The military justice system plays a vital role in fairly adjudicating military law to aid in maintaining order and discipline in the U.S. Armed Forces. Throughout history, it has enforced military law—within combat zones and aboard naval vessels—and has demonstrated flexibility amid such extraordinary circumstances. During World War II, for example, the military extended authority to the Commanding Officer of the London Base Command to discipline all soldiers in the London area by court-martial. The General Board of the U.S. Forces, European Theater, noted that such a policy change was necessary given that some of the soldiers who visited London on leave, pass, or furlough were misbehaving, in part because they were away from their own commands (U.S. General Board of European Theater, 1945, p. 50). More recently, personnel of courts-martial held in the combat zones of Iraq and Afghanistan navigated obstacles related to witness production, panel selection, availability of judges, and limited resources for investigating crimes committed in theater (Rosenblatt, 2011). Complex international proceedings, such as those at Abu Ghraib (Tate, 2010), have required transporting military judges, lawyers, and witnesses to and from remote loca-
tions. Collectively, these examples demonstrate the military justice system’s resiliency in the face of logistical and procedural difficulties.

The coronavirus disease 2019 (COVID-19) pandemic, however, presented new challenges for administering military justice. Personnel entrusted to oversee military courts had to quickly expand use of courtroom technology for remote proceedings and vigorously enforce public health guidance in courtrooms during in-person proceedings. When civilian courts made similar adjustments (e.g., Baldwin, Eassey, and Brooke, 2020), the transition period was described as “kind of a mess” (Thomsen, 2020). The dynamic nature of the pandemic forced both military and civilian courts to innovate quickly for the sake of keeping justice moving forward. Although the military and civilian justice systems faced similar challenges stemming from changes owing to the pandemic, the effect of the pandemic on military courts has not received as much scholarly and popular attention. This Perspective provides a preliminary examination of how the pandemic affected caseloads in the military justice system and how the military justice system adapted its operations during this time. The paper also offers several recommendations for future directions.

### What Is the Military Justice System?

_Military justice_ comprises a body of laws and procedures that govern members of the U.S. Armed Forces. The U.S. Congress has the power under the U.S. Constitution to regulate the military. Congress enacted the Uniform Code of Military Justice (UCMJ) to provide a set of rules applicable to all U.S. service members around the world (10 U.S.C. 801–946a). The UCMJ identifies prohibitions on conduct that is generally considered criminal, such as rape and murder, but also identifies offenses that are unique to the military, such as desertion and dereliction of duty. Although courts-martial have exclusive jurisdiction over purely military offenses, federal courts and courts-martial must determine jurisdiction in cases that involve violations of both the UCMJ and federal criminal law because trials for the same misconduct cannot be conducted in both a federal court and court-martial.2

The Manual for Courts-Martial (MCM), which also contains the Rules for Courts-Martial (RCM) and Military Rules of Evidence, provides guidelines for implementing UCMJ provisions. Whereas the MCM covers most aspects of military law, each service branch of the armed forces also supplements the MCM with service-specific guidelines.

The UCMJ details different types of punishments according to the severity of the offense and the rank of the accused. If a service member commits a minor offense, their commanding officer can impose a non-judicial punishment (NJP) (see UCMJ, Art. 15). If a service member commits a serious offense, their commanding officer can...
recommend that their case be heard by a court-martial. There are three types of courts-martial, which vary according to case severity: summary, special, and general. Summary courts-martial adjudicate the least-severe cases and are quite rare because most offenses typically tried in summary courts-martial are resolved by imposing NJPs. Special courts-martial, which are the equivalent of a misdemeanor-level court, and general courts-martial, which are the equivalent of a felony-level court, can impose far harsher punishments, such as punitive discharges, jail time, and even the death penalty in the most severe cases (see Elsea and Gaffney, 2020; and Mason, 2013). Table 1 details differences among these types of hearings.

Although the military justice system has evolved to include more robust administrative features and due process protections akin to those found in the civilian legal system, there remain significant differences between the institutions (see Morris, 2010). There are two differences that are particularly distinct regarding the military justice system’s response to the pandemic. First, because Congress enacted the UCMJ, some administrative changes require legislative approval. This approval process can frustrate efforts to promptly respond to dynamic challenges in times of emergency—such as during a global pandemic. Second, because there are rules in the military justice system that limit the size of a panel and who can serve as panel members (equivalent to civilian jury members), military panels are much smaller, and the pool of military panel members is limited by rank (i.e., panel members must be of the same or higher rank than the accused). It is possible that having smaller and more-select panels might have mitigated some of the pandemic-related effects on jury selection and jury composition that were observed in civilian courts.

### How Did the Pandemic Generally Affect the Military?

The U.S. military experienced waves of the pandemic that paralleled the waves within the civilian population, yet military personnel experienced slightly lower infection rates and significantly lower fatality rates than civilians. Whereas military personnel tend to be younger and healthier than the general population, it is also notable that the military quickly responded to the pandemic at its outset with aggressive health measures. In January 2020, before the pandemic was considered a public health crisis in the United States, the U.S. Department of Defense (DoD) issued force health protection guidance regarding the use of personal protective equipment, mandatory testing, surveillance and screening, deployment and redeployment, and mandatory quarantines for personnel who tested positive for COVID-19 (Pannell, 2020). Despite such guidance, 1,271 crew members tested positive for COVID-19 during an early outbreak aboard the U.S.S. Roosevelt (Kasper et al., 2020). In response, DoD instituted new procedures for the defense workforce, which included “extensive telework, provision of personal protective equipment and sanitizer, deep cleaning of workspaces, social distancing, and restrictions on gatherings” (Saxton and Cancian, 2021, p. 2). The military also required its personnel to quarantine before they deployed, boarded ships, or participated in exercises and enforced isolation measures during deployment (Saxton and Cancian, 2021, p. 2).

The UCMJ provided a mechanism for enforcing these new procedures. At the beginning of the pandemic, Major Matthew T. Bryan published an article in the *Army Lawyer* in which he advised JAG personnel to review the newly revised *Public Health Emergency Management Within the*
<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Non-Judicial Hearings</th>
<th>Judicial Hearings</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NJPs</td>
<td>Summary Court-Martial</td>
</tr>
<tr>
<td>Purpose</td>
<td>Mechanism for punishing offenses that do not necessitate a judicial hearing</td>
<td>Court for minor offenses for which an NJP would be insufficient</td>
</tr>
<tr>
<td>Applicable offense types</td>
<td>Minor misconduct; commanding officer or officer-in-charge has discretion to define minor</td>
<td>Minor misconduct that is often punishable by NJPs, for which no civilian equivalent exists</td>
</tr>
<tr>
<td>Examples of offenses</td>
<td>Consistent tardiness for duty, petty theft, sleeping on watch, providing false information, disrespect to superiors</td>
<td>Unauthorized absences, disrespect, simple assault</td>
</tr>
<tr>
<td>Personnel type</td>
<td>Enlisted or officer</td>
<td>Enlisted only</td>
</tr>
<tr>
<td>Decisionmakers⁹, b</td>
<td>Commanding officer or officers-in-charge</td>
<td>Summary court-martial officer appointed by battalion-level (or higher) commander</td>
</tr>
<tr>
<td>Maximum possible punishments⁹, b</td>
<td>For officers: Reprimand, restrictions with or without suspension from duties for up to 30 days, arrest in quarters for up to 30 days, forfeiture of one-half month’s pay per month for 3 months</td>
<td>Reprimand, confinement for up to 30 days, hard labor without confinement for up to 45 days, forfeiture of two-thirds pay for up to one month, reduction to a lower pay grade</td>
</tr>
<tr>
<td></td>
<td>For enlisted service members: Reprimand, correctional custody, forfeiture of pay, reduction in grade, extra duties for up to 14 days</td>
<td></td>
</tr>
<tr>
<td>Number of panelists members (jurors)</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
Department of Defense (DoD Instruction 6200.03, 2019), which includes instruction on military commander emergency health powers, and to be prepared to respond to questions from service members regarding travel restrictions, restrictions on installation access, procedures for cancelling leave, and the possibility of involuntary extensions of initial active duty service obligations (Bryan, 2020). Military leaders stressed potential consequences for service members, military civilians, or military family members who violate public health requirements (Pannell, 2020). The MCM provides for a variety of punishments for violators. Violators of a mandatory quarantine for communicable diseases could, for example, be punished with dishonorable discharge, forfeiture of all pay and allowances, and up to one year of confinement (Joint Service Committee on Military Justice, 2019, p. 856).

The military also used social media to reinforce the importance of adhering to the health protection guidance as well as the consequences of failing to adhere to them. For example, after more than 60 soldiers at the U.S. Army Maneuver Center of Excellence at Fort Benning (MCoE) were punished for violating an order prohibiting certain activities and restricting local travel, MCoE posted notices that detailed the UCMJ punishments imposed on unnamed violators on its official Facebook page. The Twitter accounts for Maj. Gen. Patrick Donahoe and the Fort Benning Garrison also tweeted this information (see Figure 1) (Cox, 2020).

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Non-Judicial Hearings</th>
<th>Judicial Hearings</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>NJPs</td>
<td>Summary Court-Martial</td>
</tr>
<tr>
<td>Opportunity to appeal</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

a MCM, 2019.
b Farrell, 2019, pp. 8–9.
NOTES: Rules in RCM are referred to by “RCM” followed by the rule number. JAG = Judge Advocate General; N/A = not applicable.
How Did the Military Justice System Adapt During the Pandemic?

In response to the pandemic, the military justice system adapted in two key areas. First, the military justice system greatly expanded its use of technology to accommodate virtual hearings and trainings. Second, significant modifications to physical courtrooms maximized the health and safety of court participants.

Virtual Hearings and Trainings

Prior to the pandemic, military courts already utilized teleconferencing and videoconferencing capabilities to conduct remote hearings. The MCM explicitly allows for the use of “remote means or similar technology” in certain instances, including to produce witnesses and evidence (RCM 703); conduct conferences (RCM 802); establish the presence of the accused, the judge, panel members, and counsel at trial (RCM 804–805); and produce witness statements.
(RCM 914B), including those of a child (RCM 914A). The MCM details the permissibility of “remote live testimony,” which includes “testimony by videoconference, closed circuit television, or similar technology” (RCM 914A–B). In addition, the MCM permits court-martial proceedings to be recorded by “videotape, audiotape, and other technology . . . to accurately depict the court-martial” (RCM 1112).7

Under the MCM, there are only a few types of proceedings for which remote hearings are not permitted.8 Across the U.S. Armed Forces, remote hearings increased during the pandemic. In their annual report to Congress, the U.S. Army noted,

> 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. (Office of the Judge Advocate General, U.S. Department of the Army, 2020, p. 11)

Similarly, the U.S. Navy noted that the 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 [Navy-Marine Corps Court of Criminal Appeals] conducted its first virtual appellate argument. (Office of the Judge Advocate General, U.S. Department of the Navy, 2020, p. 12)

In addition, the U.S. Air Force Court of Criminal Appeals held hearings with some remote participants, and the U.S. Court of Appeals for the Armed Forces held appellate arguments that were fully telephonic.9

The services also conducted virtual trainings for legal personnel. For example, the Trial Counsel Assistance Program, which delivers continuing legal education and specialized training to Army JAGs, adapted several of their regular courses to be conducted exclusively via Microsoft Teams (Office of the Judge Advocate General, U.S. Department of the Army, 2020, pp. 4–5). The Air Force JAG School also adapted trainings to virtual platforms, including practice-focused courses intended to develop litigation skills. The U.S. Air Force noted in its annual report to Congress that this shift “supported the fundamental notion that justice must go on” (Office of the Judge Advocate General, U.S. Department of the Air Force, 2020, p. 1).

**Modifications to Physical Courtrooms and Requirements for In-Person Hearings**

Modifications to physical courtrooms and requirements for conducting in-person hearings were imposed in cases when remote hearings were not possible. These modifications and requirements largely mirrored those introduced in civilian courtrooms, including mandatory masking, provision of personal protective equipment (e.g., masks, gloves, document protectors), enforcement of social distancing requirements, and frequent sanitization of shared spaces. The Army explained that when the due process rights of the accused could be preserved only with an in-person trial, new “procedures were added to ensure the health and safety of all participants” (Office of the Judge Advocate General, U.S. Department of the Army, 2020, p. 11). For Army proceedings, these procedures included requiring “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 professional recommended procedures” (Office of the Judge Advocate General, U.S. Department of the Army, 2020, p. 11). The Marine Corps reported similar 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” (Office of the Judge Advocate General, U.S. Department of the Marine Corps, 2020, p. 9). The Air Force even constructed plexiglass barriers and redesigned courtrooms in lieu of being able to locate venues large enough to accommodate social distancing requirements (Office of the Judge Advocate General, U.S. Department of the Army, 2020, p. 1).

Few public reports exist on the adjustments made to specific military courtrooms. However, descriptions from publicly available court documents demonstrate that some such changes were at least somewhat controversial. The Kirkland Air Force Base Court in New Mexico, for example, reportedly required all court participants, including witnesses, to wear masks and maintain six feet of distance. This distance requirement also applied to the accused and their defense counsel, which the accused later argued prevented them from being “able to orally communicate [with their defense counsel] while the hearing was in progress” (In re Justice, 2021, p. 3). The presiding judge in this case also allowed participants to pass notes and send text messages on electronic devices while court was in session to allow for adherence to physical distancing rules. Although the accused later argued that such an accommodation was not helpful because they did not have access to an electronic device at the time, the presiding judge noted that liberal recesses also were granted during the hearing (In re Justice, 2021). This example makes clear that although there might have been room for improvement, military courts were attempting to keep military justice moving forward with innovative solutions that prioritized both the health needs and legal rights of court participants.

How Did the Pandemic Affect Military Court Dockets?

The Air Force, Army, and Navy reported a significant drop in special and general courts-martial convenings during the first few months of the pandemic. The Army and Navy attributed these declines to pandemic-related trial delays (Office of the Judge Advocate General, U.S. Department of the Army, 2020, p. 10; Office of the Judge Advocate General, U.S. Department of the Navy, 2020, p. 12). As Figure 2 shows, however, these declines did not continue as the pandemic progressed. From May to June 2020, there was a sharp incline in convenings. This change could be explained by an increase in COVID-19–related offenses (e.g., violating force health protection guidance, failing to quarantine, failing to vaccinate) or an increase in general misbehavior related to the stress and strain of the pandemic and COVID-19–related restrictions. However, further research is needed to explore these and other possible causes of the relatively quick rebound.

The Marine Corps docket, on the other hand, appeared relatively unaffected during this same period. Although the Marine Corps reported challenges related to travel limitations for courts-martial support personnel, panel members, parties, and witnesses, it noted that these factors mostly affected courts-martial in Hawaii and Japan. To mitigate disruptions, the Marine Corps reportedly conducted these courts-martial elsewhere. Unfortunately, current data do not provide insight into what proportion of convenings
were conducted in-person or partially or fully remote (Office of the Judge Advocate General, Department of the Marine Corps, 2020, p. 9).

Service-specific regulations likely prevented individual services from responding to pandemic-related issues that affected their court dockets as swiftly as they would have hoped. The Navy, for example, faced unique regulatory and statutory challenges that affected administrative separations (AdSeps) and disciplinary discharges. According to Navy regulations, enlisted service members who wish to present information before an AdSep Board or the Naval Discharge Review Board must make a personal appearance (32 U.S.C. 724.119). Although a regulatory change was quickly put into motion at the start of the pandemic to allow for remote AdSep boards for enlisted service members, a statutory change was required to allow for remote AdSep boards for officers. As a result, some officers waived the personal appearance requirement to keep their cases progressing (Dunlap, 2020). Uncertainty regarding these regulatory and statutory changes might have contributed to delayed proceedings, at least during the first few months of the pandemic.

As noted earlier, military courts have a long and proven history of successfully adapting to challenging circumstances. How military courts adapted to challenges posed by the pandemic was no exception. As demonstrated in Figure 2 and Table 2, each military service experienced notable changes in
case volume during the first year of the pandemic. Although most military services experienced an overall decrease in the number of courts-martial convenings, it appears that the decrease in the number of special and general courts-martial convenings, for example, largely occurred in the first few months after the federal emergency declaration on March 13, 2020. Such a quick rebound likely occurred, at least in part, because many military courts were already equipped with the tools necessary to adapt to virtual hearings. As noted in the next section, the relative success of the military justice system during the pandemic offers several lessons that could be applicable in future public health emergencies.

**Future Directions**

The military justice system’s relative success in weathering the pandemic might be explained by the prepanademic use of virtual communication technologies, innovative changes to the physical courtroom, and an early acknowledgement of the need to enact certain regulatory and statutory changes. Questions remain, however, about how each of the service branches of the armed forces minimized disruption to legal processes and services during the pandemic, and how the civilian justice system can learn from these successes. Accordingly, we offer the following recommendations.

Thoroughly investigate how each military service responded to the challenges posed by the COVID-19 pandemic. An important principle of emergency preparedness is assessing past actions to improve future responses. To fully understand the unique challenges that the military justice system encountered during the pandemic and better understand service-specific experiences, future research should focus on two specific areas. First, data suggest that each service experienced unique shifts in caseload, in terms of both volume and case type (i.e., NJPs versus Courts-Martial Proceedings Between FY 2019 and FY 2020

<table>
<thead>
<tr>
<th>Branch</th>
<th>NJPs FY 2019</th>
<th>NJPs FY 2020</th>
<th>Change over Time (%)</th>
<th>Summary Courts-Martial FY 2019</th>
<th>Summary Courts-Martial FY 2020</th>
<th>Change over Time (%)</th>
<th>Special Courts-Martial FY 2019 (judge only/panel)</th>
<th>Special Courts-Martial FY 2020 (judge only/panel)</th>
<th>Change over Time (%)</th>
<th>General Courts-Martial FY 2019 (judge only/panel)</th>
<th>General Courts-Martial FY 2020 (judge only/panel)</th>
<th>Change over Time (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Army</td>
<td>24,852</td>
<td>20,767</td>
<td>-16%</td>
<td>134</td>
<td>91</td>
<td>-32%</td>
<td>152/15</td>
<td>181/16</td>
<td>+19%/+7%</td>
<td>356/105</td>
<td>284/100</td>
<td>-20%/-5%</td>
</tr>
<tr>
<td>Air Force</td>
<td>4,055</td>
<td>4,278</td>
<td>+6%</td>
<td>71</td>
<td>66</td>
<td>-7%</td>
<td>126/72</td>
<td>102/37</td>
<td>-19%/49%</td>
<td>106/101</td>
<td>69/55</td>
<td>-35%/-46%</td>
</tr>
<tr>
<td>Navy</td>
<td>4,323</td>
<td>6,234</td>
<td>+44%</td>
<td>32</td>
<td>23</td>
<td>-28%</td>
<td>122/12</td>
<td>113/7</td>
<td>-7%/-42%</td>
<td>69/42</td>
<td>51/27</td>
<td>-26%/-36%</td>
</tr>
<tr>
<td>Marine Corps</td>
<td>6,728</td>
<td>6,141</td>
<td>-9%</td>
<td>71</td>
<td>56</td>
<td>-21%</td>
<td>133/15</td>
<td>121/14</td>
<td>-9%/-7%</td>
<td>78/28</td>
<td>106/17</td>
<td>+36%/-39%</td>
</tr>
</tbody>
</table>


NOTES: Owing to missing data, we excluded the U.S. Coast Guard in our analysis. FY = fiscal year.
courts-martial). For example, as shown in Table 2, the special and general courts-martial caseload of the Marine Corps remained stable during the first year of the pandemic, whereas the Navy appeared to adjudicate far more NJPs and summary courts-martial than was the case with its prepandemic caseload. Further research would provide a better understanding of the drivers of these differences and allow for the identification of potential best practices for handling caseload changes during future public health emergencies. Second, although there is some information available about how particular courtrooms within the military justice system implemented physical and virtual modifications, there has been little research on how these modifications affected proceedings, court personnel, and panel members. The effects on panel members in the military justice system is of particular interest given reports that jury pool composition and jury selection were heavily affected within the civilian justice system during the pandemic. Moreover, as Table 2 shows, in FY 2020, almost every service experienced a greater drop in the number of courts-martial with panels versus courts-martial that were judge-only cases. Future research could, first, examine whether this shift happened because of challenges with panel recruitment and participation during the pandemic and, second, explore mechanisms for ensuring panel participation during future public health emergencies.

**Assess opportunities for increased or improved use of technology within the military justice system.** A better understanding of the current use of technology in the military justice system could help the services identify targeted opportunities to enhance the use of virtual modalities in the future. Possible opportunities include expanding the use of teleconferencing and videoconferencing technologies; researching communication tools that allow defendants to communicate directly and in real time with defense counsel during remote legal proceedings; exploring the possibility of using virtual platforms that allow for the instantaneous sharing of documents with all parties, mimicking the sharing of documents during in-person court proceedings; and investigating the availability of verification technology to confirm the identity of remote court participants. There also might be opportunities to strengthen technological infrastructure, including the possibility of shipping devices with pre-installed virtual platforms to court participants with limited access to technology; designating dedicated spaces on military installations that are set up for remote appearances, which could include access to dedicated information technology professionals who can assist with technological issues; and hiring virtual justice liaisons, who could continuously assess technological needs, procure new or additional equipment when necessary, and stay abreast of broader technological advances that might be appropriate for implementation in the military justice system.

This assessment should be aimed at understanding both the costs and benefits of expanding the use of technology within the military justice system. Increased technology use costs might include

- monetary costs (e.g., purchasing, installing, upgrading, and maintaining software and equipment)
- facilities costs (e.g., reallocating or rearranging military courtrooms to accommodate remote hearings)
- personnel costs (e.g., training information technology personnel on how to install and maintain technology and training military justice personnel on how to use the technology)
- security risks (e.g., identifying security vulnerabilities associated with the increased use of digital
applications and platforms and understanding any increased potential for malware attacks)

- legal risks (e.g., assessing potential constitutional violations and the privacy implications of creating digital records).

In deciding when and how to expand the use of virtual technology within the military justice system, policymakers should consider these potential costs.

**Review existing service-specific regulations for potential impediments to conducting remote hearings (e.g., AdSeps and discharges).** The rapid pace at which decisions must be made during a public health emergency requires immense flexibility, but existing regulations could limit the speed with which individual services can respond. A review of existing regulations might help identify such limitations. For example, Army Regulation (AR) 27-10 (2020) permits consideration of remote appearances of civilian witnesses in Article 32 hearings if expense to the government will be incurred. Allowing remote appearances in a broader set of circumstances would be helpful not only during a public health emergency but also in accommodating a variety of personal health concerns, mobility issues, and budget restrictions. Therefore, limitations on remote appearances should be reconsidered so long as such appearances do not pose procedural or constitutional issues.

The review should extend to proceedings that are not formally within the purview of the military justice system, such as AdSep and discharge boards, which have experienced similar challenges during the pandemic and represent a particular area of concern because they typically require in-person appearances with no option for remote appearances (although exceptions for remote appearances are often made for witnesses). There are many reasons why enlisted members and officers separate from the military. Most separations are approved without convening a board. However, some service members want or need to appear before an AdSep or discharge board. Some service branches of the armed forces relaxed the requirement for in-person boards during the pandemic. For example, the Army Discharge Review Board held at least seven telephonic personal appearance hearings in March 2020 (AR 15-180). Other service branches of the armed forces, such as the Navy, maintained an in-person requirement. Rewriting existing regulations to allow for remote appearances before AdSep and discharge boards can provide additional flexibility for service members.

**Identify opportunities for enhanced collaboration and sharing of best practices between the military and civilian justice systems.** Although there are key differences between the military and civilian justice systems, they faced similar challenges when shifting to remote hearings and maintaining continuity during the pandemic. Further research could identify opportunities for sharing best practices between the systems. These opportunities could include establishing formal and informal channels of communication that allow for personnel from both the military and civilian justice systems to stay abreast of issues that could affect both systems. This would build on ties that already exist between representatives of the military and civilian legal systems. For example, the chairperson of the Army Clemency and Parole Board regularly liaises with multiple representatives of the civilian legal system, including the U.S. Parole Commission, the Probation Division of the Administrative Office of the U.S. Courts, the National Sex Offender Targeting Center, and the U.S. Marshals Service (AR 15-130).
There is also a robust history of collaboration on training programs for both military and civilian lawyers. Military lawyers and court personnel attend annual civilian-led training events; on occasion, they attend courses that are co-taught by military and civilian experts. Future training events could focus on technology use and other courtroom innovations used during the pandemic and allow military and civilian justice personnel to share best practices.

Notes

1 The U.S. Constitution gives Congress the power to fund and regulate the armed forces but bestows the duties of commander in chief of the armed forces to the U.S. president (see U.S. Constitution, pmbl., art. I 8, cls. 11–14; and art. II 2, cl. 1). Although Congress has made significant changes to the UCMJ over years, the Military Justice Act of 2016 substantially overhauled many of the punitive articles. A major change relevant to this discussion, for example, is the Breach of Medical Quarantine article, which Congress redesignated from a presidentially prescribed violation to a separate punitive article (10 U.S.C. 884, art. 84) (see Douvas et al., 2020; Fidell, 2020).

2 On rare occasions, trials have been held for the same misconduct in both state courts and courts-martial (White, 2021).

3 There are no panels for summary courts-martial, a maximum of four panel members for special courts-martial (if the accused elects to have a panel), and a maximum of eight panel members for non-capital cases or 12 panel members for capital cases in general courts-martial (if the accused elects to have a panel).

4 For both special and general courts-martial, panel members can be commissioned officers, warrant officers (except when the accused is a commissioned officer), or enlisted persons (except when the accused is a commissioned or warrant officer) (RCM 502). If the accused is enlisted, they can request that at least one-third of the jurors also be enlisted (RCM 503).

5 Civilian courts experienced, at least anecdotally, difficulties with summoning and selecting a diverse pool of jurors. Judge Carolyn Barbara Kuhl of the Los Angeles Superior Court of California noted that for a select group of courts in California, there were significant changes in jury yield, a notable decline in prospective jurors older than 65, and meaningful differences in how each court conducted voir dire. For example, the San Diego Federal Court had prospective jurors wear opaque masks and conducted voir dire in a large room with outdoor access, whereas the Alameda Superior Court allowed prospective jurors to participate in voir dire via Zoom (see Pace et al., 2021, pp. 19, 32–33).

6 The infection rate within the military was 15 percent lower than the overall rate of infection in the United States as a whole, whereas the fatality rate for military personnel was 0.013 percent, versus an overall fatality rate of 1.68 percent in the United States as a whole (Saxton and Cancian, 2021).

7 In prepandemic times, audiovisual technology often was used to satisfy a presence requirement in which an accused service member was required to have either “a defense counsel physically present at [their] location” or the “opportunity for confidential consultation with defense counsel during the proceeding” (MCM, 2019, p. 93).

8 Remote hearing are not permitted for plea discussions and presentencing proceedings (RCM [Rule] 804). Regarding plea discussions, the MCM states that “defense counsel must be physically present at the accused’s location during an inquiry prior to the acceptance of a plea under RCM 910(d), (e), and (f)” (RCM 804). Regarding presentencing hearings, the MCM states that “presence by remote means is not authorized during presentencing proceedings under RCM 1001” (RCM 804).

9 An audio recording from an appellate hearing in United States v. Silvernail captures the following opening remarks from a military judge: “Today’s argument is being conducted under the current COVID-19 pandemic mandates from the Department of Defense and other relevant organizations. This court granted a motion by appellate civilian defense counsel, Mr. Robert Feldmeier, to appear via remote means due to travel restrictions caused by the COVID-19 outbreak. Accordingly, Mr. Feldmeier participates in today’s argument by telephone and has been informed of the counsel who are present in the courtroom representing the parties” (2020).

10 Reasons for voluntary separations include early release for further education, pregnancy, and medical condition not amounting to a disability. Reasons for involuntary separations include minor disciplinary infractions, patterns of misconduct, in lieu of trial by court-martial, drug abuse, and civilian convictions.

11 Marine Corps defense counsel, for example, attend 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.

12 Navy defense counsel, for example, attend one-week courses on defense counsel orientation, basic trial advocacy training, and defending sexual assault cases, all of which are taught by a mixture of civilian and military attorneys and paraprofessionals.

References

AR—See Army Regulation.


MCM—See Joint Service Committee on Military Justice.


Uniform Code of Military Justice, Article 15.


US Army Fort Benning [@FortBenning], “We remind all Soldiers assigned to Fort Benning that a violation of General Order #5 could result in UCMJ or administrative adverse action. #ProtectTheForce #KillTheVirus #COVID19,” Twitter post, August 26, 2020. As of August 3, 2022: https://twitter.com/fortbenning/status/1298757117063704576?lang=en


U.S. Code, Title 32, National Guard.

U.S. Constitution, Preamble to Article I, 8, clauses 11–14, The War Power.

U.S. Constitution, Preamble to Article II 2, clause 1, Commander in Chief Power.


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About This Perspective
The coronavirus disease 2019 (COVID-19) pandemic presented new challenges in administering military justice. U.S. military courts had to quickly expand how they used courtroom technology to accommodate remote proceedings as well as enforce public health guidance in courtrooms during in-person proceedings. Although the military and civilian justice systems have faced similar challenges, the effect of the pandemic on military courts has not received the same amount of scholarly attention. This Perspective provides a preliminary examination of how the pandemic affected caseloads in the military justice system and how the military justice system adapted its operations during this time. The paper also offers several recommendations for future directions.

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