

**REPORT OF THE JUDGE ADVOCATE GENERAL OF THE AIR FORCE
OCTOBER 1, 1998 TO SEPTEMBER 30, 1999**

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's workload remained relatively stable over the past three years; however, the Court's production dropped from the previous year. This is directly attributable to the reduction in the Court's manning. The Court began the fiscal year with seven judges. However, in December 1998, Judge Morgan retired, and in March 1999, Chief Judge Rothenburg retired. From April 1999 until late August 1999, the Court had only five judges. Also, during this time period, the Court had two Honors Law Clerks instead of three. By the end of the fiscal year, the Court was fully manned with nine judges. Judge Wilcox, Judge Burd, Judge Head, and Judge Roberts joined the Court. Production should increase in 2000 now that the Court is fully manned.

The Court's newly renovated courtroom was dedicated in April 1999.

Technologically, the Court has refined its Internet web page (<http://afcca.law.af.mil>), which now includes the most recent memorandum (unpublished) opinions. Appellate Government and Appellate Defense Counsel can access Electronic Filing on the web page to file Motions for Enlargement of Time with the Court. In the future, counsel will also have the capability to file other motions electronically.

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 10 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 125 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 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-Fifth Interservice Military Judges' Seminar was conducted by the Trial Judiciary at The Air Force Judge Advocate General School, Maxwell AFB, Alabama, from 12 through 16 April 1999. This seminar was attended by 105 military judges from the trial judiciaries of the Army, Navy, Marine Corps, Coast Guard, and the Air Force. The 1999 program included a PROJECT OUTREACH oral argument before the United States Court of Appeals for the Armed Forces. All of the military judges attending the Interservice Seminar and a large number of Maxwell's professional military education students and faculty attended the PROJECT OUTREACH argument.

Seven active duty trial judges attended the 3-week Military Judges' Course conducted by The Army Judge Advocate General's School in Charlottesville, Virginia, from 3 through 21 May 1999. In September 1999, one active duty judge attended the Trying Capital Cases Course in Reno, Nevada, conducted by the National Judicial College. In July 1999, 6 active duty military judges 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 in Atlanta, Georgia, in August 1999. He serves on the Executive Committee of the National Conference of Special Court Judges and as Co-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 1998, the Chief, Trial and Appellate Government Counsel Division and four 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 and discuss ways to better serve the base legal offices.

Appellate government counsel helped develop and plan the annual 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 1998, the JAJG Division Chief and two other appellate government counsel taught at the MJAW conducted at the Air Force Judge Advocate General School at Maxwell AFB, Alabama. Likewise, two appellate government counsel also provided instruction at the MJAW sponsored by HQ AFSPC/JA and conducted at the Air Force Academy in March 1999.

Appellate government counsel also prepared and provided an appellate update on USCAAF and 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 myriad 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 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 the Air Force Judge Advocate General 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 reserve counsel presented oral argument before the Air Force Court of Criminal Appeals or 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>	<u>FY 99</u>
Briefs Filed	412	329	434	320	230
Cases Argued	33	27	22	10	11
USCAAF	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>
Briefs Filed	71	80	85	48	29
Cases Argued	33	52	58	59	27
SUPREME COURT	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>
Petition Waivers Filed	24	4	15	17	2
Briefs Filed	2	0	0	0	0

Circuit Trial Counsel

The manning authorizations for the fiscal year included 17 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 1999, Circuit Trial Counsel tried 222 general courts-martial or 55% of all general courts-martial. In addition, Circuit Trial Counsel tried 53 special courts-martial and represented government interests in 11 officer discharge boards held Air Force wide. Several CTCs attended the Criminal Law New Developments Course at the Army JAG School in Charlottesville, Virginia. The CTCs in all five judicial circuits conducted workshops for base-level prosecutors. 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

With the United States Court of Appeals for the Armed Forces' decision to reverse the sentence in *United States v. Simoy*, the Air Force no longer has any death penalty cases in the appellate process. The division continues to provide death penalty litigation training to at least two appellate defense counsel annually.

Issues concerning Articles 57a and 58b, UCMJ, have generally been resolved and no longer compose a significant portion of this division's workload.

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 the 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 in fiscal year 1999 and the previous four years:

AFCCA	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>
Cases Briefed	592	534	505	603	507
Oral Arguments	33	23	22	10	9
USCAAF	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>
Supplements					
To Petitions	473	589	527	424	416
Grant Briefs	39	39	85	40	26
Oral Arguments	40	45	58	59	23
SUPREME COURT	<u>FY 95</u>	<u>FY 96</u>	<u>FY 97</u>	<u>FY 98</u>	<u>FY 99</u>
Petitions	26	5	13	17	0
Briefs in Opposition	0	2	2	1	0
Briefs on the Merits	0	1	1	0	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 Division is manned with 81 ADCs stationed at 71 bases worldwide. They received 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 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 and the added training continues to strengthen the provision of defense services. 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 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). The division chief is also the current chairman of the JSC. The division also provided representatives to all interservice activities involving military justice and support for the Code Committee.

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 98 formal opinions concerning such applications. They also received 316 inquiries in specific cases requiring either formal written replies or telephonic replies to senior officials, including the President and members of Congress. The Military Justice Division also reviewed 69 records of trial for review under Article 69a, UCMJ; 6 records under Article 69b. The Division also co-developed, planned and taught the annual Military Justice Administration Workshops with the Government Trial & Appellate Counsel Division.

The Military Justice Division has also conducted several major training projects in the area of Victim Witness Assistance (VWAP). Over the past year we traveled to two installations in Europe and six installations in the Pacific. Approximately 400 judge advocates, chaplains, first sergeants, security forces personnel, and health care professionals attended the training sessions. The Division also provided VWAP training to military judges at the Interservice Military Judges Seminar and the new judges course. Approximately 150 military judges were trained at these two courses. Division personnel assisted with training provided at the National Symposium on Victims of Federal Crime. Thirty-nine Air Force members from various Air Force career fields attended the national symposium. Finally, a representative from the Division attended the Gulf Coast Conference on Violence and Its Aftermath where they briefed on the DoD VWAP Program.

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 the Security Forces Command on correction issues.

Confinement

At the end of fiscal year 1999, a total of 526 Air Force personnel were in confinement. Of those, 158 inmates were in long-term confinement at the United States Disciplinary Barracks (USDB), Fort Leavenworth, Kansas, and 88 were serving time in the Federal Bureau of Prisons (BOP) system. There were six inmates in the Return-to-Duty Rehabilitation (RTDR) Program, with none graduating and being returned to duty during this period. The number of Air Force inmates on parole at the end of fiscal year 1999 was 136, an 11 percent decrease from last fiscal year.

AIR FORCE JUDGE ADVOCATE GENERAL SCHOOL

The Air Force Judge Advocate General's (JAG) School 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 JAG School conducts legal education for attorneys and paralegals from all military services; provides instruction at other Air University schools and colleges; publishes *The Reporter*, *The Military Commander and the Law*, 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 JAG School conducted some 45 classes in-residence covering 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
- Aircraft Accident Investigation Legal Advisor
- 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
- Law Office Manager
- Law Technology
- Legal Aspects of Information Operations
- Military Judge
- Military Justice Administration
- Negotiations and Appropriate Dispute Resolution
- Operations Law
- Paralegal Apprentice
- Paralegal Craftsman
- Reserve Component WebFLITE
- Reserve Forces Judge Advocate
- Reserve Forces Paralegal
- Staff Judge Advocate
- Trial and Defense Advocacy

In addition to this resident course curriculum, the JAG School conducted four "Surveys of the Law" for judge advocates and paralegals in the reserve components at a civilian conference center in Denver, Colorado. The surveys provide concentrated legal updates and included extensive reviews of recent development in military justice and civil

law. During fiscal year 1999, over 600 reserve and Air National Guard judge advocates and paralegals attended the JAG School Surveys of the Law. In addition, the JAG School conducted a PACOM CLE tour 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 JAG School 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 JAG School 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.

In FY 99, the JAG School faculty 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.

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 Air Force 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 December, March, June, and September. 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

FLITE (Federal Legal Information Through Electronics) continued its proud tradition of legal information technology innovation for the Department of Defense (DoD). FLITE usage continues to grow as more legal professionals take advantage of the cutting edge communication, information management, and computer assisted legal research functions of the various FLITE systems. Of significant note this year, the Air Force Court of Criminal Appeals' electronic filing system, developed at FLITE, was deployed and is in use today. FLITE hopes to work with other interested Courts of Criminal Appeals and/or the United States Court of Appeals for the Armed Forces to field similar systems in the future. In addition, a beta version of a DoD Electronic Reading Room has been developed for the three Boards of Correction of Military Records and the three Discharge Review Boards. This web site, complete with searchable decisional documents, is scheduled to become operational early in calendar year 2000. FLITE also fielded a new SIPRNET (Secret Internet Protocol Router Network) product, C-FLITE, which now provides a place for classified legal materials. Finally, FLITE is in the process of making technological enhancements to its premier product, WebFLITE, which may allow portions of it to become available to all DoD legal professionals, at no cost, sometime in fiscal year 2000.

The Automated Military Justice Administrative Management System (AMJAMS), known as AMJAMS III, is currently released to the field as version 3.0. The trial judiciary and appellate modules are complete and in use. Redesigned up-to-the-minute reports are available to all users via the internet. The recently added investigations module facilitates tracking of pending cases prior to an Article 15 being offered or courts-martial charges being preferred. The addition of five new reports and the adhoc query function greatly enhances the usefulness of the database. AMJAMS currently facilitates tracking of all military justice actions from cradle to grave while providing managers with the necessary tools to manage their local programs.

As a result of technological advancements in the voice recognition court reporting systems, the JAS Resource Management Division has set up a meeting during the second quarter of FY00 at Keesler AFB. Attendees at this meeting will include court reporters, members of the judiciary and legal information services and a representative from AudioScribe Corporation. These individuals will meet to evaluate the new version of the voice recognition court reporting system including the appropriate hardware and software requirements.

PERSONNEL

As of 30 September 1999, there were 1,330 judge advocates on duty. Company grade officers (captains and first lieutenants) made up slightly over half of that number (671). Nearly 25% were majors (321) and the remaining 15% lieutenant colonels (210). Roughly 10% were colonels (123) and above, including two major generals and three brigadier generals.

WILLIAM A. MOORMAN
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The Judge Advocate General of the Air Force