

**REPORT OF THE CHIEF COUNSEL OF THE COAST GUARD
OCTOBER 1, 1996 TO SEPTEMBER 30, 1997**

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-97 and the five preceding years.

<u>Fiscal Year</u>	<u>97</u>	<u>96</u>	<u>95</u>	<u>94</u>	<u>93</u>	<u>92</u>
General Courts-Martial	6	22	11	9	14	16
Special Courts-Martial	9	16	8	23	31	26
Summary Courts-Martial	10	14	14	15	11	25
<u>Total</u>	<u>25</u>	<u>52</u>	<u>33</u>	<u>47</u>	<u>56</u>	<u>67</u>

COURTS-MARTIAL

Attorney counsel were detailed to all special courts-martial. Military judges were detailed to all special courts-martial. For most cases, the presiding judge was the Chief Trial Judge, a full-time general courts-martial judge. When the Chief Trial Judge was unavailable, military judges with other primary duties were used for special courts-martial. Control of the detail of judges was centrally exercised by the Chief Trial Judge and all requirements were met in a timely fashion.

GENERAL COURTS-MARTIAL

Two of the 6 accused tried by general courts-martial this fiscal year were tried by military judge alone. One of the 2 accused tried by military judge alone received a dishonorable discharge and 1 received a bad-conduct discharge. Two of the 4 accused tried by general courts-martial with members received sentences which included a punitive discharge. Two accused elected to be tried by general courts-martial which included enlisted members and 2 accused elected to be tried by a court which included only officer members. All of the general courts-martial resulted in convictions. Two of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), 3 were petty officers (pay grades E-4 through E-6), and 1 was a chief petty officer (pay grade E-7).

The following is a breakdown of the sentences adjudged in general courts-martial tried by military judge alone (2 convictions):

Sentence	Cases Imposed
dishonorable discharge	1
bad conduct discharge	1
confinement	2
reduction in rate	2
forfeiture of all pay and allowances	1

The following is a breakdown of sentences adjudged in general courts-martial tried by members (4 convictions).

Sentence	Cases Imposed
confinement	4
reduction in rate	3
fined (\$12,000.00)	3
forfeiture of all pay and allowances	1

The following indicates the four sentences imposed most by general courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	Punitive Discharge/Dismissal
97	6	2 (33%)	4 (66%)	5 (83%)	4 (66%)
96	22	15 (68%)	19 (89%)	20 (91%)	18 (82%)
95	11	6 (55%)	10 (91%)	9 (82%)	7 (64%)
94	7	1 (15%)	7 (100%)	6 (90%)	6 (90%)
93	14	7 (50%)	13 (93%)	11 (78%)	9 (64%)

The following table shows the distribution of the 152 specifications referred to general courts-martial.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts)	1
86 (absence without leave)	1
92 (failure to obey order or regulation)	4
107 (false official statement)	30
112a (wrongful use, possession, etc. of controlled substances)	3
116 (riot or breach of peace)	1
120 (rape or carnal knowledge)	2
121 (larceny or wrongful appropriation)	33
123 (forgery)	18
123a (making, drawing or uttering check, draft, or order without sufficient funds)	4
128 (assault)	2
129 (burglary)	2
130 (housebreaking)	3
134 (general)	48

GENERAL COURTS-MARTIAL SUMMARY

Sixty-six per cent of the accused tried by general courts-martial were tried by military judge alone. There was a 73% decrease in general courts-martial records received and filed at Coast Guard Headquarters in this fiscal year over last fiscal year.

SPECIAL COURTS-MARTIAL

Eight of the 9 accused tried by special courts-martial this fiscal year were tried by military judge alone. Five bad-conduct discharges were adjudged, all by the military judge. One accused elected to be tried by a court which included enlisted members. Two of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), 5 were petty officers (pay grades E-4 through E-6), and 2 were chief petty officers (pay grade E-7).

The following is a breakdown of sentences adjudged in special courts-martial tried by military judge alone (8 convictions).

Sentence	Cases Imposed
bad-conduct discharge - - - - -	5
confinement - - - - -	6
reduction in rate - - - - -	8
partial forfeiture of pay - - - - -	4
restriction - - - - -	2
reprimand - - - - -	2
hard labor without confinement - - - - -	1
fined (total fines \$10,350.00) - - - - -	2

The following is a breakdown of sentences adjudged in special courts-martial tried by members (one conviction).

Sentence	Cases Imposed
hard labor without confinement - - - - -	1
reprimand - - - - -	1
reduction in rate - - - - -	1
restriction - - - - -	1

The following shows the four sentences imposed most by special courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	BCD
97	9	4 (44%)	6 (66%)	8 (88%)	5 (55%)
96	14	11 (79%)	10 (71%)	13 (93%)	7 (50%)
95	7	3 (43%)	5 (71%)	6 (86%)	2 (29%)
94	20	6 (30%)	17 (85%)	20 (100%)	11 (55%)
93	27	8 (29%)	19 (70%)	20 (74%)	14 (52%)

The following table shows the distribution of the 86 specifications referred to special courts-martial.

Violation of the UCMJ, Article	No. of Specs.
86 (unauthorized absence)- - - - -	6
90 (assaulting or willfully disobeying a superior commissioned officer) - - - - -	1
91 (insubordinate conduct toward warrant officer, noncommissioned officer, or petty officer) - - - - -	7
92 (failure to obey order or regulation) - - - - -	10
107 (false official statements) - - - - -	1
108 (sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.)- - - - -	1
112a (wrongful use, possession, etc., of controlled substance) - - - - -	13
120 (rape and carnal knowledge) - - - - -	4
121 (larceny or wrongful appropriation) - - - - -	11
123 (forgery) - - - - -	5
128 (aggravated assault)- - - - -	5
129 (burglary) - - - - -	1
134 (general) - - - - -	21

SPECIAL COURTS-MARTIAL SUMMARY

Eighty-eight per cent of the accused tried by special courts-martial were tried by military judge alone. Eleven per cent of these accused pled guilty to all charges and specifications. None of the accused tried by special courts-martial with members pled guilty to all charges and specifications. There was a 35% decrease in special courts-martial received and filed at Coast Guard Headquarters this fiscal year over last fiscal year.

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required reviews of courts-martial conducted as a result of petitions filed under Article 69, UCMJ, a discretionary review was conducted under Article 69 of all courts-martial not requiring appellate review.

PERSONNEL, ORGANIZATION, AND TRAINING

The Coast Guard has 164 officers designated as law specialists (judge advocates) serving on active duty - 121 are serving in legal billets and 43 are serving in general duty billets. Eighteen Coast Guard officers are currently undergoing postgraduate studies in law and 18 will be certified as law specialists at the completion of their studies. Eleven Coast Guard officers who recently graduated from law school or were direct-commission officers completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified

under Article 27(b), UCMJ. Over \$100,000.00 was spent on legal training during the fiscal year.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

Captain Lane I. McClelland, former Chief Trial Judge for the Coast Guard, was assigned to the Coast Guard Court of Criminal Appeals in June 1997, and is the first woman to serve on this Court. At the close of fiscal 1997, the Court consisted of the following judges:

Chief Judge Joseph H. Baum
Judge David J. Kantor
Judge Ronald R. Weston
Judge Lane I. McClelland

Issues challenging the status of this Court, first raised in 1992 with a challenge to the appointment of all military appellate judges, and continuing after the decisions of *Weiss v. United States*, __U.S.__, 114 S. Ct. 752 (1994) and *Ryder v. United States*, __U.S.__, 115 S. Ct. 2031 (1995), with questions concerning the appointment of this Court's civilian judges, were finally resolved by the U.S. Supreme Court in *Edmond v. United States*, __U.S.__, 117 S. Ct. 1573 (1997), with a holding that the appointment of civilian judges to this Court by the Secretary of Transportation was valid both Constitutionally and statutorily.

In addition to the decisional work of the Court, as reflected in Appendix A, the judges on the Court have participated in various professional conferences, committees and seminars during the past fiscal year. In March 1997, the Coast Guard Court co-hosted with the Navy-Marine Corps Court this year's all services appellate military judges conference at the Federal Judicial Center in Washington, D.C. The focus of this one-day conference was a presentation by Chief Judge B. Paul Cotter of the Nuclear Regulatory Commission on electronic technology available for appellate courts. A panel of commissioners from the Court of Appeals for the Armed Forces also made a presentation on the workings of that Court, which was followed by breakout sessions with judges and commissioners discussing a variety of topical issues.

In May 1997, all the judges of the Court attended the two-day Judicial Conference of the U.S. Court of Appeals for the Armed Forces at George Washington University. Also in May, Judge Fearnow represented the Court on a panel of Court of Criminal Appeals Judges as part of the instruction for the 40th Military Judges Course at the Army Judge Advocate General's School in Charlottesville, Virginia. This was one of Judge Fearnow's last official acts as an appellate military judge before his retirement at the end of June 1997.

In September of 1997, Judges Kantor, Weston and McClelland attended a two-day Appellate Military Judges Training Seminar at the

Washington Navy Yard. This seminar is a continuation of the highly successful appellate military judges program created expressly for the military appellate courts by Chief Judge Frank Nebeker of the Court of Veterans Appeals and first held in 1993. This year's seminar was hosted by the Navy-Marine Corps Court and featured presentations on judicial philosophy, evidence issues, opinion writing, judicial ethics, and war crimes prosecutions. A panel of Court of Criminal Appeals Chief Judges and Senior Judges, chaired by Chief Judge Baum of this Court, led a discussion with the attendees of various subjects relevant to court of criminal appeals judges. At lunch, Chief Judge Cox of the U.S. Court of Appeals for the Armed Forces spoke to attendees on matters of concern to that Court and of particular interest to the service courts. As indicated in previous reports, this highly beneficial seminar is now an annual event for both new and experienced judges and will be hosted next year by the Army Court.

This past year, Chief Judge Baum served another term as a member of the rules advisory committee of the U.S. Court of Appeals for the Armed Forces, working on proposed rule changes for that Court. He also continued to play an active role in the Federal Bar Association, as both a member of the association's National Council and as Chair of the association's Judiciary Division for the second year. Under his chairmanship, the Judiciary Division held its annual reception at the U.S. Supreme Court in November to honor newly appointed judges, after presenting an informative bench/bar program earlier that same day at the Federal Judicial Center. Later, in the spring, the Division hosted a reception for foreign judges attending a conference of common-law country judges at the Federal Judicial Center. Chief Judge Baum, as Chair of the Judiciary Division, also participated this year in two separate presentations to visiting Russian and Chinese judges.

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains additional basic military justice statistics for the reporting period and reflects the increase/decrease of the workload in various categories.

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