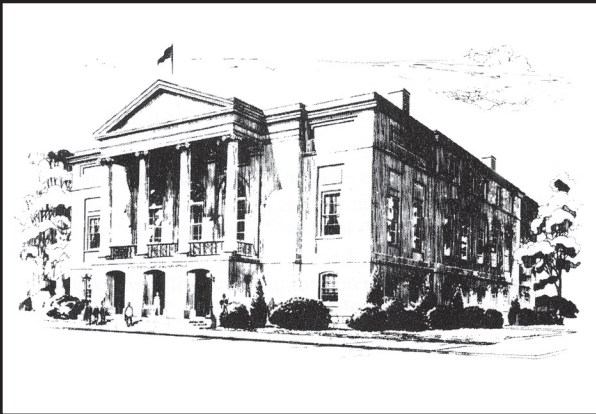


The  
United States  
Court of Appeals  
for the  
Armed Forces



Clerk of the Court  
United States Court of Appeals  
for the Armed Forces  
450 E Street, N.W.  
Washington, D.C. 20442-0001

*[www.armfor.uscourts.gov](http://www.armfor.uscourts.gov)*

## Overview

The United States Court of Appeals for the Armed Forces exercises worldwide appellate jurisdiction over members of the armed forces on active duty and other persons subject to the Uniform Code of Military Justice. The Court is composed of five civilian judges appointed for 15-year terms by the President with the advice and consent of the Senate.

Cases on the Court's docket address a broad range of legal issues, including constitutional law, criminal law, evidence, criminal procedure, ethics, administrative law, and national security law. Decisions by the Court are subject to direct review by the Supreme Court of the United States.

*The Court, an independent tribunal established under Article I of the Constitution, . . . regularly interprets federal statutes, executive orders, and departmental regulations. The Court also determines the applicability of constitutional provisions to members of the armed forces. Through its decisions, the Court has a significant impact on the state of discipline in the armed forces, military readiness, and the rights of servicemembers. The Court plays an indispensable role in the military justice system.<sup>1</sup>*

## History

Courts-martial are judicial proceedings conducted by the armed forces. The Continental Congress first authorized the use of courts-martial in 1775. From the time of the Revolutionary War through the middle of the twentieth century, courts-martial were governed by the Articles of War and the Articles for the Government of the Navy.

Until 1920, court-martial convictions were reviewed either by a commander in the field or by the President, depending on the severity of the sentence or the rank of the accused.

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<sup>1</sup> Senate Report No. 101-81, at 171 (1989).

The absence of formal review received critical attention during World War I, and the Army created an internal legal review process for a limited number of cases. Following the war, in the Act of June 4, 1920, Congress required the Army to establish Boards of Review, consisting of three lawyers, to consider cases involving death, dismissal of an officer, an unsuspended dishonorable discharge, or confinement in a penitentiary, with limited exceptions. The legislation further required legal review of other cases in the Office of the Judge Advocate General.

The military justice system under the Articles of War and Articles for the Government of the Navy received significant attention during World War II and its immediate aftermath. During the war, in which over 16 million persons served in the American armed forces, the military services held over 1.7 million courts-martial. Many of these proceedings were conducted without lawyers acting as presiding officers or counsel. Studies conducted by the military departments and the civilian bar identified a variety of problems in the administration of military justice during the war, including the potential for improper command influence.

In 1948, Congress enacted significant reforms in the Articles of War, including creation of a Judicial Council of three general officers to consider cases involving sentences of death, life imprisonment, or dismissal of an officer, as well as cases referred to the Council by a Board of Review or the Judge Advocate General. During the same period, Congress placed the Departments of the Army, Navy, and Air Force under the newly created Department of Defense. The first Secretary of Defense, James Forrestal, created a committee under the chairmanship of Professor Edmund Morgan to study the potential for unifying and revising the services' disparate military justice systems under a single code.

The committee recommended a unified system applicable to the Army, Navy, Air Force, Marine Corps, and Coast Guard. The committee also recommended that qualified attorneys serve as presiding officers and counsel, subject to limited exceptions. Numerous other changes were proposed by the

committee to enhance the rights of servicemembers in the context of the disciplinary needs of the armed forces. The recommendations included creation of an independent civilian appellate court.

The committee's recommendations, as revised by Congress, became the Uniform Code of Military Justice (UCMJ), enacted on May 5, 1950. Article 67 of the UCMJ established the Court of Military Appeals as a three-judge civilian court. The Report of the House Armed Services Committee accompanying the legislation emphasized that the new Court would be "completely removed from all military influence of persuasion." The legislation became effective on May 31, 1951. In 1968, Congress redesignated the Court as the United States Court of Military Appeals.

As initially established, the Court was the final authority on cases arising under the military justice system, except for a limited number of cases considered by the Supreme Court of the United States under collateral proceedings, such as through writs of habeas corpus. In 1983, Congress authorized direct appeal to the Supreme Court of cases decided by the U.S. Court of Military Appeals, except for cases involving denial of a petition for discretionary review.

In 1989, Congress enacted comprehensive legislation to enhance the effectiveness and stability of the Court. The legislation increased the Court's membership to five judges, consistent with the American Bar Association's Standards for Court Organization. In 1994, Congress gave the Court its current designation, the United States Court of Appeals for the Armed Forces.

## **Appellate Review of Courts-Martial**

Courts-martial are conducted under the UCMJ, 10 U.S.C. §§ 801-946, and the Manual for Courts-Martial. If the trial results in a conviction, the case is reviewed by the convening authority — the person who referred the case for trial by court-martial. The convening authority has discretion to mitigate the findings and sentence.

If the sentence, as approved by the convening authority, includes death, a bad-conduct discharge, a dishonorable discharge, dismissal of an officer, or confinement for one year or more, the case is reviewed by an intermediate court. There are four such courts — the Army Court of Criminal Appeals, the Navy-Marine Corps Court of Criminal Appeals, the Air Force Court of Criminal Appeals, and the Coast Guard Court of Criminal Appeals. The Courts of Criminal Appeals review the cases for legal error, factual sufficiency, and sentence appropriateness. All other cases are subject to review by judge advocates under regulations issued by each service. After such review, the Judge Advocate General may refer a case to the appropriate Court of Criminal Appeals. The Courts of Criminal Appeals also have jurisdiction under Article 62 of the UCMJ to consider appeals by the United States of certain judicial rulings during trial. Review under Article 62 is limited to issues involving alleged legal errors.

The Court's primary jurisdictional statute is Article 67(a) of the UCMJ, which provides:

The Court of Appeals for the Armed Forces shall review the record in –

(1) all cases in which the sentence, as affirmed by a Court of Criminal Appeals, extends to death;

(2) all cases reviewed by a Court of Criminal Appeals which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces for review; and

(3) all cases reviewed by a Court of Criminal Appeals in which, upon petition of the accused and on good cause shown, the Court of Appeals for the Armed Forces has granted a review.

Under Article 67(c), the Court's review is limited to issues of law.

The Courts of Criminal Appeals and the U.S. Court of Appeals for the Armed Forces also have jurisdiction to consider petitions for extraordinary relief under the All Writs Act, 28 U.S.C. § 1651.

The Supreme Court of the United States has discretion under 28 U.S.C. § 1259 to review cases under the UCMJ on direct appeal where the U.S. Court of Appeals for the Armed Forces has conducted a mandatory review (death penalty and certified cases), granted discretionary review of a petition, or otherwise granted relief. If the U.S. Court of Appeals for the Armed Forces has denied a petition for review or a writ appeal, consideration by the Supreme Court may be obtained only through collateral review (e.g., a writ of habeas corpus).

## **Counsel**

Each Judge Advocate General has established separate appellate divisions to represent the government and the defense before the Courts of Criminal Appeals, the U.S. Court of Appeals for the Armed Forces, and the Supreme Court of the United States regardless of indigency. A servicemember whose case is eligible for review is entitled to free representation by government-furnished counsel, and also may be represented by civilian counsel provided at the servicemember's own expense.

Counsel appearing before the U.S. Court of Appeals for the Armed Forces must be admitted to the Bar of the Court or obtain permission of the Court to appear in a specific case. An application for membership in the Court's bar may be obtained from the Court's website, [www.armfor.uscourts.gov](http://www.armfor.uscourts.gov), or by writing to the Clerk of the Court. Over 33,000 attorneys have been admitted to practice since the Court was established in 1951.

## **Practice and Procedure**

The Court has issued Rules of Practice and Procedure, which may be obtained from the Court's website, or by writing to the Clerk of the Court.

A servicemember who has received an adverse decision by a Court of Criminal Appeals typically will receive an accompanying notice of the opportunity to submit a petition for review of that decision within 60 days to the U.S. Court of Appeals for the Armed Forces.

Following receipt of a petition, the Court will notify appellate defense counsel of the opportunity to submit a Petition Supplement. The supplement describes the authority for the Court's jurisdiction over the case, sets forth alleged errors of law, and provides legal arguments supporting the contention that there is "good cause" to grant review under Article 67 and the Court's rules. After the supplement is filed with the Court, the Government has an opportunity to respond.

In the course of deciding whether to grant review, the Court reviews the record and the material filed by parties. If the Court grants review, the Court will identify the specific issues that will be considered on appeal. The Court may decide to review issues set forth by a party as well as issues identified by the Court. Under the Court's practice, review of an issue requires the support of at least two of the Court's five judges.

When the Court grants review, and in cases involving mandatory review, the parties are notified of the briefing requirements under the Court's rules. In most cases, oral argument is scheduled following submission of briefs, but the Court decides a number of cases without oral argument. The Court notifies the parties of the oral argument date, and the oral argument schedule is posted on the Court's website. In a typical case, each party is given 30 minutes to present argument to the Court.

Most of the Court's oral arguments are held at its courthouse in Washington, D.C. On occasion, as part of the Court's judicial outreach program, the Court will hold arguments at law schools, military bases, and other public facilities. This practice, known as Project Outreach, was developed as part of a public awareness program to demonstrate the operation of a federal court of appeals and the military criminal justice system.



The judges regularly meet in conference to discuss recently argued cases. As a matter of custom, there is full discussion of each case followed by a tentative vote. If the Chief Judge is in the majority, the Chief Judge assigns the responsibility for drafting an opinion to a judge in the majority. If the Chief Judge is not in the majority, the next senior judge in the majority assigns the case. After an opinion is drafted, it is circulated to all judges, who have the opportunity to concur, comment, or submit a separate opinion. After the judges have had an opportunity to express their views in writing, the opinion is released to the parties and the public.

## **Opinions**

The official decisions of the Court have been published since 1976 by West Group in the *Military Justice Reporter* (M.J.). These reports also contain the *Daily Journal* of the Court's filings, summary disposition orders, and other day-to-day actions of the Court, as well as selected opinions of each of the Courts of Criminal Appeals. West Group also publishes annotations in the *Military Justice Digest*. Shepard's/McGraw-Hill publishes a citator, *Shepard's Military Justice Citations*. The Court's opinions also are available through private electronic media, such as WESTLAW and LEXIS. Since October 1996 opinions of the Court also have been available on the Court's website.

Prior to 1976, the opinions of the Court and the intermediate courts were published by Lawyers Co-operative Publishing Company in the *Court-Martial Reports* (C.M.R.). The 50 C.M.R. volumes are accompanied by a two-volume cumulative citator-index. The opinions of the Court from that era also were bound separately in 23 volumes entitled *United States Court of Military Appeals* (U.S.C.M.A.).

# Judges

The judges of the Court sit as a single panel on all cases. Typically, all five judges participate in each case, but the Court's rules provide that a quorum is established by participation of a majority of the active judges. The Chief Judge also has discretion to call upon a former judge of the Court who is in senior judge status to sit as a senior judge if an active judge is unable to participate. If a senior judge is not available, the Chief Judge may request that the Chief Justice of the United States designate a judge of a United States Court of Appeals or United States District Court to serve with the Court.

Article 142 of the UCMJ provides that each judge "shall be appointed from civilian life." To underscore the civilian nature of the Court, the statute provides that a person who has retired from the armed forces after 20 or more years of active service "shall not be considered to be in civilian life."

The judges are linked to the judges of the Article III courts of appeals for purposes of compensation.

The position of Chief Judge is rotated among the judges to the most senior judge who has not previously served as Chief Judge. The Chief Judge serves in that position for five years unless his or her term as a judge expires sooner. Prior to 1992, the Chief Judge was designated by the President from among the sitting judges.

<b>Current Judges</b>	<b>Judicial Oath Taken</b>	<b>Expiration of Term</b>
Andrew S. Effron (Chief Judge)	Aug. 1, 1996	Sept. 30, 2011
James E. Baker	Sept. 19, 2000	Sept. 30, 2015
Charles E. "Chip" Erdmann	Oct. 15, 2002	Sept. 30, 2017
Scott W. Stucky	Dec. 20, 2006	Sept. 30, 2021
Margaret A. Ryan	Dec. 20, 2006	Sept. 30, 2021

## Senior Judges

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William H. Darden  
Robinson O. Everett  
Walter T. Cox III  
Eugene R. Sullivan  
Susan J. Crawford  
H.F. "Sparky" Gierke

## Prior Judges

## Active Service

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Robert E. Quinn	June 20, 1951 - April 25, 1975
George W. Latimer	June 20, 1951 - May 1, 1961
Paul W. Brosman	June 20, 1951 - Dec. 21, 1955
Homer Ferguson	April 9, 1956 - May 21, 1976
Paul J. Kilday	Sept. 25, 1961 - Oct. 12, 1968
William H. Darden	Nov. 13, 1968 - Dec. 29, 1973
Robert M. Duncan	Nov. 29, 1971 - July 11, 1974
William H. Cook	Aug. 21, 1974 - June 30, 1984
Albert B. Fletcher, Jr.	April 30, 1975 - Sept. 11, 1985
Matthew J. Perry	Feb. 18, 1976 - Sept. 22, 1979
Robinson O. Everett	April 16, 1980 - Jan. 1, 1992
Walter T. Cox III	Sept. 6, 1984 - Sept. 18, 2000
Eugene R. Sullivan	May 27, 1986 - Sept. 30, 2002
Susan J. Crawford	Nov. 19, 1991 - Sept. 30, 2006
H.F. "Sparky" Gierke	Nov. 20, 1991 - Sept. 30, 2006
Robert E. Wiss	Jan. 2, 1992 - Oct. 23, 1995

## Chief Judges

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Robert E. Quinn (1951 - 1971)  
William H. Darden (1971 - 1973)  
Robert M. Duncan (1973 - 1974)  
Albert B. Fletcher, Jr. (1975 - 1980)  
Robinson O. Everett (1980 - 1990)  
Eugene R. Sullivan (1990 - 1995)  
Walter T. Cox III (1995 - 1999)  
Susan J. Crawford (1999 - 2004)  
H.F. "Sparky" Gierke (2004 - 2006)  
Andrew S. Effron (2006 - present)

## **Courthouse**

Since October 31, 1952, the Court has been located in Judiciary Square in the federal courthouse at 450 E Street, N.W., Washington, D.C. 20442-0001. The courthouse, listed on the National Register of Historic Places, was erected in 1910, and was formerly the home of the United States Court of Appeals for the District of Columbia Circuit. Persons interested in visiting the courthouse should contact the Clerk of the Court.

## **The Code Committee**

Article 146 of the UCMJ establishes a committee to meet annually for the purpose of making an annual survey of the operation of the UCMJ. The Committee is composed of the judges of the U.S. Court of Appeals for the Armed Forces, the Judge Advocate General of the Army, the Judge Advocate General of the Navy, the Judge Advocate General of the Air Force, the Judge Advocate General of the Coast Guard, the Staff Judge Advocate to the Commandant of the Marine Corps, and two members of the public appointed by the Secretary of Defense. The meetings are open to the public. Notice of the meetings is published in the *Federal Register* and on the Court's website. The Annual Reports of the Committee are published in West's *Military Justice Reporter*. The reports also are available on the Court's website, or by writing to the Clerk of the Court.

## **Further Information**

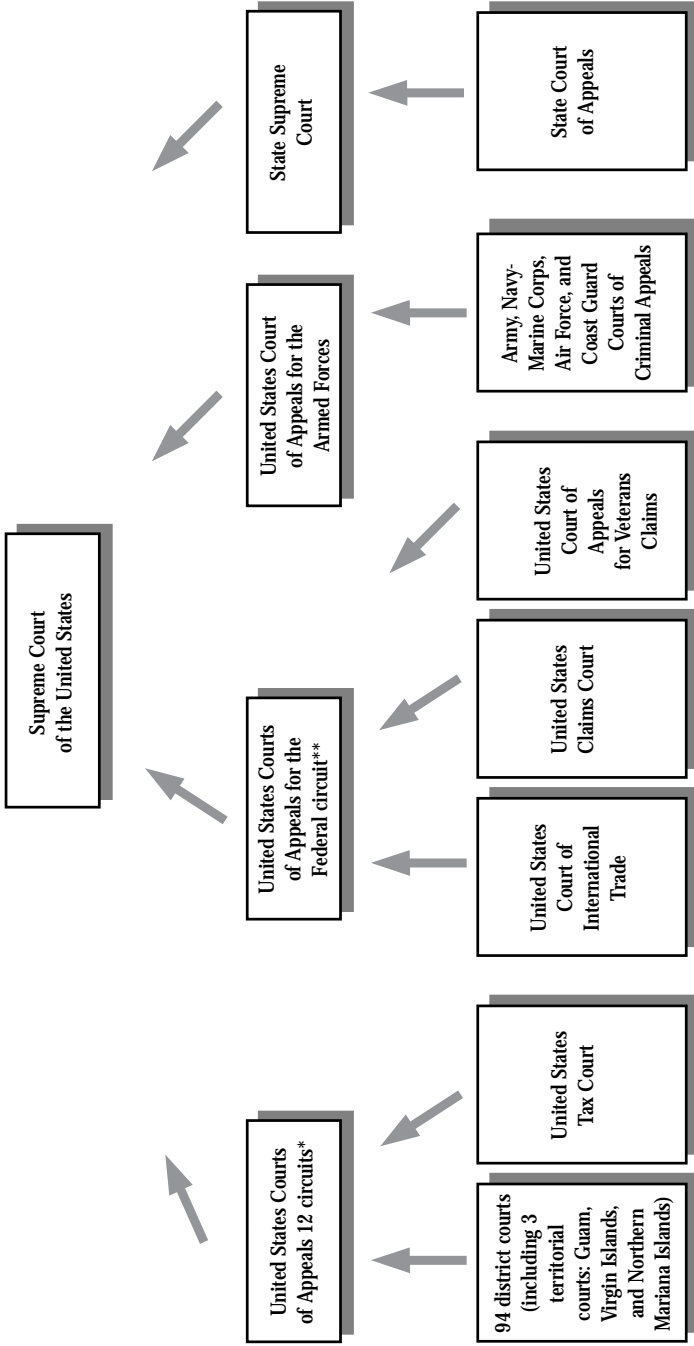
For further information about the Court, please contact:

Clerk of the Court  
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450 E Street, N.W.  
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Phone: (202) 761-1448  
Website: [www.armfor.uscourts.gov](http://www.armfor.uscourts.gov)

# Appendix



# The United States Court System



\* The 12 regional courts of appeals also review cases from a number of federal agencies.

\*\* The Court of Appeals for the Federal Circuit also receives cases from the International Trade Commission, the Merit Systems Protection Board, the Patent and Trademark Office, and the Board of Contract Appeals.



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December 2006