Report to Congress

U.S. Army Report on Military Justice for Fiscal Year 2020

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Prepared by:

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

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DEPARTMENT OF THE ARMY
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REPORT OF THE JUDGE ADVOCATE GENERAL OF THE ARMY ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE OCTOBER 1, 2019 TO SEPTEMBER 30, 2020

In fiscal year 2020 (FY20), The Judge Advocate General's Corps continued to enhance the practice of military justice despite the challenges associated with COVID-19. Through creativity and a mission-first attitude, the Army Judge Advocate General's Corps carried on its duty of prosecuting, defending, and judging the Army's courts-martial, while implementing necessary precautions to ensure the health and safety of all participants in the military justice process. In the midst of the COVID-19 pandemic, the Army fully implemented the Military Justice Redesign (MJR) to 38 installation and unit Offices of the Staff Judge Advocate. This initiative has, and will continue to, increase litigation experience in trial-focused military justice practitioners while also ensuring commanders receive dedicated military justice advice. 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, executive orders, and reports to Congress as required by statute. 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 eleven 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. Unfortunately, the visits were heavily impacted by COVID-19 travel restrictions; there will be significantly more Article 6 inspections conducted in Fiscal Year 2021. 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 Army Court-Martial Information System (ACMIS) and Military Justice Online (MJO) applications. At the end of FY20, the Army had 278 pending courts-martial cases, 38 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 FY20, is provided in the Appendix.

2. Information on the appellate review process:

a. Compliance with processing time goals: In FY20, 486 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 486, 442 were received for the first time (not a remand from CAAF or returned from the convening authority after remand). Of these cases, 77 were processed under pre-MJA 2016 procedures involving a promulgating order and 365 were processed under MJA 16 procedures involving an entry of judgement. For pre-MJA 16 cases, the average processing times for those 77 courts-martial from sentencing to

convening authority action was 243 days. In 6 of those 77 cases, initial action was completed by the convening authority within the 120 days prescribed by United States v. Moreno. Fifty-eight of the records were received by ACCA within 30 days of convening authority action. In 249 of the 365 MJA 2016 cases, the certification of the record of trial was completed within 120 days. 285 of the MJA 2016 cases were received by ACCA within 30 days of the completion of the later of certification of the record of trial or entry of judgement. ACCA rendered an initial decision in 409 cases in FY20, with an average processing time of 201 days from receipt of the record of trial by the clerk of court to decision by ACCA. Of the 409 decisions, 405 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: One, *United States v. Sergeant First Class Derrick Roberts*, ARMY 20130609 (May 27, 2020).

(a) On 3 July 2013, a general court martial convicted the accused, in accordance with his pleas, of one specification of assault on a child and one specification of child endangerment. The court sentenced the appellant to confinement for three months, forfeiture of $2600 per month for six months, reduction to the grade of E-6, and a reprimand.

(b) The ACCA Clerk of Court received the record of trial in the case for appellate review on 22 December 2014. As this case did not meet the jurisdictional threshold for review by ACCA under Article 66, Uniform Code of Military Justice (UCMJ) the Clerk of Court, on 14 January 2015, referred the case to the Criminal Law Division, Office of The Judge Advocate General, for review under Article 69, UCMJ.

(c) On 10 February 2019, The Judge Advocate General referred this case to ACCA pursuant to his authority under Article 69(d)(1), UCMJ. After submission of briefs by the appellant and the government, the case became ripe for review by ACCA on 13 February 2020. On 27 May 2020, ACCA set aside the findings of guilty and the sentence, determining that the post-trial delay between the convening authority's action on the case and the docketing of the case with the court constituted a due process violation.

(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 FY20, 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. The Military Justice Redesign (MJR) represents a comprehensive, systemic change to Army military justice practice. On July 18, 2019, after an eighteen-month comprehensive pilot program, The Judge Advocate General directed the implementation of MJR. Military Justice Redesign reduces the total number of litigators in the Army, but allows them to focus exclusively on criminal litigation. This now smaller pool of prosecutors work in dedicated trial teams uncoupled from command advising responsibilities, a job now re-tasked to other judge advocates. Prosecutors initially serve a minimum of eighteen months in position. This time allows the Army to identify talent for continued litigation positions and supervision. In conjunction with MJR the Army uses professional development proficiency codes to identify and record military justice experience. These proficiency codes are used in staffing supervisory military justice positions and detailing expert litigators in complex cases involving national security, sexual assault, and capital litigation.

(2) The Trial Advocacy Center: In FY19, The Judge Advocate General approved the formation of the Trial Advocacy Center to build expertise across the litigation spectrum—from criminal to civil. The Trial Advocacy Center will become a premier training center for trial attorneys; the first of its kind in the Department of Defense. It will synchronize, develop, and conduct advocacy training in support of the Army's relentless pursuit of trial excellence. Since then, the Advocacy Center acquired a 10,000 square foot building on Fort Belvoir, adjacent to the U.S. Army Legal Services Agency, to convert into the Advocacy Center's training facility. The U.S. Army Corps of Engineers is the project manager for a contract to renovate the building into the Advocacy Center's training facility, with a period of performance from September 2020 to September 2021. The Advocacy Center's training facility is projected to open for training in October 2021. The facility will feature five mock courtrooms and a large classroom with capacity for 100 students that can be partitioned into two additional mock courtrooms. The mock courtrooms will feature state of the art presentation and audio-visual technology.

(3) Court Reporting. FY20 saw two major court reporting milestones: the regionalization of court reporters and the acquisition of new court reporting transcription software.

(a) In November 2019, the TJAG implemented a policy to regionalize the Army's court reporting enterprise. Court reporters are now assigned to one of five worldwide regions, reporting to a regionally assigned Staff Judge Advocate. In each of these regions is a designated senior staff judge advocate who sets priorities for court reporter usage within the region and has in his or her OSJA a senior court reporter. The policy is intended to maximize the efficient use of court reporter talent through the cross leveling of court reporter capacity as needed to ensure the timely production of written courts-martial transcripts.

(b) The Army Judge Advocate General's Corps modernized its court reporting technology. Until recently, Army court reporters used a time-consuming process called "redictation" to produce a written transcript following a court-martial. This process involves recording a

proceeding, followed by listening to and repeating the words spoken at the proceeding into speech recognition software to produce a written transcript that must then be edited to correct the errors in the speech recognition. Using the new technology, the words spoken at a proceeding are automatically recognized, by speaker, and a written transcript is produced nearly simultaneously. The court reporter then edits the transcript for accuracy immediately after the proceeding. While the Army's use of this technology is nascent, it is expected to further reduce court-martial post-trial processing times and make court reporters available to SJAs for other court reporter related tasks.

(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) In FY20, the Trial Counsel Assistance Program (TCAP) continued to execute along its three coordinated lines of efforts towards the end state of ensuring justice is served in special victim & complex cases. First, TCAP delivered continuing legal education and specialized training to Army military justice advisors, 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 the Complex Litigation Team.

(2) The cadre of TCAP trainers, including seven military attorneys, three civilian Special Victim Litigation Experts, and a part-time senior paralegal noncommissioned officer, developed and delivered 16 training events for military justice advisors, trial counsel, and government paralegals worldwide. Despite COVID-19 related travel challenges, TCAP was able to execute 11 specialty training courses, including: the Basic Trial Advocacy Course (BTAC); Prosecuting Domestic Violence Course; Special Victim Prosecutor (SVP) Course; Introduction to Forensic Evidence Course; Sexual Assault Trial Advocacy Course; Prosecuting Child Abuse Course; Protecting Children Online for Prosecutors Course; and the Special Victim's Team Course. The TCAP Team also traveled to 12 Army installations to conduct two to four day outreach training events, as well as two, week-long, regional training events overseas held in Korea and Germany.

(3) Many of this year's training events focused on trial advocacy skills and prosecuting sexual assault and domestic violence cases. This year also focused on training those in the newly created positions of military justice advisor, general crimes trial counsel, and special victim trial counsel as the Army implemented Military Justice Redesign worldwide. Additionally, in light of

COVID-19 travel restrictions, TCAP also successfully adapted several of our staple courses, including BTAC and the SV team's course, to be conducted exclusively via Microsoft Teams. Moreover, TCAP was able to develop a new course, the Technology and Crime Course, which will debut in FY21. During the COVID-19 pandemic, TCAP focused on updating our course materials for our specialty courses and outreaches.

(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 thorough its Complex Litigation Team. The Complex Litigation Team consists of two to 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 created five new SVP positions across the Army and managed the Army's current 29 SVPs, 23 SVNs, and 24 SVWLs located at the Army's 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) In FY20, approximately 458 judge advocates and 56 27D paralegals were serving in the Active, Reserve and National Guard Components in U.S. Army Trial Defense Service (TDS) worldwide. This included 148 judge advocates on active duty; 171 judge advocates assigned to one of three Army Reserve (USAR) TDS Legal Operations Detachments (LOD) and 139 judge advocates in the Army National Guard (ARNG). TDS provides high quality, professional defense services to Soldiers throughout the Army. Counsel assigned to TDS are stationed at 40 active duty installations worldwide and approximately 100 reserve component locations, though their oversight and supervision is independent from local commanders and Staff Judge Advocate offices. The Chief, TDS, exercises centralized supervision over all TDS-assigned counsel from the Office of the Chief, TDS at Fort Belvoir, Virginia.

(2) Detailed TDS counsel zealously represented Soldiers at Army special and general courts-martial. In addition, TDS counsel assist Soldiers facing other military justice related adverse administrative actions such as separation proceedings and memoranda of reprimand rebuttals.

The FY20 active duty workload was as follows:

General and Special Courts-Martial:	660
Administrative Boards:	842
Nonjudicial Punishment:	22,095
Military Justice Consultations:	30,688

(3) 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.

(4) Three separate units divide the USAR TDS personnel. The 22d LOD, headquartered in San Antonio, Texas, has an area of responsibility that includes all states west of the Mississippi River, along with the Republic of Korea and U.S. territories in the Pacific Command Area of Responsibility. The 154th LOD, headquartered in Alexandria, Virginia, covers the U.S. Southeast, Lower Mississippi River Valley, and Puerto Rico. The 16th LOD, headquartered in Fort Hamilton, New York, covers the U.S. Northeast, Midwest, and Germany.

(5) The ARNG TDS, headquartered in Arlington, Virginia, consists of approximately 139 judge advocates, one legal administrator, and 78 enlisted paralegals stationed in 50 states, the District of Columbia, and 3 territories. The Office of the Chief, ARNG TDS in Arlington, Virginia, provides the technical supervision, management, direction, and legal defense training for all ARNG TDS while in Title 32 status.

(6) The Defense Counsel Assistance Program (DCAP) is the training branch of TDS. In FY20, 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.

(7) In FY20, DCAP received over one thousand inquiries from DC via emails, phone calls, and in-person inquiries during training events. DCAP HQEs and counsel 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 continued “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).

(8) In addition to providing training and advice, DCAP updated the eighth Edition of the DC 101 Deskbook and distributed it to all newly assigned DC. It also reissued the DC 201 Deskbook and distributed it to all DCs. DCAP also prepared and disseminated 10 "DCAP Sends" information papers, which quickly explained important new developments in military justice to DC. DCAP encouraged the utilization of the new online advocacy trainer for use by all counsel in the JAG Corps, in coordination with the Office of the Judge Advocate General, Criminal Law Division and TCAP by its leadership for organizational level training and assisted in the review and comprehensive update of Army Regulation 27-10, Military Justice.

(9) The Trial Defense Service established a complex litigation section in FY19 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 currently comprised of one LTC Judge Advocate and one MAJ Judge Advocate. They continued to build on the complex litigation training program developed in FY18 and FY19, but most training had to be canceled due to the pandemic.

(10) In FY20 TDS completed the hiring process to place six of the initial 12 Defense Investigators in five TDS offices and made offers to five more Defense Investigators; three TDS Regions will have two Defense Investigators.

d. Special Victim Counsel: The Army Special Victims' Counsel Office (SVCO) provides technical and policy oversight of the SVC Program and to SVCs 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 Judge Advocate General’s Corps instituted state-specific training, coordinated through Offices of the Staff Judge Advocate and Regional Managers. Upon arrival to a permanent duty station, SVCs receive training on how the local civilian jurisdictions handle victim rights, prosecution of criminal offenses, sentencing, and protective orders. The purpose of this training is to equip SVCs with the knowledge to advise clients on jurisdictional preference decisions. This training was accomplished through coordination with local attorneys and Reserve Component 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 30 September 2020, there were 71 AC SVC who actively represented clients. During FY20, SVC assisted 2,059 clients, consisting of 1,654 Servicememebers, 352 adult dependents, 18 DoD Civilian employees, and 80 minors. SVC conducted 20,691 counselings, 396 outreach/training events, and attended 2,381 interviews, 139 administrative separation proceedings, and 205 courts-martial. SVC provided services wherever our Soldiers were deployed including Iraq, Afghanistan, Kuwait, Europe, and Asia.

(4) During FY20, the Judge Advocate General approved the growth of 18 SVCs, totaling 30 additional SVC positions that will be filled during FY21. This growth provides greater flexibility to respond to requests for SVC services, eases the caseload burden of current SVCs, and assists eligible victims of domestic violence offenses.

e. The Judge Advocate General's Legal Center and School Criminal Law Academic Department: The mission of the Criminal Law Department (ADC) of TJAGLCS in Charlottesville, Virginia, is to educate, develop, inspire, and sustain excellence in the practice of military criminal law. The need to hone military justice skills in today's technology driven, joint, expeditionary force is paramount and 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.

(1) The ADC provides 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 special victim counsel (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 and Domestic Violence and Child 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 to maximize interagency operability.

(2) The recently redesigned 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 Basic Trial Advocacy Course (offered by TCAP), Defense Counsel 101 (offered by DCAP), and the SVC/DV Child Course (offered by ADC). Students learn how to conduct sophisticated case analysis of four types of cases involving sexual assault, domestic violence, fraud, and drug use, conduct vior dire, prepare instructions, interview victims and witnesses, interact with an SVC, conduct a direct and cross-examination of victims and witnesses, 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 ensuring advocates conducted four separate trial during the course of two weeks. To add realism to this intensive training, students had to interview and cross-examine a 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 and witnesses to provide ITAC students with the challenge of interviewing and interacting with live victims. This course is also greatly enhanced through our partnership with the University of Virginia by integrating experts from their nursing school, multiple Ph.D. programs, and medical school as both guest instructors and testifying experts at no cost. This demanding course is offered twice annually, with the second iteration held prior to COVID 19 restrictions.

(3) The ADC made substantial changes to the SVC Certification Course this year. In compliance with NDAA changes expanding SVC services to DV victims, whether through Legal Assistance Services or SVC Attorneys, ADC partnered with the Administrative and Civil Law Department (ADA) to develop the best opportunity for training and certification for counsel. The ADC expanded the second week of the course, the Child Victim Course, to include training on DV dynamics, risks, and case litigation, as well as DV law. This expanded the course to a full two weeks. The course also evolved to include a motions exercise, requiring students to produce a written product to submit to a court on behalf of their client. The ADC professors graded all products and provided feedback. The ADA professors also taught in the course to offer administrative remedies and investigation information for DV cases. The SVC and DV/Child Victim Course is offered once a year, staggered from the offering from the Air Force Jag School. Due to COVID 19 travel restrictions, this year's course was taught through Distance Learning (DL), with approval of all required authorities. This allowed for a greater attendance population, to include SVC paralegals, who are often unable to attend due to space constraints. This created a robust discussion and diverse viewpoints in the breakout sessions.

(4) 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. As victim rights and policies continue to develop, the ADC assists in the implementation and education of those policies and makes

recommendations for policy changes and improvements to the SVC Program, OCLL, and OTJAG Criminal Law Division.

(5) ADC traditionally hosts the Kenneth J Hodson Lecture in Criminal Law each year; however, COVID 19 restrictions prevented the lecture this year, though our selected speaker, Ms. Sujatha Baliga, a 2019 MacArthur Fellow, a renowned expert in Restorative Justice, committed to coming to speak next year.

f. Trial and Appellate Judges: There are 26 active duty and 17 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 headquartered in Alexandria, Virginia.

(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 increasing complexity of the cases due to the implementation of the Military Justice Act of 2016 will continue so long as practitioners are required to be conversant in multiple statutory frameworks, often in the same trial. Additionally, the volume of cases, which began increasing in 2019, showed signs of a continued upward trend before the temporary halt caused by COVID-19. In FY20, military judges of the U.S. Army Trial Judiciary presided over 729 original courts-martial, a 7 percent decrease from FY19, again likely attributable to COVID-19 related trial delays which are still being addressed. Of the total cases tried in FY20, 185 were fully contested, 59 involved mixed pleas, 337 were guilty pleas, and the remaining 148 were terminated prior to findings. Of the 581 cases in which findings were entered in FY20, 220 of them or 38 percent included sexual misconduct related offenses (Articles 120, 120b, and 120c), a 6 percent decrease from FY19.

(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. Of note, not all Army installations or even judges have clerks, so quality control of the redacting and posting of documents in a timely manner will likely be challenging

and require extra-judicial support. Additionally, the Trial Judiciary does not currently have a clerk billet to oversee the implementation of these new procedures by the limited number of clerks in the field, but is working to address that need.

(4) The strength of the Trial Judiciary is its judges, who rely on our robust training program. 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 FY20, 37 judge advocates attended the 63d Military Judges' Course held from 1 to 19 June 2020. Six active duty, three reserve component, and four National Guard Army judge advocates graduated and were sworn in as new military trial judges.

(5) All military judges attended the Joint Military Judges' Annual Training at Maxwell Air Force Base in Montgomery, Alabama. The Trial Judiciary was also fortunate to be able to send several military judges to courses at the National Judicial College. Unfortunately, the COVID-19 pandemic resulted in the cancellation of our annual Army Trial Judge's Sexual Assault Training and some of the NJC courses judges had planned to attend. The plenary portion of the new judges' course was offered online while students quarantined for the last week of practical hands-on training. The judiciary continues to find new ways to train and network, using such tools as Google, Zoom, Microsoft Teams, and a private forum to share questions, concerns, and ideas.

(6) With the COVID-19 outbreak, trial judges as well as parties and participants were more willing to conduct hearings on interlocutory matters via video-teleconferencing, a trend expected to continue when the pandemic abates. When there was no substitute for a live trial to preserve the accused's confrontation rights, procedures were added to ensure the health and safety of all participants, to include masks for all but the person speaking, social distancing, frequent sanitization of common touchpoints, gloves and document protectors when handling exhibits, health screening prior to court and upon court entry, and other healthcare professional recommended procedures.

(7) The Trial Judiciary also continues to provide military judges to serve as judges with the Military Commissions Trial Judiciary. In FY20, there were four Army military judges serving on the Military Commissions Trial Judiciary, one of whom acted as the Chief Judge. Two of the judges are currently presiding over referred cases.

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 FY20, 513 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. Most general officers attend 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. Eight general officers attended GOLO training at TJAGLCS in FY20. 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 Fort 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. However, the potential for honest mistakes due to the profusion of changes in the law remains high. Resources alone cannot achieve the competency we must achieve. We must have predictability in the law. When change may be necessary, it must be measured—and over time stability in the law is required to achieve that competency.

a. On September 30, 2020, the Army's end-strength was 485,383 Army Soldiers on Active Duty compared to 477,709 at the end of FY19. The attorney strength of the JAGC Active Component (AC) at the end of FY20 was 1,832 (including general officers). This does not include 69 officers attending law school while participating in the Army's Funded Legal Education Program. The FY20 end-strength of 1,832 compares to an end-strength of 1,851 in FY19.

b. The diverse composition of the FY20 AC attorney population included 137 African Americans (7%), 115 Asian Americans (6%), 61 Hispanic Americans (3%), and 527 female Soldiers (29%).

c. The grade distribution of the JAGC AC attorneys for FY20 was: six general officers; 129 colonels; 265 lieutenant colonels; 529 majors; and 922 captains and first lieutenants. An additional 107 warrant officers, 681 civilian attorneys, 771 civilian paraprofessionals and 1,670 enlisted paralegals from the AC supported legal operations worldwide.

d. The attorney strength of the JAGC USAR at the end of FY20 was 1,780 (which includes officers serving in Troop Program Units, the Drilling Individual Mobilization Augmentee (DIMA) Program, the Individual Ready Reserve, and the Active Guard Reserve Program). The attorney strength of the ARNG at the end of FY20 was 732.

e. At the end of FY20, 437 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.

As I bring to a close thirty-three years of legal practice in service to our Army, and four years as The Judge Advocate General, I can say with confidence that the present JAG Corps is the most expert and versatile version of itself since 1775. No earlier iteration of the Army JAG Corps has sustained itself in a state of war longer than that which serves our Nation and our Army today. Indeed, with few exceptions, our members joined voluntarily during a time of conflict. I am profoundly grateful to them for their service.

With this perspective, I must note that 'resources,' are not simply or solely what one can count. That is, 'resources,' are more than merely the numbers of trial attorneys, SVCs, and paralegals – an entry or two on an accounting ledger. The resources that the JAG Corps needs to succeed include the willingness of commanders to take prudent risks in the exercise of command and in support of investigations, the quality of our leaders' commitment to support our programs, our collective attitude toward the defense bar and its essential work, and perhaps most profoundly, the state of the law that we administer – together with our commanders and on behalf of our society.

Of these, the support of Army commanders and other leaders has been outstanding, and the work of our attorneys and paralegals – including most especially those who serve in TDS – has been exceptional.

But as a 'resource,' the constant changes in the law have become counterproductive.

I perceive two disturbing trends. The first concerns the constant legislative cycle that demands 'some change' every year, whether warranted by empirically sound, tested evidence or not, and the related fact that the sheer volume of change puts the proper functioning of the justice system at risk.

I note in this regard that we are now practicing under four separate, highly complex sexual assault statutes. To my knowledge, no other system of justice in the United States has seen that level of change in such a short period of time. And while I believe we have the most progressive statute in <u>the world</u>, practicing law under four statutes in twelve years requires 'rocket-science' level expertise. While judge advocates have that expertise, such unpredictability in the law is profoundly unhealthy because it creates uncertainty, which can cause confusion or lead to unintended error.

And we must not forget that the law serves as notice to those who might violate the law. Shifting sands of notice is not only bad policy, it fails to provide legally adequate notice.

I offer as a single example (among many) one of mechanics in the Military Justice Act of 2016. After nearly seventy years of trials under the Uniform Code of Military Justice with a minimum number of panel members, a change in the law inserted a minimum and *a maximum allowable* number of panel members. In thirty-three years of practice, I have never received a complaint that would have supported such a change. Indeed, that change required significant amendments to the rules – and substantial training – to comply with a revision to a standard that is potentially jurisdictionally significant and yet, by definition, has never been construed

by any court. As a consequence, it injected uncertainty into trials. Fundamentally, it is not at all clear that whatever its benefits were, which have never been well-defined, they were worth those costs.

The law is at its most effective – and it bests serves the ends of justice – when it is stable. Changing for the sake of change, or the appearance of progress, serves little purpose. It takes time for courts to work out the ambiguities that are inevitable in any statute, and at the end, it takes experience working within a statute to determine its effectiveness. To be sure, as circumstances change, so must we. We have the most progressive statute and system of justice because of Congressional vision and DoD professionalism. This salutary willingness and ability to change is our hallmark. But while change is *sometimes* necessary, all change comes at a price. We must be sure that the benefits of each such change are worth the costs.

I offer this counsel even as I am aware that some in Congress would propose yet further changes to the law – in particular, the law that would take authority from commanders over military justice and vest it in me and my lawyers. I and my fellow TJAGs are understandably honored by the confidence this scheme demonstrates in the ability and professionalism of judge advocates. As this report makes clear, that confidence is fully deserved.

Nonetheless, I strongly advise against such a change. It will not serve the interests of justice, of victims, of our communities, of our Army or of our Nation.

Study after study over the years – including the independent Response Systems Panel – all concluded that such a change would make no appreciable improvement to the delivery of military justice. At best, this would be yet another change for change's sake. Yet I must advise that the peril such a change would bring is far more pronounced. As an initial matter, a fundamental change to sever the authority to discipline from the authority of command is not a matter of simply changing one or two statutory provisions. It will require dozens, if not hundreds, of technical adjustments, conforming amendments and appellate litigation, the sum of which would guarantee that years of courts-martial would be put in jeopardy, for the reasons I discussed above.

But the more profound reason to eschew such a change is because it ignores why this Nation has an Army. Our Army exists to save our Nation from existential threats. We feel comfortable adjusting the laws when, thankfully, the wolf is not at our door. We are not fighting a near-peer enemy and presently at risk of losing thousands of our sons and daughters on a scale that would make each of us shudder. But when and if that day comes, commanders must have the authority they need in the face of such existential threats. It is the essence of command authority – total control over everything that happens in a group of people who must put their lives at risk – and <u>their</u> expectation that the commander controls their destiny <u>with legal authority when it matters</u>. Tinkering with the very nature of command – that which makes our Army the best in the world – during a time when we do not face an existential threat and assuming it will work fine in both war and peace is to invite peril.

The divorce of command authority over the misconduct of Soldiers will reduce our Army to share the same qualities of other armies: hesitant commanders, less willing to take risks on the battlefield, less martial, with fewer prosecutions, and commanders who grow up thinking crime in their formation is someone else's problem – something transactional and not part of their obligation to lead through.

In short, it will weaken our Army.

CONCLUSION

Through principled counsel, mastery of the law, servant leadership, and stewardship, the Army JAG Corps continues to reshape the way in which we practice military justice. Strategic initiatives such as Military Justice Redesign, Court Reporter Regionalization, and the creation of the Trial Advocacy Center – along with our efforts to strengthen the deliberate talent management of our attorneys – evince our commitment to the commanders, Soldiers, and Army we serve. Our efforts to build systems to maximize efficiencies, ensure justice, assist in the maintenance of good order and discipline, and improve the competence of all of our counsel are vital to achievement of the purpose of military law: the strengthening of our national security.

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

APPENDIX

Report Period: FISCAL YEAR 2020

PART 1 - PENDING COURTS-MARTIAL (As of 30 September 2020)

TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		21	
BCD SPECIAL		5	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)		0	
SUMMARY		0	
TOTAL:	252	26	278

PART 2 - BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED		CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OVER LAST REPORT
	Arraigned	Completion			
GENERAL	482	385	318	67	-16.5%
BCD SPECIAL [A]	186	148	135	13	-8.1%
NON-BCD SPECIAL	0	0	0	0	0.0%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)	63	49	46	3	+716.7%
SUMMARY	91		90	1	-32.1%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT					

PART 3 – ACCUSED DEMOGRAPHIC DATA (Persons) [17 June 2020-30 September 2020] [B]

TYPE COURT	Total	GENDER		RACE AND ETHNICITY					
		Male	Female	American Indian / Alaska Native	Asian	Black / African American	Hispanic or Latino	Native Hawaiian / Pacific Islander	White
GENERAL	138	132	6	1	5	49	21	1	61
BCD SPECIAL	33	32	1	0	1	15	3	0	14
NON-BCD SPECIAL	0	0	0	0	0	0	0	0	0
MILITARY JUDGE ALONE SPECIAL	10	9	1	0	0	3	1	0	6
SUMMARY	19	18	1	0	0	6	3	0	10

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PART 4 – VICTIM DEMOGRAPHIC DATA (Persons) [17 June 2020-30 September 2020] [C]

TYPE COURT	Total	GENDER		RACE AND ETHNICITY						
		Male	Female	American Indian / Alaska Native	Asian	Black / African American	Hispanic or Latino	Native Hawaiian / Pacific Islander	White	Unknown or Refused to Provide
GENERAL	160	34	126	2	5	26	23	2	84	21
BCD SPECIAL	30	15	15	2	1	3	5	0	16	2
NON-BCD SPECIAL	0	0	0	0	0	0	0	0	0	0
MILITARY JUDGE ALONE SPECIAL	9	6	3	0	1	0	0	0	7	1
SUMMARY	18	13	5	1	0	4	0	0	4	9

PART 5 – DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT [D]

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	134(+24)
NUMBER OF BAD-CONDUCT DISCHARGES	173
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	108

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	0
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	486
FOR EXAMINATION UNDER ARTICLE 65(d)	155

PART 7 – WORKLOAD OF THE U.S. ARMY COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		39[E]
TOTAL CASES THAT CAME AT ISSUE		469[E]
TOTAL CASES DECIDED		458[F]
TOTAL PENDING AT CLOSE OF PERIOD		50[E]
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD		+0.2%

PART 8 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF)

TOTAL PETITIONS TO CAAF	252

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PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD		0	
RECEIVED		25	
DISPOSED OF		25	
GRANTED	1		
DENIED	24		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	

PART 10 – ORGANIZATION OF COURTS [G]

TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL	284	
SPECIAL COURTS-MARTIAL	132	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)	49	
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL	100	
SPECIAL COURTS-MARTIAL	16	

PART 11 – STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	485,383[H]	

PART 12 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	20,767	
RATE PER 1,000	42.78	

EXPLANATORY NOTES

[A] Cases convened by GCM convening authority.
[B] The accused demographic data presented in this report relates only to courts-martial cases conducted on or after 17 June 2020, in accordance with section 540I of the National Defense Authorization Act for Fiscal Year 2020. For the purposes of this report, conducted means completed. Data is reported using the Office of Management and Budget Statistical Policy Directive No. 15 (OMB 15), Race and Ethnic Standards for Federal Statistics and Administrative Reporting "Combined Format."
[C] The victim demographic data presented in this report relates only to courts-martial cases conducted on or after 17 June 2020, in accordance with section 540I of the National Defense Authorization Act for Fiscal Year 2020. For the purposes of this report, conducted means completed. Data is reported using the Office of Management and Budget Statistical Policy Directive No. 15 (OMB 15), Race and Ethnic Standards for Federal Statistics and Administrative Reporting "Combined Format." Figures may not equate to number of courts-martial, as some courts-martial may involve no or multiple victims. The "total" figure relates to the number of victims for cases that were referred to a court-martial since 17 June 2020.
[D] Based on Entry of Judgment and records of trial received in FY for appellate review.

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[E] Includes only cases briefed and at issue.
[F] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.
[G] Only includes cases that were tried to completion.
[H] This number includes only Active Component Soldiers and does not include USAR, National Guard or AGR personnel.

DEPARTMENT OF THE NAVY
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Report to Congress

U.S. Marine Corps Report on Military Justice for Fiscal Year 2020

31 December 2020

Prepared by:

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REPORT OF THE
STAFF JUDGE ADVOCATE TO THE COMMANDANT OF THE MARINE CORPS
ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE
1 OCTOBER 2019 TO 30 SEPTEMBER 2020

1. Introduction: The Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) submits this report in accordance with Article 146a, Uniform Code of Military Justice (UCMJ). As a core component of legal support, the provision of military justice occupies the majority of personnel and assets within the Marine Corps legal community. The SJA to CMC closely coordinates these efforts with the Navy Judge Advocate General (JAG)[1] and collaborates with the other services' JAG Corps. Among many initiatives implemented by the Marine Corps legal community conducted during Fiscal Year 2020 (FY20), the SJA to CMC prioritized the implementation of Article 140a, UCMJ.[2] As a result, the Navy and Marine Corps transitioned to an updated online military justice case management system to provide an improved data collection and reporting capability. A related initiative was the testing and fielding of an artificial intelligence program to improve court reporting, enabling Marine Corps court reporters to produce verbatim records of trial with greatly improved speed and accuracy. Throughout the first half of FY20, the Marine Corps legal community's structure and capabilities were the subject of two separate reviews—one directed by the Secretary of Navy[3] and another commissioned by the Commandant of the Marine Corps.[4] Both studies offered useful recommendations to guide improvements for the provision of military justice. Finally, though the military justice system suffered delays, inconveniences, travel restrictions, and other challenges related to the COVID-19 pandemic, the system continued to function and the Marines continued to receive critical training.

2. Data on Numbers and Status of Pending Cases: Through most of FY20, the Marine Corps collected court-martial data in the legacy online Case Management System (CMS). CMS was "sunsetted" in early September 2020, replaced by the newly implemented online case management system, "Wolverine," which provides enhanced security and reliability while addressing the many new data fields required by Art. 140a, UCMJ.[5] At the end of FY20, the Marine Corps had 215 pending courts-martial, 130 of which were referred to trial by courts-martial, with the remainder pending disposition decisions. Data on the number of cases pending, as well as cases completed in FY20, is provided in the Appendix.

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[1] The Marine Corps provides information within this report on cases convened by Marine Corps commanders. However, certain procedures within the military justice system, such as appellate practice, are undertaken under the cognizance of the Judge Advocate General of the Navy.
[2] *See* MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS, UNIFORM STANDARDS AND CRITERIA REQUIRED BY ARTICLE 140A, UNIFORM CODE OF MILITARY JUSTICE (17 Dec. 18) [hereinafter DOD MEMORANDUM ON UNIFORM STANDARDS] (requiring the implementation of 155 uniform data fields by 23 December 2020).
[3] COMPREHENSIVE REVIEW OF THE DEPARTMENT OF THE NAVY'S UNIFORMED LEGAL COMMUNITIES, REPORT (Dec. 2019) [hereinafter DON COMPREHENSIVE REVIEW].
[4] OPTIMIZING COMMAND LEGAL ADVICE AND LEGAL SERVICES SUPPORT, REPORT, CENTER FOR NAVAL ANALYSES (May 2020) [hereinafter CNA STUDY].
[5] *See* DOD MEMORANDUM ON UNIFORM STANDARDS, *supra* note 2.

3. Information on the Appellate Review Process.

a. Compliance with Processing Time Goals: Appellate cases for the Navy and the Marine Corps are reviewed by the Navy-Marine Corps Court of Criminal Appeals (NMCCA). As in FY 19, cases considered by the NMCCA which had been referred prior to 1 January 2019 were required to follow post-trial processing rules established prior to the implementation of the Military Justice Act of 2016 (MJA 16) commonly referred to as the Moreno 1, Moreno 2, and Moreno 3 guidelines. Cases referred after 1 January 2019 followed the MJA 16 post-trial processes, referred to as the Post Trial 1, Post Trial 2, and Post Trial 3 guidelines. The information provided below pertains only to Marine Corps cases and takes into account both pre-MJA 16 and MJA 16 post-trial processes and guidelines:

(1) No cases were dismissed on Speedy Trial grounds in FY20.

(2) Moreno 1 and Post Trial 1: Two cases exceeded the pre-MJA 16 Moreno 1 guideline of 120 days from sentencing to Convening Authority's (CA) action.[6] Two cases exceeded the MJA 16 guideline of 120 days from sentencing to forwarding for appellate review.[7] In all cases, the causes of the delays were identified and addressed.

(3) Moreno 2 and Post Trial 2: One case exceeded the pre-MJA 16 Moreno 2 guideline of 30 days from the CA's action to docketing at the NMCCA by a single day.[8] No case exceeded the MJA 16 Post Trial 2 guideline of 30 days from entry of judgment to docketing at the NMCCA.

(4) Moreno 3 and Post Trial 3: One case exceeded the pre-MJA Moreno 3 guideline of 18 months from docketing at the NMCAA to decision.[9] No case exceed the MJA 16 Post Trial 3 guideline of 18 months from docketing at the NMCCA to decision.

b. No cases were reversed because of command influence or denial of the right to speedy review. No cases were otherwise remitted because of loss of records of trial or other administrative deficiencies.

c. No cases held a provision of the UCMJ unconstitutional.

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[6] United States v. Meece (336 days); United States v. Chambers (187 days).
[7] United States v. Tesch (153 days); United States v. Casuso (224 days).
[8] United States v. Dasilva, No. 201900337, slip op. (N-M Ct. Crim. App. August 28, 2020) (per curium) (holding that the one day delay not raised by the appellant was not facially unreasonable because there was no evidence of prejudice).
[9] United States v. Johnson, No. 201800249, slip op. (N-M Ct. Crim. App. April 15, 2020) (en banc) (exceeding Moreno 3 guideline by one day) (Military judge failed to give a proper self-defense instruction, tailored to include the Defense-requested Benchbook escalation of force instruction. Findings and sentence set aside, rehearing on attempted voluntary manslaughter and LIO authorized).

4. 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, appellate counsel, trial and appellate military judges, legal services specialists, legal administration officers, civilian paralegals, staff judge advocates, and Litigation Attorney Advisors (LAAs, formerly "Highly Qualified Experts"). The military justice 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 billets and level of expertise. The measures specific to trial counsel, defense counsel, victims' legal counsel, and military judges are detailed below.

a. Trial Counsel.

(1) Marine Corps judge advocates will often serve as a trial counsel in their first tour of duty. Every trial counsel is mentored by two supervisory attorneys: a Senior Trial Counsel (STC) at the rank of major (O-4) and a Regional Trial Counsel (RTC) at the rank of lieutenant colonel (O-5). Before representing the government in any court-martial, a trial counsel must first attend the Trial Counsel Orientation Course at Naval Justice School (NJS), Newport, Rhode Island. Successful completion of this course qualifies a trial counsel to represent the government at special courts-martial under the close supervision of his or her supervisory attorneys. After demonstrating competency at litigating special courts-martial, a trial counsel may obtain the qualification to represent the government at general courts-martial.

(2) Once a trial counsel acquires experience prosecuting the equivalent of felony-level crimes at general court-martial and the trial counsel's supervisory attorneys are confident in his or her litigation capabilities, the individual may seek qualification to represent the government in special victim cases.[10] Each of the Marine Corps' four Legal Services Support Sections (LSSS) maintains a Complex Trial Team under the direction of the RTC.[11] Each Complex Trial Team is comprised of highly qualified judge advocates whose mission is to deliver trial services in all special victim cases.[12] Accordingly, under the direction of the RTC, for each special victim case, attorneys within the Complex Trial Team work in close and continuous coordination with the victim, victim support providers, the command, and the Naval Criminal Investigative Service to conduct a comprehensive investigation and, when appropriate, prosecute the case.

(3) To supplement a trial counsel's professional development, each LSSS employs a civilian Litigation Attorney Advisor (GS-15) with significant experience in criminal litigation. These civilian advisors help Marine Corps judge advocates prepare their individual cases. They

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[10] U.S. MARINE CORPS, ORDER 5800.16 – Volume 16, LEGAL SUPPORT AND ADMINISTRATION MANUAL, MILITARY JUSTICE ORGANIZATION, PERSONNEL, AND QUALIFICATIONS para. 050101 (19 June 20) [hereinafter LSAM – V16] (In the Marine Corps, special victim cases are those which involve allegations of Articles 117a, 118, 119, 119a, 120, 120a (for stalking offenses committed prior to 1 January 2019), 120b, 125 (with a child or forcible), 128 or 128b (domestic violence involving aggravated assault or child abuse), 132 (when the retaliation was for reporting a sex-related offense), 134 (child pornography or assault with intent to commit the previously listed articles), or 80 (attempts to commit the previously listed articles) of the UCMJ).
[11] *Id*. at para. 020403.
[12] *Id*. at para. 050101.

also play a significant role in training all trial counsel within their respective regions, focusing on complex case litigation. Additionally, the Marine Corps maintains a Trial Counsel Assistance Program (TCAP) whose mission is to coordinate continuous training efforts for all Marine Corps trial counsel. Each year, TCAP hosts a week-long training event which consist of multiple courses focused on reinforcing the skills necessary for the competent prosecution of complex cases and special victim cases. Instructors for these courses include a mix of experienced civilian practitioners, senior judge advocates, and expert witnesses.

(4) Each year, the Marine Corps 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). Upon receipt of their LL.M., these judge advocates receive an Additional Military Occupational Specialty identifying them as specially qualified to serve in supervisory military justice billets. Following graduation, these officers serve in such key litigation billets as STC and RTC, or similar billets within the defense services organization.

(5) Although 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 when they arise. The Marine Corps consolidates all national security cases to the LSSS in the National Capital Region. This facilitates coordination with other federal agencies and enables access to courtrooms capable of handling classified material. The Marine Corps also sends its counsel to the Navy Office of the Judge Advocate General Code 30, National Security Litigation Division, to receive training on litigating national security cases.

b. Defense Counsel.

(1) Marine Corps defense counsel provide criminal defense services to Marines accused of offenses at courts-martial and adverse administrative proceedings. Similar to trial counsel's supervisory chain, every defense counsel is supervised by a Senior Defense Counsel (SDC) at the rank of major (O-4), and a Regional Defense Counsel (RDC) at the rank of lieutenant colonel (O-5).[13] Additionally, all defense counsel fall under the supervision of the Chief Defense Counsel of the Marine Corps (CDC) who is a colonel (O-6).[14] Two civilian GS-15 Litigation Attorney Advisors advise and support the four RDCs: one at Camp Lejeune, North Carolina supporting the eastern region, and the other in San Diego, California, supporting the western region.[15]

(2) The Defense Counsel Assistance Program (DCAP) complements the supervisory chain of command and advisor support by coordinating training for all Marine Corps defense counsel and maintaining a comprehensive website to facilitate defense counsel ability to share lessons learned at courts-martial.[16] The DCAP is led by a major (O-4) with a LL.M. in criminal law, stationed in the National Capital Region, and serving under the direct supervision of the

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[13] U.S. MARINE CORPS, ORDER 5800.16 – Volume 3, LEGAL SUPPORT AND ADMINISTRATION MANUAL, MARINE CORPS DEFENSE SERVICES ORGANIZATION para. 010608, 010609 (20 Feb. 18) [hereinafter LSAM – V3].
[14] *Id*. at para. 010601.
[15] CDC POLICY MEMORANDUM 4.2A, ATTORNEY ADVISOR MISSION AND CORRESPONDING POLICIES (16 Jan. 19).
[16] LSAM – V3 *supra*, note 13 at para. 010606, 010607.

CDC.[17] Each defense counsel is required to attend two mandatory training events: a two week-long military justice orientation course upon initial assignment as a defense counsel and an annual week-long training course. Both are hosted by the DCAP. In addition, each SDC and RDC conduct monthly and quarterly training. Marine Corps defense counsel also attend civilian-led training events hosted by the National Criminal Defense College, the Bronx Defenders Academy, the National Criminal Defense College, the Trial Lawyers College, and the National Association of Criminal Defense Lawyers.

(3) The CDC maintains internal safeguards to ensure the competency of counsel assigned to specific cases. In conjunction with the continuous training and supervision, these safeguards ensure that defense counsel effectively, competently, and ethically represent their clients. In accordance with Sexual Assault Accountability and Investigation Task Force (SAAITF) Recommendation 2.4[18] and Section 540J of the FY20 NDAA,[19] Judge Advocate Division continues to prioritize the hiring of defense investigators. Once hired, these defense investigators will play a significant role in safeguarding the fairness of the military justice process and protecting the discovery rights of an accused.

c. Victims' Legal Counsel.

(1) Marine Corps victims' legal counsel (VLC) provide legal representation to victims during military legal proceedings. Each victims' legal counsel is supervised by a Regional victims' legal counsel (RVLC) at the rank of major (O-4) and the Chief Victims' Legal Counsel (CVLC) who is a lieutenant colonel (O-5) or colonel (O-6).[20]

(2) To serve as a victims' legal counsel, Marine Corps judge advocates are subject to a rigorous nomination, screening, interview, and vetting process.[21] A VLC nominee's Official Military Personnel File is first reviewed to evaluate whether the individual possesses the appropriate experience and temperament. Nominees must have at least six months or more of military justice experience as a trial counsel or defense counsel, and must have tried at least one contested court-martial.[22] The CVLC then interviews each nominee. Next, VLC nominees must complete a Special Victims' Counsel certification training at either TJAGLCS or the Air Force Judge Advocate General's School (AFJAGS). Only after completion of one of these courses will a nominee be certified by the SJA to CMC to practice as a VLC.

(3) Marine Corps victims' legal counsel participate in several training events each year. The entire Victims' Legal Counsel Organization hosts an annual week-long training symposium, and individual counsel participate in local quarterly training. These training efforts ensure that

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[17] *Id*.
[18] SEXUAL ASSAULT ACCOUNTABILITY AND INVESTIGATION TASK FORCE, REPORT 38 (30 Apr 19) [hereinafter SAAITF REPORT].
[19] National Defense Authorization Act for Fiscal Year 2020, Pub. L. No.116-92, § 540J, 133 Stat. 1371 (2020).
[20] U.S. MARINE CORPS, ORDER 5800.16 – Volume 4, LEGAL SUPPORT AND ADMINISTRATION MANUAL, MARINE CORPS VICTIMS' LEGAL COUNSEL ORGANIZATION para 010202.
[21] *Id*. at para 010304.
[22] *Id*.

judge advocates assigned as VLC remain current on law and practice and remain capable of performing their duties with a high degree of proficiency.

d. Trial and Appellate Military Judges.

(1) All Marine Corps military judges are competitively selected by a process established by the Judge Advocate General of the Navy. The selection process includes careful evaluation of the education, experience, accomplishments, temperament, and leadership capabilities of the candidates. Trial and appellate military judges must possess a suitable background in military justice, sound judgement, an even temperament, unquestioned maturity of character, and exemplary writing skills. Each candidate seeking future assignment to the judiciary must submit an application to the judicial screening board. A candidate's application must include appraisals from judges before whom they have tried cases and a detailed summary of their qualifications and experience.

(2) Judge advocates selected by the judicial screening board become eligible for assignment to the judiciary, but selection does not guarantee assignment to a judicial billet. Finally, prior to assignment to a judiciary billet, military judges pass the three-week military judge course conducted at TJAGLCS. Twelve Marine Corps judge advocates currently serve as trial military judges and three serve as appellate military judges at the NMCCA.

e. Additional Policy and Regulatory efforts.

(1) Publication of the Legal Support Administration Manual, Volume 16: On 19 June 2020, the Marine Corps published Volume 16 of Marine Corps Order 5800.16, Legal Support Administration Manual (LSAM Volume 16).[23] Applicable to all military justice practitioners (excluding defense counsel and victims' legal counsel), this volume consolidates all Marine Corps policies pertaining to the administration of military justice. It is broadly organized into the following sections: Organization, Personnel, and Qualifications of Trial Services Personnel; Detailing; Victim Rights; Special Victim Cases; Pretrial Matters; Pretrial Confinement; Military Magistrates; Investigative Subpoenas, Warrants, Orders, and Article 30(a) Proceedings; Article 32 Preliminary Hearings; Discovery; Military Justice Hearings and Court Reporting Procedures; Military Justice Data Collection; Criminal Justice Information Reporting; Sex Offender Notification; and Criminal Indexing.

(2) Case Management System Development: Since 2010, the Navy and the Marine Corps have relied upon an online electronic case management system (CMS) to track and maintain all data and documents pertaining to military justice cases. CMS was not designed to address the many changes to the UCMJ made over the past 10 years, and over time CMS proved to be inefficient, unreliable, and unsecure. In FY19, the Marine Corps committed to provide a replacement for CMS using existing software and at minimal cost in order to "bridge" the requirement for a system until the Department of the Navy (DON) could acquire and develop a more robust case management platform. This effort came to fruition in September 2020 when the CMS data was migrated into the new system known as "Wolverine." Wolverine will meet minimal case management requirements for the Marine Corps, Navy, and Coast Guard in early

[23] LSAM – V16, *supra* note 10.

FY21.[24] Wolverine will continue to improve throughout FY21 while the Marine Corps supports the Navy-led efforts to acquire a modern, secure, and more capable case management platform.

(3) Implementation of New Court Transcription Technology: The Military Justice Act of 2016 called upon the Marine Corps' court reporters to produce records of trial faster than previously required. In an effort to increase the speed of post-trial processes, the Marine Corps transitioned from a voice-writing court reporting system to an artificial intelligence (AI) speech-to-text (STT) recognition system. After testing online and offline AI STT programs in FY19 and FY20, the Marine Corps partnered with the Army to purchase licenses for SpeechMatics, an offline-capable AI STT program. The new software, coupled with improved audio capture hardware in the courtrooms, will be fully deployed in FY21, capable of meeting the Marine Corps' court-reporting requirements and improving post-trial processing timelines in compliance with Article 140a, UCMJ.

(4) Military Justice Training for Commanders: The Marine Corps developed a plan in FY20 to conduct comprehensive training for commanders focusing on their roles at all stages of sexual assault cases.[25] This training supplements existing curriculum presented to all Marine Corps O-5 and O-6 commanders during the Commandant of the Marine Corps' two-week long Combined Commandership Course ("Cornerstone"). Cornerstone already offers significant military justice training, featuring a presentation by the SJA to CMC and breakout sessions with SJAs and the commanders. The additional training will ensure that commanders, including those O-6s who are sexual assault initial disposition authorities, understand the nuances of the law and policy affecting their handling of sexual assault cases. Additionally, in FY20 Marine Corps worked with the Navy to update the military justice curriculum for the Senior Leader Legal Course taught at the NJS, which provides optional training for Marine Corps commanders.

(5) Licensing Fee Reimbursement: To ease the financial burden of maintaining a license to practice law, in FY20 the SJA to CMC implemented a licensing fee reimbursement program for Marine Corps judge advocates and civilian attorneys operating under the cognizance of the SJA to CMC. This initiative was one of several recommendations of the DON Comprehensive Review[26] and discussed in the CNA study.[27] In FY20, the Marine Corps paid $72,147.27 in licensing fee reimbursement to 288 attorneys.

(6) U.S. Department of Justice Fellowships: In FY20, the Marine Corps created two criminal-law focused fellowships for judge advocates. The first fellowship, intended for a captain (O-3), is a one-year term at the U.S. Attorney's Office in Washington, D.C. The selected fellow will prosecute misdemeanor and felony level cases on behalf of the U.S. Attorney, enabling the Marine to acquire valuable litigation experience in federal court. The second fellowship, intended for a major (O-4), is a one-year clerkship with a Federal District Court Judge in Arizona. This fellow will focus primarily on criminal cases. These fellowships will begin in FY21.

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[24] *See* DOD MEMORANDUM ON UNIFORM STANDARDS, *supra* note 2.
[25] *See* National Defense Authorization Act for Fiscal Year 2020, Pub. L. No.116-92, §§ 540A, 540B, 133 Stat. 1371 (2020); *see also* SAAITF REPORT, *supra* note 18.
[26] DON COMPREHENSIVE REVIEW, *supra* note 3 at 173.
[27] CNA STUDY, *supra* note 4 at 29.

5. Independent View of the Staff Judge Advocate to the Commandant of the Marine Corps on the Sufficiency of Resources to Capably Perform Military Justice Functions.

a. The Marine Corps legal community effectively accomplished its broad and complex military justice mission in FY20. This past year saw exceptional challenges, but also exceptional successes. In the very brief two years I have served as the SJA to CMC, I have witnessed the Marine Corps legal community implement the Military Justice Act of 2016, support the Commandant's transformational vision and guidance, participate in two robust external reviews of our practice of law, and continue to perform despite the strictures required to combat the COVID-19 pandemic—without failing in any category. In other words, despite enduring nearly constant change over the past two years, our Marines found a way.

b. On 21 August 2019, the Secretary of the Navy directed a review of the Navy JAG Corps and the Marine Corps legal community.[28] Additionally, the Commandant of the Marine Corps approved the Center for Naval Analyses (CNA) to conduct an independent evaluation of the Marine Corps legal community to assess whether the community is organized, structured, manned, and trained to best support operational and garrison forces.[29] Both of these studies were published in FY20 whereby they made numerous recommendations concerning the Marine Corps legal community's provision of military justice support. To evaluate and execute these recommendations, and as part of the continuing effort to improve the Marine Corps legal community's structure and capabilities, I established a Strategic Initiatives Branch (JSI) at Judge Advocate Division. In FY21 this branch will continue to provide a means make strategic structural and policy changes to how the legal community organizes and practices law in support of the Marine Corps. Several pending initiatives are described below.

(1) Victims' Legal Counsel: In keeping with the Commandant's guidance, new statutory requirements,[30] and the recommendations of the comprehensive review and the CNA study, the Marine Corps is working to increase the number of judge advocates assigned to VLC billets. The critical work of these attorneys will be made even more important as the scope of VLC representation expands to include victims of domestic violence while counsel are limited to representing no more than 25 clients. The Marine Corps expects to resolve this manpower and structure issue in FY21.

(2) Continuation Pay: Recognizing that Marine Corps judge advocates frequently leave the service after serving an initial, single tour of duty, and that this creates a lack of experience that manifests predominantly in military justice practice, the Marine Corps is weighing incentives to encourage judge advocates to remain on active duty for second and follow-on tours. Continuation pay is one such incentive currently under consideration.[31] The Marine Corps expects to resolve this resource and manpower issue in FY21.

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[28] DON COMPREHENSIVE REVIEW, *supra* note 3.
[29] CNA STUDY, *supra* note 4.
[30] *See* National Defense Authorization Act for Fiscal Year 2020, Pub. L. No.116-92, §§ 541, 548, 133 Stat. 1374-75, 1378-79 (2020).
[31] *See* 37 U.S.C. § 321 (2018).

(3) Legalman Paralegal Education Program: The purpose of the Legalman Paralegal Education Program (LPEP) is to provide the Marine Corps legal community with trained paralegals capable of conducting legal research and writing under the supervision of Marine Corps judge advocates serving as trial counsel, defense counsel, and victims' legal counsel. Consistent with the Commandant and the Sergeant Major of the Marine Corps' intent to revolutionize education for the enlisted force, LPEP is a paralegal degree program for sergeants (E-5) and staff sergeants (E-6) with the legal service specialist military occupational specialty. Through a board selection process, the SJA to CMC selected the first group of three legal service specialists to attend the program in early FY21.

(4) Victim-Witness Assistance Program: The SJA to CMC is responsible for the oversight of the Marine Corps' Victim-Witness Assistance Program (VWAP).[32] During FY20, Judge Advocate Division conducted an assessment of the VWAP program.[33] This assessment identified procedural and personnel changes that will improve the multidisciplinary response to assist victims of, and witnesses to, crime. These changes, which include a revision to the applicable Marine Corps Order, structure, and manning, will be implemented in FY21.

c. The Marine Corps has endured several impacts in the military justice arena as a result of the COVID-19 pandemic.

(1) COVID-19 directly affected the conduct of courts-martial. While the degree of these impacts varied from case to case and region to region, the following were the common areas of impact: (1) court-room mitigation measures; (2) case-specific mitigation measures; (3) travel limitations; and (4) exposure consequences. All of the regional Legal Services Support Sections employed court-room mitigation measures, including temperature checks, changing where members and parties were located to maintain social distancing, entry-control points with COVID-19 screening procedures, and mask requirements. All regions also experienced case-specific challenges from the consequences of exposure or potential exposure (e.g., when a party or necessary witness contracted or was exposed to COVID-19). Additionally, travel limitations presented difficulties when courts-martial required travel by support personnel, members, parties, and witnesses. Travel limitations had (and continue to have) the most significant impact on courts-martial conducted in Hawaii and Japan. However, to ensure courts-martial continued while mitigating the risks addressed above, some cases were conducted at different locations.

(2) While COVID-19 restrictions precluded some of the traditional in-person training events during FY20, training for trial services personnel continued through virtual events and significantly modified in-person events. For example, a limited number of in-person attendees were permitted to participate in the annual Joint Appellate Advocacy Training, but the training was broadcasted virtually to permit all interested participants to attend. In another instance, the fall Basic Trial Advocacy course permitted in-person attendance for attendees within driving distance (to mitigate the exposure concerns associated with air travel). Attendees were segregated in small groups, observed continual temperature monitoring and mask requirements,

[32] U.S. MARINE CORPS, ORDER 5800.14, VICTIM-WITNESS ASSISTANCE PROGRAM (15 Mar. 2013).
[33] *See* National Defense Authorization Act for Fiscal Year 2020, Pub. L. No.116-92, § 540(b), 133 Stat. 1364 (2020).

and were prohibited from going out in public (with meals received by take-out methods only). As a result, military justice training continued, but with significant adjustments and limitations.

d. In FY21, my priorities shall 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.

5. Conclusion. The Marine Corps legal community is poised to continue delivering quality military justice support to the Service. Trial counsel, defense counsel, victims' legal counsel, appellate counsel, and military judges receive extensive training and supervision in the performance of their duties. The information technology systems and hardware necessary to support these efforts are in place, with plans on the shelf to meet future requirements. The Marine Corps legal community has close ties with the other Services' JAG Corps to collaborate on these matters. Looking into FY21, the Marine Corps will continue to implement the recommendations of the DON Comprehensive Review, the CNA Study, and the SAAITF. Similarly, the Marine Corps looks forward to learning from such advisory panels as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces and the Military Justice Review Panel to continue improving the practice of military justice.

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

APPENDIX

Report Period: FISCAL YEAR 2020

PART 1 – PENDING COURTS-MARTIAL (As of 30 September 2020)			
TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		54	
BCD SPECIAL		56	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)		5	
SUMMARY		15	
TOTAL:	215	130	345

PART 2 – BASIC COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OF CASES TRIED OVER LAST REPORT
GENERAL	123	113	10	+16%
BCD SPECIAL	128	113	15	-8%
NON-BCD SPECIAL	0	0	0	0
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)	7	7	0	-22%
SUMMARY	56	56	0	-21%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OF CASES TRIED OVER LAST REPORT				-3%

PART 3 – ACCUSED DEMOGRAPHIC DATA [A]

TYPE COURT	Total	GENDER		ETHNICITY		RACE						Race and Ethnicity Unknown
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	
GENERAL	1	1	0	0	1	0	0	0	0	1	0	0
SPECIAL	15	14	1	3	12	0	1	3	1	9	1	0
MJ SPECIAL (Art. 16 (c)(2))	3	3	0	0	3	1	0	0	0	2	0	0
SUMMARY	40	36	4	11	29	0	4	3	0	29	4	0

PART 4 – VICTIM DEMOGRAPHIC DATA [B]

TYPE COURT	Total	GENDER		ETHNICITY		RACE						Race and Ethnicity Unknown
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	
GENERAL	0	0	0	0	0	0	0	0	0	0	0	0
SPECIAL	6	2	4	1	5	0	0	1	0	5	0	0
MJ SPECIAL (Art. 16 (c)(2))	0	0	0	0	0	0	0	0	0	0	0	0
SUMMARY	17	10	7	3	13	0	0	3	0	11	2	1

PART 5 – DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT [C]

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	51	
NUMBER OF BAD-CONDUCT DISCHARGES	46	
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	65	

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	4	
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0	
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	260	
FOR EXAMINATION UNDER ARTICLE 65(d)	21	

PART 7 – WORKLOAD OF THE U.S. NAVY COURT OF CRIMINAL APPEALS

TOTAL ON HAND BEGINNING OF PERIOD		197[E]	
TOTAL CASES REFERRED FOR REVIEW		267[E]	
TOTAL CASES REVIEWED		267[F]	
TOTAL PENDING AT CLOSE OF PERIOD		198[E]	
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD		-3.3%	

PART 8 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES

TOTAL PETITIONS TO CAAF	33

PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ

TOTAL PENDING BEGINNING OF PERIOD		8	
RECEIVED		11	
DISPOSED OF		7	
GRANTED	1		
DENIED	6		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		12	

PART 10 – MARINE CORPS ORGANIZATION OF COURTS [D]

TRIALS BY MILITARY JUDGE ALONE	226	
GENERAL COURTS-MARTIAL	106	
SPECIAL COURTS-MARTIAL	114	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)	7	
TRIALS BY MILITARY JUDGE WITH MEMBERS	31	
GENERAL COURTS-MARTIAL	17	
SPECIAL COURTS-MARTIAL	14	

PART 11 – STRENGTH [E]

AVERAGE ACTIVE DUTY STRENGTH	183,939	

PART 12 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ) [E]

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	6,141	
RATE PER 1,000	33.39	

EXPLANATORY NOTES

[A] In accordance with section 540I of the National Defense Authorization Act for Fiscal Year 2020, the accused demographic data presented in this report relates only to courts-martial conducted between on or after 17 June 2020 and 30 September 2020.
[B] In accordance with section 540I of the National Defense Authorization Act for Fiscal Year 2020, the victim demographic data presented in this report relates only to courts-martial conducted between on or after 17 June 2020 and 30 September 2020.
[C] Based on Entry of Judgment and records of trial received in FY20 for appellate review.
[D] Only includes cases tried to verdict.
[E] This number includes only active duty component Marines.

Report to Congress

U.S. Navy Report on Military Justice for Fiscal Year 2020

31 December 2020

Prepared by:

THE OFFICE OF THE JUDGE ADVOCATE GENERAL, U.S. NAVY
NAVY PENTAGON
WASHINGTON DC 20310-1000

The estimated cost of this report or study for the Department of Defense is approximately $4,400 for the 2021 Fiscal Year. This includes $0 in expenses and $4,400 in DoD labor.

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DEPARTMENT OF THE NAVY
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REPORT OF THE JUDGE ADVOCATE GENERAL OF THE NAVY ARTICLE 146a, UNIFORM CODE OF MILITARY JUSTICE OCTOBER 1, 2019 TO SEPTEMBER 30, 2020

1. Introduction: This report is submitted pursuant to Article 146a, Uniform Code of Military Justice (UCMJ). In fiscal year (FY) 2020 (FY20), the Navy Judge Advocate General's Corps (JAGC) met its military justice mission while overcoming significant challenges. Despite the pandemic, the Navy tried 221 courts-martial (combined general, special and summary courts-martial) and reviewed 267 cases on appeal at the Navy-Marine Corps Court of Criminal Appeals (NMCCA), while strictly adhering to COVID-19 mitigation safety protocols. We utilized the Navy's Military Justice Litigation Career Track officers to fill our most important military justice billets, and we made changes to further leverage their litigation expertise as mentors and leaders in service of the fleet. We overhauled military justice training for practitioners, while switching to a virtual training environment during extended periods of limited official travel. To better align tasks, we added counsel at select prosecution offices and received approval to add legal support personnel in the future. We implemented requirements from the Sexual Assault Accountability and Investigation Task Force (SAAITF) and the Military Justice Act of 2016 (MJA16), and recommendations from the 2019 Comprehensive Review of the Department of the Navy's Uniformed Legal Communities (CR). Though more information technology (IT) resources are needed, we advanced our IT capabilities in FY20 by implementing an interim case management system (Wolverine) in cooperation with the Marine Corps. In addition, planning is underway for an FY21 pilot speech-to-text courtroom transcription service. These efforts will help the Navy JAGC enhance our organization's capabilities in the future. However, more work lies ahead as we continue to move towards a more modern and efficient military justice system.

2. Data on the number and status of pending courts-martial: The Navy, in cooperation with the Marine Corps, tracks courts-martial information through the "Wolverine" case management database. At the end of FY20, the Navy had 170 pending courts-martial (108 referred for trial and 62 with preferred charges pending disposition decisions). Additional information on the number of cases pending and completed in FY20 is provided in the Appendix.

3. Information on the appellate review process:

a. Compliance with processing time goals.

(1) Zero Navy cases were dismissed for violation of an accused's right to speedy trial.

(2) Two Navy cases exceeded 120 days from sentencing to Convening Authority's (CA) action (the "Moreno 1" guideline). The first case exceeded the Moreno 1 guideline by 30 days, and the second by 44 days. One case exceeded 120 days from announcement of the sentence to forwarding for appellate review (the "Post Trial I" guideline). The case exceeded the Post Trial I guideline by five days.

(3) Zero Navy cases exceeded the 30-day window from the date of CA's action to docketing at NMCCA (the "Moreno 2" guideline) or the 30-day window from forwarding to docketing at NMCCA (the "Post Trial II" guideline).

(4) Two Navy cases (referred prior to January 1, 2019) exceeded 18 months from docketing to decision by NMCCA (the "Moreno 3" guideline). The first case exceeded the guideline by 17 days. The second case exceeded the guideline by 14 days. Zero Navy cases (referred after January 1, 2019) exceeded 18 months from docketing to decision by NMCCA ("the Post Trial III" guideline).

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.

4. Measures implemented by the Navy to ensure the ability of judge advocates to participate competently as trial counsel and defense counsel; preside as military judges; and perform the duties of Victims' Legal Counsel, with emphasis on capital cases,[1] national security cases, sexual assault cases, and proceedings of military commissions:

a. Military Justice Litigation Career Track (MJLCT).

(1) The MJLCT was created in 2007 in order to develop and retain a cadre of experienced litigators to serve across the spectrum of military justice billets.[2] During FY20, the MJLCT was

[1] The Navy has not tried a capital case in recent decades. However, several Navy judge advocates have served in military commissions as trial or defense counsel on two capital-referred cases (both of which remain in pretrial litigation). The JAGC is presently updating our capital litigation requirements with the goal of enhancing our future capabilities in capital litigation and ensuring the Navy is prepared to prosecute, defend, and adjudicate cases of this magnitude.

[2] The MJLCT is governed by Judge Advocate General Instruction (JAGINST) 1150.2E, which provides: "The delivery of military justice is both a core competency and a primary mission for the JAG Corps. Good order and discipline enables the operational readiness of the Navy and requires a military justice process that is, and is perceived to be, just. To meet this mission, the JAG Corps has established a litigation career track to identify, select,

comprised of 95[3] designated officers in paygrades O-3 (Lieutenant) to O-6 (Captain). These officers served in the Navy's most important military justice positions, including: Trial Counsel Assistance Program (TCAP) Director/Deputy Director and Defense Counsel Assistance Program (DCAP) Director/Deputy Director, providing real-time assistance in individual trials and vital reach-back resources for litigators throughout the enterprise; Senior Trial Counsel (Senior Prosecutor) in all nine Navy prosecution commands and Senior Defense Counsel in all four Navy defense commands; Victims' Legal Counsel throughout the enterprise and on both coasts; Military Commissions (both prosecution and defense – where 10 of 21 Navy judge advocates were MJLCT officers); and Military Judge, in which 12 of 13 Navy judges assigned to the Navy-Marine Corps Trial Judiciary were MJLCT officers.

(2) To better develop and retain judicial experience, the Navy approved certain programs in FY20 that will commence in 2021. In September 2021, military judges approaching mandatory retirement will be offered the opportunity to compete for retention for three years beyond their mandatory retirement date via the Navy's Continuation Board process. In addition, after contemplating establishment of a military magistrate program as authorized by the UCMJ, we decided to re-establish two special court-martial judge positions – in the Southwest and Central judicial circuits located at San Diego, CA, and Norfolk, VA, respectively. These locations are our busiest fleet concentration areas. These two efforts will increase the career opportunity window for military judges, permitting the Navy to develop and retain judges over a

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develop, and train judge advocates who have demonstrated an aptitude for military justice litigation . . . The purpose of the MJLCT is to provide excellence in courts-martial litigation and in other accountability actions, to enable good order and discipline, and to ensure that courts-martial results at trial and on appeal are just and reliable. The JAG Corps is committed to providing MJLCT officers the education, training, and courtroom experience to develop and maintain the critical skill sets needed to litigate and preside over complex criminal cases. MJLCT officers fill litigation-intensive billets, ensure the effectiveness and efficiency of the courts-martial process, and are available for emergent assignments that require expertise in military justice and criminal litigation. MJLCT officers embrace and embody the governing principles of the JAG Corps and embody a warfighting spirit, lead with courage and integrity, promote a culture of learning, encourage innovation, and embrace critical self-assessment and accountability."

Designations within the MJLCT are as follows: (a) "Specialist I." The MJLCT entry point, a judge advocate may be designated as "Specialist I" after demonstrating litigation proficiency and potential as a leader in the military justice community. Candidates are normally eligible for "Specialist I" at any time after their fourth year of active duty; (b) "Specialist II." Following "Specialist I" designation, a judge advocate may be designated 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;" (c) "Expert." Following "Specialist II" designation, a judge advocate may be designated as an "Expert" after obtaining significant military justice litigation experience, as well as demonstrated leadership of junior judge advocates. For this reason, "Expert" designation 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." "Specialist II" and "Expert" designations are community management tools to guide the detailing, training, and professional development needs of MJLCT judge advocates and to ensure participants in the track maintain the ability to execute the core function of military justice, including court-martial litigation, across the JAGC Community billet structure. JAGC leadership seeks to provide all MJLCT judge advocates with training and duty assignment opportunities that facilitate their professional development within the MJLCT, the JAGC, and the Navy.

[3] Increased from 86 designated officers in FY19.

longer period. Further, the JAGC partnered with the U.S. Attorney's Office in Washington, D.C. to establish a one-year rotational assignment during which assigned MJLCT officers will prosecute cases under the supervision of experienced career civilian prosecutors. Finally, we identified an officer to pilot a new Complex Case Counsel billet staffed by an O-6 (Captain) MJLCT officer for detail into high-visibility or complex cases in the field. The selected officer will report for duty in the summer of 2021.

b. Military Justice Training and Professional Development Programs.

(1) The Naval Justice School (NJS), headquartered in Newport, RI, conducted over 40 in-resident and virtual courses for more than 3,900 students in FY20, including providing over 300 military justice practitioners with military justice training. Training courses included Basic Trial Advocacy, Defense Counsel Orientation, Defending Sexual Assault Cases, and Litigating Complex Cases.

(2) In FY20, the Navy JAGC designed the Military Justice Orientation (MJO) Course which, when it formally launches in early 2021, will provide comprehensive military justice training to new trial and defense counsel through a blending of lectures, demonstrations, and practical exercises taught by subject matter experts and field practitioners. The MJO Course curriculum synthesizes a variety of new training standards and certification requirements, including those recommended by the SAAITF, into one course and is both more comprehensive and more efficient than prior military justice training efforts.[4]

(3) Every year, new Navy judge advocates, along with new Marine Corps and Coast Guard counsel, receive ten weeks of legal training at the NJS Basic Lawyer Course, of which approximately five weeks focus directly on military justice. This year, NJS, in coordination with a senior review panel of military justice leaders across the Sea Services, updated the Basic Lawyer Course curriculum, revalidating the course objectives, including the standards for certification as a courtroom counsel under Article 27, UCMJ.

(4) Similar to prior years, all Navy judge advocates underwent a robust professional development program at their first commands, called the First Tour Judge Advocate (FTJA) Program. This program included professional development in military justice (with year-long assigned rotations in prosecution or defense/personal representation). NJS began revising professional development standards for this program in FY20.

c. Trial Counsel.

(1) TCAP helps ensure all trial counsel receive proper training and supervision and have access to necessary resources. In FY20, TCAP was staffed with an O-6 (Captain) MJLCT

[4] The MJO Course will consolidate and replace the Basic Trial Advocacy and Defense Counsel Orientation courses.

"Expert" designated officer, two O-4 (Lieutenant Commanders) MJLCT officers, and two civilian (GS-15) attorneys with extensive civilian prosecution experience in complex cases.

(2) TCAP provided in-person or virtual training at each of the main prosecution offices located at the Navy's nine Region Legal Service Offices. They also conducted weekly training webinars and designed new courses in prosecuting sexual assault and domestic violence.

(3) As in previous years, TCAP also supported trial counsel with extensive "reach back" support and an array of resources. TCAP held regular case review conferences with field trial counsel to provide policy guidance and case merits analysis when appropriate. They maintained an online community discussion portal for all trial counsel that provided real-time advice to counsel around the globe. They also kept an online repository of sample documents and guides.

(4) Most new trial counsel completed the Basic Trial Advocacy Training Course and the Prosecuting Special Victims Crimes Course.[5] Senior counsel and military justice managers were given advanced training focused on domestic violence, adult sexual assault, and child abuse/exploitation crimes conducted by the National District Attorneys Association.

(5) Every trial counsel was directly supervised by a senior trial counsel, an experienced O-5 (Commander) or O-4 (Lieutenant Commander) MJLCT designated officer assigned by the Judge Advocate General (JAG). All senior trial counsel received additional training in special victims' litigation and many also received formal training in complex litigation, supervising counsel, and managing a prosecution office.

d. Defense Counsel.

(1) DCAP mirrors TCAP, but assists and supervises defense counsel. In FY20, DCAP was staffed with an O-5 (Commander) MJLCT "Specialist II" designated officer as Director, two other MJLCT designated officers, and a civilian Highly Qualified Expert with over 30 years' criminal defense experience.

(2) DCAP provided in-person and virtual training to defense counsel, created a training Podcast, and began a regular newsletter that highlighted emerging issues and provided advice to defense counsel throughout the fleet.

(3) As in past years, DCAP ensured that defense counsel had access to support and resources through every phase of litigation. They maintained a central repository of defense resources and an online discussion board. Several times, DCAP traveled to the site of a court-

[5] As discussed in section 4b(2), above, in FY21 the MJO Course will replace the Basic Trial Advocacy course.

martial to provide on-site supervision or worked alongside defense counsel as assistant counsel of record.

(4) Most new defense counsel completed the Defense Counsel Orientation, Basic Trial Advocacy Training, and Defending Sexual Assault Cases courses. These one-week courses included classroom instruction and practical exercises and were taught by civilian and military experts. Experienced defense counsel and military justice managers attended a variety of advanced training in complex litigation, including from the National Criminal Defense College and the National Association of Criminal Defense Lawyers.

(5) Similar to the prosecution command structure, defense counsel were supervised by a senior defense counsel at one of four regional defense commands. All senior defense counsel were O-4 (Lieutenant Commander) MJLCT designated officers assigned by the JAG. In addition, all regional defense commands were led by a commanding officer or executive officer with significant military justice experience.

(6) The four regional defense commands were supported by eight criminal investigators called Defense Litigation Support Specialists (DLSS). Each DLSS carried an average of twenty complex cases in FY20 and received extensive training. DLSS attended the Certified Digital Forensics Examiner Course, National Defense Investigator Seminar, and the Mile 2 Digital Forensic Examination Certification Course. Additionally, DLSS assisted in DCAP's Mobile Training Team and global defense training efforts.

e. Victims' Legal Counsel (VLC).

(1) The VLC Program is organized into five regions: Pacific; West; Southeast; East; and Europe, Africa, Southwest Asia (EURAFSWA). O-5 officers (Commanders) lead the East and Southeast Regions, O-4 officers (Lieutenant Commanders) lead the Pacific and West Regions, and an O-3 officer (Lieutenant) leads the EURAFSWA Region. During FY20, 34 VLC provided legal support to approximately 1,600 sexual offense victims at over 500 proceedings and conducted 358 outreach briefs to more than 20,000 personnel. In order to continue to meet our mission, the Navy approved the addition of 11 new VLC billets in FY21 (10 in the field; 1 at headquarters).[6]

(2) VLC were supervised and trained within the VLC Program, which is overseen by a senior O-6 (Captain) Chief of Staff (COS) and a civilian Deputy Chief of Staff (DCOS).

(3) The JAGC continued a rigorous selection process and extensive training program for VLC. Every VLC candidate was screened based on their experience, maturity, and judgment

[6] In FY20, we also placed a VLC in Sasebo, Japan.

and interviewed by the JAG, the Commander, Naval Legal Service Command, and the COS, VLC Program, prior to selection. Eleven new VLC were selected in FY20.

(4) All new VLC completed a Special Victims' Counsel Certification Course prior to representing clients. VLC also attended specialized courses in representing child victims and victims of domestic violence. In August 2020, the VLC Program held its fifth annual training symposium. This week-long program (conducted virtually due to COVID-19) included training on vicarious trauma; child victims; recent appellate case law; professional responsibility; domestic violence; and procedures for expedited transfers and transitional compensation benefits. In addition, the VLC Program conducted monthly training for all personnel throughout FY20. The Navy JAGC also approved creation of an NJS VLC certification course that will commence in April 2022.

(5) The VLC Program continued its appellate practice team with six VLC appellate practitioners assigned, as a collateral duty, to aid trial VLC on interlocutory and appellate issues. The VLC Program also recently formed a Victims' Counsel Assistance Program (VCAP), with five experienced VLC providing real-time advice and training across the enterprise.

f. Military Judges.

(1) The Navy-Marine Corps Trial Judiciary (NMCTJ) presides over all courts-martial within the Department of the Navy and is composed of ten judicial circuits. In FY20, the NMCTJ consisted of 24 active-duty Navy and Marine Corps judges and 15 Reserve Navy and Marine Corps judges.

(2) In FY20, the NMCCA consisted of six to nine active-duty Navy and Marine Corps appellate judges, seven Navy Reserve appellate judges, and two Marine Corps Reserve appellate judges.

(3) Selection Requirements. The Navy employs several screening and training requirements for military judges, which continued in FY20.

(a) Before assignment to a trial or appellate judicial billet, Navy and Marine Corps military judges are screened by a Judicial Screening Board and certified by the JAG as qualified for judicial duties.[7] This process, unique to the Navy and Marine Corps, ensures only highly qualified judge advocates are recommended for assignment to judicial billets.

(b) All newly reporting trial and appellate judges attend the three-week Military Judge Course hosted by the U.S. Army's Judge Advocate General's Legal Center and School in

[7] Judge Advocate General Instruction (JAGINST) 5817.1J, dated 31 October 2019.

Charlottesville, VA.[8] The course includes instruction on the court-martial process, evidence, procedure, Constitutional law, judicial problem solving, and judicial methodology. It also includes demonstrations and practical exercises. For FY20, the Military Judge Course utilized hybrid in-person and virtual classwork to ensure new military judges received training while complying with pandemic mitigation measures.

(4) Military Judges Continuing Education.

(a) In February 2020, all NMCTJ judges attended the Joint Military Judges Annual Training with instructors from the Department of Defense (DoD), National Judicial College (NJC),[9] and the Services' trial judiciaries. This three-day course included training on the MJA16 implementation, challenging evidentiary issues, and judicial ethics. The Navy and Marine Corps breakout sessions provided specific training on identifying and overcoming unconscious bias from a judicial perspective.

(b) In September 2020, all NMCTJ judges participated in a virtual training provided by NJC instructors.[10] Training topics included judicial methodology, evidentiary issues associated with child and expert witness testimony, child sexual assault cases, and judicial ethics.

(c) NMCTJ judges also attended a variety of courses hosted by the NJC, including judicial writing, advanced evidence, and capital litigation.

(d) NMCCA judges virtually attended the annual William S. Fulton, Jr., Military Appellate Judges' Training Conference, a one-day, inter-service event that includes discussion on significant appellate developments (U.S. Supreme Court, Court of Appeals for the Armed Forces, and Service Courts of Criminal Appeals cases), ethics, and common issues at the Courts of Criminal Appeals.[11]

g. National Security Cases (NSC).

(1) The Office of the Judge Advocate General (OJAG) Code 30 is the only legal office in the DoD that is exclusively dedicated to supporting litigation involving classified information. It

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[8] This course meets the requirements to be certified for duty as a military judge under Article 26(b), UCMJ.

[9] The NJC is a fully accredited civilian university that hosts 30 to 40 judicial courses annually.

[10] The training was shifted to a virtual forum to comply with pandemic mitigation measures.

[11] Typically, NMCCA judges may also attend the week-long New Appellate Judges Seminar hosted by New York University (NYU) School of Law and the Appellate Judges Education Institute (AJEI) hosted by the American Bar Association's Judicial Division; however, this year's NYU and AJEI programs were both cancelled due to COVID-19 restrictions.

is the Navy JAGC's center of excellence for classified information litigation, including courts-martial designated as NSC. In FY20, Code 30 staff consisted of an O-5 (Commander) Director, an O-4 (Major) Marine Corps liaison officer, and an O-3 (Lieutenant) Deputy Director.

(2) In FY20, Code 30 provided support for two designated NSC and twelve other military proceedings (nine courts-martial and three administrative hearings) involving classified information. Code 30 reviewed all proposed legislation or regulations pertaining to national security matters and interacted with Original Classification Authorities (OCAs) and Special Security Officers. Code 30 also worked with the Department of Justice (DOJ), other intelligence and law enforcement agencies, and other Services, to refine classified litigation practice across the Sea Services, improve the use of classified information in military and DOJ cases, and ensure that classified information remains protected from unauthorized disclosure during litigation. Code 30 provided extensive investigation and litigation support to judge advocates across all the Services including:

(a) Reviewing and cataloging classified material for trial; coordinating with high-level OCAs; tracking security clearance requests for courts-martial personnel; processing requests for classification reviews of evidence; and advising on the assertion of the classified information privilege under Military Rule of Evidence 505, the Classified Information Procedures Act, and the State Secrets Protection Act.

(b) Providing classified information litigation training to judge advocates at two NJS courses (Advanced Staff Judge Advocate Course and Litigating Complex Cases Course) and conducting training at mobile training events in Norfolk, VA, and San Diego, CA.[12]

(c) Maintaining a library of resources for NSC and publishing the National Security Litigation JAGC Primer.

h. Military Commissions.

(1) The Office of Commissions – Prosecution (OCP). In FY20, nine Navy Judge Advocates and five Legalmen served at OCP, which used a robust orientation program to train new counsel. All new counsel were trained in the history of the commissions, the rules and procedures of the Military Commissions Act of 2009, and litigating classified information cases under the Military Commissions Act corollary to the Classified Information Procedures Act. All counsel worked under the supervision of experienced attorneys to gain practical experience and training.

(2) The Military Commissions Defense Office (MCDO). In FY20, twelve Navy judge advocates and six Legalmen served at MCDO. The counsel participated in an extensive training

[12] Due to COVID-19 restrictions, the in-person iteration of the Classified Information Litigation Course (normally held in July) was cancelled.

program that consisted of both on-site training and funded training opportunities at courses around the country. Following initial training, each military counsel was assigned to one of the defense teams and worked under the mentorship of an experienced civilian attorney. A Managing Defense Counsel also supervised day-to-day operations of each defense team.

5. The independent views of the JAG on the sufficiency of resources available within the Navy, including total workforce, funding, training, and officer and enlisted grade structure, to capably perform military justice functions:

a. Judge advocate manning. In order to address manning and caseload challenges identified in my FY19 report, in FY20 additional experienced judge advocates were detailed into some of our busiest trial departments in fleet concentration areas in Norfolk, VA, San Diego, CA, and Bremerton, WA, as well as an additional judge advocate to the Navy TCAP to improve oversight in prosecuting complex cases. These assignments provided much-needed support to prosecution offices, but come at the cost of assigning litigation-focused officers to postgraduate studies or career broadening assignments in the fleet. Also, looking ahead, the Navy approved the addition of 11 Victims' Legal Counsel (VLC) billets in FY21, which will be critical to providing legal services to victims of domestic violence and meeting the VLC-related provisions of the FY20 National Defense Authorization Act. These efforts will improve our ability to meet military justice requirements. However, ongoing assessments related to the Comprehensive Review (CR) and a holistic Navy Shore Manpower Requirements Determination for Naval Legal Service Command may identify additional requirements related to improving case processing and the timeliness of military justice services.

b. Enlisted paralegal manning. The Navy JAGC was supported by 470 active-duty personnel in the Legalman rating in FY20, 43 less than the authorized end strength of 513. Some of the gapped billets affect prosecution and defense offices, which impedes military justice efficiency by requiring judge advocates to spend time on administrative and paralegal duties, in addition to fulfilling their counsel responsibilities. The Navy JAGC continues to work with Navy Personnel Command and expects to remedy this shortfall by FY22.

c. Civilian paralegals and other specialists. Beginning in FY19 and continuing through FY20, I directed prosecution office manning reviews, resulting in recommendations for additional civilian paralegal and administrative specialist hiring. Based on these recommendations, and the recommendations of the CR, the strong support of Navy leadership resulted in permission to hire 35 additional civilian paralegal, administrative assistant, and courtroom security billets in FY22 to support our litigation offices and help oversee the courtroom security program. In addition to these billets, the JAGC received permission to hire the following civilian billets in FY22: 19 billets to support modern court reporting and transcription; 17 billets to provide legal counsel to domestic violence victims (for legal assistance and VLC services); and 11 billets to facilitate public access to court-martial documents. As additional personnel are hired, these efforts will enhance the proper allocation of duties related to military justice and contribute to process improvements.

d. Training. The JAGC made two significant training advancements in FY20. First, in order to improve litigation training for both trial counsel and defense counsel, we revised certification requirements, re-wrote learning objectives, and consolidated the Basic Trial Advocacy and Trial/Defense Counsel Orientation courses into one comprehensive training – the Military Justice Orientation Course. This course will begin in April 2021. Second, NJS began development of the Training Tracker Management Program – a "training jacket" for all members of the Navy legal community – enabling the community to monitor and assess the training accomplishments of our counsel and paralegals. Several CR recommendations relate to military justice training, and continued focus is needed to ensure NJS has the necessary budget and personnel resources to meet training requirements.

e. Retention. Retaining senior litigators for critical military justice positions remained a challenge. As I noted last year in light of the elimination of O-7 (Rear Admiral) retired pay for Assistant Judge Advocates General, flag retired pay had been a valuable incentive to retain very senior MJLCT officers who were competitive for selection as Assistant Judge Advocate General/Chief Judge, Department of the Navy. The Navy is reviewing JAGC retention incentives as part of the ongoing CR implementation.

f. Technology. Deficiencies in IT systems continue to be one of our biggest challenges. Our legal community lacks modern systems in military justice data collection, case management, and court reporting.[13] Although more work is needed, we took the following steps in FY20 to improve our case management systems and court-reporting abilities:

(1) The Navy and Marine Corps continued efforts to develop a new case management system (Naval Court-Martial Reporting System (NCORS)) to more efficiently collect required data, manage cases throughout the courts-martial process, and provide public access to dockets, filings, and records, all required by Article 140a, UCMJ. The development goal is a modern, cloud-hosted, highly-configurable system with data sharing and interfaces with other Department of the Navy databases. As we continue coordinating with Navy information technology offices on our requirements, OJAG and Marine Corps Judge Advocate Division (JAD) have implemented a bridging case management system, "Wolverine." While initial funding to develop a six-month NCORS pilot product has been approved for FY21, significant additional funding and resources will be needed before the Navy is able to develop and maintain a modern case management system.

(2) The Navy JAGC is planning a pilot program in FY21 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 will improve the Navy's ability to generate quality records of trial in a timely manner. The Marine Corps purchased and will field a similar AI STT capability at all Marine Corps courtrooms.

[13] This was a specific finding of the CR.

OJAG and Marine Corps JAD have submitted a joint proposal to Navy Commercial Cloud Services seeking approval and funding to support AI STT capabilities in all courtrooms, but IT authorities and funding issues remain unresolved.

g. Impact of the COVID-19 pandemic. COVID-19 significantly impacted Navy JAGC military justice operations, along with criminal justice systems throughout the country. Court proceedings were delayed, particularly during the earliest phase of the pandemic during the spring and early summer, which resulted in a 20.2% decrease in trials from last year. However, despite COVID-19 obstacles, the Navy completed 221 general, special, and summary courts-martial in FY20, while ensuring strict adherence to COVID-19 safety protocols. In addition, the NMCCA reviewed 267 cases. We also made several adaptations to meet our military justice mission. Use of remote case conferences and remote witness testimony increased. Practitioners conducted nearly all Article 32 hearings remotely and continued to utilize virtual capability during other proceedings, and the NMCCA conducted its first virtual appellate argument during the last session. Military justice training adapted to virtual formats, including using online training platforms to conduct moot courts and mock trial exercises. While these efforts have required flexibility and vigilance, I am confident in the ability of the Navy JAGC to continue adapting to meet our military justice mission during the pandemic.

CONCLUSION

6. This past year, I emphasized the governing principles applicable to all members of the Navy judge advocate community. They are: (1) embody a warfighting spirit; (2) lead with character and integrity; (3) embrace accountability; (4) promote a culture of learning; and (5) encourage innovation. Application of these governing principles has been central to the Navy JAGC's successful execution of the military justice mission in FY20. Most importantly, I recognize and appreciate the support of Navy senior leadership in allocating more resources for FY21 and FY22. There is more work to do, but I am confident in our future as we support the readiness of today's Navy — as well as a Navy ready for tomorrow.

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

APPENDIX

Report Period: FISCAL YEAR 2020

PART 1 - NAVY PENDING COURTS-MARTIAL (As of 30 September 2020)

TYPE COURT	PREFERRED PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		76	
BCD SPECIAL		28	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)		4	
SUMMARY		0	
TOTAL:	62	108	170

PART 2 - NAVY COURTS-MARTIAL STATISTICS (Persons)

TYPE COURT	TRIED	CONVICTED	ACQUITTALS	RATE OF INCREASE (+)/ DECREASE (-) OF CASES TRIED OVER LAST REPORT
GENERAL	78	65	13	-29.7%
BCD SPECIAL	107	100	7	-20.1%
NON-BCD SPECIAL	0	0	0	0.0%
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A)	13	12	1	none reported prior year
SUMMARY	23	23	0	-28.1%
OVERALL RATE OF INCREASE (+)/DECREASE (-) OVER LAST REPORT				-20.2%

PART 3 – ACCUSED DEMOGRAPHIC DATA (Navy courts-martial conducted on or after 17 Jun 20) (Persons) [A]

TYPE COURT	Total	GENDER		ETHNICITY			RACE						
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	Unknown	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unknown
GENERAL	35	35	0	2	33	0	0	1	12	1	21	0	0
SPECIAL	31	30	1	3	28	0	0	1	11	0	19	0	0
MJ SPECIAL (Art. 16 (c)(2))	4	4	0	0	2	2	0	0	3	0	0	0	1
SUMMARY	5	5	0	0	5	0	1	0	3	0	1	0	0

APPENDIX

PART 4 – VICTIM DEMOGRAPHIC DATA (Navy courts-martial conducted on or after 17 Jun 20) (Persons) [B]

TYPE COURT	Total	GENDER		ETHNICITY			RACE						
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	Unknown	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unknown
GENERAL	41	11	30	5	35	1	0	2	6	0	28	4	1
SPECIAL	23	9	14	1	22	0	0	2	4	4	13	0	0
MJ SPECIAL Art. 16(c)(2)	0	0	0	0	0	0	0	0	0	0	0	0	0
SUMMARY	2	0	2	0	2	0	0	0	2	0	0	0	0

PART 5 – NAVY DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT [C]

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES (+ dismissals)	23
NUMBER OF BAD-CONDUCT DISCHARGES	23
SPECIAL COURTS-MARTIAL NUMBER OF BAD-CONDUCT DISCHARGES	37

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG (NAVY & MARINE CORPS)

FOR REVIEW UNDER ARTICLE 66(b)(1) – APPEALS BY ACCUSED	4
FOR REVIEW UNDER ARTICLE 66(b)(2) – CASES FORWARDED FOR REVIEW BY TJAG	0
FOR REVIEW UNDER ARTICLE 66(b)(3) – AUTOMATIC REVIEW	260
FOR EXAMINATION UNDER ARTICLE 65(d)	21

PART 7 – WORKLOAD OF THE U.S. NAVY - MARINE CORPS COURT OF CRIMINAL APPEALS (NAVY & MARINE CORPS)

TOTAL ON HAND BEGINNING OF PERIOD		197[D]
TOTAL CASES REFERRED FOR REVIEW		267[D]
TOTAL CASES REVIEWED		267[E]
TOTAL PENDING AT CLOSE OF PERIOD		198[D]
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES DECIDED DURING LAST REPORTING PERIOD		-3.3%

APPENDIX

PART 8 - ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES (CAAF) (NAVY & MARINE CORPS)

TOTAL PETITIONS TO CAAF	33

PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ (NAVY & MARINE CORPS)

TOTAL PENDING BEGINNING OF PERIOD		8	
RECEIVED		11	
DISPOSED OF		7	
GRANTED	1		
DENIED	6		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		12	

PART 10 – NAVY ORGANIZATION OF COURTS [F]

TRIALS BY MILITARY JUDGE ALONE	164	
GENERAL COURTS-MARTIAL	51	
SPECIAL COURTS-MARTIAL	100	
MILITARY JUDGE ALONE SPECIAL (ART. 16(c)(2)(A))	13	
TRIALS BY MILITARY JUDGE WITH MEMBERS	34	
GENERAL COURTS-MARTIAL	27	
SPECIAL COURTS-MARTIAL	7	

PART 11 – NAVY STRENGTH

AVERAGE ACTIVE DUTY STRENGTH	344,060[G]	

PART 12 – NAVY NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)

NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	6,234	
RATE PER 1,000	18.12	

EXPLANATORY NOTES

[A] The accused demographic data presented in this report relates only to courts-martial cases conducted on or after 17 June 2020, in accordance with section 540I of the National Defense Authorization Act for Fiscal Year 2020. For the purposes of this report, conducted means completed.

[B] The victim demographic data presented in this report relates only to courts-martial cases conducted on or after 17 June 2020, in accordance with section 540I of the National Defense Authorization Act for Fiscal Year 2020. For the purposes of this report, conducted means completed. Figures may not equate to number of courts-martial, as some courts-martial may involve no or multiple victims.

[C] Based on Entry of Judgment and records of trial received in FY for appellate review.

APPENDIX

[D] Includes only cases briefed and at issue.
[E] Includes Article 62 appeals, All Writs Act cases, and appeals withdrawn.
[F] Only includes cases that were tried to completion.
[G] This number includes only Active Component Sailors and does not include USNR, unless the Reservists were called to Active Duty during the FY.

Report to Congress

Department of the Air Force Report on the State of Military Justice for Fiscal Year 2020

December 31, 2020

Prepared by:

JUDGE ADVOCATE GENERAL, UNITED STATES AIR FORCE
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DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
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December XX, 2020

Air Force Report on the State of Military Justice for Fiscal Year 2020

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

I. INTRODUCTION

The Air Force is fully committed to the fair administration of military justice and ensuring we have a disciplined force to support our national security objectives. Despite the challenges presented by COVID-19, the Air Force military justice system showed its strength and resolve in FY20. The resiliency and ingenuity exhibited by military justice practitioners across all ranks and positions ensured the overall number of courts-martial this year decreased by only 28%. This is despite the varying levels of restricted movement the Department of Defense had in place for over half of the year. Across the force, JAG Corps personnel consulted public health officials and made appropriate accommodations. Law office personnel constructed plexiglass barriers, redesigned courtrooms, and found alternate venues at their installations when courtrooms were too small to accommodate sufficient social distancing requirements. The Air Force JAG School, circuit counsel, and military judges found ways to adapt training to virtual platforms, allowing for distance learning, even in the dynamic and practice-based courses that focus on litigation development. This innovation and adaptation supported the fundamental notion that justice must go on.

At the same time, the JAG Corps fully engaged on the topic of racial disparity in the military justice system. Historical data has long revealed a disparity in the number of disciplinary actions taken against black Airmen. We examined the military justice statistics and engaged with Airmen to ensure our processes promoted fairness and equity. This involved hard conversations across all levels of the Air Force between and among those stakeholders in the military justice system, to include commanders, first sergeants, supervisors, as well as legal professionals, as we all work collectively to understand the root causes of the disparity. We currently have several lines of effort designed to study data, identify root causes, and build more transparency in the system.

Finally, and more broadly, we engaged in a realignment of the JAG Corps structure to streamline the provision of legal services across our three primary domains, Operational and International Law, Civil Law, and Military Justice and Discipline. The Military Justice and Discipline Directorate, now led by an O-7, includes all aspects of the military justice system (with the exception of the judges). The realignment brought in the Special Victims' Counsel Program and the processing of all administrative disciplinary actions. The Military Justice and Discipline Division is poised to execute efficient, effective and transparent military justice processes.

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). AMJAMS is as the sole database for military justice processing, capturing case status updates and developments in each investigation for review and

appropriate forwarding to higher headquarters in a timely manner. This facilitates efficient and effective oversight and allows for a better understanding of resource allocation, identification and sharing of best practices, and the channeling of detached and neutral legal advice to the field from experienced practitioners. AMJAMS 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 154 cases through opinions and orders in Fiscal Year 2020. Four were published opinions. The court held oral argument in seven cases. Pursuant to the Court's "Project Outreach" program, the court held two of these oral arguments at law schools: The George Washington University Law School, Washington, DC, on 5 February 2020; and Liberty University School of Law, Lynchburg, Virginia, on 20 February 2020. Outreach arguments 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 military justice. Outreach arguments also serve as a powerful recruiting tool for the Air Force and the JAG Corps. The AFCCA has 12 (ten active duty and two reserve) appellate judge billets.

a. Compliance with Processing Time Goals

(1) In FY20, no convictions in Air Force cases were set aside on speedy trial grounds.

(2) Twelve cases exceeded 120 days from sentencing to Convening Authority's action (the "*Moreno* 1" standard). Under the facts of each case, AFCCA found no relief warranted for violation of the *Moreno* standard.

(3) Six cases exceeded the 30-day window from the date of Convening Authority's action to docketing at the AFCCA (the "*Moreno* 2" standard). Under the facts of each case, AFCCA found no relief warranted for violation of the *Moreno* standard.

(4) Nineteen cases exceeded the standard of 18 months from docketing to decision (the "*Moreno* 3" standard). Under the facts of each case, AFCCA found no relief warranted for violation of the *Moreno* standard.

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: 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 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

A deliberate professional development model is key to the ability of judge advocates to competently prosecute and defend complex cases. Air Force judge advocates begin their career with the opportunity to litigate as a prosecutor under the supervision of a Staff Judge Advocate, who will generally have well over a decade of experience. Trial counsel serve at least one tour at a base legal office where they focus on developing and prosecuting cases. 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 both their supervising Staff Judge Advocate and a military judge who has observed them in court. This pre-certification period typically lasts between 18-24 months. After trial counsel certification, they still typically serve as an assistant trial counsel to a more experienced lead trial counsel. This is especially true for cases involving capital offenses, national security issues, or sexual assault crimes. The process of serving as assistant trial counsel, or "second chair" lasts until such a time as they have shown a higher level of expertise in litigation matters. As second chair, assistant trial counsel manage discovery and perform other assigned duties (witness examinations, motions, opening statement, or argument) as determined by the lead trial counsel.

Certification is the baseline from which Air Force litigators grow. Once certified, trial counsel are competitively selected at the local level to be nominated to serve as an Area Defense Counsel (ADC) or Special Victims' Counsel (SVC) by their Staff Judge Advocate. Staff Judge Advocates build nominations based on actual performance in trial, general duty performance, officership, and personal characteristics of the nominee such as demeanor and ability to lead. The nominations are reviewed by the trial counsel's and Staff Judge Advocate's functional chain (senior supervising attorneys) who then forward final nominations to TJAG's Professional Development Directorate (DAF/JAX). DAF/JAX also receives feedback from the Trial Defense Division (DAF/JAJD) or Special Victims' Counsel Division (DAF/JAJS) regarding potential ADCs or SVCs before making recommendations to TJAG, who is personally involved in the assignment of every ADC and SVC to ensure the selection of the best-qualified candidates. The JAG Corps utilizes a similar selection process for counsel assigned to the military commissions, where capital qualification is particularly important. Judge advocates must be certified, recommended for the position, and have proven themselves in the courtroom to be eligible.

The next stage of development is a selection process to identify those litigators best suited to become senior prosecutors, called Circuit Trial Counsel (CTC). These Air Force senior prosecutors usually possess five or more years of experience as an Air

Force litigator. They are vetted by the Government Trial and Appellate Operations Division (DAF/JAJG), recommended by DAF/JAX, and assigned by TJAG. Once selected, they receive additional specialized training. They are responsible for assisting junior trial counsel with criminal cases of all levels of severity and they 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 positions.

The JAG Corps designates some CTCs as members of the Special Victims Unit, or SVU-CTCs, made up of prosecutors possessing 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 prosecuting felony-level cases as CTCs, and they are fundamental to the Air Force's prosecution arm of its Special Victim Investigation and Prosecution capability. In FY20, 100% of Air Force sexual assault cases referred to general court-martial had a CTC assigned.

After serving as an ADC or a CTC, judge advocates may be considered for an assignment as a Circuit Defense Counsel (CDC). CDCs supervise three to five ADCs and are co-located in regional offices with CTCs and military judges. In addition to supervisory duties, they often serve as lead defense counsel in complex and serious courts-martial, and they also represent senior Air Force personnel accused of misconduct.

Judge advocates, after serving as ADCs, CTCs, CDCs, or SVCs, can serve as Appellate Counsel, regional Directors of Trial Operations (formerly titled Chief CTCs), Chief CDCs, or Chief Circuit 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 ten to 14 years of experience as an Air Force JAG and previously served as a senior prosecutor or defense counsel or both. Beyond those positions, there are additional opportunities to remain directly involved with 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, Government Trial & Appellate Division), Chief Defense Counsel (Chief, Trial Defense Division), Chief Special Victims' Counsel, and Military Trial or Appellate Judge.

Since 18 October 2017, DAF/JAX has employed the Military Justice Experience Tracker (MJET) assigning various levels to all judge advocates based on military justice proficiency.

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 ten 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."

At its core, the MJET system is an enterprise level assessment of a member's capabilities. Additionally, members have the ability to self-report their training and experience. On a yearly basis, all judge advocates identify and update their specific areas of legal expertise. This involves 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. DAF/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 JAG Corps. 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 criminal procedure, and sexual assault policy and response. AFJAGS faculty members also provide instruction on military justice for several schools and colleges across Air University, the Air Force's center for professional military education. During FY20, AFJAGS faculty members instructed more than 10,700 students at these military academic institutions. AFJAGS plays a critical role educating national security leaders in the law, to include addressing congressionally mandated military justice training for wing, vice wing, and group commanders during the Senior Officer Legal Orientation Course. Similarly, senior enlisted leaders receive essential military justice training at the Senior Enlisted Legal Orientation Course. During the unprecedented global pandemic, AFJAGS continued to provide mission essential in-residence training for 332 legal professionals, and leveraged technology to convert 15 courses to distance education.

Additionally, AFJAGS published 14 articles through the Air Force JAG Corps magazine, *The Reporter*, and scholarly journal, *The Air Force Law Review*. Further, AFJAGS initiated significant revisions to the School's flagship publication to the Air Force field writ large, *The Military Commander and the Law.* AFJAGS revised this vital resource for commanders, first sergeants, and leaders at every level, to include clear and comprehensive guidance to dealing with law and policy in the arena of responding to and preventing sexual assault. *The Military Commander and the Law* is available in a print edition and online to Air Force legal professionals and commanders worldwide. In addition, AFJAGS produced eight webcasts on various national security law topics. These webcasts are available "on demand" via AFJAGS' web-based learning management system which is accessible to all members of the JAG Corps. AFJAGS also launched its own podcast in FY20, recording 25 episodes on relevant national security law topics, reaching more than 3,000 listeners worldwide.

More than 3,300 students attended in-residence and distance education courses in FY20. 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
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 JAG Corps 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 involve a specific focus on sexual assault litigation: Advanced Sexual Assault Litigation Course, Circuit Advocacy Training, and Training by Reservists in Advocacy and Litigation Skills. 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 (DAF/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 Law and Policy Division

The Military Justice Law and Policy Division, (DAF/JAJM), operates as part of the Office of The Judge Advocate General for purposes of providing military justice administration and support across the JAG Corps. An O-6 leads DAF/JAJM and serves a dual role as the Division Chief and as the Air Force representative to the Department of Defense's Joint Service Committee on Military Justice (JSC). In FY20, DAF/JAJM incorporated changes in the law pursuant to the Fiscal Year 2020 National Defense Authorization Act and initiated a complete review and rewrite of the four fundamental military justice Air Force policy publications and their corresponding templates and checklists. In addition to this review, DAF/JAJM drafted a new policy publication for victim and witness rights and procedures that brings together into one publication the Special Victims' Counsel Program, Victim and Witness Assistance Program, and domestic violence services. DAF/JAJM also authored a comprehensive policy memorandum, signed by the Secretary of the Air Force, to help ensure a smooth transition and continued administration of military justice for the stand-up of the United States Space Force.

DAF/JAJM continued to provide training across the JAG Corps during restrictions of movement imposed due to COVID-19 via pre-recorded webinars and live webcasts. The various trainings included the Staff Judge Advocate Course (pre-recorded and live webcasts), and the Military Justice Administration Course (live training). Additionally, DAF/JAJM continually monitors appellate court decisions affecting courts-martial and

provides timely notice and advice to the field through the Online News Service, a weekly email sent to all members of the Air Force Judge Advocate General's Corps.

d. Trial Counsel

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

Under the O-6 Chief of JAJG, the CTC program consists of five Directors of Trial Operations and twenty CTCs strategically located throughout the world. Eleven CTCs are SVU-CTC prosecutors. These SVU-CTCs handle the most serious, complicated, and highest-visibility sexual assault cases in the Air Force. The SVU-CTCs, along with the rest of the CTCs, are supported by JAJG's Assistant Director of Operations–Criminal Investigations & Prosecution, who is DAF/JAJG's focal point for issues related to the prosecution of sexual assault cases.

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 JAG Corps selects the most proficient CTCs 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 as a capital case. SVU-CTCs are identified after demonstrating enhanced proficiency in prosecuting sexual assault and other victim-involved cases. SVU-CTCs have litigated an average of 60 courts-martial. The Director of Operations and the Assistant Director of Operations–Criminal Investigations & Prosecution both have Top Secret clearances ensuring the division has the capability to handle any national security cases that arise.

CTCs also received a variety of training offered by the Air Force, sister service, and non-DoD sources. These trainings add to the perspective of CTCs and the interaction with attorneys outside the Air Force allows for a valuable cross-feed of information. In total, in FY20, CTCs attended approximately 1,000 hours of training to improve advocacy and prosecution skills.

e. Defense Counsel

The Trial Defense Division (DAF/JAJD) is responsible for providing all defense services throughout the Air Force with its worldwide team of ADCs, defense paralegals, Circuit Defense Counsel (CDC), Chief Circuit Defense Counsel (CCDC), and Defense Paralegal Managers. The Division also includes the Defense Counsel Assistance Program (DCAP), which provides training, resources, and assistance for Air Force defense counsel worldwide. In addition, in FY20, the Division stood up the Defense Attorney Assistance Program (DAAP), which provides a cadre of experienced Air Reserve Component (ARC) judge advocates to supplement CDC capabilities during the investigative and pretrial phases of the court-martial process. The program has proven successful with one ARC defender successfully earning an acquittal while representing an Airman-client at court-

martial. The Division Chief, together with the Chief of Policy and Training and Office Superintendent, oversees trial defense services from Joint Base Andrews.

ADCs are responsible for representing clients at their own and nearby installations who are facing adverse action, ranging from personnel matters to pending court-martial charges. Their primary focus is on the practice of military justice, to include court-martial litigation. ADCs begin their defense careers by trying misdemeanor-level cases, supervised by a CDC. Until the ADC gains sufficient experience, CDCs are detailed 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 at a general court-martial, the venue reserved for felony-level offenses.

During FY20, the Division was staffed with 81 ADCs, 77 defense paralegals, 18 CDCs, three defense paralegal managers, and five CCDCs. Each CCDC leads the defense team falling within their respective judicial circuit: three in the Continental United States (CONUS), one in United States Air Forces Europe (USAFE) and one in the Pacific Air Forces (PACAF). The defense paralegal managers 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 FY20, DAF/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 FY20, DAF/JAJD conducted regional litigation training in four of the five litigation circuits, providing advanced advocacy skills to defense counsel and paralegals. The fifth circuit's training was cancelled due to COVID-19. DAF/JAJD transitioned to virtual training in response to the limitations imposed on travel and large group gatherings by COVID-19 and associated Department of Defense policies. For the first time, the Defense Orientation Course was held virtually, with new defense counsel and defense paralegals attending in real-time from their home stations all over the world. Although many of the practical exercise classes were cancelled due to COVID-19, CDCs were able to utilize virtual means to provide on-the-job training and mentoring to the ADCs within their circuit.

DAF/JAJD continued to work with DAF/JAX in FY20 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 FY21. 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 enhance fairness and efficiency, in reality and in appearance.

f. Special Victims' Counsel

The Special Victims' Counsel Division (DAF/JAJS) represents victims of sexual assault. Pursuant to 10 U.S.C. §1044e(d)(1)(B), judge advocates are required to be certified as competent by TJAG before being designated as SVCs. As discussed above, judge advocates must be certified under Article 27(b), UCMJ, nominated and vetted through the "best qualified" selection process, successfully trained through completion of the Special Victims Certification Course (SVCC), and be approved for assignment to the SVC position by TJAG. All SVCs attend the SVCC and receive tailored training dedicated to preparing them to represent adult and child victims of sexual assault. To ensure every SVC is certified, incoming personnel attend a ten-day certification course at AFJAGS. In FY20, DAF/JAJS also provided training on legal issues commonly encountered by domestic violence victims to enable SVCs to offer expanded services where necessary and appropriate.

In FY20, SVCC was conducted via distance learning due to COVID-19. Twenty-five incoming Air Force SVCs and 20 incoming Air Force special victims' paralegals received 41 blocks of instruction concerning representation of adult and child victims of sexual assault and domestic violence. The course also included 53 SVCs/VLCs from sister services. This year's SVCC student feedback included appreciation for real-world practical seminars, small group breakout sessions, the ability to network with their peers despite the virtual platform, the inclusions of tactical practitioners and subject matter experts, joint service training, and especially for the survivors who presented on their own experiences.

In this reporting period, Air Force SVCs both conducted and received advanced training at Air Force and joint-service courses. In FY20, SVCs and special victims' paralegals attended Circuit Annual Training, which provides specialized litigation training for practitioners in each of the five Air Force circuits (East, West, Central, Pacific and Europe).

SVCs and special victims' paralegals also attended joint regional training. In November 2019, the four Pacific-based SVCs and two paralegals attended a one-week training course at Yokota AB, Japan. SVCs also attended training at the Army SVC Regional Training at Fort Hood in February 2020.

In September 2020, the SVC Division conducted a six-day distance-learning workshop related to representation of domestic violence victims. The training was conducted in anticipation of expansion of eligibility for domestic violence victims for SVC services. The workshop was attended by 89 Air Force SVCs and paralegals, and two Army SVCs. The training consisted of interactive lectures from experts in the field on domestic violence legal issues, representation challenges related to domestic violence victims, and male victimization issues.

g. Appellate Defense Counsel

The Air Force Appellate Defense Division (DAF/JAJA) is located at Joint Base Andrews and is responsible for delivering superior appellate defense services to Airmen on appeal. DAF/JAJA counsel are selected through coordination with DAF/JAX based upon experience and capability in litigation. In FY20, DAF/JAJA was staffed by one O-6 Division Chief, one O-5 Deputy Chief, eight active duty appellate attorneys, two active duty paralegals, one GS-15, and seven reservists.

In 2020, DAF/JAJA provided a two-day newcomer training course for incoming appellate defense counsel, and all appellate defense counsel attended the Joint Appellate Advocacy Training which is held annually and attended by appellate advocates from each of the military services. Additionally, DAF/JAJA attorneys continued to provide formal course instruction for CDCs and ADCs and distributed a quarterly newsletter to DAF/JAJD for Defense Counsel in the field.

h. Appellate Government Counsel

Appellate Government (DAF/JAJG) is located at Joint Base Andrews and is responsible for representing the United States on all appeals before the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces. The Division is staffed by one O-6 Division Chief, who is dual-hatted as the Chief of the Government Trial Counsel, one O-5 Director of Operations, six active duty Appellate Counsel, six reserve Appellate Counsel, and one civilian Associate Chief/Director of Appellate Operations. 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.

TJAG, upon the recommendation of DAF/JAX, in coordination with the Chief of DAF/JAJG, selects officers to be appellate government counsel based upon their experience and capability with respect to litigation and writing. The Appellate Counsel are comprised of mostly O-3s and O-4s. Typically, Appellate Counsel are chosen from officers currently serving as ADCs or circuit counsel and recognized for their ability and desire to serve as appellate counsel. Military judges, other circuit counsel, and advocacy instructors assess each candidates potential to serve as Appellate Counsel.

New Appellate Counsel participate in an orientation with DAF/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 allows for 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 possess training and experience with litigating sexual assault

cases. In addition, the Director of Operations and Associate Chief hold Top Secret clearances in the event classified matters arise on appeal.

i. Trial and Appellate Judiciary

(1) Trial Judges: The Chief Trial Judge, located at Joint Base Andrews, manages the Air Force Trial Judiciary (DAF/JAT), which includes judges assigned to five judicial circuits as well as all court reporter functions around the world. Chief Circuit Military Judges supervise the various judges within each circuit. Four judges are stationed in the two overseas circuits; two in Europe and two 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 continuing implementation of the Military Justice Act of 2016, 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, various new trial procedures, 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 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 instances where closed hearings are required by law.

Each year, the trial judiciary trains alongside all trial judges in the Department of Defense. In 2020, the Joint Military Judges Annual Training was hosted by the Air Force Trial Judiciary at AFJAGS. Instruction included courses on computer and digital evidence, the Electronic Communication Privacy Act, evidence and ethics issues involving social media, and recent appellate cases. Members of the trial judiciary have also been fortunate to attend courses through the National Judicial College. The Military Commissions Trial Judiciary provides additional training applicable to their work.

(2) Appellate Judges: During FY20, the number of active duty appellate military judges assigned to AFCCA varied from six to ten, along with one to two reserve appellate judges. Additionally, the court support staff consisted of a Clerk of the Court, two commissioners, and two paralegals (one military and one civilian). The court also hosted one Fall 2019 law student extern, one Spring 2020 law student extern, and one law student intern and one law student extern for Summer 2020 under the DAF/JAX Intern/Extern Program.

Two AFCCA judges currently serve on the United States Court of Military Commissions Review (USCMR). 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. The nomination of another AFCCA judge to the USCMR is currently pending.

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

Judge advocates designated for assignment as military appellate judges are required to attend the three-week Military Judges' Course at The Judge Advocate General's Legal Center and School in Charlottesville, Virginia, which occurs once a year in June. The 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, an inter-service, two-day event held at American University's Washington School of Law, Washington, D.C., on 11–12 March 2020. Additionally, all court personnel attend the William S. Fulton, Jr. Military Appellate Judges' Training Conference held at the Thurgood Marshall Federal Judiciary Building, Washington, D.C., in September of each year, but the FY20 training event was rescheduled into Fiscal Year 2021. As a result of COVID-19 mandates, the following annual training events were cancelled and/or rescheduled: (1) the New York University Appellate Judges' Course in July; (2) the National Conference of Appellate Clerks of Court Annual Training in August; and (3) the Appellate Judges Education Institute in November, rescheduled for 11-14 November 2021 in Austin, TX.

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

a. Total Workforce

The Air Force JAG Corps has approximately 1,312 judge advocates and 914 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% (588) of the JAG Corps. Approximately 27% (355) are majors and approximately 19% (253) are lieutenant colonels. Colonels and above, including one lieutenant general, one major general, and one brigadier general, comprise approximately 9% (116) of the Corps. As detailed in Section IV, all judge advocates and paralegals begin their careers as trial counsel and military justice technicians in support of military justice functions and prosecution of courts-martial. Air Force JAG Corps personnel may specialize in military justice positions as they gain more experience. Currently, the Military Justice and Discipline Directorate (DAF/JAJ) has over 420 personnel dedicated to specialized military justice positions including those referenced throughout this report. Opportunities in civil litigation across the JAG Corps also contribute to a robust cadre of experienced litigators.

b. Funding

Currently, there are no FY21 funding concerns for the JAG Corps as to the administration of military justice. However, the increasing costs of travel, implementation of NDAA technological requirements, and the rollout of defense investigators and expanding SVC services to victims of domestic violence will likely raise fiscal concerns in the upcoming years. While overall courts-martial are down due to COVID-19, travel-related expenses have not dropped proportionately. Given Restriction of Movement requirements, some CTCs, CDCs, and ADCs, were required to isolate at the court-martial TDY location for a period prior to the commencement of the court-martial. This resulted in additional travel expenses that would not otherwise incurred in a non-COVID-19 environment. While DAF/JAS was able to modify AMJAMS to support all NDAA requirements that were in effect during FY20, AMJAMS and other Air Force information technology platforms currently are incapable of supporting all Section 140a requirements, requiring additional internet technology solutions to be developed prior to the implementation deadline in FY21. In FY20, the Air Force contracted for the replacement program for AMJAMS. The Disciplinary Case Management System (DCMS) will begin replacing AMJAMS in FY21 through a phased plan. The JAG Corps secured funding for the first year of the contract but is still working on full funding for follow-on years. Failure to fully fund this program through the Future Year Defense Program could negatively impact the timely implementation of DCMS and the ability to meet all Section 140a requirements. Finally, JAG Corps initiatives such as defense investigators and expansion of SVC services will likely require additional resources and personnel. These initiatives are closely linked to diversity and inclusion efforts in that they will ensure fair and equitable representation of all Air Force members involved in the military justice process. Finally, the topline

budget has not been adequately increased over the past four years. If not properly addressed, may result in "over the horizon" threats to the adequate administration of military justice throughout the Air Force.

c. Training

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

d. Officer and Enlisted Grade Structure

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 defense paralegals and special victims' paralegals, respectively, who serve in the grades of E-5 and above. Paralegals are not eligible to become defense paralegals and special victims' paralegals until they meet certain professional requirements called "skill levels." Paralegals enter their first assignment at a skill level of three, and they must gain the next skill level, five, through on-the-job training and by satisfying academic requirements. Once paralegals meet the five-level requirements, they are eligible for selection as defense paralegals and special victims' paralegals. The final level, seven, 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 counsel, decision makers, and their clients in terms of rank or grade. As ADCs and SVCs, defense paralegals and special victims' paralegals, have independent reporting chains from the wings they support, 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 CCVC. 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 to which they are assigned. SVCs report to CCVCs, who serve in the grades of O-4 or O-5, depending on the size of the circuit to which they are assigned, and have a broader scope of responsibility in terms of personnel.

VI. CONCLUSION

The efforts of the JAG Corps professionals in this trying and difficult year, unlike any in recent memory, are apparent throughout this report. The adaptability of our military justice practitioners is key to continuing to provide commanders with the necessary tools to promote good order and discipline throughout their units at the speed of relevance.

While a number of our practices and trainings looked different in FY20, we constantly sought out innovative ways to better train and develop our justice system and our personnel. With our eyes on the horizon, we seek to put in to practice several initiatives in the coming year:

expanding SVC legal services to domestic violence survivors and other victims of violent crimes; expanding defense services through the provision of dedicated defense investigators; and creating directors of trial operations to ensure the health of our prosecution function. Through the pressure that all of these components place on the military justice system in each and every case, in support of their respective clients, the Air Force maintains a strong and robust military justice program that appropriately balances the competing interests of all of those with a stake in the military justice system.

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

VII. APPENDIX

U.S. AIR FORCE MILITARY JUSTICE STATISTICS

Report Period: FY 2020

PART 1 – PENDING COURTS-MARTIAL [A]			
TYPE COURT	PREFERRED AND PENDING DISPOSITION DECISION	REFERRED	TOTAL
GENERAL		52	
BCD SPECIAL		24	
NON-BCD SPECIAL		0	
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A)) [B]		1	
SUMMARY		3	
TOTAL:		80	

PART 2 – BASIC COURTS-MARTIAL STATISTICS				
TYPE COURT	TRIED	CONVICTED	ACQUITTALS	INCREASE (+)/ DECREASE (-) OVER FY19 IN CASES
GENERAL	134	93	41	-38%
BCD SPECIAL	144 [C]	128	16	-27%
NON-BCD SPECIAL	0	0	0	N/A
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	7 [C]	7	0	+600%
SUMMARY	66	66	0	+ 7%
OVERALL CASES RATE OF INCREASE (+)/DECREASE (-) FROM FY19				-28%

PART 3 – ACCUSED DEMOGRAPHIC DATA												
		Gender		Ethnicity		Race						
	Total	Male	Female	Hispanic / Latino	Non-Hispanic / Latino	American Indian / Alaska Native	Asian	Black / African American	Native Hawaiian / Pacific Islander	White	Other	Unknown
General	134	130	4	14	55	2	4	31	5	84	72	0
BCD Special	144	129	15	21	71	4	4	36	2	86	62	0
Non-BCD Special	0	0	0	0	0	0	0	0	0	0	0	0
Military Judge Alone Special	7	5	2	2	5	0	0	0	0	6	1	0
Summary	66	53	13	11	33	0	2	21	1	34	30	0

PART 4 – VICTIM DEMOGRAPHIC DATA [D]

	Total	Gender		Ethnicity		Race						
		Male	Female	Hispanic / Latino	Non-Hispanic / Latino	American Indian / Alaska Native	Asian	Black / African Americans	Native Hawaiian / Pacific Islander	White	Other	Unknown
General	195	24	171	8	80	1	2	5	1	74	9	103
BCD Special	85	29	56	8	37	0	3	10	0	23	6	43
Non-BCD Special	0	0	0	0	0	0	0	0	0	0	0	0
Military Judge Alone Special	4	4	0	0	3	0	0	1	0	2	0	1
Summary	18	6	12	1	17	0	0	1	0	10	0	17

PART 5 –DISCHARGES APPROVED/ENTERED ON ENTRY OF JUDGMENT

GENERAL COURTS-MARTIAL (CA LEVEL) NUMBER OF DISHONORABLE DISCHARGES/DISMISSALS	35/11
NUMBER OF BAD-CONDUCT DISCHARGES	74
SPECIAL COURTS-MARTIAL (CA LEVEL) NUMBER OF BAD-CONDUCT DISCHARGES	45

PART 6 – RECORDS OF TRIAL RECEIVED FOR REVIEW BY JAG

ARTICLE 66(b)(1) – APPEALS BY ACCUSED	2
ARTICLE 66(b)(2) – FORWARDED BY TJAG	0
ARTICLE 66(b)(3)/ ARTICLE 66(b) (Pre-MJA16) – AUTOMATIC REVIEW	127
FOR EXAMINATION UNDER ARTICLE 69(a) (Pre-MJA16 Cases) [E]	3
FOR EXAMINATION UNDER ARTICLE 69 (Post-MJA16 Cases) [F]	2

PART 7 – WORKLOAD OF THE AIR FORCE COURT OF CRIMINAL APPEALS

TOTAL CASES ON-HAND BEGINNING OF PERIOD	218
TOTAL CASES REFERRED FOR REVIEW [G]	154
TOTAL CASES REVIEWED [H]	188
TOTAL CASES PENDING AT CLOSE OF PERIOD	184
RATE OF INCREASE (+)/DECREASE (-) OVER NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+4

PART 8 – ACTIONS OF THE U.S. COURT OF APPEALS FOR THE ARMED FORCES	
PERCENTAGE OF CCA-REVIEWED CASES FORWARDED TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES (72/188)	38.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	-17.5%
PERCENTAGE OF TOTAL PETITIONS GRANTED (6/72)	8.3%
PERCENTAGE OF INCREASE (+)/DECREASE (-) OVER PREVIOUS REPORTING PERIOD	+4.6%
PERCENTAGE OF PETITIONS GRANTED OF TOTAL CASES REVIEWED BY CCA (6/188)	3.2%
RATE OF INCREASE (+)/DECREASE (-) OVER THE NUMBER OF CASES REVIEWED DURING LAST REPORTING PERIOD	+27.9%

PART 9 – APPLICATIONS FOR RELIEF UNDER ARTICLE 69, UCMJ [I]			
TOTAL PENDING BEGINNING OF PERIOD		0	
RECEIVED		1	
DISPOSED OF		1	
RELIEF GRANTED	0		
RELIEF DENIED	1		
NO JURISDICTION	0		
WITHDRAWN	0		
TOTAL PENDING AT END OF PERIOD		0	

PART 10 – ORGANIZATION OF COURTS [J]		
TRIALS BY MILITARY JUDGE ALONE		
GENERAL COURTS-MARTIAL	69	
SPECIAL COURTS-MARTIAL	95	
MILITARY JUDGE ALONE SPECIAL (Art. 16(c)(2)(A))	7	
TRIALS BY MILITARY JUDGE WITH MEMBERS		
GENERAL COURTS-MARTIAL	55	
SPECIAL COURTS-MARTIAL	37	

PART 11 – STRENGTH [K]		
AVERAGE ACTIVE DUTY STRENGTH	327,117	

PART 12 – NONJUDICIAL PUNISHMENT (ARTICLE 15, UCMJ)		
NUMBER OF CASES WHERE NONJUDICIAL PUNISHMENT IMPOSED	4,278	
RATE PER 1,000	13.08	
RATE OF INCREASE (+)/DECREASE (-) IN NJPs OVER FY19	+5.5	

Explanatory Notes

[A] Data for cases pending as of 30 September 2020.

[B] In the Fiscal Year 2019 report, the Air Force reported that 38 cases were referred to the new Special Court-Martial by Military Judge Alone forum under Article 16(c)(2)(A), UCMJ. In fact, only four cases were referred to that forum. The other 34 cases were traditional special courts-martial that were erroneously marked in the Air Force's case management system.

[C] Last year's report stated that there were 38 Military Judge Alone SPCMs. After identifying errors in one of the data entry fields in the case management system, we confirmed that 37 of those were regular SPCMs where the forum choice was military judge alone. Only 1 case last year was a Military Judge Alone SPCM under Art. 16(c)(2)(A). The percentages for these columns are based on the adjusted numbers after this discrepancy was resolved.

[D] The victim demographic data contained with this table refers only to victims named in a specification. Figures may not equate to number of courts-martial, as some courts-martial may involve no or multiple victims.

[E] Refers to the pre-Military Justice Act of 2016 (MJA16), whereby The Judge Advocate General reviewed any general court-martial case that did not qualify for Article 66 review.

[F] Refers to the current Article 69, UCMJ, whereby the accused may petition The Judge Advocate General for relief after completion of an initial review under Article 64 or Article 65.

[G] Includes opinions and orders terminating cases and withdrawals from appellate review.

[H] Figure includes applications for relief under both the pre-MJA16 Article 69(b) and the current Article 69.

[I] Figure includes cases tried to completion where the Court-Martial Order or the Entry of Judgment was completed within Fiscal Year 2020.

[J] Figure includes only active component Airmen and does not include the Air Force Reserves or the Air National Guard.