

REPORT OF THE CHIEF COUNSEL OF THE COAST GUARD

OCTOBER 1, 1998 to SEPTEMBER 30, 1999

NOTE: All statistics presented in this analysis are based upon the number of court-martial records received and filed at Coast Guard Headquarters during fiscal year 1999 and, where indicated, records received during each of the five preceding years. Further, all undated statistics refer to courts-martial in which the record was received in fiscal year 1999.

<u>Fiscal Year</u>	<u>99</u>	<u>98</u>	<u>97</u>	<u>96</u>	<u>95</u>	<u>94</u>
General Courts-Martial	6	18	6	22	11	9
Special Courts-Martial	17	21	9	16	8	23
Summary Courts-Martial	3	8	10	14	14	15
Total	26	47	25	52	33	47

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

Four of the six accused tried by general courts-martial this fiscal year were tried by military judge alone. None of the four accused tried by military judge alone received a dishonorable discharge and three received a bad-conduct discharge. Two accused elected to be tried by general courts-martial that included enlisted members. Both of the accused tried by general courts-martial with members received sentences that included bad-conduct discharges. 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), four were petty officers (pay grades E-4 through E-6), none were chief petty officers (pay grades E-7 through E-9), and none was a warrant officer or junior officer (W-1 through O-3).

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

Sentence	Cases Imposed
dishonorable discharge	0
bad-conduct discharge	3
confinement	4
hard labor without confinement	0
reduction in pay-grade	4
fined (total \$0.00)	0
restriction	0
forfeiture of all pay and allowances	0
partial forfeiture of pay and allowances	0

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

Sentence	Cases Imposed
dishonorable discharge	0
bad-conduct discharge	2
confinement	2
hard labor without confinement	0
reduction in pay-grade	2
fined (total \$0.00)	0
restriction	0
forfeiture of all pay and allowances	0
partial forfeiture of pay and allowances	0

The following indicates the frequency of imposition of the four most common punishments imposed by general courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Pay-Grade	Punitive Discharge/Dismissal
99	6	0 (0%)	6 (100%)	6 (100%)	5 (83%)
98	17	5 (29%)	12 (71%)	16 (94%)	11 (65%)
97	6	2 (33%)	4 (67%)	5 (83%)	4 (67%)
96	22	15 (68%)	19 (86%)	20 (91%)	18 (82%)
95	11	6 (55%)	10 (91%)	9 (82%)	7 (64%)

The following table shows the distribution of the 99 specifications referred to general courts-martial in fiscal year 1999.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts) - - - - -	1
81 (conspiracy) - - - - -	0
83 (fraudulent enlistment)- - - - -	0
85 (desertion) - - - - -	0
86 (absence without leave)- - - - -	3
87 (missing movement) - - - - -	0
89 (disrespect toward a superior commissioned officer - - -	1
90 (assaulting or willfully disobeying a superior commissioned officer) - - - - -	0
92 (failure to obey order or regulation) - - - - -	25
93 (cruelty and maltreatment) - - - - -	3
107 (false official statement) - - - - -	3
108 (wrongful disposition of military property)- - - - -	0
109 (waste, spoilage, or destruction of government property)	1
112a (wrongful use, possession, etc. of controlled substances) - - - - -	0
116 (riot or breach of the peace) - - - - -	0
117 (provoking speech or gestures) - - - - -	0
120 (rape or carnal knowledge) - - - - -	3
121 (larceny or wrongful appropriation) - - - - -	14
123 (forgery) - - - - -	7
123a (making, drawing or uttering check, draft, or order without sufficient funds) - - - - -	0
125 (sodomy) - - - - -	4
128 (assault)- - - - -	3
129 (burglary) - - - - -	0
133 (conduct unbecoming an officer) - - - - -	0
134 (general) - - - - -	31

GENERAL COURTS-MARTIAL SUMMARY

There was a 67% decrease from fiscal year 1998 to fiscal year 1999 in general courts-martial records received and filed at Coast Guard Headquarters. Due to the small size of the Coast Guard this change is not statistically significant when viewed as a single-year change. Over the past 5 years the Coast Guard has averaged 13 general courts-martial per year. Sixty-seven per cent of the accused tried by general courts-martial during fiscal year 1999 were tried by military judge alone. Twenty-five per cent of these accused pled guilty to all charges and specifications. Fifty per cent of the accused tried by general courts-martial with members pled guilty to all charges and specifications.

SPECIAL COURTS-MARTIAL

Sixteen of the seventeen accused tried by special courts-martial this fiscal year were tried by military judge alone. Eight received a bad-conduct discharge. The one accused tried by a special court-martial with members received a sentence that included a bad-conduct discharge. No accused elected to be tried by a special court-martial that included enlisted members. All of the special courts-martial resulted in convictions. Seven of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), nine were petty officers (pay grades E-4 through E-6), one accused was a chief petty officer (pay grades E-7 through E-9), and no accuseds were warrant officers or junior officers (W-1 through O-3).

The following is a breakdown of the sentences adjudged in special courts-martial tried by military judge alone (16 convictions).

<u>Sentence</u>	<u>Cases Imposed</u>
bad-conduct discharge - - - - -	8
confinement - - - - -	15
hard labor without confinement - - - - -	1
reduction in pay-grade - - - - -	15
fined (total \$7,500.00) - - - - -	2
restriction - - - - -	2
partial forfeiture of pay and allowances- - - - -	8
reprimand - - - - -	0

The following is a breakdown of the sentence adjudged in the special court-martial tried by members (one conviction).

<u>Sentence</u>	<u>Cases Imposed</u>
bad-conduct discharge - - - - -	1
confinement - - - - -	0
hard labor without confinement - - - - -	1
reduction in pay-grade- - - - -	1
fined (total \$0.00) - - - - -	0
restriction - - - - -	0
partial forfeiture of pay and allowances - - - - -	0
reprimand - - - - -	0

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	
				Pay-Grade	BCD
99	17	8 (47%)	15 (88%)	16 (94%)	9 (53%)
98	20	9 (45%)	9 (45%)	17 (85%)	4 (20%)
97	9	4 (44%)	6 (67%)	8 (89%)	5 (56%)
96	14	11 (79%)	10 (71%)	13 (93%)	7 (50%)
95	7	3 (43%)	5 (71%)	6 (86%)	2 (29%)

The following table shows the distribution of the 109 specifications referred to special courts-martial in fiscal year 1999.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts)	6
81 (conspiracy)	0
83 (fraudulent enlistment)	0
85 (desertion)	2
86 (unauthorized absence)	0
87 (missing movement)	1
90 (assaulting or willfully disobeying a superior commissioned officer)	2
92 (failure to obey order or regulation)	9
93 (cruelty and maltreatment)	6
107 (false official statements)	2
108 (sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.)	0
112a (wrongful use, possession, etc. of controlled substance)	22
116 (riot or breach of the peace)	0
117 (provoking speech or gestures)	0
121 (larceny or wrongful appropriation)	19
123 (forgery)	13
123a (insufficient funds)	0
125 (sodomy)	0
128 (aggravated assault)	1
129 (burglary)	0
133 (conduct unbecoming an officer)	0
134 (general)	26

SPECIAL COURTS-MARTIAL SUMMARY

There was a 19% decrease in special courts-martial received and filed at Coast Guard Headquarters this fiscal year over last fiscal year. Due to the small size of the Coast Guard this change is not statistically significant when viewed as a single-year change. Over the past five years the Coast Guard has averaged 14 special courts-

martial per year. Ninety-four per cent of the accused tried during fiscal year 1999 by special courts-martial were tried by military judge alone. Six 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.

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 66, 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 171 officers designated as law specialists (judge advocates) serving on active duty - 130 are serving in legal billets and 41 are serving in general duty billets. Twenty Coast Guard officers are currently undergoing postgraduate studies in law and 19 will be certified as law specialists at the completion of their studies (8 to graduate in 2000 including one with an LLM in Admiralty Law, 6 will graduate in 2001 including one with an LLM in International Law, and 6 will graduate in 2002). Nineteen Coast Guard officers (6 funded postgraduate program studies and 13 direct-commissioned lawyers) 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.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

The judges for the U.S. Coast Guard Court of Criminal Appeals during fiscal year 1999 were as follows:

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

The Court normally sits in panels of three at U.S. Coast Guard Headquarters in Washington, D.C. On 13 April 1999 the Court traveled *en banc* to the U.S. Coast Guard Academy in New London, Connecticut to hear oral argument in the case of *U.S. v. Frazier* as part of "Project Outreach," a program instituted by the United States Court of Appeals for the Armed Forces to take appellate hearings outside the Washington, D.C. area, and thus, make the public more aware of the military justice appellate process. Oral argument on the case was held before the corps of cadets, faculty, and administration at the

Coast Guard Academy, Coast Guard law specialists, both active and retired, from the surrounding area, and other guests. After the hearing adjourned, in furtherance of "Project Outreach" objectives, the judges and appellate counsel entertained questions from the audience not pertaining to the case.

In addition to the decisional work of the Court, as reflected in appendix A, the judges to the Court have been involved in various professional conferences, committees and seminars during the past fiscal year. In March 1999 the judges of the Court participated in the William S. Fulton, Jr. Appellate Military Judges Conference at the Federal Judicial Center in Washington, D.C. The conference was hosted by the U.S. Air Force Court of Criminal Appeals and featured Chief Judge Walter T. Cox III, who offered his perspective of the military justice system from fifteen years on the bench of the U.S. Court of Appeals for the Armed Forces. The conference also included a presentation by Professor James Strazzella of Temple University School of Law on the "Art of Appellate Judging," a talk by Major Martin H. Sitler, USMC, of the Army Judge Advocate General's School, on Extraordinary Writs, and a presentation by Ms. Diane DiMarco from the Administrative Office of the U.S. Courts on electronic filings. The conference also included panel discussions with judges from the Air Force Court on various issues facing our courts of criminal appeals. The Air Force Court also hosted the annual Appellate Military Judges Training Seminar, which was held on September 16 and 17, 1999, at the Federal Judicial Center.

In May 1999 the judges of the Court attended the Judicial Conference of the United States Court of Appeals for the Armed Forces at George Washington University in Washington, D.C. This two-day conference included presentations on a variety of topics, including problems implementing Articles 57(a) and 58b, UCMJ, trickery and deceit by law enforcement officers, various rules of evidence, ethical questions, disobedience of orders and the law of war, and defending high profile cases.

On 18 March 1999, Chief Judge Baum participated on a panel with Chief Judge Cox and the Chief Judges from the other service Courts of Criminal Appeals as part of the program for a Military Appellate Advocacy Symposium at The Catholic University of America Columbus School of Law. Chief Judge Baum also served another term this past year 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 continued to play an active role in the Federal Bar Association as a member of the Pentagon Chapter and as immediate past Chair of the Association's Judiciary Division.

ADDITIONAL MILITARY JUSTICE STATISTICS

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

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