articles/how-many-people-are-in-the-us-military-a-demographic-overview/>.
 63. See 10 U.S.C. § 802.
 64. See SanDiegoCounty.gov, Health & Human Services Agency, *Demographics*, at https://www.sandiegocounty.gov/content/sdc/hhsa/statistics_demographics.html (last accessed Nov. 24, 2025).
 65. See 2024 Annual Report, San Diego Dist. Att'y, at 2, at <https://www.sdcda.org/content/office/2024%20DA%20Annual%20Report.pdf>.
 66. *Id.*
 67. *Id.* at 3.
 68. See Miami-Dade County FY 2024–2025 Proposed Budget and Multi-Year Capital Plan, at <https://www.miamidade.gov/resources/budget/proposed/fy2024-25/our-county.pdf>.
 69. See Miami State's Att'y's Off. Newsletter 2024, vol. 11, Dec. 30, 2024, at <https://miamisao.com/sao-newsletters/miami-sao-newsletter-2024-volume-11/>.
 70. The author worked as a homicide and violent crimes prosecutor in the Frederick County State's Attorney's Office from 1999–2000 as an Assistant State's Attorney.
 71. See Frederick County State's Attorney Data Dashboard *Criminal Cases Filed*, at https://data.samaryland.org/frederick/filing_charging.
 72. *Id.*
 73. *Brady v. Maryland*, 373 U.S. 83 (1963).
 74. *Giglio v. United States*, 405 U.S. 150 (1972).
 75. *Jencks v. United States*, 353 U.S. 657 (1957).
 76. See *Brady*, *supra* note 73, at 87.
 77. This issue has been heavily litigated in the military courts. To date, no judge has found that *Brady*, *Giglio*, or *Jencks* applies to the VLC. It is only a matter of time, in my opinion, before a case comes along in which an appellate defense counsel discovers that the VLC was in possession of material derived from the victim that, if it had been in the possession of the prosecution and not disclosed to the defense, would have violated *Brady*, *Jencks*, or *Giglio*.
 78. RCM 701 governs discovery, RCM 702 governs depositions, and RCM 703 governs the production of witnesses and evidence. Each rule mandates reciprocal disclosure between trial and defense counsel. The *Manual for Courts-Martial's* discussions of these rules reference additional disclosure obligations under the Military Rules of Evidence, but none acknowledges or addresses requirements related to VLCs. See *Manual for Courts-Martial*, ch. VII, *Pretrial Matters*, at II-72.
 79. See United States Dep't of War, United States Dep't of Def. Sexual Assault Prevention and Response, DOD Sexual Assault Prevention and Response Office, at <https://www.sapr.mil/> (last accessed Nov. 25, 2025).
 80. *Id.* See https://www.sapr.mil/Portals/156/FY24_Annual_Report.pdf.
 81. *Id.*
 82. See, e.g., United States Marine Corps, *Victim Advocacy Program*, at <https://quantico.usmc-mccs.org/marine-family-support/prevention-and-counseling/victim-advocacy-program>.
 83. *Id.*
 84. *Id.*
 85. See San Diego Dist. Att'y, Victim Services home page, at <https://www.sdcda.org/helping/victims/victim-services>.