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Regional Hearing on Military Justice

By MILTON J. BLAKE*

On September 9, 1946, a regional hearing of the War Department Advisory Committee on Military Justice, was held in Court Room A of the District Court in Denver. Justice Alexander Holtzhoff, of the District Court of the United States for the District of Columbia, conducted the hearing in behalf of the committee of which he is secretary. This committee was appointed by the Secretary of War, Robert P. Patterson early this spring to determine whether the administration of justice in the army can be improved and to make recommendations for that purpose.

The committee, whose membership was nominated by the President of the American Bar Association, Willis Smith of North Carolina, at the request of Secretary Patterson, is composed of the following:

Arthur T. Vanderbilt, of Newark, New Jersey, a former president of American Bar Association, dean of the New York University Law School and chairman of the United States Supreme Court's Advisory Committee on the new Federal Rules of Criminal Procedure, chairman.

Alexander Holtzhoff, of Washington, D. C., judge of the United States District Court for the District of Columbia, secretary.

Walter P. Armstrong, of Memphis, Tennessee, a former President of the American Bar Association.

Frederick E. Crane, of New York, New York former Chief Judge of New York State Court of Appeals.

Joseph W. Henderson, of Philadelphia, Pennsylvania, a former president of the American Bar Association.

W. T. Joyner, of Raleigh, North Carolina.

Jacob M. Lashley, of St. Louis, Missouri, a former President of the American Bar Association.

Morris A. Soper, of Baltimore, Maryland, Circuit Judge, United States Circuit Court.

Floyd E. Thompson, of Chicago, Illinois, former Chief Justice of Illinois.

In the official War Department directive appointing the committee, (W. D. Memorandum No. 25-46, 25 March 1946) the function of the committee is stated to be:

"To study the administration of military justice within the army's courts-martial system and to make recommendations to the

* Of the Denver bar. Mr. Blake, a colonel in The Judge Advocate General's Department during the war, served as secretary and acting chairman of the Special Committee on arrangements of the Colorado Bar Association for this hearing. The committee referred to in this article has now completed its work and made its report. See American Bar Association Journal, Jan. 1947, p. 40 and 45.

Secretary of War as to changes in existing laws, regulations, and practices which the committee considers necessary or appropriate to improve the administration of military justice in the army."

The directive further provides that:

"The committee is to have full freedom of action in the accomplishment of its mission and is authorized to hold such hearings and call such witnesses as it may deem desirable, and to call upon the office of Under Secretary of War, The Judge Advocate General, and any other appropriate agency of the War Department for information or assistance needed in the conduct of its activities."

The Secretary of War, in appointing the committee, advised Mr. Vanderbilt, the chairman, that the War Department wishes to have the "most efficient and just system of military justice that can be devised in the light of military experience, American conceptions of punitive justice, and enlightened penology." He further stated to Mr. Vanderbilt that:

"As you undoubtedly know, the present army courts-martial system is founded on Articles of War, which were revised by the Congress in 1920. We have just come through a long war during which the army reached great strength and in the course of which it was found necessary to try many men by army courts-martial. In view of the number of personnel brought within the jurisdiction of the courts-martial system and the necessary abruptness of the conversion of millions of citizens into disciplined soldiers, it is not surprising that grievances have been expressed in various quarters. It is the course of wisdom to make a thorough review of our courts-martial experiences in this War and to derive benefits from those experiences. I am happy to have the wise counsel of the committee selected by the American Bar Association in that important task. The investigation and advice of the committee on which I am asking you to serve will be of very great value in reaching this result."

Soon after its appointment, the committee met in Washington to begin its study and determined that it was concerned only with procedures and not with individual cases, other than as such cases may "illustrate either the necessity of change or the need for preservation of present system of military justice." (32ABAJ255).

Since then the committee has been busily engaged in taking testimony from War Department officials and from many other interested persons and organizations who have knowledge of the courts-martial system. In order to give all who wished to testify a chance to appear, the committee determined to hold regional hearings in various parts of the United States, and a series of such hearings was arranged. The method adopted was to assign a particular

region to one of the members to conduct the hearing and to call upon the local bar association to arrange the hearing for that region.

Consequently the Colorado Bar Association was requested to arrange a hearing to be held in Denver on September 9, 1946. In response to this request, the Colorado Bar Association appointed a Special Committee on Arrangements with Royal R. Irwin, of the Denver bar, as chairman. This special committee notified a large number of Colorado lawyers, who had served in the armed forces, of the scheduled hearing and invited them to appear and testify if they so desired and furnished to them a "topical outline," which the War Department Advisory Committee on Military Justice had prepared. This topical outline is very broad in scope and was designed to stimulate testimony on a wide variety of subjects. In addition, several of the veterans' organizations were invited to send representatives and the Denver papers carried press notices of the scheduled hearing, so that anyone who wished to testify had notice of the hearing.

In order to avoid duplication and to save time, those who desired to testify were requested to appear at a preliminary meeting which was held in Court Room B on September 6, 1946. At that time a program was arranged, allotting a specific time to each one desiring to appear.

The hearing was held on September 9, 1946, and was presided over by Justice Holtzhoff, the member of the committee assigned to this region. It was conducted, in general, in the manner customarily pursued in legislative committee hearings. An average of about 15 minutes was allotted to each witness—some took more, some took less, while others presented prepared papers. None of the witnesses were sworn and, at Justice Holtzhoff's request, the proceedings were conducted informally, with each witness being given full opportunity to express his views in his own way:

The following persons, most of whom are Denver lawyers, testified at the hearing:

Samuel H. Sterling	Victor A. Miller
Edward V. Dunklee	Theo. A. Chisholm
LeRoy Seckler	Horace F. Phelps
Charles E. Works	Hamlet Barry, Jr.
Ira C. Rothgerber, Jr.	Charles A. Baer
William E. Doyle	Frank Seydel
William D. Powell	James N. Sabin
Robert D. Charlton	Robert T. Kingsley
W. F. O'Brien	Herbert J. Newcomb

Mr. Barnard A. Gates, National Field Secretary of the American Legion, was in attendance as an observer for the American Legion.

Due to the illness of Mr. Irwin, the Chairman of the Special Committee on Arrangements, the author of this article, the Secretary of the Special Committee, acted as chairman and presented the witnesses as they appeared

to Justice Holtzhoff, and otherwise assisted him in the conduct of the hearing.

The proceedings and all testimony were reported stenographically, and transcriptions thereof will be furnished to each of the members of the War Department Committee for their study and consideration. A similar procedure is being followed at all other regional hearings, which are being conducted by other members of the committee, so that all of the committee will be able to have all of the testimony, wherever presented, available for their deliberations.

The witnesses at the Denver hearing expressed a wide variety of views—sometimes in conflict, sometimes in accord, with each other—on the many subjects discussed. Although there had been no attempt by the Special Committee on Arrangements to arrange for witnesses of various types to be present and all who did so came forward voluntarily, a remarkable feature was that the testimony was heard from those who had served in all parts of the World, in all ranks—from private to colonel—and in all the various capacities incident to the courts-martial system, i. e. trial judge advocate, defense counsel, law member of the court, commanding officer, law clerk, and as staff judge advocate for both the appointing and the reviewing authorities, as well as those who had served on boards of review and in military justice divisions of higher command, and in the Judge Advocate General's Office in Washington.

In support of the activity of the committee and to encourage participation and the free expression of views, Major General Thomas H. Green, the Judge Advocate General, prior to the hearing wrote to some of those participating, who are, or were, members of his department, urging them to testify and to have other judge advocates testify. He expressed his purpose in the following words:

“I am very much interested in having this committee receive the views of persons who are experienced in the operation of the system. To that end I am sending notices out to judge advocates so that they may avail themselves of an opportunity to appear before the committee and give the benefit of their experiences. * * * I am interested solely in obtaining the best possible system of military justice for the army.”

As a consequence, the judge advocates, and the others, who participated expressed themselves freely and the whole scope of military justice was discussed. Justice Holtzhoff expressed himself as well pleased at the results of the hearing and in having received many constructive suggestions. All who participated appeared sincerely interested in improving the system. Those who made criticisms made them in a dispassionate and analytical manner, as did those who had words of praise for parts or all of the system.

On the evening of September 9th, Justice Holtzhoff appeared as the principal speaker at a meeting of the Denver Chapter, Reserve Officers Association, and discussed the work of his committee. Following his address, a

general discussion was had in which many of the reserve officers present expressed their views on military justice and Justice Holtzhoff announced that the committee was desirous of hearing from all who wished to offer anything on the subject, particularly from those who had had actual experience with the system in World War II. He suggested that those interested put their views in a letter addressed to Justice Alexander Holtzhoff, Secretary, War Department Advisory Committee on Military Justice, Room 3D746, The Pentagon, Washington 25, D. C., and particularly suggested the use of the aforementioned "topical outline" (which is appended to this article) for such purpose.

The responsibility for the administration of justice, whether in the civil or military courts rests with the legal profession, and it is therefore a source of gratification that the American Bar Association has taken the lead in this matter and that the Colorado Bar Association and local lawyers were privileged to have the opportunity to assist the Committee in its labors. The importance of this study is manifest and the manner in which it is being conducted is in accord with the best traditions of the legal profession.

Considering all this, and particularly the high calibre of membership of the War Department Advisory Committee on Military Justice, there can be little doubt that its report to the Secretary of War will be sound and unbiased, and that any recommendations it may make will be well considered, constructive, and in furtherance of the American ideals of justice.

War Department Advisory Committee on Military Justice

Topical Outline

I. GENERAL

1. Purposes of court-martial system; maintenance of discipline or administration of justice?
2. Merits and weaknesses or defects of existing system.
3. Causes of weaknesses and defects: (a) the system, organization, and procedure in themselves; (b) the administration of the system; or (c) personnel.
4. Are weaknesses and defects found in time of peace to the same extent as in time of war? If not, why? Is the difference, if any, to be explained by the difference between professional officers and temporary officers?
5. Are officers, both permanent and temporary, given sufficient training in ideals, purposes, rules, and practical administration of military justice? If not, what improvements are desirable?
6. Should there be any difference in dealing with offenses at the front during actual military operations and offenses committed behind the lines or in training areas?