

Newsline Washington

Bill would let more service members appeal to high court

By Deborah Funk
TIMES STAFF WRITER

Court-martialed service members whose cases involve extraordinary circumstances could ask the Supreme Court to review their cases — a right now denied them — under a bill introduced in Congress.

The bill, HR 1984, sponsored by Rep. Susan Davis, D-Calif., would affect defendants who appeal their cases to the military's highest court, the Court of Appeals for the Armed Forces, based on extraordinary circumstances such as new evidence.

In most cases reviewed by the CAAF, defendants who lose before the military's high court can ask for further review by the Supreme Court under the routine appeals process.

However, defendants in cases involving extraordinary circumstances that come before the military high court do not have that option.

Davis' bill would change the law to even the playing field for military defendants in terms of their right to seek Supreme Court review.

"The disparity with which defendants and the government are treated under current law is an inequity that should be rectified," Davis said.

But retired Coast Guard Capt. Kevin Barry, a former military judge, said the measure would fix only a small part of the problem.

In the military justice system, the CAAF mandatorily reviews all death penalty cases and cases that have been heard by a military Court of Criminal Appeals and forwarded to the CAAF by a judge advocate general. Defendants can appeal those cases to the Supreme Court if the CAAF rules against them.

While other military defendants can ask the CAAF to review their cases, it's up to that court's discretion whether to do so — only about

10 percent of those requests are approved. The other 90 percent of defendants making such requests cannot ask the Supreme Court for further review, Barry said.

Davis was led to introduce her legislation by the case of a service member who asked the CAAF for review of his court-martial based on extraordinary circumstances.

One of Davis' constituents, Norbert MacLean III, a former Navy cryptologic technician (administrative) third class, has fought for more than a decade to have his conviction vacated and to be reinstated in the Navy.

In 1992, MacLean pleaded guilty to writing bad checks under an agreement that he would be released with time served — avoiding as many as 55 years in jail — and received a bad conduct discharge. But MacLean said later that he felt pressured into pleading guilty and couldn't put on a defense because his pay records were missing, as was other evidence.

MacLean appealed his case to the CAAF, saying he had new evidence that was not considered during the original trial and appeals process. He was denied relief, however, and thus could not ask the Supreme Court to further review the case, he said.

"The Supreme Court's doors were sealed off for me," MacLean said. □

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By Rick
TIMES ST

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