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# THE ADMINISTRATION OF MILITARY JUSTICE AT THE UNITED STATES DISCIPLINARY BAR- RACKS, FORT LEAVENWORTH, KANSAS

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Contrary to what appears to be the general opinion of the American public, wide-spread and long-standing conditions in this country usually are very truly reflected in the army, so it is not strange that the growing protest against the delay in the administration of justice in civil life should find its counterpart in the service. For years there has been an increasing effort on the part of the military authorities to expedite the trial of soldiers charged with military or criminal offenses. Minor offenses, as a rule, have been handled promptly and efficiently by summary courts, the cases usually having been disposed of within twenty-four or forty-eight hours from the time of commission of the offense. The more serious offenses, those properly triable by general court-martial, have presented a more difficult problem due to circumstances over which the War Department had little or no control. Large geographical departments, small, scattered, and frequently isolated posts, shortage of officers, etc., all operated to increase the time spent by an offender in confinement before trial.

To combat the effect of these conditions and in an effort to expedite the trial of men whose offenses were of such a nature as to render their confinement at the United States Disciplinary Barracks at Fort Leavenworth probable, the War Department, in January, 1917, established the Disciplinary Barracks as a separate general court-martial jurisdiction, and directed that all men charged with desertion, who surrendered or were apprehended in the Central and Southern Departments, and who, upon conviction, would probably be dishonorably discharged from the service and confined at that institution, be sent there for trial.

This action by the War Department probably was taken, primarily, to expedite trials and to reduce expenses, it being obvious that if a man were to be confined at the Disciplinary Barracks the cost of transportation there would be the same whether before or after trial, and if the trial could be expedited by transfer to that place before trial, the consequent saving in rations and clothing alone would justify the increased work thrown upon the Disciplinary Barracks authorities. It was considered probable that, other things being equal, the courts meeting daily and under the same roof as the reviewing authority,

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the delays usually encountered by sending records several hundred miles by mail to a reviewing authority would be minimized, if not entirely done away with, and discipline would be improved by punishment being more promptly awarded. The results have fully justified the expectations of the War Department; exact figures are not available, but conservative estimates place the average saving per man, for food and clothing alone, for the cases handled under this system, at about \$20.00. Since about 500 cases were handled during the first four months during which this scheme was in operation, the saving to the government has been considerable. The average period spent awaiting trial and result of trial has been greatly reduced, but exact figures for accurate comparisons with other jurisdictions are not yet available.

From the standpoint of the scientific administration of punishment, the War Department scheme outlined above has had one interesting development, new to the service, but following closely the lines of development in the more advanced and better administered courts in civil life.

The Department of Psychiatry was established at the Disciplinary Barracks in 1914 and has as its head the Medical Examiner, Major Edgar King, Medical Corps, United States Army, an officer of sound judgment and remarkable ability as a psychiatrist. All men sent to the barracks for confinement or for trial are, upon arrival, or shortly subsequent thereto, given a searching examination by the medical examiner. This examination is divided into two parts and is intended to determine the man's physical, mental and moral fitness for further service. The physical examination determines the man's fitness for further military service, irrespective of the offense with which he is charged, and reveals a higher percentage of unfit than is usually found elsewhere in the army. The second part of the examination is very comprehensive and is designed to classify accurately the individual according to accepted standards as regards mentality and to ascertain, in all its essential phases, the family history, personal history, military and civil record of the individual. It may be remarked that all facts revealed by the man under examination are treated as confidential, and are made use of only in the determination of what action is to be taken in his case subsequent to trial. The information derived from this examination is checked up by correspondence with former employers, members of the family, police authorities, various charitable associations, etc., so that a very complete record of the

man's past can be obtained upon which to base a fair prognosis of his future.

As a result of the above examination a varying percentage of the individuals examined are found to be definitely unfitted for military service (about 13% in the first 500 cases in this jurisdiction) and steps are immediately taken for discharge, or, as in the case of insanity, transfer to another institution.

When the examination by Major King does not definitely determine unfitness for service, the man is turned over to the casual officer as awaiting trial, or in case of a man already tried, is dressed in. If of the former class, and if his charges have already been received, he is furnished a copy and his counsel consults with him as to how he wishes to plead. The medical examiner is an associate counsel for the accused and information in his hands, as well as testimony by him, can be, and frequently is, made use of by the defense. If the charges have not been received a telegraphic summary of the man's offenses is requested by wire from his company commander and the charges are preferred by one of the Commandant's staff officers.

Should the accused wish to plead guilty, his case is immediately referred to one of the trial judge advocates and the man is brought to trial the same day or the following day. In case he does not wish to plead guilty and the witnesses cannot appear in person, the trial judge advocate immediately draws up interrogatories for the prosecution and these with the cross interrogatories and, if necessary, separate interrogatories for the defense are mailed at once, and upon their return the trial takes place and the case is disposed of.

Two courts-martial, each consisting of five or six members with a trial judge advocate, an assistant trial judge advocate, and a counsel, are in daily session and dispose of from three or four to as high as fifteen cases per day. Each case is tried on its merits, and in a large percentage of cases the bulk of the evidence is in the form of depositions; this in itself is unsatisfactory, because in many instance the facts brought out by the evidence presented are not such as to enable the courts to act with intelligence and a second set of interrogatories must be sent out. Owing to the numerous movements of troops in the last six months these interrogatories must be sent to widely separated points and in individual cases the difficulty in getting in touch with a material witness has been a fruitful source of delay. However, in spite of these unusual and unfavorable conditions, the average time in confinement at this station before promulgation of the sentence was, for the first 400 cases handled, only 24.9 days and for subsequent

cases has been materially reduced. This period includes the medical examination, preparation for trial, trial, action by the reviewing authority and preparation and promulgation of the order in the case. In view of the serious nature of the offenses charged, the average time in confinement is probably much less than in a similar number of cases for similar offenses tried before any criminal court in civil life.

Of the 400 cases considered, only 349 actually went to trial; 51 cases were disposed of without trial, in these the accused was either discharged as unfit, transferred as insane, or released on account of the Statute of Limitations running for the particular offense charged, etc. In these 349 cases there were 3 total acquittals and 346 convictions in whole or in part. In all there were 491 offenses charged, the greatest number being for desertion, 340. Other serious offenses were as follows:

|                             |    |                               |   |
|-----------------------------|----|-------------------------------|---|
| Escape .....                | 27 | Burglary .....                | 1 |
| Larceny .....               | 20 | Forgery .....                 | 6 |
| Embezzlement .....          | 14 | Disobedience of orders.....   | 3 |
| Sleeping on post.....       | 3  | Threats to kill.....          | 1 |
| Quitting guard .....        | 3  | Allowing prisoner to escape.. | 1 |
| Absence without leave.....  | 4  | Assault .....                 | 5 |
| Losing clothing .....       | 6  | Drunk and disorderly.....     | 8 |
| Losing equipment .....      | 34 | Misuse of government prop-    |   |
| Breach of arrest .....      | 8  | erty .....                    | 4 |
| Fraudulent enlistment ..... | 2  |                               |   |

Of the 491 offenses alleged, the trial resulted in 365 convictions and 126 acquittals, and it might be noted that in 51 cases men charged with desertion were found guilty only of absence without leave; the courts in awarding punishment adjudged dishonorable discharge in 281 cases in addition to varying terms of confinement, which, for the 349 cases considered, totalled 522 years and 4 months.

When the trial in any particular case is completed, the record is forwarded to the reviewing authority, the Commandant, who turns it over to his legal adviser, the Judge Advocate of the Disciplinary Barracks, for review and recommendation. The review of the Judge Advocate covers all the legal questions raised, sufficiency of proof, admissibility of evidence and compliance with statutory requirements, etc.

While the man has been awaiting trial the Medical Examiner has completed his verification of the examination of the accused and has forwarded his recommendations to the Judge Advocate. This recommendation embodies the views of the Medical Examiner as to the pos-

sibilities of the man for future service, or in case unusual or extenuating circumstances have become known, they are cited for the benefit of the reviewing authority, and briefly indicates the Medical Examiner's idea as to the amount of punishment. If the Medical Examiner considers the man a good risk for restoration to the colors, he recommends suspension of dishonorable discharge in case one be adjudged, or in certain cases, if the man be unsuited for further service, and if discipline will not suffer thereby, he may recommend that any confinement awarded be remitted, this latter action being frequently taken in the case of married national guardsmen whose records indicated that they had properly supported their families before being called into the federal service. But whatever the recommendation of the Medical Examiner may be, the Judge Advocate considers the case on its merits and then places the record before the reviewing authority with his recommendation and that of the Medical Examiner. The ideas of the Medical Examiner and the Judge Advocate usually coincide, but when they do not, the reviewing authority takes such action as the circumstances warrant; the finding of the court may be approved and then certain remissions, mitigations or suspensions be made, or the finding and sentence may be disapproved in whole or in part. The reviewing authority is guided by a desire to save as many good men to the service as possible and to see that, in so far as possible, equal punishment be given for similar offenses. It may be mentioned that of the 349 cases mentioned above, the reviewing authority suspended the execution of dishonorable discharge until the soldier's release from confinement in 134 cases, and of the 522 years and 4 months confinement awarded by the courts, the same authority remitted 103 years and 5 months. This suspension of the portion of the sentence that involves dishonorable discharge until the soldier's release from confinement is intended to give the man a certain period of time in which by positive action he can evidence his reformation and be restored to the service without the stigma of a dishonorable discharge appearing upon his record.

The following cases may serve to illustrate the action taken by the reviewing authority and the reasons therefor, upon certain classes of cases that not infrequently come before him:

*Case I*—John Smith was the son of average parents in a large city; his mother spoiled him; he enlisted fraudulently, and, after serving on the border until the glamor of a soldier's life wore off, he became home-sick, deserted, was apprehended, sent to the Disciplinary Barracks, tried and convicted. Investigation showed that he was

actually only 16 years of age, that he had been arrested for joy riding, had not attended school regularly, and was mentally rather undeveloped, but not bad. Correspondence with the parents indicated that they had awakened to a realization of the necessity for action, and that they were anxious to do what they could for their son. It appeared that confinement in the Disciplinary Barracks could do little or no good for one so young, but that home influence and supervision might make a useful citizen out of the boy. The confinement in consequence was remitted.

*Case II*—John Jones was a farmer, married, with a couple of children, and a member of the local militia company. When the call of June 18, 1916, came, he responded and was sent to Texas. For some unknown reason he was not discharged, notwithstanding that he had dependent relatives. His wife fell ill, John Jones deserted, returned home, and looked after her. He was apprehended, tried, and convicted. Investigation showed that he had always taken good care of his family, that he was not particularly well suited for military service, and that if confined his family would be a charge upon the community. The confinement was remitted.

*Case III*—John Brown came from the slums in a large city; he enlisted, deserted, was tried and due to a fault in the prosecution was convicted of absence without leave only. Investigation developed the fact that the man was a drug user, had had a long police record and was a menace to any organization in which he might be serving. Upon completion of his term of confinement a board of officers found him unfit for service under Paragraph 148½ Army Regulations, and he was discharged.

*Case IV*—John Green served one enlistment and was discharged with a character "Excellent." After a year on his second enlistment he went to town one night, got drunk, and disappeared. After an absence of six months he surrendered, pleaded guilty to desertion, and was sentenced to dishonorable discharge and confinement for two years. It appeared that the man had an honest desire to redeem himself, his confinement was cut to one year, the dishonorable discharge suspended, and the man put in the disciplinary battalion at once, and there appears to be every probability that he will make good.

So much for the means of getting the man "behind the walls," the greater problem is the one that faces the authorities of all penal institutions, that is, getting the man out again in such a condition that he will be a better citizen or, in this particular case, a better soldier, actual or potential, than before the commission of his offense. As

yet, in the army, as in nearly every other place, delinquents are classified in accordance with the offenses they have committed. In time doubtless, the type of delinquent rather than his offense will be considered and men will be handled as individuals rather than as representatives of a given class of delinquents.

It is the present policy of the War Department to hold eligible for restoration to the colors any man who has been dishonorably discharged for any offense not involving moral turpitude. All men of this class at the Disciplinary Barracks are given a chance to go into the Disciplinary Battalion where they are given an intensive course of military training. The procedure is roughly as follows:

A man is tried for desertion and convicted, his psychiatric examination has shown him to be of average mentality and that, as far as can be determined, there are no serious blots on his past. He says he desires restoration: The reviewing authority possibly has suspended his dishonorable discharge and ordered him to the Disciplinary Battalion at once. If the man works and makes good, at the end of four (4) months, a board of officers, three in number, convene and consider his case. If, upon recommendation of the board, the man is restored, he remains three (3) months more at the Barracks as a member of the restored detachment (this three months being a sort of probationary period in which the man is given an advanced course of military instruction), after which the man is transferred to some line organization. The excellence of the system of training followed in the Disciplinary Battalion is attested by the fact that over 80% of the men restored make good, many of them later being discharged as non-commissioned officers with a character "Excellent."

The men who are not eligible for restoration are given, in all cases where they so desire, a course of vocational training, either in agriculture or in one of the mechanic arts, as they may choose, in order to fit them to be self-supporting in some useful field upon discharge. The more ambitious are given instructions at night in ordinary grade school subjects as well as in telegraphy, short-hand, type-writing, etc. Those who express no choice in training are given one of the courses for which they appear suited. The Disciplinary Barracks runs a farm colony in which various phases of chicken and hog raising, fruit and vegetable growing are taught. It is hoped that in the near future this will be further extended by the addition of a

dairy herd and one or more units of farming under glass. In the various shops, men are taught tailoring, boot and harness making, tin-smithing, blacksmithing, carpentry, and to a limited extent mechanical and electrical engineering. Last but not least, the parole officer maintains an employment bureau through which any man who so desires can obtain a position in any line in which he has qualified at the barracks. For some reason there seem to be more jobs than men, so no man need leave the place without good prospects unless he so wills.

The latter paragraphs perhaps pertain more to penology than to the administration of justice, but as the two should go hand in hand, this phase of Disciplinary Barracks life has been touched upon to show the opportunities accorded the inmates as well as the efforts of the authorities to save and to return either to civil or military life the highest possible percentage of self-supporting law-abiding citizens