

**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
OCTOBER 1, 1996 TO SEPTEMBER 30, 1997**

In compliance with the requirements of Article 6(a), Uniform Code of Military Justice (UCMJ), The Judge Advocate General and Deputy Judge Advocate General made official staff inspections of field legal offices in the United States and overseas. They also attended and participated in various bar association meetings and addressed many civic, professional, and military organizations.

THE AIR FORCE COURT OF CRIMINAL APPEALS

The Court underwent a number of changes during this year. Chief Judge Richard D.S. Dixon, II, retired from military service after 30 years in the Air Force and over 5 years as Chief Judge. Colonel Richard F. Rothenburg assumed the mantle of Chief Judge on April 1, 1997.

The process begun under Chief Judge Dixon, of reducing the Court's backlog was completed, with cases completing review in record time. With the elimination of the backlog, the Court's output has decreased by 25%. Of primary focus were over 150 cases reviewed by the Air Force Court involving application of Articles 57a and 58b, UCMJ. The *ex post facto* application of the law was ultimately resolved by the ruling of the United States Court of Appeals for the Armed Forces in *United States v. Gorski*. Post-trial errors continue to be a factor and, in addition to the guidance in the Court's written opinions, the Court has embarked on a broader outreach program.

USAF JUDICIARY ORGANIZATION

The USAF Judiciary Directorate has responsibility for overseeing the administration of military justice throughout the United States Air Force, from nonjudicial proceedings to the appellate review of courts-martial. Additionally, the Directorate has the staff responsibility of the Air Force Legal Services Agency in all military justice matters which arise in connection with programs, special projects, studies, and inquiries generated by the Department of Defense (DoD), Headquarters USAF, members of Congress, and various agencies. The Judiciary Directorate consists of the Trial Judiciary Division, Government Trial and Appellate Counsel Division, Appellate Defense Division, Trial Defense Division, Military Justice Division, and the Clemency, Corrections and Officer Review Division.

TRIAL JUDICIARY DIVISION

The military judges' duties include: presiding over all general and special courts-martial tried in the United States Air Force; serving as investigating officers under Article 32, UCMJ; legal advisors for officer discharge boards and other administrative boards; and hearing officers at public hearings held to consider draft environmental impact statements. The Air Force Trial Judiciary had an average of 21 active duty trial judges, 5 Reserve trial judges, and 11 noncommissioned officers assigned throughout 5 judiciary circuits worldwide. During the year, military judges averaged approximately 120 days on temporary duty to perform these functions at locations other than their bases of assignment. The Chief Trial Judge, his military judge assistant and, as

of late July 1997, one noncommissioned officer are assigned to the Trial Judiciary headquarters.

The Chief Trial Judge made supervisory visits to all three CONUS circuits and both of the overseas circuits to review workload and facilities. The Trial Judiciary now has a website, available to trial judges. The website replaces *The DICTA*, which was previously published on a quarterly basis.

The Twenty-Third Interservice Military Judges' Seminar was conducted by the Trial Judiciary at The Air Force Judge Advocate General's School, Maxwell AFB, Alabama, from 27 April to 2 May 1997. This seminar was attended by 70 military judges from the trial judiciaries of the Army, Navy, Marine Corps, Coast Guard, and the Air Force, and by the Chief Military Trial Judge of the Canadian Forces.

In June 1997, six military judges attended the Special Problems in Criminal Evidence Course at the National Judicial College, Reno, Nevada, and one judge attended the Managing Trials Effectively Course, also at the National Judicial College in Reno. Seven trial judges attended the three-week Military Judges' course conducted by The Army Judge Advocate General's School in Charlottesville, Virginia, from 12 through 30 May 1997. Finally, each of the judicial circuits conducted two or three-day educational workshops during the year. All workshops were held in conjunction with trial and defense counsel workshops for the respective circuits; the Chief Trial Judge attended and participated in the European, Pacific, Eastern, and Central Circuit workshops.

The former Chief Trial Judge, Colonel (Ret.) James E. Heupel, attended both the mid-year and annual meetings of the American Judges Association. The new Chief Trial Judge, Colonel Michael B. McShane, arrived in July 1997, and attended the annual meeting of the American Judges Association as well as the annual meeting of the American Bar Association where he was named to the Executive Committee of the National Conference of Special Court Judges. These interactions with civilian judges are most beneficial in promoting a greater mutual understanding of the military and civilian justice systems and the roles of military and civilian judges.

GOVERNMENT TRIAL & APPELLATE COUNSEL DIVISION

Appellate Government Counsel

The appellate government counsel review records of trial of courts-martial, analyze legal issues, and write legal briefs presenting the position of the United States. They argue the Government's position before the Air Force Court of Criminal Appeals and the United States Court of Appeals for the Armed Forces. They also advise prosecutors throughout the Air Force on trial strategy and recent developments in the law.

The appellate government counsel continued to manage the Advocacy Continuing Education (ACE) Program. In the last fiscal year, a web page dedicated to the ACE program was created and placed on the FLITE server at Maxwell AFB. Ready access to this material benefits trial counsel worldwide. Hard copies of ACE materials continue to be distributed.

Easy access to this material supplements the briefings provided at both the Trial and Defense Advocacy Course (TDAC), the Advanced Trial and Defense Advocacy Course (ATAC), and the Major Command Staff Judge Advocate Conferences.

Appellate government counsel contributed to "Project Outreach," sponsored by USCAAF and the AFCCA, by conducting oral arguments before audiences at the United States Air Force Academy and Howard University Law School, demonstrating the fairness and professionalism of the military justice system.

The Chief, Government Trial and Appellate Counsel Division and one appellate government counsel attended trial counsel workshops in all five judicial circuits. They participated in the workshops as instructors and seminar participants.

Four reserve judge advocates, assigned as appellate counsel, continued to provide excellent support. In addition to preparing written briefs, two of the reserve counsel presented oral argument before the Court of Appeals for the Armed Forces during the fiscal year.

Appellate practice before USCAAF and AFCCA is cyclic as indicated below.

AFCCA	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>
Briefs Filed	412	329	434
Cases Argued	33	27	22
USCAAF	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>
Briefs Filed	71	80	85
Cases Argued	33	52	58
SUPREME COURT	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>
Petition Waivers Filed	24	4	15
Briefs Filed	2	0	0

Circuit Trial Counsel

During the fiscal year 1997, there were 15 Circuit Trial Counsel (CTC) divided equally between three circuit offices in CONUS. 4 other CTCs covered the Pacific and European theaters, two per theater. CTCs tried 259 general courts-martial or 48% of all general courts-martial. In addition, CTCs tried 33 special courts-martial and represented government interests in eight of the nine officer discharge boards held Air Force wide. Several CTCs attended the Criminal Law New Developments Course at the Army JAG School in Charlottesville, Virginia. Workshops for base-level prosecutors were conducted by the CTCs in all five judicial circuits; CTCs also conducted one-on-one training of assistant trial counsel during pretrial case preparation and trials. CTCs also utilized their talents by teaching as adjunct instructors at the Trial and Defense Advocacy Course (TDAC) and the Advanced Trial and Defense Advocacy Course (ATAC).

APPELLATE DEFENSE COUNSEL DIVISION

The Appellate Defense Division provide appellate defense services for military personnel. This includes assistance to appellants at all stages of the appellate process which extends to submission of written briefs and conducting oral arguments before military appellate tribunals and the U.S. Supreme Court.

In response to a petition filed by the United States Solicitor General, the United States Supreme Court granted certiorari in the case of *United States v. Scheffer*. This was the first Air Force case to be granted review by the Supreme Court. The division filed its Brief for the Respondent in August 1997.

The division continued to provide appellate updates to counsel in the field through Circuit Defense Counsel Workshops. In addition, appellate counsel taught new Area Defense Counsel at Area Defense Counsel Orientation Courses.

During this period, the division filed its brief to the Court of Appeals for the Armed Forces in the case of *United States v. Simoy*, the only Air Force death penalty case currently on appeal.

The following figures reflect the division's workload over fiscal year 1997:

AFCCA

Cases Reviewed	505
Oral Arguments	22
Other Motions	191

USCAAF

Supplement to Petitions	527
Grant Briefs	85
Oral Arguments	58
Other Motions	111

Supreme Court

Petitions	13
Briefs in Opposition	2
Briefs on the Merits	1

TRIAL DEFENSE DIVISION

The Trial Defense Division is responsible for providing legal defense services within the Air Force to all Air Force members and, in certain cases, civilian employees of the Air Force and members of the other Armed Forces through Area Defense Counsel (ADC), Defense Paralegals (DP), Circuit Defense Counsel (CDC), and Chief Circuit Defense Counsel (CCDC). They report to the Chief, Trial Defense Division, who in turn reports directly to the Director, USAF Judiciary.

Defense counsel assigned to the Division represent military members in interrogation situations; UCMJ Article 32 investigations; pretrial confinement hearings; summary, special, and general courts-martial; and all post-trial and clemency matters. They also serve as respondents' counsel in involuntary discharge, demotion, and nonjudicial punishment proceedings; flying evaluation, physical evaluation, and medical credentials boards; and various, other adverse personnel actions. Overseas-assigned counsel act as military legal advisors in foreign jurisdiction cases as well.

As has been the case for the past several years, the Trial Defense Division continued its realignment of personnel and offices, In July 1997, the ADC offices and personnel at both Wright-Patterson AFB OH and Scott AFB IL were realigned from the Central Circuit to the Eastern Circuit. This move will improve span of control in the Central Circuit and the balance among the CONUS circuit offices.

Additionally, in July 1997, the Division opened a new office at Los Angeles AFB CA, adding both an ADC and a DP to the rolls. In August, the Andrews AFB MD office added one attorney, bringing that office to two ADCs and one DP.

As of 30 September 1997, the Division had 81 ADCs stationed at 70 installations worldwide. They received support from 70 DPs. Spread throughout the 5 circuits were 21 CDCs and 5 CCDCs. The CCDCs, along with all but four of the CDCs, were stationed at the circuit offices at Bolling AFB, DC; Randolph AFB, TX; Travis AFB, CA; Ramstein AB, Germany; and Yokota AB, Japan.

One of the most welcomed personnel developments in many years was the approval by the commander, Air Force Legal Services Agency, of the assignment of a Defense Paralegal to the Office of the Chief, Trial Defense Division, in July 1997. Due to the large number of bases and paralegals assigned to the Division, this paralegal has proven to be invaluable in assisting in the management of a formidable legal and administrative workload.

Trial defense counsel training remained one of the division's highest priorities. This training includes periodic ADC Orientation Courses for new ADCs and annual one-week workshops at each of the circuits. The Division also provided adjunct faculty members for the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course, both of which are conducted at The Air Force Judge Advocate General School, Maxwell AFB, AL. In addition, on-the-job training was continuously conducted by CDCs and CCDCs.

MILITARY JUSTICE DIVISION

The Military Justice Division prepares opinions and policy positions for The Judge Advocate General and for the Air Force Board for Correction of Military Records. They also assemble reports on military justice requested by the White House, Congress, DoD and the Air Staff. The division chief represents the Air Force on the Joint Service Committee on Military Justice (JSC).

During the course of the past year, the Military Justice Division served as the action agency for the review of military justice issues on

applications submitted to the Air Force Board for Correction of Military Records. The Division provided 102 formal opinions concerning such applications. They also received 1,406 inquiries in specific cases requiring either formal written replies or telephonic replies to senior officials, including the President and members of Congress. Finally, the Military Justice Division provided representatives to all interservice activities involving military justice and support for the Code Committee. The Military Justice Division also reviewed 88 records of trial for review under Article 69, UCMJ.

CLEMENCY, CORRECTIONS & OFFICER REVIEW DIVISION

The primary responsibilities of the Clemency, Corrections and Officer Review Division are to (1) recommend appropriate disposition of statutorily required sentence review actions by the Secretary of the Air Force in officer and cadet dismissal cases; (2) recommend action by The Judge Advocate General or the Secretary of The Air Force, as appropriate, to effect statutorily authorized clemency for members of the Air Force under court-martial sentence; (3) represent The Judge Advocate General on the Air Force Clemency and Parole Board; (4) make recommendations for the Secretary of the Air Force to the Attorney General on Presidential Pardon applications by court-martialed Air Force members; and (5) advise The Judge Advocate General and Security Force Command on corrections issues.

Confinement

At the end of fiscal year 1997, a total of 429 Air Force personnel were in post-trial confinement. Of those, 232 inmates were in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and 18 are serving time in the Federal Bureau of Prisons (BOP) system. There were nine inmates in the Return-to-Duty Rehabilitation (RTDR) Program, with five graduating and being returned to duty during this period. The number of Air Force inmates on parole at the end of fiscal year 1997 was 132, a seven percent decrease from last fiscal year.

AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

The Air Force Judge Advocate General School (AFJAGS), is one of seven professional continuing education schools organizationally aligned as part of Air University's Ira C. Eaker College for Professional Development at Maxwell Air Force Base, Alabama. The William L. Dickinson Law Center is home to the school, and the David C. Morehouse Center supports Paralegal Studies. The AFJAGS conducts legal education for attorneys and paralegals from all military services; provides instruction at other Air University schools and colleges; publishes *The Reporter* and *The Air Force Law Review*; manages HQ USAF's Preventive Law Clearinghouse; and maintains JAG Department liaison with civilian professional organizations, law schools, and states requiring continuing legal education.

Resident Courses

The AFJAGS conducted some 50 classes in-residence covering nearly 30 different courses (some courses are held more than once a year), which were attended by approximately 3,600 students. Courses, seminars, and workshops conducted at the AFJAGS included:

- Advanced Environmental Law
- Advanced Labor and Employment Law
- Advanced Trial Advocacy
- Claims and Tort Litigation
- Deployed Air Reserve Components Operations and Law
- Environmental Law
- Environmental Law Update
- Federal Employee Labor Law
- Federal Income Tax Law
- International Law
- Judge Advocate Staff Officer
- JAG Family Team Building
- Law Office Managers'
- Legal Aspects of Information Operations
- Military Judges'
- Operations Law
- Paralegal Apprentice
- Paralegal Craftsman
- Reserve Component WebFLITE
- Reserve Forces Judge Advocate
- Reserve Forces Paralegal
- Staff Judge Advocate
- Trial and Defense Advocacy

Included in this curriculum, were four "Surveys of the Law" conducted by the AFJAGS for both judge advocates and paralegals in the reserve components. The surveys are conducted at a civilian conference center in Denver, Colorado. The surveys provide concentrated legal updates and include extensive reviews of recent developments in military justice. During fiscal year 1997, over 600 Reserve and Air National Guard judge advocates and paralegals attended an AFJAGS Survey of the Law. In addition, the resident course figures reflect two "road shows" put on by AFJAGS in EUCOM and PACOM to update overseas bases on a host of legal topics, including military justice and professional ethics.

Distance Learning Courses

The AFJAGS utilizes distance learning for those educational offerings that lend themselves to effective teaching through this medium. The school presented two courses, the Air Force Systems and Logistics Contracting Course and the Fiscal Law Course via teleseminar (satellite downlink) to over 50 locations attended by more than 2000 personnel. In addition, the 5-skill level Paralegal Journeyman Course is offered as a non-resident, distance learning course in both paper-based and CD-ROM versions. The CD-ROM version is the first career development course in Air Force history to be offered in multimedia CD format.

Outside Teaching

In addition to the resident courses, the AFJAGS faculty provided military justice instruction in the following colleges, schools, academies, and courses within Air University: Air War College, Air Command and Staff College, Squadron Officer School, College of Aerospace Doctrine, Research, and Education, International Officer School, Officer Training School, USAF First Sergeant Academy, Senior Noncommissioned Officer Academy, Group Commanders' Course, and the Chaplain Orientation Course.

The AFJAGS participated in the Expanded International Military Education and Training Program (E-IMET), one of several Security Assistance Programs mandated by Congress (22 U.S.C. 2347). The program is designed to further U.S. foreign policy goals as established in the Foreign Assistance Act. The E-IMET Program involves joint U.S. military teaching teams sent abroad to teach human rights, military justice, civilian control of the military, law of armed conflict, rules of engagement, and general democratic principles. Faculty from the AFJAGS continued to participate in a number of E-IMET program missions in fiscal year 1997.

Publications

The school published three issues of *The Air Force Law Review*, a professional legal journal consisting of articles of interest to Air Force judge advocates, civilian attorney advisors, and other military lawyers. *The Law Review* is a scholarly publication that encourages frank discussion of relevant legislative, administrative, and judicial developments. Additionally, four issues of *The Reporter*, the JAG Department's quarterly legal publication containing articles of general interest, were distributed in March, June, September, and December. Each issue of *The Reporter* has two sections dedicated to contemporary military justice issues. A third section addresses ethical issues that have surfaced in the military justice context. The school continued to distribute substantial numbers of its most popular publication, *The Military Commander and the Law*, a 500+ page compendium of legal topics addressing the issues confronting today's Air Force commanders. In fiscal year 1997, it was placed on WebFLITE, a service available to military users, where it was revised every six months.

PERSONNEL

As of 30 September 1997, there were 1315 judge advocates on duty. Company grade officers (captains and first lieutenants) made up almost 50% of that number. Almost 10% were colonels and above, including two major generals and three brigadier generals; 25% were majors and the remaining 13%, lieutenant colonels.

BRYAN G. HAWLEY
Major General, USAF
The Judge Advocate General