

18 Sept. 1948

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30 Linnaean St.  
Cambridge 38, Mass.

Mr. E. M. Morgan  
Langdell Hall  
Cambridge 38, Mass.

Dear Mr. Morgan:

It has come to my attention that you have been appointed to head a committee to draft a new legal code for the armed forces. It occurred to me that you might find the enclosed plan of interest. I submitted it to the Scripps-Howard newspaper people of 230 Park Ave., New York 17, N.Y. under a covering letter dated 23 October 1947. The idea was first suggested in a letter to Secretary Forrestal dated 25 Feb. 1947.

Sincerely yours,

*Robert L. Dressler*

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A PLAN FOR THE REORGANIZATION OF THE

NAVAL COURTS MARTIAL

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The writer wishes to express his gratitude to Mr. Samuel E. Eastman of Erie, Penn., a fellow law student, who has offered his time and energy to make criticisms and suggestions, many of which have been adopted. His most valuable contributions, however, were encouragement and presenting the writer with the psychological viewpoint of the enlisted sailor as he would view his accusers and judges under this plan.

Cambridge  
October, 1947

Robert L. Dressler

## A PLAN FOR THE REORGANIZATION OF THE NAVAL COURTS MARTIAL

### INTRODUCTION:

With the merger of the armed forces will come inevitable changes in the system of courts martial. The system as it presently exists is rife with abuses which it is the purpose of this plan to eliminate. Although the plan is drawn primarily with a view to reorganizing Navy courts it is expected that if adopted similar plans would be drawn for the Army and Air Force.

The following principals are the axioms on which this plan rests:

1. The purpose of Naval courts is to insure the just administration of Naval Law.
2. The purpose of Naval courts is to keep the fighting efficiency of the Navy at its maximum by requiring that all hands carry out their duties to the best of their abilities.

Among the abuses sought to be eliminated by this plan are the following:

1. The courts now consist of men with no special legal training and who may be assigned to courts martial as a mere collateral duty. Such men acting as honestly as possible are not competent to administer a fair trial.
2. The officers on the courts are frequently in authority over the very men they try both before and after the trial.
3. The courts do not keep adequate records nor are their reports of the trials full and accurate.
4. The system of appellate review is almost entirely ineffective consisting of the signature of the record by the convening authority and his immediate superior. This puts the convening authority in a position to delay the record if it contains information which it would be in his interest to suppress or even to force the court to impose a heavier sentence if the one rendered is not to his liking. In other words the court instead of being an instrument to promote justice becomes a method of imposing heavy sentences in the hands of the convening authority.
5. The courts may be convened from time to time as each offense comes up and are not necessarily of a permanent nature.
6. Commissioned officers are not subject to the same jurisdiction and punishment of the same courts as enlisted men and consequently can go unpunished for the same offenses for which an enlisted man may be heavily penalized. The law does not apply equally to all hands.
7. Neither the courts as presently constituted nor the traditional system of formal inspections are adequate to the task of exposing dishonesty, evasion of duty, and safeguarding the rights and health of Naval personnel.
8. The accused may be tried without having been fully informed of his rights merely by railroading him through a trial on a plea of guilty and afterwards making up the record in the prescribed form. This is particularly easy when dealing with unlettered men of limited experience.

Three basic changes are necessary to carry out the principals<sup>ies</sup> set forth above and to minimize the evils listed and others.

1. It is necessary to remove the judicial process from the chain of command and vest it in an independent judiciary.
2. The judiciary should be permanent and staffed by men with trained legal minds who have wide experience in the Navy as well as the law and who understand the problems of a seagoing organization, and of enlisted men as well as commissioned officers. Above all the judiciary must be staffed by men with a judicial temperament.
3. The judiciary should be vested with all the powers of a court of inquiry.

The authority for courts martial stems from Congress under Section 1200, Title 34, U.S.C. entitled Articles for the Government of the Navy. The proposed plan, therefore, takes the form of an amendment to that act. The President through the Secretary of the Navy would have to make the necessary changes in Navy Regulations and Naval Courts and Boards.

#### THE COURT MARTIAL

1. All powers heretofore exercised by any court martial or court of inquiry or commanding officer at mast are vested in a permanent court to be known as the Court Martial.
2. The Court Martial shall be divided into a Supreme Court Martial; divisions for the Army and subsidiaries, divisions for the Air Force and subsidiaries, divisions for the Navy and subsidiaries; and Station Court Martial Officers.
3. The divisions for the Navy shall be Naval District Courts Martial and under them Station Court Martial Officers.
4. The jurisdiction of the Court Martial shall be purely criminal in character but this provision is not to be construed as abridging in any way the powers of the Court Martial as a Court of Inquiry.
5. The jurisdiction of the Court Martial and all of its divisions is to extend to all military personnel regardless of rank or rating or administrative position, all other personnel serving under the Secretary of Defense, and such civilians as are subject to the jurisdiction of any Court Martial as it existed before the passage of this act, except as herein otherwise provided.
6. The Court Martial may invoke its powers as a Court of Inquiry without the aid of any convening authority on petition and presentment to any division of evidence by any person serving with any of the armed forces provided such petition and presentment be made in accordance with the rules prescribed by the Supreme Court Martial.
7. No civilian or officer of any of the armed forces shall have power to convene, dissolve, review, revoke, or in any way change or interfere with any proceedings or decisions of the Court Martial except that the Presidential right of

pardon shall be preserved.

8. The Court Martial and all of its divisions shall keep complete and accurate records of all proceedings before it and such records shall be at all times available for public inspection.

9. The Court Martial and all of its divisions shall at all times when in session employ a stenographic reporter for the purpose of making verbatim reports except as herein otherwise provided, and such reports shall be part of the public record required by article 9. The verbatim report shall be signed by the reporter making it.

Comment: If the court's pronouncements are to be criminal in character the accused is entitled to the judgment of trained jurists as opposed to the loosely organized courts, staffed by untrained men whose primary interests lie in other fields than jurisprudence. By instituting permanent courts in place of the present system of convening a court for each offender this abuse can be eliminated. Giving to the Court Martial the powers of a Court of Inquiry which it can itself invoke without the aid of any convening authority will be a powerful deterrent to abuse such as is not provided by the conventional system of inspections. Yet the rules under which such powers are exercised should be so framed as to make any person secure in the performance of his duty and the reasonable exercise of his judgment. The requirement of public records will make it impossible to suppress facts to aid fraud or other abuse. The requirement of verbatim reports will make it impossible to alter safely the record of a trial to make it look as if the rules were followed when in fact they were not.

#### THE SUPREME COURT MARTIAL

10. There shall be established a permanent Supreme Court Martial which shall be the court of last resort of the Court Martial.

11. The Supreme Court Martial shall consist of nine judges appointed by the President with the consent of the Senate.

12. Each judge shall be thirty years of age or older, shall be a member of the bar of some State, Territory, or the District of Columbia.

13. Each judge shall hold some rank or rating in the military establishment but regardless of such rank or rate shall receive compensation at the rate of \$12,000 per year.

14. Each judge shall hold office during good behavior or until the termination of his active military service.

Comment: These provisions are intended to secure adequate training, background, and military experience in the judges and the compensation is high enough to attract able men.

15. The Supreme Court Martial with the concurrence of a majority of the judges shall have power to review, reverse, remand, modify, or diminish but not increase any decision

of any branch of the Court Martial whether sitting as a judicial court or a court of inquiry. It shall have power to order re-hearings for the correction of error or correct such error itself as appropriate. As a court of appeal it may acquit the accused.

16. The Supreme Court Martial shall have power to prescribe rules of procedure for itself and all other divisions of the Court Martial which are not inconsistent with any provisions herein or with existing law. Such rules must be so framed as to make certain that the accused is at all times kept fully informed as to his rights.

17. The Supreme Court Martial shall be the court of last resort except in cases where

- a) Punishment may be confinement for one year or longer
- b) Punishment shall be death
- c) Jurisdiction of the Court Martial is challenged
- d) An illegal sentence is imposed.

18. Where appeal is allowed under section 17 it shall be to the Circuit Court of Appeals of the Federal Judicial Circuit in which the initial proceedings were held. The Circuit Court of Appeals may grant certiorari in its discretion otherwise the decisions of the Supreme Court Martial shall be carried into effect immediately by the Judge Advocate General.

**Comment:** When read with article 7 these provisions will make it impossible for any official, civilian or otherwise, to vitiate or delay prompt action by the Court Martial for his own personal purposes. There will be no convening authority so it will be no longer necessary for him to sign the record to give it legal effect thus taking from him the power of abuse in that direction. Appeal to the Federal Courts will make it unnecessary for any judge to write the following type of opinion again:

... Undoubtedly errors are committed by the Courts Martial which a civil tribunal would regard as sufficient ground for a reversal for their judgments if it were sitting as an appellate court. But there is always this radical difference between an appellate court sitting for the correction of errors and a civil court into which the record of a Court Martial is collateral--in the former there is not a failure of justice; the appellate court may reverse a judgment or prescribe another or award a new trial; in the latter, the court must either give full effect to the sentence or pronounce it wholly void. *Swain v. U.S.* 16 U.S. 536.

19. The Supreme Court Martial shall convene three times each year and stay in session until its calendar is cleared.

#### NAVAL DISTRICT COURTS MARTIAL

20. There shall be established in each Naval District a District Court Martial consisting of five judges.

21. Each judge shall be appointed by the President with the consent of the Senate.

22. Each judge shall have the same qualifications as the judges

of the Supreme Court Martial.

23. Each judge shall receive as compensation \$8000 per year and no more.

24. Each judge shall serve during good behavior or until the termination of his active Naval service.

Comment: These provisions bring trained men as judges closer to the field of action where their training will have more direct effect of procedure and morale than in the higher court.

25. Each Naval District Court Martial shall within its own district have all the powers of the Court Martial.

26. Each Naval District Court Martial shall have jurisdiction of all Naval personnel within its district, all Naval personnel whose temporary or permanent duty station is within the district, all personnel afloat whose home port is within the district, such personnel as shall be ordered before it by competent authority, such personnel as shall be assigned to its jurisdiction by competent authority who are not otherwise subject to any District Court Martial.

27. Each Naval District Court Martial may invoke its powers as a Court of Inquiry on presentment of sufficient evidence by any Naval personnel or civilian serving with the Navy; or on petition of any Court Martial Officer or Commanding Officer of any Naval Station or vessel, or any flag officer, or any officer above the rank of captain.

28. The District Court Martial will have original jurisdiction of all offenses punishable by punishments in excess of those which could have been awarded by a Summary Court Martial before the passage of this act. Such punishments will not be carried into effect unless the accused has been served with a specification, has been offered compulsory process for obtaining witnesses, has been confronted by his accusers, has been given an opportunity to be represented by counsel of his choice, has been given a hearing at which he can present his defense, and has been fully informed of his rights by the Court in open session. The sentences of the Court shall be carried into effect immediately by the Judge Advocate General provided all the requirements of this section are complied with and provided no appeal is taken.

29. An appeal may be taken to the Supreme Court Martial from any proceeding which arose originally in the Naval District Court Martial or which involves

- a) punishment of death
- b0 b) confinement of one year or longer
- c) an illegal sentence
- d) jurisdiction of the Court Martial
- e) interpretation of the rules of the Court Martial prescribed by the Supreme Court Martial
- f) Any matter not included above which the Supreme Court Martial consents to review.

#### COURT MARTIAL OFFICER

30. The President shall appoint to each command of the Navy

of 500 officers and men or larger or such other unit as he may deem advisable a Court Martial Officer.

31. The Court Martial Officer shall be a commissioned Naval officer twenty-five years of age or older. He shall be a member of the bar of some State, Territory, or the District of Columbia. He shall receive the compensation of his rank.

Comment: This brings the trained legal mind to the very beginning of Court Martial proceedings where it belongs and is intended to insure thereby that any accused person gets fair, intelligent, impartial treatment from beginning to end of his trial.

32. The Court Martial Officer shall be the judicial officer of his station and shall try all personnel accused of any violations of Naval law on his station regardless of rank other than his own commanding officer and those persons who are authorized to issue orders to such commanding officer.

Comment: This removes once and for all the stigma of separate courts and separate punishments and different degrees of punishment for officers and enlisted men. It makes the law apply equally to all hands. At the same time the commanding officer is protected against his own Court Martial Officer.

33. The Court Martial Officer shall be the legal officer of his station and shall advise all personnel attached thereto on any legal matters which they bring to his attention.

34. He shall be an officer of the Court Martial of his district and as such must recommend to that court that it invoke its powers as a Court of Inquiry if he is in possession of evidence warranting such an investigation.

Comment: This puts teeth in the powers of the Court Martial as a Court of Inquiry and provides powerful deterrents to abuse in countless different ways, supplementing the impotent inspection system.

35. The Court Martial Officer shall be authorized to impose any sentence which before the passage of this act could have been imposed by a Summary Court Martial, a Deck Court, or the Commanding Officer at Mast; but he shall not impose any punishment in excess of that which could have been imposed by the Commanding Officer at Mast before the passage of this act unless the accused has been served with a specification, has been offered compulsory process for obtaining witnesses, has been confronted by his accusers, has been given an opportunity to be represented by counsel of his choice, has been given a hearing at which he can present his defense, and has been fully informed of his rights by the Court Martial Officer. For the purposes of this section the punishments listed in Articles for the Government of the Navy which may be imposed by Summary Courts Martial or Deck Courts or the Commanding Officer shall be deemed to extend to Commissioned and Warrant Officers as well as enlisted men.

36. The Court Martial Officer shall have full powers as a

division of the Court Martial to exercise compulsory process.

37. The Court Martial Officer shall make full reports of all of his proceedings to the District Court Martial including a memorandum of all petitions for a Court of Inquiry not otherwise formally acted upon.

38. The Court Martial Officer need not employ a stenographic reporter if in proceedings without one he does not impose a sentence greater than could have been imposed by a commanding officer at Mast before the passage of this act.

39. The sentences of the Court Martial Officer other than those which could have been imposed by a commanding officer at Mast before the passage of this act will not be carried into effect until so ordered by the District Court Martial after it has examined and each judge signed the record.

40. An accused who is convicted by the Court Martial Officer and awarded any punishment in excess of that which could have been awarded by a commanding officer at Mast before the passage of this act may petition the District Court Martial for a review of his case. If the petition is granted the District Court Martial will then sit as an appellate court with full power to reverse the judgment, prescribe another or award a new trial, or conduct the new trial itself. If the District Court Martial refuses the petition such refusal may be reviewed by the Supreme Court Martial.

41. The Court Martial Officer shall try any person ordered before him by the Commanding Officer or delivered to his station by police authorities either civil or military.

#### COMMANDING OFFICER

42. No powers now possessed by virtue of law by any Commanding Officer shall be considered changed except as herein specified.

43. The Commanding Officer may administer the following punishments and no others to any officer or enlisted man under his command:

- a) Confinement to quarters or station
- b) Deprivation of liberty
- c) Extra police duty
- d) Imprisonment when necessary to insure the presence of the accused at trial or to prevent violence in any situation.

44. The commanding officer by declaring that a state of emergency exists may suspend the judicial powers of the Court Martial Officer of the ship or station and shall then be vested with complete authority until he declares the emergency at end; but he may not prolong the state of emergency longer than necessary for the safety of the ship or station or the personnel attached thereto.

45. When any officer or enlisted man is accused of an offense requiring punishment beyond his power the commanding

officer shall conduct a hearing and then if he deems it necessary order that the accused be tried by the Court Martial Officer or the District Court Martial as appropriate.

46. The commanding officer shall detail an officer under his command to act as prosecuting attorney in all proceedings involving any person whom he has ordered to trial.

47. The commanding officer may assign the Court Martial Officer to collateral duties so long as such duties do not interfere with said officer's judicial function or his functions as an officer of the Court Martial when it is invoking its powers as a Court of Inquiry.

48. The commanding officer may impose any of his authorized punishments on the Court Martial Officer or order him to trial before the District Court Martial.

#### GENERAL PROVISIONS

49. All military personnel shall at all times be within the jurisdiction of some District Court Martial and if personnel are to be ordered to duty where no District Court Martial has jurisdiction it shall appear on his orders to which court he is assigned.

50. Whenever large units of Army, Navy, Air Force or any subsidiaries thereof are serving overseas on a permanent or semi-permanent basis the President shall cause such District Courts Martial in each branch of the services to be organized as necessary and such courts shall function in all respects as divisions of the Court Martial. The President shall have power to make temporary appointments to judgeships in these courts.

51. The President may from time to time reorganize or consolidate District Courts Martial sitting outside the continental or territorial limits of the United States or combine the courts of one or more branches of the service serving overseas into single units and prescribe the jurisdiction thereof.

52. Any appellate Court of the Court Martial shall have power to review the evidence presented to any of the courts below.

53. Any Commanding Officer or Court Martial Officer who intentionally discriminates between officers and enlisted men as to punishments awarded shall be sentenced as the Court Martial may adjudge.

54. Any officer who intentionally discriminates between officers and enlisted men as to who is ordered to trial shall be punished as the Court Martial may adjudge.

55. The President, the Secretary of Defense, the Secretary of the Navy, or any officer above the rank of captain may order any Naval Personnel or civilian serving with the Navy to be tried by any division of the Court Martial or may order the Court Martial to invoke its powers as a Court of Inquiry.

56. Any person who attempts in any way other than in open or closed court to influence the decisions of any divisions of the Court Martial shall be punished as the Court Martial may adjudge.

57. Any officer or civilian who is authorized to order any other person to trial by the Court Martial and does so order for the purpose of harassing or discrediting such other person shall be punished as the Court Martial may adjudge.

58. Any officer of the Court Martial who willfully violates any of the provisions of this act shall be punished as the Court Martial may adjudge.

59. Whenever it is necessary to present evidence to the Court Martial which concerns classified matter the Court may go into closed session and the records of such closed session shall not be public records.

60. Any judge of the Court Martial may be impeached by the House of Representatives. If so impeached he shall be tried by the Senate and if convicted shall be removed from office.

61. Definitions:

- a) Mast-- A hearing at which the commanding officer exercised his powers of punishment as granted in Section 1200, Title 34, U.S.C. prior to this amendment.
- b) Military--A generic term embracing Army, Navy, Air Force and all subsidiary organizations.
- c) Navy-- A term which embraces the Navy, and Marine Corps and all subsidiary organizations.

62. Those provisions of the Articles for the Government of the Navy, Section 1200, Title 34, U.S.C. which are inconsistent with anything herein and no others are hereby repealed so far as they are so inconsistent.

63. This act shall become effective six months after it becomes law.

## SUGGESTIONS

The plan as it stands is not intended to be in final form but rather to express in some detail the opinions of the writer as to what a court martial should be like. Some of the provisions could be more artistically phrased by someone more experienced in writing statutes, notably sections 7, 13, 15, 36, 57, 59, 61. Sections 57, and 59 particularly should be carefully studied as to their exact effect. It is conceivable that section 59 could be used to deny public trials and avoid public records but perhaps the presence of several judges would be sufficient to prevent misuse of the power to go into closed session.

No provision for a jury has been made because the writer is not convinced it is desirable to have one. There are good arguments both for and against a jury but the writer takes the position that if anything must be sacrificed it is better to do without the jury than to do without trained judges to run the courts. H.R. 2575 provides for enlisted men sitting on Army courts martial which is a comparable problem.

If compromises are necessary to cause this plan to be adopted in whole or in part they should not be on the points of legally trained judges or in the direction of giving back to the chain of command its powers of punishment. It is not necessary that the chain of command have such powers to run the military establishment and they are less subject to abuse in trained hands.

The writer has been unable to locate the opinion quoted after section 18 in the official reports but it can be found along with several others in Naval Courts and Boards, Ch. IV, pp. 60-61 Ed. 1917.

It might be desirable to so phrase section 34 that anyone presenting evidence calling for a Court of Inquiry could force action on it himself rather than to rely merely on the sanctions of section 58 to influence the Court Martial Officer to take action. On the other hand it would not be desirable to allow a petty griper to force official action where there is no need for it.

Another problem left entirely alone is how to protect witnesses who are afraid to testify for fear of getting into trouble after the trial is over.

A valuable addition to the plan might be some sort of pre-trial procedure such as is used in the Army.