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## MODERN PENAL METHODS IN OUR ARMY

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JOHN H. WIGMORE

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[In Vol. VIII, No. 3, of this JOURNAL for September, 1917, there was published an article by Major George V. Strong on the penal methods in use at the U. S. Disciplinary Barracks at Fort Leavenworth, due to the initiative of Major-General Enoch H. Crowder, Judge Advocate General, in 1912.

The extension of these modern scientific and practical methods to the cantonments of the new National Army has been the subject of much attention by some of the officers whose experience has lain in that direction. A number of reports have been received at the Judge Advocate-General's office, from judge advocates and commanding generals of the divisions. The Disciplinary Barracks Regulations, 1915, which were framed only with a view to the Regular Army prisoners at those barracks, would need some revision in order to fit the conditions at the new National Army cantonments. With such revision the system could then be extended to the cantonments by constituting at each of them a branch of the U. S. Disciplinary Barracks (as the statute authorizes the Secretary of War to do).

Such a revision has been prepared for the approval of the Adjutant-General of the Army (under whom the military prisons are now placed by law) and of the Secretary of War. Pending such approval, the revision of the regulations and the extension of the system remains in abeyance (although in a few cantonments its principles are being applied). In the meantime it will be of interest to the readers of the JOURNAL to peruse an explanatory statement, compiled by Lieut.-Col. John H. Wigmore, Judge Advocate, N. A., from memoranda of Major George V. Strong, Judge Advocate, U. S. A., and Major Edgar King, Medical Corps, U. S. A., both of whom were formerly stationed at Fort Leavenworth. Major King may be regarded as the foremost authority in the Army on criminal psychiatry; his personal genius for diagnosing and handling criminal defectives is comparable to that of Dr. William Healy, formerly of the Cook County, Illinois, Juvenile Court.

This statement is an exposition of the principles and methods of the system, and of its proposed application to the new National Army. It may serve as a general guide for those who have not had direct

experience with the system as developed so successfully at the U. S. Disciplinary Barracks during the last six years.—Ed.]

#### GENERAL SCOPE AND PURPOSE OF THE DISCIPLINARY SYSTEM

1. In the year 1915 the military establishment consisted of some 108,000 men. During that period the total of court-martial cases was, in round numbers:

	Trials	Convictions
General .....	5,300	5,000
Special .....	2,500	2,300
Summary .....	41,000	40,000

The dishonorable discharges totalled 3,600.

With a military establishment now on a footing of more than 800,000 new men, and presumably soon to reach 1,200,000 and more, most of them in cantonments under active preparation for service, the system of penal justice takes on an enormous increase in proportions, and the problem of saving the wastage becomes a serious one and one to be handled with a view to its bearing on the highest efficiency of the service. Applying the above percentage to 1,000,000 men, the probable annual number of convictions may become: General courts-martial, 50,000; special courts-martial, 23,000; summary courts, 400,000, and the total number of dishonorable discharges, 36,000.

To keep down these totals and to save for the fighting army the greatest number of savable and efficient men is the object that has prevailed in establishing at the cantonments the system of disciplinary battalions and disciplinary barracks, which has already proved so effective, after five years' trial, at Fort Leavenworth, Alcatraz, and Fort Jay.

2. The plan vests the handling of actual or potential military offenders in each division in the division commander (under the direction of the Adjutant-General), who in the exercise of his power makes use of the following three offices:

1. The Medical Officer.
2. The Disciplinary Battalion.
3. The Judge Advocate.

These three offices are inter-dependent. To accomplish the desired result we must have, first, the medical officer (a specialist in nervous and mental diseases), to make the preliminary mental and physical examination; this must be checked by correspondence with

the man's family, teachers, employers and associates; his complete history (physical, mental and moral, civil and military) must be established in order that a reasonably correct prognosis may be made for his future. We must have then a judge advocate who can weigh the action of the court that tried the man and act upon the recommendations of the psychiatrist in presenting the case to the reviewing authority; he must consider the welfare of the man, the interests of the government, and the demands of discipline in the service, in his action on the case. Lastly, we must have the disciplinary battalion, where the action taken by the reviewing authority must be put in effect. These three officers are mutually dependent; none can exist and *get its full results* without the others.

3. In each cantonment the following would be the process: A medical department, working in close co-operation with the division judge advocate, will examine all men who are to be tried for serious offenses, and will separate them into two classes: First, those mentally or physically incapable of rendering service; second, those physically and mentally capable of rendering service. All of these latter, except those convicted of really major crimes, who will be comparatively few, will be assigned to the divisional disciplinary barracks, one of which will be established in each division. After training, restore all suitable men to regular organizations, and send all others to Fort Leavenworth or to the special battalions or regiments which may be formed as the need arises.

4. This plan will work out in practice as follows: The path of the offender will be:

1. Commits offense.
2. Confined for trial.
3. Examined mentally and physically.
4. Reported mentally and physically fit, or unfit.
5. If unfit, action according to circumstances, but separated from service in any case.
6. If fit, tried, and sentenced, if found guilty.
7. After sentence, placed in disciplinary battalion (unless guilty of major crime).
8. After three months' training, restoration, either to regular organization or to one of the special units.

5. Experience at Ft. Leavenworth Disciplinary Barracks has demonstrated that the great majority of delinquents fall under one of the two following general classes:

- A. Those demonstrably totally unsuited to remain in the service.
  1. Mentally undeveloped men.
  2. Insane or feeble-minded.
  3. Abnormals, not amenable to ordinary discipline:
    - (a) Drug users,
    - (b) Alcoholics, either periodic or constant;
    - (c) Men having a criminal record in civil life.
  4. Abnormals or subnormals not criminally inclined.
  5. Miscellaneous unfit types.

B. Those who may under proper handling be saved to the service and become assets instead of liabilities.

As the system of recruiting for the Regular Army has been incapable of keeping such men out of the service, it appears to be a fair assumption that the selective draft system will not be more efficient in keeping them out of the National Army; possibly the percentage of these men will be higher in the National Army than it has been in the Regular Army. The question then arises as to how these actual or potential offenders against military law are to be handled. It is perfectly obvious that all who commit offenses can be totally eliminated, either with or without a period of confinement, by trial by general court-martial or under the provisions of paragraph 148½ Army Regulations; but that method is not economical either as regards men or money.

In order to avoid the wastage indicated above, to save as many potentially good men to the service as possible, and to eliminate the physically, mentally or morally unfit with the least amount of trouble and annoyance to the organization commanders, the medical officer's work, in conjunction with the division judge advocate and a divisional disciplinary battalion, furnishes the most economical method. All habitual offenders, those who have committed serious offenses, and the misfits who are a drag upon the organization, should be sent to the medical officer, whose recommendations in the premises should be submitted to the division judge advocate before the charges are referred to a court for trial, or the case otherwise disposed of. If the psychiatric examination indicates that the man is unfitted for military service, the case can go to trial or the man can be disposed of under A. R. paragraph 148½. If this examination indicates that the man is suitable for military service but is in the wrong branch, it will be a simple matter to transfer him to another organization. If the examination indicates that special training is necessary, it can be given under competent officers in the disciplinary battalion.

6. The operation of this system will improve discipline by insuring intelligent handling of the individual delinquent by trained men, removing the drags and misfits from their organization, saving potentially good men to the service, and saving the Government much money that would otherwise go to the support of a non-productive body of general prisoners whose confinement would result in no good to the individual, and whose incarceration would be unnecessary for disciplinary purposes.

The method does *not* contemplate getting rid of *any* man who can by training or otherwise serve the government in any useful military capacity. On the contrary, the scheme is intended to *save* to the government: (1st) from 25,000 to 40,000 men per year (based on an army of 1,000,000) who under the present system would inevitably be lost, and (2d) to save the government an enormous sum of money that would otherwise be used to maintain in military prisons, in a comparatively unproductive state, a great number of men who, under our present system, would be convicted of military offenses, dishonorably discharged and sentenced to varying periods of confinement, which would serve no good ends as far as the reformation of the individual or maintenance of military discipline is concerned.

#### GENERAL SUGGESTIONS AS TO THE ACTUAL OPERATION OF A BRANCH DISCIPLINARY BARRACKS AT A CANTONMENT

The stockade should afford facilities for the confinement of all classes of prisoners. It should be of sufficient capacity to care for the number of prisoners to be expected during the six months or so in which a division is likely to be in camp, supposing that only a moderate number will be sent away.

Assuming that the institution is in operation, what will be the treatment of the man confined awaiting trial on general charges? Immediately after his confinement, while the charges are being prepared (say, in the first two days), he should be sent to the medical officer who is a specialist in nervous and mental diseases. This medical officer should interview him in private, questioning him tactfully, and endeavoring to get his confidence; the prisoner being given to understand that statements which he makes in this medical examination will not be used against him at his trial, but that they may be used in determining his fitness or unfitness to remain in the service, or in determining in what capacity he should remain in the service.

The medical examination should include physical and mental

examination, and should secure a complete history of the patient's life, on a prepared form. The form in use at Fort Leavenworth Disciplinary Barracks is a result of long experience, and is an excellent one. This form, containing a full report of the examination, including the history, should be filed as a permanent record, and a copy of it forwarded at once to the division commander, to enable the judge advocate to have the advantage of the report in deciding whether or not the prisoner shall be brought to trial.

This report may show a man to be physically unfit. It will do so in a considerable number of cases, despite an already careful examination on acceptance for service. Cases reported as physically unfit, if the unfitness be definite, should ordinarily not be tried, unless they are charged with a particularly vicious act. Physically unfit men are a great nuisance and burden in any institution handling delinquents; the interests of the service will be better served by discharging the man than by retaining him. Nor should the mentally unfit be brought to trial. No benefit is gained by it. This fairly large percentage of men should be separated from the service at once, with or without confinement in the asylum for the insane.

Those found mentally and physically fit should be considered for trial in the usual way. If convicted and sentenced, they will enter upon what may be called a stage of probation.

The report of the medical officer, supplemented by correspondence in suitable cases, will give the commandant of the barracks a very good insight into the type of man he is dealing with. When the commandant comes to know his medical officer well, he will find in most cases that he can very well leave to the medical officer the selection of the men for disciplinary training with a view to further service. To accomplish this, all the commandant need do is to issue general orders outlining, in a general way, what are suitable men for the battalion, and to require the medical officer then to indicate from his records and study which men come within these classes.

Within (say) two weeks after the men begin serving their sentences, all those considered fit should be put into disciplinary companies for training. Here they will be closely observed by the officers and non-commissioned officers, who should be able to form a quite satisfactory opinion as to their fitness for further service, within the period of three months which their training should include. At the end of the three months the commandant will require consideration of each man by a company or battalion commander, with a written report stating whether or not they recommend his restoration to duty,

and if they do not recommend restoration to duty, whether they recommend further training in the battalion or reduction to numbers to finish their sentence. The men should then be sent again to the medical officer for a final examination. This will give the commandant an excellent insight into the man's character, so that he should be able at a short interview to form an opinion as to whether or not he desires to recommend the restoration of the man to an honorable duty status. Three months will probably be long enough ordinarily to train these men in the battalion.

They should not be asked, at the close of that period, whether or not they want to go back to duty. The training can be made a part of the qualifications for return to duty, but the mere fact that a man does not want to return to the army should not permit him to avoid restoration after an offense, if he is a type who could make a good soldier if he wishes. In other words, it should be made very difficult for a man mentally and physically capable to secure release from service by committing an offense. By not executing the dishonorable discharges imposed by courts, it will be a simple matter to turn them into duty at the proper time.

Regarding men who are convicted of misdemeanors of a non-military nature, either alone or in connection with military offenses, this class, under Par. 16, Clause 2, of the Regulations, may be considered for further service. By study of the case, the commandant will be able to separate those whose moral character is so bad as to make it probable that they would continue to be offenders. In many instances such men can and should be kept on probationary discipline, instead of being placed irrevocably in the class with persons guilty of felony. Whatever may be the dictates of peace-time policy, there are several reasons for this policy in war-time. In the first place, the offense is one which may not be due to ultimate unfitness for military service, but to casual temptation and to inexperience in military standards of honor; and the circumstances and history may put this beyond a doubt. In the second place, this measure will remove the inducement, often operating, to commit a misdemeanor with the object of escaping military service. In the present war conditions, it is especially important to remove all possibility of this motive. And finally, the prime purpose of saving all possible material for the fighting forces should dominate the penal system; and there is sure to be a lot of fighting capacity in this class. Should such offenders be numerous, a special disciplinary company can be formed, to be employed for special service on arrival at the front.

Men convicted of serious offenses, whether military or non-military, should not be returned to duty. The character of offenses which should bar absolutely will be apparent to officers, and will be such offenses as usually carry with them very severe penalties.

The question of forming special organizations to take care of the men who are considered too bad to go back into the regular company should be considered. It might be worth while. A better opinion of this can be formed when the disciplinary barracks branches are in operation and the number and character of prisoners to be cared for is determined. It is probable that those in charge of the cantonment disciplinary barracks will, by the proper form of encouragement and training, be able to return a very large number (presumably half of the men convicted by a general court-martial) to an honorable place in the ranks, at or before the time the division sails. There will probably be a certain number of men who are more or less chronic absentees, who nevertheless if once taken abroad, would be satisfactory soldiers. The question of holding these men under confinement until shortly before their organization sails and then restoring them to duty should be considered.

*Garrison Prisoners.* If the experience at the camps is the same as that at posts of the regular army, there will be a very considerable number of men who will be serving guardhouse sentences of from three to six months given by the inferior courts. It is believed that the imposition of these sentences has heretofore proved more of a detriment to discipline than a help, not because the man should not be temporarily deprived of his liberty of action and required to perform some hard labor, but because in the usual guardhouse the soldier has lost touch with his military training, and opportunity has been given him to stagnate, to perhaps form bad associations, and to lose interest in his military work. By placing these garrison prisoners, however, under disciplinary barracks regime, with a half day's very intensive drilling and instruction each morning, a half day's work in the afternoon, and deprivation of liberty in the guardhouse, it does not become a particularly attractive place; for the work is quite as hard as in a company (which has not always been the case heretofore), and with a restriction of privileges it becomes a real punishment. This should tend to deter men. Another very great advantage is that by the collection of these men into groups for the whole division, with a very careful study by a medical officer as well as the line officer, it has created a suitable opportunity to weed out of the companies themselves chronic misfits who are such a drag and detriment to an organization.

By the examination on entrance into the disciplinary organization, the training officers learn which men it is that are slow in learning, which men it is that are lazy, which men do not try, etc., and by bestowing a little attention on them may improve them. The same careful observation will determine before the garrison prisoner's sentence expires those who are physically and mentally unfit. It thus creates an agency making it really easy to discover and eliminate the percentage of defectives early, who would otherwise remain indefinitely in companies to the detriment of everybody.

Another point of importance is that by the more or less individual training given in the battalion and by the careful individual study made, it will be found that a considerable number of men have got into the guardhouse because they were misfits in the position they were placed in the company. By correction of this they may do well on release.

The commandant and other officers of the disciplinary barracks, by the intensive study made, will thus be able largely to weed out the unfit elements, whether the unfitness be moral, physical, mental or what not, making this institution an excellent winnowing machine, so that no man need return to his regular company unless he is really worth while.

In the original plans for these disciplinary units at cantonments and at camps it was considered to be possible to train the inapts, who had committed offenses, along with the disciplinary battalions. Further consideration of the plan, and conversations with men having considerable experience, have modified this view. It now seems undesirable to do this, even though the law permitted it. The inapt who commits no offense is probably a plodder, perhaps rather easily influenced by more active minds. While he could get the necessary training at the disciplinary battalion, it would seem better to form a few companies for the special training of the inapts, into which could be gathered all of this class from the various units of the cantonment. This is directly in line with modern ideas and should result in very great good. French experience has found that there is a certain type of recruit who is a very slow thinker, and if placed in a company made of quicker thinkers he is apt to be singled out as feeble-minded, whereas he is not really feeble-minded at all. He is a slower witted man, and takes a longer time, more patience, and keener instructors. By collecting these men in companies, the level of aptitude for each is about the same, and we are told that these men then do very well. This contains a lesson for us; for no doubt in every regiment there

will be an appreciable number who are slow. They cannot keep up with the regular course of training and their chances of becoming really useful will be very good indeed if placed in special training companies.

It may seem to some officers who have not had detailed experience in this work that it signifies taking a great deal of trouble for a lot of men who (many would say) are not worth it. But if one stops to think that the offender class, plus the inapt class, may reach ten per cent of the total of the cantonment, and that it is probable that this plan will save to the division, as useful men, not less than half of these, the effort would appear to be well worth while. The details of administration are not difficult. All that is really required is the spirit of co-operation between the various agencies concerned; all officers realizing that no one is sufficient alone. The medical officer fulfills certain parts in the scheme, which no one else can do. The line officer has certain functions which he alone can perform. The judge advocate of a division must be a man of broad principles, and must master the details of the whole scheme, in order that the action recommended by him to the division commander may be sound. This method of handling prisoners is much more expeditious than the old methods. It creates a machinery distinctly for this purpose, and does away with a lot of vexatious delays by making certain men directly responsible for certain things and requiring them to follow certain generally outlined methods. The proper carrying out of this proposed plan will prove beyond a doubt to the entire military service its very great advantages over methods previously used.