

Judicial Profile

MAJ. DEBORAH L. HOUCHINS

Hon. Thomas Cumbie U.S. Circuit Judge, U.S. Air Force

WE LIVE IN unpredictable times. The events of 9/11 materially changed the outlook of millions of Americans—military and civilian alike. That is the perspective that Col. Thomas Cumbie brings to the bench as a circuit judge hearing cases across the U.S. Air Force.

On Choosing Military Service

Judge Cumbie was born in Gainesville, Fla. He graduated from Florida State University in 1979 with a Bachelors of Arts in criminology. He received his Juris Doctor degree from the Florida State University College of Law in 1982.

Even though his father had served in Korea, Judge Cumbie's family did not boast a long connection with military service. In fact, it was only out of fascination with the mechanics of the military that he spoke to a friend in law school about his own military service and his excess-leave program status (which allows an individual to attend law school while still serving in the military). Judge Cumbie graduated from law school, was married, and began his legal career drafting state legislation in Florida.

During his early years, it occurred to him that trial work was where he wanted to focus his practice; it was an opportunity that was not readily available to him while he was drafting legislation. One day, his father-in-law, a retired fighter pilot, mentioned to Judge Cumbie that there were vast opportunities available to an individual serving in the military, particularly as a member of the Air Force. Judge Cumbie agreed to talk to a recruiter, and he has not looked back since.

By virtue of the Direct Accession Program—a vehicle for bringing civilian lawyers into military service—Judge Cumbie was commissioned as a first lieutenant in August 1985 and began active duty that same year. The Air Force Judge Advocate General's (JAG) Corps placed him at Fort Walton Beach, Fla. (Hurlburt Field), as a brand new assistant staff judge advocate (the functional equivalent of an associate in a law firm). Military lawyers are considered true generalists, and Judge Cumbie's initial placement was no different. A drafter looking for an opportunity to do trial work, Judge Cumbie was assigned as chief of civil law (most akin to civilian practice working on matters of domestic rela-



tions, employment, contracts, and administrative law). He flourished in this position, which he credits to the staff judge advocate and deputy staff judge advocate with whom he worked (much like senior partners in a law firm). These military attorneys themselves had had previous military careers before joining the JAG Corps, and they helped him transition from his civilian mind-set to a more military perspective. The result of their influence was that just one year after joining the Air Force, Judge Cumbie was reassigned to serve as the area defense counsel (much like a public defender)—a position that is reserved for more senior attorneys.

In military service, it is not uncommon for attorneys to move between areas of law and to change offices and locations frequently. In 1988, Judge Cumbie moved from being an area defense counsel in Florida to a position as circuit (or senior) defense counsel working out of Travis Air Force Base in California. The position of circuit defense counsel is extremely labor intensive, and Judge Cumbie's experience was no different. He averaged 200-plus days on the road that year, defending cases out of other attorneys' offices; he was so busy

that he managed to get home for the birth of his first child only a couple of days before the event, then left for another 19-plus days on the road.

The Air Force JAG Corps has an intricate system of management for its attorneys. Young attorneys are placed at bases or offices throughout the world—a long way away from where the organization's senior leadership operates in Washington, D.C. Therefore, midlevel "partners" in the form of staff judge advocates and deputy staff judge advocates act as the senior leadership for the legal mission at the local level. Judge Cumbie's next position was as a deputy staff judge advocate at Charleston Air Force Base, but even in this leadership position, Judge Cumbie was never far from the courtroom. In just two and one-half years his office tackled 53 criminal cases; Judge Cumbie tried or trained other trial attorneys for 52 of those cases.

The Air Force, like any other government organization, is no stranger to change. In 1993, the Air Force converted its structure to a new collection of major commands and numbered air forces to manage the infrastructure. Judge Cumbie's sabbatical from the courtroom included his "next stop" at the numbered air force level, where he helped the Second Air Force (2AF) legal office provide seamless legal support while the major commands converted from Air Training Command to Air Education and Training Command, the system that exists today. Judge Cumbie spent two years ensuring a smooth legal transition for these projects.

Certain that he was never again going to see the inside of the courtroom as a major player in the arena of military criminal law, Judge Cumbie next pursued a professional military education (a career-making step for Air Force officers moving to a leadership position, which includes lawyers). After completing the year-long course of study, he moved to the position of staff judge advocate at Laughlin Air Force Base in Texas. He thought that surely this much time out of the courtroom meant he was done as a trial lawyer.

Then Col. Mike McShane asked Cumbie for identifying information and determined that Cumbie was too senior for trial work. McShane told Cumbie that, "if you can't play in the game, refereeing is the next best thing" and submitted him for his first military judgeship. And Lt. Col. Cumbie assumed the new title of "Judge."

The Uniqueness of the Judge Advocate General's Corps' Judiciary

Since becoming a military judge in the late 1990s, Judge Cumbie has served on the bench two separate times for a total of eight years. In the early 2000s, he briefly returned to management as a staff judge advocate at the second largest legal office under the control of an officer of his rank—only to find himself at the center of ensuring that the legal needs of the first round of departing soldiers were met in the wake of the 9/11 attacks. An eager servant of the people but still driven by his love for trial work, Judge Cumbie was able to limit his time away from the bench to that one tour at

Davis-Monthan Air Force Base in Arizona. He returned to the bench in 2003 and has stayed there ever since.

In the Air Force, serving as a military judge is not necessarily the optimal position for military promotion. It is an appointed, rather than elected, position and is assigned based on skill and ability as well as the needs of the service. Many military judges consider themselves lucky if they receive a single appointment to the bench and later return to the management of the service. In Judge Cumbie's case, two appointments (and incumbency until retirement) speak volumes about his service on the bench. As if that were not enough to say about a long military career blessed with years of trial advocacy work, Judge Cumbie was also selected as chief judge of the Air Force's Atlantic Region. His reputation clearly precedes him.

Why then did he choose a path that took him from promotions and leadership responsibilities to a lifestyle requiring countless trips around the circuit and hours of preparation for singularly important days of reckoning for those seeking truth and justice from the bench? The answer for Judge Cumbie is threefold.

First, military cases often take longer to try than civilian cases do. Even to plead guilty, the providency hearing (what must be proved before an Air Force judge may formally accept a guilty plea) may take longer than some litigated civilian trials. It has always been Judge Cumbie's clear intent to ensure that the inherent fairness that comes with a system that demands that degree of proof prior to determining guilt is protected. And he feels that he can best achieve that goal from the bench.

Second, one of the best opportunities a judge has is to help develop the next generation of trial attorneys who will operate in that system. In the Air Force, after a trial, each appearing attorney has the opportunity to receive feedback from the bench about his or her performance in court. Young attorneys relish this feedback because it provides the best opportunity to hear a senior attorney and officer tell them how to accomplish their assigned mission better. And, according to Judge Cumbie, these mentoring sessions provide that chance to leave a lasting effect on the future of the system that he looks forward to serving every day.

Finally, Judge Cumbie keeps coming back day after day because the courtroom provides him something new every time. In his opinion, when he finds the issues before him are new—even after eight years on the bench—then that tells him he has not grown older than the concepts he serves. And it's not just the issues involved in the cases, even though in the Air Force the matters before the court range from criminal matters (like theft, sexual assault, or even murder) to matters that are related to the military (like desertion and conduct unbecoming an officer). The opportunity to work with military juries provides something new to the courtroom as well, which is a plus for a senior criminal advocate with more than 500 cases to his name. In the Air Force, juries arguably represent the

defendant's peer group more closely, whereas in the civilian world, one might argue that a jury more closely represents society as a whole. A standard member of an Air Force jury usually has a college education and often has a graduate degree, such as a master's degree, and has certainly held a position of trust at the request of the agency, probably the equivalent in scope and monetary value to a trusted position in a large corporation. Without a doubt, every member of a military jury has had to receive and follow an order given by a superior officer, whether or not they agreed with that order or wanted to follow it. A judge's instructions to the jury are the equivalent of military orders, and the strict construction and adherence to them by jury members places the judge in a position where he or she can focus on matters of law rather than jury administration.

In general, focusing on matters of law is arguably the best part of a judge's job. In a system where the judge, the prosecution, and the defense are all paid by the same agency that is questioning the actions of the accused, some might say the system is skewed. But the Air Force military justice system and the JAG Corps in general pride themselves on the fact that justice is at the core of what they do. Judicial freedom is alive and well in the military justice system, and the best defense possible underlies each and every trial. In fact, the trial advocacy system in the Air Force is so separate and apart from the experiences of its participants that attorneys and judges can operate in the courtroom without fear that outcomes will be tied to their ability to be promoted. To Judge Cumbie, that

aspect equates to more time to support the system and the ability for whoever stands before him to get the best defense and the fairest trial possible en route to seeing that actual justice is served, and less time worrying about the politics that sometimes coincide with the execution of judicial activity.

The Culmination of a Distinguished Career

Col. Thomas Cumbie has faithfully served the U.S. Air Force since 1985—the better part of 23 years. An accomplished trial advocate, proven leader, and distinguished judge, Judge Cumbie will “soldier on” as long as he can positively serve the bench. What then? This legal mind—who has seen some of the most recent complex criminal cases found in the Air Force, who has led people, and who has prepared members of the Air Force for both good times and bad during the most significant events in military history since Vietnam—will finally get an opportunity to relax. **TFL**

Deborah L. Houchins is a major in the U.S. Air Force and works as a deputy staff judge advocate at Eglin Air Force Base in Florida. The views expressed in this publication are those of the author and do not reflect the official policy or the position of the Department of Defense, the U.S. government, or the U.S. Air Force. This publication has been reviewed by security and policy review authorities and is cleared for public release.