From the Regimental Historian and Archivist

Our history: The origins and evolution of the Manual for Courts-Martial (MCM)

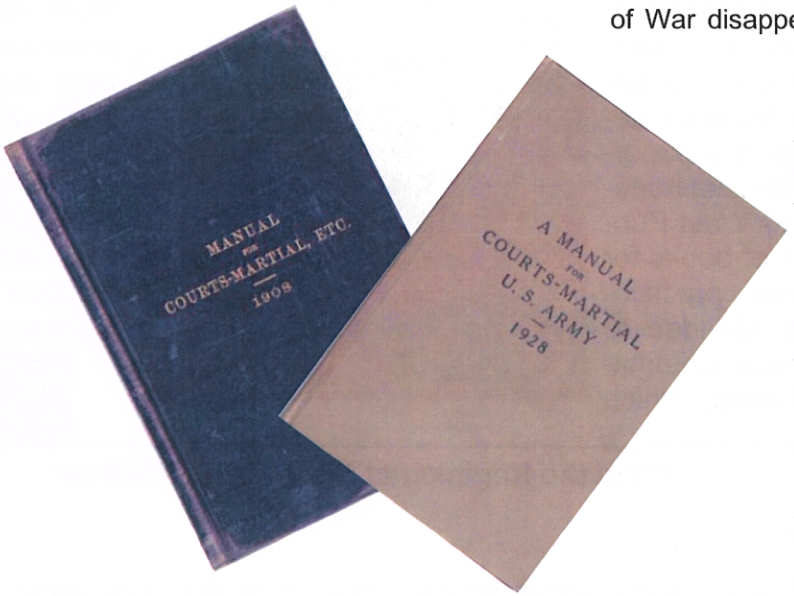
While the earliest Judge Advocates were heavily involved in prosecuting criminal cases under the Articles of War, there was no official procedural guide for conducting courts-martial until 1895, when the War Department published the first *Manual for Courts-Martial*.

This first manual was actually an adaptation of a privately published guide authored in 1889 by CPT Arthur Murray. Murray, who was the Acting Judge Advocate in the Missouri Department, wrote a pamphlet titled *Instructions for Courts Martial and Judge Advocates*, and it was published as Circular No. 8, Department Headquarters, Ft. Leavenworth. Murray later took this circular and printed it commercially under his own name, and the "Murray Manual" sold well throughout the Army---if only because it was the sole handy source of legal guidance on how to prepare charges and present evidence at courts-martial.

This "Murray Manual" was written for the non-lawyer since, with rare exception, an officer chosen by his commander to serve as a Judge Advocate at a court-martial was a line officer and had no legal training. But the Judge Advocate in the last quarter of the 19th century did not have an easy job, since he served as prosecutor, legal advisor to the court and, if necessary, as individual defense counsel.

In 1895, the Judge Advocate General's Office took Murray's manual and published it as the Manual for Courts-Martial. (As an aside, Murray effectively lost any future royalties, and had no right to sue for copyright infringement; the U.S. could not be sued for copyright infringement in the Court of Claims until 1960).

The new MCM was a small blue-in-color hardcover pocket-sized book. It contained the complete text of the Articles of War, as well as general guidance on the form of charges and jurisdiction. As for rules of evidence, the MCM stated that a court-martial should follow "the common law rules of evidence" but that this was not required by statute. In any event, "a certain latitude in the introduction of evidence and the examination of witnesses" was permissible when it was "in the interest of the administration of justice."



The MCM 1895 was republished in 1901, 1905, 1907, 1908, 1909, and 1910. After Congress made changes to the Articles of War in 1916, a new MCM appeared in 1917. Another revision of the Articles of War in 1920---which "judicialized" court-martial procedure ---resulted in the MCM, 1921.

When the United States entered World War II in December 1941, the MCM, 1928, controlled court-martial practice. This tan-in-color hardback MCM remained in effect throughout the war and guided the Judge Advocates who prosecuted and defended Soldiers at the two million courts-martial held between 1941 and 1945.

In 1949, the Army published a new MCM, but it was obsolete almost immediately, since the Articles of War disappeared when the Congress enacted a "uniform" criminal code applicable to the Army, Navy (and Marine Corps) and the new Air Force in 1950.

The maroon-colored MCM, 1951 remained the "bible" for the criminal law practitioner until Congress passed the Military Justice Act of 1968, which triggered the publication of the MCM, 1969. While the 1969 manual retained the maroon color of the 1951 manual, this new MCM was published as an expandable notebook (so that supplementary pages (called "Changes") could be inserted when the MCM was amended as a result of legislative changes or a new executive order).

More legislative changes in 1983 led to the publication of the MCM, 1984. This large notebook (which many practitioners disliked because it did not fit into the standard-size brief case and was difficult to carry) remained in effect for 10 years. TJAGSA's Criminal Law Division spearheaded the publication of this new MCM, and members of that teaching department (led by then MAJ Patrick Finnegan) did all the proofreading for the new manual and created an index.

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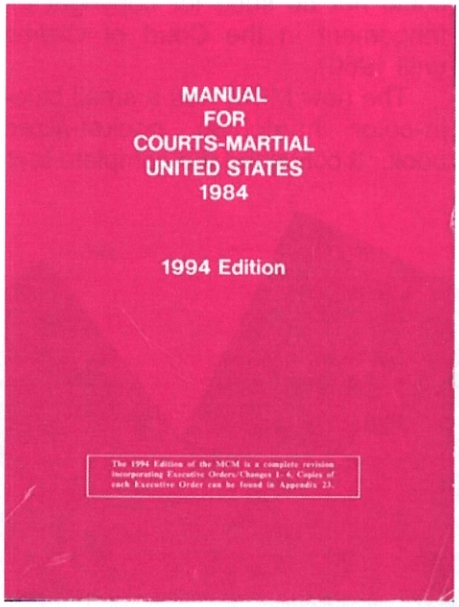
In 1994, the MCM underwent a major metamorphosis when it changed from hardback to paperback. This move to an all-paper format was initially conceived by COL Francis A. Gilligan, who served as Chief of OTJAG's Criminal Law Division in the early 1990s. Gilligan recognized that advances in electronic publishing made it possible to abandon the MCM's notebook format and go to a paperback modeled on the telephone-book format used by West Publishing for its series of books for Federal civilian law practitioners. Gilligan took his idea to the DoD Joint Service Committee on Military Justice, which approved it. OTJAG's Criminal Law Division subsequently worked with the Army Publications and Printing Command to produce the first paperback MCM in 1994.



Since 1994, a new paperback MCM has been published as needed---usually after an executive order amending the MCM has been signed by the president. New paper MCMs were published in 1995, 1998, 2000, 2002, and 2005. These paper MCMs all had red-colored stiff card covers. The current MCM (2008 edition), however, has reverted to the time-honored maroon color that first appeared in 1951.

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A correction:

An alert (and smart) reader spotted an error in the story about COL David "Mickey" Marcus (June 2009 *Quill & Sword*). Although at least one published source claims otherwise, Marcus in fact did not parachute into Normandy with the 101st Airborne Division on June 6, 1944. While he had permission to accompany the division in combat, Marcus was not airborne qualified. Consequently, he crossed the Channel on a ship on June 8. Marcus then waded ashore at Utah Beach---under fire---and soon linked up with the 101st. Marcus then remained with the division in France for several weeks, until he was ordered to return to his Civil Affairs job in Washington.

"A good character is, in all cases, the fruit of personal exertion. It is not inherited from parents; it is not created by external advantages; it is no necessary appendage of birth, wealth, talents, or station; but it is the result of one's own endeavors—the fruit and reward of good principles manifested in a course of virtuous and honorable action."

- J. Hawes