

Navy Court a Hybrid Proceeding

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CORONADO, Calif., Jan. 30—From the outset, the Navy has gone to great pains to explain that it is not trying Comdr. Lloyd M. Bucher for surrendering the intelligence ship Pueblo or for signing a prison camp confession.

As the Court of Inquiry carries on its proceedings, now secret, now public, a day does not pass without a reminder from Navy lawyers or public relations officers that what is occurring here is strictly an "inquiry" and not a trial. They also stress that the term "court" is a misnomer, in that no final judgments can be rendered by the admirals hearing testimony relating to all the "facts and circumstances" of the Pueblo incident.

Legally, of course, this is correct, and the point has surely not been ignored by the press. But, as one Navy lawyer said today, "We can't seem to put it across to the public. Nobody seems to understand what we're doing here. The nation is up in arms, and the general impression is that we're scapegoating Commander Bucher at a kangaroo court."

A Complex of Reasons

If this is so—and a massive amount of mail to Commander Bucher, the Navy and the newspapers appears to substantiate it—the reasons are complex but less than mysterious.

They lie partly in the hybrid nature of the proceedings, which are unknown to civil law, and partly in the impression of a military court that makes the concept of "military justice" appear to many as a contradiction in terms.

The reasons also include the Navy's failure to make it clear in advance that the warning the court gave to Commander Bucher last week that he was "suspected" of violating the military code was less than apocalyptic.

Another factor is that the court is, indeed, "judging" the commander's actions, despite the fact that the judgment will have no legally binding effect.

Military courts of inquiry, which were noted in the journals of the Continental Congress as early as 1776, have no direct counterpart in the civil legal system.

Protection of Witness

Such a court's full-scale powers of investigation, including the right to compel attendance and testimony by persons in and out of the armed services, suggests an analogy with the grand jury. But, while this is as close a comparison as can be made, the differences

It Offers Witnesses Greater Protection Than Grand Jury

are more compelling than the similarities.

Ironically, considering the popular notions of military justice, a suspect has far more protection before a court of inquiry than before a grand jury.

For example, a prospective defendant in a criminal case has no right to appear before a grand jury and, if he is subpoenaed by the prosecutor, he has no right to be represented by counsel in the grand jury room. He can be indicted in the Federal system and in many states solely on hearsay evidence.

Indictment East to Get

This means that the grand jury need not hear witnesses to an alleged crime but can indict a person on the testimony of a Federal agent or a police officer who may merely read a summary of his investigative report.

Moreover, grand juries generally operate as rubber stamps of the prosecutor, who ordinarily has no difficulty in obtaining an indictment.

"If this were a criminal case and the Justice Department wanted to make an example of Bucher," a Navy lawyer said yesterday, "a U. S. attorney could walk into a grand jury and, by smoothly marshaling his testimony, he could walk out with an indictment in an hour."

Be that as it may, there is no question that Commander Bucher is now being afforded procedural rights that no defendant gets before a grand jury. He has two lawyers, one provided by the Navy. He has been permitted to give a full statement of the events as he saw them. He has the right to cross-examine witnesses, examine documentary evidence and, if he wishes, he can produce his own witnesses.

A Generalization Denied

Furthermore, a grand jury indictment results in a criminal trial. A finding of culpability and a recommendation of a court-martial by the admirals here, on the other hand, is subject to modification or outright reversal by the Chief of Naval Operations or the Secretary of the Navy.

Despite all this, there appears to be a widespread feeling that military courts are of the kangaroo variety, operating behind a facade of due process to convict innocent servicemen. There have been excesses in the system, but military lawyers, who on and off represent both the Government and the accused, heatedly deny the generalization.

"It's nothing but a libel," a longtime Navy trial lawyer said last night over cocktails. "I've been in this business over 20 years and there's no doubt in my mind that a guy gets a fairer shake in a military court than in the civilian courts."

"Ninety-five per cent of the defendants going through the civilian court system plead guilty and most of the others are convicted after trial. I don't have any statistics but I can swear to you that our percentages work out far better for the defendants, far better."

'Supreme Irony' Seen

Military lawyers point with pride to the fact that the Uniform Code of Military Justice required suspects to be advised of their rights some 15 years before the United States Supreme Court imposed similar obligations on the civilian police.

They therefore consider it a "supreme irony" that the warning given by the admirals to Commander Bucher, that he was now a suspect and therefore his future testimony could be held against him in a possible court-martial, was widely interpreted as an indication that the Navy was out to "scapegoat" the Pueblo skipper.

Most people here believe that the admirals committed a public relations error of the first order by not making it clear that the warning was a procedural requirement designed to protect the suspect and record.

Early this week, Commander Bucher's attorneys held a news conference to discount the importance of the warning, but the impact had already occurred and there is little doubt here that the incident mobilized public opinion against the entire inquiry.