

## **REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE**

**OCTOBER 1, 1997 TO SEPTEMBER 30, 1998**

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 workload and production has remained relatively stable over the past two years. Court manning has dropped from nine to seven judges, with two of the seven judges (Chief Judge Rothenburg and Judge Morgan) scheduled to leave the Court by the middle of fiscal year 1999. The Court's ability to maintain a level of production commensurate with the number of cases referred for review has been largely attributable to the record-setting work of two judges (Judge Senander and Judge Morgan). With the pending departure of Chief Judge Rothenburg and Judge Morgan, the number of cases awaiting review will increase until the Court is once again fully manned.

The *ex post facto* application of UCMJ Articles 57(a) and 58b to adjudged sentences, as well as other post-trial issues, presented a significant portion of the Court's workload. The Court implemented a state-of-the-art Internet webpage that provides access to its published opinions, rules, and other appellate information of interest to practitioners and the public. The Court has also laid the groundwork for one of the first electronic filing of pleading systems in the federal courts. The courtroom is undergoing a full renovation, scheduled to be complete by May 1999. The Court will hear oral arguments at the Washington Navy Yard and Andrews AFB in the meantime.

### **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 Air Force Trial Judiciary had an average of 20 active duty trial judges, 5 reserve trial judges, and 9 noncommissioned officers assigned throughout 5 judiciary circuits worldwide. The Chief Trial Judge, his military judge assistant and one noncommissioned officer are assigned to the Trial Judiciary headquarters. 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. 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 made supervisory visits to all three continental United States (CONUS) circuits and both of the overseas circuits to review workload and facilities. The Trial Judiciary has a Website on the Internet for trial judges. The Website contains reference materials and is updated continually.

The Twenty-Fourth Interservice Military Judges' Seminar was conducted by the Trial Judiciary at The Air Force Judge Advocate General's School, Maxwell AFB, Alabama, from 19-24 April 1998. This seminar was attended by 65 military judges from the trial judiciaries of the Army, Navy, Marine Corps, the Air Force and by a military trial judge from Canada.

Five active duty trial judges and two reserve trial judges attended the three-week Military Judges' course conducted by The Army Judge Advocate General's School in Charlottesville, Virginia, from 4 through 22 May 1998. In November 1997, two active duty judges attended the Trying Capital Cases Course in Reno, Nevada conducted by the National Judicial College. In August 1998, seven judges, six active duty and one reservist, attended the Special Problems in Criminal Evidence Course in Reno, Nevada.

The Chief Trial Judge attended both the mid-year and the annual meeting of the American Bar Association. He serves on the Executive Committee of the National Conference of Special Court Judges and as Chair of the Military Courts Committee. He also serves as the Chair of the Military Courts Committee of the Judiciary Division, Federal Bar Association. 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

In November 1997, the Chief, Trial and Appellate Government Counsel Division and three appellate counsel traveled to The Army Judge Advocate General's School to attend the Criminal Law New Developments Course. This course covered the latest military cases in all significant areas of criminal law. In addition to providing the newest counsel an update in the most recent criminal law developments, it was an opportunity for both appellate counsel and trial counsel to spend several hours together outside of the classroom to discuss ways to better serve the base legal offices.

Appellate government counsel helped develop and plan the first-ever Military Justice Administration Workshop (MJAW) designed to assist numbered Air Force and base legal offices in understanding the complexities and problems associated with administering a military justice program. In December 1997, two appellate government counsel taught at the first MJAW conducted at the Air Force Judge Advocate General's School at Maxwell AFB, Alabama. These same two appellate government counsel also provided instruction at the MJAW conducted at the HQ SPACECOM legal office in February 1998.

Appellate government counsel also prepared and provided an appellate update on United States Court of Appeals for the Armed Forces (USCAAF) and Air Force Court of Criminal Appeals (AFCCA) decisions and trends in case law for each of the trial counsel workshops in the five judicial circuits. Additionally, appellate government counsel provided instruction on a myriad of military justice topics at the Trial and Defense Advocacy Course, the Advanced Trial and Defense Advocacy Course, and the Staff Judge Advocate Course conducted at the Air Force Judge Advocate General's School.

The Trial and Appellate Government Counsel Division continues to manage the Advocacy Continuing Education (ACE) Program. The web page dedicated to the ACE Program is routinely updated with materials of assistance to trial counsel worldwide, including the Trial Counsel Deskbook annually prepared by appellate government counsel. Easy access to these materials supplements the briefing provided by appellate government counsel at the Trial and Defense Advocacy Course and the Advanced Trial and Defense Advocacy Course.

Appellate government counsel have contributed to "Project Outreach," sponsored by USCAAF and the AFCCA, by conducting oral arguments before audiences at the United States Air Force Academy and Air Force Judge Advocate General's School, educating personnel about the fairness and professionalism of the military justice system.

Currently there are seven reserve judge advocates assigned as appellate government counsel. They continue to provide superb support, greatly assisting the Trial and Appellate Government Counsel Division in carrying out its mission. In addition to preparing written briefs, three of the reserve counsel have 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>	<u>FY 98</u>
Briefs Filed	412	329	434	320
Cases Argued	33	27	22	10
USCAAF	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>
Briefs Filed	71	80	85	48
Cases Argued	33	52	58	59
SUPREME COURT	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>
Petition Waivers Filed	24	4	15	17
Briefs Filed	2	0	0	0

#### **CIRCUIT TRIAL COUNSEL**

The manning authorizations for the fiscal year included 18 Circuit Trial Counsel (CTC) at three circuit offices in CONUS, while four CTCs cover the Pacific and European theaters, two per theater. During fiscal year 1998, Circuit Trial Counsel had tried 268 general courts-martial or 56% of all general courts-martial. In addition, Circuit Trial Counsel had tried 44 special courts-martial and represented government interests in 10 officer discharge boards held Air Force wide. Several CTCs attended the Criminal Law New Developments Course at the Army Judge Advocate General's School in Charlottesville, Virginia. Workshops for base-level prosecutors were conducted by the CTCs in all five judicial circuits. Circuit Trial Counsel also utilize their talents by teaching as adjunct instructors at the Trial and Defense Advocacy Course and the Advanced Trial and Defense Advocacy Course.

#### **APPELLATE DEFENSE COUNSEL DIVISION**

The past year has again been an eventful one for the Air Force Appellate Defense Division. In response to a petition filed by the United States Solicitor General, the United States Supreme Court granted *certiorari* in the case of *Clinton v. Goldsmith*. This is the second consecutive year that division personnel have been involved in an Air Force case in which the Supreme Court granted *certiorari*. The division is currently preparing its Brief for the Respondent.

During this period, the case of *United States v. Simoy* was argued by division personnel, including a reserve attorney, and decided by the United States Court of Appeals for the Armed Forces. This case was the only Air Force death penalty case.

Issues concerning Articles 57(a) and 58b, UCMJ, were again major issues this year before both the Air Force Court of Criminal Appeals and the Court of Appeals for the Armed Forces.

Appellate counsel continued to support trial defense counsel in the field through active participation in Circuit Defense Counsel Workshops. Counsel provided briefings at the workshops to field trial defense practitioners on new developments in military criminal law. Appellate counsel also taught new Area Defense Counsel at Area Defense Counsel Orientation Courses.

The following figures reflect the division's workload over fiscal year 1998:

**AFCCA**

Cases Reviewed	603
Oral Arguments	10

**USCAAF**

Supplements to Petitions	424
Grant Briefs	40
Oral Arguments	59

**Supreme Court**

Petitions	17
Briefs in Opposition	1
Briefs on the Merits	0

**TRIAL DEFENSE DIVISION**

The Trial Defense Division is responsible for providing all defense services within the Air Force through Area Defense Counsel (ADC), Defense Paralegals (DP), Circuit Defense Counsel (CDC), and Chief Circuit Defense Counsel (CCDC). These personnel report directly to the Chief, Trial Defense Division (JAJD), who reports to the Director, United States Air Force Judiciary (JAJ).

The ADC office at Howard AFB, Panama, was closed this year due to impending closure of the installation, and a new defense office was opened at Hanscom AFB, Massachusetts. Both of these changes took place within the Eastern Circuit. The Division is manned with 81 ADCs stationed at 71 bases worldwide. They receive paralegal support from 72 DPs. The Division has 21 CDCs and 5 CCDCs. The CCDCs, along with all but four of the CDCs, are stationed at the circuit offices located at Bolling AFB, DC; Randolph AFB, TX; Travis AFB, CA; Ramstein AB, Germany; and Yokota AB, Japan. A single defense paralegal is assigned to each of the three CONUS circuits.

The continuing success of the Air Force's Area Defense Program is largely attributable to its independence and its energized personnel. Other than advising and representing clients, training remains the division's top priority. Aside from on-the-job training and mentoring that is provided by CCDCs and CDCs, newly appointed defense counsel receive formal training at the Area Defense Counsel Orientation and at various Circuit-sponsored workshops. DP training was broadened in 1998 with the introduction of Circuit DP Conferences. The Division also provided adjunct faculty members for the Trial and Defense Advocacy Course and the Advanced Trial Advocacy Course, held at the Air Force Judge Advocate General's School, Maxwell AFB, AL.

#### **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). On 1 June 1998, the division chief became the chairman of the 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 120 formal opinions concerning such applications. They also received 374 inquiries in specific cases requiring either formal written replies or telephonic replies to senior officials, including the President and members of Congress. The Division took the lead in developing, planning, and teaching the first two Military Justice Administration Workshops. 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 77 records of trial for review under Article 69(a), UCMJ. On 30 December 1997, The Judge Advocate General referred one of those cases, *United States v. Rogers*, to the Air Force Court of Criminal Appeals for review pursuant to Article 69(d)(1), 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 1998, a total of 403 Air Force personnel were in post-trial confinement, a six-percent decrease from last fiscal year. Of those, 178 inmates were in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and 66 are serving time in the Federal Bureau of Prisons (BOP) system. There were 12 inmates in the Return-to-Duty Rehabilitation (RTDR) Program, with two graduating and being returned to duty during this period. The number of Air Force inmates on parole at the end of fiscal year 1998 was 153, a 16 percent increase from last fiscal year.

### **AIR FORCE JUDGE ADVOCATE GENERAL'S SCHOOL**

The Air Force Judge Advocate General's School (AFJAGS), is one of seven professional continuing 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*; 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:

- Accident Investigation Officers
- 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  
Military Justice Administration (First time ever held in FY 98)  
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, the AFJAGS conducted four "Surveys of the Law" 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 and civil law. During fiscal year 1998, over 600 reserve and Air National Guard judge advocates and paralegals attended the AFJAGS Survey of the Law. In addition, the AFJAGS conducted two "road shows" in EUCOM and PACOM to update Air Force, Army, and Navy personnel assigned overseas 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 was 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 Officers School; Basic Officers' Training Course; Commissioned Officers' Training Course; 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 1998.

#### Publications

The school published two 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 updated and redistributed substantial numbers of its most popular publication, *The Military Commander and the Law*, a 600+ page compendium of legal topics addressing the issues confronting today's Air Force commanders. *The Military Commander and the Law* is also available to military users on WebFLITE, where it is revised every six months.

#### LEGAL INFORMATION SERVICES

LEGAL INFORMATION SERVICES, also known as JAS, released version III of the Automated Military Justice Accounting and Management (AMJAMS III) software this summer. AMJAMS III moves this program onto a Microsoft Windows compatible format and incorporates the trial judiciary and appellate processing of a case. AMJAMS now tracks each AF military justice case from preferral through each case's final appellate action. The cooperation of the Appellate Government and Defense communities, the Trial Judiciary, and the Air Force Court will allow us to have one database to track all military justice actions from cradle to grave.

WebFLITE, our legal research database, stays involved in our military justice program. WebFLITE usership has increased ten-fold over the past five years, converting it to the Department's communications hub as well as a world class legal research asset. JAS hosts the public web sites for USCAAF and AFCCA. JAS plans to provide the same service to the Discharge Review Boards for all of the Services. Last year, Judge Cox, Chief Judge of USCAAF, asked the WebFLITE staff to work with him to create a system for the electronic filing of documents with the Court. The Air Force Court of Criminal Appeals agreed to participate and to be the test bed for the project. A test of the system, starting with enlargements of time, is scheduled to begin in fiscal year 1999.

The JAS Resources Division, working with an Air Force paralegal process action team, is examining the use of voice recognition software to transcribe records in Court-Martial cases. JAS has purchased two units from the Audioscribe Corporation, and they have been given to two experienced court reporters to test in the field. Initial results are very favorable. Both court reporters are happy with the units and legal offices are impressed with the time they can save normally devoted to transcribing a record of trial. Following the completion of the test program, the team will examine ways in which this new technology can be distributed and used in the field.

#### **PERSONNEL**

As of 30 September 1998, there were 1,328 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 15% lieutenant colonels.

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*The Judge Advocate General of the Air Force*