

Uniform Code of Military Justice

Subject: Powers; Procedure.

See C.S., A. W. 97 -- Courts of Inquiry.

Uniform Code of Military Justice

Subject: Opinion on Merits of Case.

See C.S., A.W. 97 -- Courts of Inquiry.

Uniform Code of Military Justice

Subject: Record of Proceedings--How Authenticated.

See C.S., A. W. 97 -- Courts of Inquiry.

Uniform Code of Military Justice

Subject: Disciplinary Powers of Commanding Officers. A. W. 104.

I. Army Provisions

1. Articles of War

"ART. 104. Disciplinary Powers of Commanding Officers.--Under such regulations as the President may prescribe, the commanding officer of any detachment, company, or higher command may, for minor offenses, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

"The disciplinary punishments authorized by this article may include admonition, reprimand, withholding of privileges for not exceeding one week, extra fatigue for not exceeding one week, restriction to certain specified limits for not exceeding one week; and hard labor without confinement for not exceeding one week, but shall not include forfeiture of pay or confinement under guard; except that in time of war or grave public emergency a commanding officer of the grade of brigadier general or of higher grade may, under the provisions of this article, also impose upon an officer of his command below the grade of major a forfeiture of not more than one-half of such officer's monthly pay for one month. A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a crime or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty."

2. Manual for Courts-Martial

"Par. 105. DISCIPLINARY POWER OF COMMANDING OFFICER--Authority; Policy; Effect of Errors.--

"For statutory basis of authority, see A. W. 104. Subject to the provisions of A. W. 104 and of this chapter, the commanding officer of any detachment, company, or higher command may,

for minor offenses, without the intervention of a court-martial, impose disciplinary punishments upon persons of his command, who are subject to military law, including officers. This authority of a commanding officer can not be delegated, but communications with respect thereto may be signed or transmitted by him personally or as provided for official communications in general.

"Whether or not an offense may be considered as 'minor' depends upon its nature, the time and place of its commission, and the person committing it. Generally speaking the term includes derelictions not involving moral turpitude or any greater degree of criminality or seriousness than is involved in the average offense tried by summary court-martial. An offense for which the Articles of War prescribe a mandatory punishment or authorize the death penalty or penitentiary confinement is not a minor offense.

"A. W. 104 and the provisions of this chapter do not apply to, include, or limit the use of those nonpunitive measures that a commanding officer is authorized and expected to use in order to further the efficiency of his command, such as administrative admonitions, reprimands, exhortations, disapprovals, criticisms, censures, reproofs, rebukes, etc., written or oral, not intended or imposed as a punishment for a military offense. The fact that admonition and reprimand are termed disciplinary punishments by A. W. 104 does not deprive a commanding officer of the power he had prior to the enactment of that article to make use of admonition and reprimand, not as a penalty but as a purely corrective measure, more analogous to instruction than to punishment, in the strict line of his duty to create and maintain efficiency. A commanding officer should resort to his power under A. W. 104 in every case where punishment is deemed necessary and where that article applies, unless it is clear that punishment under that article would not meet the ends of justice and discipline. Superior commanders should restrain any tendency of a subordinate commander to resort unnecessarily to court-martial jurisdiction for the punishment of offenders.

"Any failure to comply with the regulations in this chapter will not invalidate a punishment imposed under A. W. 104, except to the extent that may be required by a clear and affirmative showing of injury to a substantial right of the person on whom the punishment was imposed, which right was neither expressly nor impliedly waived."

"Par. 106. Punishments.--

"Except as otherwise prescribed, the immediate commanding officer of the accused is charged with the execution of punishment imposed pursuant to A. W. 104. He has power to suspend the execution of such punishment and to vacate such suspension.

"Hard labor will not be imposed or enforced as a punishment against any person of actual, relative, or assimilated rank above that of a private, first class, in the Army, and no form of punishment is permitted which tends to degrade the rank of the person on whom such punishment is imposed. Punishments will be strictly enforced. Any failure in this respect has, if anything, a worse effect on discipline than an unwarranted condonation of the offense for which the punishment was imposed."

"Par. 107. DISCIPLINARY POWER OF COMMANDING OFFICER--Procedure.--

"The commanding officer, after ascertaining to his satisfaction, by such investigation as he deems necessary, that an offense cognizable by him under A. W. 104 has been committed by a member of his command, will notify such member of the nature of such offense as clearly and consisely as may be, and inform him that he proposes to impose punishment under A. W. 104 as to such offense unless trial by court-martial for the same is demanded. The notification and information will be by written communication through proper channels in the case of an officer and may be by such communication in any case. If the notification, etc., is in writing, the accused will be directed to acknowledge receipt of the communication by indorsement through the proper channels and to include in the indorsement any demand for trial wishes to make. If the notification, etc., is not in writing, the accused will be given a reasonable time to make up his mind.

"With reference to each offense as to which no demand for trial by court-martial is made, the commanding officer may proceed to impose punishment. The accused will be notified of the punishment imposed as soon as practicable and at the same time will be informed of his right to appeal. (See 108.) If the original notification and information were in writing, the notification of the punishment imposed and any reprimand or admonition that may be included in such punishment, will be by indorsement on the communication carrying such original notification, etc., and the accused will be directed to acknowledge receipt by similar indorsement, and to include in his indorsement the date of such receipt, and any appeal (see 108) he may desire to make. If the notification of the punishment imposed is not in writing, the immediate commanding officer of the accused will be informed of the matter and given the necessary data for the record (see 109) of punishment."

"Par. 108. DISCIPLINARY POWER OF COMMANDING OFFICER--Appeals.--

"A person punished under authority of this article who deems his punishment unjust or disproportionate to the offense may, through proper channels, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. (A. W. 104.) An appeal not made within a reasonable time may be rejected by the 'next superior authority.' An appeal will be in writing through proper channels (see 107 as to appeal by indorsement), and will include a brief signed statement of the reasons for regarding the punishment as unjust or disproportionate. The immediate commanding officer of the accused will when necessary include with the appeal a copy of the record (see 109) in the case. The superior will, in passing upon the appeal, ordinarily hear no witnesses. When justice requires such action, he will modify the punishment or set it aside, but will not increase it, and will in no case award a different kind of punishment. After having considered the appeal, he will return the papers through channels to the appellant, with a statement of the disposition of the case and with direction to return the papers to his (the appellant's) immediate commanding officer for file with the record in the case."

"Par. 109. DISCIPLINARY POWER OF COMMANDING OFFICER--Miscellaneous.--

"The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. Applications for mitigation or remission and any action taken under this authority will be in writing and subject to the regulations as to appeals as far as applicable.

"As to each offense for which punishment is imposed under A. W. 104, the immediate commanding officer of the person on whom such punishment was imposed will cause a record to be made and filed in his office or other proper place, showing the offense, with date and place of commission; the punishment, with the authority that imposed it and the date the accused received the notice of the imposition of the punishment; the decision of higher authority on any appeal; any mitigation or remission of the punishment; and any remarks or additional data desired....."

3. Public Law 759--80th Congress, Chapter 625, 2D Session

"ART. 104. DISCIPLINARY POWERS OF COMMANDING OFFICERS.--

"Under such regulations as the President may prescribe, the commanding officer of any detachment, company, or higher command, may, for minor offenses, impose disciplinary punishments upon

persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

"The disciplinary punishments authorized by this article may include admonition or reprimand, or the withholding of privileges, or extra fatigue, or restriction to certain specified limits, or hard labor without confinement or any combination of such punishments for not exceeding one week from the date imposed; but shall not include forfeiture of pay or confinement under guard; except that any officer exercising general court-martial jurisdiction may, under the provisions of this article, also impose upon a warrant officer or officer of his command below the rank of brigadier general a forfeiture of not more than one-half of his pay per month for three months.

"A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty."

II. Navy Provisions

1. Articles for the Government of the Navy

"ART. 24. Punishments by order of commander.--

"No commander of a vessel shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest, or confinement shall not continue longer than ten days unless a further period is necessary to bring the offense to trial by a court-martial; nor shall he inflict, or cause to be inflicted, upon any petty officer, or person of inferior rating, or marine, for a single offense, or at any one time, any other than one of the following punishments, namely:

"First. Reduction of any rating established by himself.

"Second. Confinement not exceeding ten days, unless further confinement be necessary, in the case of a prisoner to be tried by court martial.

"Third. Solitary confinement, on bread and water, not exceeding five days.

"Fourth. Solitary confinement not exceeding seven days.

"Fifth. Deprivation of liberty on shore.

"Sixth. Extra duties.

"No other punishment shall be permitted on board of vessels belonging to the Navy, except by sentence of a court martial. All punishments inflicted by the commander, or by his order, except reprimands, shall be fully entered upon the ship's log."

"ART. 25. Punishments by other officers.--

"(a) All officers of the Navy and Marine Corps who are authorized to order either general or summary courts martial shall have the same authority to inflict minor punishments as is conferred by law upon the commander of a naval vessel.

"(b) No officer who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishment than confinement."

2. Naval Courts and Boards

No discussion except as to double jeopardy.

3. Naval Justice

"Sec. 8-1. Nature and function of the mast.

"The mast is essentially a formal investigation or inquiry by the commanding officer for the purpose of enabling him to make certain determinations necessary to properly exercise his authority to maintain discipline.

"The determinations which the commanding officer must make in order to dispose of a report of misconduct are as follows: (1) a determination of the facts, (2) a determination of the offense committed, and (3) a determination of action to be taken. These three determinations and the action predicated upon them constitute the exercise of authority to maintain discipline. Although in a strict sense the action taken is not a part of the investigation, it can best be considered in connection with the mast, and, generally speaking, is referred to as mast action, or in case it takes the form of commanding officer's punishment, as mast punishment. The exercise of this authority is only quasi-judicial in nature, and the investigation or inquiry is in no sense a trial; the determinations

do not result in an acquittal or conviction, and the mast action or mast punishment is not a sentence."

Sec. 8-2 - 8. (Synopsis)

Upon a complaint against a person under his command, the commanding officer will conduct an investigation to enable him to decide whether an offense has been committed and to make a sound disposition of the case. All possible evidence should be examined. The commanding officer is not bound by the technical rules of evidence in the interrogation of witnesses at mast. The accused person should be given every opportunity to explain his side of the case, but cannot be required to admit his guilt or incriminate himself.

Sec. 8-4 - 8-6.

After determining the facts the commanding officer should determine what offense, if any, has been committed. If an offense has been committed he shall take appropriate action: - (1) dismiss or warn accused; (2) give mast punishment; or (3) refer for court-martial.

In considering whether the offense should be punished under AGN Art. 24, the nature of the offense and the customary punishment for it must be taken into consideration.

"Sec. 8-6.Policy.

"Commanding officers should bear in mind that it is the certainty of punishment as well as the degree which deters men from committing offenses, and that punishment which immediately follows an offense has a greater deterrent effect than punishment which follows a considerable time after an offense. The Navy Department's statement of policy in this regard is contained in AlNav 83, 1942, which read as follows:

'In interest of reducing paper work and better administration of naval justice, Department directs that all commands utilize to a greater degree mast punishments rather than summary or deck courts-martial and trial by deck rather than summary courts-martial and by summary rather than general courts-martial in cases of infractions by enlisted men of the Navy, Marine Corps, and Coast Guard when such action will accomplish the ends of discipline.....'

"In construing AlNav 83, action which will accomplish the ends of discipline is considered to be action which will deter other men of the command from committing the offense with which the accused is charged as well as deter the accused from again committing the offense."

"Sec. 8-8. Function and use of mast punishment.

"Many infractions of the law occur from time to time in any command which require some punishment but which are not sufficiently serious to warrant trial by court-martial. To provide a prompt and efficient method of disposing of such offenses, commanding officers are empowered to impose limited forms of disciplinary punishment directly upon persons of their command without the intervention of a court-martial. Such disciplinary punishment is commonly known as mast punishment inasmuch as it usually follows immediately upon the mast investigation without intervention of time. In invoking this punishment a commanding officer must carefully adhere to the provisions of Article 24, AGN, since it is a provision of law restrictive in its character, prescribing the limits within which the disciplinary power inherent in command may be exercised."

"Sec. 8-13. Procedure for imposing mast punishment.

"After the commanding officer has determined that he will punish the accused under Article 24, AGN, and has decided the appropriate punishment, he advises the accused of the offense, which he believes has been committed and of the punishment to be imposed therefor. In the case of enlisted man, notification of the punishment should be furnished the executive officer, officer of the day, the man's division officer, the provost marshal, or other agency, as deemed necessary."

"Sec. 8-14. Records of reports and commanding officer's punishments.

"Navy Regulations require that a log shall be kept of all reports and commanding officer's punishments, and that the commanding officer shall affix his signature in the report book. Article D-8017(1), Bureau of Naval Personnel Manual, 1942, requires that a record of all punishments awarded shall be entered in the service record of an offender....."

"Sec. 8-15. The effect of punishment by the commanding officer.

"The fact that punishment under Article 24, AGN, has been imposed upon an enlisted man or an officer may be taken into account by his commanding officer in connection with other matters affecting him in the future. Ordinarily in the case of an enlisted

man the effect will not extend beyond his current enlistment or current extension thereof.

"Future disciplinary action.

"Record of a previous punishment under Article 24, AGN, will often be an important factor to be considered by the commanding officer in deciding what disciplinary action would be appropriate for a subsequent offense. Likewise, the commanding officer, in his capacity as convening authority of a court-martial, will take into account such prior punishment in determining whether a subsequent sentence by court-martial should be mitigated.

"As a bar to trial.

"No person under naval law may, without his consent, be tried twice for the same offense. It has been held that the action of a commanding officer in imposing punishments under Article 24, AGN, does not take the status of a court-martial, that his investigation of an offense is in no sense a trial, that his finding is not a conviction or acquittal, and that the punishment which he imposes is not a sentence. The commanding officer's power in this respect has been likened to the power of a parent over his child, or of a master over his apprentice, or of a school teacher over his scholar. To constitute former jeopardy, there must have been a trial by a duly constituted court, and, therefore, punishment imposed by the commanding officer, under the provisions of Article 24, AGN, does not bar subsequent proceedings by court-martial for the same offense. However, the same fundamental principle of fairness which precludes double jeopardy should be the basis for any determination of the commanding officer as to whether he will order the convening of a court-martial for the trial of a man for an offense which has been properly punished by him, under Article 24, AGN.

"As a previous conviction.

"As noted in the preceding paragraph, punishment by the commanding officer under Article 24, AGN, does not constitute a conviction for any offense. It logically follows, therefore, that a record of a punishment under Article 24, AGN, cannot be introduced in evidence in a subsequent trial by court-martial nor considered by the court against the accused.

"Conduct marks.

"Conduct marks for an enlisted man in any period must be based solely upon the man's behavior during that period. A record of an offense for which punishment is awarded by a commanding officer under Article 24, AGN, during a period under consideration will affect the conduct mark in accordance with the standard established in Article D-8020, Bureau of Naval Personnel Manual, 1942. Since an advancement to any rating requires 4.0 conduct

for a specified period, a record of punishment under Article 24, AGN, during such period will preclude an advancement in rating.

"Punishment of an officer under the provisions of Article 24, AGN, may be taken into account by the commanding officer in his preparation of the officer's fitness report."

4. Proposed Navy Bill

"ART. 14.

"(a) No commander of a vessel shall inflict upon a commissioned or warrant officer any other punishment than private reprimand, suspension from duty, arrest, or confinement, and such suspension, arrest or confinement shall not continue longer than ten days unless a further period is necessary to bring the offender to trial by a court martial; nor shall he inflict, or cause to be inflicted, upon any enlisted person, for a single offense, or at any one time, any other than one of the following punishments, namely:

"First. Reduction to the next inferior rank or rating;

"Second. Solitary confinement on bread and water not exceeding five days, to run consecutively;

"Third. Confinement not exceeding ten days, to run consecutively, unless further confinement be necessary, in the case of a prisoner to be tried by court martial;

"Fourth. Deprivation of liberty on shore for a period not exceeding one month;

"Fifth. Extra duties not exceeding one month;

No other punishment shall be permitted on board of vessels belonging to the Navy, except by sentence of a court martial. All punishments inflicted by the commander, or by his order, except reprimands, shall be fully entered upon the ship's log.

"(b) All officers who are empowered to convene summary courts martial shall have the same authority as that of a commander of a vessel to inflict punishments for minor offenses committed by persons regularly or temporarily under their command: Provided, That such officers may delegate to their subordinate officers on separate or detached duty the authority to inflict the punishments set forth in article 14 (a).

"(c) As an alternative to a punishment provided for in this article, loss of pay, not exceeding one-half of one month's pay, may, in time of war or national emergency or, when specifically

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authorized by the Secretary of the Navy, in time of peace, be inflicted as a punishment, for a single offense, or at any one time.

"(1) upon any officer by an officer having authority to convene a general court martial for the trial of the offender,

"(2) upon any enlisted person by an officer having authority to convene a summary court martial for the trial of the offender:

Provided, That a full report be made of the infliction under this article of any punishment involving loss of pay,

"(1) to the Secretary of the Navy by the officer inflicting this punishment upon an officer,

"(2) to the next senior officer in the chain of command by an officer inflicting this punishment upon an enlisted person.

"(d) No officer who may command by accident, or in the absence of the commanding officer, except when such commanding officer is absent for a time by leave, shall inflict any other punishments than confinement or suspension from duty."

III. Differences

1. Punishing Authority

The amended Articles of War authorize the commanding officer of any detachment or company or higher command to impose punishment under A. W. 104, while the proposed Navy bill authorizes the commander of a vessel or an officer empowered to order a summary court-martial to impose mast punishment. An Navy officer having summary court-martial jurisdiction may delegate his power to impose mast punishment, except loss of pay, to subordinate officers on separate or detached duty.

A Navy officer commanding by accident may only impose confinement or suspension from duty.

2. Punishments

	<u>ARMY</u>		<u>NAVY</u>	
	<u>EM</u>	<u>Officer W.O.</u>	<u>EM</u>	<u>O</u>
(1) Admonition or Reprimand	Yes	Yes	No	Yes
(2) Withholding of Privileges	One week	One week	No	No
(3) Restriction	One week	One week	One month	No
(4) Hard Labor w/o confinement	One week	One week? ¹	Included under (5)?	No
(5) Confinement	No	No	Ten days	Ten days
(6) Solitary confinement on bread and water	No	No	Five days	No
(7) Extra duties	One week	?	One month	No
(8) Reduction to next inferior rank or rating (EM)	No	No	Yes	No
(9) Arrest	No	No	No	Ten days
(10) Suspension from duty	No	No	No	Ten days
(11) Forfeiture of Pay	No	One-half pay for 3 months by officer having GCM jurisdiction. ²	One-half pay for one month by officer having SCM jurisdiction. ³	One-half pay for one month by officer having GCM jurisdiction. ³

Combinations: Navy - none

Army - (2), (3), (4), & (7) cannot be combined to exceed one week. Otherwise, O.K.

- Notes:
1. MCM, Par. 103c, forbids sentencing officer or warrant officer to hard labor w/o confinement.
 2. Officer below rank of brigadier general.
 3. In time of war, national emergency or when specifically authorized by SecNav in time of peace - When loss of pay is inflicted, a report must be made to SecNav in an officer case, or to the next superior in chain of command in the case of an enlisted person.

3. Right to Trial by Court-Martial.

The amended Articles of War provide that if the accused demands trial by court-martial, he may not be punished under A. W. 104, while the proposed Navy bill does not contain such a provision.

4. Right of Appeal.

A person punished under A. W. 104 has the right of appeal, through channels, to the next superior authority, while the proposed Navy bill gives no such right other than the general provision as to complaints of wrongs. See C.S., A.W. 121.

5. Remission, Mitigation, Suspension.

A. W. 104 provides for remission, mitigation, or suspension of punishment imposed thereunder by the officer imposing it, his successor, or superior authority, while the proposed Navy bill has no such provision.

6. Subsequent Trial by Court-Martial.

Punishment under A. W. 104 is not a bar to trial for a serious offense growing out of the same act and not properly punishable under that article. In such a case, the accused may show disciplinary punishment which shall be considered in determining punishment.

Under the proposed Navy bill, mast punishment is never a bar to trial, and cannot be shown on a subsequent trial by court-martial.

IV. Recommendations

The McGuire Committee recommended abolition of deck courts and an increase in mast jurisdiction and the antecedent right to demand trial by a summary court-martial.

McGuire Articles:

"II. Commanding Officers

"Article 2. Punishments by commanding officers.

"(a) Officers authorized. Every officer of the naval service, or of an organization serving as a part of the Navy, who is authorized to convene either general or summary courts-martial, may, after an impartial hearing, impose upon personnel regularly or temporarily under his command, for the commission of one or more offenses against these articles, such punishments, and none other as are specified in this article.

"(b) Upon officers. Upon a commissioned or warrant officer, at any one time, one and only one of the following punishments may be imposed:

"(1) Suspension, arrest, or confinement for not exceeding ten days, unless a further period is necessary to bring the offender to trial by court-martial;

"(2) Loss of pay not exceeding ten day's pay;

"(3) Private reprimand.

"(c) Upon enlisted persons. Upon an enlisted person, at any one time, one and only one of the following punishments may be imposed:

"(1) Reduction to the next inferior rank or rating;

"(2) Confinement for not exceeding fifteen days, unless a further period is necessary to bring the offender to trial by court-martial;

"(3) Solitary confinement for not exceeding ten days;

"(4) Loss of pay not exceeding fifteen day's pay;

"(5) Deprivation of liberty for not exceeding thirty days;

"(6) Extra duties for not exceeding thirty days, the performance of which shall not involve deprivation of liberty.

"(d) Procedure. (1) Under such regulations as the Secretary of the Navy may prescribe, the commanding officer shall, before imposing punishment, afford the offender an opportunity to demand trial by court-martial. Should such demand be made, the offender shall, as a matter of right, be given a trial by court-martial.

"(2) Punishment imposed by a commanding officer shall be a bar to trial by court-martial of the offender for the offense or offenses for which the punishment was imposed.

"(3) The commanding officer who imposes a punishment, or his successor in office, shall have the power to mitigate or remit any unexecuted portion of that punishment."

White Articles:

"Commanding Officers

"Article 7 - Punishments by commanding officers.

"(a) Officers authorized. Every officer in command may inflict upon personnel regularly or temporarily under his command such

punishments, and one other, as are specified in this article. But no officer who may command by accident, or in an absence of the commanding officer not due to authorized leave, shall inflict any punishment other than confinement and suspension from duty.

"(b) Upon officers. Upon a commissioned or warrant officer, the following punishments may be inflicted:

"(1) Suspension, arrest, or confinement for a period not exceeding ten days, unless a further period is necessary to bring the offender to trial by court-martial;

"(2) Private reprimand.

"(c) Upon enlisted persons. Upon an enlisted person, at any one time, one and only one of the following punishments may be inflicted:

"(1) Reduction of any one rating established by himself;

"(2) Confinement for a period not exceeding ten days, to run consecutively, unless a further period is necessary to bring the offender to trial by court-martial;

"(3) Solitary confinement on bread and water for a period not exceeding five days, to run consecutively;

"(4) Loss of pay not exceeding ten day's pay;

"(5) Deprivation of liberty on shore for a period not exceeding thirty days, to run consecutively;

"(6) Extra duties for a period not exceeding fifteen days, to run consecutively;"

First Ballantine Report:

"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

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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."

The Second Ballantine Report recommends the schedule of mast punishments as under the present AGN.

The Keefe Report recommends that:

"(2) Consideration be given by the Advisory Council to a provision that punishment imposed by a commanding officer be a bar to trial by court martial for the same offense, but not a bar to trial for another offense growing out of the same act or omission."

In regard to discrimination in officer punishment, the Vanderbilt Report recommends:

"1. Article of War 104 should be amended to provide: (a) that warrant officers, flight officers, and field officers shall be punishable thereunder; (b) that the punishment shall be imposed by an officer with the rank not less than that of Brigadier General or by an officer who has general court-martial jurisdiction under Article of War 8; (c) that the maximum fine be increased to one-half month's pay for each of three months.

"The right of the officer to demand a court-martial and to appeal to the next higher commander should of course be preserved."

"It has been tentatively proposed in Articles for the Government of the Navy, as redrafted on 17 May 1948, to amend these provisions further in the following manner:

"a. The infliction of arrest as a punishment should be deleted. (Art. 14 (a)).

"b. The provision as to the authority for confinement greater than ten days in case of a prisoner to be tried by court martial should be deleted. (Art. 14 (a)).

"c. The term 'deprivation of liberty on shore' should be changed to 'close confinement within limits.' (Art. 14 Third).

"d. An officer who exercises command, or is in charge, during the temporary absence of the officer regularly in command or in charge, except when such absence is pursuant to authorized leave or orders, shall be limited in inflicting punishment to confinement and suspension from duty."

Uniform Code of Military Justice

Subject: Redress of Injuries to Property, A.W. 105.

I. Army Provisions

1. Articles of War.

"ART. 105. Injuries to Property--Redress of.-- Whenever complaint is made to any commanding officer that damage has been done to the property of any person or that his property has been wrongfully taken by persons subject to military law, such complaint shall be investigated by a board consisting of any number of officers from one to three, which board shall be convened by the commanding officer and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

"Where the offenders can not be ascertained, but the organization of detachment to which they belong is known, stoppages to the amount of damages inflicted may be made and assessed in such proportion as may be deemed just upon the individual members thereof who are shown to have been present with such organization or detachment at the time the damages complained of were inflicted as determined by the approved findings of the board."

"ART. 89. Any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, in so far as the offender's pay shall go toward such reparation, as provided for in article 105, shall be dismissed from the service, or otherwise punished, as a court-martial may direct."

2. Manual for Courts-Martial.

"Par. 147. EIGHTY-NINTH ARTICLE OF WAR.

"d. REFUSING OR OMITTING TO SEE REPARATION MADE

"Discussion.-- Refusing to entertain a proper complaint at all; refusing or omitting to convene a board for the assessment of damage; or to act on such proceedings, or to direct the proper stoppages, are instances of this offense.

"Proof.--(a) That the accused was the commanding officer of a certain command in quarters, garrison, camp, or on the

march, as alleged; (b) that a complaint was duly made to him by a certain person of damage to or loss of certain property occasioned by troops of the accused's command, as alleged; and (c) that the accused either refused to see reparation made, or omitted in the manner alleged to see reparation made, to the party injured in so far as the offender's pay would go toward such reparation."

3. Public Law 759--80th Congress, Chapter 625--2D Session.

No change.

II. Navy Provisions

No comparable provisions.

III. Differences

The A.G.N. contains no provision for reparation for injuries to property.

IV. Recommendations

The McGuire, White, Ballantine, Keeffe, Vanderbilt, and Navy JAG recommendations do not comment on reparation for injuries to property.

The Statutory Revision Group of the Office of the Army Comptroller suggests that since A. W. 105 has only a collateral relationship to military justice, it might be omitted from the Articles of War and placed elsewhere in the U.S. Code, Letter CSACM-L, 6 Aug. 48.

Uniform Code of Military Justice

Subject: Arrest of Deserters by Civil Officials.
A. W. 106.

I. Army Provisions

1. Articles of War

"ART. 106. Arrest of Deserters by Civil Officials.--It shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States."

2. Manual for Courts-Martial

"Par. 23. COURTS-MARTIAL--PROCEDURE BEFORE TRIAL-- Arrest of Deserter by Civilians--Civilians generally.--A private citizen has no authority as such, without the order or direction of a military officer, to arrest or detain a deserter from the Army of the United States (Kurtz v. Moffitt, 115 U. S. 487); but sending out a description of a deserter with a request for his arrest and the offer of a reward for his apprehension and delivery, coupled with the provisions of law and regulations authorizing the payment of such reward, is sufficient authority for the arrest of a deserter by a private citizen."

3. Public Law 759--80th Congress, Chapter 625, 2D Session

A. W. 106 was not changed by P. L. 759.

II. Navy Provisions

1. There are no provisions in the present A.G.N., the proposed Navy bill, nor NC&B dealing with the arrest of deserters by civil officials.

2. U. S. Code Annotated, Title 34, Navy.

"Sec. 1011. Arrest of deserter by civil officers.--It shall be lawful for any civil officer having authority under the laws of the United States or of any State, Territory, or District to arrest offenders, to summarily arrest a deserter from the Navy or Marine Corps of the United States and deliver him into the custody of the naval authorities. (Feb. 16, 1909, c. 131, § 15, 35 Stat. 622.)"

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III. Differences

1. The Navy provision analogous to A. W. 106 appears only in 34 USCA 1011.

IV. Recommendations

None.

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Uniform Code of Military Justice

Subject: Soldiers to Make Good Time Lost, A. W. 107.

I. Army Provisions

1. Articles of War

"ART. 107. Soldiers to Make Good Time Lost.-- Every soldier who in an existing or subsequent enlistment deserts the service of the United States, or without proper authority absents himself from his organization, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or through the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve."

2. Manual for Courts-Martial.

No comment.

3. Public Law 759--80th Congress, Chapter 625, 2D Session

No change.

II. Navy Provisions

No similar provisions in A.G.N.

Similar provisions are incorporated in 34 U.S.C. 183, 183a.

III. Differences

Navy has no corresponding provisions in A.G.N., but Title 34, U.S. Code contains like provisions.

IV. Recommendations

There is no comment in the McGuire, White, Ballantine,

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Keeffe, or Vanderbilt Reports or Navy JAG recommendations.

The Statutory Revision Group of the Office of the Army Comptroller indicates that this provision is only collateral to military justice and might be placed elsewhere in the U.S. Code. Letter CSACM-L, 6 Aug. 48.

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Uniform Code of Military Justice

Subject: Discharges. A.W. 108.

I. Army Provisions

1. Articles of War

"ART. 108. Soldiers--Separation from the Service.--No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present; and no enlisted man shall be discharged from said service before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial."

2. Manual for Courts-Martial

Par. 87(b)

"Dishonorable discharge, in itself a severe punishment, should be approved only when it is clear that the accused should be separated from the service or that he should be required to undergo a period of reformatory discipline before he can again be permitted to serve in an organization composed of honorable men. When the accused is relatively young and his record, except for the offense of which he stands convicted, is good, the reviewing authority should, in the exercise of his sound discretion, suspend the execution of the dishonorable discharge, to the end that the offender may have an opportunity to redeem himself in the military service; but he should not suspend the execution of the dishonorable discharge in any case of conviction of an offense involving that degree of moral turpitude which disqualifies the accused for further military service.".....

Par. 104(b)

"A court shall not, by a single sentence which does not include dishonorable discharge, adjudge against an accused:

"Confinement at hard labor for a period greater than six months.

Par. 104(c) "Maximum Punishments....."

"Permissible additional punishments.--If an accused be found guilty by the court of an offense or offenses for none of which dishonorable discharge is authorized, proof of five or more pre-

vious convictions will authorize dishonorable discharge, total forfeitures, and, if the confinement otherwise authorized is less than three months, confinement at hard labor for three months.

"If an accused be found guilty by the court of two or more offenses for none of which dishonorable discharge is authorized, the fact that the authorized confinement without substitution for such offenses is six months or more, will authorize dishonorable discharge and total forfeitures.".....

3. Public Law 759--80th Congress, Chapter 625--2D Session.

"ART. 108. SOLDIERS--SEPARATION FROM THE SERVICE.--

"No enlisted person, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, and no enlisted person shall be discharged from said service before his term of service has expired, except in the manner prescribed by the Secretary of the Department of the Army, or by sentence of a general or special court-martial."

"ART. 12. GENERAL COURTS-MARTIAL.--.....

"Provided, That general courts-martial shall have power to adjudge any punishment authorized by law or the custom of the service including a bad-conduct discharge."

"ART. 13. SPECIAL COURTS-MARTIAL.--.....

"Provided, That subject to approval of the sentence by an officer exercising general court-martial jurisdiction and subject to appellate review by The Judge Advocate General and appellate agencies in his office, a special court-martial may adjudge a bad-conduct discharge in addition to other authorized punishment: Provided further, That a bad-conduct discharge shall not be adjudged by a special court-martial unless a complete record of the proceedings of and testimony taken by the court is taken in the case."

II. Navy Provisions

1. Articles for the Government of the Navy.

No similar article. See 34 U. S. C. 191-206.

2. Naval Courts and Boards.

SEC. 444.....

"Where the court deems an offense found proved serious enough to warrant a sentence of imprisonment it should, except under most unusual circumstances, or where not allowed by the limitation of punishment, include in its sentence dismissal or dishonorable or bad conduct discharge; a man who has committed such an offense is not a proper person to remain in the service. Furthermore, such a sentence puts the accused in prison in a status altogether different from that of the other prisoners. A court must be careful in sentencing to confinement to include accessories in its sentence, as otherwise the man will continue to draw full pay.

"The stigma of a dishonorable discharge is in itself a severe punishment. Its use should, therefore, be reserved for those cases where it is entirely proper that this stigma should attach."

SEC. 456. "Restriction upon sentences involving dishonorable discharge.--

"Special attention is invited to the fact that wherever in the accompanying table a dishonorable discharge is authorized, the court, if desiring to adjudge a discharge, need not adjudge a dishonorable discharge, but may in lieu thereof adjudge a bad conduct discharge. In general, dishonorable discharges should be reserved for crimes involving moral turpitude or the serious military or naval crimes."

SEC. 476.

It is desirable that sentences of discharge be conditionally remitted for first offenses not of a serious nature.

SEC. 623, note 24.

A general court-martial may sentence an enlisted man to dishonorable (bad-conduct) discharge alone, but this sentence is not ordinarily deemed advisable.

3. Proposed Navy Bill.

No similar article.

III. Differences

The Navy has no provision comparable to A. W. 108.

The provisos of A.W. 12 and 13 quoted above merely serve to authorize Army General and special courts-martial to adjudge bad-conduct discharges. This authorization might be placed elsewhere since this is the only punishment mentioned in those articles.

Under Army practice, a general court-martial may impose a sentence of dishonorable discharge.

- (1) When confinement greater than six months is imposed. (Mandatory).
- (2) On conviction of six minor offenses within one year. (Permissible).
- (3) On conviction of two offenses for which the total authorized confinement is six months or more. (Permissive).
- (4) Here authorized. (Permissive).

Under Navy practice, as a general rule, a person should be given a dishonorable or bad-conduct discharge if sentenced to imprisonment.

In the Navy Table of Maximum Punishments either dishonorable discharge or bad-conduct discharge is authorized for every offense.

However, it is also Navy policy to conditionally suspend discharges for first offenders, if the offense is not of a serious nature. Army policy is the same.

IV. Recommendations

The First Ballantine Report:

"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."

The Keefe Report:

"2. Discharges: The types of naval discharges are numerous and the distinctions between them are but little understood by the general public, and, it would seem, by most members of the naval service. This is one of the reasons the Board hesitated to recommend immediate discharge in many cases, or a change in the form of discharge, although in a very few cases its recommendation took this form.

"This much seems to be true under the various statutes and regulations relating to discharges:

"Under the Selective Service Act a man discharged from the Navy with either a dishonorable discharge or a bad conduct discharge is barred from public employment by the United States Government. It does not seem to matter, in the case of a Bad Conduct Discharge, whether it was awarded by a summary or a general court martial.

"Any dishonorable discharge or bad conduct discharge from a general court martial will deprive a man of benefits under the Servicemen's Readjustment Act of 1944. A Bad Conduct Discharge from a summary court if for mutiny, spying, moral turpitude or wilful and persistent misconduct may also rob a man of the benefits under this Act. In certain other cases an undesirable discharge will cause loss of these benefits.

"A collateral statute, often confused by the public with the statute relating to discharges, renders a person ineligible to become a citizen, or, if he is already a citizen, deprives him of his citizenship, and renders him incapable of holding any federal office, if he has been convicted by a court martial of desertion in time of war. A recent amendment provides that restoration to active duty, or reenlistment or induction, in time of war, shall serve to restore the nationality or citizenship, and the civil and political rights, so lost.

"Although this statute relates to the offense, as evidenced by conviction thereof, rather than to the form of discharge, it becomes important to consider it in connection with the subject of discharges, because of the recent amendment. For, by virtue of this amendment, restoration to duty has the effect of restoring the citizenship previously lost. Conversely, a failure to restore a convicted deserter, and execution of his discharge, renders permanent his loss of citizenship.

"Because of the above serious consequences of a dishonorable or bad conduct discharge, and of a discharge based upon a conviction of wartime desertion, the Board has suggested, in Section VII of this Report, that a dishonorable or bad conduct discharge be executed only upon order of the Secretary, or his duly designated representative. Such a procedure has already been proposed by the McGuire, White, Judge Advocate General, and Tedrow-Finn draft articles. It is contemplated that execution of such a discharge would be ordered only after review by the proposed Sentence Review Board.

"There is another reason why this procedure would be advisable. A dishonorable or bad conduct discharge of an enlisted man is comparable to the dismissal of an officer. Both have the same serious consequences. The latter can be carried into execution only after the case has been confirmed by the President or Secretary. To permit execution of a dishonorable or bad conduct discharge of an enlisted man without requiring a substantially equivalent review is to apply a double standard of justice. It is perhaps for this reason that all the draft articles which have been proposed provide for execution of a discharge only upon order of the Secretary, or his duly designated representative. The Board concurs in these proposals.

"It is believed that the Advisory Council should review the whole subject of discharges, in the light of the above discussion. The Advisory Council should also consider whether the discharge system could be simplified, and the number of different kinds of discharges reduced. In this connection, the Council should consider whether the bad conduct discharge should be continued and whether the summary court martial should continue to have the power to impose it.

"From time to time the Board's reviewers recommended that a dishonorable discharge be changed to a bad conduct discharge. The Board's reluctance to approve such recommendations was based principally upon its inability to discover any substantial difference between the two. As stated above, each such discharge from a general court martial deprives the recipient of public employment and benefits under the Serviceman's Readjustment Act of 1944. Under these circumstances the Board felt that there was no substantial reason to recommend a change in the form of discharge.

"On the question whether the summary court martial should

continue to have the power to impose a bad conduct discharge, the following statistics are of interest. They indicate that summary courts martial have used this form of punishment but sparingly.

<u>Month</u>	<u>Trials by Summary Court Martial</u>	<u>1946</u>		<u>Probation Granted (6 mos.)</u>
		<u>Bad Conduct Discharges</u>	<u>Approved</u>	
Jan.	4417	186	109	77
Feb.	3152	167	74	93
Mar.	4516	172	92	80
Apr.	3717	148	77	71
May	3392	140	80	60
June	2319	148	81	67
July	2718	104	64	40
Aug.	3038	138	76	62
Sept.	<u>1962</u>	<u>96</u>	<u>58</u>	<u>38</u>
<u>Totals</u>	29,231	1299	711	588

*Figures supplied by Captain Bunter Wood of the Bureau of Naval Personnel.

"It has been suggested that the power of the summary court martial to impose confinement be substantially increased. If this is done, it might remove the reason for that court having power to give a bad conduct discharge. On the other hand, it might be a reason why such power should be continued. There might, of course, be some increase in the number of trials by general court martial if the power to give a bad conduct discharge were taken away from the summary court martial.

"In any event, no bad conduct discharge, whether imposed by a general or a summary court martial should be carried into execution without review by a Sentence Review Board and the Secretary or his duly appointed representatives.

"The first Ballantine Report recommended that the summary court's power to impose a bad conduct discharge should be reconsidered. The Board believes that the proposed Advisory Council should study this question.

" RECOMMENDATION:

"The Board recommends that the Advisory Council study the whole subject of discharges, both disciplinary and administrative. Such study will be assisted greatly by the current study of Joint Army-Navy Personnel Board which we understand is considering the recommendation of uniform types of discharges for both services."

The Vanderbilt Report (Army) recommends:

"There should be an additional type of discharge; namely, a discharge for unfitness similar to a so-called "blue discharge" in order that a sentence of dishonorable discharge should be reserved for exceptionally grave and heinous offenses."

The Second Ballantine, McGuire, and White recommendations do not add to above.

A Memorandum for the Army JAG from the Statutory Revision Group, Management Division, OAC, dated 6 Aug. '48, indicated that since A. W. 108 has only a collateral relationship to military justice, it might be eliminated from the Articles of War and placed elsewhere in the U. S. Code.

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Uniform Code of Military Justice

Subject: Oath of Enlistment, A. W. 109.

I. Army Provisions

1. Articles of War

"ART. 109. Oath of Enlistment.-- At the time of his enlistment, every soldier shall take the following oath or affirmation: 'I, _____ do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the rules and Articles of War.' This oath or affirmation may be taken before any officer."

2. Manual for Courts-Martial

No comment.

3. Public Law 759--80th Congress, Chapter 625-2D Session

No change.

II. Navy Provisions

1. Articles for the Government of the Navy

No like provision.

34 U.S.C. 593 provides that Navy officers and enlisted men shall take the oath of allegiance provided for officers and men of the Army and Marine Corps.

III. Differences

None except that oath is included in Articles of War and Title 34 U.S. Code.

IV. Recommendations

The Statutory Revision Group of the Army Comptroller's Office indicates that this provision might be omitted from the Articles of War. Letter CSAM-L, 6 Aug. '48.

Uniform Code of Military Justice

Subject: Certain Articles to be Read and Explained.
A. W. 110.

I. Army Provisions

1. Articles of War

"ART. 110. Certain Articles to be Read and Explained.--Articles 1, 2, and 29, 54 to 96, inclusive, and 104 to 109, inclusive, shall be read and explained to every soldier at the time of his enlistment or muster in, or within six days thereafter, and shall be read and explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States."

2. Manual for Courts-Martial

"Par. 126. Courts-Martial--RULES OF EVIDENCE--Miscellaneous Matters.

"a. Intent--Ignorance of Law--Ignorance of the law is not an excuse for a criminal act. This rule may be partially relaxed by courts-martial in the trial for purely military offenses of soldiers recently enlisted.

"For example, a recruit might be permitted to show that the Articles of War had never been read to him as required by A. W. 110. While such evidence would not amount to a defense, it could be regarded by the court as an extenuating circumstance."

3. Public Law 759--80th Congress, Chapter 625, 2D Session

"Sec. 240. Article 110 is amended to read as follows:

"ART. 110. CERTAIN ARTICLES OF WAR TO BE READ OR EXPLAINED--Articles 1, 2, 24, 28, 29, 54 to 97, inclusive, 104 to 109, inclusive, and 121 shall be read or carefully explained to every soldier at the time of his enlistment or muster in, or within six days thereafter, and shall be read or explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States. And a complete text of the Articles of War and of the Manual for Courts-Martial shall be made available to any soldier, upon his request, for his personal examination."

II. Navy Provisions

1. Articles for the Government of the Navy

"ART. 20.....Every commanding officer of a vessel in the

Navy shall obey the following rules:

"Tenth (.....).-- He shall cause the Articles for the Government of the Navy to be hung up in some public part of the ship and read once a month to his ship's company."

2. Proposed Navy Bill

"Sec. 13. Article 20 is renumbered as Article 3 and amended to read as follows:

"Art. 3. Officers and all others in authority in the naval service shall take all necessary and proper measures, under the laws, regulations, and customs of the naval service to promote and safeguard the morale, the physical well-being and the general welfare of the officers and enlisted persons under their command or charge."

III. Differences

1. The provisions in the present A.G.N. for posting the Articles and reading them monthly to ship's company have been eliminated in the proposed Navy bill. It is understood that similar provisions will be contained in a new edition of Navy Regulations which is now being prepared.
2. Naval Courts and Boards does not contain any provision that if a man can show that A.G.N. have never been read to him, such evidence can be regarded by the court as an extenuating circumstance.

IV. Recommendations

1. Vanderbilt Report, page 12.

"Special emphasis should be placed upon the education and instruction of enlisted men with respect to Army justice. The Articles of War should not only be read; they should be explained. The instructions should not be confined to Articles relating to punishment of enlisted men, but should include the Articles dealing with the rights and the protection of enlisted men, such as Articles of War 24, 97, and 121.

"Further, the nature and the function of general courts-martial, special courts-martial, summary courts-martial, and company punishment should be explained. The enlisted man should be taught that army discipline and army courts-martial are necessary for his comfort, protection and safety; and that the Army judicial system is not something for use against him, but something which works for him."

2. Keoffe Report, page 289.

"Although it has been said by some that the reading of the Articles to an assembly of naval personnel fails to accomplish its purpose, nevertheless, it is felt that something is accomplished by this reading and that it should be improved rather than abolished."

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