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To: The Secretary of the Navy

Subject: Organization, Methods and Procedure of Naval Courts

Reference: Letter from the Secretary of the Navy to Arthur A. Ballantine, Esq., dated 25 June 1943.

This report is respectfully submitted in response to the letter of reference, a copy of which is appended, requesting us "to prepare and submit as promptly as practicable a report on the organization, methods, and procedure of naval courts with recommendations, if found warranted, of possible improvement in procedure and practices that will facilitate the satisfactory handling of the largely increased volume of cases handled by such courts."

The need for consideration of the subject arises from the greatly increased number of discipline cases resulting from the war expansion in the personnel of the Navy from some 150,000 or less to upwards of 2,000,000. This rapid growth represents the entry into the service of a large number of young men unaccustomed to rigorous discipline whose complete indoctrination can only be achieved gradually, and who, of necessity, do not look forward to permanent careers in the Navy. Yet the system for handling discipline cases remains substantially as developed under conditions very differenct from those now prevailing. The possibility of improvement in the system is suggested by the fact that nearly 80% of all general court martial and summary court martial cases involve solely offenses of unauthorized absence not amounting to desertion, tried on one or more charges of absence over leave, absence without leave, or breach of arrest.

The object of the recommendations is to expedite dealing with offenses within the framework of the present system. We believe that the suggested steps will minimize delay and loss of man hours to the service, while affording adequate safeguards for the rights of accused men and avoiding any possible impairment of naval discipline.

In considering the subject, we have had the full cooperation of the Office of the Judge Advocate General, of the Bureau of Naval Personnel, and of the Personnel Department of Marine Corps Headquarters. We have also had the benefit of consultation with district legal officers and judge advocates.

The report is divided into three parts: (1) a summary statement of recommendations; (2) recommendations in detail, with discussion of relevant facts and underlying reasons, preceded by a

brief descriptive account of the system to which they are directed and against which they must be considered; (3) some impressions on the administration of naval justice.

PART I

SUMMARY STATEMENT OF RECOMMENDATIONS

All of our recommendations are set out below, including those previously made by us in our interim reports of 23 July 1943 and 24 July 1943, copies of which are appended, and on which action has heretofore been taken. The recommendations are of varying degrees of importance and urgency. Some could be put into practice immediately; others would require changes in Navy Regulations or in Naval Courts and Boards; a few would necessitate amendments to the Articles for the Government of the Navy. The nature and scope of the necessary changes and amendments will be indicated in the course of the discussion under Part II. Our recommendations, in summary form, are as follows:

GENERAL COURTS MARTIAL

Decentralization

1. Authorization to convene general courts martial during the period of the present war should be granted to certain commandants within the continental United States; and the Secretary of the Navy should also have the power to authorize commandants of naval districts, navy yards, and naval stations to convene general courts martial in time of peace as well as in time of war.

2. A docket should be maintained in each naval district, wholly or partly within the continental United States, under the immediate charge of the district legal officer, of all cases ordered tried before a general court martial by any convening authority within such naval district.

3. Under the recommended system of maintenance and review of dockets, judge advocates of courts subject to the system should be relieved of the duty of making regular monthly reports and reporting, as a regular practice, delays in trials.

Composition

4. The maximum number of members of a general court martial should be reduced from thirteen to nine and the convening authority should be empowered to determine the number within the statutory limits.

5. As a matter of policy, wherever practicable at least one member of each general court martial should be skilled in the law.

6. A defense counsel should be appointed for each general court martial.

Procedure

7. The precept for a general court martial should be read when the court assembles at its first session and such reading should not be repeated at the beginning of the trial of each case.

8. Oaths should be administered to the members of a general court martial and to the judge advocate when the court assembles at its first session and this procedure should not be repeated at the beginning of the trial of each case.

9. The closing of court should rest within the discretion of the court.

10. Where a trial consumes more than one day, the reading, on each successive day, of the record of the proceedings of the previous day or its salient features should not be required.

11. Recording of the findings and sentence by the judge advocate in his own handwriting should not be required.

12. The receipt of stipulations in evidence should be permitted.

13. The accused, at the close of the case for the prosecution, should be entitled to move for a finding of not guilty.

Sentences

14. General courts martial should be given larger powers and responsibilities in determining the ultimate punishment of offenders.

Review

15. The procedures for review in the Department should be re-examined in the interest of unifying and expediting the operations of the Office of the Judge Advocate General and the Bureau of Naval Personnel.

SUMMARY COURTS MARTIAL

Composition

16. Effective provision should be made for the representation of the accused by defense counsel in all cases.

Procedure

17. The precept for a summary court martial should be read when the court assembles at its first session and such reading should not be repeated at the beginning of the trial of each case.

18. Oaths should be administered to the members of a summary court martial and to the recorder when the court assembles at its first session and this procedure should not be repeated at the beginning of the trial of each case.

19. Effective provision should be made by which civilian witnesses may be compelled to testify before summary courts martial.

20. The closing of a summary court martial should rest within the discretion of the court.

21. Approved printed forms should be made available for documents capable of standardization, such as orders for trial, specifications for offenses of most frequent occurrence, and records of proceedings in cases where the accused pleads guilty.

22. Recording of the findings and sentence by the recorder in his own handwriting should not be required.

23. The receipt of stipulations in evidence should be permitted.

24. The accused, at the close of the case for the prosecution, should be entitled to move for a finding of not guilty.

Sentences

25. Summary courts martial should be empowered to adjudge sentences of greater severity than presently permitted, and, in particular, to adjudge confinement and loss of pay for not more than six months.

26. As a matter of policy, summary courts martial should not adjudge bad conduct discharges except where the offense involves moral turpitude or the accused is neither presently nor prospectively of any value to the service.

27. A table of recommended punishments for the more common offenses should be prepared and distributed as an advisory guide for the courts and reviewing authorities.

Review

28. Approval of the sentences of summary courts martial by immediate superiors in command of convening authorities, whether or not required in all or certain cases as a matter of policy, should not be required by law.

29. Review of the records of summary courts martial by the convening authority should be final in all cases in which the accused, acting under advice of counsel, pleads guilty, makes no objection to the proceedings, does not protest the composition of the court or the propriety of the sentence, and does not within three days after the action of the convening authority is made known to him request further review.

DECK COURTS

Procedure

30. Consent of the accused to trial by deck court should not be required.

Sentences

31. Deck courts should be empowered to adjudge sentences of greater severity than presently permitted and, in particular, to adjudge confinement and forfeiture of pay for not more than one month.

32. A table of recommended punishments for the more common offenses should be prepared and distributed as an advisory guide for the courts and reviewing authorities.

Review

33. Review by the convening authority should be final in all cases in which the accused pleads guilty, makes no objection to the procedure, does not protest the qualifications of the deck court officer or the propriety of the sentence, and does not within three days after the action of the convening authority is made known to him request review.

MAST PUNISHMENT

34. Loss of pay not exceeding ten days should be included in the punishments authorized to be inflicted at mast.

PART II

DETAILED RECOMMENDATIONS AND DISCUSSION

Naval justice is administered through general courts martial, summary courts martial, and deck courts, and through the exercise of disciplinary powers ("mast" punishment) by certain commanding officers. Their jurisdiction extends from capital crimes to minor offenses, and the procedure for review runs from an extensive and rather complicated method in the case of general courts martial to no review at all in the case of "mast" punishment.

General Courts Martial

A general court martial may be convened at any time by the President, the Secretary of the Navy, the commander in chief of a fleet or squadron, and the commanding officer of a naval station beyond the continental limits of the United States. Commanding officers of certain other naval forces afloat, or of other forces on shore beyond the continental limits of the United States may be empowered to convene general courts martial at any time by the Secretary of the Navy, while commandants of navy yards or naval stations and commanding officers of certain forces on shore may be so empowered by the Secretary of the Navy in time of war.

A general court martial consists of not more than thirteen nor less than five commissioned officers, and as many officers, not exceeding thirteen, as may be convened without injury to the service shall be summoned. The power to appoint a judge advocate is implied from the authority to convene a general court martial. As a matter of policy, whenever practicable, officers ordered as members of a general court martial are not to be below the rank of lieutenant; the president shall be a line officer; one-third of the court shall be composed of officers of the same branch of the service as the accused; and in case an officer is to be tried, all members shall be senior to the accused, and also, if the accused is of the regular Navy, the majority of the court shall be of the regular Navy. Other limitations of policy upon the constitution of general courts martial are not of sufficiently frequent application to warrant specific reference.

Until 24 July 1943, on which date the Secretary of the Navy empowered certain commandants to convene general courts martial, all general courts martial within the continental limits of the United States were convened, subject only to minor exceptions, by the Secretary of the Navy, and all accused persons within such limits were ordered to trial before the courts so convened. Trials before such courts are referred to

as "Department cases." Courts are also convened by the commanding officers of certain forces afloat or on shore abroad and accused persons ordered to trial before such courts by the convening authorities. Trials before such courts are referred to as "fleet cases." The sentence of a general court martial may be carried into execution when approved by the convening authority, subject to the exception that sentences extending to loss of life or to dismissal of a commissioned or warrant officer must also be confirmed by the President prior to being carried into execution.

Navy Regulations provide that all general court martial cases shall be reviewed as to legal features in the Office of the Judge Advocate General and as to disciplinary features in the Bureau of Naval Personnel. In effect, except in unusual cases, the two reviews so made usually determine the action of the Secretary of the Navy as the convening authority in "Department cases" and in the exercise of final powers of review and clemency, after previous action by other convening authorities, in "fleet cases."

Summary Courts Martial

A summary court martial may be convened by the commanding officer of a vessel, the commandant of a navy yard or naval station, the commanding officer of any one of certain specified commands, and, when empowered by the Secretary of the Navy, by the commanding officer of any other command. A summary court martial has jurisdiction to try petty officers and enlisted men, and to award any one of the following punishments:

(i) Bad conduct discharge
(ii) Solitary confinement, not exceeding thirty days, on bread and water
(iii) Solitary confinement not exceeding thirty days
(iv) Confinement not exceeding two months
(v) Reduction to next inferior rating
(vi) Deprivation of liberty on foreign station

Extra police duties and loss of pay not to exceed three months may be imposed alone or in addition to any one of the punishments enumerated above.

A summary court martial consists of three officers not below the rank of ensign and of a recorder. As a matter of policy, at least one member of each summary court martial is required, whenever practicable, to have the qualifications of a member of a general court martial. Certain other rules of policy, affecting the constitution of summary courts martial, do not require specific reference.

No sentence of a summary court martial shall be carried into execution until the proceedings and sentence have been approved by the convening authority and also, unless the convening authority is the senior officer present, by his immediate superior in command.

Navy Regulations provide that all summary court martial cases shall be reviewed in the Office of the Judge Advocate General. In addition, as a matter of practice, certain classes of cases constituting approximately 7% of the total number and consisting principally of cases in which the sentences provide for confinement of a petty officer, reduction in rating, or a bad conduct discharge are also referred to the Bureau of Naval Personnel for review as to disciplinary features. If the reviews so made disclose that corrective action is indicated, such action is ordered, in an en bloc letter, by the Secretary of the Navy in response to the recommendation of the Judge Advocate General or the Bureau of Naval Personnel.

Deck Courts

All officers authorized to convene either general courts martial or summary courts martial may order deck courts upon enlisted men under their command for minor offenses. A deck court consists of one commissioned officer. Ordinarily, an officer shall not be ordered as deck court officer who is below the rank of lieutenant, or who has had less than six years' service as a commissioned officer. The punishments which may be imposed by deck courts are the same as those which may be imposed by summary courts martial subject to two important limitations:

(i) A deck court may not adjudge discharge from the service

(ii) A deck court may not adjudge confinement or forfeiture of pay for a longer period than twenty days.

A sentence of a deck court may be carried into effect upon approval by the convening authority.

The records of the proceedings of deck courts are required to be forwarded to and filed in the Office of the Judge Advocate General, where they shall be reviewed, and when necessary, submitted to the Secretary of the Navy for further action. As a matter of practice, the records of deck courts are further reviewed in the Bureau of Naval Personnel in the same manner as the records of summary courts martial, and when required, action is taken by the Secretary of the Navy as in the case of summary courts martial.

Mast Punishment

Mast punishment may be inflicted by the commander of a vessel or by any officer authorized to convene either general courts martial or summary courts martial. For a single offense, any one of the following punishments may be inflicted:

(i) Reduction of any rating established by the officer inflicting the punishment
(ii) Confinement not exceeding ten days
(iii) Solitary confinement, on bread and water, not exceeding five days
(iv) Solitary confinement not exceeding seven days
(v) Deprivation of liberty on shore
(vi) Extra duties.

Punishment inflicted is, except in the case of reprimands, entered in the log, and review is neither required by law or regulation nor made as a matter of practice. Mast punishments are not "convictions" and do not act as a bar to trial by court martial for the same offense.

For the sake of brevity, specific references to the Marine Corps and Coast Guard have generally been omitted in this report. Unless the context otherwise requires, references to the Navy, the Bureau of Naval Personnel, and officers and enlisted men of the Navy shall be considered appropriately to include the Marine Corps, when not detached for duty with the Army, and the Coast Guard, while serving as part of the Navy in time of war or national emergency, and the corresponding departments, officers and enlisted men of these branches of the service.

We turn now to detailed consideration of the recommendations stated in summary form in Part I, taking them up in the same order in which they appear there.

General Courts Martial

1. Decentralization. Prior to 24 July 1943 cases were not usually submitted for trial to courts convened within the continental United States, even where there was a "permanent" court, except upon the order of the Secretary of the Navy. Recommendations for trial came from the field to the Department and were cleared through both the Office of the Judge Advocate General and the Bureau of Naval Personnel. Charges and specifications were drawn in the Office of the Judge Advocate General and returned to the field. Sentences could be carried into execution only after approval by the Secretary of the Navy as the convening authority. Accordingly, the records of the cases were sent to the Department where they were reviewed both in

the Office of the Judge Advocate General and in the Bureau of Naval Personnel, and thereafter acted upon by the Secretary of the Navy. Thus, each case made two round trips to, and several detours in, the Department before the sentence could be carried into execution.

As a result, the time between an accusation and the promulgation of sentence was prolonged to an average period in excess of 100 days, of which approximately 60 days elapsed before the case was tried.

To meet this situation and to minimize delay we recommended in our interim report of 23 July 1943 the decentralization of power to convene general courts martial within the continental United States. Such decentralization, provided by the order of the Secretary of the Navy of 24 July 1943, should shorten the time between accusation and promulgation of sentence by at least 60%. Approximately 500 recommendations for trial by general court martial are now made each month and, with further growth of the Navy, increase in this number of cases may be anticipated. Counting only the time of the accused men, the estimated saving would aggregate more than 400,000 man-days a year. Taking into account the time of witnesses, often held from other duties for considerable periods pending trial, the saving in man-days is substantially greater. In addition to the saving in time and manpower, decentralization should produce many other beneficial results, such as saving in brig space. Also, prompt trials will tend to avoid unnecessary impairment of morale.

The Articles for the Government of the Navy authorize the Secretary, but only in time of war, to empower the commandant of any navy yard or naval station and the commanding officer of a brigade or larger force of the Navy on shore not attached to a navy yard or naval station to convene general courts martial. Commandants of naval districts are not expressly included in the enumeration of those to whom the power may be delegated.

Recommendation: An amendment to Article 38 of the Articles for the Government of the Navy should be sought authorizing the Secretary of the Navy to empower the commandant of any naval district, navy yard, or naval station to convene general courts martial.

2. Dockets. Maintenance of dockets will facilitate the handling of the large number of cases. The review of dockets will provide information as to the number of cases, the progress of individual cases, and the points, if any, at which delays occur.

Recommendation: A docket should be maintained in each naval district, wholly or partly within the continental United States, under the immediate charge of the district legal officer, of all cases ordered tried before a general court martial by any convening authority within such naval district. A printed form of docket has been heretofore prepared and distributed to all district legal officers as indicated in the letter of the Secretary of the Navy dated 24 July 1943.

3. Monthly reports and delay letters. Under the present practice the judge advocate must make regular monthly reports on pending cases and report upon delays in bringing cases to trial. Under the decentralized system of convening general courts martial, such reports should no longer be necessary, since the dockets to be maintained in the district legal offices should afford at all times an adequate source for determining the general state of affairs or the status of a particular case. The making of the monthly reports and the writing of delay letters is a considerable task for the judge advocates of the permanent courts.

Recommendation: Under the recommended system of maintenance and review of dockets, judge advocates of courts subject to the system should be relieved of the duty of making regular monthly reports and reporting, as a regular practice, delays in trials.

4. Size of court. The Articles for the Government of the Navy provide that a general court martial shall consist of not more than thirteen nor less than five commissioned officers and that as many officers, not exceeding thirteen, as can be convened without injury to the service, shall be summoned on every such court. The convening authority is, in effect, compelled to make a finding as to the number of officers who can be make available "without injury to the service." We see no convincing reasons for a court of thirteen members. On the contrary, a tribunal of such size is likely to be unwieldy and slow.

Recommendation: An amendment to Article 39 of the Articles for the Government of the Navy should be sought reducing the maximum number of general courts martial to nine and authorizing the convening authority to determine the number of members within the statutory limits.

5. Law member. Nowhere do we find a requirement of law or statement of policy that any member of a general court martial shall be skilled in the law. Naval Courts and Boards specifies that the judge advocate should be "an officer who is skilled in the law"; and it is his duty to "advise the court in all matters of form and of law." However, it is his principal duty to act as prosecutor. In the British navy the judge advocate is also the adviser of the court; but he does not prosecute the case and he is especially charged under the law to "maintain an entirely impartial position." In the United States Army, the Articles of War provide for a law member of each general court martial.

Recommendation: As a matter of policy, wherever practicable at least one member of each general court martial should be skilled in the law.

6. Defense counsel. The accused is entitled to counsel as a right and, wherever practicable, to counsel of his own choice. Naval Courts and Boards provides that the accused "shall be advised to consult counsel before deciding to proceed with the case without counsel." If the accused so requests, the convening authority must detail a suitable officer to act as his counsel. The judge advocate (the prosecutor) may advise the accused in the event that the accused has no counsel of his own.

All this falls short of adequate protection of accused men. They need to have, and to be informed that they have, a designated defense counsel to whom they can go for advice as to their rights and the steps to be taken to vindicate them. They should, of course, be entitled to counsel of their own choice, but they should in any event be able to obtain the assistance of the designated and responsible defense counsel. Defense counsel, like judge advocates, should be skilled in the law.

Recommendation: As a matter of policy, a defense counsel should be appointed for each general court martial to represent all accused men who are not otherwise represented and to assist, if requested to do so, other counsel selected by accused men.

7. Reading the precept. Under the present practice the precept for a general court martial is read at the beginning of the trial of each case. Although it is desirable to have a copy of the precept annexed to the record of each case, the reading of the precept at the beginning of each trial serves no useful purpose. Preservation of the right of the accused to object to one or more members of the court does not require this formality.

Recommendation: Naval Courts and Boards should be revised to provide that the precept for a general court martial shall be read when the court assembles at its first session and that such reading should not be repeated at the beginning of the trial of each case.

8. Swearing in the court. Each member of a general court martial, "before proceeding to trial," is required to take a prescribed oath administered by the judge advocate. Under present procedure the oath is administered at the beginning of each case. Such a procedure, although required by the Articles for the Government of the Navy, serves no useful purpose. It consumes, in the aggregate, a substantial amount of time.

Recommendation: An amendment to the Articles for the Government of the Navy should be sought to the end that oaths may be administered to the members of a general court martial and to the judge advocate when the court assembles at its

first session and that this procedure need not be repeated at the beginning of the trial of each case.

9. Closing the court. Under present procedure, the court is closed for deliberation upon questions arising between the parties to the trial, upon challenges, upon the sufficiency of the charges and specifications, upon objections to evidence, upon the findings, and upon certain other occasions. Although it is provided that the closing of the court may be dispensed with in certain circumstances, failure of courts to avail themselves of these provisions, together with the limited nature of the exceptions covered by such provisions, results in a considerable loss of time.

Recommendation: Naval Courts and Boards should be revised to provide that closing of the court is required for deliberation upon findings not proved by plea and upon sentences, and that in all other instances the court shall be closed only when the president so orders, either upon his own initiative or upon motion of any member.

10. Reading the record. Naval Courts and Boards provides for the reading of the record of the previous day or of the salient features of the proceedings upon the opening of the court on each successive day. This practice results in unnecessary delay.

Recommendation: Naval Courts and Boards should be revised to provide that where a trial consumes more than one day, the reading, on each successive day, of the record of the proceedings of the previous day or its salient features should not be required.

11. Recording the findings and sentence. Under present practice, the findings and sentence of the court are required to be recorded in the handwriting of the judge advocate. Proceedings in each separate case must be signed by all the members present when judgment is pronounced and also by the judge advocate. The signing of such proceedings in this manner should be a sufficient guarantee of accuracy of the record, including the findings and the sentence. Secrecy could be safeguarded by swearing the reporter not to divulge or disclose the findings or sentence.

Recommendation: Naval Courts and Boards should be revised to provide that the findings and sentence may be transcribed in the same manner as is adopted for the transcription of the other parts of the record and that the reporter may be sworn to secrecy.

12. Use of stipulations. Many of the delays in trial are due to the unavailability of witnesses or of their testimony by

deposition. In many instances it would be possible to proceed promptly with the trial if, in lieu of having witnesses testify or obtaining depositions, the accused, and defense counsel, if any, and the judge advocate might enter into a stipulation to the effect that certain events occurred or conditions exist, or that certain witnesses if present would testify to particular facts. The opinion of the Judge Advocate General, dated October 12, 1942, in the General Court Martial case of Smith, Hilary M. (MM-370649) states that stipulations are not depositions and that Naval Courts and Boards does not authorize the use of stipulations, but that in time of war the court in its discretion may receive them when material witnesses are unavailable and depositions cannot be obtained. Since Naval Courts and Boards is silent on this subject no distinction on the basis of peculiar circumstances can be found in it, and it is difficult to understand how stipulations may be permitted in one case and forbidden in another. The use of stipulations in civil courts is generally encouraged, the experience of judges, attorneys, and litigants over many years having established the desirability of such use.

Recommendation: The use of stipulations duly entered into between the judge advocate and defense counsel, acting with the consent of the accused, should be permitted, and appropriate instructions should be presently issued by the Judge Advocate General and subsequently incorporated in Naval Courts and Boards.

13. Motion for findings of not guilty. Under present practice the accused is not permitted, at the close of the case for the prosecution, to move for findings of not guilty on the ground that the evidence before the court is legally insufficient to support the charges and specifications. The practice in civil courts ordinarily allows a defendant, at the close of the prosecution's case, to obtain a ruling by the court as to whether or not a prima facie case has been established. The practice is also authorized in Army courts martial. The obvious advantage of this procedure is the saving of the time of all the parties in cases in which the evidence introduced by the prosecution is insufficient. In such circumstances, it should not be necessary for the accused to proceed with his defense, yet under the existing procedure, an accused has no alternative, since he is without means of ascertaining whether or not the court considers the evidence introduced by the prosecution sufficient to establish a prima facie case.

Recommendation: Naval Courts and Boards should be revised to provide that at the close of the case for the prosecution, the court shall, on motion of the accused, consider whether the evidence is legally sufficient to support the charges and specifications, and shall forthwith enter a finding of not guilty of each specification, and, where appropriate, of each charge, as to which the motion is sustained.

14. Sentences. A study of over 1600 cases cleared through the Office of the Judge Advocate General in the months of April, May, and June of 1943 shows that over three-quarters of sentences adjudged by general courts martial are substantially mitigated in the process of review.

Under the existing procedure it is the duty of the court, in all cases of conviction, "to adjudge a punishment adequate to the nature of the offense" and "due regard must be had to the requirements of the Articles for the Government of the Navy and the limitations prescribed by the President for punishment in time of peace." At the same time it is the privilege of the members of the court individually to "recommend the person convicted as deserving of clemency" and to state on the record their reasons for so doing. Clemency, however, "is to be exercised only by the reviewing authorities who are expressly clothed with the power to mitigate or remit punishment." Moreover, the courts are admonished not to "presume upon the prerogative of the reviewing authority in exercising clemency"; for such action, so it is declared, "would be in effect, a reflection upon the judgment of the reviewing authority." Inconsistently, courts are expressly authorized to receive matter in mitigation for the purpose of lessening "the punishment to be assigned by the court."

The British system, even with due allowance for fundamental differences, furnishes a sharp contrast in this respect. "In awarding sentence, the court should take into consideration the former services and any other claims which the accused may lay before them, with a view to his being dealt with more leniently. It is objectionable for a court to award a sentence and then to recommend a prisoner to the favourable consideration of the Admiralty. Such a course throws a responsibility upon others which properly belongs to the court." (Manual of Naval Law and Court-Martial Procedure, by Stephens, Gifford, and Smith, 4th Edition 1912, pp. 89-90).

Except in the matter of determining general policies governing punishments, the court is in the best position to fix sentences. It is the only place in the system where the man himself is actually under observation and appraisal.

Increase in the powers of courts to determine ultimate punishment might well be accompanied by a procedural change requiring the announcement of findings and sentence in open court at the conclusion of trial. This would augment the sense of responsibility of the court. The prompt, public announcement of sentences as imposed by the courts should have a desirable deterrent effect. In addition, the suggested procedure would have the advantage of affording the accused a fair opportunity to make an informed appeal to the reviewing authority.

Recommendation: Naval Courts and Boards should be revised to grant general courts martial larger powers and responsibilities for fixing sentences.

15. Review in the Department. It appears that the internal procedures in the Department for the review of cases is susceptible of simplification. The subject is fully discussed in the "Survey of Division I, Judge Advocate General's Office" prepared in the Office of the Management Engineer in June, 1943, and merits careful consideration.

Recommendation: The procedures for review in the Department should be re-examined in the interest of unifying and expediting the operations of the Office of the Judge Advocate General and the Bureau of Naval Personnel.

Summary Courts Martial

16. Counsel for the accused. Naval Courts and Boards provides that an accused is entitled to counsel as a right, and whenever practicable, to counsel of his choice. Enlisted men are to be advised of their rights and should be represented by counsel unless they explicitly state in open court that they do not desire such assistance. No doubt the formalities are observed in summary court martial cases, but it is not probable that an accused who states that he does not desire counsel is aware of the advantages of such representation. Counsel should be able to render service to an accused, even in cases where the accused pleads guilty. Representation by counsel is particularly desirable if any simplifying procedure be adopted which would avoid the necessity of review of all summary court martial records in the Office of the Judge Advocate General.

Recommendation: Effective provision should be made for the representation of the accused by defense counsel in all cases, and, as a matter of policy, in the event the accused does not select counsel of his own choice, counsel should be assigned to represent him.

17. Reading the precept. The discussion and recommendation appearing above under Number 7 with respect to this phase of the procedure of general courts martial are equally applicable to summary courts martial.

18. Swearing in the court. The discussion and recommendation appearing above under Number 8 with respect to this phase of the procedure of general courts martial are equally applicable to summary courts martial.

19. Subpoenas for civilian witnesses. The Articles for the Government of the Navy authorize any "naval court martial"

to issue subpoenas to compel witnesses to appear and testify but provide process for the punishment of recusant witnesses only when they have been duly subpoenaed by a general court martial. Consequently, a subpoena to a civilian witness to appear and testify before a summary court martial is, in legal effect, a mere request. In those cases in which testimony of civilian witnesses is essential, injustice may result from the lack of power to require attendance.

Recommendation: An amendment of paragraph (c) of Article 42 of the Articles for the Government of the Navy should be sought making the provisions now applicable in respect of witnesses subpoenaed by general courts martial applicable to witnesses subpoenaed by summary courts martial.

20. Closing the court. The discussion and recommendation appearing above under Number 9 with respect to this phase of the procedure of general courts martial are equally applicable to summary courts martial.

21. Use of standard forms. The use of standard printed forms would eliminate much clerical work, would reduce the number of errors which occur in trials by summary courts martial and would facilitate the work of reviewing the records of such trials. Certain units of the service presently employ forms prepared within such units. The feasibility of the use of forms is thus established but greater benefits would follow from the preparation and distribution by the Office of the Judge Advocate General of standard forms for use, within their discretion, by all summary courts martial.

Recommendation: Printed forms, prepared and approved by the Office of the Judge Advocate General, should be made available for documents capable of standardization, such as orders for trial, specifications for the offenses of most frequent occurrence, and the records of proceedings in cases where the accused pleads guilty.

22. Recording of findings and sentences. The discussion and recommendation appearing above under Number 11 with respect to this phase of the procedure of general courts martial are equally applicable to summary courts martial.

23. Use of stipulations. The discussion and recommendation appearing above under Number 12 with respect to this phase of the procedure of general courts martial are equally applicable to summary courts martial.

24. Motion for findings of not guilty. The discussion and recommendation appearing under Number 13 with respect to this phase of the procedure of general courts martial are equally applicable to summary courts martial.

25. Authorized punishments. The powers of summary courts martial to adjudge punishment are set out above in the brief descriptive account of the disciplinary system. It is particularly noted that the maximum period of confinement which may be adjudged is two months and that loss of pay adjudged shall not exceed three months. The limitations are unsound in that they do not provide sufficient variation between deck courts and summary courts martial. Furthermore, they compel the trial by general court martial of many cases which could be tried by a summary court martial with somewhat enlarged powers. The Army counterpart of the summary court martial, a "special court martial," may adjudge confinement for a period not in excess of six months. Increase in the power to adjudge loss of pay is particularly desirable in order that adequate penalties may be inflicted without loss of manpower to the service.

Recommendation: An amendment of Article 30 of the Articles for the Government of the Navy should be sought, permitting a summary court martial to adjudge confinement and loss of pay not exceeding six months.

26. Bad conduct discharges. A review of the records of a representative number of cases discloses that bad conduct discharges are awarded in approximately 20% of the total number of cases. Although the discharges so awarded are remitted on probation in approximately 85% of the cases, the practice is subject to objection. First, since a summary court may, except for loss of pay and extra police duties, sentence an offender to only one punishment, the remission, on probation or otherwise, of the bad conduct discharge necessarily results in the offender's escaping serious punishment. Second, a bad conduct discharge is infrequently an appropriate punishment in time of war. The loss of manpower involved is to be deplored. The offender who receives this punishment is placed in an anomalous position under the Selective Service Law. The position of the Navy is no less anomalous since in certain circumstances it may subsequently accept the offender back into the service. If the offender is not accepted by any branch of military service, the ultimate punishment is restoration to civilian life with little difficulty in obtaining a safe and comparatively lucrative position. The possibility that there are some men in the service who would welcome such punishment should not be overlooked. In many instances, the offenders might more appropriately be sent to rehabilitation centers, or, if the particular circumstances warrant, to active combat areas. The Army "special court martial," referred to above, has no power to adjudge discharge.

Recommendation: As a matter of policy, bad conduct discharges should not be adjudged except in cases where the offense involves moral turpitude, or where the accused is neither presently nor prospectively of any value to the service.

27. Uniformity of punishment. A review of the sentences of a representative number of summary courts martial and of the action taken by reviewing authorities, discloses a serious lack of standardization of punishment. Complete uniformity is neither necessary nor desirable, but men who commit the same offenses under the same circumstances should, with due regard for all relevant factors, such as age, mentality, length of service, and previous general experience, receive punishments which, if not exactly the same, are at least fairly comparable.

Recommendation: A table should be prepared, covering the more common offenses, as an advisory but not obligatory guide. This recommendation, made in our interim report of 24 July 1943, has heretofore been made the subject of action.

28. Review by immediate superior in command. The Articles for the Government of the Navy provide that no sentence of a summary court martial shall be carried into execution until the proceedings and sentence have been approved by the immediate superior in command of the convening authority, except where the convening authority is the senior officer present. In many cases such review by the immediate superior in command should not be necessary. This is particularly true in cases where the rank and experience of the convening authority are such that adequate review by him is assured. Administrative authority by appropriate regulation or order could best determine the method of review in particular classes of cases. The statutory provisions should permit flexibility.

Recommendation: An amendment of Articles for the Government of the Navy should be sought dispensing with the requirement that sentence of a summary court martial be approved by the immediate superior in command.

29. Finality of review by the convening authority. All records of summary courts martial cases are reviewed in the Office of the Judge Advocate General. Such review is rarely completed until after the sentence has been carried into effect. The review now serves the purpose of clearing the record of a man improperly convicted, of restoring loss of pay improperly adjudged, and, in a limited number of cases, of permitting other corrective action. This review also

has the effect of educating those responsible for errors, since the nature of the errors may be brought to their attention, thus discouraging repetition. It would seem advisable to dispense with the requirement of review in all cases in which the possibility of error is at a minimum. Errors are not apt to occur in a case in which the accused, acting under the advice of counsel, pleads guilty. In such cases the record and proceedings should merely be forwarded to the Office of the Judge Advocate General for filing. In all other cases, a review by the Judge Advocate General or other competent authority should be made. Such review should cover all questions of law and procedure and also observance of policies of the Bureau of Naval Personnel. One class of cases should be excepted from the foregoing statements. This class includes cases in which a bad conduct discharge is adjudged by the court and is not remitted by the convening authority. Owing to the permanent effect of this punishment upon the offender, we believe that all cases involving execution of a sentence of discharge should receive a review of the scope considered appropriate for contested cases before that part of the sentence involving discharge is carried into execution.

Recommendation: The review by the convening authority should be final in all cases in which the accused, acting under the advice of counsel, pleads guilty, makes no objection to the proceedings, does not protest the composition of the court or the propriety of the sentence, and does not within three days after the action of the convening authority is made known to him request further review.

Deck Courts

30. Consent to trial. No person who objects thereto shall be brought to trial before a deck court. The theoretical right to object, so granted, is hardly ever exercised. Precise data are not available, but it is conservatively estimated that such objection is made in less than one out of every 10,000 cases. A procedure so rarely used and of no substantial value to the accused in any event should not be preserved.

Recommendation: An amendment of Article 64 of the Articles for the Government of the Navy should be sought, striking out all of paragraph (g) of that Article, thus eliminating the requirement of consent.

31. Authorized punishments. The powers of deck courts to adjudge punishment are set out above in the descriptive account of the disciplinary system. The powers of deck courts are circumscribed by limitations preventing the most effective use of deck courts. In the summary court martial a proper distinction is made between mere confinement and solitary confinement on bread and water. Although solitary confinement on bread and water is not generally looked upon with favor, a deck court must resort to this punishment to exercise its maximum powers since the same time limitation is applicable both to solitary confinement on bread and water and to ordinary confinement. It would be desirable to increase the power of the deck court to impose loss of pay, so that an adequate punishment of this nature, which is frequently more appropriate than confinement, could be imposed.

Recommendation: An amendment to Article 64 of the Articles for the Government of the Navy should be sought, empowering deck courts to adjudge confinement and forfeiture of pay for not more than one month.

32. Uniformity of punishment. The discussion and recommendation appearing above under Number 27 with respect to uniformity of punishment in the sentences of summary courts martial are equally applicable in the case of deck courts.

33. Review. The Articles for the Government of the Navy require review of all deck court cases in the Office of the Judge Advocate General. The discussion appearing above under Number 29 with respect to summary courts martial is applicable to deck courts, except that representation of accused men by counsel is not involved and no question arises with respect to sentences adjudging discharge. In addition, it may be noted that the limited jurisdiction of deck courts further minimizes the necessity for review, and that the records of deck courts are of such brevity that only in unusual cases may a review in fact be made except in respect of technical compliance with requirements. Trial by deck court is very properly a somewhat summary procedure. The extent of the review required by law should accord with the nature of the procedure.

Recommendation: Review by the convening authority should be final in all cases in which the accused pleads guilty,

makes no objection to the procedure, does not protest the qualifications of the deck court officer or the propriety of the sentence, and does not within three days after the action of the convening authority is made known to him request review. In all cases a prompt review covering all questions of law and policy, as defined by the Bureau of Naval Personnel, should be made in the field rather than in the Department. Within the continental United States such review might appropriately be made by district legal officers. Thereafter the record should be forwarded to the Office of the Judge Advocate General merely for filing. Amendment of the Articles for the Government of the Navy should be sought to the end that adoption of the recommended procedure may be permitted.

Mast Punishment

34. Authorized punishments. Loss of pay is not an authorized mast punishment. Loss of pay is, however, frequently a most appropriate punishment. Aboard small ships confinement may be carried out only with considerable difficulty. A commander of such a vessel may in effect be compelled to convene a deck court so that loss of pay may be adjudged. This procedure is not only unnecessarily cumbersome, but has the effect of increasing the punishment of the offender, since, if found guilty by a deck court his record will show a "conviction." Ordinarily, the loss of one day's pay is considered a disciplinary equivalent for one day's confinement. It would be desirable to provide greater flexibility, with no actual increase in disciplinary powers, by authorizing a commanding officer to inflict a comparable loss of pay as one of the alternative forms of punishment.

Recommendation: An amendment of Article 24 of the Articles for the Government of the Navy should be sought including in the punishments which may be inflicted loss of pay not exceeding ten days.

PART III

IMPRESSIONS ON THE ADMINISTRATION OF NAVAL JUSTICE

The recommendations which we have made are not inconsistent with the general framework of the present system for the administration of naval justice and, as we have indicated, we think their adoption will result in improvement in future operations. Further than that the letter of reference does not call upon us to go, and we should in any event be disinclined to recommend any action which would involve substantial reorganization of the system in time of war. The whole subject should be reviewed after the war, particularly in the light of the experience in the war, with a view to the possibility of effecting improvements which might be more far reaching than those now practicable.

In the course of our consideration of the subjects included

in the letter of reference, however, we have formed some impressions and have developed a few suggestions (not sufficiently definite to be embodied as recommendations) to which it seems appropriate to call attention in closing this report.

The administration of naval justice necessarily has as its objective the maintenance of discipline in the Navy, with recognition, to the extent practicable, of accepted principles of justice. Every system of military justice must, in final analysis, distinguish between the maintenance of discipline and the administration of justice, and provide a workable plan under which the two factors are accorded proper relative importance. In an effort to formulate a view on this subject, we have given some consideration to the systems of military justice in force in a number of foreign countries including England, France, Russia, Switzerland, Germany, Italy, and Japan.

All of these systems make a distinction, with varying degrees of clarity in the line of demarcation, between disciplinary infractions on one hand and major military offenses and crimes on the other. In general, they provide for the prompt punishment of disciplinary infractions, without judicial formalities, by commanding officers. The extent of the power so to inflict punishment is sufficient to cover the field of cases dealt with in our Navy at mast and by deck courts and summary courts martial. Major military offenses and crimes are made the subject of trial before permanent military tribunals, the members of which include at least one and usually more specialists in this field. Judge advocates and defense counsel are customarily required to be lawyers with practical experience in trial work.

In our system the distinction has been less clearly made. In comparison, there is a more elaborate treatment of minor infractions, as in deck courts and summary courts, and a less formal treatment of major military offenses and crimes, with greater emphasis on administrative than judicial process. Some of our specific recommendations, if adopted, would tend to provide a more summary procedure for disciplinary infractions, and to increase the exercise of judicial process in the treatment of major military offenses and crimes.

Our system, to the extent that it provides a means for dealing with major military offenses and crimes, might well provide greater independence to the judicial function. There is a substantial risk that members of courts, judge advocates and defense counsel may not be altogether free from pressure and restraint by superior authority exercised not in violation but as a part of the system. Convening authorities, for example, not only convene the courts from among those under their command but also order men to trial, and, since it is not their practice to order a man to trial unless reasonably convinced of his guilt, acquittal may be considered tantamount to an expression of disagreement with a superior officer. The opinions of convening authorities respecting

adequacy of sentences, not infrequently known to the courts convened by them, may result in the imposition of unduly severe sentences. We speak thus of the risks in the system without any criticism whatsoever of the integrity and sense of fairness of officer personnel and with the belief that substantial justice is generally effected.

The system also might well give greater recognition to the value of specialized training of those charged with the administration of naval justice. Whether or not all officers should have specialized training in naval law is questionable, but there can be no doubt that those who may be called on to participate in the administration of naval justice should be adequately trained in this field. And while experience may to a degree take the place of training, it appears that legal work in the Navy is generally performed pursuant to temporary assignment or on intermittent tours of duty, which is hardly conducive to the accumulation of experience.

Moreover, competence in law does not appear to be a factor of particular importance contributing to a successful career in the Navy. Competence in a specialized activity is not normally to be expected when it is neither induced by instruction, nor developed by experience, nor rewarded when acquired by independent effort.

In the past, suggestions have been made from time to time in the Annual Reports of the Secretary of the Navy in favor of the establishment of a Judge Advocates' Corps or of a classification of "Legal Duty Only" for line officers. Irrespective of the creation of a Judge Advocates' Corps or an independent classification of "Legal Duty Only," we believe that, even under present conditions, development of a training program might well be undertaken.

Improvements might be effected in the official literature and methods employed for its distribution. Naval Courts and Boards is a comprehensive legal text, but without special instruction it cannot be fully understood by one possessing neither legal training nor exceptional aptitude. A well organized and clearly written manual, less complex than Naval Courts and Boards but containing more practical detail than Chapter 9 of Naval Administration, would be useful. Court Martial Orders represent a substantial body of naval law, the proper use of which requires some skill and familiarity with the subject matter. It does not appear that the matters covered by them are systematically presented to the service in any readily usable form. As of 1 August 1943 Court Martial Orders had not been compiled and distributed for any period subsequent to 31 December 1941. Prompt and reasonably frequent compilation and distribution should be required.

Article 63 of the Articles for the Government of the Navy provides that whenever the punishment for the conviction of an offense is left to the discretion of a court martial, the punishment shall not, in time of peace, be in excess of a limit which the President may prescribe. The peacetime limitations upon punishment

are set out in Section 457 of Naval Courts and Boards. The courts are substantially without the benefit of any official guidance in the matter of determining punishments in time of war. Article 45 of the Articles of War, which corresponds to Article 63 of the Articles for the Government of the Navy, provides that the limits prescribed by the President are effective at all times. We suggest that the promulgation, as a matter of policy, of limitations upon punishments, effective in time of war, would be beneficial. This is particularly true if the recommendation made in Number 14 is adopted.

We have referred to the fact, under Number 14 above, that the majority of general court martial sentences are substantially mitigated in the course of the review. The action usually involves not merely reduction of the sentence but also suspension of a substantial part of the sentence during a probationary period commencing after a relatively small part of the sentence has been served. The view appears to be held in the Department that in many cases punishment should include, in addition to a relatively short period of confinement, a probationary period during which any improper conduct on the part of the probationer may result in his being compelled to serve the unexecuted, and major, portion of his sentence. Since substantial sentences can be adjudged only by general courts martial, the number of trials by general court martial is necessarily large. The probationary system should, of course, be preserved, but we suggest that the scope of the system has perhaps been unduly extended with the result that many cases are tried by general courts martial, which but for the broad application of the system could be tried by inferior tribunals. This suggestion gains significance if the power of summary courts martial and deck courts to impose punishment, as recommended in Numbers 25 and 31 above, is increased.

This report deals with only one phase of a broad problem before the Navy. It is concerned with the question of a system for dealing with those charged with the commission of offenses. The problem presents two other phases. First, there is the question of the causation of offenses. Second, there is the question of treatment of convicted offenders. We deem it appropriate to make a brief general observation on each.

It is our impression that causation of offenses involving unauthorized absence should be the principal source of concern. Approximately three-quarters of all court martial cases involve this type of offense. Major military offenses and crimes are, in relation to the number and class of the naval population, gratifyingly rare, but the Navy, no less than industrial enterprise, is confronted with absenteeism. Some steps in this direction have already been taken. We believe that this situation merits further comprehensive study and appropriate action.

The system for the treatment of convicted offenders would benefit by the development of a systematic and comprehensive plan to effect the speedy rehabilitation of the maximum possible number

of offenders. Naval prisons appear to place greater emphasis upon rehabilitation than the brigs. The value and effectiveness of rehabilitation programs are illustrated by the fact that the percentage of successful probationers, restored to duty after confinement, is greater in the case of men who were confined in prisons, usually for serious offenses, than in the case of men who were confined in brigs, usually for minor offenses.

The Secretary of the Navy is responsible for the broader aspects of the administration of naval justice as well as for the ultimate disposition of thousands of individual cases. The character and magnitude of this responsibility are now such that it appears desirable to establish in the Office of the Secretary of the Navy an office or staff, with adequate powers and charged solely with the duty of assisting him in the performance of this task.

(signed) Arthur A. Ballantine
Noel T. Dowling

24 September 1943

25 June 1943

Dear Mr. Ballantine:

You and such associates as shall be approved by me are requested to prepare and submit as promptly as practicable a report on the organization, methods, and procedure of naval courts with recommendations, if found warranted, of possible improvement in procedure and practices that will facilitate the satisfactory handling of the largely increased volume of cases handled by such courts. The Office of the Judge Advocate General and all other Offices, Bureaus and activities of the Navy having information in the matter will be requested to supply all information germane to the survey.

You will be furnished with quarters and such assistants as may be found necessary.

Sincerely yours,

(signed) Frank Knox

Mr. Arthur A. Ballantine
31 Nassau Street
New York City, New York

July 23, 1943

TO: The Secretary of the Navy

SUBJECT: Grant of Authority to Certain Officers of the Navy in the Continental United States to Convene General Courts Martial

Reference: Letter from Secretary of the Navy dated June 25, 1943

You have before you for approval and signature drafts of letters authorizing the convening of general courts martial for the period of the present war by the officers named in the attached list, in the continental limits of the United States, conferring on them under Article 38, A.G.N., the same authority as now held by commanding officers of certain forces afloat or beyond the continental limits of the United States. The effect of the authority granted by these letters will be to decentralize the power to convene general courts martial. This, it is believed, will effect the saving of at least sixty per cent of time now consumed due to the present centralization of such authority in Washington, a saving which would aggregate considerably over 500,000 man-days a year. There are now approximately 750 recommendations for general courts martial coming to the Secretary of the Navy each month from the various districts and the number is on the increase. In addition to the great saving in time and manpower, it is believed decentralization will produce many other beneficial results, such as saving in brig space, guards, and time of witnesses, and will doubtless result in an uplift in morale in that the accused men will be speedily tried and informed of their sentences.

There is also before you a proposed letter to the officers receiving the power to convene general court martial to guide them in their procedure in setting up courts; also, a letter informing them of the policy of the Department in regard to the mitigation of sentences in certain cases.

Under the present procedure, except in limited cases such as by authority of a commander of a sea frontier, no case can be submitted to a general court martial in the continental United States even where there is a permanent court, without the approval of the Secretary of the Navy. Recommendations for trial must come from the field to Washington; they must be cleared through both JAG and BuPers and specifications must be drawn by JAG and returned to the field. Further, no sentence is carried into execution until it has been reviewed in Washington by both JAG and BuPers and, as approved, included in an en bloc letter authorizing promulgation of the sentence. Thus, each case has to make two round trips to Washington before the sentence is put into execution.

This centralization results in prolongation of the time between an accusation and the promulgation of the sentence of an average period of in excess of 100 days. It is believed that the decentralization should reduce the time involved by as much as sixty per cent.

The letter to the officers receiving authority will serve as a guide for final action in most common offenses -- the A.O.L. and A.W.O.L. cases, thus promoting uniformity. As a matter of policy it is recommended that so much of a sentence as extends to dishonorable discharge or bad conduct discharge shall not be carried into execution without the approval of the Secretary of the Navy. Requirement of such approval will not result in delay as in such cases, the period of the confinement which will go immediately into effect is usually ample to permit review of the discharge.

An immediate result of the recommended authorization to convene general court martial will be that the task of dealing with the recommendations for trial and preparing charges and specifications will fall on the legal advisers of the convening authorities; also, the task of examining cases on review in order to make recommendations to the convening authority as reviewing authority. This will probably call for some additional legal personnel in the field. Additional stenographic assistance will also be required and this will necessitate modification or some exception made to the recent freezing order of March 31, 1943. It is suggested that immediately upon proposed authorization, a conference be held of District Legal Officers from each District.

Because other officers in the continental United States are not equipped with legal assistants and of the need of securing uniformity in treatment so far as practicable, provision for greater decentralization than that recommended above is not now recommended.

(signed) Arthur A. Ballantine

Noel T. Dowling

July 24, 1943

To: The Secretary of the Navy

SUBJECT: Disciplinary Action in Certain Cases of "Absence Over Leave" and "Absence Without Leave"

Reference: Letter from the Secretary of the Navy to Arthur A. Ballantine, Esq., dated June 25, 1943.

Review of records pertaining to a representative number of courts martial has disclosed a lack of uniformity in sentences and in the action of reviewing authorities. The offenses of most frequent occurrence are "absence over leave" and "absence without leave." Complete standardization of punishment for these offenses is neither necessary nor desirable, but men who commit like offenses under like circumstances should receive punishments which are, if not the same, at least fairly comparable. The large number of reser officers particularly require guidance in this respect.

To promote greater uniformity in sentences and in the mitigating action taken by reviewing authorities a schedule of recommended disciplinary action in certain cases of absence over leave and absence without leave has been prepared, a copy of which is enclosed, which is intended for the guidance of summary courts martial, of deck courts, of authorities convening such courts or reviewing their proceedings, and of commanders authorized to order punishment pursuant to A.G.N. 24. The proposed schedule is purely advisory in nature. It is not intended to modify existing instructions and policy as set forth in Navy Regulations, Naval Courts and Boards, and Court Martial Orders, nor should it be deemed to limit proper discretion in adjusting punishments to the special circumstances of individual cases.

(signed) Arthur A. Ballantine

Noel T. Dowling

3 (14)

The Honorable James Forrestal
Secretary of the Navy

Dear Mr. Forrestal:

There is transmitted herewith the report and recommendations of the Board convened by your precept of November 15, 1945, to consider and report upon the handling of legal problems in the Navy. The study the Board has made includes examination of the Articles for the Government of the Navy and their implementation, the procurement and training of officers to perform law duties, the organization in the Navy Department to deal with matters of commercial law, and other subjects which the Board considered to be related thereto.

Because of illness, Mr. Dowling and Captain Morine were unable to be present during final deliberations of the Board. They are, nevertheless, sufficiently familiar with the subject matter of the report to subscribe without qualification to the matter contained therein.

Sincerely yours,

Arthur A. Ballantine

24 April 1946

BOARD CONVENED BY PRECEPT OF THE SECRETARY OF THE NAVY
DATED NOVEMBER 15, 1945

REPORT

Pursuant to the precept of the Secretary of the Navy dated November 15, 1945, this Board has considered the subject of the administration of justice in the Navy during the war with a view to recommending any action deemed appropriate to improve the Navy's disciplinary system. This subject has already received attention from time to time at the direction of the Secretary of the Navy and helpful intermediate reports, including a survey and study made by a committee headed by the Honorable Matthew F. McGuire, have been submitted to the Board. These reports and other material have been carefully studied by the Board, and witnesses having information or responsibility in the premises have been heard at length.

In addition to the study of the administration of justice, the Board has addressed itself to a study of the procurement and employment of officers and civilians doing legal work in the Navy. This subject has also been studied by other agencies within the Navy Department, and as in the case of the disciplinary system, informed witnesses have appeared before the Board to express their views and furnish pertinent information.

The Board is of the opinion that the disciplinary system of the Navy has in general functioned well, but that recent wartime experience shows the need of changes in the court-martial system. These changes recommended by the Board are hereinafter set forth. The Board is also of the opinion that the plans and

procedures developed throughout the war for providing legal services in matters of commercial law and material procurement were effective, and that the necessary provisions should be made at this time for adequate handling of these matters during peacetime, either by continuing or appropriately adapting the system so developed.

The basis for the Navy's disciplinary system is to be found in the Articles for the Government of the Navy. These are the established statutory provisions expanded but not substantially changed since their adoption many years ago. The Articles prescribe standards for the conduct of naval personnel, both in war and in peace; deal with offenses and how they shall be punished, and prescribe the procedure by which the punitive articles are to be enforced, including the system of naval courts-martial.

Legal services and organization

During the period immediately preceding the war, all legal affairs of the Navy Department were under the cognizance of the Judge Advocate General of the Navy. That officer, who holds a four-year appointment, was not (and is not) required by law to possess legal qualifications, nor were the personnel in his office. As a matter of practice, the officers engaged in the performance of law duties in the Navy Department had received professional legal training, usually at a law school in Washington, and following the established rotation of duty procedure, were assigned to the Office of the Judge Advocate General for duty. In time of peace, the number of officers so

employed was comparatively small, because the work load did not demand more.

With the approach of war, and incident to the expansion that took place, it became evident that the Office of the Judge Advocate General was not equipped with personnel in sufficient quantity or of adequate qualifications to discharge efficiently all the duties assigned that office. The situation was particularly acute in the field of commercial law and material procurement. As a result, there was established a so-called Procurement Legal Division, which subsequently became the General Counsel's Office, to handle matters of commercial law. This unit, headed by a lawyer of wide legal experience, was staffed by upwards of 140 extremely able civilian lawyers recruited largely from leading law firms in the country. The office functioned on a decentralized basis under which each bureau is the Department was furnished legal counsel who were subject to policy control by the General Counsel.

One of the specific questions this Board has considered relates to the advisability of retaining the Office of the General Counsel as now set up and organized.

The Disciplinary System

The general belief among officers of the Navy is that fitting conduct of naval personnel depends on example and encouragement rather than upon the infliction of penalties. The Board is of the opinion that this attitude is in large measure responsible for the maintenance of naval discipline at a high level.

In any branch of the military service comprising large numbers even in time of peace, although the general morale may be kept high, there are bound to be offenses which must be dealt with by penalties. As has been recognized since the establishment of the Navy, complete administration of discipline requires a system for the imposition of punishments.

Offenses requiring punishment may be divided into two general classes, those which are strictly military--far the larger class--and those which while affecting discipline are non-military. Included in the former category are unauthorized absence, violations of rules having to do with obedience, and violations of that portion of the Articles for the Government of the Navy dealing with conduct in battle. The latter category includes such offenses as theft, burglary, rape, and murder.

Whatever the character of the offense, it must be handled from the standpoint of maintaining naval discipline at the standards prescribed by the Articles for the Government of the Navy, and with every reasonable assurance that the rights of the accused are also protected. The objective is the fullest possible reconciliation of the responsibilities of command with the fundamental safeguards of the rights of the individual.

The Articles for the Government of the Navy provide for the imposition of punishments for minor offenses by commanding officers, commonly known as mast punishments, subject to no review; Deck Courts, whose findings and sentences are subject to review by the convening authority, and which are empowered to impose more severe sentences than is a Commanding Officer; Summary

Courts-Martial, which are composed of three officers vested with greater powers of punishment, and whose findings and sentence are subject to review by the convening authority and his immediate superior in command; and General Courts-Martial, composed of not less than five nor more than thirteen commissioned officers, which alone can try commissioned officers and which are empowered to impose heavy sentences, even the death sentence.

Deck Courts, Summary Courts-Martial and General Courts-Martial are subject to review in the Navy Department. As a matter of practice, the records of proceedings are reviewed as to legal features in the Office of the Judge Advocate General, as to disciplinary features in the Bureau of Naval Personnel or in the Headquarters of the Marine Corps, as the case may be. These reviews are conducted for the Secretary of the Navy and represent recommendations to him. The authority to act finally in any case rests with the Secretary of the Navy, and the Board considers that final action should be taken by him on every General Court-Martial case.

As a measure of the success in maintaining naval discipline during the war (in addition to the fact that the system enabled us to prosecute the war successfully), it is to be noted that the percentage of men tried by court-martial rose only from .173 to .185, in spite of the fact that such a large portion of naval personnel were new to the service and subjected immediately to the rigors of wartime service.

During the war the Department established on the West Coast a school for the purpose of furnishing naval and Marine

officers an intensified course in naval justice. The Board has been favorably impressed with the thoroughness of the instruction there, with its general efficient administration, and with the useful text book "Naval Justice" which was there produced. In the opinion of the Board, the establishment of this school was a constructive step and its continuance and further development will serve a useful purpose.

The changes in the naval court-martial system herein recommended reflect the desire to assure the fullest protection of the individual in the administration of naval justice.

RECOMMENDATIONS

There are set forth below recommendations for specific changes in the Articles for the Government of the Navy. The Board believes that if these changes are adopted and are implemented as suggested, the various criticisms leveled against the court-martial system will be met and that a sweeping revision of the Articles for the Government of the Navy will not be necessary. If changed as recommended, the Articles will still contain a certain amount of repetition and redundance, but the Board feels that as the Articles constitute such an important basis of naval usage and tradition, it would be unwise to revise them completely, merely for the sake of condensation and reduction in number. The Board recommends the following changes:

A. Jurisdiction

Provisions which relate to what persons are subject to the jurisdiction of naval courts, and to the time

and place of offenses triable by them, are found not only in the Articles for the Government of the Navy but also in other federal statutes. On some points there is uncertainty and confusion. The Board is of the opinion that the law relating to the jurisdiction of naval courts should be restated and recast in the interest of clarity and definiteness. This will require legislation.

B. Duties of a Judge Advocate

The Board recommends that the duties of a judge advocate be as follows:

1. An officer, specially trained under the supervision of the Judge Advocate General, and certified by the Judge Advocate General as qualified to perform the duties of such office, shall be appointed to act as judge advocate before General Courts-Martial, and when the circumstances permit, before Summary Courts-Martial.
2. The judge advocate shall, under such rules of practice, pleading and procedure as the Secretary of the Navy may prescribe, summon all witnesses; advise the court on all questions of admissibility of evidence; give impartial advice on matters of law and procedure to the prosecutor, to the accused and his counsel, and to the court; question such witnesses as may, in his discretion,

be necessary to a full exposition of the facts; advise the court, prior to its deliberations on findings, upon the law of the case; and keep, with the assistance of a duly designated clerk, the record of proceedings.

3. In any case where the court does not follow the advice of the judge advocate with respect to matters of law and procedure, the rejection of such advice and reason therefor shall be noted in the record of proceedings.

4. The Judge Advocate General shall be the officer to report upon the fitness of each judge advocate in so far as his performance of duty as such is concerned.

It is the opinion of the Board that adoption of these recommendations will operate to insure fuller protection of the rights of the accused, and that a greater degree of legal efficiency in court-martial trials will result. The recommended change in the status of the judge advocate presupposes the appointment of another qualified individual to act as prosecutor. It is also assumed that provision for the counsel for the defense will be continued.

C. Boards of Review

Review of all sentences of naval courts, particularly General and Summary Courts, in the Department is now

provided for and practiced. As a further means for assuring the attainment of justice to all individual defendants the Board recommends that there be established in the Navy Department, Boards of Review, each of which would be composed of at least one civilian with legal background, one naval lawyer and one or more general service officers of mature judgment. The function of the boards would be to review such cases as the Secretary of the Navy might deem appropriate. Such cases might be those in which heavy sentences are imposed, those which are highly complicated, those which are the subject of appeal by brief or otherwise. Should a board disagree with the review of the case already made by the Judge Advocate General or by the disciplinary activity involved, the record would be returned to the appropriate office for reconsideration and further recommendation before being presented to the Secretary of the Navy for final approval.

D. Composition of General Courts-Martial

The Board believes that the maximum number of 13 members is unduly high and that the number should be reduced to 9.

E. Retention of Deck Courts

The Board believes that although there is some difference of opinion on the subject, and that although some officers do not make full use of Deck Courts, they are nevertheless essential in ships, particularly in time

of war. Furthermore, the authority now vested in a Deck Court must, in order to preserve the scale of punishments, be vested somewhere. It appears to the Board that the only place for this authority to go would be to the Commanding Officer. The Board does not believe that his powers should be increased to that extent.

F. Increase in Powers of Summary Courts-Martial

Under the present Articles for the Government of the Navy, a Summary Court-Martial is authorized to award sentences of confinement not exceeding two months and loss of pay not exceeding three months. For the reasons stated below, the Board believes that the powers of punishment by Summary Courts-Martial should be increased. A Summary Court-Martial may try any enlisted person subject to naval law. The sentence which it may impose is limited to "any one of several punishments, including discharge from the service with a bad conduct discharge," to which may be added extra police duties and loss of pay not to exceed three months. Where a bad conduct discharge is awarded by such a court, and is later mitigated, the result under present provisions is that there is ordinarily no punishment. As a matter of practice, General Courts-Martial are prone to regard their minimum punishment of confinement as six months, thus there is a gap in the punishment scale which the Board feels should be closed. The

Board therefore recommends an increase in the powers of Summary Courts-Martial as follows:

1. Discharge with a bad conduct discharge.

2. Confinement for a period not exceeding six months, to run consecutively.

3. Solitary confinement for a period not exceeding thirty days, to run consecutively, or solitary confinement on bread and water with full ration every third day for a period not exceeding ten days, to run consecutively.

4. Reduction to the next inferior rating.

5. Deprivation of liberty on shore for a period not exceeding sixty days, to run consecutively.

6. Confinement for a period not exceeding three months, to run consecutively, and loss of pay not exceeding three months may be adjudged in addition to a bad conduct discharge. No bad conduct discharge shall be executed in a foreign country.

Adoption of the above scale of punishments will, in the opinion of the Board, reduce the number of General Courts-Martial. Additional safeguards provided for the rights of the accused (detail of a judge advocate is one) are believed to be commensurate with the increase of the limitations of Summary Court-Martial punishments as recommended. It is to be noted that the foregoing permits a combination of confinement, loss of pay, and bad conduct discharge. In the opinion of the Board, this flexibility is desirable, in that it makes it possible for a man to be sentenced to a bad conduct discharge to be placed on probation without his escaping punishment entirely.

G. Relation of Disciplinary Activities to Courts-Martial.

The Board believes that participation of the Bureau of Naval Personnel and the Commandant of the Marine Corps in review serves a useful purpose.

H. Courts and Boards and Court-Martial Orders

The Board recommends in the interest of more ready availability, rewriting Naval Courts and Boards and thorough re-editing of Court-Martial Orders.

I. Adaptation of Rules for Naval Courts-Martial

The Board believes that further simplification of procedure can be obtained through clear delegation to the Secretary of full rule-making power and the elimination of any provisions or orders standing in the way of the full exercise of such power. Provision should be made for the proper use of depositions and stipulations and for the attendance of civilian witnesses. The Board therefore recommends that the rules for practice, pleading, and procedure for naval courts-martial be revised and simplified, and that in addition, there be adopted uniform rules of evidence.

J. Mast Punishments

The Board favors leaving the schedule of Mast punishments as it is.

K. Announcements of Sentences

Under the present practice, sentences are not announced to the accused until approved by the reviewing authority. There is some difference of opinion, but the Board sees

no real objection to the sentences imposed being announced immediately upon completion of a trial. If this procedure is adopted, however, the Board believes it should be accompanied by the establishment of legal limitations of punishment in time of war as well as in time of peace. Announcement of the sentence immediately upon completion of the trial should not operate to change the time the sentence begins to run.

Officers for Legal Duties

A. Status

Whatever the needs of the Navy before the war for officers to perform legal duties, the war has demonstrated beyond all question that provision must be made to train and employ a larger number of naval officers to perform legal duties. As the Board views this problem, the officers so procured and trained should be organized and employed in such a way that legal duties will be their primary duty. There are at least two ways to accomplish the desired results.

One method is to establish a law corps which would be set up and occupy the same status as the various other corps in the Navy. This corps would consist of officers performing legal duties only, promotion therein would be governed by their comparative fitness as is the case in other corps (in so far as is consistent with the running-mate system)

and the members would be recruited from all available sources, both within and without the Navy. This method has the disadvantage that such a corps would lead itself to such undesirable features as compartmentation and rigidity, and the distinct possibility that the line of the Navy would not find such an organization as useful as some other form.

Another method would be to designate naval officers performing law duties as legal specialists. Under such a plan, legal specialists would occupy very much the same status as officers designated for engineering duty only. The officers so designated would be selected for promotion in competition with each other on the basis of their comparative fitness. Their duties would be primarily law duties, but they would be available and qualified to perform certain other duties now assigned so-called "unrestricted" line officers. These would include duties as legal advisers on staff duty with commands afloat, with naval governors, and various other details such as military government which arise from time to time and for which their law background would render them particularly suited. Furthermore, the performance of such duties, even to a limited extent, would result in the acquisition of naval experience so necessary to maximum effectiveness.

Both methods suggested have the advantage of

improving legal services to the Navy by providing adequate numbers of personnel permanently assigned to legal duties. In either case, the Board considers a component of officers in the Naval Reserve designed to constitute sufficient personnel, of the calibre desired incident to time of war or national emergency, essential.

In the opinion of the Board, the system which would create legal specialists in the line of the Navy, as distinguished from a law corps, has all the advantages of such a corps and a minimum of the disadvantages thereof. Accordingly, the Board recommends the "legal specialist" plan.

B. Procurement and Employment

There are at the present time three potential sources of legal specialists, the Regular Navy, the Reserve component thereof (a large portion of which are still on active duty) and civilians. The Board recommends that legal specialists be drawn from all three sources. Obviously, the establishment of legal specialists will require special measures applicable only to the formation of such a group, in order that there may be proper distribution throughout the various grades. After the group is established, it is expected that there will be a stabilized flow of officers into the group and a normal attrition in all grades.

Initially, legal specialists would be taken from the Regular Navy and from these members of the Naval Reserve who request transfer thereto. There is much available material for this purpose, as there are upwards of 12,000 lawyers in the Naval Reserve from which, combined with officers already in the Regular Navy, there would be recruited a legal specialist group now estimated at about 400, to serve in the Navy Department and in the field.

In this connection it should be noted that Reserve officers who are potential legal specialists now occupy a transitory status; that is, with demobilization in progress, some of these officers have returned to inactive duty, some are on terminal leave, some are on active duty and soon to be separated, and some may be expected to continue on active duty until 1 July 1947. All of these officers have been given an opportunity to apply for transfer to the Regular Navy and the designation of legal specialist, but in view of the fact that legal specialists have not yet been authorized it has been necessary to make their transfer a matter of contingency, and revocable in case of failure to be so designated. The situation is further complicated by a degree of uncertainty as to what the age and other eligibility requirements are to be.

If and when legal specialists are authorized by law,

and after the initial group is established, the Board recommends that the procurement of legal specialists be by two methods, first, by giving legal training in law schools to naval officers in limited numbers applying therefor, and second, by bringing into the Navy from civilian life individuals who already have a legal training.

Those officers who are selected for the law course would, upon completion of their course or within a reasonable time thereafter, be permitted to apply for designation as legal specialists. This should be permissive rather than mandatory. Considering the demonstrated value of naval officers with a legal background, the Board believes that not only should the election be permitted but that subsequent detail to the performance of legal duties should be determined according to the capabilities of the individual. No officer should be ruled out of duty in the legal field simply because he has sufficient versatility to do well in other fields. In this connection, however, the Board believes that as a matter of policy, the maximum age for an officer entering law school should be thirty or less.

The commissioning of individuals with legal training directly from civilian life represents a radical departure from past practice, but the Board feels very

strongly that it is highly desirable, and that most excellent material will be obtained in that manner. Considering the small number that can be taken each year, it is predicted that outstanding young men will be the result. Should this recommendation be approved, the Board feels equally strongly that individuals should be credited with constructive service equivalent to the time spent in law school (three years), as is done in the case of medical officers.

The Board also strongly recommends that consideration be given to readjusting the position of legal specialists on the Navy list in such a way as to place them in a position thereon approximating their contempories in the line of the Navy. In this connection an analogy is drawn to the situation which would exist if a medical corps were to be created, namely, the necessity of a proper distribution throughout all ranks, based on age, experience, and demonstrated ability to perform the duties required.

Legal Organization in the Navy Department

As previously indicated in this report, the Board is of the opinion that affirmative action should be taken at this time to insure the adequate handling of matters involving commercial law during peacetime. The question of how this should be accomplished has been studied at length, and the Board has had the benefit of the views of all concerned.

The Board is of the opinion that under the conditions prevailing during the recent war the Navy Department received very great benefit from the services of the Office of the General Counsel, manned by a personnel of broad experience and high character, especially equipped to deal with the many legal problems of expanded procurement.

The Board believes that in principle all legal matters within the Navy Department should be placed under a single head and that the logical officer to be in charge of the legal organization is the Judge Advocate General. Under present circumstances, however, it appears that the development of a single legal organization can not be accomplished immediately in an orderly manner. There is still an unusual burden of work in the procurement and commercial law field resulting from the war, and the personnel situation makes such a move inadvisable at this time.

The Board therefore recommends that the Office of the General Counsel be continued in the Office of the Secretary and that the necessary steps be taken to retain such office for such time as the need therefor is indicated. This recommendation contemplates that at least the principal lawyers serving in the Office of the General Counsel can be exempted from Civil Service rules and classification and accorded a salary basis on the highest level for civilian employees. While much of the greater portion of the attorneys who served in the Office of the General Counsel have returned to civilian practice, it has been stated that an adequate number are possible candidates for continued

employment. It may be possible to recruit the remainder needed from returning servicemen of adequate legal training who have no permanent connections.

Carrying out this general recommendation, the Board recommends that as in the development of his force the Judge Advocate General secures trained legal specialists of suitable qualifications, they be assigned to the General Counsel's Office as replacements of civil personnel. The Board believes that in this manner there will be made possible a smooth transition to the ultimate development of a single legal organization. Determination of when that complete integration can be made advantageously will depend upon developments, and is a matter for the decision of the Secretary, but the Board recommends that in so far as available information will permit, a plan be drawn up now looking to the accomplishment of the change. When such integration has been effected it should also be determined whether or not the individual having immediate charge of commercial law matters under the Judge Advocate General should retain the title of General Counsel. The Board believes that after the integration, provision for civilian attorneys exempt from Civil Service should be retained.

There will be submitted shortly a table of statistics showing the result of the court-martial system during the war.

* * * * * * * * * * *

The Board stands ready to perform any additional services that you may deem appropriate in connection with the general subject.

Arthur A. Ballantine, Esq.	Justice Matthew F. McGuire
Noel T. Dowling	Major Gen. Thomas E. Watson, USMC
Rear Adm. George L. Russell, USN	Rear Adm. John E. Gingrich, USN
Rear Adm. George C. Dyer	Captain Leon H. Morine, USCG
Lt. Comdr. Richard L. Tedrow, USNR	Lieutenant John J. Finn, USNR

JAG:AJ:deg

3 (16)

25 June 1946

From: The Secretary of the Navy.
To: The Judge Advocate General.

Subj: Ballantine Report.

Ref: (a) Report of Ballantine Board dated 24 April 1946.

1. The Board of which Mr. Arthur A. Ballantine was Senior Member, appointed by me to study the handling of legal problems in the Navy and to make recommendations looking to their solution, submitted its report on 24 April 1946. After full consideration of the Board's report, including the separate report of two members of the Board, I desire that the following action be taken with respect to the various recommendations set forth in the two reports.

2. Please take steps to accomplish the following:

(a) Prepare the necessary legislation to modernize the Articles for the Government of the Navy, including but not necessarily limited to the following particulars:

(1) Amend the present articles to clarify and consolidate those provisions which relate to jurisdiction (Recommendation A).

(2) Reduce the maximum number of members of a general court-martial from thirteen to nine (Recommendation D).

(3) Increase the powers of summary courts-martial in accordance with the Board's recommendation (Recommendation F).

(4) Authorize the Secretary of the Navy to prescribe rules for court-martial procedure (Recommendation I).

(5) Delineate more clearly major criminal offenses and punishment therefor.

(b) Submit for my approval a comprehensive revision of Naval Courts and Boards to include the rules for court-martial procedure referred to in the preceding subparagraph. Incorporated in those rules should be rules and regulations covering the duties of a judge advocate, conforming to the general recommendations of the Board.

JAG:AJ:deg

Subj: Ballantine Report.

(c) Undertake, in cooperation with the Chief of Naval Personnel, the immediate procurement and detail of an adequate number of officers qualified to perform law duties in your office, in the naval districts, and with the forces afloat.

3. Recommendations E, G and J of reference (a) relating to the maintenance in status quo of deck courts, review of court-martial proceedings by the Chief of Naval Personnel and the Commandant of the Marine Corps, and mast punishments, respectively, have my approval.

4. Action on the Board's recommendation (Recommendation C), calling for additional boards of review of naval courts-martial, should be deferred pending the completion of the study of this subject which is now being made by the General Court-Martial Sentence Review Board convened in April, with Professor Arthur J. Keeffe as its President.

5. In addition to the foregoing, I wish the necessary steps taken to make a court-martial sentence start to run as of the date it is imposed by a court instead of, as at present, the date it is approved by a convening or reviewing authority.

6. No decision is made with respect to the recommendation as to the cognizance of commercial law matters. The Office of General Counsel shall continue to perform its present functions.

/s/ Forrestal

Copy for:
Chief of Naval Personnel

3(1)

28 June 1946

The Honorable James Forrestal
Secretary of the Navy
Washington, D. C.

My dear Mr. Secretary:

Submitted herewith is the table of statistics referred to in the report of the board of which I was senior member, dated 24 April 1946.

Sincerely yours,

ARTHUR A. BALLANTINE

TABLE OF CONTENTS

PURPOSE OF SURVEY

The purpose of the survey herein contained was to determine the percentages and distribution of trials, offenses, convictions, acquittals and sentences by naval courts during World War II and study the conclusions to be drawn therefrom.

HOW RESULTS WERE OBTAINED

The 45-month period of hostilities, December 1941 through August 1945, was chosen for the survey. Data on file in the offices of the Military Law Division of the Office of the Judge Advocate General of the Navy, and Enlisted Discipline Section, Officer Discipline Section, Corrective Services Division and Field Research Division of the Bureau of Naval Personnel were utilized.

Where percentages of total personnel or classes of personnel are shown, the figures are based upon the aggregate numbers of such personnel who were subject to the jurisdiction of naval courts during the 45-month period. They include those who were present at the beginning of the period plus those who entered the naval service during the period.

Inasmuch as it was desired to have data on officer personnel, who are subject to trial by general court martial only, in order that a check and proper comparison with enlisted personnel could be made and studied, the data herein contained is limited to general courts martial.

Offenses have been grouped under headings indicating their nature. Attempts and related offenses have been combined

with the consummated offenses of the same type. Offenses committed during the period are more numerous than trials conducted, since a single trial often covered several offenses.

To separate the categories of personnel convicted and not convicted, the designation "Acquittals" includes cases set aside, disapproved or nolle prossed.

WHAT THE SURVEY SHOWS

I

Number of Trials

Of the aggregate naval population of 4,758,215, twelve and three-fourths (12-3/4) per cent were brought to trial before naval courts. Most of the trials were before the lesser courts for minor offenses (253.406 summary courts). Only 1-1/10 per cent were tried by general court martial.

II

Offenses

A total of 64,121 offenses resulted in conviction by general courts martial. Of these, 2-1/2 per cent were committed by officers and 97-1/2 per cent by enlisted personnel.

Civil crimes accounted for 14 per cent of all offenses committed, the remaining 86 per cent being military offenses. This ratio was the same for officers as for enlisted personnel.

Of the military offenses committed it is interesting to note that unauthorized absence accounted for 77 per cent and

desertion for about 10 per cent. In military law, these two offenses, comprising 87 per cent of the total general court martial charges, are relatively simple to prove. These charges are based on factual records which are seldom susceptible to rebuttal. Therefore, unless the accused has a plea in justification, which is a rarity, he must and usually does rely solely on evidence in extenuation and pleas for clemency based on youth, inexperience and previous good service or, in the case of desertion alone, on efforts to rebut the evidence as to intent to remain permanently out of military jurisdiction. Consequently, in the case of enlisted personnel, it has been found that 90 per cent of the accused entered pleas of guilty, which left the court with no alternative but to convict.

III

Convictions and Acquittals

Of the 52,120 trials by general court martial, 97 per cent resulted in convictions and 3 per cent in acquittals. Roughly, 22 of each 10,000 officers were tried by general court martial; 18 were convicted and 4 acquitted. Roughly, 130 of each 10,000 enlisted persons were similarly tried; 110 were convicted and 20 acquitted. Recapitulating, for approximately every six enlisted men tried by general court martial, one officer was so tried; for every six enlisted men convicted, one officer was convicted.

IV

Sentences

The typical sentence for absence offenses imposed by a general court martial upon enlisted personnel was:

reduction in rank to Apprentice Seaman;
confinement for 15 months; bad conduct
discharge and accessories.

The typical sentence for offenses other than absence was:

confinement for 36 months and a bad conduct
discharge or dishonorable discharge.

V

Review by Convening Authority and Secretary of the Navy

Sentence passed by a general court martial were reviewed by the convening authority. This review resulted in drastic reduction of sentences imposed by the court. The length of confinement for absence offenses was reduced, typically, from 15 months to 5 months; the length of confinement for offenses other than absence was reduced, typically, from 36 months to 18 months.

Subsequent review of sentences by the Secretary of the Navy seldom resulted in changes. Of every 100 trials by general court martial, 79 were left undisturbed by the Secretary of the Navy, no action by him being legally necessary or desirable. In 20 of the 21 remaining cases, convictions were approved by the Secretary of the Navy.

NOTE: In addition, the Naval Prison Inspection and Clemency Board reviews requests for clemency and restoration to duty and makes appropriate recommendations to the Secretary of the Navy. Also, on 9 April 1946, the Secretary of the Navy established General Court Martial Sentence Review Board, headed by a civilian, for the purpose of making recommendations to the Secretary of the Navy concerning such further reductions in the approved sentences of prisoners as may be considered warranted.

VI

Restoration to Duty
(to 1 December 1945)

Of all general court martial prisoners received at places of confinement during the war

74% had been released as of 1 December 1945

26% were still confined.

The Bureau of Naval Personnel established the policy, and implemented it in its Corrective Services Division, of administering integrated confinement activities which provided for intelligent and humane treatment of General Court Martial prisoners and operated a program of segregation, discipline, and instruction designed to correct attitudes, readjust the individual, and return the greatest possible number of men to active duty as early as possible.

Of the total number of men released

83% had been restored to duty in the naval service

16% had received a bad conduct or dishonorable discharge from the naval service

1% had received some other kind of discharge from the naval service.

A follow-up study of men restored to duty during the war has shown that two-thirds of such men made a successful readjustment to naval duty.

TABULATIONS

PERCENTAGE OF OFFICER AND ENLISTED PERSONNEL DISTRIBUTED BY TRIALS, CONVICTIONS, AND ACQUITTALS BY GCM

	OFFICERS	ENLISTED PERSONNEL
	416,251	4,341,964
	%	%
TRIED	0.22	01.3
CONVICTED	0.18	01.1
ACQUITTED	0.04	0.2

NOTE: For a comparison in actual numbers, it will appear from the above percentages that of the total number of 416,251 officers in the service, 938 were tried by General Court Martial. Of the latter number, 761 or 81.1% were convicted.

Of the total number of 4,341,964 enlisted men in the service, 51, 182 were so tried resulting in convictions for 49,953 or 97.6% thereof.

Any question regarding the reason for the difference between the percentage of convictions for enlisted men and that for officers is readily explained by the fact that 88.7% of, all offenses on which convictions were returned against enlisted men (see table on page 13) were for relatively simple-to-prove charges of unauthorized absence and desertion, which accounted for the very high percentage of pleas of guilty (see page 3 supra), whereas, only 8.3% of all offenses resulting in convictions of officers were based upon said charges.

ACTION OF THE SECRETARY OF THE NAVY ON GCM CASES
DISTRIBUTED BY OFFICERS AND ENLISTED PERSONNEL

	Acquittals or convictions as app'd or disapp'd by CA not disturbed	Acquittals after trials by SecNav order	Convictions Approved	Convictions wholly dis-app'd or set aside	Convictions disapp'd or set aside in part	convictions set aside & new trial ordered	Nolle pros. ent'd	Plea in bar of trial sustained
	41.035	149	10.355	133	352	7	82	7
	%	%	%	%	%	%	%	%
Officers	01.87	11.41	00.72	08.27	12.78	0	18.29	0
Enlisted Personnel	98.13	88.59	99.29	91.73	87.22	100	81.71	100

OFFICER AND ENLISTED PERSONNEL TRIED BY GCM
DISTRIBUTED BY ACTION OF THE SECRETARY OF
THE NAVY

	OFFICERS	ENLISTED PERSONNEL	TOTAL
	928	51.192	51.120
	%	%	%
Acquittals or convictions as approved or disapproved by convening authorities, not disturbed.	82.54	78.66	78.73
Acquittals after trial by SecNav Order	01.83	00.26	00.28
Convictions Approved	07.97	20.09	19.88
Convicti ns wholly disapproved or set aside	01.19	00.24	00.25
Convictions disapproved or set aside in part	04.85	00.59	00.68
Convictions set aside and new trial ordered	0	00.01	00.01
Nolle prosequi entered	01.62	00.14	00.16
Plea in bar of trial sustained	0	00.01	00.01

OFFENSES FOR WHICH CONVICTED BY
GENERAL COURT MARTIAL
DISTRIBUTED BY OFFICERS AND ENLISTED PERSONNEL

	CIVIL CRIMES	MILITARY OFFENSES	TOTAL OFFENSES
	9,026	55,095	64,121
	%	%	%
OFFICERS	02.45	02.12	02.35
ENLISTED PERSONNEL	97.55	97.88	97.65

OFFICER AND ENLISTED PERSONNEL'S OFFENSES
FOR WHICH CONVICTED BY GENERAL COURT-MARTIAL
DISTRIBUTED BY CIVIL CRIMES AND MILITARY OFFENSES

	OFFICERS' OFFENSES	ENLISTED PERSONNEL'S OFFENSES	TOTAL OFFENSES
	1,503	62,618	64,121
	%	%	%
CIVIL CRIMES	14.76	14.06	14.07
MILITARY OFFENSES	85.24	85.94	85.93

MILITARY OFFENSES
(Enlisted Personnel and Officers)

	OFFICERS	% OF TOTAL OFFICERS	ENLISTED MEN	% OF TOTAL ENLISTED MEN	TOTAL	% OF TOTAL ENLISTED MEN AND OFFICERS
Absence, Unauthorized	104	8.1%	42383	78.7%	42487	77.1%
Assaulting or threatening superior officer	5	.4	459	.9	464	.8
Carelessly endangering lives	19	1.5	79	.2 +	98	.2 -
Conduct to the prejudice of good order and discipline	380	29.7	2291	4.3	2671	4.8
Conduct unbecoming an officer and a gentleman	63	4.9	--	--	63	.1
Desertion	2	.1 -	5342	9.9	5344	9.7
Disobedience of orders	20	1.6 -	504	.9	524	1.0 -
Disrespect to superior officer	25	2.0 -	385	.7	410	.7 +
Drunkenness	231	18.0	743	1.4	974	1.8 -
Failing to apprehend offenders	--	--	35	.1 -	35	.1 -
Falsehood	247	19.3 -	129	.2	376	.7
Fraud (other than on Government)	2	.1	31	.1-	33	.1 -
Fraudulent enlistment	--	--	66	.1	66	.1
Injuring property on shore	--	--	7	.0	7	.0
Maltreatment of persons subject to orders	5	.4	22	.0	27	.0 +

MILITARY OFFENSES
(Enlisted Personnel and Officers)
(continued)

	OFFICERS	% OF TOTAL OFFICERS	ENLISTED MEN	% OF TOTAL ENLISTED MEN	TOTAL	% OF TOTAL OF ENLISTED MEN AND OFFICERS
Misconduct before the enemy	--	--	44	.1% -	44	.1% -
Mutiny	--	--	31	.1 -	31	.1 -
Neglect of duty	69	5.4%	172	.3	241	.4
Scandalous conduct	38	3.0	723	1.3	761	1.4
Sleeping on watch	--	--	361	.7	361	.7 -
Stranding or hazarding vessel	15	1.1	--	--	15	.0
Violation of orders and regulations	56	4.4	7	.0	63	.1
	1281	100.00	53814	100.00	55095	100.00

CIVIL CRIMES
(Enlisted Personnel and Officers)

	OFFICERS	% OF TOTAL OFFICERS	ENLISTED MEN	% OF TOTAL ENLISTED MEN	TOTAL	% OF TOTAL OF ENLISTED MEN AND OFFICERS
Arson	--	--	2	--	2	--
Assault	56	25.2%	962	10.9%	1018	11.3%
Breaking arrest	23	10.4	3936	44.7	3959	43.9
Burglary	--	--	146	1.7	146	1.6
Disorderly conduct	26	11.7	509	5.8	535	5.9
Extortion	--	--	11	.1	11	.1
Forgery	5	2.2 +	214	2.4	219	2.4
Fraud against the government	64	28.8	1059	12.0	1123	12.4
Larceny	30	13.5	1275	14.5	1305	14.5
Mail, offenses concerning	1	.5 -	129	1.5	130	1.4
Manslaughter	6	2.7	122	1.4	128	1.4
Murder	1	.5-	13	.1 +	14	.2 -
Perjury	--	--	6	.1 -	6	.1 -
Robbery	--	--	191	2.2	191	2.1
Sex Offenses	10	4.5	229	2.6	239	2.6
	222	100.0	8804	100.0	9026	99.9