Towers of Steel

(By CHARLES JOHNSON POST in Harper's Weekly.)

(Mr. Post's series on the Army raised an outrageous commotion. Harper's Weekly was boycotted in many Army and Navy Clubs. No sensible answer was made to Mr. Post, but there was much foaming at the mouth. He has now taken up the Navy. What the Navy is actually doing throws a good deal of light on what the Army ought to do.)

How about the Navy? Is it efficient? Is it up to date? Is it just? Or is it bungling like the Army? In the Army series I criticised the court-martial system and tried to show that the administration of justice in the Army is archaic; that it tends to foster favoritism an injustice, that the court-martial, as a single court of original and final jurisdiction without appeal, is inadequate; that the review by the Army department or the judge advocate's office is so perfunctory, except in case of an official, that it gives no guarantee of legal justice. I was interested to know how this same matter was cared for in the Navy. I went down to Washington to make a study of conditions in that department. The step across the hall in the Army and Navy building is a hundred feet perhaps, while at one end the two departments join on the same floor. But it is separated by much more than a hundred feet of hallway; it is separated by many years.

It was in this central hallway, where are the beautiful little models of all of our types of battleships, that I encountered accidentally the friend of a very high official in the Navy Department. He had a little anecdote.

He had met the high official one day while the series of articles on the Army was appearing.

"Have you read that series on the Army?" he inquired.

"I have," returned the official.

"Well," said the other pleasantly but perniciously probing, "I wonder if that man will be down here next to take up the Navy?"

"Well," returned the high official promptly, "if we have things like that in the Navy I hope he does."

Interesting Comparison.

So a comparison between the court-martial methods of administration—for both the Army and the Navy have virtually the same system—may be interesting. In its disciplinary methods the Navy has been lighting the way for the Army; the Army has but recently installed what is known as the "detention barracks" system of imprisonment with a "disciplinary battalion" for offenses against discipline. The Navy adapted it from England over three years ago.

The Army is high in praise of this step that it has but just taken. And, curiously, the Navy is just now seriously considering abolishing it and substituting, as a punishment for the most serious disciplinary offenses, a simple dismissal from the Navy. In other words, the Navy is about to demolish the system of imprisoning men—even under modified forms of penal reform—because it is inefficient and ineffective.

It is interesting to compare the duties of the judge advocate general of a court-martial in the Navy to that obtainiing in the Army. In the Army it is laid down in the Articles of War that the judge advocate "shall prosecute in the name of the United States, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to put to the prisoner, the answer of which might tend to incriminate himself.

This is the law of the Navy: "Articles for the Government of the Navy, Par. 745, sec. 4. Where the accused is without counsel, and especially where he is an ignorant or inexperienced enlisted man, the judge advocate will properly render him, both in and out of court, such assistance as may be compatible with his primary duty of efficiently conducting the prosecution. But he will especially guard against even suggesting that the accused plead guilty."

In the laws of the Navy, Paragraph 767 states, "The accused is entitled to counsel as a right, and the court can not properly deny the assistance of a professional or other adviser."

Regulations Not Perfunctory.

And this is no perfuncory regulation. It is rigidly enforced. Take the case of James L. Dormer, a coal passer in the Navy who was on trial before a courtmartial. He stated that he desired counsel but had not been able to obtain any, thereupon the president of the court directed the judge advocate of the court to act as counsel for the accused. At the Navy Department—or the Judge Advocate of the Navy, who is in charge of the Navy's administration of justice—attached this emphatic opinion:

"This action was distinctly improper. Furthermore, Article VI of the amendments to the Constitution provides that 'in all criminal prosecutions' the accused shall 'have the assistance of counsel for his defense.' Though the reference here is to prosecutions before the criminal courts of the United States, naval courts, though not bound by the letter, are within the spirit of the provision.

"Therefore, when an accused goes on record as being desirous of having the assistance of counsel in conducting his defense, and is denied that right, except where it is impractical to obtain counsel, such denial constitutes a fatal irregularity, and the improper precedure of designating the judge advocate to act in that capacity does not offset this irregularity nor fulfill the requirements of the law."

For years the Navy has been issuing as a regular part of its routine, a monthly leaflet or bulletin that contains the summary of court-martial cases for that particular month. The list itself is brief, but following, under the heading of "Remarks," is a commentary on the special cases that have occurred. It is a course in law. It bristles with pointed and biting phrases where it points out to officers of court-martial their errors of law or procedure; it argues, explains, analyzes, expounds, and condemns the courts unsparingly when needed; it quotes from the Federal court's decisions and from the decisions of State courts. The thoroughness with which this legal laboratory work is done under that innocuous heading of "Remarks" is a guarantee that a legal error of violated regulation is as little likely to slip by as it would be in the most exacting civil court of appeals. It does not even hesitate to set aside the acts of courts-martial that have convicted guilty men, if the trial has not been properly and fairly conducted. And it frequently sends back cases to courts-martial for reconsideration of the verdict, where there has not been an adequate sentence imposed.

And it sends back cases for a severer sentence when a trivial one has been awarded, not only in the cases of enlisted men, the ordinary sailors and marines, but in the cases of commissioned officers as well.

But what is to prevent such miscarriages and oppressions as sometimes occur in the Army from occuring in the Navy? Nothing except a rigorous, vigilant and conscientious administration that follows an ideal of equal and exact justice and that holds, with Emerson, that we dare not let pass unchallenged an injury to the rights of the humblest lest our own be jeopardized. In addition to that, even for the military or naval arm of a government, it must reflect the advancing social and economic standards of civilization.

This the Navy does so believe, as stated in official documents. The commander in chief of the United States Pacific Fleet in 1911 wrote in an official comment on a case:

"The general drift of public opinion in the United States today shows a marked tendency toward repressing the use of intoxicants, and it behooves the officers of the naval service to take note of this determination."

This is the expression of a principle, and from an officer who has not the power to impose it but only to point it out as a policy. It is significant, and in its early date it looks almost like a prophecy in the light of the famous "wine-mess" order.

Now let us take up the first tests. Let us take a case of robbery and assault of a civilian.

Mike Jankowski, an enlisted man, coal passer of the United States Navy, was tried by a general court-martial on the charge of assault and robbery. He was found guilty on both charges in that he did "by violence feloniously take, steal, and carry away from a cash register" in an ice cream bazaar, the sum of $25.

In the light of the evidence there was no question as to his guilt and the propriety of a heavy sentence. The ends of justice had apparently well served and Janowski was no object for sympathy.

But in that little monthly bulletin the Judge Advocate General of the Navy discussed the case over one page and a half as he analyzed the charge of "Robbery" in the light of the facts in evidence and the specifications of the charge. He cited from one case in the United States Federal Court, one case from the State Court of West Virginia, one from the courts of Virginia, and one from the Massachusetts court, and all bearings on the distinction between the crime of "Robbery" and the crime of "Theft." And then, in summing up, he wrote:

"But in Jankowski's case, it was clear that the element which constitutes the essential difference between the two crimes referrd to was not alleged in the specification. The omission was not one of form but of fact. There was nothing in any part of the specification which, even by inference suggested this important missing element of the crime of robbery* * * In view of the foregoing, the department held that the specification under the second charge (Robbery) did not support the charge and that there had been no legal trial and conviction thereon. Therefore the finding upon the second charge was disapproved."

This was no idle technicality—it would be a startling situation if men could be convicted and sentenced without regard to the specifications of their acts. Also, so far as any practical result is concerned, it might appear to the very practical minded as a waste of time.

Rights of Humblest Guarded.

But the point lies in this: that a wretched Janowski of the Navy can get a page and a half of careful, precise weighing of legal safeguards, viewed in the light of scrupulous justice.

In my recent articles in Harper's Weekly on the Army I set forth the case of the soldier of the 15th Cavalry who was sentenced to prison for two years on two charges, desertion and attempted escape, each with a separate specification, and both describing and comprising but one and the same act.

The Navy had a similar case. John Bland, a coal passer in the Navy, was found guilty of: Charge 1, "absent from station and duty after his leave had expired"; Charge , "conduct to the prejudice of good order and military discipline"; Charge 3, "desertion" with two specifications.

The similarity in the cases lies in the fact that the specification under Charge 1 and the first specification under Charge 3 alleged an identical act of absence. He pleaded guilty to the first two charges, but "not guilty" to the third charge of desertion. The court-martial found him guilty of all three charges. The review of the case by the Judge Advocate General of the Navy in his compact bulletin is as follows:

"While little regard was paid by the court to the rules governing the admission of documentary evidence, and secondary evidence was repeatedly introduced where primary evidence was obtainable, yet it appears that sufficient competent evidence was introduced to prove enough of the specifications of the third charge to warrant a finding of guilty to the charge. But, as the absence alleged under the first charge and that in the first specification of the third charge are identical, and as desertion includes the lesser offense of absence without leave, and in a finding of guilty of desertion a guilty of absenc without leave is included, it is thus manifest that the court in this case have twice found Bland guilty of the same offense, which is contrary to law * * * *

"It is presumed that the court in adjudging sentence adhered to the law, which makes it mandatory upon conviction to adjudge a punishment adequate to the nature of the offense, and in so doing assigned a certain amount of the whole sentence determined upon as adequate punishment to each charge of which Bland was found guilty; it follows that the accused was sentenced to be twice punished for the same offense, which is also contrary to law * * * *

"The proceedings, findings, and sentence of the court and also the approval of the convening authority, in this case were disapproved by the department."

"Disapproved" is not only a term of disapproval but it has, in the service law, a technical value that operates to devitalize and make inoperative the sentence—it vacates it, it renders the proceedings in the case wholly terminated.

Justice Impartially Dispensed.

There is a little over a page in this monthly Naval legal bulletin devoted to the case of an ordinary coal passer, moreover a coal passer who was warrantably guilty of desertion. It was the laying down of an impartial law that demanded and exacted that the scales of justice shall never dip with short weight in either scale-pan.

Let us consider some further cases taking those in which our sympathies would be rather inclined to uphold error if they inclined at all.

Joseph E. Gordon, a bugler in the Navy, was charged with "plundering an inhabitant" and "scandalous conduct to the destruction of good morals." It was alleged that he had stolen a variety of articles from a cottage on shore and that he had appropriated these articles to his own use. The specifications of the second charge alleged that he had unlawfully in his possession practically all of the articles enumerated in the first charge "all of which he well knew were stolen property." He was found not guilty of the first charge and guilty of the second charge of having possession of stolen articles. This is the careful weighing of this case:

"Without going into the inconsistency manifested in these findings of the court, except to say that in the opinion of the department, such evidence as was received if sufficient to prove one specification was equally good under the circumstances set forth to prove the other, it is observed from a careful review of this case that all the material evidence introduced to prove the offenses was entirely hearsay.

"There was no competent evidence submitted to prove that any of the property belonged to the persons stated nor that it ever had been stolen.

Two or three witnesses testified to the fact that the owners had in their presence identified the articles and stated that they had been stolen, but this was only secondary evidence and inadmissible. (Greenleaf on Evidence, 16ed., vol. 1, sec. 98.)

"It is the constitutional right of an accused to be confronted with the witnesses against him, and be afforded an opportunity to cross-examine them (Greenleaf on Evidence, 16ed., vol. 1, sec. 163f) and unless such course is followed a grave and serious error has been committed and in this particulare case it was a fatal one * * * *

"In view of the fact that no additional evidence could be introduced upon revision, and as therefore no object would have been accomplished by reconvening the court for a consideration of this case, and as the evidence on which Gordon was convicted was hearsay and incompetent, the proceedings, findings, and sentence in this case were disapproved by the department."

The whole trial was wiped out because of its illegal desire to convict.

And these are not isolated cases; case after case has been set aside, and likewise courts-martial criticised for their methods or the lack of them. There is no accepting a sentence if it happens to be an officer; the Navy will send it back with the demand that the court-martial reconsider it, as it is inadequate to the offense—and it will do it just as quickly in the case of an enlisted man. It is impartial, and that is the backbone of justice.

NO "CHEWING" FOR SALE.

Missourian Who Uses Tobacco Disappointed at the Waldorf.

Several months ago a visitor from Arizona complained that there were no bootjacks in the Waldorf, and immediately the management sent out and ordered a supply of them. A man from Missouri discovered five minutes after he entered the hotel yesterday that it was short of what he considered one of the most necessary and delectable of commodities.

The visitor, who registered from Springfield, Mo., headed for the cigar stand in the barroom.

"What, you don't keep chewing tobacco?" he demanded as the clerk shook his head. "Well!"

That was all he said, but the emphasis was remarkable. It conveyed surprise, incredulity, and disgust. Pasing by the door of the men's cafe, the Missourian saw the big cigar counter inside. He walked in, but the clerk informed him he couldn't get chewing tobacco there.

With a puzzled expression the visitor walked u ptoward Peacock Alley. As he reached the cashier's desk his face brightened. He had caught sight of a man whose jaws were working.

"Excuse me," said the Missourian, "But I suppose you wouldn't mind telling mewhere I could get some of what you are chewing?"

"Not at all," said the other man, "have some," and he pulled out something in a pink wrapper and handed it over.

The Missourian started back in disgust, but managed to murmer his declination in a polite tone. It was chewing gum that had been offered him. Finally somebody told him of a tobacco shop. A few minutes later he returned and waved a handful of small, flat packages at an acquaintance.

"You won't catch me getting up against a tobacco famine in this place again," he cried.—New York Times.

RUSSELLITES TURNED AWAY.

They Tried to Distribute Their Pamphlets in Ocean Grove.

Disciples of "Pastor" Russell inaded Ocean Grove this morning about dawn and as the sunrise meeting in the Tabernacle was dismissed endeavored to distribute literature in the street, a proceeding prohibited by the associa-

lsa'noitw. They were informed by the police that their presents was undesirable and they immediately departed. Officers escorted them to the Heck Street bridge to make certain their decree was carried out.

"Pastor" Russell, in speaking of the incident later in the day at Asbury Park, said that the real objest to his association by the pastors in opposition to him was that he told the truth they did not dare to tell and received money without asking for contributions. He drew from his pocket an envelope which had just been handed to him and, tearing it open, pulled forth five $20 bills unaccompained by any explaination.

"There you are now," he said. "I do not need to take up any collection. There is true spirit of giving in the association. Why should we take up any collection This is what worries the ministers. They don't get such voluntary gifts."

"My wife did leave me some twenty years ago," the "pastor" went on in answer to a question: "She tried to get too much space for her writings in our publication and we had to cut her off. That's what made her leave me.—Asbury Park Dispatch to New York Times.

HACKMAN HAS RECORD.

(Special to The News and Observe.)

Elizabeth City, July 5.—Charles McDaniel, Elizabeth's veteran hackman, who has been in the business for the past thirty-five years, secured the first passenger that stepped from the Norfolk Southern passenger train Saturday morning at the new station. McDaniel has a unique record as hackman. He secured the first passenger from the first Norfolk Southern passenger train in Elizabeth City thirty-three years ago. He also secured the first passenger from the first train of Suffolk & Carolina Railroad Company. He is an old-time darkey, reared in a white home before the war and has all of the old-time traditions and polished manners. He has hauled more people than any other hackman in Elizabeth City. Many of Elizabeth City's wealthy citizens will put themselves to all manner of trouble to secure his services and will walk before they will have anyone else.