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Law

ADMINISTRATION OF MILITARY JUSTICE

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1. Good order and discipline are essential to an effective fighting force. Impartial, timely military justice helps sustain good order and discipline. This directive establishes policies for implementing uniform military justice that promote ethical standards, are compatible with combat requirements, and help deter misconduct.
2. All practitioners of military justice will be ethical and civil in conducting their business.
3. The Judge Advocate General (TJAG) will organize military justice components of his or her department to maintain their independent and adversarial interests.
4. All trial judges and appellate judges, and all persons who act in a quasi-judicial capacity must be free to make their judicial determinations with absolute independence.
5. Defense counsel, at trial and the appellate level, will perform their defense functions with the sole objective of furthering the interests of their defense clients, consistent with their ethical obligations and their status as officers of the court.
6. Allegations of charges under the Uniform Code of Military Justice (UCMJ) will be processed without needless delay and promptly disposed of by the appropriate commanders. Processing goals may be established to help manage the military justice process, but they may not drive substantive decisions.
7. Air Force members will not be tried by court-martial or punished under Article 15, UCMJ, for substantially the same act or omission for which a state or Federal court has tried them, unless the Secretary of the Air Force (SECAF) grants an exception to this policy.
8. Pretrial agreements will be limited to cases in which the available evidence of guilt is convincing, conviction is probable, and a sound, convincing reason to forego trial of the facts and issues exists.

9. Military justice actions involving espionage, subversion, aiding the enemy, sabotage, spying, or violation of punitive regulations and criminal statutes concerning classified information or the foreign relations of the United States will not begin without coordination through the Air Force Legal Services Agency, Military Justice Division (AFLSA/JAJM).

10. Article 58(a), UCMJ, will not operate to automatically reduce the grade of an enlisted member.

11. Commanders will use nonjudicial punishment, under Article 15, UCMJ, as a prompt way to maintain good order and discipline and promote positive behavior changes in Service members without the stigma of a court-martial conviction. Commanders should consider nonpunitive discipline before resorting to nonjudicial punishment, but they do not have to.

12. Convening authorities must get Department of Justice (DoJ) authorization through AFLSA/JAJM to grant immunity to witnesses who are not subject to the UCMJ or who are subject to active DoJ prosecutorial interest.

13. When determining whether to release information regarding a criminal proceeding, the Air Force will balance public interest in the administration of justice against the accused's right to a fair trial and right to privacy.

14. SECAF will be the only Air Force person who may decide whether to claim the privilege from disclosure of classified information under Military Rule of Evidence 505.

15. Exercise of Jurisdiction Over Reserve and Retired Members:

15.1. A sentence to confinement may not be approved for a member of the US Air Force Reserve recalled to active duty for purpose of trial, unless such recall is approved by SECAF.

15.2. Retired Air Force members who are subject to UCMJ jurisdiction will not be tried by court-martial unless the alleged misconduct is adverse to a significant military interest of the United States and SECAF has approved starting a trial.

16. For all military justice purposes, AFLSA/JAJM will be considered part of the office of TJAG.

17. This directive establishes the following responsibilities and authorities:

17.1. SECAF or the SECAF's designee determines which of the commanders designated under the UCMJ to convene special or general courts-martial may exercise those powers.

17.2. TJAG prescribes the *Air Force Rules of Professional Responsibility* and the *Air Force Standards for the Administration of Criminal Justice*, which apply to all attorneys practicing in Air Force jurisdictions and to paralegals they supervise.

17.3. Commanders, TJAG, and Staff Judge Advocates (SJA) carry out these policies. TJAG issues Air Force instructions (AFI), consistent with these policies, establishing procedures and delegations needed to uniformly administer military justice in the Air Force.

17.4. SECAF delegations and directives concerning military justice will be maintained at AFLSA/JAJM or published in Air Force policy directives or instructions.

17.5. Anyone having official contact with victims and witnesses will treat them with dignity and courtesy, give them consideration, help them in any authorized way, and disrupt their personal lives as little as possible.

18. This policy directive applies to all persons who administer military justice in the Air Force, including the US Air Force Reserve. It does not apply to Air National Guard units and members, unless called or ordered into Federal service.

19. This policy directive does not confer any rights, benefits, or form of due process on any individual nor does it create any obligations for the United States, the Department of Defense, or the US Air Force.

20. See **Attachment 1** for measures used to comply with this policy.

21. See **Attachment 2** for governing policies and directives implemented by this policy directive and other publications with which it interfaces.

DAVID C. MOREHOUSE, Maj General, USAF
The Judge Advocate General

Attachment 1

MEASURING COMPLIANCE WITH POLICY

A1.1. TJAG will assess compliance with the policy for administering military justice by taking measurements in two areas: Timeliness of Courts and Nonjudicial Punishments (Article 15s, UCMJ), and Deterrent Effectiveness. Each legal office will report measurements to AFLSA/JAJM through RCS: HAF-JA(BM)7401, *Automated Military Justice Analysis and Management System (AMJAMS)*. The measurement charts will display trends over time. Data can be displayed monthly, quarterly, or annually, and can be stratified by major command or substance, as needed.

A1.1.1. The policy to promptly process allegations under the UCMJ will be measured by the number of days required to carry out the discipline. Commanders and SJAs at all levels must ensure timely processing of all military justice measures.

A1.1.1.1. Nonjudicial punishments normally should be offered to an individual as soon as possible after the commission of an offense to achieve maximum disciplinary and rehabilitative effect. Compliance with policy will be measured by the average number of days from first offense to offer of nonjudicial punishment (**Figure A1.1.**). Commanders should be able to offer nonjudicial punishments within 10 days of commission of the first offense charged, or be able to articulate sound management reasons why this was not appropriate.

A1.1.1.2. Undue delays in a case getting to trial present hardships to witnesses and victims, as well as the accused. Undue delays in post-trial processing of cases is disruptive to the lives of accused and victims and costly to the Air Force. therefore, expeditious processing of courts-martial is essential. Compliance with this policy will be measured by the average number of days from first offense until a court-martial adjudges sentence or acquittal (**Figure A1.2.**), and by the average number of days from sentencing until review or appeal is completed (**Figure A1.3.**). SJAs are encouraged to analyze available statistical data relating to the segments of court processing over which they have significant control to highlight specific areas they can improve.

A1.1.2. Effective discipline should deter future misconduct. Analyzing the frequency of use of courts-martial and nonjudicial punishment compared to the Air Force population, over time, indicates deterrent effectiveness. Significant departures from trends may reflect disproportionate use of military justice mechanisms.

A1.1.2.1. Courts-martial rates per thousand indicate the deterrent effect of the disciplinary process (**Figure A1.4.**). Rates of courts-martial per thousand Air Force members, over time, indicate trends of commanders' need to use the court system to discipline breaches of military justice.

A1.1.2.2. Nonjudicial punishment rates per thousand indicate the deterrent effect of the disciplinary process (**Figure A1.5.**). Rates of nonjudicial punishments per thousand Air Force members, over time, indicate trends of commanders' need to use nonjudicial punishment to discipline breaches of military justice.

Figure A1.1. Sample Metric of Nonjudicial Punishment Processing Times.

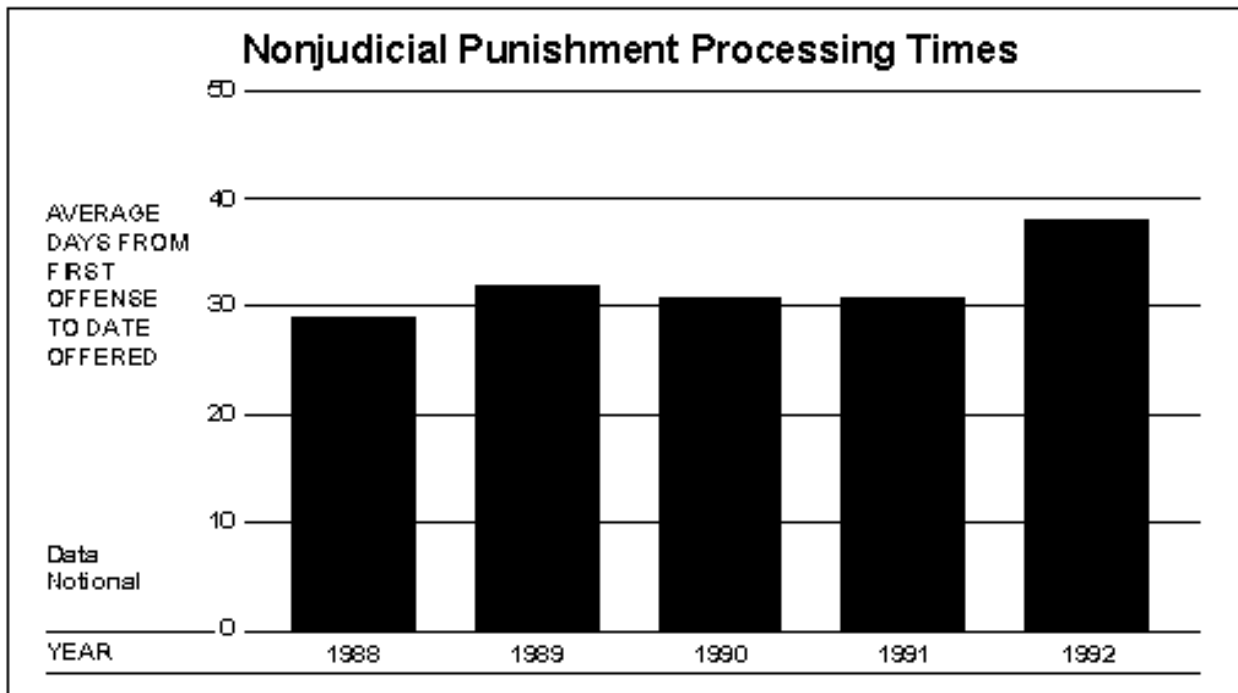


Figure A1.2. Sample Metric of Court-Martial Processing Times.

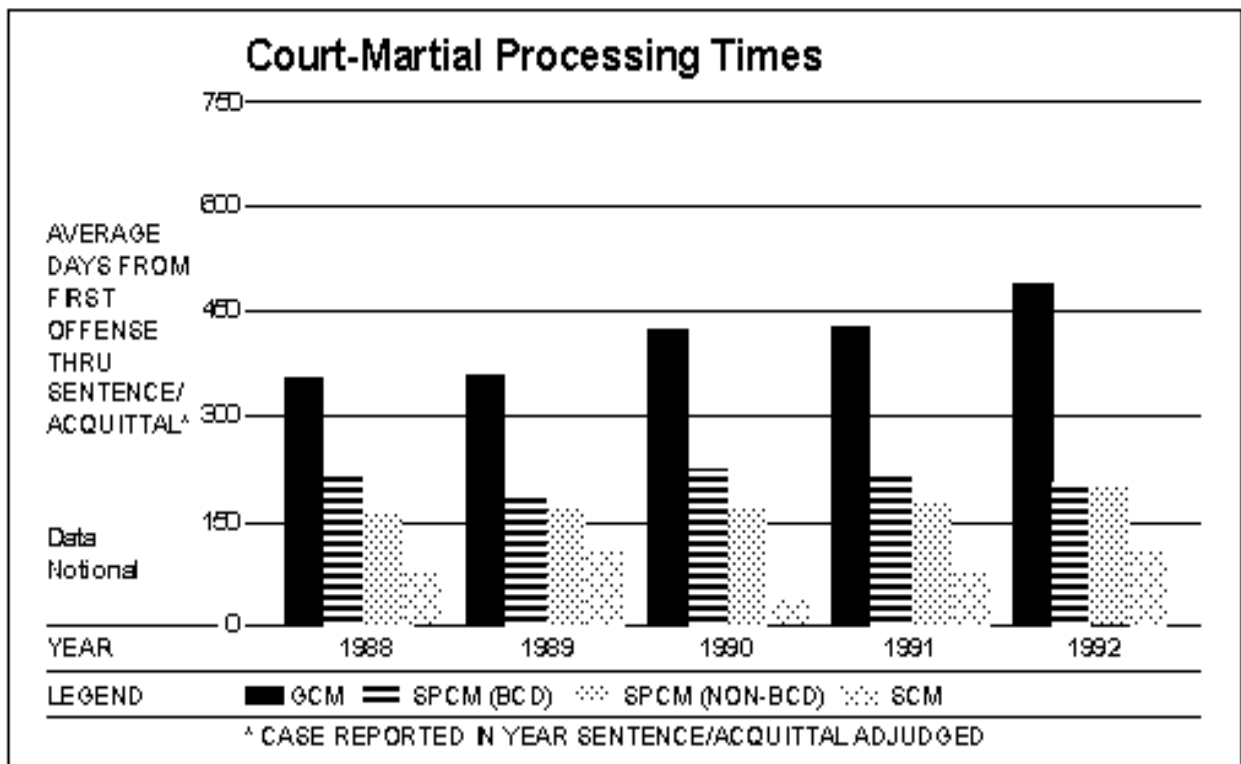


Figure A1.3. Sample Metric of Court-Martial Appellate Processing Times.

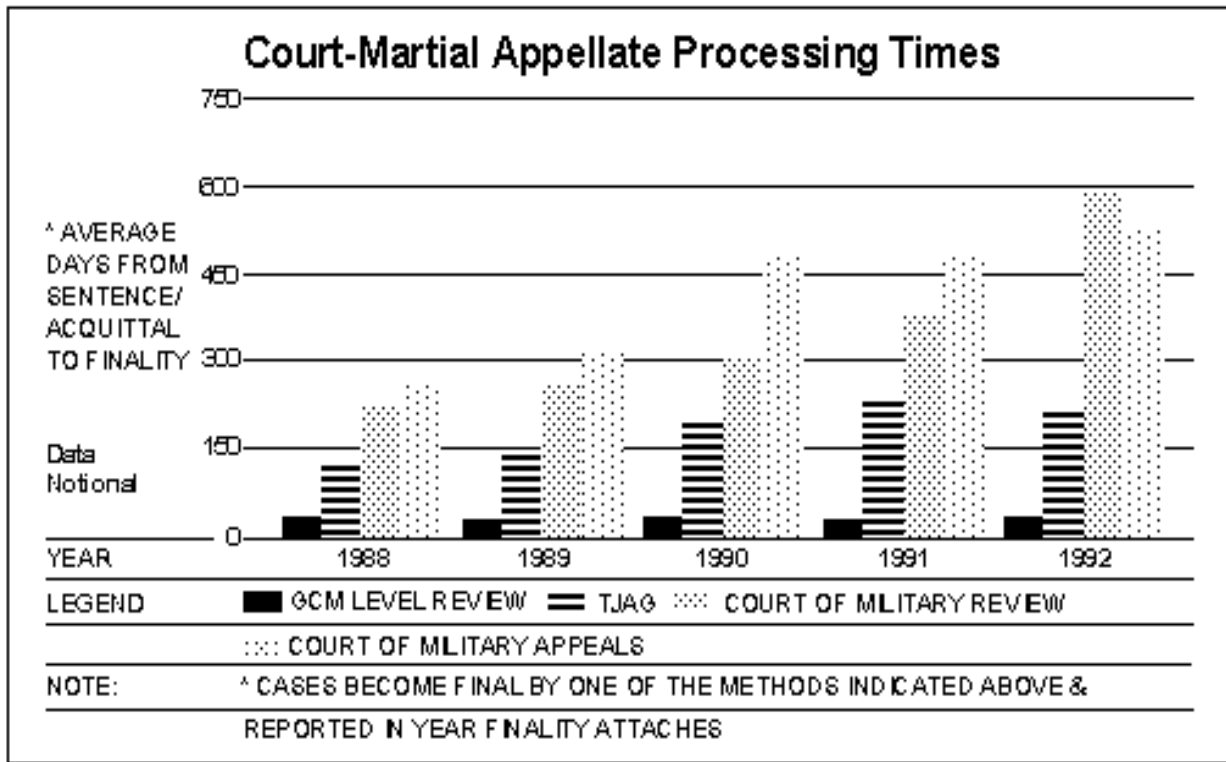


Figure A1.4. Sample Metric of Court-Martial Rates.

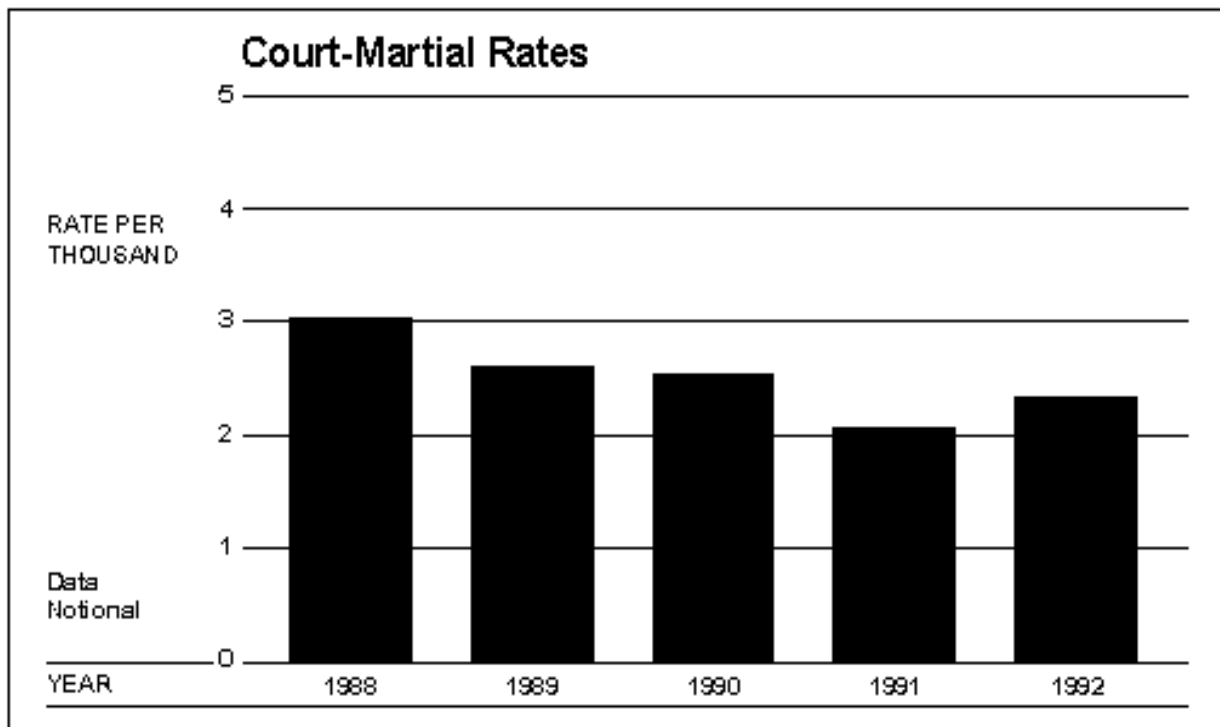
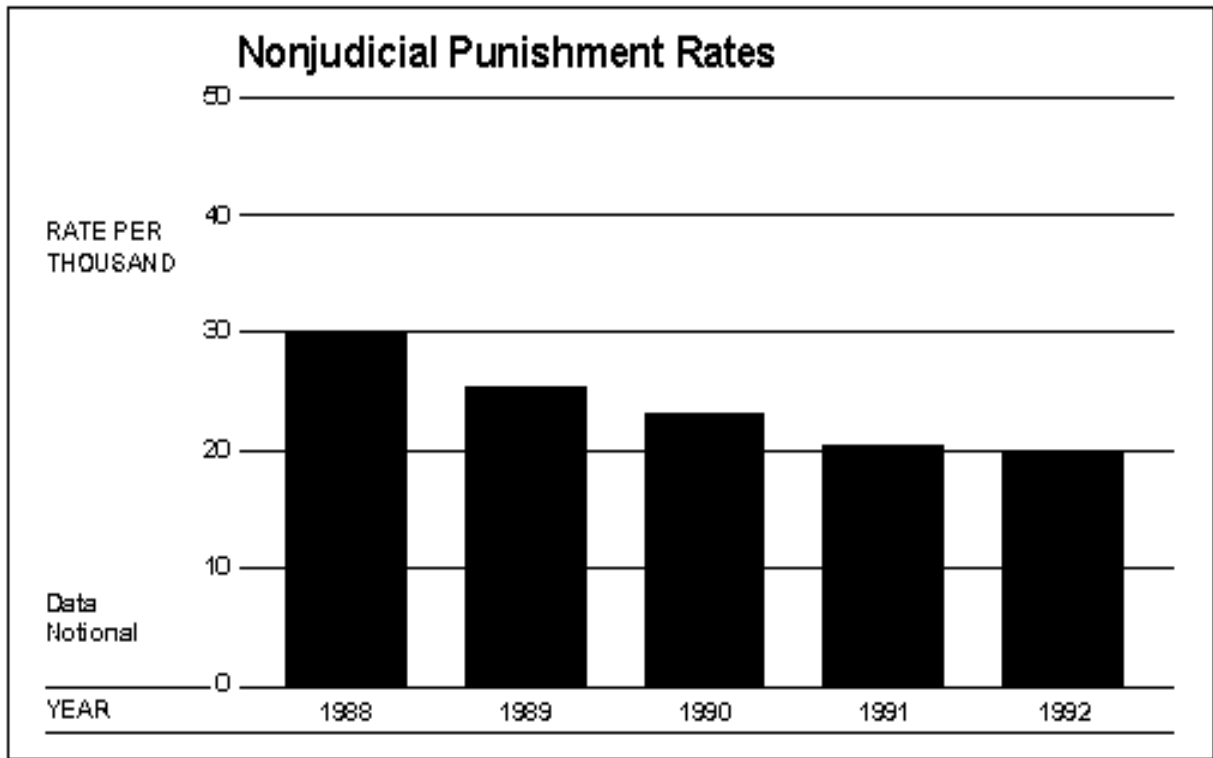


Figure A1.5. Sample Metric of Nonjudicial Punishment Rates.



Attachment 2

RELATED POLICIES AND INSTRUCTIONS

A2.1. This policy directive implements the UCMJ (Title 10, United States Code, Sections 801 through 942), and the *Manual for Courts-Martial*, including the *Rules for Courts-Martial* and the *Military Rules of Evidence* (Executive Order 12473, *Manual for Courts-Martial, United States, 1984*, July 13, 1984, and amendments thereto.)

A2.2. This directive interfaces with policies contained in:

Title 5, United States Code, Sections 552 *Public Information*, September 6, 1966, and 552a, *Records Maintained on Individuals*, December 31, 1974

Public Law 101-647, *Crime Control Act of 1990*, November 29, 1990

Public Law 97-291, *The Victim and Witness Protection Act of 1982*, October 12, 1982

DoD Directive 1030.1, *Victim and Witness Assistance*, August 20, 1984, With Change 1

DoD Directive 5030.7, *Coordination of Significant Litigation and Other Matters Involving the Department of Justice*, August 22, 1988

AFI 10-1101, *Operations Security (OPSEC) Instructions*(formerly AFRs 55-30, 55-32, 55-36, 55-39, and 205-1)

AFI 25-201, *Support Agreements Requirements*(formerly AFR 11-4)

AFI 31-205, *The Air Force Corrections Program*(formerly AFR 125-18)

AFPD 31-5, *Investigations, Clearances, and Access Requirements*

AFI 35-102, *Crisis Planning, Management, and Response*

AFI 37-131, *Air Force Freedom of Information Act Program*(formerly AFR 12-30)

AFI 37-132, *Air Force Privacy Act Program*(formerly AFR 4-33)

AFI 38-101, *Air Force Organization*(formerly AFRs 23-22 and 26-2)

AFI 51-103, *Designation and Certification of Judge Advocates*(formerly AFR 110-9)

AFI 51-201, *Military Justice* (formerly AFRs 111-1, 111-2, 111-3, 111-5, 111-7, 111-9, and 111-17)

AFI 51-202, *Nonjudicial Punishment*(formerly AFR 111-9)

AFI 51-703, *Foreign Criminal Jurisdiction*(formerly AFR 110-25)

AFR 110-12, **(Joint Departmental Publication [JDP])**, *Status of Forces Policies, Procedures, and Information*, January 14, 1990

AFR 110-13 **(JDP)**, *Consular Protection of Foreign Nationals Subject to the Uniform Code of Military Justice*, November 5, 1968

AFM 111-651, *Automated Military Justice Analysis and Management System (AMJAMS) F065/CV, Users Manual*, December 19, 1980, With Changes 4 through 25