DEPARTMENT OF DEFENSE
JOINT SERVICE COMMITTEE ON MILITARY JUSTICE
2200 ARMY PENTAGON
WASHINGTON, DC 20350-2200

May 6, 2020

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

SUBJECT: Reports of the Services on Military Justice for Fiscal Year 2019

1. Pursuant to Article 146a, Uniform Code of Military Justice, the Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps provided the enclosed reports on military justice for Fiscal Year 2019 to the Committees on Armed Services of the Senate and House of Representatives.

2. Copies of these reports will be made publically available on the Joint Service Committee website at https://jsc.defense.gov/Annual-Reports/.

Adam S. Kazin
ADAM S. KAZIN
Lieutenant Colonel, U.S. Army
Executive Secretary, Joint Service Committee
on Military Justice

Attachments:
As stated

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Report to Congress

U.S. Army Report on Military Justice for Fiscal Year 2019

31 December 2019

Prepared by:

THE OFFICE OF THE JUDGE ADVOCATE GENERAL, U.S. ARMY
ARMY PENTAGON
WASHINGTON DC 20310-2200

The estimated cost of this report or study for the Department of Defense is approximately $4,180 for the 2019 Fiscal Year. This includes $4 in expenses and $4,170 in DoD labor.

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DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE OCTOBER 1, 2018 TO SEPTEMBER 30, 2019

In fiscal year 2019 (FY19), The Judge Advocate General's Corps built on its efforts to enhance the practice of military justice through an era of unprecedented change. January 1, 2019, kicked off the implementation of the Military Justice Act of 2016 (MJA 2016). The Army saw dividends paid on its comprehensive training effort, as all stakeholders in the military justice process, including commanders, law enforcement, prosecution, defense, and corrections components were well positioned to seamlessly execute the changes in the military justice mission. Through its current role as the Chair of the Joint Service Committee on Military Justice, the Army has coordinated with the other Services on gathering feedback from military justice practitioners across the Department of Defense to recommend measured refinements through proposed legislation and executive orders. In furtherance of TJAG's duties under Article 6(a), Uniform Code of Military Justice (UCMJ), TJAG and senior leaders in the Judge Advocate General's Corps (JAGC) conducted twenty visits to installations and commands in the United States and overseas to inspect the delivery of military justice support to commanders and Soldiers. These inspections underscore the vital role of commanders in our military justice system. Commanders, advised by experienced and trained judge advocates, are best situated to make decisions that fulfill the purposes of the military justice system. The Army JAGC remains committed to sustaining excellence in the practice of military justice through a variety of initiatives and programs.

1. Data on the number and status of pending courts-martial cases: The Army manages and tracks courts-martial and other Military Justice actions through its Military Justice Online (MJO) application. At the end of FY19, the Army had 437 pending courts-martial cases, 158 of which were referred for trial by courts-martial, with the remainder pending disposition decisions. Data on the number of cases pending, as well as cases completed in FY19, is provided in the Appendix.

2. Information on the appellate review process:

a. Compliance with processing time goals: In FY 2019, 388 records of trial and over 1,000 motions and briefs were referred to one of the three judicial panels comprising the U.S. Army Court of Criminal Appeals (ACCA) for judicial review. Of those 388, 362 were received for the first time (not a remand from CAAF or returned from the convening authority after remand). The average processing times for those 362 courts-martial from sentencing to convening authority action was 134 days. In 171 of those 362 cases, initial action was completed by the convening authority within the 120 days prescribed by United States v. Moreno. Two hundred seventy-eight of the records were received by ACCA within 30 days of convening authority action.

ACCA rendered an initial decision in 397 cases in FY19, with an average processing time of 264 days from receipt of the record of trial by the clerk of court to decision by ACCA. Of the 397 decisions, 359 were issued within the 18-month period prescribed by United States v Moreno.

b. Descriptions of the circumstances surrounding cases in which general or special court-martial convictions were:

1) Reversed because of command influence or denial of the right to speedy review: None.

2) Otherwise remitted because of loss of records of trial or other administrative deficiencies: None.

c. Analysis of each case in which a provision of the UCMJ was held unconstitutional: None.

3. Measures implemented by the Army to ensure the ability of judge advocates to participate competently as trial counsel, defense counsel, military judges, and Special Victims' Counsel, with emphasis on capital cases, national security cases, sexual assault cases, and proceedings of military commissions:

a. Institutional Programs for all Judge Advocates: In FY19, the Army JAGC implemented a number of programs aimed at improving the competence and expertise of Judge Advocates litigating courts-martial cases.

1) Military Justice Redesign. On July 18, 2019, after an eighteen-month pilot program, The Judge Advocate General directed the implementation of the Military Justice Redesign (MJR). The MJR is based on the recognition that the trial counsel position historically performed two distinct roles–command advisor and litigator. Both of those roles are vital to readiness and lethality, and are the foundation of our practice. Consequently, the MJR separates these roles into two separate positions: trial counsel, who litigate cases referred to court-martial and military justice advisors, who advise commanders on their military justice mission. Dedicated, untethered trial teams of judge advocates and paralegals will continue to expertly try cases, from investigation to trial, while dedicated military justice advisors provide comprehensive, expert service to our Commanders on all other military justice matters. This separation of duties will produce, over time, greater expertise — both in litigation and in command advice. Individual SJA offices have submitted their plans for redesign, and implementation across the force will continue throughout FY20.

2) The Advocacy Center: The Judge Advocate General approved the formation of The Advocacy Center, which is located at Fort Belvoir, VA. The Advocacy Center will focus on building expertise across the litigation spectrum — from criminal to civil — by synchronizing, developing, and conducting advocacy training in support of the Army's relentless pursuit of trial excellence. The new Director of the Advocacy Center was hired in October of 2019, and the Center is expected to become fully operational in FY20.

3) The Judge Advocate General's Legal Center and School (TJAGLCS), the JAGC organization tasked with development of institutional training for Judge Advocates and paralegals, implemented changes to make the Intermediate Trial Advocacy Course (ITAC) more challenging. Under the new curriculum, students conduct four separate trials during the course of two weeks. To add realism to this intensive training, students interview and cross-examine a forensic psychologist, digital forensic analysts, toxicologists, and sexual assault medical forensic examiners.

4) An essential aspect of military justice is that it is deployable. The National Security Law Division (NSLD) continued preparing judge advocates and paralegals for upcoming operational deployments to Operation Freedom's Sentinel/Resolute Support, Operation Inherent Resolve, and Operation Spartan Shield. Specifically, NSLD conducted mission-tailored pre-deployment training programs using mobile training teams comprised of recently re-deployed personnel, as well as currently deployed personnel (via secure video teleconference). The instruction covered all core legal disciplines, including military justice and international law. With respect to the military justice portion of the training, instructors explored the unique aspects and logistical challenges of administering military justice in a deployed environment.

b. Trial Counsel:

1) The Army Trial Counsel Assistance Program (TCAP), the JAGC organization tasked with development of functional training for Judge Advocates, continued to perform its three primary missions. First, TCAP delivered continuing legal education and specialized training to Army trial counsel and government paralegals worldwide. Second, TCAP provided direct prosecutorial assistance to SJA offices on many of the Army's most complex and/or high-profile cases. Finally, TCAP also managed the operations of the Special Victim Prosecution (SVP), Special Victim Noncommissioned Officer (SVN), Special Victim Witness Liaison (SVL) programs, and Complex Litigation Team.

2) In FY19, TCAP devoted specific time to do a comprehensive curriculum review of the Basic Trial Advocacy Course, the Prosecuting Domestic Violence Course and the Prosecuting Sexual Assault Course. Based on a "360-degree assessment" from new trial counsel, field military justice practitioners, and criminal law experts within TCAP, curriculum for these courses was updated to keep pace with both evolving practice and new procedural and substantive rules enacted in FY19. This resulted in a more effective training time for junior military justice attorneys.

3) The cadre of TCAP trainers, including seven military attorneys, three civilian Special Victim Litigation Experts, a part-time senior paralegal noncommissioned officer, and a Special Victim Witness Liaison program manager, developed and delivered 31 training events for trial counsel and government paralegals worldwide. This year's training events consisted of 20 specialty courses, including: the Basic Trial Advocacy Course; Prosecuting Domestic Violence; Prosecuting Sexual Assault; Expert Symposium; Child Forensic Interviewing; Special Victim Witness Liaison Course; Senior Trial Counsel Course; Sexual Assault Trial Advocacy Course; Special Victim Prosecutor Course; Special Victim Noncommissioned Officer Course; Prosecuting Child Abuse; Protecting Children Online; and the Special Victim Prosecutor/Special

Victim Investigator Course. The TCAP Team also traveled to 17 Army installations to conduct two to four day outreach training events, as well as three, week-long, regional training events overseas. This year also focused on training on implementing Article 128b, UCMJ domestic violence statute as well as procedural and substantive changes related to Military Justice Act of 2016, in effect on 1 January 2019.

4) In support of its mission to assist prosecutors in the field, TCAP continued to provide expert military counsel to prosecute many of the Army's most complex and/or high-profile cases, and provided direct expert assistance and consultation through its three civilian Special Victim Litigation Experts (SVLEs), as well as through the Complex Litigation Team, which was stood up at the end of FY 18. The Complex Litigation Team consists of three field-grade military justice practitioners and has been assisting with complex and capital litigation across the Army as well as providing support to cases involving classified evidence. TCAP also continued its traditional information-sharing and collaboration activities such as publishing regular issues of its "TCAP Express" newsletter to inform and advise the field on new legal developments and issues, compiling and distributing a resource disk of useful templates, resources and tools, as well as responding in real time to hundreds of legal questions submitted by phone and email from prosecutors and paralegals worldwide.

5) Finally, TCAP continued to manage the Army's 23 SVPs, 23 SVNs, and 23 SVWLs located at the Army's 21 busiest UCMJ jurisdictions. Their primary mission is to ensure that every instance of sexual assault, child abuse, and intimate-partner violence within their geographic area of responsibility is properly investigated and, where appropriate, charged and prosecuted. The SVPs, SVNs, and SVWLs also work with the Criminal Investigation Command's specialized Sexual Assault Investigators and with the local SVC to ensure that survivors are treated respectfully, notified of all available support services, and kept abreast on the status of the investigation and prosecution. Our SVPs are also charged with creating local training programs for trial counsel and government paralegals in order to ensure that our trial practitioners receive relevant military justice and advocacy training on a regular basis.

c. Defense Counsel.

1) The Trial Defense Service (TDS) provided defense services to Army personnel deployed worldwide, including Iraq, Afghanistan, Kuwait, and Qatar. The field office in Kuwait supports personnel in these areas, with defense counsel traveling into theater as needed.

2) The Defense Counsel Assistance Program (DCAP) is the training branch of TDS. In FY19, DCAP staff consisted of four judge advocates and two civilian Senior Counsel/Trainers, who provided on-site training and real-time advice to more than 120 TDS counsel worldwide. The training events included three iterations of Defense Counsel (DC) 101, a three-day course that provides critical instruction to newly assigned DC and paralegals on all aspects of client representation with an emphasis on professional responsibility and complex issues arising in sexual assault cases. Furthermore, all DC and paralegals attended one of five regionally aligned DC 201 courses and received training on new developments in military justice and trial advocacy, with a focus on sexual assault litigation. Regional and Senior DC from the Active, Reserve, and National Guard gathered to receive instruction on their duties as leaders in TDS at Trial Defense

Leadership Training (TDLT). Additionally, DCAP and the Trial Counsel Assistance Program (TCAP) jointly organized and taught four Advanced Trial Communication Courses, the Sexual Assault Trial Advocacy Course, and the Expert Symposium. DCAP also organized a course at the USACIL Criminal Laboratory that gave DCs an opportunity to tour the lab and receive instruction from different areas of the lab.

3) In FY19, DCAP received over one thousand inquiries from DC via emails, phone calls, and in-person inquiries during training events. DCAP personnel provided direct assistance to DC in the field that included researching case law, answering case specific questions, providing sample motions, expert requests, and other trial documents. Moreover, DCAP's website and the Knowledge Management Milbook website provided counsel with reference materials on critical issues. DCAP launched “DCAP Talks” this fiscal year; it is a series of video podcasts providing counsel on-demand training in targeted areas outside the reach of our current DC 101 and 201 curricula. Finally, DCAP also worked with DAD to assist TDS counsel in the preparation and filing of extraordinary writs before the Army Court of Criminal Appeals (ACCA) and the Court of Appeals for the Armed Forces (CAAF).

4) In FY19 the Trial Defense Service established a complex litigation section specifically designed to advise the field in high profile and complex cases, act as counsel in complex and capital cases when detailed by the Chief, USATDS, and manage the training for a cohort of 20 Defense Counsel selected to participate in the complex litigation track. The complex litigation section is comprised of one O-5, judge advocate, one O-3, judge advocate, and one Warrant Officer. Continuing to build on the training program established in FY 18, USATDS sent 13 counsel to four civilian courses that primarily focus on death penalty litigation. Leveraging civilian training from the previous FY 18, USATDS also hosted the Joint Capital Defenders Course (JCDC) for 19 Army Defense Counsel (including four Defense Appellate Division Attorneys), eight counsel from our sister services and counsel from the Military Commissions Defense Organization. The JCDC focused on bringing together the combined knowledge of the services concerning complex and capital litigation, providing instruction from civilian learned counsel, and sharing knowledge gained from the previous year's cases and training.

5) Defense Investigators: TDS received finalized approval and funding for the new Defense Investigator term employment hiring action. Hiring is currently ongoing to place twelve Defense Investigators in all nine TDS offices; three TDS Regions will have two Defense Investigators.

5) Army Defense Appellate Division (DAD), along with the appellate divisions from the other services, organized and presented the Joint Appellate Advocacy Training at Joint Base Myer-Henderson Hall. This three day event provides advanced appellate advocacy training for over 100 government, defense, and victim advocates from the Army, Navy, Air Force, Marine Corps, and Coast Guard.

d. Special Victim Counsel: The Army Special Victims' Counsel Office (SVCO) provides technical and policy oversight of the SVC Program and to SVC serving in the field. In circumstances where the interests of sexual assault victims do not align with the interests of the

Government, the Chiefs of Legal Assistance (or Chiefs of Client Services, if appropriate) and the SVCO provide technical advice and professional responsibility supervision.

1) The Army JAG Corps instituted 22 hours of enhanced specialized training, statutorily mandated for SVC certification, to be imbedded within the Judge Advocate Officer Basic Course (OBC), held at The Judge Advocate General's School. All new Judge Advocates receive instruction on the following: UCMJ Article 6b and other applicable laws, regulations, and policies; sexual offense response; impact of trauma on memory; legal issues associated with victims of sex-related offenses; professional responsibility rules; representing DoD civilian clients; and other relevant victim-centered topics as mandated by DoD. The OBC-imbedded training will not replace the Special Victims' Counsel Certification Course, but will serve as foundational education for all Judge Advocates.

2) The Army standard is that every SVC must complete a certification course and be personally certified by TJAG prior to serving SVC clients. Additionally, each SVC must complete a child representation course before representing child clients. The Air Force and the Army collaborated and sent attendees to each Service's certification course to ensure consistency in training and course content. Each of the sister Services provides experienced SVC/VLC facilitators and instructors for the Army SVC certification and child courses.

3) As of 1 October 2019, there were 71 Active Component SVCs who actively represented clients. During FY19, SVC assisted 2,128 clients, consisting of 1,634 Servicemembers, 372 adult dependents, 18 DoD Civilian employees, and 86 minors. Active Component SVCs conducted 19,431 counseling and 401 outreach/training events, and attended 2,406 interviews, 149 administrative separation proceedings, and 241 courts-martial. Active Component SVCs provided services wherever our Soldiers were deployed, including Iraq, Afghanistan, Kuwait, Qatar, Jordan, Europe, and Asia.

e. The Judge Advocate General's Legal Center and School Criminal Law Academic Department: The mission of the Criminal Law Academic Department (ADC) of TJAGLCS in Charlottesville, Virginia, is to develop, improve, and sustain excellence in the practice of military justice. The need to hone military justice skills in today's joint, expeditionary force is the primary focus of our curriculum. The ADC is responsible for developing brand new judge advocates' understanding of substantive criminal law and military justice procedure and basic trial advocacy skills. It also trains seasoned advocates on intermediate to advanced trial advocacy skills and keeps them abreast of recent changes to military justice practice. ADC professors also provide limited off-site instruction and critical reach-back capability for military justice practitioners world-wide. The ADC provided a variety of courses to a number of diverse audiences to include judge advocates, sister service judge advocates, commanders, and international students. Courses are designed for: initial-entry judge advocates in the Officer Basic Course (OBC); new trial counsel, defense counsel, and SVC in the Intermediate Trial Advocacy Course (ITAC); mid-level judge advocates in the Graduate Course, the Military Justice Leaders Course, the Judge Advocate Officer Advanced Course, and the SVC certification course; senior judge advocates in the Military Judge Course and the Staff Judge Advocate Course; and commanders in the Senior Officer Legal Orientation Course, Army Strategic Education Program (ASEP), and General Officer Legal Orientation Course (GOLO). Those

courses focused on training trial counsel, defense counsel, and SVC are taught utilizing a sexual assault fact pattern, domestic violence fact pattern, and general crimes fact pattern, and are synchronized with other JAG Corps training agencies

1) The ITAC is an advocacy-centered course designed to be more challenging than the OBC and serves as intermediate level advocacy training. The ITAC builds on courses junior advocates will have already received, to include: the New Prosecutor Course (offered by TCAP), Defense Counsel 101 (offered by DCAP), and the SVC Course (offered by ADC). Students learn how to conduct sophisticated case analysis of a sexual assault, conduct voir dire, prepare instructions, interview a sex assault victim, interact with an SVC, conduct a direct and cross-examination of a sex assault victim, interview and conduct direct examinations of expert witnesses, and use technology and demonstrative evidence in the opening statement and closing argument. This year, the ADC continued to refine the course by developing and implementing more live demonstrations of specific advocacy skills by faculty facilitators. To add realism to this intensive training, students had to interview and cross-examine forensic psychologist, digital forensic analysts, toxicologists, and sexual assault medical forensic examiners. Additionally, judge advocates who are attending the Graduate Course role-play the victim to provide ITAC students with the challenge of interviewing and interacting with live victims. This demanding course is offered twice annually.

2) ADC continued to develop and improve the SVC Certification Course, offering two certification courses and one SVC Child Victim Course. ADC instructors provided subject matter expertise instruction at TCAP training conferences and served as SMEs to various OCLL engagements with congressional staffers. Through the SVC Counsels' Office, ADC coordinated with and provided best practices from sister services, which enhanced the experience of the students and cross-leveled instruction to each of the SVC/VLC programs throughout the DoD. In cooperation with the SVC Counsels' Office, ADC sent professors to provide training at each of the SVC's four geographic regions.

3) The SVC certification course is required prior to TJAG certifying an SVC to see clients. Students in this course learn best practices for working with sex assault victims, how trauma impacts crime victims, how to work with law enforcement and victim-care professionals, how to manage professional responsibility and scope of representation issues, and how to most effectively advocate for victim's rights while working with commanders, law enforcement, and other participants in the military justice system. The SVC certification course includes a roundtable discussion where actual sexual assault victims discuss their experiences and the assistance they received from their respective SVC/VLC. Students in the SVC certification course also participate in a practical exercise where the students learn to build rapport while performing an initial interview with a client-victim role player. The SVC certification course is a prerequisite for the SVC Child Victim Course which focuses on: how to effectively communicate with children; how children process and discuss traumatic events; which experts are best-suited to assist child victims; and the services available to child victims. As victim rights and policies continue to develop, ADC assists in the implementation and education of those policies and makes recommendations for policy changes and improvements to the SVC Program, Office of the Congressional Legislative Liaison, and OTJAG Criminal Law Division.

4) ADC continues outreach to the field by teaching at: the Army's Sexual Harassment and Assault Training Response Program Academy; the Army Trial Judge Sexual Assault Training, four Reserve Component off-sites, and a capstone seminar to law majors at the United States Military Academy at West Point, New York.

f. Trial and Appellate Judges: There are 24 active duty and 20 reserve component military judges in the U.S. Army Trial Judiciary. The Chief Trial Judge, located at Fort Belvoir, Virginia, manages the Trial Judiciary, which consists of five circuits worldwide. Chief Circuit Judges supervise the circuit judges within each circuit. There are currently three judges stationed overseas, one in Korea and two in Germany. The reserve component judges are assigned to the 150th Legal Operations Detachment.

1) Military judges primarily preside over trials referred to general and special court-martial. The percentage of contested cases remains high due to the significant number of sexual misconduct related prosecutions. The complexity of the cases has increased due to the implementation of the Military Justice Act of 2016, which requires practitioners to be conversant in multiple statutory frameworks, often in the same trial. Additionally, the volume of cases has increased. In FY19, military judges of the U.S. Army Trial Judiciary presided over 783 original courts-martial, a 16 percent increase from FY18. Of the total cases tried in FY19, 202 were fully contested, 65 involved mixed pleas, 357 were guilty pleas, and the remaining 159 were terminated prior to findings. Of the 624 cases in which findings were entered in FY19, 276 of them or 44 percent included sexual misconduct related offenses (Articles 120, 120b, and 120c).

2) The Trial Judiciary maintains and continuously updates DA Pamphlet 27-9, Military Judges' Benchbook (Benchbook), used by all Services, which contains trial scripts and pattern instructions for members. Changes to the Benchbook are approved by the Chief Trial Judge following review and comment by the Benchbook Committee and other stakeholders in the military justice community. An electronic version of the Benchbook, containing all approved changes to date, can be found on the Trial Judiciary website at www.jagcnet.army.mil/USATJ. Court dockets and other judiciary related documents and resources are also located on the Trial Judiciary website, with some materials accessible to the public and the remaining materials restricted access for judges only.

3) The Trial Judiciary is taking an active role in the implementation of Article 140a, which directed the Services to provide public access to dockets, court filings, and court records. The judiciary already provides public access to dockets worldwide through our website, and will be prepared to require the uploading of filings and documents into a new public access platform when it goes online. Not all Army installations or judges have clerks, so quality control of the posting and redacting of documents in a timely manner will present challenges that are being addressed through the implementation working group.

4) The Trial Judiciary conducts an annual Military Judges' Course at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia. The three-week course is a certification course for judge advocates of all Services — Army, Navy, Marine Corps, Air Force, and Coast Guard — prior to assignment as military judges. The course also typically includes select international students. In FY19, 43 judge advocates and one international student

attended the 62nd Military Judges' Course held from 15 April to 3 May 2019. 15 active duty, seven reserve component, and three National Guard Army judge advocates graduated and were sworn in as new military trial judges. Military judges gathered twice this year for training. All military judges attended the Joint Military Judges' Annual Training at MacDill AFB in Tampa, FL and all active and reserve component Army judges attended the Trial Judiciary Sexual Assault Training at Fort Belvoir, Virginia. The Trial Judiciary was also fortunate to be able to send several military judges to courses at the National Judicial College.

5) Judges in the Trial Judiciary presided over two capital trials in FY19. After approximately 50 motions, one of these trials, at Fort Campbell, KY, resulted in a guilty plea in exchange for a non-capital referral and a confinement cap of 75 years. The second trial, at Fort Stewart, GA is ongoing. Another non-capital murder trial is being conducted at Fort Bliss, Texas. The Trial Judiciary also continues to provide military judges to serve as judges with the Military Commissions Trial Judiciary. In FY19, there were three Army military judges serving on the Military Commissions Trial Judiciary, one of whom acted as the Chief Judge.

6) As previously mentioned, the Military Justice Act of 2016 went into effect January 1, 2019, supported by the 2019 Manual for Courts-Martial. The transition has been fairly smooth. Judges have quickly become accustomed to new procedure, such as pre-referral requests for warrants, orders, or subpoenas, of which there were 60 total from January 1, 2019, through September 30, 2019. Army judges also presided over 7 of the new Judge Alone Special Courts-Martial. Another adjustment was the requirement to complete both a Statement of Trial Results and an Entry of Judgment for each trial.

7) Finally, the Trial Judiciary celebrated its history by marking the 50th anniversary of the Military Justice Act of 1968, which created an independent trial judiciary and went into effect on August 1, 1969. Special events included an expert panel discussion on the effects and ramifications of the Act and a joint service dinner graciously hosted by the Court of Appeals for the Armed Forces at Fort Myer, VA.

g. Commanders: Judge Advocates continue to provide training, advice, and assistance to Commanders as they execute their central role in ensuring good order and discipline, justice, and accountability. By regulation, Army Senior Leadership requires Brigade level commanders to attend the Senior Officer Leadership Orientation (SOLO) Course at TJAGLCS, and many Battalion commanders also attend on a space available basis. In FY19, 615 Commanders attended the SOLO. At the SOLO, a faculty member from TJAGLCS ADC teaches commanders a specific block of instruction on sexual assault response and prevention. Every General Officer attends the General Officer Leadership Orientation (GOLO), a one-on-one desk side briefing covering victims' rights, convening authority responsibilities/duties, military justice updates to include MJA 16 and NDAA 2017 changes to the UCMJ, retaliation issues and prevention strategies. Twenty General Officers attended GOLO training at TJAGLCS in FY19. Company commanders receive onsite training from a trial counsel serving the jurisdiction on victims' rights, reporting and processing sexual assault cases. The JAGC leadership also provides instruction at the Pre-Command Course in Ft. Leavenworth, Kansas, where a JAGC General Officer conducts military justice training with future Battalion and Brigade Commanders, ensuring compliance with Article 137, UCMJ.

4. The independent view of The Judge Advocate General on the sufficiency of resources available within the Army, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions: The Army JAG Corps, through its Personnel, Plans, and Training Office (PPTO), continues to work with Army leadership to ensure sufficient legal support to the force, whether that force expands or contracts.

a. On September 30, 2019, the Army's end-strength was 477,709 Army Soldiers on Active Duty compared to 476,179 at the end of FY18. The attorney strength of the JAGC Active Component (AC) at the end of FY19 was 1,851 (including general officers). This does not include 69 officers attending law school while participating in the Army's Funded Legal Education Program. The FY19 end-strength of 1,851 compares with an end-strength of 1,830 in FY18. The diverse composition of the FY19 AC attorney population included 133 African-Americans, 67 Hispanics, 102 Asians, one Native American, and 521 female Judge Advocates.

At the end of FY19, 454 Army JAGC personnel (officer and enlisted, AC and Reserve Component) were deployed in operations in Afghanistan, Djibouti, Egypt, Guantanamo Bay, Honduras, Iraq, Jordan, Kosovo, Kuwait, Qatar, Ukraine, Syria, and other locations around the world.

b. The grade distribution of the JAGC AC attorneys for FY19 was: six general officers authorized (five filling JAGC authorizations, one serving in a Military Occupational Specialty (MOS) coded position (Chief Prosecutor for the Commissions); 126 colonels; 267 lieutenant colonels; 528 majors; and 924 captains and first lieutenants. An additional 108 warrant officers, 728 Civilian attorneys, 764 Civilian paraprofessionals and 1,559 enlisted paralegals from the AC supported legal operations worldwide.

c. The attorney strength of the JAGC USAR at the end of FY19 was 1,822 (which includes officers serving in Troop Program Units, the Drilling Individual Mobilization Augmentee (DIMA) Program, the Individual Ready Reserve, and the Active Guard & Reserves). The attorney strength of the ARNG at the end of FY19 was 901.

CONCLUSION

The Army JAG Corps continues its unrelenting efforts to provide timely, ethical, and professional legal support to our Commanders, to ensure justice, good order, and discipline across the formation. Through constant self-assessment, training, and the daily practice of law, our practitioners hone their skills both in the courtroom and on the field of battle. Our efforts remain laser-focused on ensuring the Army is the most ready and lethal force in the world.

CHARLES N. PEDE
Lieutenant General, US Army
The Judge Advocate General

APPENDIX

Report Period: FISCAL YEAR 2019

PART 1 - PENDING COURTS-MARTIAL (As of 30 September 2019)

TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		105	
BCD SPECIAL		32	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)		5	
SUMMARY		16	
TOTAL:	279	158	437

PART 2 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED		CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
	Arraigned	Completion			
GENERAL	568	461	386	75	+22.0%
BCD SPECIAL [A]	214	161	148	13	+29.8%
NON-BCD SPECIAL	0	0	0	0	0.0%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)	6	6	6	0	N/A
SUMMARY	134		130	4	+15.5%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT					+23.3%

PART 3 – DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT [B]

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	110(+22)	
NUMBER OF BAD-CONDUCT DISCHARGES	156	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	73	

PART 4 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY TJAG

FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	0	
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	1	
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	387	
FOR EXAMINATION UNDER ARTICLE 69(a) (2016) AND ARTICLE 65(d) (2019) [G]	56	

PART 5 – WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		75[C]	
TOTAL CASES THAT CAME AT ISSUE		421[C]	
TOTAL CASES DECIDED		457[D]	
TOTAL PENDING AT CLOSE OF PERIOD		39[C]	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD		+10.9%	

APPENDIX

PART 6 – APPELLATE COUNSEL REQUESTS BEFORE U.S. ARMY COURT OF CRIMINAL APPEALS (ACCA)

NUMBER	419	
PERCENTAGE	99.52%	

PART 7 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)

TOTAL PETITIONS TO CAAF	312

PART 8 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ [H]

TOTAL PENDING BEGINNING OF PERIOD		96	
RECEIVED		96	
DISPOSED OF		93	
GRANTED	0		
DENIED	93		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		3	

PART 9 – ORGANIZATION OF COURTS [F]

TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL	356	
SPECIAL COURTS-MARTIAL	146	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)	6	
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL	105	
SPECIAL COURTS-MARTIAL	15	

PART 10 – COMPLAINTS UNDER ARTICLE 138, UCMJ[I]

NUMBER OF COMPLAINTS	26	

PART 11 – STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	483941[E]	

PART 12 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	24,852	
RATE PER 1,000	51.35	

EXPLANATORY NOTES

[A] Cases convened by GCM convening authority.
[B] Based on Entry of Judgement and records of trial received in FY for appellate review.
[C] Includes only cases briefed and at issue.
[D] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.

APPENDIX

[E] This number includes only Active Component Soldiers and does not include USAR, National Guard or AGR personnel.
[F] Only includes cases that were tried to completion.
[G] Due to changes made to Articles 65 and 69, UCMJ, under the Military Justice Act of 2016, which went into effect on January 1, 2019.
[H] Includes reviews in the fiscal year under both the 2016 and 2019 versions of Article 69, UCMJ.
[I] Article 138 Complains reviewed at the Department of the Army level.

Report to Congress

Navy Report on the State of Military Justice for Fiscal Year 2019

December 31, 2019

Prepared by:

JUDGE ADVOCATE GENERAL, U.S. NAVY
NAVY PENTAGON
WASHINGTON DC 20350-1000

The estimated cost of this report or study for the Department of Defense (DoD) is approximately $4,090 for the 2020 Fiscal Year. This includes $0 in expenses and $4,090 in DoD labor.
Generated on 2019Nov22 RefID: E-0D497D0

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December 31, 2019

Navy Report on the State of Military Justice for Fiscal Year 2019

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IN ACCORDANCE WITH ARTICLE 146A, UNIFORM CODE OF MILITARY JUSTICE, THE FOLLOWING INFORMATION IS PROVIDED.

I. INTRODUCTION

Military Justice remained a principal line of effort for the Navy Judge Advocate General's Corps (JAG Corps) in Fiscal Year 2019 (FY19). In FY19, the Office of the Judge Advocate General (OJAG) was heavily involved in implementing the Military Justice Act of 2016 (MJA 2016) by revising service regulations, training judge advocates and enlisted support staff, training courts-martial convening authorities, and improving military justice procedures. The Navy focused particular attention on identifying solutions to meet the technological requirements of MJA16, to include improving access to wireless Internet, improving court reporting transcription tools, and improving case management solutions. However, we have not been able to obtain the authority to secure the necessary technology or the funding for solutions to meet these requirements. In addition, the Navy recognizes there is room to improve our military justice practice. A Comprehensive Review of the JAG Corps, directed by the Secretary of the Navy, and a separate Legal Community Assessment, being executed by the Judge Advocate General of the Navy, both began in the summer of 2019. Each will likely identify ways for the JAG community to enhance its military justice practice. We welcome the feedback and look forward to further growing our organization's capabilities. The following information is provide to illustrate the current state of Navy military justice practice.

II. DATA ON NUMBERS AND STATUS OF PENDING CASES

The Navy collects court-martial data in the Case Management System (CMS) as well as the Case Management and Tracking Information System (CMTIS). CMS tracks cases from the time they are received by a Region Legal Service Office (RLSO) to their final disposition. CMTIS tracks cases through the appellate review process. Data on pending cases in the Navy is provided in the Appendix.

III. INFORMATION ON APPELLATE REVIEW PROCESS

Appellate cases for the Navy and the Marine Corps are reviewed by the Navy-Marine Corps Court of Criminal Appeals (NMCCA). In FY19, the NMCCA had nine active-duty Navy and Marine Corps appellate judges. In FY19, the NMCCA was also supported by seven Navy reserve and three Marine Corps reserve appellate judges, a mid-grade Navy officer senior law clerk, and two Navy junior officer law clerks. Additionally, the NMCCA benefitted from its internship and externship programs, which provided five summer student law clerks. The NMCCA is responsible for all cases referred under Articles 62(b), 66(b), 69(d), and 73, Uniform Code of Military Justice (UCMJ). The NMCCA may also consider petitions for extraordinary relief, including petitions filed by crime victims pursuant to Article 6b, UCMJ. The following information is provided on specific Navy cases reviewed by the NMCCA during FY19. All Marine Corps cases reviewed by NMCCA will be reported in the Marine Corps FY19 Article 146a Report.

a. Compliance with Processing Time Goals.

(1) The Military Justice Act 2016 (MJA16) was implemented on 1 January 2019. Accordingly, the post-trial processing of court-martial cases follow the MJA16 processes if the charges in the case were referred to a court-martial on or after 1 January 2019. The information provided below takes into account both pre-MJA16 and MJA16 post-trial processes and timelines.

(2) In FY19, the NMCCA did not dismiss any cases on speedy trial grounds.

(3) In FY19, four pre-MJA16 Navy cases exceeded the "Moreno I" guideline of 120 days from the date the sentence was announced to Convening Authority's (CA) action. The delays in three of these cases (9 to 29 days) were due to additional time needed to create the records of trial and one case was due to defense requested delay to submit clemency. In FY19, one MJA16 Navy case exceeded 120 days from the announcement of the sentence to forwarding the certified record of trial for appellate review. This delay was attributable to a defense request for additional time to consider clemency.

(4) Two Navy cases exceeded the "Moreno II" guideline of 30 days from the date of CA's action to docketing at the NMCCA due to the delays in the shipping process. One case was delayed by 1 day and the other by 38 days.

(5) No Navy NMCCA case exceeded the "Moreno III" guideline of 18 months from docketing to appellate decision.

b. Circumstances surrounding Navy cases in which general or special court-martial convictions were reversed or otherwise remitted by the NMCCA for the following reasons:

(1) Unlawful Command Influence: None.

(2) Denial of right to speedy review: None.

(3) Loss of records of trial: None.

(4) Other administrative deficiencies: None.

(5) Cases in which provisions of the UCMJ were found to be unconstitutional: None.

IV. MEASURES IMPLEMENTED BY THE NAVY TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO PARTICIPATE COMPETENTLY IN CAPITAL CASES, NATIONAL SECURITY CASES, SEXUAL ASSAULT CASES, AND MILITARY COMMISSIONS

Training, qualifications, and assignment policies are designed to ensure that only qualified and competent counsel are placed in litigation positions to ensure the integrity of the system and allow them to further develop the skills necessary to participate in increasingly complex cases as they progress in their careers. The Navy cultivates litigation skills among its judge advocates, enlisted support staff (legalmen), and civilians through training, mentorship, and oversight provided across all levels of the organization. The following details our organizational construct and assesses measures focused on preparing Navy military justice practitioners to handle capital cases, national security cases (NSC), sexual assault cases, and proceedings of military commissions.

a. Professional Development Programs.

(1) The Navy takes pride in the development of individuals as both Navy officers and judge advocates. The professional development of officers and legalmen begins with the training each receives at the Naval Justice School (NJS). The mission of NJS is to oversee and provide formal training to sea service judge advocates and enlisted and civilian legal professionals, ensuring career-long professional development. NJS provides judge advocates with tiered military justice instruction from active component judge advocates supplemented by reserve judge advocates serving as local, state, and federal prosecutors and criminal defense attorneys. NJS also trains senior officers, senior enlisted leaders, and other legal support personnel who are not judge advocates or legalmen in the practical aspects of military law, to enable them to perform their command and staff duties and to administer military justice. Through the delivery of quality legal training, NJS enhances Sea Service readiness and the promotion of justice.

(2) Prior to reporting to their first command, all judge advocates in the Navy must successfully complete the Basic Lawyer Course (BLC) at NJS. This 10-week course provides accession training for all judge advocates in the Navy, Marine Corps, and Coast Guard. The course includes training in military justice and court-martial advocacy, as well as training in legal assistance, administrative law, standards of conduct, and operational law. Teaching methods include lecture, seminar, and practical exercises. Upon graduation, judge advocates are certified as qualified to serve as trial or defense counsel in courts-martial under Article 27(b), UCMJ. In FY19, NJS graduated 162 BLC students, including 77 Navy officers.

(3) Upon reporting to their first command, each Navy judge advocate begins his or her First Tour Judge Advocate (FTJA) training pipeline. The FTJA program promotes professional development as naval officers and prepares first tour officers for success in an increasingly complex and specialized legal operating environment. The FTJA program consists of four primary components: (1) participating in professional military education; (2) completing rotations in three JAG Community core practice areas (legal assistance, command services, and military justice (prosecution or defense)); (3) demonstrating proficiency in each of those practice areas by meeting professional development standards; and (4) mentorship. A Professional Development Officer (PDO) is assigned at each region to assist with mentoring every judge advocate through each of the requirements.

(4) NJS provides continued training to judge advocates throughout their careers. Continuing legal education training and advanced military justice training is centrally-managed

under the oversight of a Litigation Training Coordination Council comprised of two Assistant Judge Advocates General, military justice experts from both prosecution and defense, policy advisors, instructors, and senior judges. Course requirements are established annually by a board of advisors from the Navy, Marine Corps, and Coast Guard who have extensive experience in litigation and training.

(5) In FY19, NJS provided instruction to more than 4,000 students from across the globe at more than 145 in-resident courses ranging in length from one day to 13 weeks. NJS instructors also provided off-site teaching in military justice, civil and administrative law, ethics, and operational law to commands onboard Naval Station Newport, including the Naval War College, Naval Leadership and Ethics Center, the Defense Institute of International Legal Studies, Officer Development School, Senior Enlisted Academy, Surface Warfare Officers School, Officer Candidate School, Supply Corps School, Naval Chaplaincy School, and Limited Duty/Chief Warrant Officer Indoctrination School.

(6) In anticipation of the implementation of MJA16, NJS built on-line training in order to provide required MJA16 training to the community. The NJS team built the training modules that were offered through Joint Knowledge Online (JKO), a Department of Defense (DoD) online learning platform that allowed us to track who completed the training. Over 2,300 Navy JAG community professionals completed the MJA16 training through JKO in the first quarter of FY19. In addition to the online training, multiple in-person training sessions were provided to military justice practitioners, including trial counsel, defense counsel, victims' legal counsel (VLC), and SJAs through their community managers as well as NJS organized training programs.

(7) Continued MJA16 training was provided to judge advocates at various courses throughout FY19. This training was provided by the Trial Counsel Assistance Program (TCAP), Defense Counsel Assistance Program (DCAP), Victims' Legal Counsel Program (VLCP), and the OJAG Criminal Law Division (Code 20). The goal has been to ensure judge advocates receive continued support and guidance to provide them with the tools and resources required to carry out the military justice mission successfully.

(8) NJS also assisted in creating MJA16 training for convening authorities and their staff judge advocates. To do this, NJS created a Smart Pack for commanders and their staff judge advocates. The Smart Pack is a packet of MJA16 training and reference materials designed for the staff judge advocate or command services attorney to deliver as training for a convening authority, and is intended to provide initial training on the changes to the military criminal justice system as required by statute. Included in the Smart Pack is a PowerPoint presentation with instructor notes, an accompanying Instructor Guide, several quick reference guides, the updated Commander's Quick Reference Legal Handbook (Quickman), and several pieces of legislation and legislative updates.

b. Military Justice Litigation Career Track (MJLCT)

(1) The Navy established the MJLCT in 2007 to ensure the JAG Corps develops and retains experienced litigators to serve as trial counsel, defense counsel, VLC, and military

judges. Judge advocates must submit an application to be selected into the MJLCT and to advance in the MJLCT. A board consisting of active duty judge advocates with significant military justice experience meets annually to review applications and select judge advocates for initial admission into the MJLCT as SPECIALIST I officers and for designation of MJLCT officers as SPECIALIST II or EXPERT. At the close of FY19, there were 86 Navy MJLCT officers. Designations within the MJLCT are as follows:

(a) SPECIALIST I. This is the entry point for the MJLCT. A judge advocate may be qualified as SPECIALIST I after demonstrating military justice litigation proficiency and MJLCT potential. Candidates are normally eligible for SPECIALIST I after their fourth year of active duty. In FY19, we selected nine judge advocates for SPECIALIST I.

(b) SPECIALIST II. Following SPECIALIST I qualification, a judge advocate may qualify as SPECIALIST II after obtaining additional qualitative and quantitative military justice litigation experience, as well as professional development as a naval officer. Candidates are normally eligible for SPECIALIST II after five years as SPECIALIST I. In FY19, we selected seven judge advocates for SPECIALIST II.

(c) EXPERT. Following SPECIALIST II qualification, a judge advocate may qualify as EXPERT after obtaining significant additional military justice litigation experience, as well as demonstrated leadership of junior judge advocates. For this reason, EXPERT is ordinarily reserved for those judge advocates who are eligible for assignment to the most senior MJLCT positions. Candidates are normally eligible for EXPERT after five years as SPECIALIST II. In FY19, we selected two judge advocates for EXPERT.

(2) SPECIALIST II and EXPERT Military Justice Litigation Qualifications (MJLQ) are community management tools to guide the detailing, training, and professional development needs of MJLCT judge advocates and to ensure the community maintains its ability to execute the core function of military justice across the community billet structure. JAG Corps leadership seeks to provide all MJLCT judge advocates with training and duty assignment opportunities that facilitate their professional development within the MJLCT, the JAG Corps, and the Navy.

(3) The Navy's MJLCT attorneys serve in prosecution, defense, victims' legal counsel, and judicial assignments. With many having served as both prosecution and defense attorneys, the Navy's career litigators have a better understanding of the strengths and weaknesses of cases. They are also detailed to assignments outside the career track, such as sea duty onboard aircraft carriers and staff judge advocate (SJA) billets to further develop them as naval officers and to broaden their Fleet perspective. We aim to ensure the Navy's litigators understand the importance of each role in the military justice system—insight that will serve the Navy well as these attorneys move into senior litigation positions and provide training and mentorship to junior officers.

(4) MJLCT officers have reached high levels of leadership within the JAG Corps, to include positions as commanding officers (COs), executive officers (XOs), division directors within OJAG, chief judges of the trial judiciary and the NMCCA, and the Chief Judge of the

Department of the Navy. MJLCT officers are immersed in the daily prosecution, defense, and judicial hearing of cases throughout the service.

(5) The MJLCT has positioned the Navy well to provide effective prosecution, defense, representation of victims, and judicial hearing of national security and sexual assault cases, as well as cases before the military commissions. Among O-5s and O-6s in the MJLCT, the Navy has a cadre of officers that maintain the necessary clearances to litigate national security/classified information cases, and conducts annual training specifically tailored to classified information litigation to improve professional readiness and competency in this unique area of practice. Similarly, we have numerous senior and mid-grade officers with experience on military commissions as trial counsel and defense counsel or in leadership positions with the RLSOs and Defense Service Offices (DSO). MJLCT officers have robust experience in a wide range of sexual assault-related cases. Each area of practice (prosecution, defense, victims' legal counsel, and judiciary) currently includes MJLCT members and every practice area has ready access to these experts for support. In addition, many of the MJLCT officers also have significant experience and expertise in NSCs and commissions cases. There are no MJLCT officers with significant capital experience, as the Navy has tried no capital cases in recent decades. Several MJLCT officers, however, have served in military commissions as trial or defense counsel on the two referred capital cases, both of which remain in pretrial litigation.

(6) In FY19, the Chief of Naval Operations approved the creation of a "rotational assignment" for MJLCT officers that will place an MJLCT officer with a U.S. Attorney's Office for a one-year rotation prior to being assigned to a trial counsel billet. The initial placement will commence with the U.S. Attorney's Office in D.C. in the summer of 2020, and we hope to expand the program further to additional U.S. Attorney's offices and to a Federal Public Defender's office for prospective defense counsel.

c. Trial Counsel

(1) Upon completion of the FTJA program, generally two years long, judge advocates are available to be assigned to a billet as a core trial counsel (prosecutor) at one of the nine RLSOs. A core trial counsel is an O-3 or above who is certified to practice in accordance with Article 27(b), UCMJ, is a member in good standing of a state bar, and has completed a two-year tour prior to assuming the duties of a core trial counsel. Each core trial counsel receives oversight by a senior trial counsel (STC) who is an O-4 or above, MJLCT officer. Each STC is selected by the JAG to fill one of nine STC billets. Upon reporting, all STCs complete a one-week special victim investigation course and participate in additional specialized training such as litigating complex cases, the TCAP targeted mobile training, and online special victims offenses litigation training.

(2) Core trial counsel receive continuous training in a variety of forms to ensure they are prepared to handle complex cases including sexual assault cases, NSC, and other complex litigation. Within their first year or shortly thereafter, core trial counsel are sent to training courses to include Basic Trial Advocacy training and Prosecuting Special Crime Victims training. Additional advanced training is provided to core trial counsel to include a special victim crimes course, which covers intermediate and advanced prosecution principles in

domestic violence, adult sexual assault, and child abuse/exploitation crimes. In FY19, the TCAP provided baseline, intermediate, and advanced training in the dynamics of special victim crimes as well as trial advocacy. Additionally, TCAP conducted on-site training at all nine RLSOs focusing on trial advocacy and prosecution of special victim offenses. Using Department of the Navy Sexual Assault Prevention and Response (SAPR) funding, TCAP ensured prosecutors' attendance at special victim crimes training including courses with the National District Attorney's Association. In FY19, TCAP created two separate stand-alone courses – one that focuses on domestic violence and adult sexual assault, and a second course that focuses on child sexual abuse, exploitation and physical abuse. TCAP brings in experts from entities such as Search.org, medical personnel, and the U.S. Attorney's Office to supplement the training. TCAP supplements its training outreach with a number of webinars focusing on prosecuting special victim offenses and other evidentiary topics. These webinars enable Navy prosecutors and paralegals to attend educational programs online at little to no cost presented by our own experts, as well as nationally recognized experts. In addition, in FY19, trial counsel attended training at the National District Attorney's Association on both sexual assault and domestic violence.

(3) Detailing of counsel to particular cases is within the discretion of the RLSO commanding officer who takes into consideration such matters as competence, experience, training, existing caseload, and availability of counsel, as well as case specifics. A commanding officer may detail a second, more experienced counsel to a particular case to provide the opportunity for practical mentoring. A core trial counsel can be detailed to a sexual assault or NSC as a lead counsel at the discretion of the RLSO commanding officer.

(4) In FY19, the Navy JAG Corps revised its Special Victim Investigations and Prosecution (SVIP) Policy to better provide guidance for the selection, training, and certification of SVIP trial counsel, paralegals, and administrative support personnel. The goal of the policy is to establish a standard for trial counsel that are detailed to cases involving special victims, such as sexual assault cases.

(5) Outside of the resources available at each individual RLSO, TCAP provides 24/7 support to trial counsel around the world. TCAP's primary mission is to assist and advise trial counsel on all aspects of prosecution, including pre-trial investigation, drafting charges, trial preparation and motions practice, discovery, securing and preparing expert witnesses, devising trial strategy, and professional responsibility issues. TCAP reports to the Chief of Staff, RLSO (COS-RLSO), who is dual hatted as the Chief Prosecutor of the Navy. TCAP's current Director is an O-6 select, qualified as an EXPERT in the MJLCT. TCAP's Deputy Director is an O-4, qualified as a SPECIALIST I in the MJLCT. In addition to the military personnel, TCAP staff includes two civilian attorney advisors (GS-15) with over 40 years of collective special victim prosecution experience. They provide litigation support, legal advice, and resources for Navy trial counsel handling sexual assault, domestic violence, and child abuse and exploitation cases. TCAP engages trial counsel in the field via regular case review conferences and coordinates with OJAG Appellate Government (Code 46) to ensure court-martial prosecutions are postured to withstand appellate review.

(6) TCAP maintains an online repository of useful resources such as sample motions and responses, foundation questions, articles and manuals on prosecution, case disposition tracking,

and an expert witness database. TCAP's SharePoint discussion board enables real-time responses to inquiries from the field leveraging enterprise knowledge for the benefit of practitioners. The discussion board facilitates a closer prosecution bar by enabling discussions among trial counsel worldwide.

(7) As the Navy has not had a capital case in several decades, capital litigation training has not been a specific area of focus. Currently, the Navy does not have any trial counsel experienced in capital litigation.

d. Defense Counsel

(1) Upon completion of the FTJA program, generally two years long, judge advocates are available to be assigned to a billet as a core defense counsel at one of the four DSOs. Similar to a core trial counsel, a core defense counsel is an O-3 or above who is certified to practice in accordance with Article 27(b), UCMJ, is a member in good standing of a state bar, and has completed a two-year tour prior to assuming the duties of a core defense counsel. All core defense counsel receive guidance and supervision by a senior defense counsel (SDC) who is an O-4 or above, MJLCT officer. In addition, all DSOs currently have either a MJLCT commanding officer or executive officer. All SDCs, commanding officers, and executive officers are hand selected by the JAG based on their experience and competency. Most SDCs have previously been a core defense counsel where they received training at a variety of courses. If they have not received training prior to becoming an SDC, they will receive training opportunities to include: defense counsel orientation; defending sexual assault cases; and litigating complex cases. In addition, as schedules permit, SDCs also attend trainings at the National Criminal Defense College or the Bronx Public Defender's Course.

(2) Detailing core defense counsel to cases is within the discretion of the DSO commanding officer who takes into consideration such matters as competence, experience, training, existing caseload, and availability of counsel, as well as case specifics. It is standard DSO policy to detail only experienced counsel or supervisory counsel to complex cases, including sexual assault cases. Core defense counsel are detailed as the lead counsel in sexual assault cases after they have demonstrated they possess the background and experience level appropriate for the complexity of the particular case.

(3) Core defense counsel receive continuous training to ensure they are prepared to effectively represent their clients. Within their first year or shortly thereafter, core defense counsel are sent to training courses to include Defense Counsel Orientation, Basic Trial Advocacy training, and the week-long Defending Sexual Assault Cases course. These courses are designed to provide defense counsel the very best tools to respond to criminal charges and administrative hearings on behalf of their clients. These courses include lectures and practical exercises. Civilian experts along with experienced military defense attorneys teach and facilitate the courses allowing for extensive discussion of existing military justice issues. Once these courses have been completed, defense counsel may attend a variety of specialty courses in complex litigation hosted by expert civilian practitioners or the Litigating Complex Cases course. In FY19, Navy defense counsel attended advanced legal seminars offered by the National Criminal Defense College and the National Association of Criminal Defense Lawyers –

attendance at these nationally recognized courses ensures that Navy defense counsel are competent to defend complex cases. The courses provide specialized instruction on defending sexual assault and child abuse cases as well as a variety of advanced defense advocacy concepts.

(4) The DCAP is in place to support and enhance the proficiency of the Navy military justice defense bar, provide experienced reach-back and technical expertise for case collaboration, and to develop, consolidate, and standardize resources for defense counsel. DCAP provides full-spectrum advice and serves as a resource through every phase of pre-trial investigation and court-martial litigation. DCAP reports to the Chief of Staff, DSO (COS-DSO). DCAP's current Director is an O-5 qualified as a SPECIALIST II in the MJLCT and he is supported by two deputy directors, one is qualified as an EXPERT and the other is a SPECIALIST I in the MJLCT. DCAP is also staffed by a civilian Highly Qualified Expert who has more than thirty years criminal defense experience and who has proven to be an invaluable asset to DCAP and the global defense enterprise.

(5) During FY19, DCAP assisted detailed defense counsel across a wide spectrum of trial practice, including trial strategy, motions practice, argument development, investigations, discovery, requests for witnesses and expert assistance, voir dire strategies and questions, complex legal research, and preparing clients and witnesses to testify in courts-martial. DCAP personnel provided on-site support during trial preparation and were often in court to assist "behind the bar." DCAP also provided advice on post-trial matters and provided both professional responsibility and ethics advisory opinions. All of the DCAP opinions, recommendations, and resources are maintained on a centralized defense database on DCAP's SharePoint site, which allows for the collection of metrics and real-time exchange and dissemination of information and serves as a central repository of documents and resources developed by DCAP and counterpart offices in other services, Code 20, and NJS. SharePoint allows offices to collaborate across vast geographical boundaries, promoting a "world-wide defense firm" mentality.

(6) The Navy Defense Litigation Support Specialist (DLSS) program continues to provide critical assistance to the defense enterprise. Eight DLSS provide investigative assistance in a variety of cases by conducting site visits, witness interviews, and assisting with the development of trial strategies. Each DLSS assists on average 20 cases per year. The DLSS investigators receive extensive training to ensure they possess the skills and resources to effectively assist the defense counsel. They attend courses such as: the Certified Digital Forensics Examiner Course, National Defense Investigator Seminar, and the Mile 2 Digital Forensic Examination Certification. Additionally the DLSS take part in the DCAP's Mobile Training Team and global defense training.

(7) At this time, we do not have any active duty defense counsel that are considered "learned counsel" in so far as being "capital litigation qualified." However, we have established capital counsel requirements aimed at improving our ability to provide effective representation in a capital case.

e. Victims' Legal Counsel (VLC)

(1) The Navy VLCP is comprised of 33 uniformed judge advocates stationed at 23 locations around the world. These attorneys receive administrative support from 10 enlisted yeomen. The VLCP is led by a senior O-6 in the position of Chief of Staff, VLC (COS-VLC), with the assistance of a civilian Deputy Chief of Staff. The VLCP is organized into five regions: Pacific; West; Southeast; East; and Europe, Africa, Southwest Asia (EURAFSWA), with an O-4 or O-5 officer in charge leading each region.

(2) The Navy ensures its judge advocates assigned as VLC are able to perform their duties through a rigorous selection process, extensive and continuous training, and regular oversight. All VLC candidates are vetted for requisite professional experience, maturity, and judgment. Following interviews with COS-VLC and Commander, Naval Legal Service Command, the JAG interviews all candidates. Twelve VLC nominees were interviewed and approved during FY19. Approved officers serve for no less than two years as VLC, with many serving for three years, thereby developing extensive expertise.

(3) All VLC are required to successfully complete the Special Victims' Counsel Certification (SVCC) Course offered by either the Army or the Air Force in order to be certified by the JAG to practice as a VLC. During FY19, 12 incoming VLC completed the SVCC course and were certified in writing by the JAG. VLC also attend specialized courses and symposia such as Prosecuting Special Victims Cases (NJS), Representing Child Victims (Army), and the National Crime Victim Law Institute. In addition to outside training, in September 2019, the VLCP held its fourth annual training symposium, bringing together all administrative support staff and 29 of 33 VLC, including all newly reported personnel. This training included: required annual vicarious trauma training conducted by a psychologist from Naval Medical Center San Diego, child victim training conducted by a panel of seasoned VLC, training and discussion on MJA16, an update on appellate case law relevant to victims' rights, a professional responsibility refresher, a domestic violence practice brief, and a detailed brief from counsel from the Navy personnel office on practices and procedures for expedited transfers and transitional compensation benefits. VLC also participate in internal monthly training, which includes topics such as retaliation, victim standing to be heard at a court-martial, the clemency and parole process, and sealing orders.

(4) The Navy VLCP's appellate practice team consists of 5 of the 33 VLC who are also specially trained to support trial VLC with interlocutory issues, as well as post-trial appellate matters, when they arise. During FY19, the VLCP added a Victims' Counsel Assistance Program (VCAP) team, which consists of 5 of the 33 VLC with significant military justice litigation experience, three of whom are also members of the appellate practice team. Appellate and VCAP team members attend the Joint Appellate Advocacy Training (JAAT), the standard training for military government and defense appellate counsel.

(5) During FY19, Navy VLC provided legal support to 1,938 sexual offense victims (872 of whom were new clients for VLC during FY19). With an average of 1,090 open cases at any given time, VLC participated on behalf of victims at more than 625 military justice and administrative proceedings, and conducted 581 outreach briefs on VLC services to approximately 29,000 active duty and civilian personnel.

f. Appellate Defense Division (Code 45)

(1) Appellate defense counsel for the Navy and Marine Corps are consolidated within OJAG Appellate Defense Division (Code 45). Code 45 represents Navy and Marine Corps appellants before the NMCCA, the Court of Appeals for the Armed Forces (CAAF), and the U.S. Supreme Court. Code 45 assists trial defense counsel in the field by helping file extraordinary writs before the NMCCA and the CAAF, providing advice on individual cases in litigation, and providing instructors at formal training sessions on topics including recent appellate rulings and how to preserve issues for appeal. Code 45 also works closely with both the Navy's DCAP and the Marine Corps' DCAP to advance the skills and success of trial defense counsel and to engage in strategic development of issues.

(2) During FY19, 12 active-duty Navy and Marine Corps judge advocates, 1 civilian attorney, and 1 civilian support staff member were assigned to Code 45. Two U.S. Coast Guard judge advocates were also co-located with Code 45 to execute Coast Guard appellate defense services. Seventeen Navy and Marine Corps reserve judge advocates also supported Code 45.

(3) Training for new Navy, Marine Corps, and Coast Guard appellate defense counsel consists of an intensive, multi-day instructional program concentrating on appellate case law, appellate advocacy, and appellate courts rules, practices, and procedures provided by a GS-15 subject matter expert in a seminar format. Group participation in both an annual JAAT conference and attendance by some at the annual Appellate Judges Education Institute (AJEI) training seminar augments JAAT training. New counsel also attend a highly personalized appellate advocacy seminar focusing on the mechanics of case review and brief writing by one of the leading appellate defense advocates in the country, Mr. Ira Mickenberg. Through all of these training avenues, appellate defense counsel develop vital appellate advocacy skills including: experience in appellate motion and brief writing, appellate oral argument, litigating extraordinary writs, complex statutory and legal analysis, complex sexual assault litigation, and Supreme Court litigation.

(4) After arriving at Code 45, new counsel work with a more experienced appellate defense counsel identified as their branch head to provide on-the-job training. The branch head, typically a senior O-3 or above, assists new counsel as they develop appellate litigation skills including brief writing and case review. Appellate defense counsel are initially assigned less complicated cases as they refine their capabilities and learn how to identify issues and draft briefs. As their skills develop, appellate defense counsel are given more complex cases.

(5) The Director of Code 45 is responsible for ensuring appellate defense counsel are qualified to represent appellants before assigning them to cases. Five appellate defense counsel have been identified as having the training and experience necessary to handle NSCs. If a complex appellate NSC were to arise, the appellate defense counsel would receive additional specialized training, as needed, to thoroughly understand the complexities of a NSC.

(6) Because capital litigation is extremely rare and has not been used in recent history, we do not have any active duty appellate defense counsel qualified to represent an

appellant in this area. However, one member of the reserve unit that supports Code 45 does have capital litigation experience, and that attorney would be assigned to any capital litigation case, should one arise.

(7) Five appellate defense counsel have been identified as having the training and experience necessary to handle the appellate issues in a sexual assault case. They have received a breadth of training in either sexual assault prosecution or defense during their previous tours as a trial or defense counsel. They have also attended numerous courses and training specifically designed to educate counsel on the intricacies of a sexual assault case. Prior to being assigned to a sexual assault case, all appellate defense counsel receive training and mentorship from leadership and supervisory counsel.

g. Appellate Government Division (Code 46)

(1) Appellate government counsel for the Navy and Marine Corps are consolidated within OJAG Appellate Government Division (Code 46). The primary mission of Code 46 is to represent the United States before the NMCCA and the CAAF. The division also provides interlocutory appeal and appellate support and advice to trial counsel, SJAs, and post-trial review officers throughout the Navy and Marine Corps for all types of pretrial, court-martial, and post-trial matters.

(2) During FY19, 10 active-duty judge advocates, 1 civilian supervisory appellate attorney, and 2 civilian administrative employees were assigned to Code 46. In FY19, five Navy and two Marine Corps reserve judge advocates supported Code 46.

(3) Code 46 requires every counsel to attend the yearly JAAT, where basic and intermediate appellate advocacy skills are taught, topics include: litigation of extraordinary writs, appellate motion and brief writing, appellate oral argument, protecting trial records against appellate reversal, complex statutory and legal analysis, Fourth Amendment rights in the digital age, litigating and protecting victim appellate rights, Supreme Court litigation and developing constitutional issues in military cases, strategic appellate development of service-favorable precedent, complex sexual assault litigation, and upcoming statutory and regulatory changes to the military appellate process. In FY 2019, Code 46 chaired the JAAT Steering Committee, and planned and executed the seventh annual JAAT for a joint audience of approximately 130 judge advocates. In addition to the annual JAAT, Code 46 counsel attend the annual CAAF Continuing Legal Education and Training Program.

(4) After arriving at Code 46, new counsel are paired with more experienced appellate counsel to ensure they learn basic appellate litigation skills on-the-job. In turn, the more experienced counsel learn the editorial skills needed for military leadership, which further enhances litigation skills development. As competency grows, Code 46 counsel are assigned increasingly complex issues. Additionally, advanced appellate litigation skills are bolstered through attendance at the Washington, DC Bar's appellate advocacy course, and the annual AJEI summit. Skills are then reinforced through serving as volunteer appellate moot court judges at regional and national appellate advocacy competitions; developing courses to teach appellate issues to trial counsel, victims' counsel, and SJAs; and, when assigned, making policy, regulatory,

and statutory recommendations to appropriate departmental offices in light of new developments in appellate court precedents.

(5) Code 46 coordinates with Navy and Marine Corps TCAP organizations to advise and respond to questions from the field on pending litigation and appellate matters. The Duty Appellate Counsel program provides trial counsel, VLC, and SJAs instant access to a duty counsel and supernumerary with a duty phone and official email address. This allows Code 46 the ability to provide professional appellate advice 24/7 to the field on all appellate matters, including interlocutory appeals in ongoing trials, extraordinary writs, and any other emergent matters. Code 46 expands its reach electronically through online media including a discussion board, a Military Justice Wiki, and a military justice blog, all of which are also used by trial counsel and appellate government counsel from other services. Additionally, Code 46 periodically emails newsletters and memoranda to practitioners.

(6) Code 46 works through Navy and Marine Corps TCAP organizations and NJS to provide formal trial counsel and SJA training both on a scheduled and on-demand basis. Code 46 trains trial attorneys on handling interlocutory appeals, extraordinary writs, post-trial fact-finding hearings and remands, protecting the record to withstand appellate scrutiny, and the intersections between trial and post-trial processing and appellate review.

(7) The Code 46 Division Director is responsible for ensuring appellate government counsel are qualified prior to assigning them any case, including NSCs, sexual assault cases, or capital litigation. Although no core or supervisory government appellate counsel have experience in NSCs, the Code 46 Division Director has sufficient litigation experience to represent the government effectively in a NSC. If a complex appellate NSC were to arise, the Division Director would assume direct supervision of the case and the core appellate government counsel would receive specialized training, as needed, to thoroughly understand the complexities of a NSC.

(8) Although capital litigation is extremely rare and has not been used in recent history, Code 46 is currently staffed with one counsel that is capital litigation qualified.

(9) A supervisory appellate government counsel reviews and monitors all cases, including sexual assault cases. The five supervisory appellate government counsel have been deemed qualified by the Code 46 Division Director based on the training and experience they receive in either sexual assault prosecution or defense during their previous tour(s) as a trial or defense counsel or during their assignment at Code 46.

h. Trial and Appellate Judges

(1) There are currently 13 active duty Navy trial judges and 12 active duty Marine Corps trial judges in the joint Navy and Marine Corps trial judiciary. The trial judiciary is organized in 10 judicial circuits worldwide, led by a Chief and Deputy Chief Trial Judge. Navy trial judges are O-5s and O-6s. Marine Corps trial judges are O-4s through O-6s. The NMCCA has five active duty Navy and two active duty Marine Corps officers assigned. These appellate judges are O-5s

and O-6s. The Court is led by a Chief Judge and supported by a civilian Clerk of Court. Both the trial and appellate judges are supported by reserve units.

(2) All trial and appellate judges within the Navy and the Marine Corps are selected based on their qualifications and judicial temperament at an annual Judicial Screening Board. Upon selection, those individuals are eligible to fill a billet as a trial or appellate judge. Prior to taking the bench, a new judge must receive training and education. The required courses for a trial judge's judicial education begin with the three-week Military Judge Course, provided by the U.S. Army's Judge Advocate General's Legal Center and School in Charlottesville, Virginia. This course meets the requirements for attendees to be JAG-certified as military trial judges by providing the fundamentals of judicial practice. The course covers court-martial process, evidence, procedure, Constitutional rights, judicial problem solving, and judicial methodology. It includes demonstrations and practical exercises. Appellate judges attend the same school for certification.

(3) All trial-level military judges, active and reserve, attend the annual Joint Military Judges Annual Training (JMJAT). JMJAT is the venue for continuing education for all trial judges and for discussing current and evolving practice issues, such as pending changes under the MJA16; the evolution of victims' rights in recent National Defense Authorization Acts; and advanced evidence, sentencing methodology, and judicial ethics.

(4) Responsibility for hosting JMJAT alternates between the Navy-Marine Corps Trial Judiciary (NMCTJ) and the Air Force Trial Judiciary. In February 2019, the NMCTJ hosted JMJAT 2019 onboard MacDill Air Force Base in Tampa, Florida. Instructors from the DoD, National Judicial College (NJC), and the services' trial judiciaries provided three days of training on MJA16 implementation, and challenging evidentiary issues, including presentations on new standards for ordering the production and disclosure of victims' mental health records.

(5) In September 2019, all Navy and Marine Corps trial judges gathered at Naval Air Station North Island in Coronado, CA for three days of training funded by the DoD SAPR Office related to issues involving victims of sexual assault. Training topics focused on implementation and execution of the MJA16, including discussion of new plea agreement rules, victims' rights, electronic warrants, orders and investigative subpoena powers, court-martial empanelment, and segmented sentencing procedures.

(6) Additionally, the trial judiciary sends some judges to the NJC in Reno, NV for individual courses. The NJC is a fully-accredited university that presents an average of 30 to 40 judicially-oriented courses annually. These courses serve to broaden judicial experiences and training.

(7) The judiciary currently includes several judges who have handled classified information and NSC as litigators and as military judges, as well as officers with extensive experience in military commissions. Specialized training in classified information cases is available to judges and litigants.

(8) Appellate judges also receive extensive and ongoing training. The NMCCA provides initial training to newly assigned judges and continuing education for active and reserve appellate judges. This training focuses on court processes, opinion writing, ethics, appellate burdens of proof and persuasion, and advanced evidence. Appellate judges also attend the annual William S. Fulton, Jr. Military Appellate Judges' Training Conference, which is an inter-service, two-day event with the host rotating among the services. In 2019, the Army Court of Criminal Appeals hosted the conference, which included a full day on judicial writing. Finally, one appellate judge attended the New Appellate Judges Seminar hosted by New York University School of Law, two appellate judges and the clerk of court attended the Appellate Judges Education Institute Summit hosted by Duke University School of Law, and one appellate judge attended a weeklong course offered through the NJC.

i. National Security Litigation Division (Code 30)

(1) OJAG Code 30 serves as the JAG Corps' central point of contact for litigation and administrative matters involving classified information including courts-martial designated as NSC. Code 30 works closely with other federal agencies in the intelligence and law enforcement communities, other services, and the Department of Justice (DOJ) to refine classified litigation practice across the sea services; facilitate the approved use of classified information in military and DOJ cases; and to protect classified information from unauthorized public disclosure during litigation, including during high-visibility cases. In FY19, Code 30 staff consisted of one O-5 Director and one O-3 Deputy Director.

(2) As in past years, Code 30 provided extensive investigation and litigation support to commanders, SJAs, trial counsel, and defense counsel across all services. During FY19, Code 30 supported: 2 designated NSCs, 28 courts-martial and 4 administrative boards involving classified information, criminal and civil litigation related to Navy ship collisions, ongoing investigations involving espionage, and high visibility cases involving classified information. Code 30 co-sponsored the latest iteration of the Classified Information Litigation Course in July 2019 with NJS, and taught numerous blocks of instruction to counter-intelligence officers at the Joint Counter Intelligence Training Academy. Code 30 continued its initiative to provide mobile training teams to the Navy's National Security Litigation hubs by traveling to both Norfolk, VA and San Diego, CA to provide a 2-day training event to trial and defense counsel, TCAP and DCAP personnel, and area judge advocates and court reporting personnel assigned to classified information cases. In FY19, Code 30 also taught at the NMCTJ training in Coronado, California to enhance awareness and provide better direct support to military judges who preside over cases involving classified information.

(3) To ensure practitioners have a depth of knowledge from which to draw, Code 30 maintains an extensive library of resources and templates to assist in litigation efforts. Improvements to the Code 30 SharePoint site have also ensured that this information is available to all judge advocates. Additionally, Code 30 retains a hard-copy library of significant Navy classified information cases and continues to publish and update a National Security Litigation Primer. The primer serves as a starting point for attorneys across all services litigating cases involving classified information by providing updated changes to policy, process, and reference templates.

j. Criminal Law Division (Code 20)

(1) OJAG Code 20 serves as the Navy's resource for military justice policy matters. During FY19, Code 20 consisted of an O-6 Division Director, an O-5 military deputy director, a GS-15 civilian deputy director, and six O-4 and O-3 action officers. In addition, Code 20 has two additional civilians – one employed as a military justice Highly Qualified Expert and another as the Freedom of Information Act branch head. Four of the officers at Code 20 are members of the MJLCT. In addition, Code 20 is supported by a reserve unit consisting of nine officers that assist on several military justice matters to include performing appellate reviews in accordance with Article 69, UCMJ.

(2) With the implementation of MJA16 on 1 January 2019, Code 20 was critical in developing, implementing, and teaching corresponding policies and procedures to all Navy military justice practitioners, convening authorities, and SJAs. Code 20 was integral in publishing a significant change to the Manual of the Judge Advocate General governing military justice matters. In addition, Code 20 coordinated new post-trial policies and procedures, as well as providing other vital military justice resources needed to successfully implement MJA16.

(3) Code 20 is available to answer military justice questions that arise in a variety of circumstances, including at non-judicial punishment, during command investigations, court-martial procedures, and the post-trial process. In FY19, Code 20 provided military justice training during several courses, including the Basic SJA course, the Advanced SJA course, SAPR for the SJA course, the Special Victim Counsel course, and the NMCTJ training. In addition, Code 20 provided training to several judge advocates around the world during the Article 6 inspection process.

k. Military Commissions (Prosecution and Defense)

(1) The Office of Commissions – Prosecution (OMC-P) is currently authorized a total of 46 officers and 33 noncommissioned officers from across the Navy, Marine Corps, Army and Air Force. OMC-P is authorized 10 Navy judge advocates and 11 enlisted legalmen. Currently OMC-P has nine Navy judge advocates (six active duty and three reservists) and five active duty enlisted legalmen. When new counsel arrive at OCP, they go through an orientation program where they learn the history of the military commissions program and the rules and procedures of the Military Commissions Act of 2009. There is continued in-depth training in litigating classified information cases under the Military Commissions Act corollary to the Classified Information Procedures Act (CIPA), in addition to regular continuing legal education opportunities. After initial training, counsel are given different individual assignments that allow them to immediately begin working with more experienced attorneys, gaining expertise in complex litigation, and building professional relationships.

(2) The Military Commissions Defense Office (MCDO) is authorized a total of 52 officers and 34 noncommissioned officers from across the Navy, Marine Corps, Army, and Air Force. MCDO is authorized 16 Navy judge advocates and 12 enlisted legalmen. Currently MCDO has 13 Navy judge advocates and 10 enlisted legalmen. Each client at the MCDO is

represented by a team of joint military judge advocates and seasoned civilian litigators who provide continuity on the case. There are several levels of defense counsel at MCDO based on the experience required. A motion writer is a judge advocate that is able to write collaboratively with the defense team and produce a quality motion that stands on its own in a compressed time schedule. They are provided extensive oversight by the lead or learned counsel (capital cases) as well as other senior attorneys assigned to the team. The defense counsel are judge advocates with some complex case experience and are responsible for reviewing and reading significant amounts of discovery to prepare for litigation and are also guided and mentored by senior attorneys on the team. The SDC have complex case experience and proven leadership skills that enable them to manage day-to-day operations of the defense team. A SDC's role during litigation depends on experience level, but an SDC will not be a lead counsel on a defense team in a capital case. The Chief Defense Counsel and Deputy Chief Defense Counsel have complex case experience, proven leadership skills, and experience managing a large legal organization. Upon arrival, each military counsel is assigned to one of these teams and will be under the mentorship of an experienced civilian attorney. The civilian attorneys always lead the litigation. For capital cases, a learned counsel with extensive experience in death penalty litigation will provide additional mentorship and training.

(3) The MCDO has an extensive training program designed to ensure counsel are provided ample opportunity to develop skills integral to accomplishment of the MCDO mission. In addition to bringing first-rate instructors to the MCDO to provide on-site training, the MCDO has sent its attorneys to courses throughout the country. Educational opportunities have included: The Death Penalty College at Santa Clara, California; courses offered by the Trial Lawyers' College; the National College of Capital Voir Dire; conferences hosted by the National Association of Criminal Defense Lawyers and state public defender offices; and legal writing and media relations seminars.

V. INDEPENDENT VIEWS OF THE JUDGE ADVOCATE GENERAL AS TO THE SUFFICIENCY OF RESOURCES, INCLUDING TOTAL WORKFORCE, FUNDING, TRAINING AND OFFICER AND ENLISTED GRADE STRUCTURE TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS

(1) During FY19, the Navy had sufficient resources to fulfill military justice functions at the trial and appellate level. But as noted below, there are several areas in which additional resources are and will be needed to build our capabilities and ensure personnel can work efficiently and at a sustainable pace, having the tools needed to operate a modern and effective justice system. To get a fuller understanding of the personnel resources needed, in FY19 I initiated a review of prosecution office manning, which was later expanded to include the DSOs.

(2) Judge advocates. At the end of FY19, the Navy had 935 judge advocates on active duty. This means for the first time in several years the number of judge advocates matches the number of authorized billets. It also means that, with rare and temporary exceptions, all military-justice related billets are filled – including new billets allocated over the past several years for additional trial counsel (10) and defense counsel (9). But I see the need for a few additional trial counsel, particularly in the offices with high caseloads. As a result, I assigned additional judge advocates to join in summer 2020 the trial departments in Norfolk, VA, San Diego, CA, and

Bremerton, WA, and an additional judge advocate to join TCAP. These personnel will provide additional experienced counsel to prosecute complex cases, provide oversight, and ensure completion of the increasing documentation requirements associated particularly with cases involving victims. Separately, I requested from the Navy 4 billets to compensate for the additional billets I previously devoted to VLC; if approved, these billets will support the additional trial counsel noted above.

(3) Enlisted paralegals. The Navy JAG Corps is supported by 466 active duty personnel in the Legalman (LN) rating. This is 47 less than the 513 LN's authorized. We are taking steps to remedy the shortfall in recent LN recruiting. We also will work with Navy Personnel Command and our RLSOs and DSOs to minimize the impact of this numbers deficit on the Navy's military justice practice.

(4) Civilian paralegals and other specialists. The first prosecution office manning review, conducted in Norfolk, VA, recommended additional civilian paralegals to manage legal and administrative tasks associated with the prosecution function, and additional specialists such as Information Technology and Physical Security. I have requested a mix of military and civilian billets to meet these needs in the Norfolk office; the request is pending. Manning reviews in other RLSOs and DSOs may indicate similar needs.

(5) Retention. In FY19, we saw an increasing challenge retaining judge advocates for critical positions within the judiciary and prosecution offices. Simply put, we need to ensure the right incentives are in place to keep highly-skilled litigators and judges well beyond the point at which they become retirement eligible. In my opinion, the statutory change that eliminated O-7 retired pay for Assistant Judge Advocates General who are approved for retirement in paygrade O-7 has lessened the incentive for continued service, particularly for MJLCT officers who otherwise would compete for selection as Assistant Judge Advocate General/Chief Judge, Department of the Navy.

(6) Technology continues to be a significant hurdle preventing more efficient military justice administration. The Navy and Marine Corps are working to implement a new case management system to comply with the requirements of Article 140a, UCMJ, and capture required data, manage cases, and provide public access to court-martial dockets, filings, and records. We envision a modern cloud-hosted, highly configurable system based on commercial Customer Relationship Management software, and a system that communicates with the modules being developed in the Department of the Navy's (DON) Naval Justice Information System effort. As we continue coordinating with DON IT offices on our requirements, the Office of the Judge Advocate General (OJAG) and Marine Corps Judge Advocate Division (JAD) are developing a bridging case management system that we expect will meet the 23 December 2020 statutory deadline. In the end, to fully meet the requirements of Article 140a and the demands of a complex military justice practice, significant efforts and funding will be needed for a modern comprehensive case management system.

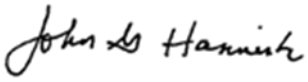
(7) The Navy JAG Corps also has initiated a pilot program to test and field an Artificial Intelligence-supported, Cloud-based Speech-to-Text (AI STT) transcription capability that implements post-trial processing requirements from the MJA16. Once implemented, this would

improve the Navy's ability to generate quality records of trial in a timely manner. The Marine Corps purchased and has fielded a similar, but distinct, AI STT capability at all Marine Corps courtrooms. OJAG and Marine Corps JAD have submitted a joint proposal to Navy Commercial Cloud Services (NCCS) seeking approval and funding to support AI STT capabilities in all courtrooms, but IT authorities and funding issues remain unresolved.

(8) The Navy JAG Corps remains committed to ensuring judge advocates and LNs are fully trained to carry out their responsibilities. As part of the Comprehensive Review of the JAG Corps, a panel of outside individuals evaluated our judge advocate training programs. In anticipation of recommendations for improvement, I have directed a complete review of military justice training for judge advocates and also for commanders across the fleet. This effort matches well with our ongoing work with the other Services to implement the recommendations of the Sexual Assault Accountability and Investigation Task Force (SAAITF). Related to the SAAITF, we are evaluating our training for military justice practitioners involved in sexual assault cases and for commanders that make disposition decisions.

VI. CONCLUSION

In FY19, the Navy continued to focus on providing high quality military justice advice and representation to service members, commanders, and the Fleet. The complexity of our cases demands that the Navy continue to train attorneys, paralegals, and support staff to ensure they all have the resources necessary to provide the best representation possible. Implementation of solutions and recommendations from the Comprehensive Review and our Legal Community Assessment will require a commitment from everyone in the JAG community. However, I am confident we will improve our military justice practice and continue our commitment to excellence in this critical mission.



JOHN G. HANNINK
Vice Admiral, JAGC, U.S. Navy
Judge Advocate General

VII. APPENDIX

U.S. NAVY MILITARY JUSTICE STATISTICS [A]

Report Period: FY 2019 [B]

PART 1 – NAVY PENDING COURTS-MARTIAL (As of 1 October 2019)			
COURT TYPE	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL COURTS-MARTIAL		54	
SPECIAL COURTS-MARTIAL		37	
NON-BCD SPECIAL COURTS-MARTIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2))		6	
SUMMARY COURTS-MARTIAL		6	
TOTAL:	47	103	150

PART 2 – NAVY COURTS-MARTIAL STATISTICS				
COURT TYPE	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER FY18
GENERAL COURTS-MARTIAL	111	85	26	-1%
SPECIAL COURTS-MARTIAL	134	125	9	+3.9%
NON-BCD SPECIAL COURTS-MARTIAL	0	0	0	0
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2))	0	0	0	0
SUMMARY COURTS-MARTIAL [H]	32	32	0	+167.67%
OVERALL RATE OF INCREASE (+)/DECREASE (-) FROM FY18				+8.66%

PART 3 – NAVY DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT		
GENERAL COURTS-MARTIAL NUMBER OF DISHONORABLE DISCHARGES/ DISMISSALS	30	
NUMBER OF BAD-CONDUCT DISCHARGES	30	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	41	

PART 4 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG (NAVY & MARINE CORPS)		
FOR REVIEW UNDER ARTICLE 66(b)(1) - APPEALS BY ACCUSED	1	
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0	
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	280	
FOR EXAMINATION UNDER ARTICLE 69(a) (Pre-MJA16 Cases) [C]	16	
FOR EXAMINATION UNDER ARTICLE 69(a) (Post-MJA16 Cases) [D]	0	

PART 5 - WORKLOAD OF THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (N-M.C.C.A) (NAVY & MARINE CORPS)			
TOTAL CASES DOCKETED AT BEGINNING OF PERIOD		152	
TOTAL CASES REFERRED FOR REVIEW		305	
TOTAL CASES REVIEWED		276	
TOTAL PENDING AT CLOSE OF PERIOD		196	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-15.08%	

PART 6 - APPELLATE COUNSEL REQUESTS BEFORE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS (NAVY & MARINE CORPS)		
NUMBER	305	
PERCENTAGE	100%	

PART 7 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (NAVY & MARINE CORPS)_	
PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (54/276)	18.84%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+2.54%
PERCENTAGE OF TOTAL PETITIONS GRANTED (18/54)	33.33%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+16.35%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (9/325)	6.52%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+1.85%

PART 8 –APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (NAVY & MARINE CORPS) [E]			
TOTAL CASES PENDING BEGINNING OF PERIOD		4	
RECEIVED		0	
DISPOSED OF		4	
RELIEF GRANTED	0		
RELIEF DENIED	4		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	

PART 9 – NAVY ORGANIZATION OF COURTS [F]		
TRIALS BY MILITARY JUDGE ALONE	191	
GENERAL COURTS-MARTIAL	69	
SPECIAL COURTS-MARTIAL	122	
MILITARY JUDGE ALONE SPECIAL (ART 16(c)(2))	0	
TRIALS BY MILITARY JUDGE WITH MEMBERS	54	
GENERAL COURTS-MARTIAL	42	
SPECIAL COURTS-MARTIAL	12	

PART 10 – NAVY COMPLAINTS UNDER ARTICLE 138, UCMJ		
NUMBER OF COMPLAINTS	29	

PART 11- NAVY STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	337,006 [G]	

PART 12 – NAVY NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ) [H]		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	4,323	
RATE PER 1,000	12.83	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+24%	

Explanatory Notes

[A] This report provides military justice statistics for the U.S. Navy unless otherwise noted. Statistics on the appellate review process include both the U.S. Navy and the U.S. Marine Corps.
[B] This is the first annual report since the Military Justice Act of 2016 (MJA16) went into effect on 1 January 2019, causing significant changes to the Uniform Code of Military Justice. References in this report are to the 2019 version of the UCMJ unless otherwise stated.
[C] Refers to the pre-MJA16 Article 69(a), UCMJ, whereby the Judge Advocate General reviewed any general court-martial case that did not qualify for Article 66 review.
[D] Refers to the current Article 69(a), UCMJ, whereby the accused may petition the Judge Advocate General for relief upon completion of an initial review under Article 64 or Article 65.
[E] Figure includes applications for relief under both the pre-MJA16 Article 69(b) and the current Article 69.
[F] Figure only includes cases tried to completion where the Promulgating Order or the Entry of Judgment was completed within Fiscal Year 2019.
[G] This figure includes only Active-Duty Sailors and does not include Reservists.
[H] Non-Judicial Punishment and Summary Courts-Martial. This figure was derived from Navy's Quarterly Criminal Activity Report, whereby Navy commanders report all known instances of criminal activity pursuant to JAGINST 5800.9C.

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
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Report to Congress

Marine Corps Report on the State of Military Justice for Fiscal Year 2019

31 December 2019

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The estimated cost of this report or study for the Department of Defense is approximately $4,470 for the 2020 Fiscal Year. This includes $5 in expenses and $4,460 in DoD labor.
Generated on 2019Dec03 RefID: D-2044386

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I. INTRODUCTION

The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) submits the following report in accordance with Article 146a, Uniform Code of Military Justice (UCMJ). A core component of legal support, military justice occupies the majority of personnel and other assets within the Marine Corps legal community. The SJA to CMC closely coordinates the efforts of that community with our colleagues in the Navy.[1] In addition to many other legal efforts throughout Fiscal Year 2019 (FY19), the SJA to CMC focused on preparing counsel and commanders to implement the vast changes contained in the Military Justice Act of 2016 and in implementing those changes. The comprehensive training during the previous Fiscal Year provided dividends this year, as many of the changes were implemented seamlessly. Planning for the implementation of Article 140a, UCMJ, in December 2020 continues to be a top priority. We need to ensure our practitioners are equipped with the policies, procedures, and technology needed to implement Article 140a, which will ultimately improve transparency in the military justice process. The Marine Corps also recognized there is room to improve our military justice practice. A Comprehensive Review of the Navy JAG Corps and Marine Corps Judge Advocate Community and a Legal Community Assessment both began in the summer of 2019. Both will likely identify ways for the Marine Corps to enhance our military justice practice. We welcome the feedback and look forward to further growing our organization's capabilities. The details contained in this report are illustrative of those efforts, and provide additional insight on lines of effort in the years to come.

II. DATA ON NUMBER AND STATUS OF PENDING CASES

The Marine Corps collects court-martial data in the Case Management System (CMS). Cases are entered into CMS when a law center receives a request for legal services from a supported command, and progress and outcomes are entered into that system as applicable. Data related to the number and status of those cases is included in the Appendix.

III. INFORMATION ON THE APPELLATE REVIEW PROCESS

Both Navy and the Marine Corps cases which meet applicable jurisdictional requirements are reviewed by the Navy-Marine Corps Court of Criminal Appeals (NMCCA). The information provided on the cases below flows from cases convened by Marine Corps commanders, although appellate litigation of these cases is handled by personnel assigned to the Navy-Marine Corps Appellate Review Activity.

a. Information on Compliance with Processing Time Goals.

(1) The Military Justice Act of 2016 (MJA16) was implemented on 1 January 2019. Accordingly, the post-trial processing of court-martial cases follow the MJA16 processes if the charges in the case were referred to a court-martial on or after 1 January 2019. The information

[1] The Marine Corps provides information throughout this report on cases convened by Marine Corps commanders, recognizing that some efforts within that continuum are undertaken by our colleagues working within various Code sections in the Office of the Judge Advocate General of the Navy.

provided below takes into account both pre-MJA16 and MJA16 post-trial processes and timelines.

(2) No Marine Corps case was dismissed on speedy trial grounds during FY19.

(3) The Marine Corps had five cases exceed the 120 days from sentencing to Convening Authority (CA) action ("Moreno 1" guidelines). This is two fewer cases than in FY18 and reflects continuing improvement in post-trial processing. Delay in these cases was most closely associated with lengthy records of trial and delays in having the record authenticated by the military judge.

(4) No Marine Corps case exceeded the 30-day window from the date of CA action to docketing at NMCCA (the "Moreno 2" guideline).

(5) No Marine Corps case docketed at NMCCA exceeded the "Moreno 3" guideline of 18 months from docketing to decision.

b. Circumstances Surrounding Cases Specified in Article 146a(a)(2)(B)-(C).

No Marine Corps general or special court-martial convictions were reversed because of command influence or denial of the right to speedy review, or otherwise remitted because of loss of records of trial or other administrative deficiencies. Neither were any provisions of the UCMJ held unconstitutional.

c. Such Other Matters Regarding the Operation of the Appellate Review Process as may be Appropriate.

Under Article 66(d), UCMJ, a Service Court of Criminal Appeals may overturn a conviction if, after weighing the evidence in the record of trial and making allowances for not having personally observed the witnesses, the judges of the service court are themselves not convinced of an appellant's guilt beyond a reasonable doubt. This standard of appellate review is unique to the military justice system.

In FY19, the Navy-Marine Corps Court of Criminal Appeals overturned three convictions as factually insufficient. Two of the three involved Marine Corps cases; all three involved convictions under Article 120, UCMJ. In the last three years, eight of the nine cases overturned as factually insufficient involved convictions under Article 120. This report is not a criticism of any individual court decision, nor is it an attempt to influence how appellate judges apply Article 66(d) as it is currently written. An impartial judiciary is a hallmark of due process and our appellate judges faithfully apply the law, as it is written. But historically, factual sufficiency review was created as a backstop against command influence and violations of the rights of the accused. Its genesis was at a time when attorneys and military judges were seldom involved in the court-martial process and the accused may not have been represented by a qualified judge advocate. Giving an appellate court broad authority to correct potential injustices was appropriate during a time when an accused had very limited due process rights at the trial level. By contrast, modern courts-martial have a military judge presiding over the court-martial

and a defense attorney to vigorously cross examine witnesses, identify and object to improper influence of the members, and otherwise protect the rights of the accused.

Given the due process protections at court-martial, it is time to consider whether factual sufficiency review serves its intended purpose. After extensive study of this issue and comparing the military system to various civilian models, the Military Justice Review Group (MJRG) concluded that changing the standard for factual sufficiency review under Article 66 was advisable. The MJRG proposal would only allow the courts of criminal appeals to overturn a guilty verdict upon a specific showing of a factual deficiency when the finding was clearly against the weight of the evidence. This would replace the current requirement that the judges be personally convinced of guilt beyond a reasonable doubt. This change would afford greater respect to the fact-finders' verdict, when the verdict often hinges on in-court credibility assessments.

IV. MEASURES IMPLEMENTED BY THE MARINE CORPS TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO SERVE IN CERTAIN BILLETS OR TYPES OF CASES

The Marine Corps military justice community is comprised of trial counsel, defense counsel, victims' legal counsel, legal services specialists, legal administration officers, staff judge advocates, Litigation Attorney Advisors (LAAs, formerly "Highly Qualified Experts"), and military judges.[2] This community combines the experience of these professionals with organization and training programs to accomplish the military justice mission. All personnel receive initial, regular, and specialized training suited to their billet and level of expertise. The measures specific to each billet are detailed below.

a. Trial Counsel

(1) The Marine Corps maintains approximately 80 Trial Counsel (TC) assigned around the world at Legal Services Support Sections (LSSS) covering four regions: National Capital Region, Eastern Region, Western Region, and Pacific Region. The LSSS is broken into several Legal Service Support Teams (LSST) located at key bases within each region. Each LSST has a trial services office containing TCs and a Senior Trial Counsel (STC) leader. Each office reports to a Regional Trial Counsel (RTC). Slightly more than 50% of Marine Corps TCs are qualified to prosecute Special Victim Investigation Prosecution (SVIP) cases.[3] All TCs are provided with formal training and trial preparation advice, mentorship, and on-the-job training that utilizes the experience of senior judge advocates within their assigned LSSS. Additionally, each TC has access to a civilian LAA hired based on their extensive litigation experience, expertise in dealing with SVIP cases, and for the purpose of advising junior counsel.

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[2] Marine judge advocates are selected for judicial duties by the Judge Advocate General of the Navy and, while sitting as judges, are supervised by an independent judiciary acting under the cognizance of the Navy JAG. However, the SJA to CMC determines which Marine judge advocates are available for assignment as military judges, and ensures their careful training and preparation for those duties accordingly.

[3] These requirements include trying a minimum number of cases as lead or co-counsel, training course attendance, recommendations of senior attorneys familiar with counsel, and education requirements for personnel in certain billets.

(2) Each year, the Marine Corps hand selects judge advocates to obtain a Master of Laws (LL.M.) degree in criminal law. The selected judge advocates are required to obtain a degree from The Army's Judge Advocate General's Legal Center and School (TJAGLCS) or an American Bar Association accredited civilian law school. Once they have received their LL.M., these judge advocates receive an Additional Military Occupational Specialty (MOS) identifying them as uniquely qualified to serve in military justice billets. These officers serve in supervisory litigation billets (e.g. as STC and RTC) and in offices tasked with complex litigation.

(3) Each STC supervises on average 5-10 TCs. STC usually hold the grade of O-4, or above, and have an LL.M. in criminal law in addition to a Juris Doctor (J.D.). The STCs report to RTCs, typically officers in the grade of O-5 who hold an LL.M. in criminal law. The RTCs are responsible for ensuring trial counsel are detailed to cases whose complexity match the TCs experience level. Judge Advocate Division coordinates with the LSSS Officers-In-Charge (OIC) to select each STC and RTC.

(4) Trial counsel must complete a trial counsel orientation course prior to being assigned to any case. A TC will only be assigned to a complex General Court-Martial (GCM) if the RTC or LSSS Officer-In-Charge (OIC) believe they are sufficiently experienced. Assignment to a GCM requires, at a minimum: (1) certification as a TC under Article 27(b), UCMJ and being sworn under Article 42(a), UCMJ; (2) service as a trial counsel for six months or a combined eighteen months experience as a trial and/or defense counsel or military judge; (3) experience prosecuting a contested special court-martial as the lead TC or a contested GCM as an Assistant TC; and (4) a written recommendation from a cognizant STC and, when applicable, LSST OIC.

(5) Marine Corps LAAs provide advice to TCs on all sexual assault cases and on other complex cases that present unique legal issues. The Marine Corps has four LAAs dedicated to supporting TCs who together possess decades of litigation experience. The LAAs participate in all areas of trial preparation, collaborate on case analysis memos, help prepare charging documents, advise during witness interviews, review drafts of affirmative and responsive government motions, identify expert witnesses, and help organize evidence to improve case presentation. The LAAs help retain institutional knowledge in prosecution sections experiencing regular personnel turnover.

(6) While the Marine Corps has not tried a capital case in several years, supervisory personnel and training resources are in place to ensure counsel are prepared to try such cases.

(7) The Marine Corps consolidates all national security cases to the LSSS - National Capital Region. This facilitates coordination with other federal agencies, enables access to courtrooms capable of handling classified material, and leverages the experience of Reserve Judge Advocates versed in this type of litigation. The Marine Corps also sends counsel to the Navy Office of the Judge Advocate General (OJAG) Code 30, National Security Litigation Division, to receive training on litigating national security cases. Training on specific national security cases requirements is integrated into certain training courses (such as the Military Judges' Course), and made available to others as the need for training arises.

(8) Sexual assault cases are subject to detailing requirements focused on ensuring TCs with appropriate training, experience, and demeanor are assigned to these cases. A Complex Trial Team (CTT) member or SVIP TC specifically trained in SVIP litigation is assigned to every sexual assault case. To be detailed to a sexual assault case, a TC must: (1) have qualified to litigate in GCM; (2) demonstrate to the satisfaction of the LSSS Officer in Charge (OIC) that they possesses the requisite expertise, experience, education, innate ability, and disposition to competently prosecute special victim cases; (3) prosecute a contested special or general court-martial involving a special victim as an Assistant TC; (4) attend an intermediate-level trial advocacy training course focused on the prosecution of special victims cases; and (5) receive written recommendations from the relevant STC, RTC, and, when applicable, LSST OIC.

(9) The Marine Corps maintains a Trial Counsel Assistance Program (TCAP) whose mission is to coordinate training efforts, identify lessons learned, and act as a supplement to the LAA program. TCAP hosts an annual training focused on reinforcing the baseline skills TCs need to prosecute sexual assault cases. The topics covered at this annual training event include: building case theory, charging under Article 120, UCMJ, general trial advocacy skills, use of expert witnesses, victim support, and prosecutorial ethics. Instructors for this course include a mix of experienced practitioners, senior judge advocates, district attorneys, and expert witnesses who testify in sexual assault cases. Additionally, nearly all other training Marine Corps TCs attend addresses the unique requirements of prosecuting sexual assault cases.

b. Defense Counsel

(1) The Marine Corps Defense Services Organization (DSO) provides criminal defense services to Marines accused of offenses at courts-martial and adverse administrative proceedings. The DSO maintains approximately 55 attorneys who are assigned within the same regional LSSS and LSST as their TC counterparts. Every defense counsel serves in a DSO office led by a Senior Defense Counsel (SDC), who reports directly to the Regional Defense Counsel (RDC). The RDC reports directly to the Chief Defense Counsel of the Marine Corps (CDC).

(2) Two civilian GS-15 LAAs support the RDCs (one located in the eastern region and one located in the western region), and a Reserve Attorney Advisor, a major (O-4), supports globally.

(3) The DSO maintains a Defense Counsel Assistance Program (DCAP), currently led by an active duty major (O-4) with a LL.M. In addition to training coordination, the DCAP maintains an internal DSO website which includes a global discussion forum where counsel can post questions and provide feedback to discussions in real-time; a motions database; copies of judges' rulings; standard forms and practice tips, and various trial advocacy tools and samples. The DCAP has two Reserve Assistant DCAPs—one for policy and one for training—along with a Defense Chief who controls all administrative duties regarding training.

(4) Defense counsel (DC) are required to attend two mandatory training events: a week-long Defense Counsel Orientation course upon assignment to DSO and an annual DSO-wide training. In addition, there are mandated monthly SDC training sessions and quarterly RDC training. During their tenure in the DSO, DC attend other training events including Basic Trial Advocacy and Defending Sexual Assault Cases courses, and one of the DSO's recognized core

civilian trial advocacy courses (the Trial Practice Institute hosted by National Criminal Defense College, the Bronx Defenders Academy, the Alternate Defense Counsel Trial Advocacy Course, or the Federal Criminal Justice Advocacy Trial Skills Academy). Defense counsel are frequently sent to various other civilian defense courses offered by the National Criminal Defense College, the Trial Lawyers College, and the National Association of Criminal Defense Lawyers. This robust training program ensures DSO attorneys gain and maintain the knowledge and experience necessary to provide high quality representation in complex sexual assault cases.

(5) The CDC directs adherence to established internal safeguards to ensure the competency of counsel assigned to specific cases. For example, detailing authority for certain complex and high visibility cases is withheld to either the RDC or CDC, and supervisory counsel must consider case complexity, potential conflicts, anticipated rotation date of counsel, caseload of counsel, experience of counsel, and training and education requirements of counsel prior to detailing defense counsel to a case. In conjunction with the training program, these safeguards ensure that DSO defense counsel effectively, competently, and ethically represent their clients.

(6) During the next year, a priority for the DSO will be the hiring of defense investigators. This pilot program is required to implement the findings of the Sexual Assault Accountability and Investigation Task Force (SAAITF). Defense investigators play a vital role in safeguarding the fairness of the military justice process and protecting the discovery rights of an accused.

c. Victims' Legal Counsel

(1) The Marine Corps established its Victims' Legal Counsel Organization (VLCO) in 2014 to provide legal representation to victims during military legal proceedings. The VLCO is comprised of 19 active duty full-time judge advocates, and includes an OIC, a Deputy OIC, four supervisory Regional Victims' Legal Counsel (RVLC), and 13 Victims' Legal Counsel (VLC). These counsel are distributed across the same four LSSS regions as their TC and DC counterparts. Two active duty judge advocates serve as auxiliary VLCs detailed to cases when a conflict arises within a region, and 8 Marine Reserve officers also serve as VLCs, one of whom is the Reserve VLC Branch Head. The VLCO is currently supported with 10 civilian paralegals and one active duty Marine legal services specialist. The current VLCO OIC is an active duty lieutenant colonel (O-5) selected for promotion to colonel (O-6). The Deputy OIC, Regional VLCs, and the Reserve VLC Branch Head are all majors (O-4). All remaining active duty VLCs are captains (O-3). Remaining reserve VLCs include three majors and four captains.

(2) Marine VLCs attend Special Victims' Counsel certification training at either The Army Judge Advocate General's Legal Center and School (TJAGLCS) or the Air Force Judge Advocate General's School (TJAGS). Marine VLC also attend the annual VLCO training symposium, and participate in local quarterly training. In addition, VLC have the opportunity to attend other military and civilian training courses throughout the year, including courses offered by TJAGLCS, TJAGS, Naval Justice School, and the National District Attorneys Association (NDAA).

(3) Selection of Marine Corps VLCs includes a careful nomination, screening, interview, and vetting process. This process satisfies the Department of Defense requirement that individuals considered for VLC positions undergo an enhanced screening process before selection. Legal Services Support Section and Team OICs nominate judge advocates to serve as VLCs based on performance, experience, and demeanor. Nominees must be serving in or selected to the grade of O-3/Captain, have at least six months of military justice experience, and must have tried at least one contested court-martial. Waiver of any of these requirements requires a Critical Information Requirement (CIR) report to the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC). In accordance with MCO 5800.16 (Legal Services Administration Manual, Volume 4) the sensitive screening process for a judge advocate nominated to assume the assignment as a VLC consists of a review of judge advocate's Official Military Personnel File to determine appropriate experience and temperament. An individual who has a conviction for, a substantiated incident of, or is currently facing an open investigation into sexual assault, domestic violence, child abuse, or any other felony-level offense is expressly prohibited from serving as a VLC. The OIC, VLCO interviews each nominated judge advocate in order to determine whether the nominee has the appropriate temperament to work with victims. After attending a certification course at either TJAGLCS or TJAGS, nominees are certified in writing by the SJA to CMC.

(4) Marine VLC training efforts are aimed at ensuring that judge advocates designated as VLC are able to perform their duties with a high degree of proficiency. Marine Corps policy establishes minimum qualifications for RVLC and VLC, including requirements related to experience and seniority. Pursuant to that policy, RVLCs are Marine judge advocates serving in or selected to the grade of major (O-4) who normally have at least two years combined experience as a trial counsel, defense counsel, or military judge, to include experience in at least one contested general court-martial case.

(5) Marine VLCs provided legal services to approximately 631 victims during FY19, including intakes and initial counseling and guidance. Of these victims, approximately 85% were victims of sexual assault, including sexual assaults perpetrated by an intimate partner. Approximately 15% were victims of other crimes, including domestic violence.

(6) The client volume during FY19 represents an overall decrease in workload compared to FY17 and FY18, during which VLCO assisted approximately 661 and 713 victims, respectively. The FY19 client volume yielded an average caseload of 374 detailed cases across the VLCO, a decrease from the 391 average for FY 18. This overall decrease reflected corresponding decreases in the Eastern and Western regions, whose average caseloads dropped from 145 in FY 18 to 130 in FY 19 in the East; and from 139 in FY 18 to 131 in FY 19 in the West. Average caseloads in the two remaining regions increased slightly, from 52 in FY 18 to 54 in FY 19 in the NCR and from 55 in FY 18 to 59 in FY 19 in the Pacific. Individual VLC caseloads varied by installation, with counsel assigned to Camp Pendleton and Camp Lejeune routinely carrying between 35 and 38 cases, and counsel assigned to smaller installations carrying as few as 11 cases.

(7) Marine VLC are encouraged to interact with commanders at every opportunity in order to ensure that commanders are aware of the benefit they provide. All regional VLC offices

engage in outreach activities with commanders, staff judge advocates, and victim service providers. These efforts include briefs to incoming commanders, welcome aboard briefs to new personnel, courses to new uniformed victim advocates, and instruction in conjunction with other military justice counsel.

(8) Victims' legal counsel are not assigned to the OMC, but are eligible to attend all training offered to other Marine judge advocates.

d. Trial and Appellate Military Judges

(1) All Marine Corps military judges are competitively selected by a process established by the Judge Advocate General (JAG) of the Navy. That process includes careful evaluation of the education, experience, accomplishments, temperament, and leadership capabilities of the candidates. Each candidate must apply to be screened for judicial duty, receive letters of recommendation from judges before whom they have tried cases, and provide a detailed summary of their qualifications and experience.

(2) Marine Corps policy requires military judges to possess "a suitable background in military justice, sound judgment, an even temperament, unquestioned maturity of character, and exemplary writing skills." The new provision also requires a Master of Laws degree and a certificate issued on graduation from the Military Judges' Course at TJAGLCS.

e. Additional policy and regulatory efforts

In FY19, the SJA to CMC directed Marine Corps Judge Advocate Board #1-2019 to establish an Operational Advisory Group (OAG) to identify areas where the Marine Corps may find efficiencies during the investigation and prosecution of special victim military justice cases. This OAG met extensively during FY19 and studied ways the processing of special victim cases could be accomplished more efficiently. The length of time required to investigate a sexual assault case and make a disposition decision is an area of continuing concern for both victims and commanders. The OAG made several recommendations, which the SJA to CMC approved on October 30, 2019, and are currently being incorporated into service regulations.

Throughout the start of FY19, the Marine Corps legal community finished a phased training plan that included 24 hours of in-person instruction to prepare all personnel for the implementation of the Military Justice Act, which represents a sea change to the military justice system.

V. INDEPENDENT VIEWS OF THE STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS ON THE SUFFICIENCY OF RESOURCES TO CAPABLY PERFORM MILITARY JUSTICE FUNCTIONS

One of the most important developments during FY19 regarding the ability to capably perform military justice functions was the exhaustive work of the Secretary of Defense-directed Sexual Assault Accountability and Investigation Task Force (SAAITF). The SAAITF made many important recommendations, which the Marine Corps is working with the other

services to implement. In particular, we are taking this opportunity to evaluate our training for military justice practitioners and for commanders who make disposition decisions. The SAAITF identified critical areas of improvement to ensure commanders and military justice practitioners are equipped with the tools and resources they need to ensure victims are treated with dignity and respect and servicemembers accused of sexual assault are afforded their due process rights under the Constitution.

Other important developments were the Secretary of the Navy-directed Comprehensive Review and the Commandant of the Marine Corps-led Legal Community Assessment. Those efforts remain ongoing. While FY19 focused on studying and analyzing areas for improvement, FY20 will require even more effort to implement those changes.

December 2020 will witness the deadline for implementing Article 140a, UCMJ, which requires all of the Services to implement a case management system to capture required data, manage cases, and provide public access to court-martial dockets, filings, and records. The Navy JAG Corps, in coordination with the Marine Corps Judge Advocate Division (JAD), is working to implement a system that fulfills Article 140a, UCMJ, requirements as well as replaces the two legacy case tracking systems currently in use – the OJAG managed Case Management and Tracking Information System (CMTIS) and the Marine Corps JAD-managed Case Management System (CMS). However, funding for a permanent solution to the Article 140a, UCMJ, requirements is not available. The OJAG and Marine Corps JAD are jointly funding the bridging case management system that remains under development. OJAG and Marine Corps JAD continue to support the broader DON effort to develop, test, and deploy a modern case management system that fulfills Article 140a, UCMJ requirements, the requirements from MJA16, and the functional requirements to improve the delivery of services to the Fleet and the overall effectiveness of the military justice system for the DON.

While FY19 saw many changes, my priorities remain the same. They are:

(1) Development and retention of a motivated, trained, and diverse Marine Corps legal community postured to provide the highest caliber legal support to operating and garrison forces;

(2) Analysis, and if necessary modification, of the structure and personnel resources of Judge Advocate Division and the Marine Corps legal community to ensure we meet the requirements of that community, the Commandant, and the Marine Corps; and,

(3) Train, educate, and equip our Marines and civilian personnel to meet the needs of current and future operating environments, especially in the areas of court reporting, electronic records management, knowledge management, and data collection and analytics.

D. J. LECCE
Major General, U.S. Marine Corps

VI. APPENDIX

U.S. MARINE CORPS MILITARY JUSTICE STATISTICS [A]

Report Period: FY 2019 [B]

PART 1 – MARINE CORPS PENDING COURTS-MARTIAL (As of 1 October 2019)			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		51	
BCD SPECIAL		77	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2))		7	
SUMMARY		23	
TOTAL:	118	158	276

PART 2 – MARINE CORPS COURTS-MARTIAL STATISTICS				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER FY18
GENERAL	106	96	10	-33%
SPECIAL	139	130	9	-21%
NON-BCD SPECIAL	0	0	0	0
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2))	9	9	0	N/A
SUMMARY	71	70	1	-42%
OVERALL RATE OF INCREASE (+)/DECREASE (-) FROM FY18				-31%

PART 3 – MARINE CORPS DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT		
GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES/ DISMISSALS	24	
NUMBER OF BAD-CONDUCT DISCHARGES	23	
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	48	

PART 4 - RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG (NAVY AND MARINE CORPS)		
FOR REVIEW UNDER ARTICLE 66(b)(1) - APPEALS BY ACCUSED	1	
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0	
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	280	
FOR EXAMINATION UNDER ARTICLE 69(a) (Pre-MJA16 Cases) [C]	16	
FOR EXAMINATION UNDER ARTICLE 69(a) (Post-MJA16 Cases) [D]	0	

PART 5 - WORKLOAD OF THE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS			
TOTAL ON HAND BEGINNING OF PERIOD		152	
REFERRED FOR REVIEW		305	
TOTAL CASES REVIEWED		276	
TOTAL PENDING AT CLOSE OF PERIOD		196	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD		-15.08%	

PART 6 - APPELLATE COUNSEL REQUESTS BEFORE U.S. NAVY-MARINE CORPS COURT OF CRIMINAL APPEALS		
NUMBER	305	
PERCENTAGE	100%	

PART 7 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES	
PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (54/276)	18.84%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+2.54%
PERCENTAGE OF TOTAL PETITIONS GRANTED (18/54)	33.33%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+16.35%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (9/325)	6.52%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+1.85%

PART 8 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (NAVY AND MARINE CORPS) [E]			
TOTAL PENDING BEGINNING OF PERIOD		4	
RECEIVED		0	
DISPOSED OF		4	
RELIEF GRANTED	0		
RELIEF DENIED	4		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	

PART 9 - ORGANIZATION OF MARINE CORPS TRIAL COURTS [F]		
TRIALS BY MILITARY JUDGE ALONE	205	
GENERAL COURTS-MARTIAL	78	
SPECIAL COURTS-MARTIAL	124	
MILITARY JUDGE ALONE SPECIAL (ART 16(c)(2))	9	
TRIALS BY MEMBERS	43	
GENERAL COURTS-MARTIAL	28	
SPECIAL COURTS-MARTIAL	15	

PART 10 – MARINE CORPS COMPLAINTS UNDER ARTICLE 138, UCMJ		
NUMBER OF COMPLAINTS	12	

PART 11- MARINE CORPS STRENGTH		
AVERAGE ACTIVE DUTY STRENGTH	186,009 [G]	

PART 12 – MARINE CORPS NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ) [H]		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	6,728	
RATE PER 1,000	36.17	
RATE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS PERIOD	+18%	

Explanatory Notes

[A] This report provides military justice statistics for the U.S. Marine Corps unless otherwise noted. Statistics on the appellate review process include both the U.S. Navy and the U.S. Marine Corps.
[B] This is the first annual report since the Military Justice Act of 2016 (MJA16) went into effect on 1 January 2019, causing significant changes to the Uniform Code of Military Justice. References in this report are to the 2019 version of the UCMJ unless otherwise stated.
[C] Refers to the pre-MJA16 Article 69(a), UCMJ, whereby The Judge Advocate General reviewed any general court-martial case that did not qualify for Article 66 review.
[D] Refers to the current Article 69(a), UCMJ, whereby the accused may petition The Judge Advocate General for relief upon completion of an initial review under Article 64 or Article 65.
[E] Figure includes applications for relief under both the pre-MJA16 Article 69(b) and the current Article 69.
[F] Figure only includes cases tried to completion where the Promulgating Order or the Entry of Judgment was completed within Fiscal Year 2019.
[G] This figure includes only Active-Duty Marines and does not include Reservists.
[H] Non-Judicial Punishment. This figure was derived from the Marine Corps' Quarterly Criminal Activity Report, whereby commanders report all known instances of criminal activity pursuant to JAGINST 5800.9C and from the Marine Corps Total Force System.

December 31, 2019

Air Force Report on the State of Military Justice for Fiscal Year 2019

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IN ACCORDANCE WITH ARTICLE 146A, UNIFORM CODE OF MILITARY JUSTICE, THE FOLLOWING INFORMATION IS PROVIDED.

I. INTRODUCTION

The Air Force remains committed in its fight against sexual assault and its support of survivors. In FY19, The Judge Advocate General (TJAG) served as the Air Force member to the Department of Defense's Sexual Assault Accountability and Investigation Task Force (SAAITF). The SAAITF developed 18 recommendations aimed at improving investigative technologies and setting a command and organizational climate that criminalizes sexual harassment, enhances our already robust support systems for sexual assault survivors, and ensures fair and just due process for the accused. Air Force JAGC senior leadership met personally with Senator Martha McSally (R-Arizona) to present the Air Force SAAITF implementation plan. The Air Force JAGC also formed a SAAITF implementation working group, which is actively implementing the SAAITF recommendations into Air Force policy and training programs.

The Air Force JAGC also continued its exhaustive efforts to implement the Military Justice Act of 2016 (MJA16)'s massive overhaul of the Uniform Code of Military Justice (UCMJ), which is a constant theme throughout this report. The MJA16 became effective on 1 January 2019 and marked the biggest reform to the UCMJ since 1983. Military justice experts updated all relevant Air Force policy publications and built numerous tools to assist the field in understanding and applying the new justice system. Our Military Justice Division sent teams to regional training events and created on-line training webinars to ensure comprehensive training across the Corps. Overall, we were successful in our goal to ensure a smooth and seamless transition.

We provide the following information to illustrate the current state of Air Force military justice practice:

II. DATA ON NUMBERS AND STATUS OF PENDING CASES

The Air Force collects court-martial data through its Automated Military Justice Analysis and Management System (AMJAMS). This system tracks cases from initial legal office notification to final disposition. The Appendix provides data on pending Air Force cases.

III. INFORMATION ON APPELLATE REVIEW PROCESS

The Air Force Court of Criminal Appeals (AFCCA) rendered decisions in 184 cases through opinions and orders in FY19, seven of which were published opinions. The court held oral argument in five cases. Pursuant to the Court's "Project Outreach" program, one of these oral arguments took place at UC Hastings College of Law, San Francisco, California, on 8 August 2019, during the American Bar Association's Annual Meeting. Outreach arguments are an exceptional tool that offer civilians the opportunity to observe and better understand the military justice system. This is especially critical for law students who may otherwise have very little experience with, or exposure to, the military justice system. Moreover, outreach

arguments serve as a powerful recruiting tool for the Air Force and the JAG Corps throughout the civilian community.

AFCCA reviews all appellate cases from the Air Force. The Court has ten (8 active duty & 2 reserve) Air Force appellate judge authorizations, with nine (7 active duty & 2 reserve) Air Force appellate judges currently assigned to the Court.

a. Compliance with Processing Time Goals.

(1) In FY19, AFCCA did not dismiss any cases on speedy trial grounds.

(2) Seventeen cases exceeded 120 days from sentencing to Convening Authority's (CA) action (the "*Moreno* 1" guideline). Of the seventeen cases, AFCCA granted relief in two cases:

(a) *United States v. Seeto*, No. ACM 39247, 2018 CCA LEXIS 518 (A.F. Ct. Crim. App. 26 Oct. 2018) (unpub. op.):

In *Seeto*, it took 277 days from sentencing to CA's action. Before adjournment, the Government realized a portion of the recording of the trial was missing. However, the Government did not request outside assistance to recover the missing recording from the court reporter's laptop until 92 days after Appellant's trial had concluded. The Court found Appellant's incarceration was oppressive and that he suffered particularized anxiety and concern. Due to the loss of a portion of the record, the Court set aside the findings and sentence and granted *Moreno* relief by limiting the rehearing sentence to no more than 99 days.

(b) *United States v. Turpiano*, No. ACM 38873 (f rev), 2019 CCA LEXIS 367 (A.F. Ct. Crim. App. 10 Sep. 2019) (unpub. op.).

In *Turpiano*, the original post-trial processing delays consisted of 227 days (*Moreno* 1 & 2). The Government's failure to provide Appellant with the additional matters from outside the record that were discussed with the CA led the Court to order a *DuBay* hearing and ultimately return the case for new post-trial processing. Remand post-trial processing took 164 days from return of the case to action, and 92 days from action to docketing. The Court addressed the lack of accountability for timely processing, noting that during the remand post-trial process it took two months to "correct" an error in the court-martial order (CMO), which resulted in a CMO that still contained errors which required it to be done yet again. The Court declined to grant relief under *Moreno*, but did grant relief under its Article 66 authority, reducing Appellant's forfeitures from $7,353.00 pay per month for three months to $7,353.00 pay per month for two months.

(3) Ten cases exceeded the 30-day window from the date of CA's action to docketing the case at AFCCA (the "*Moreno* 2" guideline). Of the ten cases, AFCCA granted relief in two cases:

(a) *United States v. Zegarrundo*, No. ACM S32430 (f rev), 2019 CCA LEXIS 250 (A.F. Ct. Crim. App. 13 Jun. 2019) (unpub. op.).

In *Zegarrundo*, the case was remanded for new post-trial processing. It took the Government 164 days to accomplish a new CA action, and it took 181 days from action to docket Appellant's case with AFCCA. The Court did not grant *Moreno* relief, but did grant *Tardif* relief due to the delay between the CA's action and docketing the case at AFCCA. The Court acknowledged the 181 days were "partially explained by the legal office's attempts to obtain receipts and the unavailability of the judge advocate and paralegal primarily responsible for the post-trial processing of Appellant's case." However, because the remainder of "the delay was almost wholly unjustified and unreasonable," the Court reduced the approved confinement from 30 days to 15 days, while approving the bad conduct discharge and reduction to the grade of E-1.

(b) *United States v. Turpiano*. See explanation in section 2 (b) above.

(4) Twelve cases exceeded the "*Moreno* 3" guideline of 18 months from docketing to decision. No relief was granted by the appellate court.

b. Circumstances surrounding Air Force cases involving the following issues:

(1) Unlawful Command Influence: None.

(2) Denial of right to speedy review: None.

(3) Loss of records of trial: *United States v. Seeto*, No. ACM 39247, 2018 CCA LEXIS 518 (A.F. Ct. Crim. App. 26 Oct. 2018) (unpub. op.). In *Seeto*, more than five hours of transcript was missing from the record of trial, including a contested Mil. R. Evid. 412 motion. Accordingly, the Court found the transcript was not "substantially verbatim" and set aside the findings and sentence. A rehearing was authorized.

(4) Other administrative deficiencies: None.

(5) Cases in which provisions of the UCMJ were found to be unconstitutional: None.

IV. MEASURES IMPLEMENTED BY THE AIR FORCE TO ENSURE THE ABILITY OF JUDGE ADVOCATES TO PARTICIPATE COMPETENTLY IN CAPITAL CASES, NATIONAL SECURITY CASES, SEXUAL ASSAULT CASES, AND MILITARY COMMISSIONS

a. Professional Development Directorate

Certification Process. A typical Air Force judge advocate begins his or her career with the opportunity to litigate as a prosecutor under the supervision of a Staff Judge Advocate (SJA) with well over a decade of experience. Before TJAG certifies a judge advocate under Article 27(b), Uniform Code of Military Justice, to serve as lead trial counsel in a general court-martial, the judge advocate must meet certain criteria. The judge advocate must graduate from a nine-week Judge Advocate Staff Officer Course (initial military attorney training), demonstrate competence in performing duties as trial counsel, and be recommended for certification by their supervising SJA and a military judge. This pre-certification period typically lasts between 18-24 months. After a trial counsel becomes certified, they still typically "sit second chair" to a more experienced trial counsel on cases involving capital offenses, national security issues, or sexual assault crimes until such a time as they have shown a higher level of expertise in litigation matters. As second chair, trial counsel manage discovery and perform other assigned duties (witness examinations, motions, opening statement, or argument) as determined by the more experienced trial counsel, oftentimes a Circuit Trial Counsel (CTC). Counsel are assigned to the military commissions only after they have been certified, have proven themselves in the courtroom, and are recommended for the position.

Certification is the baseline from which Air Force litigators grow. Trial counsel serve at least one tour at a base legal office. Once certified, trial counsel can be nominated to serve as an ADC or Special Victims' Counsel (SVC) by their SJA. SJAs build nominations around actual performance in trial, general duty performance, and personal characteristics of the nominee such as demeanor and ability to lead. The nominations are reviewed by the trial counsel's and SJA's functional chain (senior supervising attorneys) who then forward final nominations to TJAG's Professional Development Directorate (AF/JAX). AF/JAX also receives feedback from the Trial Defense Division (AFLOA/JAJD) or Special Victims' Counsel Division (AFLOA/CLSV) regarding potential ADCs or SVCs before making recommendations to TJAG, who is personally involved in the assignment of every best-qualified ADC and SVC.

Senior prosecutor positions are managed with similar care. CTCs are senior prosecutors in the Air Force. CTCs are specially trained and experienced prosecutors who assist junior prosecutors with criminal cases of all levels of severity and serve as lead counsel on the most serious cases, to include capital, national security, and sexual assault cases. The Air Force currently maintains 25 CTC authorizations to serve as senior prosecutors on criminal cases across the Air Force. These Air Force senior prosecutors usually have five or more years of experience as an Air Force litigator, are vetted by the Government Trial and Appellate Division (AFLOA/JAJG), recommended by AF/JAX, and assigned by TJAG.

Among the CTCs is the Special Victims Unit, or SVU-CTCs, made up of prosecutors who have specialized experience and who have shown specific aptitude in trying cases involving child victims, allegations of sexual assault, or allegations of domestic violence. These experienced prosecutors have spent over a year trying felony-level cases as CTCs, and make up the Air Force's prosecution arm of its Special Victim Investigation and Prosecution (SVIP) capability. In addition to consulting with bases during the development and charging of a case and serving as lead counsel, SVU-CTCs provide direct support and training to junior counsel on complex cases involving special victims. In FY19, CTCs were detailed to more than 90% of Air Force sexual assault cases referred to General Court-Martial. In the remaining cases, the trial

team was guided by a military justice chief or deputy SJA with extensive military justice experience.

Judge advocates, after serving as CTCs, CDCs, or SVCs, can serve as Appellate Counsel, Chief CTCs, Chief CDCs, or Chief SVCs. These very experienced attorneys supervise subordinate counsel and try the highest profile cases in the Air Force. Generally, each Chief CTC or CDC has 10 to 14 years of experience as an Air Force JAG and previously served as a senior prosecutor or defense counsel. Beyond those positions, there are additional opportunities for promotion within the military justice system, with former circuit counsel often competing favorably for military judge positions and, eventually, for the positions of the Air Force's Chief Prosecutor, Chief Defense Counsel, Chief Special Victims' Counsel, and Military Trial or Appellate Judge.

Military Justice Experience Tracker. Since 18 October 2017, Military Justice Experience Tracker (MJET) levels were assigned to all judge advocates based on proficiency levels.

MJET 1 ("Proficient") is assigned to all judge advocates who are trial certified under Article 27(b), Uniform Code of Military Justice. MJET 1 means that the judge advocate is "talented and adept at executing litigation duties."

MJET 2 ("Skilled") is assigned to those who are or who have been ADCs or SVCs and have completed ten months or more in the designated positions. "Skilled" in this context means "trained, practiced, and acquiring a heightened level of skill in executing litigation duties.

MJET 3 ("Advanced") is assigned to those who are or have been CTCs, CDCs, SSVCs, or Appellate Counsel and have completed 10 months or more in the designated position. "Advanced" in this context means "progressive and vastly developed beyond proficiency in executing, overseeing, or supervising litigation duties."

MJET 4 ("Accomplished") is assigned to those who are or have been CCTCs, CCDCs, Military Trial Judges, or Military Appellate Judges. "Accomplished" in this context means "gifted, consummate, and demonstrating the skill of an expert in executing, overseeing, or supervising litigation duties."

The MJET system is an enterprise level assessment of a member's capabilities. In addition to the enterprise level assessment of an individual's capabilities, members have the ability to self-report their training and experience as well. On a yearly basis, all judge advocates are instructed to identify their specific areas of legal expertise, as well as quantifying the number of years of practice in the area of law and providing a self-assessment of their level of experience. In addition to listing a variety of legal specialties, like acquisition law, environmental law, international law, operations law, etc., this feature also allows attorneys to elaborate on specific military justice positions held throughout their careers. Members can report the number of courts-martial in which they have participated and any additional trial experience they may have gained, such as service as a Special Assistant United States Attorney participating in magistrate court at installations where the Air Force has concurrent or proprietary jurisdiction. AF/JAX independently tracks and reviews military justice experience through assignments, performance

reports, and supervisors' feedback; however, this self-reporting feature allows members to document experiences that may not be visible from those forms of feedback and provides yet another professional development tool that assists TJAG in matching precisely the right talent to precisely the right job.

b. The Air Force Judge Advocate General's School

The Air Force Judge Advocate General's School (AFJAGS) is the educational arm of the Air Force JAGC. Located at Maxwell Air Force Base, Alabama, AFJAGS provides education and training in all aspects of military legal practice to attorneys and paralegals from all military services, other federal agencies, and several foreign countries. Military justice instruction topics include advocacy, administration, military rules of evidence, the rules of procedure, and sexual assault policy and response. AFJAGS faculty members also provide instruction on military justice for several schools and colleges throughout Air University, the Air Force's center for professional military education. During FY19, AFJAGS faculty members instructed more than 23,093 students at these military academic institutions, an increase in 41% from last year. The increase was due in part to a renewed focus on the Air University Law Chair Program.

Additionally, AFJAGS published 21 articles in *The Reporter* and Volume 80 of *The Air Force Law Review*. Of note, the migration of *The Reporter* to a fully dynamic and mobile platform, increased readership to approximately 36,000+ consumers in FY19. Further, with the assistance of subject matter experts from the Administrative Law Directorate (JAA), the Civil Law & Litigation Directorate (JAC), and the Judiciary Directorate (JAJ), AFJAGS significantly revised the School's flagship publication, *The Military Commander and the Law*. The publication included major revisions to the military justice portions of this vital commanders' resource guide incorporating new law and policy in the arena of sexual assault and prevention. *The Military Commander and the Law* is available online to Air Force legal professionals and commanders worldwide. In addition, AFJAGS produced nine webcasts on various topics within military justice. These webcasts are available "on demand" via AFJAGS' web-based learning management system which is accessible to all members of the JAG Corps.

More than 3,300 students attended in-residence and distance education courses in FY19. With more than 67 AFJAGS course offerings, the following courses devoted substantial resources to military justice-related topics:

Accelerated Commissioning Program & Total Force Officer Training
Advanced Sexual Assault Litigation Course
Advanced Trial Advocacy Course
Air Command and Staff College
Annual Survey of the Law
Chaplain's College (Basic, Deputy Wing, and Wing Chaplain Courses)
Chief's Leadership Course
Defense Orientation Course (new Area Defense Counsel and Defense Paralegals)
Discovery Management Course (distance learning)
First Sergeant's Academy
Gateway (intermediate leadership course for Air Force JAGC majors)

Intermediate Sexual Assault Litigation Course (held regionally in United States and overseas – now called Circuit Advocacy Training)
Judge Advocate Staff Officer Course (initial training for new Judge Advocates)
Law Office Manager Course
Leadership Development Course for Squadron Command
Military Justice Administration Course
Military Personnel Management Course
Non-Commissioned Officer Academy & Senior Non-Commissioned Officer Academy
Paralegal Apprentice Course
Paralegal Craftsman Course
Senior Enlisted Legal Orientation Course
Senior Officer Legal Orientation Course
Special Victims' Counsel Course
Squadron Officer School
Training by Reservists in Advocacy and Litigation Skills (held regionally in the United States and overseas)
Trial and Defense Advocacy Course
Victim/Witness Assistance Program Course

Several of the courses listed above contain a specific focus on sexual assault litigation. For instance, Advanced Sexual Assault Litigation Course, Circuit Advocacy Training, and Training by Reservists in Advocacy and Litigation Skills, all contain a focus on sexual assault. In addition, other courses, such as Advanced Trial Advocacy Course, Judge Advocate Staff Officer Course, Defense Orientation Course, Military Justice Administration Course, and Trial and Defense Advocacy Course also contain critical updates to the law as it pertains to military sexual assault and/or a practical application focus on litigation skills related to fact patterns focusing on sexual assault.

Finally, AFJAGS plays an integral part in preparing Judge Advocate Generals' Corps personnel to participate proficiently in national security cases through its many national security law course offerings as well as training in war gaming at Air University. Through cooperation with subject matter experts and foreign exchange officers at the Operations and International Law Directorate (HQ USAF/JAO), AFJAGS engages on the latest national security issues and incorporates lessons learned during exercises as well as real-world domestic events into the various national security courses offered throughout the year.

c. Military Justice Division

The Military Justice Division, Air Force Legal Operations Agency (AFLOA/JAJM), operates as part of the Office of The Judge Advocate General for purposes of providing military justice administration and support across the Air Force JAGC. AFLOA/JAJM is led by an O-6 who serves a dual role as the Division Chief and as the Air Force representative to the Department of Defense's Joint Service Committee (JSC). In FY19, AFLOA/JAJM continued its full-scale implementation of the Military Justice Act of 2016 (MJA16), which went into effect on 1 January 2019. Attorneys with specialized training in military justice and MJA16 updated thousands of pages of Air Force policy, templates, and checklists to ensure uniform application

of the new military justice system throughout the field. AFLOA/JAJM also sent (and is continuing to send) training teams across the JAGC to provide in-person training, hosting five online webinars as part of a three-part MJA16 training initiative between FY18 and FY19 that included 19 online training events and over seventy hours of in-person training. AFLOA/JAJM conducts post-trial hotwashes of cases using the new MJA16 system with trial counsel and case paralegals to identify policy gaps and areas of confusions that can be corrected and disseminated to the field.

Meanwhile, AFLOA/JAJM continued to focus on the enhancement of crime victim services and policies. In FY19, AFLOA/JAJM held two in-person Victim and Witness Assistance Program (VWAP) Training Symposiums. Over sixty installation-level VWAP coordinators received specialized training to maximize their support to victims throughout the court-martial process and to facilitate integration between VWAP and other victim-centric programs.

Finally, AFLOA/JAJM served a critical role in the Sexual Assault Investigation and Accountability Task Force (SAAITF). In its capacity as the Air Force representatives to the JSC, AFLOA/JAJM helped develop both the Department of Defense and Air Force SAAITF implementation plans. AFLOA/JAJM continues to serve as a key point of contact overseeing Air Force SAAITF implementation, and provides regular status updates to TJAG.

d. Trial Counsel

As discussed above, TJAG assigns judge advocates to serve as CTCs only after significant vetting and based on recommendations from AFLOA/JAJG and AF/JAX.

Under the O-6 Chief of JAJG, the CTC program consists of five Chief Circuit Trial Counsel and twenty CTCs strategically located throughout the world. Eleven CTCs are SVU-CTC prosecutors. These SVU-CTCs handle the most serious, most complicated, and highest-visibility sexual assault cases in the Air Force. The SVU-CTCs, along with the rest of the CTCs, are supported by the SVU's Chief of Policy & Coordination, who is AFLOA/JAJG's focal point for issues related to the prosecution of sexual assault cases. One CTC also serves as liaison to the Department of Defense (DoD) Computer Forensics Laboratory (DCFL) and is the Air Force's legal expert on issues related to digital evidence.

All CTCs attend the Advanced Sexual Assault Litigation Training Course and many attend both the Advanced Trial Advocacy Course at AFJAGS as well as the Prosecuting Complex Cases Course at the Naval JAG School. As needed, the most proficient CTCs are selected to attend the Capital Litigation Course presented by the Association of Government Attorneys in Capital Litigation if there is a pending case that could be referred capital. SVU-CTCs are identified after demonstrating enhanced proficiency in prosecuting sexual assault and other victim-involved cases. SVU-CTCs have litigated an average of 59 courts-martial. The Deputy Division Chief and the DCFL Liaison CTC both have Top Secret clearances ensuring the division has the capability to handle any national security cases that arise.

Further, as part of the third annual Air Force Circuit Annual Training (AFCAT) at Joint Base Andrews, CTCs received intensive training specially tailored to the high-profile cases they

prosecute and enhanced peer-to-peer education in a variety of subject areas. In addition to training conducted within JAJG, AFCAT also allowed the entire CTC corps to train in plenary sessions alongside judge advocates assigned to the Trial Judiciary, Trial Defense Division and SVC Division. In 2019, AFCAT provided instruction on the MJA16, as well as computer and digital evidence, the Electronic Communication Privacy Act, and recent appellate cases. This opportunity enhanced knowledge of the missions of the other divisions. CTCs also received a variety of training offered by sister service and non-DoD sources. These trainings add to the perspective of CTCs and allows for the cross-feed of information from outside of the Air Force. In total, CTCs attended approximately 1,500 man-hours of training to improve advocacy and prosecution skills.

e. Defense Counsel

AFLOA/JAJD is responsible for providing all defense services throughout the Air Force with its worldwide team of ADCs, Defense Paralegals (DP), CDCs, Chief Circuit Defense Counsel (CCDC), and Defense Paralegal Managers (DPM). The Division also includes the Defense Counsel Assistance Program (DCAP), which provides training, resources, and assistance for Air Force defense counsel worldwide. The Division Chief, together with the Chief of Policy and Training and Office Superintendent, oversee trial defense services from Joint Base Andrews.

ADCs are responsible for an installation where they focus on the practice of military justice, to include court-martial litigation. ADCs begin their defense careers by trying misdemeanor-level cases and they are supervised by a more experienced circuit defense counsel, or CDC. Until the ADC gains more experience, CDCs will detail themselves to cases involving felony-level offenses, to include capital offenses, national security cases, and sexual assault. Rarely will an ADC defend a military accused alone on a general court-martial, the venue reserved for felony-level offenses.

During FY19, the Division was staffed with 83 ADCs, 73 DPs, 17 CDCs, 1 Chief of Policy and Training, 3 DPMs and 5 CCDCs. Each CCDC leads the defense team falling within their respective judicial circuit, of which three are in the Continental United States (CONUS), one is in United States Air Forces Europe (USAFE) and one is in the Pacific Air Forces (PACAF). The DPMs are assigned to the three CONUS circuits and, in addition to leading their own circuit, assist in managing the PACAF and USAFE circuits. Together these professionals provide defense services to Airmen around the world.

In FY19, JAJD continued to demonstrate excellence in defending complex cases, including sexual assault cases. The continuing success of the Air Force’s ADC program is largely attributable to its independence and the effective and zealous advocacy of its personnel. Training remains the division’s top priority to ensure the best representation for Airmen and to maintain a team of defense counsel with the skill set to participate competently in capital cases and to lead defense teams in national security and complex sexual assault cases.

In FY19, the division utilized a progressive training program where new defense counsel attend the Defense Orientation Course and the Trial and Defense Advocacy Course. All defense

counsel were also required to attend their respective circuit's annual advocacy training, which focused on defending sexual assault cases. CDCs, and ADCs who demonstrated a strong aptitude for trial defense work, also attended the Advanced Sexual Assault Litigation Course and the Advanced Trial Advocacy Course. All CDCs attended AFCAT, which included substantive instruction on working with experts in sexual assault cases and working with defense investigators. To the extent funding would allow, defense counsel also attended external civilian-sponsored courses that provided expertise or instruction not otherwise available internally. Those defense counsel then passed along the lessons learned from those courses to defense counsel at their respective circuit advocacy training or as instructors at the AFJAGS. In addition to formal instruction, CDCs provide on-the-job training and mentoring to the ADCs within their circuit on a continuing basis.

AFLOA/JAJD worked with AF/JAX in FY19 to create defense investigator positions within the division. The investigators will provide investigative support in sexual assault, national security, and other complex cases similar to criminal defense investigators in civil jurisdictions. This effort to embed defense investigators will continue in FY20. The addition of civilian authorizations for defense litigation support will help make the Air Force military justice system more effective in the fact-finding phase and will ensure its military justice system is more fair and efficient, in reality and in appearance.

f. Special Victims' Counsel

10 U.S.C. §1044e(d)(1)(B) requires judge advocates to be certified as competent by TJAG to be designated SVCs. As discussed above, judge advocates must be certified under Article 27(b), UCMJ, nominated and vetted through the "best qualified" selection process, successfully complete a certification course and be approved for assignment to the SVC position by TJAG. All SVC receive tailored training dedicated to preparing them to represent adult and child victims of sexual assault. To ensure that every SVC is certified, incoming personnel attend a 10-day certification course at the AFJAGS at Maxwell Air Force Base.

At the 2019 SVC Course (SVCC), 26 incoming Air Force SVCs and 17 incoming Special Victims' Paralegals (SVP) received 54 blocks of instruction concerning representation of adult and child victims of sexual assault. The course also included 41 SVCs/Victims' Legal Counsels (VLC) from our sister services. This year's SVCC student feedback included appreciation for real-world practical seminars, the ability to network with their peers, the inclusions of tactical practitioners, subject matter experts, and joint service training.

Air Force SVC personnel who did not have the opportunity to attend the Air Force SVCC (transferred in to the SVC Division off-season, etc.) attended the Army SVC course in order to fulfil their primary duty functions and represent adult clients. The Army SVCC satisfies the requirements for Air Force SVC certification. In FY19, one SVC and three SVPs attended the adult portion of the Army certification course and one SVP attended the child portion of the course. Additionally, the Army SVC Program invited three Air Force SVC personnel to be instructors at the Army Adult certification courses.

Air Force SVCs and SVPs both conducted and received advanced training at service courses and civilian organizational conferences. SVCs and SVPs attend specialized litigation training at their respective Circuit Advocacy Training Courses (CAT—previously titled ISALC) and SVCs attended the Advanced Sexual Assault Litigation Course (ASALC). CAT-East was held in October 2018 and hosted at Joint Base Langley-Eustis. In November 2018, CAT-West was conducted at Travis AFB. In December 2018, CAT-Europe was conducted at Ramstein AB in Germany. In Feb 19, CAT-Pacific was conducted at Kadena AB in Japan. Finally, CAT-Central was held in November 2019 at Joint Base San-Antonio, Texas. In September 2019, the ASALC was held at AFJAGS, and six SVCs attended.

In August 2019, the Air Force Trial Judiciary hosted the AFCAT. CLSV leadership (Division Chief, Associate Chief, Chief of Appellate and Outreach) and the five SSVCs attended AFCAT. Shortly thereafter in September 2019, AFLOA/CLSV Division participated in the annual Judge Advocate Appellate Training (JAAT) by providing an instructor and six SVC attendees.

g. Appellate Defense Counsel

The Air Force Appellate Defense Division (AFLOA/JAJA) is responsible for delivering zealous appellate defense services to Airmen on appeal. AFLOA/JAJA counsel are selected through coordination with AF/JAX, based upon experience and capability in litigation and writing. In FY19, AFLOA/JAJA was staffed by one O-6 Division Chief, one O-5 Deputy Chief, nine active duty appellate attorneys, two active duty paralegals, and one GS-15. Eight reservists were also assigned to the AFLOA/JAJA.

In 2019, AFLOA/JAJA provided a two-day newcomer course for appellate defense counsel who also received orientation provided by the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces. AFLOA/JAJA supported and attended multiple training events outside the Air Force, such as joint appellate advocacy training in the National Capital Region and the Appellate Judges Education Institute Summit. AFLOA/JAJA personnel also received training at the civilian appellate advocacy course at the University of North Carolina, Chapel Hill School of Government. Additionally, AFLOA/JAJA attorneys continued to provide formal course instruction for CDCs at Joint Base Andrews and new ADCs at AFJAGS.

h. Appellate Government Counsel

AFLOA/JAJG is staffed by one O-6 Division Chief, who is dual-hatted as the Chief of the Government Trial Counsel, seven active duty Appellate Counsel, five reserve Appellate Counsel, and one civilian Associate Chief Appellate Counsel. Additionally, “Appellate Government” has two active duty paralegals and one civilian paralegal. Appellate Counsel vigorously represented the government in Article 66 and Article 67 appeals of Air Force court-martial convictions.

Appellate Government is located at Joint Base Andrews. The Appellate Counsel are comprised of mostly O-3s and O-4s who represent the United States on all appeals before The Air Force Court of Criminal Appeals and the Court of Appeals of the Armed Forces. TJAG, upon the recommendation of AF/JAX, in coordination with the Chief of AFLOA/JAJG, selects

officers to be appellate government counsel based upon their experience and capability with respect to litigation and writing. Typically, Appellate Counsel are chosen from among officers serving as ADCs or circuit counsel recognized for their ability and desire to serve as appellate counsel. Their potential to serve as Appellate Counsel is assessed by military judges, other circuit counsel, and advocacy instructors who have worked with them.

Once Appellate Counsel arrive at AFLOA/JAJG, they have an orientation with AFLOA/JAJG, the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces. During the year, Appellate Counsel attend two main courses to enhance their appellate advocacy. Counsel attend and participate as instructors at the Annual Joint Appellate Advocacy Training, which provides valuable instruction on appellate advocacy from plenary speakers and allowed cross-feed between government appellate counsel from all services. Counsel also attend the annual continuing legal education program sponsored by The United States Court of Appeals for the Armed Forces allowing for specific training on appellate advocacy run by and from the perspective of the appellate judges of our highest court. All Appellate Counsel are trained on and have experience with litigating sexual assault cases. In addition, the Associate and Deputy Chiefs hold Top Secret clearances in the event classified matters arise on appeal.

i. Trial and Appellate Judges

Trial Judges: The Chief Trial Judge, located at Joint Base Andrews, manages the Air Force Trial Judiciary (AF/JAT), which consists of five judicial circuits around the world. Chief Circuit Military Judges supervise the various judges within each circuit. Four judges are stationed in the two overseas circuits; two judges are in Europe and two are in the Pacific. Primarily, military trial judges preside over trials referred to general and special courts-martial. The complexity of these cases has increased due to the implementation of the MJA16, which became effective on 1 January 2019. As a result, trial judges have quickly become accustomed to new processes including pre-referral requests for warrants, orders, or subpoenas, the use of the Judge Alone Special Court-Martial forum, and new post-trial processes requiring Statements of Trial Results and Entries of Judgment.

The Air Force Trial Judiciary also works closely with judges in the other Services in order to ensure a standardized application of military law and procedure across criminal trials conducted throughout the Department of Defense. To that end, members of the trial judiciary attend the Military Judges' Course at the U.S. Army's Judge Advocate General's Legal Center and School in Charlottesville, Virginia. The three-week course prepares judge advocates from all Services, for their roles as trial and appellate military judges. The course provides detailed instruction on substantive and procedural criminal law, and judicial ethics and responsibilities. The curriculum focuses on sexual assault offenses, rules of evidence applicable thereto, and victims' rights. It also covers national security concerns and closed hearings.

In addition, the trial judiciary trains twice annually -- once with all trial judges in the Department of Defense and once with all Air Force senior litigators. In 2019, both the Joint Military Judges Annual Training and the AFCAT provided instruction on the MJA16, as well as computer and digital evidence, the Electronic Communication Privacy Act, and recent appellate cases. Members of the trial judiciary have also been fortunate to attend courses through the

National Judicial College (NJC); in that regard, two military judges have attended the NJC's Capital Litigation Course (one in 2017 and the other in 2019). The Military Commissions Trial Judiciary provides training applicable to their work.

This year, members of AF/JAT joined the other Services in marking the 50th anniversary of the Military Justice Act of 1968 (effective in 1969), which created an independent military trial judiciary for the first time.

Appellate Judges: During FY19, the number of active duty appellate military judges assigned to AFCCA varied from six to eight, along with two to three reserve appellate judges. Additionally, the court support staff consisted of two commissioners, two paralegals (one military and one civilian), and a clerk of the court. Two reserve commissioners combined to cover the 12-week maternity leave absence of one of the active duty commissioners. The court also hosted one fall 2018 law student extern, two summer 2019 law students (one educational delayed program intern and one extern), and one fall 2019 law student extern.

During FY19, a total of four appellate judges were nominated to serve on the United States Court of Military Commissions Review (USCMCR). The USCMCR hears appeals of cases convened under the Military Commissions Act of 2009. The USCMCR not only hears cases with a finding of guilty from military tribunals at Guantanamo Bay, but also hears appeals on issues taken prior to and during trial. Two of the judges were confirmed by the Senate and joined the court in May 2019, but another retired before this process was complete. The last nomination is pending.

According to The Joint Rules of Appellate Procedure for Courts of Criminal Appeals (JRAP), effective 1 January 2019, tenure for appellate military judges assigned to the court will be for a minimum of three years, except under certain circumstances identified in JRAP Rule 1(c).

Judge advocates designated for assignment as military appellate judges are now required to attend the three week Military Judges' Course at The Judge Advocate General's Legal Center and School (TJAGLCS) in Charlottesville, Virginia, which occurs once a year, usually in April. AFCCA also conducts in-house initial training for newly-assigned appellate judges and refresher training for incumbent appellate judges, focusing on internal court processes, opinion writing, ethics, standards of review, and recurring motions. AFCCA judges (along with staff attorneys) attended the annual training held by the United States Court of Appeals for the Armed Forces (CAAF), an inter-service, two-day event held at the Antonin Scalia School of Law, American University, Washington, D.C., in March 2019. Additionally, all court personnel attended the William S. Fulton, Jr. Military Appellate Judges' Training Conference held at the Thurgood Marshall Federal Judicial Building in Washington, D.C., September 2019—another inter-service two-day event which included a full day on judicial writing. Finally, two appellate judges attended the New Appellate Judges Seminar hosted by New York University School of Law in July 2019, and three appellate judges attended the Appellate Judges Education Institute Summit hosted by Duke Law School in Atlanta, Georgia, November 2018.

j. Total Force Integration

This year, TJAG stood up a Circuit Counsel Assistance Program (CCAP). The CCAP provides Air Reserve Component (ARC) support to local trial, defense, and victims' counsel. This support is coordinated with the Air Force Judiciary (AFLOA/JAJ) circuit counsel programs in certain court-martial case investigations and pretrial activities (cases involving unrestricted reports of adult sexual assault, unrestricted reports of domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm, and child abuse involving sexual assault and/or aggravated assault with grievous bodily harm). The CCAP provides a cadre of experienced ARC judge advocates broken into separate teams to supplement CTC and CDC capabilities during the investigative and pretrial phases of the court-martial process, and SVCs in the post-trial appellate phase. CCAP consists of the Trial Counsel Assistance Program (TCAP), Defense Counsel Assistance Program (DCAP), and the Victims' Counsel Assistance Program (VCAP). These programs aim to enhance the quality of investigations and client representation by involving experienced Total Force litigators in the early stages of court-martial investigations and processing. CCAP team members must possess the requisite litigation skills and professionalism to provide the highest quality of legal representation for the government, accused service members, and victims.

V. INDEPENDENT VIEWS OF THE JUDGE ADVOCATE GENERAL AS TO THE SUFFICIENCY OF RESOURCES, INCLUDING TOTAL WORKFORCE, FUNDING, TRAINING AND OFFICER AND ENLISTED GRADE STRUCTURE TO PERFORM CAPABLY ITS MILITARY JUSTICE FUNCTIONS

a. Total Workforce:

The Air Force JAG Corps has approximately 1,304 judge advocates and 857 paralegals on active duty rotated on an annual basis in support of military justice functions. Company grade officers (lieutenants and captains) make up approximately 44% (573) of the JAGC. Approximately 26% (343) are majors and approximately 19% (254) are lieutenant colonels. Colonels and above, including one lieutenant general, one major general, and one brigadier general, comprise approximately 10% (134) of the Corps. As detailed in block IV, all judge advocates and paralegals begin their careers as trial counsel and military justice technicians in support of military justice functions. Air Force JAGC personnel may specialize in AFLOA military justice positions as they gain more experience. Examples of these positions include ADCs, SVCs, Appellate Counsel, CTCs, Military Judges, and paralegals who support these positions. Currently AFLOA has over 420 personnel dedicated to these specialized military justice positions. Opportunities in civil litigation across the JAGC also complement our military justice training.

b. Funding:

Currently, there are no funding concerns for the Air Force JAGC as to the administration of military justice. However, the increasing costs of travel and other activities, combined with a topline budget that has not been increased over the past several years could result in concerns in the next fiscal year. Our current information technology supports our litigation practice and will be able to support the statutorily imposed requirements in accordance with MJA16. The Air Force is currently in the midst of selecting a follow-on program to the Automated Military

Justice Analysis and Management System. The Disciplinary Case Management System (DCMS) will eventually replace AMJAMS through a phased-in plan. The Air Force is using Other Transaction Authority (OTA) for the acquisition of DCMS, but has not been able to secure funding through the FYDP which could negatively impact the acquisition and implementation of this new program.

c. Training:

As described above, judge advocates are well and deliberately trained and developed throughout their careers. AFJAGS, in coordination with subject matter experts and AF/JAX, is continuously reviewing and updating the curriculum to meet the needs of the Corps, thus ensuring recency and relevance in the continuing education needs of the Corps.

d. Officer and Enlisted Grade Structure:

In short, there are no concerns with the existing officer and enlisted grade structure of Air Force litigators. ADCs and SVCs serve in the grade of O-3. They are supported by DPs and SVPs, respectively, who serve in the grades of E-5 and above. DPs and SVPs are not assigned without first achieving certain professional development gates called “skill level.” A skill level of seven is the highest professional skill level a paralegal can achieve. Paralegals enter their first assignment at a skill level of three and gain the next skill level, five , through on-the-job training and by satisfying academic requirements. The seventh level is achieved by qualifying for, attending, and completing an eight-week in-residence course held at AFJAGS.

ADCs and SVCs are capable of advocating fully and zealously without regard to differences between them, decision makers, or their clients in terms of rank or grade. As ADCs and SVCs, DPs and SVPs, have independent reporting chains from the wings they support, they are free of undue command influence. These attributes are supported by their functional chain, which runs from the attorney to a more senior supervising attorney: CDC or SSVC. CDCs generally serve in the grade of O-4 and are responsible for a geographic region, as noted above. CDCs, in turn, report to CCDCs, who serve in the grades of O-4 and O-5, depending on the size of the circuit where they are assigned. SVCs report to SSVCs, who serve in the grades of O-4 or O-5, depending on the size of the circuit where they are assigned, and have a broader scope of responsibility in terms of personnel.

VI. CONCLUSION

Entering into FY19, the Air Force JAGC was prepared for the massive changes brought on by the MJA16. The MJA16 impacted the entire spectrum of court-martial proceedings—such as modernizing criminal offenses by updating or enacting new offenses, expanding judicial authorities, establishing fixed panel or “jury” requirements, modifying the sentencing and plea agreement paradigm to be more in-line with Federal practice, and transforming the post-trial structure entirely. While these sweeping changes to our military justice system will have significant impacts, the JAGC is still determining the long-term effects, both positive and negative, on the overall effort to strengthen discipline, protect crime victims, and maintain the integrity and fairness of the court-martial process.

In FY19, we continued to administer military justice in a timely manner with few exceptions, which were justifiable under the circumstances. We have yet to realize fully the effect of MJA16 as it will take time for these historic reforms to provide data ripe for analysis. Despite these changes, and as indicated by the statistics and summaries provided in this report, the state of our military justice system remains robust and well-positioned to continue to promote justice, to assist in maintaining good order and discipline, and to promote efficiency and effectiveness in the military establishment with the goal of strengthening national security. This is in large part due to our approximately 1300 judge advocates and 850 paralegal workforce that rotate to support military justice function. We employ a vigorous vetting process to select the very best as appellate and trial judges, CTCs and CDCs, ADCs and SVCs. Training continues to be a top priority. Not only are we continuing to offer programs previously established, but this year we piloted new training programs, deliberately targeted to develop litigators. Additionally, we are leveraging the expertise of our ARC through our newly formed CCAP to support local trial, defense and victims' counsel.

In today's environment, the role of the Air Force JAGC—to strike a careful constitutional balance between all competing equities in the military process, including the respect for and protection of the rights of victims of crime, and the rights of an accused—is more critical than ever. As we move forward, looking to the year ahead, we remain committed to providing sound, independent legal advice to our commanders in a military justice system that has made us the most ready, lethal and disciplined force in the world.

JEFFREY A. ROCKWELL
Lieutenant General, USAF
The Judge Advocate General

VII. APPENDIX

U.S. AIR FORCE MILITARY JUSTICE STATISTICS

Report Period: FY 2019 [A]

PART 1 – PENDING COURTS-MARTIAL [B]			
TYPE OF COURT	PREFERRED & PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		118	
BCD SPECIAL		53	
NON-BCD SPECIAL		N/A	
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))		5	
SUMMARY		2	
TOTAL:	93	178	271

PART 2 – BASIC COURTS-MARTIAL STATISTICS					
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	DISMISSED POST ARRAIGNMENT	% CHANGE OVER FY18
GENERAL	217	132	64	21	+22.6%
BCD SPECIAL	160	138	20	2	-24.9%
NON-BCD SPECIAL	N/A	N/A	N/A	N/A	N/A
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	38	38	0	0	N/A
SUMMARY	71	71	0	0	+77.5%
OVERALL % CHANGE OVER FY18					+13.0%

PART 3 –DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT	
GENERAL COURTS-MARTIAL (CA LEVEL):	145
NUMBER OF DISMISSALS (OFFICERS)	18
NUMBER OF DISHONORABLE DISCHARGES (ENLISTED)	75
NUMBER OF BAD-CONDUCT DISCHARGES (ENLISTED)	52
SPECIAL COURTS-MARTIAL (CA LEVEL): NUMBER OF BAD-CONDUCT DISCHARGES (ENLISTED)	77

PART 4 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG	
ARTICLE 66(b)(1) – APPEALS BY ACCUSED	0
ARTICLE 66(b)(2) – FORWARDED BY TJAG	0
ARTICLE 66(b)(3) / ARTICLE 66(b) (Pre MJA16) – AUTOMATIC REVIEW	199

FOR EXAMINATION UNDER ARTICLE 69(a) (Pre MJA16 Cases) [C]	18
FOR EXAMINATION UNDER ARTICLE 69 (Post MJA16 Cases) [D]	0

PART 5 – WORKLOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS	
TOTAL CASES ON-HAND BEGINNING OF PERIOD	173
TOTAL CASES REFERRED FOR REVIEW	229[1]
TOTAL CASES REVIEWED	184[2]
TOTAL CASES PENDING AT CLOSE OF PERIOD	218
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-18

PART 6 -- APPELLATE COUNSEL REQUESTS BEFORE AIR FORCE COURT OF CRIMINAL APPEALS	
NUMBER	226[3]
PERCENTAGE	98.7%

PART 7 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES	
PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO CAAF (82/147)	55.8%
PERCENTAGE CHANGE (+ / -) OVER PREVIOUS REPORTING PERIOD	7.4%
PERCENTAGE OF TOTAL PETITIONS GRANTED (3/82)	3.7%
PERCENTAGE CHANGE (+ / -) OVER PREVIOUS REPORTING PERIOD	-7.4%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (3/147)	2.0%
RATE OF CHANGE (+ / -) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	-23.4%

[1] Includes Article 62 Appeals and all Writs.
[2] Includes opinions, orders terminating cases, and withdrawals.
[3] In three cases during FY19 Appellant elected “No Counsel” per AF Form 304.

PART 8 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ [E]		
TOTAL PENDING BEGINNING OF PERIOD		0
RECEIVED		18
DISPOSED OF		14
RELIEF GRANTED	0	
RELIEF DENIED	14	
NO JURISDICTION	0	
WITHDRAWN	0	
TOTAL PENDING AT END OF PERIOD		4

PART 9 – ORGANIZATION OF COURTS [F]	
TRIALS BY MILITARY JUDGE ALONE	232
GENERAL COURTS-MARTIAL	106
SPECIAL COURTS-MARTIAL	88
SPECIAL COURTS-MARTIAL MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	38
TRIALS BY MILITARY JUDGE WITH MEMBERS	173
GENERAL COURTS-MARTIAL	101
SPECIAL COURTS-MARTIAL	72

PART 10 – COMPLAINTS UNDER ARTICLE 138, UCMJ	
NUMBER OF COMPLAINTS RECEIVED	47

PART 11 – STRENGTH [G]	
AVERAGE ACTIVE DUTY STRENGTH	324,169

PART 12 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)	
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	4,055
RATE PER 1,000	12.51
RATE OF INCREASE (+)/DECREASE (-) OVER FY18	-5.08%

Explanatory Notes

[A] This is the first annual report since the implementation of the Military Justice Act of 2016 (MJA16) on 1 January 2019. The MJA16 drove significant changes to the Uniform Code of Military Justice (UCMJ). References in this report are to the 2019 version of the Manual for Courts-Martial unless otherwise stated.
[B] Data for cases pending as of 30 September 2019.
[C] Pre-MJA16 Article 69(a), UCMJ, reviews were conducted by The Judge Advocate General for any general court-martial that did not qualify for Article 66 review.
[D] Current Article 69, UCMJ, allows the accused to petition The Judge Advocate General for relief after completion of an initial review under Article 64 or Article 65.
[E] Data includes applications for relief under both the pre-MJA16 Article 69(b) and the current Article 69.
[F] Data includes cases tried to completion where the Court-Martial Order or the Entry of Judgment was completed within Fiscal Year 2019.
[G] Data includes only active component Airmen and does not include the Air Force Reserves or the Air National Guard.

Report of the Judge Advocate General of the Coast Guard
(Pending Release)