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**MILITARY JUSTICE IN THE GERMAN AIR FORCE DURING WORLD
WAR II**

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With the signing of the Bonn Conventions¹ and the end of the quadripartite occupation, Germany has once again become a viable state. With its accession to the North Atlantic Treaty Organization,² the Federal Republic of Germany is an active participant in the defense of the western world. The agreement on the NATO status of Forces entered into force for the Federal Republic of Germany on July 25, 1958. In the new Republic, military services, army, navy and air force, are being organized and trained.³ In the light of these developments it is worthwhile to examine the military justice system in Germany during World War II, as past practices may influence the organization and control of contemporary German armed forces. The material which follows was obtained from the files of the Archives of the Air University, USAF, of documents prepared at the close of World War II by German officials. This discussion is concerned with the organization and function of military justice in the German Air Force during

the war years; the development and organization of the Legal Department of the German Air Force; the composition, procedure and personnel of its court-martial system; principle offenses and punishments therefor; types of punishment; and treatment of non-German nationals before courts-martial. The similarities with American court-martial procedures are apparent and are discussed in footnoted material.

Military law of any armed force follows closely the national law, with variances according to the needs of discipline and circumstances. The Nazi Government's concept of justice was "right is that which is useful to the nation". This discussion may show how closely military justice in a single branch of the German armed forces, the Air Force, evolved from a tradition of civil law, conformed to that precept.

BACKGROUND OF GERMAN MILITARY JUSTICE

Two tenets of German military justice were that offenses were judged by comrades-in-arms and that discipline was the sole responsibility of the superior officer concerned. The doctrine of trying a soldier by soldiers existed from the time of the earliest German standing armies. Within certain limits, it was the right only of a commanding officer to determine and impose disciplinary action against a subordinate, with no higher authority having a right to intervene or to modify his decision. In criminal offenses, the superior officer concerned submitted a charge sheet or summary of evidence [*Tabericht*] on the offense to the appropriate established court-martial and proceedings were begun on the basis of his report. Correlatively, any superior officer who knew of an offense had a duty to submit such a charge sheet

¹ Protocol on the Termination of the Occupation Regime in the Federal Republic of Germany, signed 23 October 1954, effective May 5, 1955 [1955] 6 U. S. Treaties & Other Int'l Agreements 4117, T.I.A.S. 3425.

² North Atlantic Treaty: Accession of the Federal Republic of Germany, signed October 23, 1954, effective May 5, 1955, [1955] 6 U. S. Treaties & Other Int'l. Agreements 5707, T.I.A.S. 3428.

³ With the passage of a conscription bill, the Federal Republic of Germany was to have 96,000 men in the Armed Forces by late 1956 and a probable total of 210,000 by December, 1957. N. Y. TIMES, July 10, 1956, p. 10, cols. 3-6: A twelve-month term of service has been proposed. N. Y. TIMES, July 29, 1956, p. 7, cols. 1-2.

In regard to United States assistance in training of army personnel, see T.I.A.S. 3753, December 12, 1956, and, of navy personnel, T.I.A.S. 3754, December 12, 1956; on the sale to Germany of certain military equipment and services under the Mutual Security Act, of 1954, see T.I.A.S. 3660, October 8, 1956.

and was liable for failure to do so.⁴ Civil police power and jurisdiction ended at the air station boundary. A court-martial could ask the assistance of the police in investigations, but even if a soldier were apprehended in the act of committing an offense outside the military area, the police were obliged to turn him over to the nearest military authorities.⁵

However, after World War I, this exclusive jurisdiction was abolished by the Social Democratic Government's termination of a "special military law" for the land forces [*Reichswehr*]. Thereafter, members of the military service were tried and sentenced by civil courts, with army lawyers [*Heeresanwälte*] protecting their interests, and with investigations conducted by civil prosecution authorities. Only the units of the Navy afloat were permitted to retain the traditional concept and function of military law.

The National Socialist Government re-established military jurisprudence in the Armed Forces by a decree effective January 1, 1934, on the basis of the 1898 Military Penal Code. The German Air Force [hereinafter referred to as GAF] created its own judicial system in October, 1935. The 1934 law provided for two superior courts: the court-martial [*Kriegsgericht*] and the higher court-martial [*Oberkriegsgericht*]. In 1936 the Supreme Court of Justice of the Armed Forces⁶ [*Reichs-*

kriegsgericht] was instituted as a general court of appeal and as the court of first instance for high treason and other serious crimes. During World War II, the Wartime Criminal Proceedings Order [*Kriegsstrafver fahrensordnung*] abolished the superior courts-martial but retained the Supreme Court of Justice.

LEGAL DEPARTMENT OF THE GERMAN AIR FORCE DEVELOPMENT

The highest supervisory authority of the GAF legal branch was the Director of German Air Force Legal Matters [*Chef der Luftwaffenrechtspflege*] at the High Command of the German Air Force [*Oberkommando der Luftwaffe*] in Berlin.

The first Director of the legal department was an individual who had previously dealt with air traffic legislation in the Reich Ministry of Communication. Initially, the Department was a section of the Central Office [*Zentralamt*]; in 1942 it was under the Director of Air Administrative Matters and Personnel [*Chef Luftwehr*]; in the spring of 1944, it was transferred to the Director of Manpower and National Socialist Indoctrination of the German Air Force [*Chef der Personellen Rüstung und National-Sozialistischen Führung der Luftwaffe*]. In December, 1944, the Department became immediately subordinate to the Reich Minister for Air and Commander-in-Chief, GAF.⁷

In 1934, with the foundation of the Reich Air Ministry and the Legal Department, the Director was primarily responsible for advising the entire Air Ministry on all questions relating to matters of contract, civil and public law, air law, air traffic law and Reich legislation. These problems were gradually assumed by other departments of the Ministry. The Director was then mainly concerned with air traffic laws, drawing up a new Code of Military Law [*Militärstrafgesetzbuch*], and building an independent GAF judiciary. These functions became increasingly important with the expansion of the GAF and the outbreak of war. The Director furnished to the Commander-in-Chief legal advice on his rights as Convening Authority [*Gerichtsherr*] after the wartime elimination of the two superior courts-martial; on the confirming or rescinding of sentences for more serious punishments, such as death or degradation of officers; on uniformity in the administration of justice; and on the maintenance of discipline among the troops.

The Director of GAF Legal Matters was the

⁷ At this time the office holder was Hermann Goering.

⁴ Cf. UNIFORM CODE OF MILITARY JUSTICE, Article 98, 70A Stat. 69 (1956), 10 U.S.C. §898 (1956). Non-compliance with Procedural Rules.

"Any person subject to this chapter who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this chapter; or

(2) knowingly and intentionally fails to enforce or comply with any provision of this chapter regulating the proceedings before, during, or after trial of an accused; shall be punished as a court-martial may direct."

⁵ Cf. UNIFORM CODE OF MILITARY JUSTICE, Article 14, 70A Stat. 41 (1956), 10 U.S.C. §814 (1956). Delivery of Offenders to Civil Authorities.

"(a) Under such regulations as the Secretary concerned may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed "by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of his sentence."

⁶ UNIFORM CODE OF MILITARY JUSTICE, Article 67, 70A Stat. 60 (1956), 10 U.S.C. §867 (1956) provides for a Court of Military Appeals with three civilian judges and for the scope of their review authority.

commander of all judges in the GAF. As legal advisor to the Reich Minister for Air and Commander-in-Chief, GAF, he had the right of direct audience with the Commander-in-Chief.

DUTIES AND ORGANIZATION

The responsibilities of the Director of GAF Legal Matters were: preparatory work in cases where only the *Reichs Marshal* could confirm or mitigate a sentence; handling all petitions and requests on sentences submitted to the *Reichs Marshal* personally; standardizing legal practice in the GAF; organizing and employing personnel in the GAF legal branch; representing the Reich Air Minister in collaboration on Reich legislation; collaborating in the development and application of the penal code; advising the Chief of the General Staff, the Director for Air Matters, and all departments of the Reich Air Ministry on legal matters; superintending and directing all legal disputes concerning the aviation department of the Reich Treasury; and dealing with cases of sabotage in the GAF.

The organization of the Department was frequently revised to handle these manifold obligations. Essentially, there were three Divisions [*Abteilungen*]. The first⁸ was responsible for the

⁸ The duties of the First Division [*Abteilung 1*] were mainly administration of personnel and miscellaneous judicial functions. These included checking and standardizing the administration of justice; controlling the conduct of field courts-martial; developing rules for GAF courts-martial; supervising the Redemption by Combat Units [*Bewährungseinsatz*]; advising the Director of Manpower and National Socialist Indoctrination on penal matters; confirming sentences imposed by the Special Duties GAF Field Courts-Martial; considering execution, reprieve, mitigation, repeal and abrogation of sentences and retrials; compensating innocent persons unjustly held for investigations and investigating the alleged deaths of missing persons. The Division assisted the Director in his responsibilities for insuring that courts-martial had the right type and number of personnel and for utilizing and promoting them. The constant organizational changes in the GAF, the setting up of new units, and alterations in compositions and strength required corresponding changes in the composition of courts-martial. The First Division selected new judges from candidates, trained them, considered their probation and acceptance as full judges, assessed and assigned them. Formal appointment, promotion and assignment of judges was made on recommendation of the Director by the Personnel and Records Office for Officers and Officials, which also dealt with their rights as officers and their payment. The Chief of the First Division was also the legal adviser to the Secretary of State and later to the Director of Manpower and National Socialist Indoctrination, as well as acting as a Higher Convening Authority [*Gerichtsherr*].

organization and personnel; the second,⁹ administration and uniformity of military justice; and the third,¹⁰ other affairs not strictly within the scope of military justice. By 1944 the Department numbered sixty people. The approval of the Nazi Party authorities, previously necessary for promotions and appointments, was dispensed with during the war, and the criteria became professional and military aptitude. Wartime responsibilities and increased incidence of serious crimes increased the duties of the Department.

SPECIAL DUTIES

The Director of GAF Legal Matters had, in addition to routine duties, special tasks assigned to him by the Commander-in-Chief.

For uniformity in dealing with political cases and crimes of corruption, which were serious enough for a possible death penalty, the German Air Force

⁹ The Second Division [*Abteilung 2*] was headed by the Director personally. He conferred directly with the Commander-in-Chief and *Reichs Marshal* on the confirmation of verdicts, the abrogation of sentences already imposed, and matters of political nature thereon. For uniformity in the administration of military justice, the Commander-in-Chief made his decisions on the advice and recommendations of the Director on organization of courts-martial, powers of a Convening Authority, laws and directives for the administration of justice. As the most severe sentences required action by the central authority of the highest standing, much time was spent on confirmation, mitigation or rescission of sentences and pleas for mercy. From documents forwarded for the decision of the Commander-in-Chief in the administration of justice, the Director had an understanding of GAF discipline, morale and courts-martial, and, thereby, was able to direct the handling of particular court-martial offenses and measures to reinforce discipline and morale among the troops. For knowledge of his entire command, and as shortages of paper, manpower and time curtailed reporting during the war, the Director held quarterly conferences with the Chief Judges of the individual numbered Air Forces [*Luftflotten*]. Gradually, most of the less serious crimes, for which the sentence could be confirmed by the Convening Authority, were not reported centrally. The extensive peacetime reporting system narrowed so that eventually the Director was advised only of sentences requiring confirmation or pardon only by the Commander-in-Chief; offenses of insubordination; political sentences; and serious cases of corruption.

¹⁰ The Third Division [*Abteilung 3*] was concerned with civil affairs of the GAF and advice to the General Staff and the Reich Air Ministry. The matters included taxation; interpretation of treaties; laws, orders and decrees of other Ministries and the Armed Forces Supreme Command; drafting laws and orders other than those for passive air defense and air traffic law, and collaborating on the latter; collaborating on legislation on public bodies, military law, constitutional law, administrative law, voluntary jurisdiction, penal law, civil law and the law of criminal procedure; advising on international law and its violations; settling actions for damages; and conducting lawsuits.

commissioned a Special Duties Court-Martial [*Feldgericht a.b.V.*] to handle them. The Chief of the First Division of the Department was the Convening Authority and an order of the Commander-in-Chief referred cases to it. The 1934 "Malice Law" [*Heimtückegesetz*] specified as an offense the making of false, inflammatory or garbled statements in public that might endanger the Reich or damage the prestige of the government, of the National Socialist Party or of leading State or Party personalities. The Special Duties Court, composed of experienced judges, distinguished itself by its moderate treatment of these cases and inflicted heavy punishment only on offenders who, by reviling authorities to subordinates or in public, had endangered discipline to an intolerable extent from a military point of view. The Führer became dissatisfied with the administration of justice by this particular court and with military courts generally for excessive clemency in punishing political offenses.¹¹ In 1943 he ordered all political cases, breaches of the "Malice Law", sedition and high treason committed by service personnel, withdrawn from military jurisdiction and transferred to a special session of the Senate [*Sondersenat*] of the Reich Supreme Court. This court proved equally unsatisfactory and "derelict in duty" and the Führer, in 1944, hoping for more severe punishments, ordered that all political offenses occurring in the Armed Forces be referred to the civil courts—People's Courts and Special Courts—and that the Security Service [*Gestapo*] conduct investigations, even within the Armed Forces. However, these oral instructions were not committed to writing and were never executed, although the Senate was dissolved. As a result, documents were returned without action to the military courts after months of delay.

In December, 1944, the Commander-in-Chief created within the Department a Staff for Special Tasks and Suggestions to replace various special commissions which investigated abuses in the GAF, including armament, command or operations. Inquiries were instituted after military re-

verses to assess objectively the sources of error or to determine the cause of failure of a new type of aircraft by investigation in the department directing its development, in the factory constructing it or in testing and experimental stations.¹² Anonymous letters of reports from the Security Service [*Gestapo*], indicting senior air officers or officials of the aircraft industry were often the basis for such investigations. These were usually proven to be groundless denunciations and rarely led to court-martial proceedings. Although time-consuming and difficult to carry out, these extra-judicial investigations were conducted by objective GAF judges experienced in inquiry procedure and they proved of value to the authorities by clarifying the situation. For these "special tasks", the Chief of the Special Staff had the judicial powers of a Convening Authority with the right to intervene in the sphere of any other Convening Authority and to hold a court-martial of his own, conducting investigations and instituting proceedings on the spot, or, to refer the matter to the GAF Special Duties Court-Martial. He had also the disciplinary powers of a higher commander. [*Höherer Befehlshaber*] over all members of the GAF. He could order arrests or investigations, prefer charges, issue instructions to lawyers and military courts, and, within the limits of the powers of the GAF Commander-in-Chief, confirm sentences, except loss of rank by officers, and confer pardons. The Chief of Staff for Special Tasks conferred with the Director of GAF Legal Matters and the Commander-in-Chief, GAF, on verdicts by his courts.

Although the German Air Force had its own legal organization, it was subordinate to the Supreme Command of the Armed Forces [*Oberkommando der Wehrmacht*], which, without interfering with the organization or courts-martial, issued general orders on legal matters for the whole of the Armed

¹¹ One example was the revocation by the Führer of a sentence to five years' imprisonment adjudged against a colonel for insulting the Führer, as he had expected the death sentence. The GAF Commander-in-Chief rescinded a three year sentence imposed on retrial, on the ground that it was too lenient in view of the Führer's expression. On a third trial, a sentence to three years' imprisonment was approved by the GAF Commander-in-Chief, but was later converted to a period of "redemption by combat".

¹² U. S. Air Force Regulation 123-1, dated 12 April 1956, entitled "The Inspection System" makes inspection a command responsibility and extends the inspection system into every field of Air Force affairs. This includes inquiry into adequacy and preparedness of the Air Force to accomplish its role in national defense; the state of training readiness and combat capability and logistical support; discipline, morale, health and welfare of units and individuals; programing and effectiveness; safety and economy of practices and procedures; internal security; personnel administration, procurement and pay; effective use of personnel, materiel, installations, facilities and funds; all aspects of procurement of materiel and services; compliance with laws and regulations; public relations and administration of funds and activities. The Office of the Inspector General carries out these functions.

Forces. These orders included treatment of civilians in occupied areas, settlement of jurisdictional disputes between GAF and Army courts and establishment of a combined Armed Forces Court. The Legal Department of the Supreme Command [*Wehrmachtsrechtswesen*] was composed of personnel of all three branches of the military service.

THE COURT-MARTIAL SYSTEM

TYPES OF COURTS AND THEIR JURISDICTION

As has been said, the two superior military courts were the court-martial [*Kriegsgericht*] and the high court-martial [*Oberkriegsgericht*], with a Supreme Court of Justice for the Armed Forces [*Reichskriegsgericht*]. The first two of these courts were eliminated but the latter was retained with jurisdiction over cases of general officers of all branches of the service, cases of high treason, treachery and a few other serious crimes against the regime. All political offenses, breaches of the "Malice Law" [*Heimtückegesetz*], sedition, and high treason, committed by military personnel, were withdrawn from military courts and transferred to civil courts.

The GAF field court-martial, with an independent judiciary, was the *Feldgericht*. (This is distinguished from the Special Duties Court-Martial [*Feldgericht a.b.V.*]) Each command had an unspecified number of courts-martial [*Feldgerichte*], depending on the number of units stationed within an Air Force Command [*Luftflotte*], and each GAF commander with the powers of a Convening Authority [*Gerichtsherr*] regulated his own court-martial. By delegated authority, the commander of a unit could supervise courts-martial for lighter offenses. Offenses carrying a sentence of a year or more were referred to trial by the commander of a major air command [*Luftgau*]; as, from a company commander through the regiment and division to the zone. The Convening Authorities [*Gerichtsherren*] for crimes involving heavier penalties were the Commanders-in-Chief of individual Air Forces [*Luftflotten*]. The Commander-in-Chief, GAF, reserved to himself the authority in cases for which there could be the most serious sentences, including loss of rank of officers.

Before the war, the powers of a Convening Authority were granted only to officers commanding Air or Flak Division, to officers commanding Air Zones and to Commanders-in-Chief of individual Air Forces. The latter were Higher Convening Authorities, comparable to the United States military General Court-Martial Authority. Grad-

ually powers of a Convening Authority were conferred on officers in charge of corps and independent or isolated units.¹³

COMPOSITION OF COURTS-MARTIAL

The participants in a GAF trial were, in addition to the accused, the Judge, court members, Prosecutor, Recorder and Defense Counsel. The number of participants varied with the type of court.

The Judge,¹⁴ a Deputy Judge Advocate [*Kriegsgerichtsrat*] was the court president. He was usually the highest legal official attached to the unit but in cases of serious offenses he might be the Chief Judge and Legal Adviser [*Chefrichter und Rechtsberater*] of the appropriate individual Air Force [*Luftflotte*] Headquarters. The members of the court were lay persons, one a field grade officer and the other an "assessor" with a rank at least as high as that of the accused. The "accessor" was the so-called "Prisoner's Peer" [*Kameradenrichter*], an innovation on the 1898 Military Penal Code introduced by the 1934 law. The Prosecutor was either a legal official with the unit, a Deputy Judge Advocate [*Kriegsgerichtsrat*], or a Senior Judge Advocate [*Oberkriegsgerichtsrat*] of field grade rank or he was the Investigating Officer¹⁵ [*Gerichtsof-*

¹³ The following units had their own permanent courts-martial [*Feldgerichte*]: Air Zone [*Luftgau*], Air Force Corps [*Fliegerkorps*], Air Force Division [*Fliegerdivision*], Fighter Corps [*Jagdkorps*], Fighter Division [*Jagddivision*], Anti-Aircraft Corps [*Flakkorps*], Anti-Aircraft Division [*Flakdivision*], Parachute Corps [*Fallschirmkorps*], Parachute Division [*Fallschirmdivision*], and even in Flight Leader [*Fliegerführer*] and Training Divisions and Training Schools.

¹⁴ "The Articles of War, as amended, and the 1949 Manual make clear that the law member's position with respect to a court-martial is closely analogous to that of the judge in the criminal law administration of the civilian community. Basically and obviously the law member, like the judge, is the final arbiter at the trial level as to questions of law. He is the court-martial's adviser and director in affairs having to do with legal rules or standards and their application. He is the external and visible symbol of the law in a process which has long been characterized as juristic and must genuinely be regarded as such." U.S. v. Berry, 1 U.S.C.M.A. 235, 2 C.M.R. 141, 146 (1952).

These principles are also applicable to the Law Officer under the Uniform Code of Military Justice. The Law Officer has a status similar to that of the Law Member under the 1949 Articles of War, but has no vote.

See, *Comparative Study of Military Justice Reforms in Britain and America*, 6 VAND. L. R. 309 (1953), on the law officer.

¹⁵ Cf. UNIFORM CODE OF MILITARY JUSTICE, Article 27, 70A Stat. 46 (1956), 10 U.S.C. §827 (1956). Detail of trial counsel and defense counsel.

"(a) For each general and special court-martial the authority convening the court shall detail trial counsel and defense counsel, and such assistants as he con-

fizier]. The latter was the more usual. In a case where the Prosecutor had not conducted the preliminary inquiry, the Investigating Officer was the Recorder [*Verhandlungsleiter* or *Justizinspektor*], so that both could act as either Recorder or Prosecutor. The Defense Counsels were not required to be legal officials, but it was preferable that they have "some legal experience."¹⁸

The normal court-martial consisted of one Judge, one field grade officer, one Prisoner's Peer and the Counsels. If the offense were one for which 15 years' imprisonment or the death penalty were authorized, there were two Judges, one field grade officer and two Prisoner's Peers. Higher courts-martial were also composed of two Judges, one field grade officer and two Prisoner's Peers, or, in serious cases, an additional one of each. Counsel were always present.

The number of Judges allocated to various courts-martial jurisdictions depended upon the volume of work. Large courts-martial of Air Zones [*Luftgaue*], with territorial powers and

many subordinate units, were assigned many judges; for example, the Third Air Command [*Luftgau III*] in Berlin had at times more than twenty assigned Judges. The courts of training units were also well-manned, but the courts of the actual fighting forces had few Judges, never less than two: a recorder and prosecutor.

PERSONNEL AND DUTIES

Convening Authority. Officers in charge of commands with permanent courts-martial [*Feldgerichte*] were not trained legal specialists, but in regard to legal matters were known in the judicial capacity of Convening Authorities [*Gerichtsherren*] and were addressed as such. Their duties, before and after trial, included the powers of and responsibilities for: preferring charges after receiving the full report of the Investigating Officer of his preliminary examination; issuing a warrant of arrest or order of confinement to quarters, as necessary; effecting the approved penalty in the shortest possible time; and ordering a stay of execution and reopening the case if he disapproved the decision on the basis of facts known to him, new evidence, or a plea of the accused and counsel that the case was not proven. Further, apparently any Convening Authority was empowered to confirm the imposition of the death penalty in the case of non-commissioned officers and lower grades if the Command Chief Judge and Legal Adviser of the individual Air Force [*Chefrichter und Rechtsberater der Luftflotte*] were not readily accessible. He was obliged to have two Deputy Judge Advocates [*Kriegsgerichtsräte*] witness and confirm the execution.

Investigating Officer. The Investigating Officer [*Gerichtsoffizier*] was a non-legal officer appointed by the Convening Authority to serve within his assigned unit. Transfer to another unit automatically relieved him of his duty and capacity. It was preferable, but not essential, that he have some legal experience. His assignment was undertaken only after an oath was administered by a Deputy Judge Advocate [*Kriegsgerichtsrat*]. His duties included conducting investigations, carrying out search and seizure of evidence in the case, arresting an accused if necessary, reporting the arrest to the Convening Authority, working with the competent court-martial, replacing the prosecutor during the trial if the competent legal official were not available and the Convening

siders appropriate. No person who has acted as investigating officer, law officer, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(b) Trial counsel or defense counsel detailed for a general court-martial—

(1) must be a judge advocate of the Army or the Air Force, or a law specialist of the Navy or Coast Guard, who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; or must be a member of the bar of a Federal court or of the highest court of a State; and

(2) must be certified as competent to perform such duties by the Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial—

(1) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(2) if the trial counsel is a judge advocate, or a law specialist, or a member of the bar of a Federal court or he highest court of a State, the defense counsel appointed by the Convening authority shall be one of the foregoing."

A member of the court who has acted as investigating officer is subject to challenge. *MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1951, par. 62(f)(5) and par. 64.*

It is prejudicial to the rights of an accused if his counsel at a pre-trial investigation is appointed on orders as the Assistant Trial Counsel, even though he be not present in court. ACM 5777, Bishop, 6 CMR 719.

¹⁸ The requirement in United States military courts is clear. Cf., *supra* note 15.

Authority ordered it, and conducting post-mortem examinations.

Judge Advocates. As World War II commenced, the GAF had 150 well-trained, active Judges. The number rose to 500 during the war and fell to 350 in 1943 as the younger men were assigned to the fighting forces, after a period of flight training and usually at their own request. The problem of recruitment and training of qualified judicial personnel was more formidable inasmuch as the GAF legal system originated in 1935 and the war ended in 1945.

The original cadre of 150 judge advocates [the *Oberkriegsgerichtsräte*] were senior to the *Kriegsgerichtsräte* was composed of volunteers who were accepted for service with the GAF by the Reich Ministry of Justice. These were generally judges with experience in civil law; the rest, lawyers. The majority were born about 1900 and were men who no longer felt at home in civil jurisprudence, because of increasing discrimination and political interference, and who feared curtailment of their judicial independence. The young judges who later joined the service did so for some of the same reasons, as well as from the attractions of problems of military justice and of association with contemporaries encountered on reserve tours. The applicants were numerous and the GAF was able to select the best. The qualifications were professional ability, favorable recommendations and, if possible, reserve training. Membership in the Nazi Party was an advantage, but was not essential as the Armed Forces [*Wehrmacht*] were traditionally non-political. The wartime additions to the department were deferred service [*Beurlaubtenstand*] civil judges of provincial, municipal and petty sessions courts. GAF Judges were trained for six months, served six months probation before acceptance with a GAF court-martial, and continued their training in courses and conferences and by attachment to larger courts. There was no political training.

At the inception of German military jurisprudence, lawyers were merely legal advisors to senior officers responsible for exercising judicial powers [*Gerichtsherren*]. They later represented the prosecution and eventually attained the status of Judges, conducting proceedings against military personnel. The Judges, as presidents of courts-martial, had less independence than in civil courts, inasmuch as the Convening Authority had

to concur in their decisions and acts of opening an inquiry, revoking a charge, ordering arrest and executing a sentence.

The Higher Convening Authorities, Commanders of Air Commands [*Luftflotten*] had a senior official as Chief Judge and Legal Advisor [*Chefrichter und Rechtsberater*] and two or three experienced assistant judges to control all courts-martial [*Feldgerichte*] within the command. These Chief Judges managed personnel matters of subordinate judges, drew up reports on verdicts, held conferences and, especially, settled disputed legal points and attempted uniformity in the administration of justice. For these purposes, the courts were grouped into "inspection districts" [*Dienstaufsichtsbezirke*], from which a judge came to a quarterly conference with the Chief Judge.

The Air Zone [*Luftgau*] had the largest number of permanent legal officials, with one Senior Judge Advocate [*Oberkriegsgerichtsrat*], seven Deputy Judge Advocates [*Kriegsgerichtsräte*] and eight Recorders [*Justizinspektoren*]. The lowest unit with its own legal department was the Group with two Deputy Judge Advocates and one Recorder, although a company might have a captain [*Hauptmann*] to deal with legal matters. All subordinate units performed essentially the same functions as the Air Zone legal office with its wide administrative area and legal problems. The Senior Judge Advocate gave legal advice to his commander, supervised courts-martial within his command and dealt with matters of organization, administration and personnel. The Deputy Judge Advocates rendered legal opinions; appeared in courts; handled verdicts and punishments, including death penalties; gave legal assistance; determined claims for personal injury and property damage; lectured the troops; and assisted the Reich Labor Service [*Reichsarbeitsdienst*] and Motor Transportation Corps. By close contact with the troops, they were able not only to discover an offender, but also, often, to prevent wrongdoing.

PROCEDURE

Criminal action against a member of the GAF was instituted when the Commanding Officer submitted a Charge Sheet [*Tatbericht*] on the offense to the appropriate court-martial. On authority of this report, the court began proceedings, conducted its investigation and issued an order for arrest as required. The President or Judge of the

court could utilize civil authorities to assist in the investigation, but generally he used the service personnel, specially trained and appointed by the unit for the purpose. These Investigating Officers [*Gerichtsoffiziere*] had usually already helped draw up the charge sheet and procure the necessary documents.

The results of the investigation were referred to the Convening Authority by the Judge. If the charges proved groundless, proceedings were suspended. If the offense proved minor or the fault of the guilty party slight, the Convening Authority could dispense with the charges and either impose disciplinary punishment himself or leave this to the discretion of the accused's immediate superior officer. If the charges were sustained, the officer in charge of the inquiry usually acted as Prosecutor before the court-martial.¹⁷

The Judges had generally had extensive training in civil practice and presumably the courts-martial followed the law of evidence and procedure of the criminal courts of German civil jurisdictions.

All unit headquarters commanders were responsible for maintaining a Record of Punishments [*Strafbuch*] indicating punishments imposed on personnel of the unit by the commander himself, by a court-martial, or by a civil court. Reports of courts-martial forwarded to the GAF Legal Department aided in checking the quality of judges and directing the administration of justice.

REVIEW

The amount of work of GAF legal officers increased during World War II. During both the First and Second World Wars, the superior courts [*Kriegsgericht und Oberkriegsgericht*] were dispensed with and review became only a matter of confirmation of the sentence by the Convening Authority.¹⁸ Prior to confirmation of a sentence,

¹⁷ Cf. *supra* note 15.

¹⁸ Cf. *UNIFORM CODE OF MILITARY JUSTICE*, Article 60 [70A Stat. 57, (1956) 10 U.S.C. §860 (1956)] provides for action on a record of trial by the Convening Authority. Article 61 [70A Stat. 58 (1956), 10 U.S.C. §861 (1956)] provides for a written opinion by the staff judge advocate on a general court-martial record of trial, for the Convening Authority. Articles 65 and 66 [70A Stat. 59 (1956), 10 U.S.C. §§ 865, 866 (1956)] provide for review of general courts-martial and special courts-martial involving a sentence to a bad conduct discharge by a Board of Review and The Judge Advocate General of the appropriate service. Article 67 [70 A Stat. 60 (1956), 10 U.S.C. §867 (1956)] gives the appellate jurisdiction of the Court of Military Appeals. Article 71 [70A Stat. 62 (1956), 10 U.S.C.

in every case, a report had to be submitted to the Convening Authority concerned by a legal adviser.

The Führer reserved to himself the right to confirm or rescind sentences to death imposed against officers and sentences against general officers. In the absence of such a reservation, these prerogatives were otherwise assigned to the Commanders-in-Chief of the several services. The GAF Commander-in-Chief reserved to himself the right of action on all other death sentences, all sentences involving loss of rank or imprisonment of officers, and all sentences in cases of insubordination and rape. Later the Commanders-in-Chief of Air Commands [*Luftflotten*] were granted the power to act on sentences of imprisonment and those not involving loss of rank in officer cases. These commanders had the right to rescind sentences submitted to them for review. The power to confirm other sentences was delegated to the Convening Authorities. If a Convening Authority did not choose to confirm a verdict, he had to submit it to the Air Command [*Luftflotte*] Commander-in-Chief, who could confirm or rescind it. If the sentence were disapproved, the case could be referred for retrial either to the same court of different composition or to another court.¹⁹

In 1944, the responsibility for the execution of all sentences imposed by courts-martial was in the Office for the Execution and Mitigation of Sentences [*Amt für Vollstreckungs- und Gnaden-sachen*] under an Air Marshal [*General der Flieger*], as Convening Authority, and directly subordinate

§871 (1956)] provides for Presidential approval of a sentence of death or against a general officer; for approval of the service Secretary of dismissal of an officer; and approval by the Court of Military Appeals of a sentence to discharge of other ranks.

¹⁹ Cf. *UNIFORM CODE OF MILITARY JUSTICE*, Article 63, 70A Stat. 58 (1956), 10 U.S.C. §863. Rehearings.

"(a) If the convening authority disapproves the findings and sentence of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(b) Every rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory."

to the Commander-in-Chief, GAF. This was to relieve courts-martial of post-sentencing matters, of execution of sentences, pardons, requests for clemency, automatic revision or remission after a stated period, and supervision of redemption by combat units. In mid-1944, in special cases where the regimental commander was the confirming authority, the death penalty against non-commissioned officers and lower grades could be imposed by his "Court on the Spot" [*Standgericht*], without reference to the Convening Authority. In such cases the Regimental Commander was known as *Standesgerichtsherr*.

ARMED FORCES COURTS

In certain special circumstances, Armed Forces Courts-Martial [*Wehrmachtgerichte*] were created, with representatives from all three branches of the service. An example was that organized on Crete in mid-1944 when the island was blockaded and in danger of isolation and invasion. Army, Navy and Air Force personnel were stationed there, but often their competent Convening Authorities were based elsewhere. Ordinarily, an accused might have to be transported to Greece for trial and punitive action would be difficult and delayed. The Führer, Supreme Commander of the Armed Forces, appointed the Commandant of the Fortress of Crete as Convening Authority for all branches of the German forces assigned for duty on the island, with the power of confirming and pardoning sentences. This power extended to prisoners of war and local civilians, always the case in occupied territory. The composition of the Armed Forces Court²⁰ on Crete was a Judge

²⁰ Cf., UNIFORM CODE OF MILITARY JUSTICE, Article 17, 70A Stat. 43 (1956), 10 U.S.C. §817 (1956).

Jurisdiction of Courts-martial in General.

"(a) Each armed force has court-martial jurisdiction over all persons subject to this chapter. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President. . . ."

A discussion of the reciprocal jurisdiction of a commander of a joint command or joint task force under direction of the President or the Secretary of Defense, with concurrence of the Secretaries of the Departments concerned, is contained in ¶4(g), MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1951.

Executive Order 10428, January 17, 1953, delegated to the Secretary of Defense the authority to empower the convening of armed forces general courts-martial. DEPARTMENT OF DEFENSE DIRECTIVES No. 5510.1, 5510.2 and 5510.3 of July 20, 1953, conferred such jurisdiction upon the Commanders of Special Weapons Project, Northeast Command, and Iceland Defense Force.

for the civil population, Judge for the Army, Judge for the Navy, Judge for the GAF, Records to correspond with the Judges assigned, and members chosen from all three branches of the service. The Commander of the Eastern Aegean Theater operated under the same conditions.

PUNISHMENT

TYPES OF PUNISHMENT

The types of serious punishment, other than mere restriction or reprimand, after court-martial action, were death, penal servitude, imprisonment, and dishonor. Capital punishment [*Todesstrafe*] was apparently inflicted by hanging. Penal servitude [*Zuchthausstrafe*] was executed by the civil authorities. Imprisonment [*Freiheitsstrafe*] was for more than six weeks [*Gefängnis* or *Festungshaft*] or for less than six weeks [Arrest].²¹

Detention sentences were served in special military prisons, referred to as "Glasshouses".

²¹ Arrest itself was further subdivided according to severity:

(1) Confinement to quarters [*Stubenarrest*]. Inflicted upon officers, senior non-commissioned officers [*Unteroffiziere mit dem Offiziersportepée*—sergeant majors, vice sergeant majors, and ensigns with rank of warrant officers or candidates for commission] and officials.

(2) Simple confinement [*Gelinder Arrest*], with Solitary Confinement. Inflicted upon non-commissioned officers and other ranks [*Unteroffiziere und Mannschaften*] and officials with non-commissioned officer rank.

(3) More Severe Arrest [*Geschürfter Arrest*], with Solitary Confinement, bread and water and hard bed, modified every third or fourth day. Inflicted upon non-commissioned officers of the lower grades [*Unteroffiziere ohne portepée*—sergeants and corporals with rank of non-commissioned officers] and other ranks [*Unteroffiziere und Mannschaften*].

(4) Close Confinement [*Strenger Arrest*]. Introduced into the GAF in 1938. This involved punishments permitted under *Geschürfter Arrest*, together with a darkened cell and the loss of daily exercise in the open air. Modifications were made on the fourth and eighth days. Inflicted on other ranks [*Unteroffiziere und Mannschaften*] but not for a first offense, and never for more than ten days.

Not all these punishments are authorized in the United States military law. An accused, Wappler, was sentenced to confinement at hard labor for 60 days; to solitary confinement on bread and water, with a full ration every third day, for 30 days; to forfeiture of \$50.00 per month for three months and to a bad conduct discharge. The United States Court of Military Appeals held that

" . . . (1) No court-martial—Navy or otherwise—may adjudge confinement on bread and water for personnel other than those 'attached to or embarked in a vessel', but (2) a court-martial of any service may impose confinement on bread and water in cases involving personnel 'attached to or embarked in a vessel' for a period not to exceed three consecutive days." U. S. v. Wappler, 2 U.S.C.M.A. 393, 9 C.M.R. 23, 26 (1953).

Arrest sentences were executed by the offender's unit. On imposition of imprisonment or servitude, the offender was automatically discharged from the service and the civil authorities carried out the punishment.²²

Punishment with Dishonor [*Ehrenstrafe*] included Dishonorable Discharge [*Verlust der Wehrwürdigkeit*].²³ Dishonorable Discharge and loss of civil rights [*Verlust der Ehrenrechte*] could be imposed jointly or singly. Apparently dishonorable discharge was for life, as no reference to a time element was made in the sentences. Loss of civil rights was for a specified period—five years being the longest reported. Dismissal from the service [*Dienstentlassung*] applied only to officers; loss of rank could be applied in officer cases.²⁴ Reduction in rank [*Degradierung*] could be imposed on non-commissioned officers.

A fine could be imposed only as the result of a court-martial and not as a company punishment.²⁵

²² UNITED STATES AIR FORCE MANUAL 125-2, dated September 1, 1956, entitled *Administration and Operation of Confinement Facilities and the Treatment and Retaining of Prisoners*, provides for confinement to a Federal institution of prisoners who have received a punitive discharge, are considered non-restorable, have been convicted of a crime of moral turpitude, and were sentenced to confinement of at least one year. [Part I, Sec. III, par. 1, Appendix A, p. 127, *id.*] Those prisoners with a punitive discharge, considered non-restorable, with six months' confinement to be served on arrival, are committed to a United States Disciplinary Barracks. [*Ibid.*]

²³ Under the Uniform Code of Military Justice, two types of discharge may be adjudged by a court-martial: Bad Conduct Discharge, the lesser, and Dishonorable Discharge. The former implies severe breaches of purely military law, while the latter connotes offenses also cognizable under civilian criminal law. Each has commensurate results under state laws, as on voting rights, and under Federal law, as entitlement to certain privileges granted by the Veterans' Administration. See: BLAKE, *Punishment Aspects of a Bad Conduct Discharge*, JAG J. 5 (Dec. 1952).

²⁴ The same is true in United States military law. "... An officer may be punished by dismissal and a warrant officer may be punished by dishonorable discharge for an offense in violation of an article of the code, but no officer or warrant officer shall be sentenced to confinement or forfeiture of all pay and allowances unless the sentence also includes dismissal or dishonorable discharge. ..."

A court-martial is not authorized to sentence an accused officer to be reduced to the ranks. However, in time of war or national emergency, the Secretary of the Department concerned ... may commute a sentence of dismissal to reduction to any enlisted grade. ...". MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1951, ¶126(d).

²⁵ Cf., UNIFORM CODE OF MILITARY JUSTICE, Article 15(a)(1)(c), 70A Stat. 41 (1956), 10 U.S.C. §815 (1956) and

"A fine may be adjudged against any enlisted person,

A fine was administered after recording it in the Punishment Book [*Strafbuch*]. Apparently fines were rarely imposed *and recorded*; therefore, it cannot be estimated how often unrecorded fines were imposed.

NON-JUDICIAL PUNISHMENT

The power to punish members of the GAF was vested not in the person but in the office; not according to rank but by virtue of the position an officer held in his unit. This was implicit in the power of command and responsibility for the maintenance of discipline within a unit.

Any officer or non-commissioned officer could cause a subordinate to be apprehended temporarily. The apprehension had to be recorded in writing and reported at once to the individual's commanding officer, who was required to order an immediate investigation of the circumstances. The superior officer concerned decided whether the subordinate was to be punished disciplinarily, without any higher authority having the right to intervene or to modify his decision, unless the punishment were contrary to regulations. In criminal cases, the superior officer submitted a charge sheet [*Tatbericht*] of the offense to the appropriate court-martial and proceedings began. The GAF Commander-in-Chief stressed that each commander had a duty to maintain discipline with all means at his disposal, including heavy court-martial sentences, and, a preëminent duty to have every regard for his subordinates, including consideration for the personal circumstances of the accused, circumstances of the offense, the offender's general conduct and an interpretation of these factors to the maximum advantage of the accused. These matters were often not legally within the scope of a court-martial.

The company commander with the rank of a first lieutenant [*Oberleutnant*], had the power to impose disciplinary punishments from simple reprimand [*Verweis*] to fourteen days' confinement in camp or ten days' severe arrest [*geschränkter Arrest*] on bread and water. For penalties up to twenty-eight days' confinement to camp or twenty-

in lieu of forfeitures, provided a punitive discharge is also adjudged. A fine should not ordinarily be adjudged against a member of the armed forces unless the accused was unjustly enriched by means of an offense of which he is convicted. However, a fine may always be imposed upon any member of the armed forces as punishment for contempt. ...". MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1951, ¶127(c), §B.

one days' severe arrest, the division commander was the competent authority.²⁶ Other types of non-judicial punishment included strong reprimand [*strenger Verweis*], punitive guard duty [*Straf-*

²⁶ The limitations on the powers of punishment were: A company commander had the power to inflict:

Upon Officers: Reprimand [*Verweis*]
Upon Non-Commissioned Officers of higher grades: Reprimand

Confinement to Quarters [*Stuben arrest*] up to 14 days.

Mild Arrest [*Gelinder Arrest*] up to 14 days.

Upon Non-Commissioned Officers of the lower grades:

Reprimand.
Restriction of egress [*Ausgangsbeschränkung*] up to 28 days.

Confinement to camp [*Kasernenarrest*] up to 14 days.

Mild Arrest [*Gelinder Arrest*] up to 14 days.

More Severe Arrest [*Geschürfter Arrest*] up to 14 days.

Upon other ranks:

Reprimand.
Restriction of egress up to 28 days.

Confinement to camp up to 14 days.

Mild Arrest up to 14 days.

More Severe Arrest up to 10 days.

Severe Arrest [*Strenger Arrest*] up to 3 days.

Withholding of pay [*Besoldungsverwaltung*]. Only a portion of pay is given the offender, the rest being controlled by his commanding officer for a determined period with a maximum of two months. Not to be inflicted on married men. No punishment awarded involved loss of basic pay, although it was possible to forfeit flying pay [*Fliegerzulage*].

A regimental commander had the powers of the

wachen], extra duty [*Dienstverrichtung ausser der Reihe*], and drill punishment [*Strafexerzieren*].²⁷

To prevent injustice by a superior and to preserve rights and privileges, provision was made for individual complaints.²⁸ Collective complaints were

company command and in addition, the power to inflict:

Upon officers: Confinement to quarters up to 10 days.

Upon Non-Commissioned Officers: Reduction in Rank.

Upon other ranks: Severe Arrest [*Strenger Arrest*] up to 10 days.

²⁷ Cf., UNIFORM CODE OF MILITARY JUSTICE, Article 15, 70A Stat. 41-42 (1956), 10 U.S.C. §815 (1956).

COMMANDING OFFICER'S NON-JUDICIAL PUNISHMENT.

"(a) Under such regulations as the President may prescribe, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial—

(1) upon officers of his command:

(A) withholding of privileges for not more than two consecutive weeks;

(B) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks; or

(C) if imposed by an officer exercising general court-martial jurisdiction, forfeiture of not more than one-half of one month's pay; and

(2) upon other military personnel of his command:

(A) withholding of privileges for not more than two consecutive weeks;

(B) restriction to certain specified limits, with or without suspension from duty, for not more than two consecutive weeks;

(C) extra duties for not more than two consecutive weeks, and not more than two hours per day, holidays included;

(D) reduction to next inferior grade, if the grade from which demoted was established by the command or an equivalent or lower command;

(E) if imposed upon a person attached to or embarked in a vessel, confinement for not more than seven consecutive days; or

(F) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for not more than three consecutive days. . . ." For a discussion of Article 15, UCMJ, see WARD *UCMJ—Does it Work?*, 6 VAND. L. REV. 221 (1953).

²⁸ Cf., UNIFORM CODE OF MILITARY JUSTICE, Article 15, 70A Stat. 41-42 (1956), 10 U.S.C. §815 (1956).

"... (d) A person punished under this article who considers his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command and the superior authority may suspend, set aside, or remit any part or amount of the punishment and restore all rights, privileges, and property affected. . . ." and UNIFORM

not allowed. Individual complaints could not be made against court decisions or alleged unfairness in pay, clothing or rationing. A complaint had to be submitted, verbally or in writing, depending on the relative ranks of the accuser and accused, to the immediate superior of the one complained against, within seven days of the wrong. Inasmuch as punishment did not commence until twenty-four hours after its imposition, timely complaint could postpone its execution.

PRINCIPAL OFFENSES AND PUNISHMENTS

The majority of GAF court-martial verdicts were the result of minor offenses that occur everywhere among soldiers. Gradually there was an increase in crimes attributable to the length of the war, service at a great distance from home and, above all, mobilization of almost the entire nation for war. This increase was not striking and, more important militarily, there was no perceptible increase of offenses against discipline.

In a command of almost exclusively technical units, as the GAF, military transportation offenses and negligence in the handling of weapons and equipment, such as damage caused in taxiing aircraft, were frequent charges. Other recurring and typical offenses were minor offenses on guard, particularly in the home defense flak outfits [*Heimatflak*]; absence without leave; insubordination; and theft. Thefts, especially from comrades, increased as the war continued and shortages of goods increased. Frauds and embezzlements increased with the employment of less desirable elements.

Among the more serious crimes were those of desertion; sedition; offenses against discipline and military property and comrades; corruption; sabotage; and political crimes. Percentages and numerical comparisons are not available.

All capital punishments had to be approved by

the Commander-in-Chief, GAF, resulting in uniformity in the imposition of the maximum penalty. In contrast, commanders of separate Armies had the power to confirm Army death sentences. During the war years from September, 1939, to March, 1945, some 700 death sentences [*Todesstrafe*] were imposed on personnel in the GAF. Two-thirds of these were executed and the rest were remitted to prison or detention sentences. The percentage of death sentences was rather low, estimating the GAF strength to have been two millions and calculating that some three million men were in the GAF during those years. The percentage was appreciably higher in the German Army. The GAF, composed mainly of volunteers and especially selected recruits, was not obliged, as was the Army, to use the death sentences as a deterrent.²⁹

Most of the capital sentences in the GAF were for desertion, but only for aggravated crimes. These included desertion by an airman previously convicted of serious offenses, a common deserter, a deserter abroad, a deserter who committed other serious offenses such as theft and fraud, or by an airman belonging to a penal or "redemption by combat" unit. Motivation for desertion by members of the GAF was rarely due to fundamental dislike of soldiering, but rather to other causes, such as fear of punishment for a minor offense, homesickness, love of adventure, or association with women, especially outside Germany. As in United States military law, the GAF differentiated between absence without leave and desertion, on

²⁹ Between May 31, 1951, and December, 1952, the first eighteen months the Uniform Code of Military Justice was in effect, only one sentence to life imprisonment for a member of the United States Air Force was ordered executed, and, insofar as is known, no sentence to death.

During the war years, figures on the death penalty are not available, as the air arm of the United States was then the Army Air Corps and the figures are commingled with those for the Army.

Under the Articles of War, 1949, only one death penalty for a member of the United States Air Force was adjudged and ordered executed. [ACM 1462, *Keller*, 2 C.M.R.(AF) 538, 553.] Keller was tried with Burks and Baughman for the premeditated murder of an Air Force sergeant while perpetrating a robbery. Keller was sentenced to death by hanging. The sentence was confirmed by the President of the United States and was carried into execution under the direction of the Commanding General, Fifth Air Force, Japan. Baughman's sentence to life imprisonment was commuted by the Reviewing Authority to confinement for 20 years. Burks' sentence to death was confirmed by the President of the United States, but was commuted to confinement for life.

CODE OF MILITARY JUSTICE, Article 138, 70A Stat. 78, 1956), 10 U.S.C. §938 (1956). Complaints of Wrongs.

"Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings had thereon."

the basis of accompanying intention and not on the duration of the absence. Intention permanently to evade service with one's unit amounted to desertion, be absence only one hour; intention to return, even after an extended period, could result in a finding of only absence without leave.³⁰

The death sentence was frequently imposed for various types of sedition. In the narrow sense of the offense, capital punishment was imposed only where there was clear incitement to indiscipline, open utterances of a defeatist character, defamation of heads of the State, of authorities or of superior officers. During the first five years of World War II, there were practically no political offenses under the "Malice Law" [*Heimtücke gesetz*]. They began to occur after the fall of Stalin-grad and increased progressively thereafter. Sedition by sabotage concerned the GAF only for a few months in 1943. Sedition also included serious cases of avoidance of military service by deception and simulation of illness. However, malingering and self-mutilation were relatively rare and were usually pardoned if homesickness or family troubles, rather than cowardice, occasioned them.

Offences against discipline rarely resulted in capital punishment. Cowardice was a grave of-

fense, but a single dereliction by a soldier of otherwise good conduct and performance was treated with clemency. Culpable negligence or inattention to guard duty frequently resulted in the death sentence. Serious cases of insubordination by soldiers to superiors were rare. Mistreatment of subordinates by superior officers was heavily punished, but clemency was applied in the case of a young and inexperienced superior who erred in his choice of action out of excess of zeal rather than out of chicanery.

Misappropriation of military property or of government funds could result in the death penalty. Exceptional severity was applied in theft of spirits in large quantity; sale of textiles, food, tobacco and goods in short supply drawn from service stocks for financial gain; and exploitation of shortages suffered by local inhabitants.

The few isolated cases of robbery with violence which were tried in Russia, Italy and France were punished with death sentences. No mercy was granted and orders were given for the execution of the sentence by hanging on the spot.

By special order, all sentences in rape cases had to be submitted to the Commander-in-Chief, GAF, who demanded unrelenting severity in such offenses. Even with a special plea by a superior officer, for an offender, the Commander-in-Chief seldom exercised clemency. He often rescinded verdicts that he did not consider sufficiently severe and ordered a retrial. Such stringency resulted in an almost complete cessation of rape cases.

Capital punishment was the general rule for the most serious offenses against comrades, that of theft in camp or barracks. Appeals for mercy were always rejected. "Anti-social crimes" [*Volkschädlings-Verbrechen*], carried out under cover of black-outs or of air raids—such as, theft, looting, assaults on women in the dark, breaking into air raid shelters and theft when evacuating property after air attacks—were punished by death. Only a few exceptional cases were pardoned.

Offenses committed by officers were mainly those of unauthorized journeys under the influence of alcohol, often resulting in accidents with serious consequences; journeys without "trip tickets" over long distances and carrying unauthorized passengers, especially women; attacks on women while under the influence of alcohol, which were dealt with with extreme severity; misappropriation of military property and employment of soldiers for private purposes, thus withdrawing them from

³⁰ An accused, Lakey, was under charges and confined when he escaped from confinement. He was apprehended the next evening in town in civilian clothes. It was held that the proof was sufficient to sustain only a finding of guilt of unauthorized absence of two days, terminated by apprehension.

"The Board of Review is not convinced that accused's intent to desert was proved beyond reasonable doubt. If he had such an intent it could be expected that he would seek refuge far from his base to avoid capture in the search he knew would follow after his escape from confinement. Instead, he was found in Manila, near his base, strolling down a street where as an American amongst Filipinos he would be conspicuous. And there appears to be no valid reason to disbelieve the testimony of the defense witness who asserted he and the accused agreed to return to the base, particularly when considered with the accused's prior statements and actions which were consistent with a temporary absence to avoid trial until the expected departure of the chief prosecution witness. . . ." ACM 4974, *Lakey*, 4 C.M.R. 837, 842 (1952).

Similar reasoning was applied by the Court of Military Appeals in an earlier case.

"... The longer the absence and the greater the distance from the units, the more reasonable the inference [of intent to desert]. The shorter the time and distance the less the inference is bottomed on reason. It is almost impossible to fix with certainty the minimum and maximum limits of these facts, but somewhere between the two is an area in which reasonable minds might differ. That area is one in which the members of the court-martial should be permitted to act without interference by this court. . . ." *U. S. v. McCrary*, 1 U.S.C.M.A. 1, 1 C.M.R. 1, 6 (1951).

their duties, for which loss of rank was imposed in even minor cases. Loss of rank was also imposed when the offense was repeated, when there was serious and obstinate disobedience, or when the offense was accompanied by fraud, as with the forging of a "trip ticket". However, maltreatment of soldiers by officers and resistance by soldiers to officers were infrequent.

At the conclusion is a table of comparison of GAF and USAF maximum punishment and a presentation of typical punishments for particular offenses.

PENAL PLATOONS

As the war progressed, GAF authorities concluded that confinement in idleness for minor offenses was an inadequate deterrent to breaches of discipline and an unsound policy when the nation needed all available manpower to conduct the war. Therefore, the GAF organized Confinement Platoons [*Arrestgruppen* or *Arrestzüge*] and Penal Platoons [*Strafvollstreckungszüge*] such as those established by the Armed Forces on the island of Crete and elsewhere. The theory of the system was punishment designed to arouse in the prisoner a spirit of pride and comradeship and to assure him that at the expiration of punishment he would be returned to his unit to make a fresh start³¹. The work and living conditions were as severe as a member of the GAF could endure without injury to health, with punishment consisting of rigorous conditions rather than work alone.

Specific procedures were followed in the execution of punishment. Prisoners sentenced to hard labor for not over six days were formed into Confinement Platoons within their own units, under control of a senior officer and supervised by a non-commissioned officer. Prisoners sentenced to hard labor for a period between six days and three months for not too serious offenses were attached to a Penal Platoon [*Strafvollstreckungszug*]. "Redemption by Combat" [*Bewährungseinsatz*] was substitute for assignment to a Penal Platoon in

more serious cases. Sentences in excess of three months were generally for imprisonment [*Gefängnis*] or penal servitude [*Zuchthausstrafe*]. The confinement and penal platoons were organized by a 1944 order and were similar in purpose and operation. The prisoner had to be certified medically fit for confinement, able to work and free from disease. Officers could not be sent to Penal Platoons for punishment. Members of the GAF civilian retinue could be attached to a Penal Platoon, but members of non-German organizations, such as Croatian legionnaires, could not. Non-commissioned officers and other ranks were sent to separate units, with supervisory personnel always superior in rank to those assigned as prisoners. Those serving disciplinary punishment could be attached to such a unit on determination of their unit commander at the time of his imposition of punishment. Prisoners undergoing punishment for court-martial sentence or for disciplinary purposes were not segregated. Penal Platoons did not work in close proximity to other units.

The total number of Penal Platoons authorized is not known. In 1944 six units were established in the Southeast Air Command, including Bulgaria [*Luftwaffenkommando Südost*] and one in the Belgium-North France area. The major air command [*Luftgau*] Headquarters referred its eligible prisoners to the nearest Penal Platoon in its area. The chain of command was from the Penal Platoon leader to the GAF Station Commandant, who had disciplinary control over and responsibility for the Penal Platoon in his territory, to the Command Headquarters. A maximum of eighty prisoners was assigned to each Platoon. The commander was preferably a captain [*Hauptmann*] or a first Lieutenant [*Oberleutnant*] with experience in handling troops. He had about five non-commissioned officers and twelve other ranks assigned to his staff, all of whom were specifically designated as superior to the prisoners. All were required to understand their difficult and responsible duty, to exhibit exemplary conduct, to train the prisoners to be useful soldiers by strictness and fairness. In turn, they received recognition by promotion. Guards were armed with machine pistols.

Regulations governing the Penal Platoons were detailed, but were considered as guiding principles, with latitude in the Platoon leader. Work was performed seven days a week, with hours dependent on weather, nature of the work, and amount of punishment considered necessary, but not to exceed

³¹ For a discussion of the rehabilitation of United States Air Force airmen by the 3320 Retraining Group, Amarillo Air Force Base, Texas, see NORDYKE, *These Prisoners Get a Second Chance*, 225 SATURDAY EVENING POST 32, 22 (Feb. 27, 1953). At that time, the Retraining Group handled a maximum of 250 men in an Air Force of slightly over one million men, with the object of guiding convicted airmen back to honorable service.

On the commitment of Air Force prisoners to Retraining Groups, see AIR FORCE MANUAL 125-2, *supra* note 22, chapter 5, pp. 68-69.

15 hours in the summer and 12 in the winter. Work projects, assigned in consultation with the GAF Station Commandant, included transportation of ammunition or construction of anti-tank ditches, pillboxes and field fortification. Drill, combined with marching to work, was required one hour a week. Inspirational lectures were given after work. Fraternization between prisoners and guards, other prisoners, soldiers or civilians was forbidden. Mail was restricted and pay withheld. Rations were normal, and supplementary rations, tobacco or alcohol, were permitted only as a special privilege granted by the Platoon leader. Quarters were guarded and locked at all times. Straw bedding was used. Prisoners in the Platoon in the Belgium-North France area, close to the front lines, wore authorized gas masks, helmets, weapons and ammunition, but otherwise even knives and matches were forbidden. For an offense committed while attached to the Platoon, the term of punishment was lengthened. On release, a short expression of opinion [*Stellungnahme*] by the Platoon leader was sent to the commander who had imposed the disciplinary punishment. An itemized report on the conduct of a prisoner and a final rating was submitted to the president of the court-martial which had sentenced him. The report could recommend that the prisoner be sent to an establishment for incorrigibles [*Straflager*].

REDEMPTION BY COMBAT

Another method of punishment designed to utilize all available manpower and give a prisoner a chance to redeem himself and return to his unit, was assignment to a unit for Redemption by Combat [*Bewährungseinsatz*].³² This was a measure of clemency as well as punishment and also a method of preventing evasion of front-line duty. As it was reserved for more serious offenses and confinement up to three months, it was a means of eliminating undesirables.

In early 1942 the Führer ordered that disgraced

³² It has been reported, in a discussion of rehabilitation of United States Army prisoners sent to Korea, that from the first group of over 300 soldiers sentenced for absence without leave but sent to Korea, more than half proved themselves in combat by earning promotion to non-commissioned officer rank. Only one was returned to the United States a prisoner. *THE ARMY, NAVY, AND AIR FORCE JOURNAL*, Vol. LXXXX, No. 34, p. 1028, cols. 3-4, April 25, 1953. An Associated Press Dispatch of 15 October 1953 reported that the United States Army sent 6,900 convicted absentees to the Far East during 1953 under this rehabilitation policy.

soldiers who subsequently distinguished themselves in battle were eligible for pardon and reinstatement and that records of punishment of men killed in action would be expunged. In the fall of 1944, the GAF extended this policy to officers and men, directing that persons under court-martial sentence would be assigned to posts of danger and thus have an opportunity to redeem their honor and to evidence worthiness of pardon by combat with the enemy or undergoing other perils of war. Commanding officers were to transfer eligible men to such units with dispatch. Men who had served a full sentence adjudged by a military or civil court could volunteer for assignment to a unit to retrieve their military honor.

Generally, punishment was carried out within the same branch of service, preferably in the same Wing [*Geschwader*] but in a different Squadron [*Staffel*]. Those prisoners sent to the front lines were given infantry and flak training and were assigned to units engaged in ground combat until they had redeemed themselves, the transfer being controlled by the Convening Authority [*Gerichtsherr*]. Those men not physically fit for combat were used for especially hazardous duty under difficult conditions in the home territory. Flying personnel were sent by the Penal Section [*Vollzugsanstalt*] to operational aircrews in the front lines. Specialist personnel reported to their basic organization [*Stammwaffe*] to redeem themselves in their special spheres by outstanding achievements and perfect behavior under difficult conditions.

Pardons and opportunity to redeem misconduct by service in a Redemption by Combat unit were granted increasingly as the war progressed. In almost all cases, men under sentence showed themselves deserving of final pardon by bravery before the enemy. Within six months of assignment to the unit, the prisoner was considered by the Company Commander for pardon and transfer, as well as for promotion and decoration, on the basis of outstanding achievements in battle, unusual courage and exemplary conduct. Exceptional performance in battle accelerated a pardon. Good conduct was not essential to a change in the punishment record of a prisoner killed or seriously wounded in battle. The application by the commander for pardon of a prisoner could include a recommendation for remission of the balance of punishment, reinstatement of rank and restriction of information of previous punishment only to the courts and the highest authorities of the Reich. The latter was a

preliminary step toward expunging the punishment record on the basis that unusual courage and excellent conduct in combat constituted a guarantee of future good conduct. Personnel, with the unit for six months who were considered unworthy of pardon, were rated again after four months. For these and for prisoners who had committed offenses while with the unit or who had not displayed an honest desire for redemption, consideration was given to whether they should remain with the unit or serve the sentence originally imposed.

NON-GERMAN CIVILIANS

Special consideration in German military law was given to persons who were neither German nationals nor members of the GAF and who resided outside the Reich, but who were subject to German courts-martial. Regulations for operational areas provided that foreigners and Germans were subject under military law to trial by court-martial [*Feldgericht*] for all offenses committed in those areas. In April, 1944, all territories outside the borders of the Reich were declared operational areas.

The types of offenses were broad. The Convening Authority [*Gerichtsherr*] was permitted to transfer to the general law courts all cases in Holland, Norway and Denmark not affecting the prosecution of the war; such as, contravention of civil police laws or an offense committed prior to the establishment of a court-martial. A 1940 order provided that if a foreigner or a German civilian committed an offense³³ in any occupied territory against German military personnel or against any authority set up by the Führer, and if the offense were punishable by the laws of the German Reich, that person would be punished as though the offense had been committed within the Reich. After 1942 the order was used against "Parasites of the People" [*Volksschädlingsverordnung*]. A "public enemy"

[*Volksschädling*] was defined as "a person who, through the wilful commission of crime disturbs the peace of the community to such an extent that he deserves at least the infliction of penal servitude in the opinion of right-minded people".³⁴ This was a convenient legal method of liquidating persons inconvenient to the Reich. It was legally possible to inflict penalties, including death, more severe than normally imposed, in cases in which the actions of the accused seriously affected the conduct of the war or the security of the Reich and in which customary punishment was not considered sufficient "in the opinion of right-minded people". Prisoners of war as well as civilians were subject to GAF courts-martial [*Feldgerichte*]. Italian soldiers who would not fight for Germany were treated by courts-martial as any other prisoners of war. By order of the High Command of the Armed Forces [*Oberkommando der Wehrmacht*], applicable to all the Southeast Command [*Luftwaffenkommando Südost*], Italian officers captured while fighting as partisans were to be shot on the spot without a trial³⁵. In regard to Russian prisoners of war, officers were dealt with as though they were enlisted men; and regimental "courts on the spot" [*Standgerichte*] could conduct a trial and adjudge the death penalty. If the nature of the punishment adjudged made the prisoner of no further value as a worker, he was turned over to the Security Service [*Gestapo*]. No further report on him was required and he was no longer subject to trial by court-martial.

The procedure in trials of civilians or prisoners of war was cursory and summary. On complaint against a foreigner and notice of a suspected offense cognizable by a military court, the Convening Authority [*Gerichtsherr*] ordered an inquiry conducted by an Investigating Officer (known in such cases as *Untersuchungsführer* although in fact a *Gerichtsoffizier*). The method of preferring charges was discretionary with the Convening Authority. By decree of June, 1944, the trial procedure was abbreviated. If the authorized punishment did not exceed one year's imprisonment or a fine, the Convening Authority had the power to issue judgment in writing without a trial, allowing the accused three days' time to protest and object to the

³³ The 1940 decree listed the offenses of:

- (1) espionage;
- (2) armed insurgency [*Freischaerlerei*] as defined by the International Agreement of October 18, 1907;
- (3) contravention of regulations issued by the military commander of a foreign area to guarantee the safety of the Armed Forces or to further the prosecution of the war;
- (4) offenses against members of the Armed Forces or civilian retinue, committed before the occupation;
- (5) treason, as defined by the Reich Penal Code;
- (6) offenses committed within a military area, installation or building, if the local Armed Forces commander deemed the punishment necessary for military reasons.

³⁴ One reported case was that of a French captain, accused of mistreating German prisoners of war and sentenced under this law by a GAF court-martial. The nature and extent of his sentence is not given.

³⁵ See, The Hostages Case, XI TRIALS OF WAR CRIMINALS 1088, 1104-1105 (G.P.O., 1950).

punishment. If the punishment authorized for the offense did not exceed five years' imprisonment, the Convening Authority could give judgment and impose sentence himself, in consultation with his legal adviser, but without the two other court members, the "accessors" [*Beisitzer*]. Execution of sentences was effected in the speediest way possible. Sentences for more than three years' imprisonment or death required confirmation by the appropriate military commanders, who could order further investigation or pardon. Punishment not involving death was effected by the Security Service [*Gestapo*]. However, sentences, including death, in cases of insurgence, espionage, and sabotage, could be executed immediately without the approval of anyone delegated by the Air Force Supreme Commander [*Oberkommando der Luftwaffe*] if the confirming authority could not be contacted immediately and military necessity did not permit a delay in the execution.

The Reich Minister of Justice designated special prisons to be placed at the disposal of the Armed Forces for foreigners sentenced to imprisonment. Persons were confined in the German prisons specified as appropriate, on the basis of age (over or under 18 years), gender and nationality. Unless the Convening Authority decided otherwise, transfer to a German prison was obligatory for foreigners in France and Belgium sentenced by military courts to imprisonment or penal servitude of nine months or more; those in Yugoslavia, for six months or more; those in Norway and Denmark, for three months or more.

CONCLUSION

The military justice system in the German Air Force during World War II was well organized and developed in accordance with the civil law con-

cepts of the country and varied with the exigencies of the war. The GAF court-martial system was similar to that which has been customary in United States military law. There is no indication that the rights of an accused were as stringently protected as they are under the Uniform Code of Military Justice. However, it is apparent that the commander in the GAF had regard for the interests of the individual as well as of the State and the war effort. Certain offenses that derogated from the success of the war or the standing of the nation and its armed forces were treated with understandable severity. The convicted were given ample opportunity for reformation.

It is to be noted that in April, 1957, the German Republic promulgated a 48-paragraph military code, defining crimes and punishments, liberalizing the disciplinary system. The new military code follows closely German criminal law for non-military offenses. Servicemen accused of felonies will be prosecuted by civilian state authorities in civilian criminal courts, and civilian law will apply to servicemen under the age of 21. However, the code retains disciplinary punishment by commanding officers. It establishes "troop service courts" composed of a civilian judge, a staff officer, and servicemen of the rank of the accused. Punishments are generally lighter and benefits to subordinates greater. The death penalty has been eliminated, even in wartime, as has the penal battalion and shackling of prisoners. Recollecting the war crimes trials, one notes with interest that superior orders, according to the new code, need not be obeyed if their execution would result in the commission of an offense or a crime.³⁶

The military justice system of the former GAF may prove a satisfactory guide for the present forces of the Federal Republic of Germany.

A comparison of the tables of maximum punishment in the GAF in World War II and in the USAF at present. (See, *MANUAL FOR COURTS-MARTIAL, UNITED STATES, 1951, par. 127c*).

| GAF PENALTY | OFFENSE | USAF PENALTY |
|---|---|---|
| Death | High Treason | Death. Art. III, § 3, U. S. Constitution. |
| Not less than five years' Penal Servitude | Plotting, but not executing, High Treason | Not specifically defined in UCMJ. |
| Not less than five years' Penal Servitude (Same as for person plotting or executing the plot) | Failure to communicate knowledge of intended High Treason | Not specifically defined in UCMJ. |
| Up to ten years' Penal Servitude. If pure negligence, up to 3 years' imprisonment | Transgression of duty with aim of helping the enemy | Death or such other punishment as court-martial may direct. (Art. 104, UCMJ). |

³⁶ N. Y. TIMES, April 21, 1957, p. 2, cols. 6-7.

| | | |
|--|--|--|
| Up to 10 years' imprisonment. (In less serious cases, up to 14 days' more severe arrest.) | Absence without leave for more than 3 days or more than 1 day in the field | Three days' confinement for each day or fraction of a day of absence. (Art. 86, UCMJ). |
| Not less than 6 months' imprisonment. (If in the field or a particularly flagrant case, penal servitude for life, or death). | Desertion | Dishonorable discharge and 5 years confinement (if with intent to avoid hazardous duty). Dishonorable discharge and 3 years' confinement (in other cases terminated by apprehension). Dishonorable Discharge and 2 years' confinement (in other cases terminated by surrender). (Art. 85, UCMJ). |
| Up to 2 years' imprisonment | Breaking Confinement to Quarters. | Bad Conduct Discharge, 6 months' confinement at hard labor (for breaking arrest). (Art. 95, UCMJ). |
| Up to 5 years' Penal Servitude | Self-inflictment of wounds | Dishonorable Discharge and 7 years' confinement. (Art. 115, UCMJ). |
| For flagrant cases, Penal Servitude for life, or death | Cowardice | Death or such other punishment as court-martial may direct. (Misbehavior before the enemy) (Art. 99, UCMJ). |
| Not less than 14 days' More Severe Arrest. (If in the field or a particularly flagrant case, Penal Servitude for life, or death). | Threatening a superior | Dishonorable Discharge and 10 years' confinement. (Art. 90, UCMJ). |
| Imprisonment up to 2 years. If committed on duty, up to 3 years. If committed in writing, up to 5 years. | Insulting a superior | Bad Conduct Discharge, 6 months' confinement (Contempt to Warrant Officer). 3 months' confinement. (Contempt to non-commissioned officer). (Art. 91, UCMJ). |
| More Severe Arrest for not less than 7 days or up to 10 years' imprisonment. Ordinary cases of neglect and failure to carry out orders, up to 5 years' imprisonment. If in the field or in a particularly flagrant case, Penal Servitude for life, or death. | Disobedience, deliberate or not, which endangers the safety of the Reich | |
| More Severe Arrest not less than 14 days or imprisonment. (If in the field or a particularly flagrant case, Penal Servitude for life, or death). | Refusal to obey, by word or deed | Dishonorable Discharge and 5 years' confinement. (Willful disobedience) (Art. 90, UCMJ). |
| Not less than 6 months' imprisonment, maximum of 10 years. For less serious cases, not less than 3 months. (If in the field or in a particularly flagrant case, Penal Servitude for life, or death). | Insubordination | Bad Conduct Discharge and 6 months' confinement. (Disrespect to superior) (Art. 89, UCMJ). |

GAF PENALTY

OFFENSE

USAF PENALTY

| | | |
|--|---|---|
| Not less than 6 months' imprisonment. If committed under provocation, sentence may be reduced to minimum. (If in the field or in a particularly flagrant case, Penal Servitude for life or death). | Assault on a superior | Dishonorable discharge and 10 years' confinement. (Assault on superior officer) (Art. 89, UCMJ). Dishonorable discharge and 5 years' confinement. (Assault on warrant officer) (Art. 91, UCMJ). Dishonorable discharge and 1 year confinement. (Assault on non-commissioned officer) (Art. 91, UCMJ). |
| Up to 3 years' imprisonment for instigator. For others, up to 6 months. | Illegal assembly and/or collective complaints | Death or any such other punishment a court-martial may direct. (Mutiny or sedition) (Art. 94, UCMJ). |

| | |
|---|---|
| Up to 3 years' imprisonment. If committed in writing or in the field, not less than 14 days' More Severe Arrest or up to 5 years' imprisonment. | Arousing of discontent |
| Up to 5 years' imprisonment. | Suppression of a legitimate complaint made by a subordinate. |
| Not less than 14 days' arrest and up to 3 years' imprisonment. For especially flagrant cases, Penal Servitude | Ill-treatment of subordinates: striking, humiliating treatment, or allowing subordinates to humiliate their fellows. |
| Up to 3 years' imprisonment | Private appropriation of booty |
| Up to Life imprisonment or death for extreme cases. (To seize goods because they are urgently needed for war purposes is not plunder). | Plunder |
| Imprisonment, Penal Servitude or death, according to the circumstances. | Robbery from sick or wounded |
| Not less than 14 days' More Severe Arrest, or up to 5 years' imprisonment. Civil rights may also be forfeited. | Theft |
| | <i>Larceny</i> Dishonorable Discharge, 6 months' confinement (Value \$20 or less). Dishonorable Discharge, 1 years' confinement. (Value \$20 to \$50). Dishonorable Discharge, 5 years' confinement. (Value over \$50). <i>Wrongful Appropriation.</i> 3 months' confinement. (Value \$20 or less). 6 months' confinement. (Value \$20 to \$50). Bad Conduct Discharge, 6 months' confinement. (Value over \$50). Bad Conduct Discharge, 2 years' confinement (Motor Vehicle) (Art. 121). |
| If intentional and dangerous to safety of the Reich, Imprisonment or even Penal Servitude. | Spreading of false report. |

| GAF PENALTY | OFFENSE | USAF PENALTY |
|--|---------------------------------------|--|
| Up to 5 years' Penal Servitude. For less serious cases up to 3 years' imprisonment | Corruption, acceptance of bribes | Dishonorable Discharge and 3 years' confinement. (Art. 134, UCMJ). |
| Not less than 14 days' More Severe Arrest. (In flagrant cases, up to 2 years' imprisonment. If in the field or particularly flagrant, Penal Servitude for life, or death.) | Negligence on Guard Duty | Dishonorable Discharge and 1 year's confinement. (Misbehavior of sentinel). (Art. 113, UCMJ). |
| Up to 3 years' imprisonment | Damage to aircraft through negligence | <i>Negligent Damage to US property.</i> 3 months' confinement (Value of \$20). 6 months' confinement. (Value of \$20-\$50). Dishonorable Discharge and 1 year confinement. (Value over \$50) (Art. 108). <i>Hazarding a vessel.</i> Dishonorable Discharge and 2 years' confinement. (Art. 110) (UCMJ). |

| | | |
|--|--------------------------------------|--|
| Not less than 14 days' More Severe Arrest, or up to 5 years' imprisonment. If due to pure negligence, up to 6 months' imprison- ment. | Unauthorized release of prisoners | |
| Up to 3 years' imprisonment. If a death re- sults, up to 5 years' imprisonment | Careless handling of weapons | 3 months' confinement (Careless handling of firearms) (Art 134, UCMJ). Dishonorable Discharge and 1 year con- finement. (Willfully, wrongfully en- dangering life) (Art. 134, UCMJ). Dishonorable Discharge and 3 years' con- finement. (Involuntary manslaughter.) (Art. 119, UCMJ). |
| Up to 3 months' imprisonment. | Marriage without per- mission | Dishonorable Discharge and 2 years' con- finement. (Violation of general order or regulation) (Art. 92, UCMJ). |
| All cases of threats, insults, assault, disobe- dience, etc., are punished as if the offense were against a superior. | Offenses against a guard on duty | |

Records on one GAF company indicate that the following punishments were typical for the offenses for which they were given.

| Punishment | Offense |
|---|---|
| Reprimand (Verweis) | arriving 20 minutes late for duty. arriving 30 minutes late for duty. carelessly carrying out an order. talking to a French civilian while on duty. unmilitary conduct in a public conveyance. returning from leave 24 hours late. leaving town for which furlough was authorized and wearing civilian clothes. wearing civilian clothes and not wearing identification tags. unauthorized use of an express train. lying to a superior. attempting to use an express train. leaving sick bed without permission. |
| Severe Reprimand [Strenger Verweis] | having a dirty rifle |
| Extra Duty [Dienstverrichtung ausser der Reihe] | failure to get up on time and being 30 minutes late for duty. |
| Punitive Guard Duty [Strafwachen] | Imposed for two successive Sundays for not taking all necessary precautions while driving on icy road. failure to get up in the morning after being called twice. arriving 15 minutes late for guard duty. |
| Restriction of Egress. [Ausgangsbe- schränkung] (Implying a return to camp fixed time). | |
| 7 days | returning from leave 25 minutes late. |
| 8 days | insolence and insubordination. |
| 10 days | taking part in a street brawl |
| 14 days | returning from leave 15 minutes late; failing to attend lecture classes. |
| 21 days | returning from leave 12 minutes late. sleeping while on night wireless duty. |
| Ban on Egress [Ausgangsverbot] | |
| 5 days and report to charge of quarters every two hours after duty until taps | conduct unbecoming a German soldier in public. |
| 10 days and report to charge of quarters every two hours after duty until taps | not saluting properly. |
| 14 days | arriving 15 minutes late for guard duty. |

Drill Punishment *Strafexerzieren*]

3 times of half hour each

returning from leave 3 hours late.
having dirty uniform.

Confinement to Camp [*Kasernenarrest*]

8 days

smoking in lecture class.
one day's failure to do work properly.
improperly dressed while on duty.
lying to a superior.

14 days

Mild Arrest [*gelinder Arrest*]

2 days

3 days

insolence.
returning from leave 15 minutes late.
returning from leave 2 hours 20 minutes late. (also restriction of egress for 14 days).
accidentally burning his clothes by hanging them too close to the stove.
making careless mistake in wireless report to GAF battle headquarters, thereby unfavorably affecting the battle situation.
failure to carry out order to repair wireless.
originating and sending by wireless an unauthorized message.
lying to superior.

Punishment

Offense

4 days

failure to render salute on patrol duty and behaving in manner unbecoming to German soldier.
failure to return promptly when leave was cancelled by wire.

5 days

More Severe Arrest [*geschärfter Arrest*]

3 days

leaving pistol in hotel.
allowing rifle to become rusty.
taking day off without permission.
failure to obey an order.
allowing shoes to become so worn they were unrepairable.
returning from leave 10 minutes late, with no excuse.
returning from leave 1 hour, 10 minutes late, with no adequate excuse.
drunk and incapable while assigned on duty.
sleeping on duty.
failure to be in barracks by appointed time. (Soldier was brought in by military police. Also given 10 days restriction of egress).
leaving post without notifying superior.
drunkenness and unmilitary conduct in public. (Also given 10 days' restriction of egress).
returning from leave 30 minutes late and returning to barracks by stealth so as to avoid punishment. (Also given 8 days' restriction of egress).
failure to write practice work.
entering wrong name on duty roster to deceive commanding officer. (Also given 14 days restriction of egress).
lying in connection with official matters.
insubordination.
having a woman in his room.
failure to clean room.
losing government-issued equipment.
sleeping on duty.
returning from official journey 1 day late with no adequate excuse.
leaving post for 1 hour when on guard duty.
smoking while on duty.
drunk and incapable of carrying out duty.
drawing bayonet against comrade while under influence of drink.
refusal to come to field drill.

4 days

5 days

indecent conduct in barracks while under influence of drink.
 failure to go on guard duty.
 drunkenness and failure to report to Duty N. C. O.
 exceeding the speed limit.
 returning from leave 14 days late, on own neglect.
 misuse of service vehicle for own pleasure.
 stealing from the Post Exchange.
 hooliganism in a public place.
 violation of laws for prevention of spread of venereal disease.
 drunkenness and failure to carry out prescribed orders.
 stealing a friend's ring. (Theft occurred before man entered GAF).
 violation of traffic rules.
 absence without leave for 9 hours.
 misconduct with French female in his quarters.
 assault on superior while under influence of drink.
 sleeping on guard duty.
 failure to report incoming German aircraft, with result that defense
 units opened fire.

| Punishment | Offense |
|---------------------------------|---|
| Severe Arrest [Strenger Arrest] | |
| 1 day | conduct unbecoming a member of the GAF begging cigarettes from civilians. smoking on duty and insubordination. absence without leave for a prolonged period. theft from a superior. reading on wireless duty. careless handling of pistol, resulting in injuries to another member of the GAF. stealing liquor from a comrade. sleeping on duty. selling government property. (Also, loss of rank). flagrant disobedience. neglect of guard duty in the field. careless talk. selling government-owned firearms. leaving post for five minutes. offense against race laws being absent from post overnight and sleeping with a French female. neglect of duty and sleeping with French female in barracks. prolonged absence without leave. driving while under the influence of liquor. losing secret documents. insubordination. refusal to obey an order. infecting a German girl with venereal disease and failing to report to medical officer. careless handling of weapon, resulting in death of a comrade. leaving post and falling asleep. allowing a prisoner to escape through neglect. plunder. onanism. (With loss of rank). drunkenness, ill-treatment of subordinates and threatening to shoot them. theft of military property while on guard duty. (With loss of rank). damage to aircraft through neglect. disobedience to a superior and arousing discontent. (With loss of rank). |
| 3 months | |
| 4 months | |
| 5 months | |
| 6 months. | |
| 7 months | |
| 8 months | |
| 9 months | |
| 1 year | |
| 15 months | |

| | |
|------------------------------|---|
| 16 months | theft of mail. |
| 18 months | stealing food and liquor from French civilians. |
| | assault on French civilian and on a superior. |
| | falsification of official records pertaining to himself, wearing insignia of higher rank, and returning from leave 2 days late. |
| 24 months | robbery and offense against race laws. |
| | absence without leave for second time. |
| 30 months | repeated selling of government-issued equipment. |
| | falsification of records to prolong leave. |
| 36 months | ill-treatment of subordinates. |
| 48 months | absence without leave for 14 days. |
| 60 months | repeated selling of government property. (With loss of civil rights for 3 years). |
| Fine instead of Imprisonment | 50 RM instead of 10 days' imprisonment for falsification of an official document. |

| Punishment | Offense |
|---|---|
| Penal Servitude | |
| 13 months, dishonorable discharge, loss of civil rights | stealing from fellow members of GAF and assuming unlawful authority. |
| 2 years, dishonorable discharge | insubordination and assault on superior. |
| 3 years, dishonorable discharge and loss of civil rights for 3 years. | desertion. |
| 3 years, 6 months, and dishonorable discharge | insubordination, disobedience and assault on a superior. |
| 5 years and dishonorable discharge | self-inflicting wound to get transfer to home territory. |
| 6 years, dishonorable discharge | desertion. |
| 10 years, dishonorable discharge; loss of civil rights for 5 years. | desertion (voluntary return). |
| Death Penalty [Todesstrafe] | desertion and murder. |
| | desertion to avoid service in Russia. |
| | desertion, offense against race laws, embezzlement and robbery. |
| | (Also 9 years' penal servitude loss of civil rights, dishonorable discharge). |