

Navy Sees Steady Decline in Courts-Martial

Despite a stream of headline-grabbing disciplinary issues, the Navy has over the past decade seen a steady decline in the number of sailors who have faced the most serious court-martial proceedings.

The pace and pressure of wartime operations is clearly a major reason, military law experts agree.

“A busy military is military that doesn’t have a lot of time to commit a lot of crime,” said Eugene Fidell, a former Coast Guard lawyer and president of the National Institute of Military Justice.

In addition, sailors are generally behaving better, civilian attorneys who specialize in military law say.

But many of those lawyers also share a sense — highlighted by a recent independent review of Navy legal requirements — that commanders are increasingly opting to dispose of cases at the lowest form of court-martial or through administrative means.

The independent panel’s February report didn’t provide statistics on lower-level disciplinary actions; these are not centrally collected, according to the Office of the Judge Advocate General. But the panel concluded that lower forms of discipline that can require judge advocate support — including summary courts-martial, nonjudicial punishment and administrative separation — have not fallen, and said the Navy has seen “indications” that the use of such measures have begun to increase.

“What we’re finding is a lot of commanders are using other methods to get people out of the military quicker,” said Greg Rinckey, a former Army lawyer who frequently represents military clients. “It’s a trend that seems to be continuing.”

An adjunct professor of law at Georgetown University and military law expert put it more bluntly.

“Commanding officers just want their troublemakers gone! Now!” wrote Gary Solis, commenting via e-mail while on travel. “Admin separations do the job. A contested court-martial takes months.”

The ability to move a case downward has its limitations. “Someone’s not going to get NJP for murder,” said Richard Stevens, a former Air Force lawyer who specializes in military legal matters. However, commanders can be flexible with lesser crimes, he said.

Stevens said he doesn’t believe the downshifts are being made for convenience. “It doesn’t seem to me that the numbers are driven by expediency or laziness,” he said. Nor does Stevens say he thinks the reduction is being driven by convening authority or prosecutor efforts to trim spending. Instead, he says he believes that commanders are being more discerning.

"I believe there's a lot more attention being focused on what the appropriate forum should be than perhaps in decades past," Stevens said. "Because now, it's very hard to survive a special court or a general court. It's not easy to find someone who's been through one and is still serving — whereas I know, in the past, of people just going to jail and then, once they get out after a month or two, go back into the field and continue on. Those days are gone."

Sharp drop in trials

The Navy tried 252 cases at general court-martial in fiscal 2000, a figure that fell to 108 in fiscal 2010. A total of 755 cases were tried at special court-martial in fiscal 2000, a number that plummeted last fiscal year to 127.

Although standard disciplinary problems will always be an issue, the attorneys — and the Navy's top lawyer — agreed that higher-quality recruits are translating into fewer serious problems.

"The sailors and Marines represent some of the nation's very best talent," said Vice Adm. James Houck, the Navy's judge advocate general. "And I believe that leads to less severe discipline problems in the service."

But the demands of the wars in Iraq and Afghanistan, the attorneys and the panel agreed, may be the No. 1 reason for the decline.

"Absolutely," said Colby Vokey, a retired Marine lawyer who represents numerous military clients. "The deployment schedule, the increased op tempo is, no question, the reason for the drop in the number of cases."

The review panel agreed.

"The high operational tempo since 2002 has placed heavy demands on time and resources, reinforcing the shift to lower forum resolutions, which typically take less time and fewer resources to adjudicate," the report states, calling the move a "cultural shift" among Navy line commanders.

But the tempo is only part of the reason for the decline, Vokey said. "The complexities of going forward on a case when a unit is in operational mode makes it much more difficult — so it's added incentive to put it in a lower forum."

The trends underlined by the panel make his point, Vokey said. "There is less misconduct being committed because these guys are out on ship or deployed in a foreign country," he said. "And of those, they're less likely to take them to court-martial than they were before."