

HOLD FOR RELEASE
FOR A M. NEWSPAPERS
SUNDAY, JANUARY 5, 1947

CHAPLAIN REPORTS ON PRISONERS' OPINIONS OF NAVAL JUSTICE

Secretary of the Navy James Forrestal made public today the report of an extensive survey of prisoners confined in naval prisons and disciplinary barracks throughout the United States, made by Commodore Robert J. White, Chaplain Corps, U.S.N.R.

During the war, the Navy expanded from about 200,000 personnel to nearly 4,000,000. While the basic rules for the administration of justice were believed adequate and sound, the need was recognized to inquire into the manner in which the Navy withstood the impact of its tremendous expansion, with particular reference to courts-martial and the disposition of naval prisoners. An accurate evaluation of how officers and men alike adapted themselves to the Navy and its customs on short notice appeared most desirable. One way to obtain accurate information that suggested itself was to ask the men who had been convicted by court-martial what they thought of the fairness of the system.

The individual selected to make the survey was Commodore White, whose qualifications were almost unique. Born in Concord, Massachusetts, Commodore White was educated in the public schools at Watertown, Massachusetts. He served in World War 1, following which he continued his education at Harvard University and Harvard Law School, then at Catholic University of America and the Sulpician Seminary. Before entering the Seminary he practiced law in Boston for eight years, a part of which time he served as Assistant District Attorney of Middlesex County. He has been active in the American Legion as Post Commander, County Commander, Legislative Chairman, and State Chaplain of the Department of Massachusetts. He served as National Chaplain of the American Legion in 1934-35. He has been a member of the faculty of the Law School of Catholic University of America since 1931, and since 1937 he has been Dean of the Law School. In 1941 he was appointed a member of the Alien Enemy Board for the District of Columbia by President Roosevelt. During World War II he was Fleet Chaplain of the Eighth Fleet on the staff of Vice Admiral H. K. Hewitt, U.S.N., and in that capacity had charge of some 1,200 naval chaplains afloat and ashore in Africa, Sicily, Corsica, Sardinia, Italy, and Southern France. He was awarded the Bronze Star for "distinguishing himself as Fleet Chaplain with exceptional skill in administration of Chaplain's activities....., the undertaking of charitable relief....., and intrepidity under enemy fire".

Commodore White was given authority to interview prisoners, where and when he chose, and in the manner that seemed best to him. Over a period of six months in late 1945 and early 1946, he personally interviewed 500 prisoners, representing a cross section of approximately 15,000. (The total number of naval prisoners today is about 5,300). Prisoners interrogated were serving sentences of courts-martial for nearly every type of offense, and had been tried in all parts of the world, and a particular effort was made to obtain a representative selection. The interviews were conducted privately, with only

a yeoman present to act as stenographer. Neither prisoners nor prison officials were forewarned of the interviews, and prisoners were free to answer or not answer, according to their own wishes.

To summarize, Commodore White interviewed one out of every 30 naval prisoners at the Naval Prison, Portsmouth, New Hampshire; the Marine Base, San Diego, California; the Naval Re-Training Command, Camp Peary, Virginia; the Naval Training and Distribution Center, Camp Elliott, California; and the Naval Disciplinary Barracks at Terminal Island, California, Boston, Massachusetts, Great Lakes, Illinois, Treasure Island, California, and Camp Shoemaker, California.

The essential feature of the survey was the question asked each prisoner: "Do you think you received a fair trial?" Taking the answers given to this question at their face value, the survey reached the conclusion that 410 or 82 per cent of the men felt that they had been treated fairly by naval courts-martial, while the other 18 per cent felt that they had cause for complaint against naval justice. Complaints of those prisoners who claimed they did not receive a fair trial or full justice fall mainly into the following categories:

- (1) Complaints concerning counsel.
- (2) Complaints concerning the prosecution.
- (3) Complaints concerning the court.

The 90 prisoners answering the question in the negative assigned 114 reasons therefor. Fifteen of those prisoners had complaints which were contradictory on their face, and for various reasons plainly invalid, but they were nevertheless listed in the report.

Remarking that about 85 per cent of all court-martial prisoners during the war were restored to duty and were able to readjust themselves and make good, Commodore White concludes that naval courts-martial functioned justly in the overwhelming majority of cases. The statistics indicate, however, that there is some room for improvement in the system of naval justice, and that there were certain cases of injustice. As a result of his survey, Commodore White has recommended specific additions and changes to the Articles for the Government of the Navy and to the Naval Law Manual to correct the deficiencies in naval statutes and court-martial procedure suggested by his work, and has pointed out the benefits to be derived from the increased education received by officers and men wherever instruction in the administration of naval justice is feasible.

Commodore White's report and his recommendations constitute the result of another in a series of investigations into naval court-martial procedures and naval justice generally, commencing in 1943 with the first Ballantine Report. His recommendations are being considered in connection with prior reports, including that of the Ballantine Board made public in June 1946, those of other investigating boards and committees, and the recommendations of the responsible authorities in the Navy Department. Based upon these studies, the Navy Department is preparing for submission the necessary legislative changes and a revised Naval Courts and Boards, the naval law manual.

An interesting feature of Commodore White's conclusions has to do with the statistics which show that while the administration of discipline within the Navy is of course a problem for the Navy, those men who have had no discipline in the home are the ones most likely to get in trouble. He particularly points out the large percentage of prisoners he interviewed who came from broken homes. From these statistics he concludes that conditions in the American home have a direct bearing on the efficiency of our armed forces, and that the religious and moral training and self-discipline of American youth constitutes a national defense responsibility which must be assumed by American parents.

The complete text of Commodore White's report follows:

A STUDY
OF
FIVE HUNDRED NAVAL PRISONERS
AND
NAVAL JUSTICE

By

COMMODORE ROBERT J. WHITE
Chaplain Corps, U.S.N.R.

on special assignment with
THE OFFICE OF THE JUDGE ADVOCATE GENERAL
UNITED STATES NAVY

TABLE OF CONTENTS

	<u>Page</u>
I. Introduction	1
II. Over-all Statistics of Naval Discipline, World War II	1
III. The Heavy Proportion of Absence Offenses	3
IV. The Purpose and Scope of this Study	4
V. The Method	4
VI. Naval Prison, Portsmouth, New Hampshire	7
VII. Disciplinary Barracks, Terminal Island, Calif.	8
VIII. Receiving Station, Boston, Massachusetts	10
IX. Disciplinary Barracks, Great Lakes, Illinois	12
X. Naval Training and Distribution Center, San Diego	13
XI. U.S. Marine Base, San Diego, California	14
XII. Disciplinary Barracks, Camp Shoemaker, Calif.	15
XIII. Disciplinary Barracks, Treasure Island, Calif.	16
XIV. Re-Training Command, Camp Peary, Virginia	17
XV. Findings and Recommendations	17
XVI. Complaints Concerning Counsel	19
XVII. Complaints Concerning the Prosecution	19
XVIII. Complaints against the Court	19
XIX. Training for the Future	20
XX. Articles for the Government of the Navy	20
XXI. Manual of Courts and Boards	21
XXII. Education in Naval Justice	23
XXIII. Delays in Trial and Sentence	24
XXIV. Excessive Sentences	24

		<u>Page</u>
XXV.	Independence of the Court	24
XXVI.	Attitude of the Court	25
XXVII.	Education of Enlisted Personnel	25
XXVIII.	The Navy and the American Home--Conclusion	26

APPENDIX

"A"	Sample form of case history for interview	App.1	28
"B"	Table showing reasons for complaint by types and by places	App.4ff	30

INTRODUCTION

The World War II expansion of the United States Navy is strikingly reflected in the gigantic increase of personnel from some two hundred and fifty thousand (250,000) in normal peace time to over four million, seven hundred thousand (4,700,000) at the height of World War II. This expansion in a global war increased the number of enlisted personnel from some two hundred thousand (200,000) to nearly four million (4,000,000) while it increased the number of officers from some twenty thousand (20,000) to over three hundred and fifty thousand (350,000).

But statistics, even if accurate, reveal only a partial and inadequate picture of the gigantic and complex man-power problem which confronted the United States Navy in waging a global war. For the basic tasks of organization, training and discipline in such a period of intensive and rapid growth, were seriously complicated by the nature of the warfare itself. Global warfare, stressing the invasion of far-flung territories occupied by the enemy, created the urgent necessity for the immediate construction and manning of thousands of ships, airplanes, boats and amphibious craft of every type, size, and function. Moreover, time was truly of the essence. The immediate necessity for indoctrination and training in seamanship, gunnery, and aviation, and in the many special skills required in radar, radio and even rocket warfare presented unforeseen, and unforeseeable problems of the greatest complexity. Consequently, the problems of training great numbers in the administration of naval justice, vital to orderly administration and involving difficult human relations, had to be subordinated to the other critical demands upon men and time in order to win the war in the shortest possible time. Moreover, this particular type of warfare posed many novel problems incident to landing, patrolling, and holding islands and even continents as well as far-flung atolls in collaboration with other American armed forces and with those of our Allies in places of strange customs, language and tradition.

In addition to such problems, which necessitated prior claims upon the time and the skills of personnel, the basic process of the assimilation of several million men, most of whom lacked any previous military training, or even maritime knowledge, into a military organization in the shortest possible time, created unexpected demands upon the disciplinary system itself.

Thus the Navy faced not only the problems of "logistics" of men, ships, and armament, but as well the "logistics" of an efficient, fair and effective administration of naval justice on ships and ashore under the stress of a new type of global warfare. A brief statistical review of the discipline "load" is itself most revealing.

II. THE OVER-ALL STATISTICS OF NAVAL DISCIPLINE - WORLD WAR II

The aggregate personnel of the United States Navy, including the Marine Corps and the Coast Guard, numbered four million, seven hundred fifty-eight thousand, two hundred fifteen (4,758,215).

During the forty-five months of warfare, there were six hundred seven thousand eighty-six (607,086) naval Courts-Martial as follows:

Deck Courts-Martial	301,560
Summary Courts-Martial	253,406
General Courts-Martial	<u>52,120</u>
Total	607,086

Reliable authorities estimate that there were something over two hundred thousand (200,000) Courts-Martial per annum at the height of the war.

It is significant that many of those who were tried by Courts-Martial--particularly by General Courts-Martial--had been tried by other Courts-Martial for previous offenses. Thus the seemingly large ratio of Courts-Martial to the total number of personnel, does not reflect in any accurate dimensions the over-all picture of naval discipline during the war. In the opinion of qualified observers, the percentage of personnel subjected to trial by Courts-Martial, was less than the percentage of civilian personnel in the corresponding age group tried by State or Federal Courts for criminal offenses in a normal period.

In the light of the statistics of the large number of Courts-Martial, it is interesting to note the comparatively small number of personnel in confinement. As of January 1, 1946, there were approximately fifteen thousand (15,000) naval personnel in confinement. Previous to that date, some thirty-eight thousand two hundred seventy (38,270) prisoners had been restored to duty. It is reassuring to note that over 85 per cent of those restored to duty, justified the exercise of clemency "by making good" and by becoming again an effective and disciplined force for waging war.

In the six months preceding January 1, 1946, some six thousand prisoners had been restored to duty. By September 1, 1946, it is expected that the naval personnel in confinement will be reduced to four thousand (4,000).

While various opinions have been expressed concerning the criminal nature of the men committed by Courts-Martial, it is generally agreed that the great majority of personnel charged with breaches of discipline, were not inherently vicious or anti-social. However, it is estimated that from three per cent to five per cent of naval prisoners would have been in serious trouble with the criminal law as civilians, even without the stress of war. There can be no doubt that the naval service is not responsible for the difficulties in which this group find themselves confined for murder, manslaughter, rape, theft, and armed robbery.

Though nineteen is the most frequent group, some 60 per cent fall into the age group of eighteen to twenty-one. The average schooling of offenders was nine and three-tenths grades (9.3), although some 70 per cent of the offenders had schooling beyond the grade school.

While a substantial majority of offenders were single men, they, as well as married offenders, reveal frequently the background of homes broken by divorce, drunkenness, death, or desertion. In some large cross-section groups, the figures from such broken homes constantly maintained a percentage running well over 85 per cent of all offenders in such groups.

III. THE HEAVY PROPORTION OF UNAUTHORIZED ABSENCE OFFENSES

It is impossible to gain any adequate understanding of the over-all picture of war-time naval discipline without a deliberate examination and appreciation of the overwhelming proportion of unauthorized absence cases. Reliable authorities estimate the proportion of absence cases, which include desertion, absence over leave, and absence without leave, from 70 per cent to over 80 per cent of all offenses, including all military and non-military offenses. Consequently, the breakdown of the total numbers of Courts-Martial would show that several hundred thousand Courts-Martial were due to unauthorized absence. In lost man-days, the total would aggregate several hundred thousand man-days per year. In terms of life and death, this type of offense undoubtedly contributed to many deaths of navy men who assumed the task abandoned by those who had gone "over the hill".

While it is true that in a substantial number of unauthorized absence cases, there were some extenuating circumstances, such as sickness, trouble in the family, or other serious worry, yet it must be reluctantly admitted that many chose the easy way out, deliberately demonstrating a complete lack of any sense of patriotic duty or personal honor.

In many such cases and in many places I have questioned men charged with an unauthorized absence and have been astounded by what I might call the composite answers of many prisoners guilty of this type of offense.

This would represent a typical interview of this type:

Q. "Smith, you had gone 'over the hill' before and had been warned. Why did you leave again?"

A. "I just wanted to go home."

Q. "But don't you realize that if everyone who wanted to go home, went, America would lose the war?"

A. (No answer)

Q. "Don't you realize the next man had to take up your job?"

A. "I don't care."

Q. "Don't you realize that a dishonorable discharge and bad conduct discharge means disgrace to you and your family in your home community?"

A. "I don't care."

Q. "Do you want to be restored to duty if that is possible?"

A. "No."

Q. "What do you want to do when you finally get out of the Navy under such conditions?"

A. "I don't know."

Q. "What do you want to do for your life's work?"

A. "I don't know."

The alarming increase of thousands of cases of this type and of the careless offender, produced a serious threat to the success of the war effort. The problem became one of acute concern to the Navy, which brought about official action in order to lessen the number of such offenses and to make the sentences for these offenses more nearly uniform.

IV. THE PURPOSE AND SCOPE OF THIS STUDY

With the end of the war near, the Judge Advocate General of the Navy formulated plans for several studies which, in the light of the war experience, might furnish an adequate survey of the working of naval justice under the stress of warfare and which might provide accurate and unbiased information as a scientific basis for any needed revisions, changes, or additions to the Articles of the Navy including the laws of Courts-Martial, the basic legal "Manual of Courts and Boards", and the future indoctrination and training of personnel for the proper preparation and conduct of Courts-Martial.

This particular report is predicated upon a cross-section study of 500 prisoners to determine, among other things, the reaction of the individual prisoner to the Court-Martial proceeding which resulted in his confinement. The Study sought data on the man's free and uncoerced reaction to all of the incidents of the proceedings from the time of the charge up to and through the Court-Martial proceeding and sentence.

This survey did not attempt to cover the penological aspects of the problem concerned in the disciplinary treatment of prisoners. This Study thus did not embrace the investigation of individual cases beyond the sentencing stage except incidentally. Nor does the Study attempt directly or indirectly to impinge upon the established jurisdiction for review of the Judge Advocate General, the Bureau of Discipline, or any of the existing clemency and review boards.

Within such distinct limits, and unencumbered by other collateral considerations, it was felt that this Study might furnish a representative pattern of whatever complaints were felt by convicted personnel, and as such might furnish some factual basis for any needed reforms and improvements in the administration of naval justice.

V. THE METHOD

In order to gain a fair and adequate understanding of the reactions of navy personnel, convicted by Navy Courts-Martial, a total of five hundred men were interviewed personally by me while on special assignment with the Office of the Judge Advocate General. The interviews were held in the various places of confinement, including two places of confinement for long-term prisoners, Portsmouth, New Hampshire, and Terminal Island, San Pedro, California, and also six disciplinary barracks, and one re-training command situated at the following places:

Disciplinary Barracks, Boston
Disciplinary Barracks, Great Lakes
Marine Base, San Diego
Camp Elliot, San Diego
Treasure Island, San Francisco
Camp Shoemaker, California
Camp Perry Retraining Command, Virginia

The cases represent a broad cross-section of Courts-Martial conducted afloat and ashore. They include Courts-Martial conducted in the United States, Hawaii, the Pacific Islands, and Japan, as well as in Africa, Sicily, France, and England. These cases cover every type of Courts-Martial, and include charges of practically every offense for which men were tried during the war.

No advance notice was given by the Navy Department to the authorities of the places of detention as to the purpose or scope of the interviews. No advance notice was given to the prisoner as to the nature of the interview. No guards or personnel, except a yeoman as stenographer, were present at the interviews.

The cases were selected by me personally after conference with the officers, and in particular with the record officer of the prison, disciplinary barracks, or re-training command. The cases were picked chiefly upon the basis of the current census of crimes for which the prisoners were held in the particular place, with reference also to age, naval activity, and offense. Because nearly 85 per cent of all Courts-Martial involved absence offenses, including desertion, absence over-leave, and absence without leave, such a heavy proportion of absence cases to the total number of cases was not maintained in choosing the cross-section of cases treated in this Study. For in the overwhelming number of such absence cases, the proceedings were what might be termed "open and shut cases," resulting largely of pleas of "guilty". By taking a more substantial proportion of non-absence cases, the scope of inquiry was broadened beyond the heavily unbalanced proportion of Courts-Martial for unauthorized absence.

As to the place of interview, they were always held in a small conference room or office, and conducted rather informally and personally, rather than with any rigid official approach. Only the interviewer, the prisoner, and the stenographer yeoman were in the room. At the outset, the prisoner was informed that the interview was in no sense a re-opening of his case, that the interview in particular could not prejudice or benefit him in relation to the length or nature of his confinement. The prisoner was told to feel free not to answer any question which to his mind might prejudice, humiliate, or embarrass him. The purpose of the interview was, primarily, to find the reaction of the prisoner to the conduct of his Courts-Martial including charges, specifications, choice of attorney, and all incidents in the conduct of his trial. This purpose was stated in simple terms.

Contrary to expectation, there was no difficulty encountered with any prisoner. All of the five hundred prisoners answered questions willingly, and discussed without reserve, the Courts-Martial proceeding, military service, and even personal and home problems.

The interviewer had devised a form, a copy of which is marked "A." This form gives an adequate history of the prisoner's personal background, as well as the essential facts concerning the particular Court-Martial. These original case histories are on file in the Office of the Judge Advocate General, as a component part of nine separate studies of prisoners by geographical location of the place of confinement. Each of these nine studies contains:

- (a) The individual's case history
- (b) A table showing the number of charges by groups
- (c) A table showing the nature and number of the crimes
- (d) A summary analysis of the results of the interviews in the particular case
- (e) The reasons given by the individual prisoner in his complaint against naval justice

In addition to the case history, the interviewer usually had the benefit of the jacket history of the particular man during the interview.

The essential feature of the conference was the question to the prisoner, "Do you think that you received a fair trial?" If the answer was "yes," it was so noted on the case history. If the answer was "no," it was so noted with the prisoner's explanation of the reasons why he felt that he had not received a fair trial. A curious third type of answer developed in some cases, and is grouped and considered under a subsequent heading. It was the answer "yes--but," usually indicating that the prisoner felt he had received a fair trial but objected to some phase of the prosecution apart from the trial itself, such as excessive sentence, or as happened in a few cases, complaints that a witness had given perjured testimony against the defendant.

For the purposes of this study, the statements of complaint by the men interviewed are taken at face value as stated. It was felt, and the completed Study demonstrates the reasonableness of the judgment, that the pattern of complaints could be found by this method without assuming the added heavy and sometimes insurmountable difficulty of going back into stenographic and other records and interviewing witnesses in all parts of the world to ascertain the truth of the statements. However, such an acceptance of the statements of complaint as true was qualified to the extent of discounting the weight of complaints which were self-contradictory, plainly invalid, or in a few instances, fantastic, as indicated hereinafter.

All of the complaints are shown in this Study in the Table "B" which indicates the reason for complaint, as well as the place of confinement of the prisoner. It will be noted that the total number of complaints exceeds the total of prisoners who complained, as some men alleged several rather than a single basis of complaint. Turning now to the specific results of the interviews at particular places, the first place of interview was the naval prison at Portsmouth, New Hampshire.

VI. NAVAL PRISON, PORTSMOUTH, N.H.

Naval prisoners are confined in three types of establishments. The most serious offenders are sent to the naval prison at Portsmouth. The personnel confined in the naval prison at Portsmouth are all long-term prisoners. The several disciplinary barracks throughout the country are places of confinement for men generally convicted of less serious crimes and thus subjected to shorter sentences. These disciplinary barracks have the largest proportion of prisoners. The re-training command is principally concerned with the speedy rehabilitation of personnel considered capable of restoration to duty.

The one hundred long-term prisoners interviewed at Portsmouth were convicted of offenses committed for the most part in the United States and European theaters. All were serving prison terms of three years and upwards. Many of the prisoners had been tried on several charges in the instant Courts-Martial. A substantial number had had prior convictions.

One hundred prisoners were examined. In answer to the question, "Do you feel that you received a fair trial?" the answers were as follows:

Yes	83
No	<u>17</u>
	100

Of the seventeen (17) who complained that they had not received a fair trial, ten (10) had pleaded "guilty" and seven (7) had pleaded "not guilty."

The reasons given for complaint were:

Defendant could not procure attorney though he made request	1
Wrongly advised by naval counsel to plead "guilty"	4
Pleaded "guilty" on advice of Navy counsel who stated punishment would be less than given	3
Navy counsel insisted on plea of "not guilty" when defendant desired to plead "guilty"	1
Navy counsel argued case at conclusion on basis of "guilty" instead of "not guilty"	1
Marine counsel refused certain information to defense counsel	1
Court prejudiced	1
Court inattentive	2
Interference with fair conduct of trial	2

Commanding Officer asked for explanation in conference, later sat as Senior member	1
---	---

Tried by Navy court martial when accomplices tried in civilian courts with small penalty	<table border="0"> <tr> <td style="text-align: right;">1</td> </tr> <tr> <td style="border-top: 1px solid black; text-align: right;">* 18</td> </tr> </table>	1	* 18
1			
* 18			

* 17 prisoners alleged 18 causes of complaint

Of the 17 who complained, eleven directed their complaints at naval counsel, a preponderance which was typical of the aggregate causes of complaint alleged in several places of confinement where prisoners were interviewed.

No attempt has been made to verify the facts in these complaints. They were taken at face value for the purposes of this study.

However, attention should be called to certain striking facts evident in the proceedings of some of these men. The complaint of one defendant that he was subjected to a Court-Martial while his accomplices were tried in a civilian court clearly raises no proper objection to the jurisdiction of the Navy Court-Martial. It should be noted also in this case that the defendant admitted the possession of the gun in the robbery.

In another of these cases, involving morals, the defendant admitted adultery.

In another case, extortion, the defendant admitted the return of \$161.

In another, a theft case, the defendant offered the naive explanation that the stealing was a "grudge" theft with the idea of returning the money later.

In another case, the defendant impressed me as utterly unreliable. The charges involved morals, drunkenness, burglary and theft.

Such facts should be fairly considered in judging the credibility of the defendant and in appraising the validity of the complaints.

Taking these objections at their face value except where weakened by factors which have been pointed out, it would appear that about 90 per cent of the one hundred prisoners (100) examined felt that they had received a fair trial by Navy Courts-Martial.

VII. U. S. NAVAL DISCIPLINARY BARRACKS TERMINAL ISLAND (SAN PEDRO), CALIFORNIA

One hundred prisoners were examined at the U.S. Naval Disciplinary Barracks, Terminal Island (San Pedro), California. All of the men were General Court-Martial prisoners.

The Terminal Island Disciplinary Barracks are used for the confinement of prisoners charged with the most serious offenses and involving long-term sentences.

The prisoners represent the most difficult cases met by the Navy. This Disciplinary Barracks felt the full impact of the serious problems of discipline, committed not only on ship and on shore bases on the Pacific Coast, but as well, throughout the whole Pacific area.

While the offenses are shown in the tables cover a wide variety of crimes, the heavy percentage of punishments, over 70 per cent (1,031 of 1,463 prisoners), were for unauthorized absence offenses.

One hundred prisoners were examined. In answer to the question, "Do you feel that you received a fair trial?" the answers were as follows:

Yes	61
No	<u>39</u>
	100

The striking increase in the percentage of complaints is explained to some extent by the fact that this disciplinary barracks was designated as the place of confinement for most of the long-term prisoners who had committed crimes in many of the far-flung bases of the Pacific where the nature of some offenses called for speedy and drastic punishments. The percentage of complaints is comparatively high even when compared with the other designated places for the confinement of long-term prisoners, such as Portsmouth, New Hampshire, where the rate of complaint was 17 per cent.

Parenthetically, it should be understood that the comparatively high percentage of complaints is not in any way connected with reactions to the present discipline of prisoners at Terminal Island. From a wide experience in visiting prisons, this Naval Disciplinary Barracks stands out far ahead of any Naval or civilian facility for discipline that the writer has ever seen.

The reasons given for complaint were:

Refused civilian counsel	1
Refused counsel requested	6
Navy counsel incompetent	9
Wrongly advised by naval counsel to plead "guilty"	6
Wrongly advised by Navy counsel not to testify in own behalf	1
Wrongly advised by Navy counsel as to testimony to give court	1
Court prejudiced	3
Court inattentive	3
Signed statement procured under duress	2
Method of identification unjust and unfair	4

Charge made after undue lapse of time	1
Nature of offense substantially less than charged	4
Finding of "guilty" inconsistent with return of 1/2 of "stolen money" to prisoner	1
Evidence did not justify finding of "guilty"	<u>15</u>
	* 57

* 39 prisoners alleged 57 complaints

No attempt has been made to verify the facts in these complaints. They were taken at face value for the purposes of this study.

A few of the cases presented bases of complaints which were hardly credible and sometimes even fantastic.

In one case the prisoner gave all the appearances of a mental case and it was so reported to the prison authorities.

In another case the prisoner's statement as to his explanation in a gang rape case charge is highly incredible.

In another, the alleged advice to plead guilty and the intimation of 50 years imprisonment otherwise, is fantastic.

In another, the explanation of the prisoner did not seem worthy of belief, and the prisoner gave the impression of being a sex moron.

In three other cases, the explanations had all the earmarks of "made-to-order" fiction.

However, after rejecting seven cases, thirty-two (32) remain, and a few of the cases present serious complaints.

In one case, the conduct of the court received severe reprimand by the convening authority.

In several cases, the method of identification was objected to. If facts are as alleged, the defendants had a right to object. The requirement of identification in a line or group with several others is elementary. The requirement for identification by such method as contrasted to the pointing out of the man by a Naval authority should never be arbitrarily over-ridden. The inherent weakness of identity cases is plainly demonstrable in such cases as the Betram Campbell case, and other well known cases.

A few of the cases present some difficulty in determining whether the acts alleged were the result of drunken brawls rather than deliberate and malicious crimes.

VIII. U. S. NAVAL RECEIVING STATION BOSTON, MASSACHUSETTS

Fifty-one (51) prisoners were examined at the U.S. Naval Receiving Station, Boston, Massachusetts.

These men were in three groups:

General Courts-Martial	4
Summary Courts-Martial	44
Deck Courts-Martial	<u>3</u>
	51

In answer to the question, "Do you feel that you received a fair trial?" the answers were as follows:

General Courts-Martial

Yes	4
No	<u>0</u>
	4

Summary Courts-Martial

Yes	42
No	<u>2</u>
	44

Deck Courts-Martial

Yes	3
No	<u>0</u>
	3

The two summary Courts-Martial prisoners who complained that they had not received a fair trial gave the same reason for complaint:

- A. "That the court rejected a plea of illness which would have excused the alleged offense (Absence)."

This Study has a special interest as a cross-section analysis of cases of Naval discipline in a large metropolitan Seaport. While the familiar breaches of order and conduct incident to liberty in a large seaport city are evident, yet the heavy proportion of absence cases including missing ship, leaving drafts, etc., result in sustaining the usual high percentage of absence offenses. For this reason, the few cases of Deck Courts-Martial and General Courts-Martial were used to supplement the available cases of Summary Courts-Martial.

This Study becomes of special interest because of the low percentage of complaints against naval justice. Out of fifty-one (51) cases, only two or less than four per cent complained. A close examination of the cases gives some apparent explanations for the unusually high per cent, over 96 per cent, of favorable reactions by the prisoners. It is clearly apparent that the experienced and able administration of the Shore Patrol reduced trials wherever possible by avoiding formal charges. It is also apparent that fines and confinement were used wherever possible to avoid the drastic results of bad conduct discharges. It is also apparent that Summary Courts-Martial were

given wherever possible in preference to General Courts-Martial. This is strikingly demonstrated by the fact that in forty-four (44) cases examined as a cross-section the authorities ordered Summary Courts-Martial in seven of these cases rather than General Courts-Martial, as originally considered. The main reason given for the action in the seven cases was a commendable attempt to consider worthy personal service records as well as the facts alleged in determining the type of Court-Martial.

IX. U. S. NAVAL DISCIPLINARY BARRACKS
GREAT LAKES, ILLINOIS

Eighty-six (86) prisoners were examined at the U.S. Naval Disciplinary Barracks, Great Lakes, Illinois.

These men were in two groups:

General Courts-Martial	49
Summary Courts-Martial	<u>37</u>
	86

In answer to the question, "Do you feel that you received a fair trial?" the answers were as follows:

Yes	79
No	<u>7</u>
	86

All of the seven (7) who complained that they had not received a fair trial were General Courts-Martial prisoners. All of the seven (7) had pleaded "not guilty."

The reasons given for complaint were:

Navy counsel incompetent	1
Court prejudiced	1
Court inattentive	2
Court restricted evidence unfairly	2
Court refused inquiry into prior injury which defendant claimed made him not responsible for offense	1
Evidence did not justify finding of "guilty"	<u>1</u>
	* 8

* 7 prisoners alleged 8 bases of complaint

Taking all of these complaints at their face value, it would appear that more than 90 per cent of the eighty-six (86) prisoners examined felt that they had received a fair trial by Navy Courts-Martial.

X. U. S. NAVAL TRAINING AND DISTRIBUTION CENTER
CAMP ELLIOTT (SAN DIEGO), CALIFORNIA

Thirty-three (33) prisoners were examined at the Naval Training Center Barracks, Camp Elliott, San Diego, California. All of the men were Summary Court-Martial prisoners.

This particular Study has unusual value because it represents relatively the broadest cross-section of places of trial.

Of the thirty-three trials, nineteen were conducted on many types of ships in the Pacific. Seven trials were conducted on Pacific bases. Seven trials were conducted on bases in the United States.

Thirty-three (33) prisoners were examined. In answer to the question "Do you feel that you received a fair trial?" the answers were as follows:

Yes	29
No	4
	<hr/>
	33

The reasons given for complaint were:

No Navy counsel provided	1
Wrongly advised by naval counsel to plead "guilty"	2
Court prejudiced	1
Evidence did not justify finding of "guilty"	<hr/>
	1
	* <hr/>
	5

* 4 prisoners alleged 5 bases of complaint

The bases of complaints were typical. In one of the cases the defendant felt that he should have had counsel provided and should have been warned on the seriousness of the plea of "guilty" which he made.

In another, there is the familiar claim of lack of responsibility because of intoxication, and the claim that the nature of the offense was less serious than the offense of which the defendant was found "guilty."

It is a striking fact in this particular study that in a cross-section of thirty-three (33) cases, punishment of Bad Conduct Discharge was meted out in thirty cases. This seems abnormally high and raises the question of the vital and far-reaching penological consequences of loss of certain substantial rights and the human problems that may flow from inequality or unusual severity of punishment.

XI. U. S. MARINE CORPS BASE (SAN DIEGO), CALIFORNIA

Twenty-five (25) prisoners were interviewed at the U. S. Marine Corps Base, San Diego.

These men were in two groups:

General Courts-Martial	17
Summary Courts-Martial	<u>8</u>
	25

In answer to the question, "Do you feel that you received a fair trial?" the answers were as follows:

General Courts-Martial

Yes	12
No	<u>5</u>
	17

Summary Courts-Martial

Yes	7
No	<u>1</u>
	8
Total	25

The reasons given for complaint were:

Court Prejudiced	1
Court inattentive	1
Evidence did not justify finding of "guilty"	2
Refusal by court to accept excuse for absence	1
Failure of court to await arrival of witnesses for defense	<u>1</u>
	6

Of the six who complained, two had pleaded guilty.

It is noteworthy of this particular Study, that in a cross-section of twenty-five (25) cases, punishment of a Bad Conduct Discharge was meted out in twenty (20) of these cases, and a Dishonorable Discharge in one (1). The group itself seemed to fall into the youngest age group of any examined. Six of the twenty who were given Bad Conduct Discharges were nineteen or under at the time of enlistment, according to their service records.

XII. U. S. NAVAL DISCIPLINARY BARRACKS
SHOEMAKER, CALIFORNIA

Forty prisoners were examined at the U. S. Naval Disciplinary Barracks, Shoemaker, California. All of the men were Summary Courts-Martial prisoners.

In answer to the question, "Do you feel that you received a fair trial?" the answers were as follows:

Yes	32
No	<u>8</u>
	40

Of the eight (8) who had complained, two had pleaded "guilty", and three had pleaded "guilty" to some specifications and "not guilty" as to others.

The reasons given for complaint were:

Wrongly advised by naval counsel to plead "guilty"	2
Failure of Navy counsel to put defendant on stand	1
Court prejudiced	1
Inequality of punishment for same offense	1
Punishment too severe	1
Evidence did not justify finding of "guilty"	3
Tried at place distant from crime and witness	<u>1</u>
	* 10

* 8 prisoners alleged 10 bases of complaint

Some of the reasons for the complaints raised a serious question of credibility. For instance, the defendant in a situation which was apparently a bar room brawl, objected to the Court taking the word of the Shore Patrol and the bartender against his word.

In another, the defendant objected to Navy counsel's advice to plead "guilty". He stated that though he admitted guilt, "he could have beaten the case with a good lawyer."

In another, the defendant accused of theft, admitted keeping the money in question thirty hours, giving the explanation that the delay in turning in the money (which he claimed he found), was due to the division officer being on watch.

If these three are included, as they are in the final tabulation, the proportion of complaints would be 8 to 40, or 20 per cent. If eliminated, the proportion of complaints would be about 16 per cent, leaving 80 per cent to 84 per cent expressing an opinion that they had received a fair trial.

XIII. U. S. NAVAL DISCIPLINARY BARRACKS
TREASURE ISLAND, (SAN FRANCISCO), CALIFORNIA

Forty-three (43) prisoners were examined at U. S. Naval Disciplinary Barracks, Treasure Island, San Francisco, California. All of the men were Summary Courts-Martial prisoners.

In answer to the question, "Do you feel that you received a fair trial?" the answers were as follows:

Yes	41
No	<u>2</u>
	43

The reasons given for complaint were:

Refused counsel requested	1
Senior SP officer sat as Sr. member of court	1
Civil jail detention not considered as excuse for AOL	<u>1</u>
	* 3

* 2 prisoners alleged 3 causes of complaint

This study has an unusual value because in spite of an enormous influx of Naval personnel into that area and the great variety of offenses charged, such an unusually low percentage of complaints appear.

There were only two complaints, one of which is on its face invalid-- objection to trial by naval authorities for absence due to defendant's detention in civilian jail for reckless driving. Excluding such an obviously invalid basis of complaint, only one out of forty-three (43) prisoners alleged injustice, though substantial punishments were meted out in a large number of cases.

It would seem that the explanation of this almost uniform favorable reaction to naval justice here is to be found in the consistent use of fine and confinement as punishment as punishments and the consistent avoidance of BCD type of discharge, except in cases of recidivists and other flagrant offenders.

The resulting conviction of fairness of treatment in both trial and punishment is reflected in the extremely low percentage of complaints, slightly over 2 per cent, and favorable reactions in over 97 per cent of the cases, regardless of the type of punishment.

XIV. U. S. NAVAL RE-TRAINING COMMAND
NAVAL TRAINING AND DISTRIBUTION CENTER
CAMP PEARY, VIRGINIA

Twenty-two (22) prisoners were examined at the U. S. Re-training Command, Naval Training and Distribution Center, Camp Peary, Virginia. All of the men were General Courts-Martial prisoners.

In answer to the question, "Do you feel that you received a fair trial?" the answers were as follows:

Yes	17
No	<u>5</u>
	22

The reasons given for complaint were:

Witnesses untruthful and wrongly influenced	1
Inequality of punishment for same offense	1
Punishment too severe	1
Evidence did not justify finding of "guilty"	<u>2</u>
	5

This study was made at a Re-Training Command where men convicted by General Courts-Martial are sent after initial screening, when found by the prison Administration Officers as restorable material. The prisoners of this Command also include men, confined in Naval Disciplinary Barracks, who have shown themselves worthy of restoration, prior to their eligibility dates for consideration under the present rules of clemency, as set out in the directives of the Secretary of the Navy, and applied by the Naval Clemency and Prison Inspection Board.

Five complained. One basis of complaint can hardly be considered seriously--the complaint of a man who committed bigamy that his punishment--three years and Dishonorable Discharge--was greater than the punishment given another for the same offense.

On the basis of rejection of such a complaint, four out of twenty-two -- or slightly under ten per cent--complained, leaving approximately 90 per cent expressing a favorable reaction to naval justice.

XV. FINDINGS AND RECOMMENDATIONS

In answer to the question "Did you receive a fair trial?" the five hundred (500) prisoners interviewed answered as follows:

	<u>Yes</u>	<u>No</u>	<u>Total</u>
Portsmouth, N. H.	83	17	100
Terminal Island, San Pedro, Calif.	61	39	100
Boston	49	2	51
Great Lakes	79	7	86
Camp Elliott, San Diego, California	29	4	33
Marine Base, San Diego, California	19	6	25
Camp Shoemaker, California	32	8	40
Treasure Island, California	41	2	43
Camp Peary, Virginia	<u>17</u>	<u>5</u>	<u>22</u>
	410	90	500
Total: "Yes"	410		
"No"	<u>90</u>		
Total	500		

Accepting as true, for the purposes of this Study, all of the complaints alleged, the conclusion follows that 18 per cent of the 500 men felt that they had not received a fair trial while 82 per cent of the men felt that they had been treated fairly by the naval Courts-Martial. As has been pointed out, some fifteen complaints were on their face contradictory, and for other reasons, plainly invalid. If this number be deducted, the percentage of five hundred (500) who felt that they had received a fair trial would be 85 per cent.

Comparatively, the percentage under the 82 per cent or 85 per cent finding gives solid reasons for concluding that Naval Courts-Martial functioned justly and fairly in the overwhelming proportion of cases. It is submitted that this percentage of favorable reaction in such a broad cross-section of five hundred cases would not be found in the corresponding cross-section of prisoners confined as a result of Federal or State criminal prosecutions. This does not mean that there were no cases of injustice. That boast cannot be made by any tribunal subject to human error. Further, it does not mean that the system of justice cannot be substantially improved as set forth in some detail hereafter.

Ninety prisoners alleged one hundred fourteen reasons for complaint. These may be divided into thirty-five types which are shown on Table B, page 30. The principal bases of complaints may be considered under the heading of:

- (a) Complaints concerning counsel
- (b) Concerning the prosecution
- (c) Concerning the court

XVI. COMPLAINTS CONCERNING COUNSEL

Forty-two (42) of the one hundred fourteen (114) complaints were directed at Naval Counsel. This heavy proportion held true generally in several places where prisoners were questioned. Consequently, it may be concluded that there were some solid bases of complaint concerning the qualifications and the trial judgment of a number of those who defended Courts-Martial. Of the forty-two (42) complaints concerning Counsel, fourteen (14) complained of wrong advice of counsel for prisoner's plea of "guilty" while eighteen (18) charged counsel with incompetence either generally or in some part of the proceedings. Seven (7) complained of the refusal to provide naval counsel of their choice--one (1) of the refusal to permit civilian counsel of his choice--one (1) that he was not provided with counsel and one(1) that he was refused permission to obtain an attorney.

- - - - -

XVII. COMPLAINTS CONCERNING THE PROSECUTION

Complaints against the method and manner of prosecution total some fourteen (14) of the aggregate complaints. Four (4) complained vigorously against the type of identification, claiming that the complaining witness identified him alone rather than in a line or group from which identification should be made. Two (2) claimed that signed statements admitting guilt were procured from them by duress. Other complaints included undue lapse of time before prosecution, place of trial distant from scene, and available witnesses for the defense; failure of prosecution to produce requested information; prosecuting upon a more serious type of offense than justified under the circumstances; and (1) charged an officer with undue influence upon a witness.

- - - - -

XVIII. COMPLAINTS AGAINST THE COURT

Eight (8) complained generally that the court was prejudiced while the same number complained that the court was inattentive. More particularly, two (2) charged the court with restricting the evidence unfairly; two (2) complained that the court interfered with the fair presentation of the defense or failed to wait for defendant's witness en route from a point in the same city.

One (1) prisoner charged that his commanding officers after asking for an explanation of the circumstances, later sat, as senior member of the Courts-Martial. Another stated that the senior member of the Shore Patrol sat as senior member of his Courts-Martial.

A few prisoners charged inequality of punishment of similar offenses. Others complained of the severity of the sentence. It is interesting to note parenthetically that twenty-one (21) of the forty-two (42) who answered the question, "Did you receive a fair trial" answered "Yes--but", claiming that the trial was fair but the sentence was too severe.

- - - - -

XIX. TRAINING FOR THE FUTURE

It would appear the greatest number of the most credible complaint were directed at Naval Counsel. As has been pointed out before, the priority claims upon men and skills for other duties, precluded the possibility of an adequate supply of defenders with legal education and trial experience. Under such conditions, it was inevitable that many defenders were not trained in the law or in the judicial process and that many more had a hearty dislike for this particular task. Moreover, the tools to work with, particularly the "Manual of Courts and Boards", were confusing, unduly complicated, and in many respects hardly intelligible to the non-legal trained defender. It is not difficult to understand how in such circumstances some young officers hurried men into pleas of "guilty" with unwarranted assurance of nominal punishments or tried the Courts-Martial under distinct handicaps.

Probably the great majority of defense counsel in Navy Courts-Martial in World War II were members of the Reserve. While it is true that a substantial percentage of the members of general courts-martial were Regular officers, yet it is probably true that the majority of the members of Summary and Deck Courts-Martial were Reserve Officers. It may be reasonably concluded that in the overall picture, including all courts, the majority of members were Reserve officers. This conclusion seems confirmed by the following figures of Naval officers in World War II: Regular officers 48,423, Reserve officers 271,655, giving a ratio of over 6 to 1 of Reserve officers to Regular officers. Thus, the errors or inadequacies of Naval justice may be attributed to both the officers of the Regular and Reserve. Consequently the plan to correct whatever faults exist, in any long-range view, should embrace the indoctrination and training in Naval justice of Reserve as well as Regular officers.

XX. ARTICLES FOR THE GOVERNMENT OF THE NAVY

The chief written source of the basic laws in naval discipline is contained in the Articles for the Government of the Navy, originally enacted in 1798. It is generally agreed that those Articles need revision to effect:

- (1) a simplified and more orderly arrangement.
- (2) the elimination of material which has become anachronistic.
- (3) the clarification of several basic elements of naval justice, such as jurisdiction of criminal offenses, and the nature and limits of punishment in time of war as well as peace, and the importance of vigilant scrutiny of identification testimony and the need for equality of punishment.

The several types of disciplinary proceedings, Captain's Mast, Deck Court, Summary Courts-Martial, and General Courts-Martial should be retained. However, it is suggested that (4) the jurisdiction of Summary Courts-Martial be reasonably enlarged to dispose of cases which are too serious for a Deck Court and yet not sufficiently serious to justify a General Courts-Martial.

It is recommended (5) that the function of Judge Advocate and prosecutor in Summary and General Courts-Martial be separated. This would effect a reform of the present anomaly of having one person perform the dual function of legal advisor to the Court as Judge Advocate while at the same time acting as a moving party as prosecutor. Moreover, in General Courts-Martial, it is suggested (6) that the Judge Advocate have authority to advise upon questions of law, and that such advice or ruling be binding upon the Court to the extent that his ruling must be followed by the Court, or the Court must note upon the record the reasons for the ruling given by the Judge Advocate and the Court's reason for the rejection thereof.

It is recommended (7) that the number of officers of a General Courts-Martial be reduced from the present requirement "not more than thirteen (13) nor less than five (5)--as many officers not exceeding thirteen (13) as can be convened without injury to the naval service." It is submitted that a requirement of not less than five (5) and not more than seven (7) would provide a more efficient number, particularly where all sentences of death must be unanimous of the Court.

It is recommended (8) that the trial Court be given the power of authority to recommend suspension of sentence and probation. It is submitted that the trial Court itself, nearest in point of time and in observation of the witnesses, defendant, etc., has the best information upon which to recommend suspension of sentence of probation.

It is further recommended (9) that the following personal guarantees be incorporated into the Articles for the Government of the Navy.

"Personal Guarantees"

(a) No person subject to these Articles shall:

- (1) be compelled to testify against himself; or
- (2) be placed twice in jeopardy for the same offense; or
- (3) be deprived of life, liberty, or property without due process of military law; or
- (4) be subjected to any cruel or unusual punishment.

(b) Every person brought to trial under these Articles shall:

- (1) be entitled to a speedy trial before an impartial court; and
- (2) be furnished a true copy of the charges and specifications preferred against him;
- (3) be confronted with the witnesses against him, except as may otherwise herein be provided; and
- (4) be entitled to the assistance of defense counsel of his own choice.

While it is true that these rights are recognized explicitly or by implication, yet it seems desirable to incorporate them explicitly into the basic law. This seems advisable, particularly in reference to the right of speedy trial which needs strengthening in the light of war-time experience.

The inclusion of a civilian as a member of the Board of Review, as provided since the beginning of this study, is recommended (10) as a permanent feature of the system of Naval Court-Martial review.

It is further recommended (11) that in a Court of Inquiry or Board of Investigation, any person who has a legitimate interest in the subject matter, be entitled to be present and to be represented by counsel.

XXI. MANUAL OF COURTS AND BOARDS

While the "Articles for the Government of the Navy" constitute the basic law of navy discipline, the official text book and most useful guide is the "Manual of Courts and Boards." If it be true, as it appears to be, that the bulk of justified complaints against the conduct of Courts-Martial are directed particularly to the lack of training, understanding of the law, and trial technique of naval counsel, the fault points to the present Manual, which in the opinion of all qualified critics, is in need of drastic revision.

More specifically, the following recommendations are submitted:

(1) Incorporation of basic changes recommended in the Articles for the Government of the Navy.

(2) Adoption of a functional organization of the material, starting with a concise historical summary and proceeding in a logical order of progression from Captain's Mast, to Deck, Summary, and General Courts-Martial, Courts of Inquiry and Boards of Investigation.

(3) The material on the successive steps of complaint and investigation should be carefully re-written, pointing out clearly such essential recommendations as the constitutional safeguards concerning admissions and confessions; the absolute requirement of identification from line or group in contrast to identification by the prosecuting witness and the individual defendant; and the sharp line of demarkation between official and confidential conversations with the defendants; and finally the strict prohibition of any person of whatever rank acting as official or informal interrogator in preliminary investigations and later sitting as a member of the Court.

(4) Careful presentation of detailed instructions for the conduct of the court martial in chronological sequence.

(5) A carefully drawn instructive section concerning situations where the technical elements of serious crimes may appear to be present, yet the exercise of a sound discretion would direct prosecution on a less serious charge. For example, some cases of technical burglary, larceny or even robbery following drunken brawls should be prosecuted under less serious charges in the exercise of a sound discretion which would yet impose adequate punishment.

(6) A complete review of the manual which would eliminate examples taken from a non-military experience and substitute examples taken from the broad experience of naval discipline.

(7) Transfer from the footnotes much important material now lost in the footnotes and incorporate that material in the main text.

(8) The elimination of all unnecessary legal phrases of art such as "de facto enlisted man" (page 192), "constructive possession of the owner" (page 9), etc.

(9) The whole text relating to evidence should be re-arranged, simplified, and written primarily for the non-lawyer legal officer.

(10) A new digest and index of currently effective court-martial orders should be drafted and correlated with the manual by a permanent key index.

(11) All subsequent references should follow the key index used in the new manual.

(12) A new and complete index of the manual should be made by specialists such as those employed now by the recognized key digests.

XXII. EDUCATION IN NAVAL JUSTICE

The revision of the "Articles for the Government of the Navy" and the revision of the "Manual for Courts and Boards", admittedly important, are only printed documents and as such only instruments in the hands of personnel who need to be instructed in the intelligent and just administration of naval discipline. The problem of enforcing discipline tries the capability and character of any officer. To the ordinary American officer, regular or reserve, such a duty is personally distasteful. Yet it is a vital function for military command. Human nature, when faced with this essentially disagreeable task, is too often prone, either to avoid action and thus lose effective discipline, or to react with extreme rigor which is disastrous to morale. Too often the problem of discipline and courts-martial seems to be regarded as a disagreeable addendum to military responsibility rather than an inevitable and important function of command. The Navy has faced this important task by erecting a School of Naval Justice at Port Hueneme, California, at which large numbers of officers and enlisted personnel are now being trained in naval justice. The school is well situated, well equipped, has an unusually capable administrative head, well-prepared texts and a carefully balanced curriculum. If any further suggestions might be made, it is that the time of the course should be lengthened as far as is practicable.

Along parallel lines it is believed that the Naval Academy itself might (12) re-examine the hours allotted, the contents included, and the examinations given in the administration of naval discipline and in particular, Courts and Boards. The Naval Academy should be certain that all graduates have received adequate instruction in the manifold problem of handling personnel and enforcing discipline, and particularly in the fundamental procedures of courts-martial.

For the reserve officers in the future who cannot attend schools in naval discipline in large metropolitan centers, correspondence courses should be provided to the end that the problems of discipline and the intelligent administration of naval justice be a necessary part of the training of every reserve officer.

XXIII. DELAYS IN TRIAL AND SENTENCE

Delays in trial and delays in reviews of the sentences of the courts martial have produced in many instances just and vigorous resentment.

While the delays in trial have been substantially reduced since the requirement of frequent reports of the numbers of men awaiting trial, the situation can be further improved by (1) the enactment of the right of speedy trial included in the personal guarantees recommended for inclusion in the Revised "Articles for the Government of the Navy", and (2) by the administrative requirement of a written report stating the reasons for any delay in trial over twenty (20) days.

XXIV. EXCESSIVE SENTENCES

The present "Articles" do not provide for any limitations of punishment for any offense committed during war. It is recommended that such limitations be enacted.

The present system of sentences, cautions the court "to adjudge a punishment adequate to the nature of the offense." Courts are admonished "not to presume upon the prerogative of the reviewing authority in exercising clemency," indicating that such exercise of clemency would in effect be a reflection upon the judgment of the reviewing authority. Vice Admiral Taussig, the senior member of the Naval Clemency and Prison Inspection Board, has estimated that over 75 per cent of the sentences considered in a three-month period were mitigated, and concluded that "courts usually impose excessively severe sentences which are mitigated with monotonous regularity."

The policy of the Navy as to sentences by the court, and the review by the convening authority, the Judge Advocate General and the Bureau of Personnel, is vigorously defended as necessary and the best means to attempt some uniformity of sentence by authorities, who have in mind the overall picture of the immediate problems of discipline of the Navy.

Any measures which will produce a more substantial uniformity of original punishment for the same type of defenses, and of equal importance the same type of offender, are desirable. Also desirable are such measures as will shorten the gap between the original sentence and the final sentence after review. A better education of all officers on the part of handling personnel and a clear understanding of court martial law and proceedings should improve this situation immeasurably.

XXV. INDEPENDENCE OF THE COURT

Any condition which correctly or mistakenly influences the court to give maximum sentences to avoid the ire of the convening authority should be terminated in fact or atmosphere. Closely connected with such a reform should be a consideration of the attitude and rights of superior officers towards members of a particular court-martial because of the decision in a particular case.

It has been recommended that the fitness reports of qualified judge advocates be made by the Judge Advocate General rather than the immediate superior officer. While it is clearly desirable to continue the present system of fitness reports of members of courts-martial by the immediate superior officer, yet the law, practice, and tradition of the Navy should make clear the prohibition of any official reprimand or unofficial prejudice towards any member of a court-martial because of a particular decision. The random complaints that a court is dominated by the convening officer seem for the most part unfounded. But in any rare case where such influence shall be exerted severe discipline of any officer involved should be promptly and vigorously enforced.

XXVI. ATTITUDE OF THE COURT

All officers should be well instructed in and sternly warned of their serious responsibilities of becoming a member of a court martial. Regardless of the apparent guilt of the defendant, the court should be vigilant to preserve an alert, conscientious, and courteous attitude in every court martial proceeding.

XXVII. EDUCATION OF ENLISTED PERSONNEL

The Navy recognizes officially its responsibility in the training of young men in discipline and morale. The religious and moral welfare of personnel is the primary responsibility of a carefully chosen Chaplains Corps.

The provision for frequent examinations and the encouragement of men to qualify for higher ratings, the large and varied library facilities on ships and shore stations, and technical training films are some features of the Navy's educational program.

The Navy's part in the encouragement of athletics of all kinds is evident in the generous provision of athletic equipment and the appointment of physical directors and athletic coaches. The recreational needs are further provided for by movies, dances, recreational facilities and canteens including the sound measure of providing beer in attractive surroundings as an encouragement to healthy temperance.

Education by films has become a recognized technique today. In addition to technical training films, the Navy has attempted to use films as one of the methods of inculcating discipline. In this particular aspect the Navy plans a further broadening of the film program in promoting self-discipline and morale. This forward step can become a powerful force in the prevention of thoughtless yet serious infractions of Navy discipline. A film of full length proportions could be taken from the human history of the five hundred personal cases covered by this study. It is suggested that such a film incorporate scenes starting from the initial pride of the recruit when departing from home to join the Navy, problems of adjustment and the attitudes to be taken, the easy pitfalls which are incident to a new freedom on liberty, and the serious results which follow breaches of morals and discipline. For example, petty thievery, perhaps in some instances not regarded too seriously in civil life, is always abhorrent to the Navy as a real disruption of the mutual

confidence in the security of personal property necessary aboard ship; the difference between a brawl in a civilian status and as a member of the Navy; the temptation to steal where huge supplies of property are available and prices offered are exorbitant, as for instance, \$20.00 for a mattress cover in Africa or fantastic prices for clothes, food, for canteen supplies almost everywhere. Furthermore, such a film should show the successive steps of indiscipline which lead to far reaching consequences after termination of military service. The film should show such tragedies as occur today after dishonorable discharges or bad-conduct discharges--inability to gain employment, rejection of application for necessary bonds in many positions including civil service and in minor civilian financial responsibilities such as cashier or store manager. The prospect of such films becoming potent vehicles of instruction is confirmed by the numbers of offenses observed in this study, which while serious and requiring severe discipline, were yet the end results of careless habits of indifference and thoughtlessness rather than deliberation and viciousness.

XXVIII. THE NAVY AND THE AMERICAN HOME -- Conclusion

The writer is aware of a temporary reaction against the exercise of military discipline, a natural sequel to a long period of strain, anxiety, and privation. No reasonable person can deny the existence of some faults in military administration, including courts martial. But it is submitted that the remedy does not lie in irresponsible and emotional attacks of a general nature. These are unwise, particularly where the civil and the military forces of this nation need mutual understanding and friendly cooperation. For both the military and the civil population are faced with a continuing emergency, the nature, the seriousness, and the time elements of which are not certain in the mind of any reasonable person. The problem of the proper administration of discipline of personnel is properly that of the Navy. But the Navy treats only with the youth given to it by American fathers and mothers. Before induction into the Navy the initial training in character or lack of it is under the control of the home. The broad experience of this survey confirms the conclusion that a home marked by divorce, desertion, drunkenness, or discord does not produce a self-disciplined youth. Every parent has the realistic and stern duty to find out now whether in the character, habits and outlook of his son are to be found any of the elements of a future member of the "potential army of six million criminals" of which J. Edgar Hoover, Director of the Federal Bureau of Investigation, warns in an alarming report. In that report he states that "if all parents will fill their obligations we would soon expect a sharp decline in crime" and concludes that the antidote for lawlessness, which includes breaches of naval discipline, is "the development of character of all our citizens."

Truly, the Navy and American parents have a very real and substantial identity of interest in the religious and moral training and the self-discipline of American youth. Surely no intelligent man would dare to assume the role of prophet of the future in these uncertain times. But all reasonable men may be certain in the conclusion that the American home by inculcating discipline and the American Navy by adopting reasonable reforms and improvements can in just that measure, strengthen the national defense and thus doubly ensure the future existence and progress of our mutual inheritance and possession---the United States of America.

APPENDIX

	<u>Page</u>
"A" Sample form of case history for interview	1
"B" Table showing reasons for complaint by types and by places	4 ff

“A”

App. 1

U. S. NAVAL PRISON
Portsmouth, N. H.

NAME: Day, Thurston, D. Rating Previous
to Court Martial: Cox.

Prison Number: 25311 Color: White

MARITAL STATUS: Married Widower Separated
Single X Divorced

PLACE OF TRIAL: Brooklyn, N.Y.

OFFENSE: 1. AWOL 92 days
2. Theft
(of \$6 from a wallet)
3. Violation of a lawful order of the SecNav
(wearing another's peacoat)

PLEA: Pled guilty on theft
Pled not guilty on desertion

FINDING: Found guilty

PUNISHMENT: 3 years and a DD by CAA on 3-16-45

REVISION OF PUNISHMENT:

DO YOU FEEL THAT YOU RECEIVED A FAIR TRIAL? “No”

IF NOT, STATE WHY: Defendant objects that he pleaded “guilty” by advice of the counsel, and that it was a grudge temporary taking the money rather than theft.

THE COMPOSITE TABLES

Showing

- (a) Kind of Complaint
- (b) Place of Complaint

	Ports- mouth, N.H.	Termi- nal Island, Cal.	Boston, Mass.	Great Lakes, Ill.	Camp Elliott, San Diego	Marine Corps Base, San Diego	Camp Shoe- maker, Cal.	Treas- ure, Is. Cal.	Camp Peary, Va.	Total
1. No Navy counsel provided					1					1
2. Defendant could not procure attorney though he made request	1									1
3. Refused civilian counsel		1								1
4. Refused counsel requested		6						1		7
5. Navy counsel incompetent		9		1						10
6. Wrongly advised by naval counsel to plead "guilty"	4	6			2		2			14
7. Pleaded "guilty" on advice of Navy counsel who stated punishment would be less than given.	3									3
8. Navy counsel insisted on plea of "not guilty" when defendant desired to plead "guilty"	1									1
9. Navy counsel argued case at conclusion on basis of "guilty" instead of "not guilty"	1									1
10. Marine counsel refused certain information to defense counsel	1									1
11. Failure of Navy counsel to put defendant on stand							1			1

5497

	N.H.	Cal.	Mass.	Ill.	Cal.	Cal.	Cal.	Cal.	Va.	Tot.
23. Court rejected plea of illness which would have excused offense (absence)			2							2
24. Inequality of punishment for same offense							1		1	2
25. Punishment too severe							1		1	2
26. Court refused inquiry into prior injury which defendant claimed made him not responsible for offense				1						1
27. Signed statement procured under duress		2								2
28. Method of identification unjust and unfair		4								4
29. Charge made after undue lapse of time		1								1
30. Nature of offense substantially less than charged		4								4
31. Finding of "guilty" inconsistent with return of $\frac{1}{2}$ of "stolen money" to prisoner		1								1
32. Evidence did not justify finding of "guilty"		15		1	1	2	3		2	24

	N.H.	Cal.	Mass.	Ill.	Cal.	Cal.	Cal.	Cal.	Va.	Tot.
33. Tried at place distant from crime and witness							1			1
34. Refusal by court to accept excuse for absence						1				1
35. Failure of court to await arrival of witnesses for defense						1				1
Totals	18	57	2	8	5	6	10	3	5	114
