# THE ARMY DISHES OUT THREE KINDS OF JUSTICE

## THE LAW-BREAKING OFFICER IS A "GENTLEMAN BY ACT OF CONGRESS" BUT THE ERRING G. I. IS JUST A COMMON CRIMINAL WITHOUT DRAG

LIKE everything else in the Army, the administration of military justice sounds good on paper. In actual practice it smells. That isn't a pretty remark, but it isn't a pretty situation. On paper, there is the same fair, impartial treatment for everyone in uniform. Actually, there are three varieties, and no one has a better chance to see this demonstrated than the G. I. court-reporter. That used to be my job in this man's Army.

The officer is treated like a member of a gentlemen's club up before the House Committee for an infraction of the rules; the white soldier is treated like a common lawbreaker with neither money, power nor influence behind him; and the colored soldier is behind the eight-ball.

Let's see how it works.

In civil court the jury is chosen from a panel of names compiled from the register of voters. *The members of every military court are hand-picked.* This is doubly significant, since they not only hear the evidence but adjudge the sentence. They have been selected for this job because they are considered "reliable." If, after two or three cases some of them prove less "reliable" than was expected, the court is dismissed and a new court is appointed on which these "unreliables" are conspicuous by their absence. In this manner, every court is "packed". These carefully selected individuals must, of course, be officers. No G. I. ever pleads his case before fellow GIs. The bitter, unbridgeable gulf between grade and rank is nowhere more evident than in the courtroom.

Well, you say, if the accused doesn't like the constitution of the court, he can challenge the members, can't he? Isn't that in Article 18? In actual practice the challenges amount to very little. Each side is allowed one peremptory; that is, each side can make one challenge without stating any reason for it. In civil court, each side has six challenges of this type. So if the Defense Counsel challenges a guy he knows is tough, the Trial Judge Advocate will challenge a guy he suspects is soft, and you are just where you started.

**Soldiers convicted of dealing in the French black market, receive sentences up to 50 years.**

EVEN so, with a strong Defense Counsel the situation would not be so hopeless. The question is, does the soldier get an able defense? And the emphatic answer is No. Article 17 guarantees him the right to his own lawyer. Most soldiers, of course, can ill afford to go out and engage a civilian attorney. Nor need they, the Army points out. At no cost to the accused, the Army will supply him with a defense counsel. And if this counsel were of the same caliber as the Trial Judge Advocate, who acts the part of prosecuting attorney, there would be no kick. But this is seldom the case, and certainly never the case for long. A really able defense soon finds himself transferred to another job. You cannot escape the inference that the Army does not want strong defenders. True enough, the defense counsel usually has his law degree. But he is young and inexperienced.

The Trial Judge Advocate, on the other hand, is an excellent prosecutor. He is customarily the post's legal officer and he has an able staff under him.

The Investigating Officer has usually succeeded in getting a "voluntary" confession from the accused, and this "confession" deserves a brief inspection. When formal charges are preferred against our G. I. Joe, an officer—and it *has* to be an officer—calls him in. He tells the soldier the nature of the charges against him and explains the 24th Article of War. He tells him he has the right to call witnesses in his own behalf; to cross-examine witnesses against him; that he has the right to make a statement in any form, or to refuse to make a statement, but that if he does make a statement and the case comes up for trial, that statement may be used against him.

How technical the explanation is, how well our soldiers understands it, we never know. In nearly every instance the soldier has an abysmal ignorance of the law, the same as the rest of us. He is apt to be young, without too much formal schooling. If the Army has taught him nothing else, it has wasted neither time nor effort to inculcate obedience and respect for his superior officer. Before the interview is over he has usually signed a state-

ment purporting to be his own, but obviously dictated by the officer. As he has had his "rights" explained to him, and as no threats had been made, and no promise of immunity or reward made, the confession is "voluntary". I have had many Defense Counsels challenge the voluntary nature of the confession and attempt to keep it out of the record, but I can remember no time when they succeeded. Even an able attorney, confronted with a confession, is hard pressed to do much for the soldier.

Although a man cannot be convicted soleiy on the basis of his confession, where the prosecution is able to establish that the crime was committed, and is able to get the confession admitted in evidence, the result is a foregone conclusion.

NOW let us consider the officer in a similar spot. The chances are good that he knows both the Trial Judge Advocate and the Defense Counsel personally. Or if he doesn't know them personally, he knows them by reputation. If the Defense Counsel is regarded as a swell guy in the club but a weak-sister in the courtroom, the officer does one of two things: Through "channels" he requests that a particular officer defend him. This officer need not even be at the post. He may be at a post five hundred miles distant; he may be at command headquarters. The chances are he was an outstanding lawyer in civilian life, and is famous throughout the command for his brilliant work on whichever side of a case he is assigned. It costs the officer nothing to procure his services. If, for any reason, the request is denied—and it usually is not—the officer engages the best civilian legal talent he can afford. In either case, he is assured of an honest-to-God fight in the courtroom.

BUT to get back to our initial statement: that the Army dishes out three brands of justice. Let me review briefly three cases involving automobiles—and a white soldier, a colored soldier, and an officer.

First our white soldier, Private Hunter. That's not his real name, of course, but the case is real enough. Hunter had spent the evening in town. It wasn't a big town. At the time the Army camp was built seventeen miles to the north, its population had been about three thousand. Now it was irritatingly overcrowded, but the townspeople did little about it. Why should they, they asked each other with a shrug. Business was brisk (and how!) and when the war was over the camp would be abandoned. So there wasn't much for Hunter to do. He made the rounds of the bars, and as the evening wore on he got to feeling pretty high. Before he knew it, it was ten of one and he had to make the gate by one o'clock. He had to. He had just been restricted

to the post for a week, and he didn't want another period of confinement.

Hurrying along the deserted street, hoping for a lift, Hunter spotted a car drawn up along the curb. On the impulse of the moment he tried the door. It was unlocked, and even more surprisingly, the key was in the ignition. Hunter slid behind the wheel and raced for camp. A few hundred yards from the gate he turned the car off the highway and got out. In somewhat legal language, Hunter had taken a motor vehicle without the consent or knowledge of the owner and had converted it to his own use. To be sure, he had no intention of keeping it permanently. He had abandoned it absolutely unhurt, less than twenty miles and fifteen minutes from the place he took it. But Hunter had run afoul of the law and was up for a court-martial.

In civil life, a young man of nineteen, which was Hunter's age, who had never been in any sort of trouble with the authorities before, would probably have gotten a thirty day suspended sentence, and some fatherly advice from the judge, had he commandeered a car as Hunter had. But now Hunter was in the Army. He came before a General Court-Martial, and he got three years.

When you recover from this body blow you wonder if there is no limit to the sentences a General Court-Martial may dish out. Fortunately, there is. The court is ruled by a Table of Maximum Punishments, and although they seem intolerably heavy in relation to the offenses, they offer some small protection to the soldier. In Hunter's case it was established in court that the car he took had a value in excess of $50.00. According to the Table he could have been sentenced to a maximum of five years.

Hunter did take the car and did break the law.

NOW, for our second example, the Negro soldier.

This Negro, whom we will call Dudley, was the driver of a staff car. On the particular evening in question he had to drive an officer to town, and had instructions to pick him up later. During this two-hour wait, his time was his own. Dudley parked the staff car in an alley down town. In the courtroom, when questioned on that point, he testified he had stopped "to take a leak." Perhaps he had stopped to visit a girl in a house. But what of it? This is no military offense. At that moment a police car drove past the alley, saw the parked car and stopped to investigate.

Now, some months before this, Dudley had been picked up in town with a girl and had been badly beaten up by the civilian police before he could reach the MPs. The report of this beating was on file in the company records.

So when the white police officer started questioning Dudley he got scared, stepped on the gas, and was out of the alley as fast as he

could make it. The officer gave chase and fairly soon a couple more police cars joined in the fun. The officers testified that they were unable to pass him because of his zig-zagging; that he was driving like a maniac. The fact is that he ran into no one, and there was no record of any passing motorist being forced off the road. At any event, the police radioed to the camp for permission to shoot to kill. This the camp did not give, but the officers began shooting regardless. Their shots entered the body of the car, the back window, the front windshield, and finally one tire. With that, the car careened against a tree and was slightly damaged.

In the excitement of the moment, the chief police officer, when he jumped out of his car, forgot to bring his gun. He stated in court that had he had it with him he would have shot to kill. As it was, he had his black-jack with him, and he beat the soldier so brutally that he was later hospitalized.

Now, hearing that case in court, you or I would have thought that the police should have been on trial, not the soldier. For after all, what had he done? Why was he being court-martialed? He had parked the staff car in the alley. There was no law against that. Nor was he charged with illegal parking, if it was illegal. In mortal terror of a beating, which he had every reason to fear, he had tried to escape from the police. In doing so he exceeded the speed limit; he drove in a "careless and wreckless manner"—at least, so it was charged, though testimony showed that the car had a governor on it and could not be driven faster than fifty-five miles an hour. He had, through willful neglect, or some such phrase, suffered Government property to be damaged. For this the court, "in closed session, and upon secret, written ballot, two-thirds of the members present at the time the vote was taken" sentenced him "to be dishonorably discharged from the service, to forfeit all pay and allowances due or to become due, and to be confined at hard labor for three years."

NOW for the officer, and we will make it short and snappy. He had been to a party at the Officers Mess. He had gotten stinko. He left in his car to drive to the hotel in town where he lived. Walking on the extreme shoulder of the highway were two young men, one of them in uniform. The car struck and killed the soldier. The officer never stopped. He was found later in his hotel room, dazed, still drunk, in bed. Manslaughter, drunken driving; hit and run. These charges automatically occur to you. Certainly a flagrant case if there ever was one. When the officer sobered up, he realized what a mess he was in. He engaged the best lawyer in the state to defend him.

At this court-martial he was charged with manslaughter, driving while under the influence of liquor, and failure to stop at the scene

of an accident. You would think that these three charges—if they stuck—and they did stick—would add up to something pretty serious in the way of sentence. But that's where you are wrong. The court didn't think so at all. All they handed out to the officer—remember, he had killed a soldier while driving a car when drunk—all they handed out to this drunken officer was a sentence of a year and a half. Nice going.

But now, boys and girls, hold on to your hats. Here comes the really funny part. When this case got to the brass hats in Washington for review, it was *busted!* In other words, the sentence was commuted and in its place the officer got a reprimand and forfeiture of $75.00 of his pay for 12 months. Very nice going, indeed!

Much has been made of the fact that every court-martial record is reviewed by higher headquarters, a sort of automatic appeal. That every record is carefully reviewed is true; but this is done to determine whether it is legally sound, to make sure that every legal technicality has been faithfully observed. If the reviewing officer considers the sentence too severe, he may recommend leniency to the Commanding General. The policy followed by these reviewing officers is determined by the Staff Judge Advocate. As he is generally hard as nails, with ice-water for blood, sentences not only are not reduced, but will often go through with the comment "grossly inadequate."

Although the sentences are shameful, the Army counters with the argument that the men are sent, with few exceptions, not to Federal prisons such as Leavenworth, but to rehabilitation centers; that regardless of the length of the sentence, with good behavior the men are out of these centers within five or six months; that they are then returned to the Army—but not to their old outfit—on an honorable basis. Until we have a story on the G. I. level, of what these centers are like, and how long the men are kept there, I will take the Army pronouncement with a dose of salts.

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