

Judicial Profile

CMDR. JEFFREY GOOD

Hon. Joseph H. Baum Chief Judge, Coast Guard Court of Criminal Appeals (Ret.)

CHIEF JUDGE JOSEPH H. Baum has been an abiding force in the field of military justice for the past half-century. He recently stepped down as chief judge of the Coast Guard Court of Criminal Appeals, having been the longest serving military appellate judge in U.S. history. He leaves a legacy of achievement that has profoundly shaped the modern era of military justice and helped guide development of military criminal justice into the world-class system it is today.



Chief Judge Baum's record of public service spans 53 years in both the Navy and the Coast Guard. At first blush, Judge Baum would not appear to be a likely candidate to have spent virtually his entire adult life with the sea services. His formative years were spent in the land-locked state of Tennessee. He graduated from high school in Memphis and then attended the University of Chicago under what was known as the "Hutchins Plan."

The Hutchins Plan refers to Robert Maynard Hutchins, the American educator who was the president of the University of Chicago from 1929 to 1945 and chancellor from 1945 to 1951. Hutchins advocated "a course of study consisting of the greatest books of the western world and the arts of reading, writing, thinking, and speaking, together with mathematics, the best ex-

emplar of the processes of human reason." His experience at the university was, as Judge Baum puts it, "a true liberal arts education."

Students under the Hutchins Plan advanced at their own pace. Chief Judge Baum proved to be a quick study and graduated in three years. He then immediately enrolled in law school—also at the University of Chicago. After a year, he transferred to Vanderbilt University Law School in his home state of Tennessee and graduated from that school. One of Judge Baum's law school professors, a reserve officer in naval intelligence, persuaded his student to consider joining the Navy. At the time, the Navy recruiting slogan was "Join the Navy, See the World," which struck Judge Baum as an exciting prospect, having seen little outside the Midwestern United States. So, he applied to Officer Candidate School, although not as a law specialist, as Navy lawyers were known at the time. Instead, Judge Baum joined the Navy as an unrestricted line officer. His first duty was as an ensign onboard the *USS Wisconsin*, where he served as personnel officer. He did, indeed, see the world—with cruises to the Mediterranean, Aegean, and South America. Unfortunately, his tour ended in a shipyard in Bayonne, N.J., where the *USS Wisconsin* was the last of the Iowa Class battle-ships to be mothballed.

From New Jersey, Judge Baum went to San Diego to serve as an assistant flag secretary and complete his three years of obligated service. Although he had never intended to stay beyond his initial tour, he was enjoying both the Navy and San Diego, so he decided to stick around "for as long as it was fun." He elected to put his law degree to use and applied for a position as a law specialist, the forerunner to today's judge advocate. He was accepted, jumped ahead a rank, and assumed duties as defense counsel, defending naval personnel at special (misdemeanor) and general (felony) courts-martial. He quickly developed a reputation as a fierce and fearless advocate—never losing a contested trial. One of the criticisms of the still nascent Uniform Code of Military Justice, when both prosecutors and defense counsel worked for the same military commander, was that defense counsel who were "too successful" would be quickly reassigned as prosecutors. Whatever the motive, Judge Baum was indeed quickly transferred to prosecution duties, where he handled the most serious cases, including several homicides.

Following his tour of duty in San Diego, he decided it was time to see more of the world and volunteered to serve as staff judge advocate on the world's first nuclear aircraft carrier, the *USS Enterprise*. Not content to sit behind a desk, he volunteered for many additional duties throughout the ship, including duties as junior officer of the deck. In Navy parlance, the officer of the deck is the captain's direct representative on the bridge of a ship with sole responsibility for the safe navigation and operation of the ship during a four-hour watch. The officer of the deck is assisted by the junior officer of the deck (JOOD). Although unusual for a lawyer, Judge Baum was able to qualify for this position because of his prior experience as a line officer onboard the *USS Wisconsin*.

Judge Baum proved his mettle as JOOD one moonless night in October 1962 when the *Enterprise* and a supporting cast of warships were called upon to enforce the naval blockade of Cuba. The *Enterprise* was steaming in tight formation under darkened conditions, meaning none of the ships displayed navigation lights. As the *Enterprise* maneuvered into the wind to launch aircraft, a ship that had been assigned as plane guard unknowingly turned into the path of the 90,000-ton ship. Judge Baum, who had been monitoring the radar, raised the alarm, and disaster was averted. Shortly thereafter, Capt. Vincent DePoix qualified Judge Baum as underway officer of the deck—an extraordinary accomplishment for a staff officer.

From the *USS Enterprise*, Judge Baum went back to shore duty at the Charleston Naval Base, where he met his wife, Hope. They had a son, Daniel, named after Judge Baum's great grandfather, who had been a private in the Confederate Army from Mississippi. From Charleston, Judge Baum and his family—including Hope's three children from a previous marriage, Beth, Rick, and Patricia—moved to Atsugi, Japan, where he served as staff judge advocate to the commander of Fleet Air, Western Pacific. In that capacity, Judge Baum was called in as counsel in the investigations of two horrific fires onboard aircraft carriers that were conducting combat operations in the vicinity of Vietnam—the *USS Forrestal* and the *USS Oriskany*.

On the morning of Oct. 27, 1966, the *Oriskany* was on station when a magnesium parachute flare exploded in a flare locker under the flight deck. The fire raced through five decks, killing 44 men. Many who lost their lives were veteran combat pilots who had flown raids over Vietnam a few hours earlier. Just eight months later, on board the *USS Forrestal* in the Gulf of Tonkin, a rocket accidentally fired from an F-4 Phantom parked on the flight deck and streaked across the deck into a 400-gallon belly fuel tank on the A-4D Skyhawk, an aircraft piloted by Lt. Cmdr. John McCain that was preparing for launch. The ruptured tank spewed highly flammable JP-5 fuel onto



Then-Lt. Cmdr. Joseph Baum on the bridge of the *USS Enterprise* with Capt. Vincent P. DePoix.

the deck. Spread by the wind, the flames engulfed the aft end of the stricken ship, turning the flight deck into a blazing inferno and killing 134 men. Judge Baum skillfully guided the investigations of both these cases. The report from the *Forrestal* fire led to Navy-wide changes in damage control practices, training, and equipment.

From Japan, Judge Baum and his family moved to Washington, D.C., where he served first as deputy and later as chief of the Navy's Criminal Law Department. His tenure was marked by several extraordinary innovations. Military justice is one of those rare areas in which the President has direct rulemaking authority. Judge Baum conceived the idea of having a formalized system of annually reviewing the Uniform Code of Military Justice as well as the *Manual for Courts-Martial*, which is promulgated by executive order and sets forth the Rules for Courts-Martial, Military Rules of Evidence, and other procedural matters. The judge's idea for a Joint Service Committee on Military Justice was ultimately adopted by the other services and the secretary of defense, and Chief Judge Baum was appointed as the first chair of that committee, presiding over its very first meeting in 1974. The Joint Service Committee continues to this day as an essential tool used by the President and Congress to fulfill their responsibilities in administering military justice.

In addition, Chief Judge Baum almost single-handedly preserved summary courts-martial as an effective tool of military discipline. A "summary" court is the lowest level of court-martial and does not have many of the rights that would attach to a criminal proceeding. An accused must consent to a trial by summary court-martial. In return, the potential punishment is limited (a maximum of 30 days of confinement). In 1972, the U.S. Supreme Court ruled that the Sixth Amendment

requires defense counsel in all criminal proceedings where confinement is a possible punishment, which arguably would include summary courts-martial. The Air Force and the Army began providing defense counsel in summary courts, which, of course, fundamentally altered the nature of the proceeding—making them considerably less “summary” in nature. Chief Judge Baum developed the theory that a summary court is not a criminal proceeding within the meaning of the Sixth Amendment, notwithstanding the possibility of confinement. The Navy therefore refused to provide counsel for summary courts, which unsurprisingly led to a class action suit against the secretary of the Navy. The case made its way to the U.S. Supreme Court, where Justice Rehnquist, writing for the majority, reached precisely the same conclusion as Chief Judge Baum had advanced: counsel is not required at a summary court-martial. Chief Judge Baum’s strategy therefore preserved summary courts as originally established by Congress and the President.

But Chief Judge Baum’s later accomplishments in the Navy were not limited to grand policy initiatives. He also proved that he still knew his way around the inside of a courtroom. On the evening of Nov. 22, 1975, a task force consisting of the aircraft carrier *USS John F. Kennedy* and a number of other ships, including the *USS Belknap*, were steaming in the Ionian Sea. As the carrier maneuvered into position to launch aircraft, the officer of the deck on the *Belknap* made a series of miscalculations that placed the *Belknap* directly in the path of the aircraft carrier. Recognizing his predicament, the officer of the deck summoned the commanding officer to the bridge, but by that time the ship was already in extremis. The two ships passed close together and the overhang of the *Kennedy*’s flight deck sheared off part of the superstructure of the *Belknap*, while spilling aviation fuel over the ship from a ruptured pipeline. The ensuing fire claimed the lives of eight sailors and injured another 48.

Based on the principle that a commander at sea bears absolute responsibility for the ship and her crew, a formal investigation concluded that the *Belknap*’s captain was responsible for the collision, even though he could not have prevented the disaster by the time he was called to the bridge. The commander in chief of the U.S. Atlantic Fleet referred charges against the commanding officer to a general court-martial. The commanding officer invoked a right provided to military accused known as “individual military counsel,” where an accused can request a military defense counsel by name. Based on Judge Baum’s almost legendary reputation, the commanding officer wisely requested then Capt. Joseph Baum. Although conventional wisdom assumed the result of the court-martial to be foregone, Capt. Baum put up a vigorous defense, getting three of four charges dismissed on motions. On the merits of the one remaining charge, Captain Baum meticulously cross-examined 18 government witnesses over the course of several days. At

the conclusion of the government’s case in chief, the military judge granted the defense’s motion for a finding of not guilty.

The result of the court-martial led to an uproar of criticism claiming that the military judge and the military justice system had eroded traditional notions of absolute command accountability. The chief of naval operations, Adm. J. L. Holloway, issued a lengthy statement to all flag officers and all commanding officers in the Navy to address the court-martial and the criticism that followed. Adm. Holloway charged that the criticism revealed “a serious misunderstanding of the role of military justice in the naval service.” This statement was, in effect, a defining moment in the evolution of military justice—from solely a commander’s tool for discipline to a true system of justice. It was an implicit acknowledgment that military justice, particularly the concept of an independent judiciary, had reached a certain maturity. To this day, a summary of the *Belknap* incident and ensuing court-martial, along with Adm. Holloway’s memorandum, are required reading for all prospective commanding officers in the Navy.

Chief Judge Baum’s record of historic achievement continued after he retired from the Navy and joined, so to speak, the Coast Guard. Virtually the first case waiting in Judge Baum’s in-box upon assuming duties as chief judge of the Coast Guard Court of Military Review was an interlocutory appeal by the government in the case of Yeoman 1st Class Richard Solorio. Solorio was an enlisted member of the Coast Guard in Alaska who was accused of sexually abusing the dependent daughters of several fellow Coast Guard members. The military judge had dismissed charges against Petty Officer Solorio on the basis that there was no “service connection” between the alleged offenses and the accused’s military service, as required by the Supreme Court’s 1969 ruling in *O’Callaban v. Parker*.

Chief Judge Baum immediately recognized the potential significance of the case. *O’Callaban* had been problematic from the start. Historically, courts-martial jurisdiction was conferred by the military status of the accused, not by the nature of the offense. In *O’Callaban*, however, the Supreme Court reversed that tradition and held that courts-martial could try only offenses that bore a service connection. The ensuing years saw seemingly endless litigation over what constituted a service connection. Solorio presented an ideal opportunity to revisit *O’Callaban*.

In an opinion written by Chief Judge Baum, the Coast Guard Court of Military Review reversed the military judge and reinstated the charges, thereby tee-ing the case up for further review. The Court of Military Appeals affirmed the decision, and the U.S. Supreme Court granted certiorari—the first military case ever to be heard on direct appeal. The U.S. Supreme Court likewise affirmed the Coast Guard Court and overruled *O’Callaban*, in what is likely one of the

most significant military cases of the 20th century.

Chief Judge Baum also took a principled stand in an unusual 1988 case, in which his sister court, the Navy-Marine Corps Court of Military Review, sought a writ against the secretary of defense and judge advocate general of the Navy. The judge advocate general, the senior uniformed lawyer of the Navy, had ordered the chief judge of the Navy-Marine Corps Court to assemble the court's commissioners the following morning to be questioned by agents of the Department of Defense Inspector General's Office. Ostensibly, this order was in response to a complaint that improper influence had been exerted against the judges in connection with the review of a high-profile and contentious appeal involving a Navy heart surgeon who had been convicted of manslaughter and negligent homicide. Others, however, viewed the action as a thinly disguised assault on the military judges following their reversal of the convictions.

The chief judge of the Navy court telephoned Chief Judge Robinson O. Everett of the Court of Military Appeals, the nation's highest military court, late in the afternoon and asked, "What time will the court be open for business in the morning?" Judge Everett recounts that he was "intrigued" with the question and pressed the Navy judge for details. The court promptly issued a stay the following morning. The extraordinary nature of the events is highlighted by Chief Judge Everett's wry subsequent comment that "I happened to have business in the vicinity of the Navy Yard that morning, so I decided to personally deliver the stay to the Judge Advocate General." A hearing was scheduled for 10 days later. Chief Judge Baum, on behalf of the Coast Guard Court of Military Review, submitted an influential amicus brief, despite the seeming lack of precedent or authority for a court to participate in a case as amicus. According to Judge Baum, "We couldn't find any authority for doing it, but I thought it was important, so I just submitted it." The Court of Military Appeals accepted the brief and cited it in its decision enjoining the inspector general from questioning court personnel. The court also appointed a special master from its own bench to investigate the allegations, which proved to be unfounded. The decision stands today as a watershed event upholding the independence of military judges from improper interference by executive branch officials.

Chief Judge Baum's jurisprudence has been characterized by an extraordinary dedication to the rule of law and the men and women of the Armed Forces. He describes the military justice system as "the finest criminal justice system in the country," with rights beyond that afforded by most other jurisdictions. But, the judge notes that "the system only works if there are judges and courts willing to enforce the rules." He is particularly protective of servicemembers' rights and demands strict adherence to the rules of courts-martial. "I've never been keen on harmless error. If there's an egregious error, judges should do something about

it—if courts don't enforce the rules, there's no incentive to follow them," he says.

As an Article I court with broad de novo authority to review factual and legal determinations of courts-martial, Chief Judge Baum has not been shy about taking the government to task for anything less than scrupulous adherence to the letter and spirit of the law. For example, the U.S. Court of Military Appeals cited him as "the most outspoken critic" of plea-bargaining practice in the military, a criticism that the court considered well-founded and one that led to extensive changes in practice. Senior Judge Everett, who was chief judge of the Court of Military Appeals during a portion of Chief Judge Baum's tenure, states that the chief judge "displayed tremendous talent on the bench."

Chief Judge Baum also leaves a legacy of volunteer activities. He has been a member of the Federal Bar Association since 1971, serving in several leadership positions. He is past chair of the Judiciary Division and past chair of the Military Justice Committee. He also served six consecutive three-year terms on the Rules Advisory Committee for the Court of Appeals for the Armed Forces, making him the longest serving member in the court's history. In July 2006, the FBA's D.C. Chapter presented Chief Judge Baum the Justice Tom C. Clark Award for outstanding federal service.

Throughout his career, Chief Judge Baum has demonstrated unwavering commitment to the rule of law, to the men and women of the Armed Forces, and to the nation. He has dedicated his life to serving his country and others. He is a leader in our community, an accomplished jurist, a mentor, and a patriot. **TFL**

Cmdr. Jeffrey C. Good currently serves as chief of the Coast Guard Office of Military Justice at Coast Guard Headquarters in Washington, D.C. He practiced before Chief Judge Baum as both appellate defense counsel and appellate government counsel. He is the immediate past president of the FBA Pentagon Chapter and president-elect of the Judge Advocates Association. © 2007 Cmdr. Jeffrey C. Good. All rights reserved.