

**THE PRACTICE OF
NAVAL SUMMARY
COURTS-MARTIAL**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649240517

The Practice of Naval Summary Courts-martial by A. A. Harwood

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

A. A. HARWOOD

**THE PRACTICE OF
NAVAL SUMMARY
COURTS-MARTIAL**

THE
PRACTICE

1148
D.

OF
NAVAL SUMMARY COURTS-MARTIAL.

PREPARED BY
A. A. HARWOOD, U. S. N.

WASHINGTON:
FRANCK TAYLOR.
1868.

Entered according to the Act of Congress, in the year 1863, by
A. A. HARWOOD,
in the Office of the Clerk of the District Court of the United States in and
for the District of Columbia.

MAR 31 1941

3/31/41

PREFACE.

THIS little manual is an arrangement of the law of Congress establishing Summary Courts-Martial, and the Regulations of the Navy Department issued in conformity with that law.

The arrangement also comprises an order of proceeding, and such general rules of evidence as appeared to be consistent with the conciseness and precision enjoined by the law and the regulations referred to.

The latter will be found in the Appendix, which also contains such necessary forms as will contribute to ensure regularity and exactness in the proceedings and in keeping the record.

To the junior grades in the navy, and especially to those officers who have been brought into it from the commercial marine by the exigencies of the times, and whose former pursuits have not led them to familiarize themselves with the principles and formalities of military law, it is hoped the work will be useful and acceptable.

WASHINGTON, April, 1863.



Figure 1.7 Number of people in the workforce in the United States, 1970-2012. Source: U.S. Bureau of Economic Analysis. Note: The number of people in the workforce is defined as the number of people aged 16 and over who are employed in either the civilian or military labor force.

NAVAL SUMMARY COURTS-MARTIAL.

§ 1. SUMMARY COURTS-MARTIAL were established for the trial, in the navy, of lesser offences, which the commanders of vessels may deem deserving of greater punishment than they are, by law, authorized to inflict * upon petty officers and persons of inferior ratings under their command, but not sufficient to require trial by General Court-Martial.

AUTHORITY OF SUMMARY COURTS-MARTIAL.

§ 2. The authority for Summary Courts is derived from "an act to provide a more efficient discipline of the Navy, approved

* Commanders of vessels of the Navy are not authorized by law, to inflict, or cause, or permit to be inflicted, upon any petty officer, or person of inferior rating, or marine, for a single offence, or at any one time any other than the following punishments, except by sentence of a General or Summary Court-Martial.

First. Reduction of any rating established by himself.

Second. Confinement, with or without irons, single or double; such confinement not to exceed ten days, unless necessary in the case of a prisoner to be tried by Court-Martial.

Third. Solitary confinement on bread and water not exceeding five days.

Fourth. Solitary confinement not exceeding seven days.

Fifth. Deprivation of liberty on shore.

Sixth. Extra duties. All punishment inflicted by the Commander or by his order, except reprimands, are required to be fully entered on the ship's log. (See law for the better government of the Navy of the United States, approved July 17th, 1862. Article 10.)

March 2, 1855;" and the laws in reference to such courts and rules of procedure, are embodied in that act, and in the *general order of April 4th of the same year*, issued in conformity therewith by the Navy Department, and approved by the President of the United States.

§ 3. The Commander of any vessel of the Navy is authorized to convene a Summary Court by a brief order to the Senior Member of the Court, stating the name and rank of the members of the Court, and the time and place of meeting; and, by written or verbal orders to the members and the Recorder. The written order to the Senior Member must always be appended to the proceedings. (*See General Order of 1855, Sec. 2d.*)

§ 4. The Court must consist of three officers not below the rank of Passed Midshipman (Ensign*), and of some competent person to act as Recorder. (*See Act to provide a more efficient discipline, etc., Sec. 5th.*)

§ 5. The Department has decided that where small vessels are serving in company, as, for instance, in a flotilla, and there are not officers enough of legal rank to compose a Summary Court-Martial, officers of a proper grade may be ordered from other vessels to report to the Commanding Officer of the vessel in which the deficiency exists, in order that they may be appointed by him members of a Summary Court-Martial; such orders being understood to be temporary.

SPECIFICATION.

§ 6. The Officer ordering the Court is required to have a written specification prepared, in as brief and explicit terms as

* The title of Ensign was substituted for that of Passed Midshipman, by the Act of Congress to establish and equalize the grades of Line Officers of the United States Navy, approved July 16th, 1862.

practicable, embracing all offences or misconduct committed at any one time by the same individual, and for which he is to be tried. This specification must be approved by the officer ordering the Court, and a duplicate of it annexed to the record. A copy of it must also be furnished to the accused before trial. (*See General Order, April 4th, 1855, Sec. 5th.*)

§ 7. The essential points, in framing the specification, are to use such plain terms in describing the offence or offences, "as will enable the person accused to know what he is to answer, and to enable the Court to know what it is they are called to inquire into."* The name, surname, and rating of the accused should be designated, and the fact or facts, time when, and place where they were committed, should be stated with as much precision as circumstances will allow.

Nothing should be alleged but that which is culpable and that which the prosecutor is prepared to substantiate.

§ 8. Offenders cannot be legitimately arraigned before a summary Court-martial in cases evidently intended by the law for the government of the navy to be tried by a General Court-martial. The law referred to makes it the duty of Courts-Martial "in all cases of conviction to adjudge a punishment *adequate* to the character and nature of the offence committed, and, as Summary Courts were established for the punishment of offences not sufficient to require trial by General Court-martial," it follows that they are not competent to take cognizance of crimes of a nature which the Superior Court alone is vested with power to punish adequately. (*See Sec. 1st and Sec. 7th of the act to provide for a more efficient discipline of the navy, approved March 2d, 1855, and articles 2, 3, 4, 5, 7, of an act for the*

* *Colonel Quentin's Trial. See Major Kennedy's practical remarks, Chap. iii. page 31.*