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NAVAL COURTS MARTIAL, 1793–1815

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NAVAL COURTS MARTIAL,
1793–1815

Edited by
JOHN D. BYRN

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This volume is dedicated to the memory of

The Honourable David Erskine

who was long a member of the Navy Records Society, served as its Honorary Secretary between 1963 and 1973, and was a benefactor to the Society.

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PREFACE

The present volume is a collection of British naval courts martial transcripts and related documents from the time of the French Revolutionary and Napoleonic Wars. In assembling and editing this collection, all of which are drawn from The National Archives, save for the first four, I have accumulated a number of personal debts. My friends and colleagues at the St Lucie County Library System in Fort Pierce, Florida, have been particularly helpful, most notably Mrs Carol Shroyer, Mrs Mary Wolf, Dr Edward Werner, Mrs Tammy Powley, Mrs Debie Hudson, Mrs Carla Niegelsen and Mr Robert Krause. With great kindness and skill, Dr Roger Morriss has guided the work to completion. Dr Nicholas Rodger graciously has given me counsel on several points of detail. As they have done for the last twenty years, the staff at The National Archives have treated me with the utmost courtesy and helpfulness. The Navy Records Society has extended me an extraordinary opportunity for which I am extremely grateful. And, as much as I am indebted to these people, I owe even more to my mother, Margaret D Byrn, who, despite a crippling stroke, has continued to offer encouragement and support. Needless to say, whatever errors there are to be found in what follows are mine and mine alone.

ABBREVIATIONS

ADM Admiralty
CM Court Martial

GLOSSARY

This list comprises terms mentioned in the text more than once.

Cheque During muster, this was a mark placed next to the names of men who were absent with leave.

Clerk of the cheque An official at a royal dockyard who mustered ships' companies when their vessel entered that port.

Cobbing A type of punishment in which the miscreant was hit upon the bottom with a board known as a cobbing board.

Crimp In a naval context, an individual whose job was to entice sailors to desert to merchantmen.

Cunning or **Conning** To direct the steering of a vessel. According to the 1815 revision of Falconer's *Universal Dictionary* by William Burney, this task fell to either the pilot or the quartermaster.

Gagging A punishment in which a noisy prisoner had a metal or wooden rod inserted in his mouth and affixed to his head. According to the 1815 revision of Falconer's *Universal Dictionary*, gagging was only administered 'under the most aggravating circumstances'.

Jolly boat A vessel, smaller than a yawl, that was kept on board ship and used either to go ashore or to perform other light duty.

Junk An old piece of cable that was cut into smaller portions and used to make such things as mats and points.

Lubber's hole The opening between the upper section of the lower mast and the top. According to the 1815 revision of Falconer, it acquired the name 'from a supposition that a lubber, not caring to trust himself up the futtock-shrouds, will prefer that way of getting into the top'.

Prick During the Middle Ages, this was a hole made with a pointed object, that was placed next to names on a muster; by the eighteenth century, it had become an ink dot placed against the names of men absent without leave.

Run To desert. An R was placed on a man's line in a muster book if he had missed three successive musters.

Starting An unsanctioned but customary punishment in which sailors were beaten with a rope's end or stick by a boatswain's mate on the

commanding officer's orders for want of alacrity. According to the 1815 revision of Falconer, by that time it was seldom inflicted.

INTRODUCTION

I

The study of British naval courts martial during the French Revolutionary and Napoleonic Wars is important for several reasons. Not only does it contribute to our understanding of military jurisprudence in the late eighteenth and early nineteenth centuries, but it furthers our knowledge of Georgian and Regency criminal law in general. Moreover, the transcripts of trials afloat, which form the core of the present volume, offer a unique window to the social conditions and behaviour aboard the King's ships at the time.

During the period under discussion, naval courts martial were the highest level of enforcement of the criminal code promulgated by *An Act for Amending, Explaining and Reducing into One Act of Parliament the Laws Relating to the Government of His Majesty's Ships Vessels, and Forces by Sea*, or, simply, the Consolidation Act of 1749 as revised by a statute passed in the nineteenth year of George III's reign. Known as the Articles of War, this code consisted of thirty-six clauses delineating virtually every naval offence and establishing their punishment.¹

The Articles of War can be divided broadly into two general categories: social crimes and naval offences.² Social crimes include such phenomena as drunkenness, theft, buggery, profanity, murder, quarrelling and fighting – that is, the same types of infraction dealt with ashore by the Common Law. Naval offences consist of episodes like mutiny, desertion, insolence, loss of ship, cowardice, neglect of duty and unofficerlike behaviour – in other words, transgressions against the needs of the service.

¹22 Geo. II c. 27; 19 Geo. III c. 27.

²In J. Byrn, *Crime and Punishment in the Royal Navy; Discipline on the Leeward Islands Station 1784–1812* (Aldershot: Scolar Press, 1989), pp. 12–15, I divided the Articles of War into four basic categories: first, 'contraventions against religion and morality' such as drunkenness, profanity and homosexuality; second, 'crimes against the king and his government' like treason, mutiny, destruction of naval property and disobedience of orders; third, 'infringements of the rights of individuals', including murder, theft, quarrelling and fighting; and fourth, 'strictly naval infractions', such as refusal to engage the enemy, cowardice and failure to provide convoy service. However, for the sake of simplicity, I have reduced that number to two groups here: social crimes and naval offences.

In addition to including the various clauses of the criminal code afloat, the Consolidation Act prescribed the authority of naval courts martial, their composition, several of the oaths to be taken at them and the penalties for prevarication, contempt of court and withholding evidence from a naval tribunal. These panels had a very limited jurisdiction. Only officers and men ‘in actual service and in full pay’ could be brought before them, and then only for offences enumerated by the Articles of War and perpetrated in areas where the Common Law did not have jurisdiction, that is ‘upon the main seas, or in great rivers only, beneath the bridges of the said rivers nigh to the sea, or in any haven, river or creek within the jurisdiction of the Admiralty’ and in all places which did not acknowledge the sovereignty of the British monarch.¹ Moreover, the alleged crime had to be committed within three years of the date of the formal letter of complaint containing the charges against the accused.²

As well as limiting the jurisdiction of courts martial, the Consolidation Act restricted their composition. Naval tribunals were to be composed of no more than thirteen, but no less than five, flag officers, captains or commanders. The first, second or third ranking officer present at the trial’s location was to serve as president of the court, ‘as shall be found most expedient, and for the good of his Majesty’s service’. In cases in which there were more than thirteen flag officers and post captains able to attend a tribunal, the twelve next in seniority to that court’s president were to serve. In instances where there were at least three, but not five, post captains able to sit as judges at a specific trial, then commanders of his Majesty’s ships below that rank were eligible to do duty. No officer who met these criteria could be denied his seat on a court.³

Section 17 of the Consolidation Act established the penalties for witnesses prevaricating before, withholding from, or behaving contemptuously to a naval tribunal. Those found guilty of prevarication or withholding evidence could be imprisoned, at the court’s discretion, for up to three months; those convicted of contempt could be incarcerated for a maximum of one month. This section further provided that individuals suspected of perjury, or subornation thereof, were to ‘be prosecuted in his Majesty’s Court of King’s Bench by indictment or information’, or by such county court as that panel directed.

Finally, the Consolidation Act of 1749 contained several of the oaths to be administered by the person executing the office of judge advocate at any given trial. The members of the quarter deck acting as judges were to take the following pledge:

¹22 Geo. II c. 33.

²Ibid.

³Ibid.

I, A. B., do swear that I will duly administer justice according to the articles and orders established by an Act passed in the twenty second year of the reign of his Majesty, King George the Second, for *Amending, Explaining and Reducing into One Act of Parliament the Laws Relating to the Government of his Majesty's Ships, Vessels and Forces by Sea*, without partiality, favour or affection; and if any case shall arise, which is not particularly mentioned in the said articles and orders, I will duly administer justice according to my conscience, the best of my understanding, and the custom of the navy in the like cases; and I do further swear that I will not upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court martial, unless thereunto required by Act of Parliament.

So help me God.¹

The Act further stipulated that, after the members of the court had taken this solemn oath, the judge advocate was to proclaim:

I, A. B., do swear that I will not upon any account at any time whatsoever disclose or discover the vote or opinion of any particular member of this court martial, unless thereunto required by act of parliament.

So help me God.²

The provisions regulating courts martial in the Consolidation Act were supplemented by those found in a volume entitled *Regulations & Instructions relating to his Majesty's Service at Sea*, which provided sea officers with a clear and concise reference manual 'describing the responsibilities of every member of the fleet and the proper methods and procedures to be followed for virtually the whole gamut of naval activities'.³ During the age of sail, the Admiralty promulgated two editions of the *Regulations & Instructions*. The first, published in 1731, went through thirteen impressions before it was revised and expanded in 1806.

Both editions included chapters on courts martial, which contained many similar rules for the conduct of naval tribunals. For example, each stipulated that all charges intended as the basis for the convention of a court martial had to be made in writing, 'setting forth the particular facts, when and where and in what manner the same were committed'.⁴

¹Ibid.

²Ibid.

³Byrn, *Crime and Punishment*, p. 18.

⁴*Regulations and Instructions Relating to His Majesty's Service at Sea*, 2nd edn (London, 1806), p. 405.

Similarly, both disqualified any captains involved in a specific case from sitting as a judge at the trial of that case. Moreover, each mandated that courts were to be held ‘in the most public place of the ship’ and that all persons wishing to attend were allowed to do so.¹ Furthermore, both stated that a majority of justices composing a tribunal determined the question of the guilt or innocence of a defendant, with the members voting in ascending order from most junior to most senior. Finally both established the procedure to be observed at execution, whereby the crews of all of his Majesty’s ships at the location where the event was scheduled to occur were to be assembled upon deck as spectators and the crime or crimes for which the guilty party or parties were to be launched into eternity were read to them.

Despite these similarities, there were marked differences between the two editions. For instance, whereas the *Regulations & Instructions* of 1731 stated that commissions to hold courts martial were ‘to be understood to be in force no longer than during the expedition’, those of 1806 were silent on the duration of such commissions. Similarly, although the revised and expanded version mandated that ‘a junior officer commanding a post ship’ was to ‘take precedence of his senior officer commanding a sloop’ in being called to sit as a judge at a naval tribunal, the earlier edition was moot on this point. Correspondingly, whereas the 1806 volume established the oath to be administered to witnesses, the earlier book contained no such vow. Moreover, while the *Regulations* of 1731 prescribed only that the judge advocate at a court was ‘to send timely before the trial’ a copy of the charges against him to the defendant, the latter version specified that the presiding officer at the proceedings must ‘take care that a copy of the charge or complaint be delivered to the person accused, as soon as may be after he shall have received the order to hold such court martial, and not less than twenty-four hours before the trial’.²

Beyond the *Regulations and Instructions* and the statutes governing justice at sea, the members of naval tribunals during the period under discussion had several manuals on courts martial at their disposal. The first of these to appear was John McArthur’s *Principles and Practice of Naval and Military Courts Martial*, which was published originally in June 1792 and revised and expanded four times by 1813. McArthur intended his study as a compendium of information about the procedures and Common Law precedents of military trials ashore and afloat that would reduce the need to consult the appropriate legal authorities.³ Thus,

¹*Regulations and Instructions*, 1st edn (London, 1731), p. 4.

²*Regulations and Instructions*, 2nd edn, p. 405.

³J. McArthur, *Principles and Practices of Naval and Military Courts Martial, with an Appendix Illustrative of the Subject*, 2 vols, 4th edn (London, 1813).

it included discussions of such matters as courts of inquiry, parole evidence, determination of guilt and sentencing.¹ In 1805, a companion volume to *Principles and Practice* was published by John Delafons, entitled *Treatise on Naval Courts Martial*. Like McArthur, Delafons sought to provide his audience with a textbook for conducting judicial proceedings in the Royal Navy.² For this reason, he too discoursed on topics ranging from the jurisdiction of naval tribunals to the role of the judge advocate to ‘the forms of drawing out the sentence’.³

II

In the Royal Navy, the judicial process began with a formal letter of complaint to the Lords Commissioners of the Admiralty in home waters or, on foreign stations, the commander in chief of that station, requesting a court martial. As noted above, both editions of the *Regulations and Instructions* required such letters to be precise in the charge or charges against the accused. They were to include a clear explanation of the alleged crime or crimes committed, the time and place each transgression had occurred, and how the alleged offences had been perpetrated. Failure to abide by any of these requirements often was grounds for dismissal of the case against the individual named in the complaint. According to McArthur, even charges properly drawn could be rejected at the discretion of the Lords Commissioners or commanders in chief acting in their stead.⁴

However, with the exception of cases in which the charges either were patently frivolous or likely to lead to a conviction, the Lords Commissioners or commanders of squadrons and foreign stations seldom acted summarily. Frequently, these authorities employed extra-constitutional devices, known as courts of inquiry, to determine the validity of letters of complaint. Such courts were analogous to grand juries ashore. As Delafons put it:

It results, then, ... that the intent of ordering courts of inquiry to be held is either to throw light on particular transactions and by the report made thereon to judge if there are sufficient grounds to bring the parties implicated to a trial for their conduct or to clear those who complain of aspersions cast on their character by persons in official capacity. Doubtless they frequently prevent an unnecessary assemblage of

¹McArthur, *Principles and Practices*, *passim*.

²J. Delafons, *Treatise on Naval Courts Martial* (London, 1805).

³Delafons, *Treatise*, *passim*.

⁴McArthur, vol. 1, p. 225.

officers to form a court martial, which is often attended with delays and considerable inconvenience to the public service. Courts of inquiry may be described as in some degree similar to grand juries, who are convened in order to decide on the truth of a bill of indictment.¹

As extra-legal entities arising from the customs of the sea, courts of inquiry were much more informal than courts martial.² Composed of from three to five members depending on the seriousness of the matter under investigation, these bodies could not render legally binding decisions or inflict punishment based on their decisions.³ Moreover, they were powerless to compel witnesses to testify before them. At the same time, although tradition dictated that they gather evidence through oral testimony, this testimony was not given under oath. Indeed, so relaxed were the procedures and safeguards at courts of inquiry that Delafons argued it was certainly within the authority of such inquests to deny defendants the fundamental right to confront those making the charges against them.⁴

When members of a court of inquiry had gathered enough evidence upon which to base a recommendation for or against a trial, they submitted their counsel to either the Lords Commissioners or the commander in chief of a foreign station. Depending on the collective inclination of the tribunal and the complexity of the case being investigated, the reports containing these opinions varied greatly in detail. Some were terse statements of advice; others included detailed accounts of the evidence upon which a decision was made. And, having issued its report, the court disbanded.

At this point, the Lords Commissioners or the commander in chief of a foreign station weighed and considered the court of inquiry's report and decided whether or not a case warranted adjudication by a court martial. In instances which the appropriate authority deemed worthy of a trial, that authority issued an order to convene a formal naval tribunal. These orders required and directed the second or third ranking officer of a station, as president of the court martial, to adjudicate the question at hand at the earliest convenience. Generally the earliest convenience translated into no more than two weeks, usually less than one. However, on occasion, it could mean considerably longer. Indeed the trial of John Bathie, in Hamoze on 1 October 1811, did not take place until more than six months after the order for his court martial had been issued by their Lordships [35].

¹Delafons, pp. 57–8.

²Byrn, p. 36.

³Delafons, pp. 46–7.

⁴Ibid.

On the morning of the day chosen for trial by the president of the court, the members of the tribunal serving as justices assembled 'in the most convenient and public place of the ship'.¹ Once convened, naval courts martial followed a formal, structured procedure. The first order of business was to account for all officers who were qualified to sit as judges but not in attendance. There were two acceptable reasons for admirals, captains and ranking non-post commanders of ships not to attend a trial: either because of illness, as attested by a ship's surgeon, or Admiralty leave.²

After all qualified justices had been accounted for and those in attendance had been seated to the left and right of the president of the court martial according to seniority, the witnesses and audience were admitted; the prisoner was brought into court by the provost martial; and the order for the trial and warrant appointing the judge advocate were recited.³ Then the members of the tribunal and the judge advocate swore their respective oaths. Next, the letter of complaint against the accused was read aloud before the assembly. At this point, all witnesses, except the first to testify, were ordered to withdraw; and, the proceedings entered the evidentiary phase.

During the evidentiary phase, all witnesses for the prosecution were called individually, followed by all those for the defence in like manner. Such evidences were examined first by the side that called them and then cross-examined by the other party. Witnesses could be called back and re-examined as often as the court thought necessary. According to McArthur, the general rule of thumb in the eighteenth and early nineteenth centuries was that, to obtain a conviction, the prosecution had to bring forward two evidences in support of the accusation, but in cases involving extremely private matters only one witness was sufficient to produce a

¹*Regulations and Instructions*, 2nd edn, p. 405.

²Defendants also had a very limited right to challenge prospective justices at their trials. Both editions of the *Regulations and Instructions* contained virtually the same provision disqualifying ranking officers from sitting as judges in cases in which they had a vested interest. In the revised volume, the clause read: 'If any officer entitled by his rank to sit at a court martial be personally concerned in the matter to be tried, he is not to be permitted to be of the number of members by whom the court shall be composed'. Similarly, members of the quarterdeck serving on courts of inquiry could not adjudicate questions arising from that particular court's investigations. 'Those who have acted as members on a court of inquiry into the prisoner's conduct should not be permitted to sit on his court martial', observed Delafons, 'since they are held, in many respects in the light of a grand jury; and no indictor or grand juror can be put upon a petty jury for the trial of the same cause if challenged by the prisoner so indicted' (Delafons, p. 123). However, it appears that prisoners rarely exercised this type of challenge.

³According to the 1815 edition of William Falconer's classic maritime dictionary which was revised by William Burney, a provost martial had charge of a prisoner during his trial and subsequent punishment (*A New Universal Dictionary of the Marine* (London, 1815), p. 359).

guilty verdict.¹ While two was the usual minimum number of witnesses needed by the prosecutorial side, there was no limit on the maximum number. However, McArthur cautioned prosecutors that ‘it would be to no good purpose to call too many to establish the same facts, as this could only tend unnecessarily to protract the trials, and perhaps ultimately so elude the justice of the case’.²

While depositions were allowed as evidence on infrequent occasions, *viva voce* testimony was the standard method used at courts martial for ascertaining the facts of a cause. As at criminal law ashore, oral declarations given publicly under oath held much greater weight than affidavits given privately and read at the trial. Not only did such testimony offer the defendant the opportunity to challenge his accuser, but it enabled the court to assess the veracity of witnesses. As McArthur put it:

The court will be able to keep the witness from wandering from the point in issue and will have an opportunity of observing his quality, age, education, understanding, behaviour and inclination; all which necessary leading features cannot be collected from the depositions of witnesses when brought forward in writing and read to the court in the absence of those who made them; and, further, as much may be frequently collected from the manner in which the evidence is delivered, as from the matter of it.³

Indeed, parole evidence was so firmly embedded in naval jurisprudence that even testimony given at courts of inquiry had to be repeated *de novo* before the tribunal adjudicating charges arising from investigations by those courts.

At the conclusion of the examination of the last witness called by the prosecution, the prisoner entered his defence. Defences varied greatly, depending on the circumstances of the case rather than the rank or education of the accused.⁴ As a rule, if the guilt of the prisoner was obvious, he threw himself upon the mercy of the court or introduced testimony regarding his character and service in the Royal Navy. Conversely, if the defendant believed that the charges against him could not be proved or if he was on trial for a crime carrying an almost certain death penalty, he mounted a vigorous rebuttal of the accusations against him.

Once the prisoner finished his defence, the court was cleared and ‘proceeded to deliberate upon and form the sentence’.⁵ During their

¹McArthur, vol. 2, pp. 104–5.

²Ibid., p. 107.

³Ibid., p. 50.

⁴Byrn, p. 49.

⁵This was a standard phrase used in the courts martial transcripts.

deliberations, the members of a tribunal had to decide two basic questions. Was the defendant guilty of the crime or crimes with which he was accused? And if so, what was to be his punishment? The first of these issues was determined by a simple majority of justices, with the judge advocate asking each panellist in ascending order of rank one question: 'Are you of the opinion that the charge against the prisoner is proved or not proved?'¹

Having reached a verdict, the tribunal took the appropriate steps. Needless to say, all defendants acquitted of the charge or charges against them were released as soon as the assembly was reconvened and its findings were announced. In cases involving officers (though not seamen) found innocent, it was customary for the court to exonerate them in the most emphatic way to preserve their honour and good name. 'The word unanimous is frequently inserted in sentences of acquittal,' Delafons observed 'in order to give greater energy and weight in restoring the officer in the good opinion of his country and efface the stain or tarnish his reputation might have suffered from the accusation brought against him; from which he is honourably acquitted'.² Moreover, if the allegations proved completely unfounded, it was not unknown for the justices to state their disapproval of the plaintiff's motives in the sentence.

If, on the other hand, the tribunal adjudged the defendant guilty either fully or in part, then it had to decide the type and degree of punishment to inflict. For a number of offences the penalty was predetermined by the Articles of War. Thus by Clause 28, the mandatory sentence for those convicted of murder was death. Correspondingly, all officers convicted of signing false musters were to 'be cashiered and rendered incapable of further employment in his Majesty's naval service'. In non-capital cases carrying prescribed penalties, all that the court could do was ameliorate the sentence by including any mitigating circumstances in its report, a practice frowned upon by the Admiralty.

Yet, not all crimes carried mandatory sentences. Indeed, most of the thirty-six clauses comprising the Articles of War gave courts martial considerable leeway in setting the penalties for the offences listed therein. Naval tribunals had a wide variety of punishments at their disposal; and the type of correction imposed varied greatly according to the rank of the miscreant. Warrant and commissioned officers adjudged guilty of violating the navy's code of criminal justice generally were dismissed their ships,

¹Byrn, p. 51, n. 1. If the first poll of the panellists ended in a tie, a second was taken. Should the result still be a deadlock, the defendant was found innocent. As Delafons explained: 'Since it requires a majority of voices to condemn, an equality should of course acquit, as it neutralizes the opinion of the judges who can come to no decision' (p. 247).

²Delafons, p. 279.

disrated, reprimanded, admonished, reduced on the seniority list for their rank or received some combination thereof, depending on the circumstances of the crime.¹ Members of the lower deck routinely received death, ‘flogging round the fleet’, simple flogging, imprisonment or loss of pay, contingent on the severity of their transgression.²

The nature of the punishment inflicted upon those convicted by courts martial was settled by a majority vote of the justices hearing the case. However, due to the silence of the statutes regulating naval tribunals about which judges should be allowed a voice in determining penalties, some confusion on the matter arose. Delafons held that only those who had deemed the prisoner guilty should establish the punishment. McArthur, on the other hand, believed that all members of a tribunal, regardless of their opinion on the question of guilt or innocence, should determine the retribution. ‘Unfortunately’, as I argued in *Crime and Punishment in the Royal Navy*, ‘it is impossible to estimate with any accuracy which of the two methods enjoyed a wider acceptance because the transcripts of naval trials uniformly and intentionally concealed the deliberations of every assembly from public knowledge’.³

No matter which method justices afloat used to determine a sentence, the Articles of War insisted they were to make sure that the punishment selected was appropriate for the crime committed. The sections not mandating a penalty routinely included the clause ‘or such other

¹Death sentences were not entirely unknown for members of the quarterdeck in the eighteenth century. Occasionally, naval tribunals condemned men like Lieutenants William Berry and Richard Stewart Gamage to suffer the ultimate penalty at the hands of a firing squad (Byrn, p. 59).

²Flogging round the fleet was a type of punishment involving a large number of lashes inflicted by the sentence of court martial. By this form of retribution, the commander in chief of a station or the commander of a squadron divided the total number of strokes imposed by the number of ships at the location where the punishment was to take place, with this figure to be administered at each of these vessels. On the day appointed to carry out the scourging, a yellow flag was flown from the foremast of the commander’s ship; and, answering this signal, each vessel in the squadron sent a launch manned by seamen and marines under the command of a lieutenant to observe the proceedings. The prisoner, together with a surgeon and the provost martial, entered another launch and was stripped to the waist and bound to a grating constructed specially for the event. When this flotilla had assembled, it formed a line and set off to the first vessel to serve as a site of punishment. On its arrival, the sentence of the court was read aloud to the assembled ship’s company and two boatswain’s mates were sent on board to inflict the designated number of lashes. After all of these blows had been struck, the victim was examined by the surgeon to determine if he was capable of receiving further punishment and, if he was, a blanket was placed on his shoulders and the little flotilla proceeded to the next ship, where the entire ceremony was repeated. And so it continued until either the flogging was completed or the prisoner was unable to withstand further suffering. In the latter instance, the punishment was stopped and the miscreant was allowed to recuperate before it resumed. Each trip round the fleet could take several hours and multiple trips could take more than half a year to complete.

³Byrn, p. 52.

punishment as the nature and degree of the offence shall deserve'. That justices, as a rule, heeded this insistence is evinced paradoxically by a phrase frequently appearing in the reports of courts martial, which seems brutally callous to the twenty-first-century Western mind; often a sentence of several hundred lashes was prefaced by the words 'do only adjudge'. Yet, when it is considered that the maximum penalty for most offences was death, the passage was neither brutal or callous; rather it was a reminder that, even though an assembly possessed the authority to inflict the ultimate retribution upon the prisoner, it had chosen to exercise restraint and impose a penalty befitting the circumstances of the defendant's case.

A further indication that judicial bodies at sea sought to make the punishment fit the crime is the difference in penalties imposed upon warrant and commissioned officers:

Considerable distinction should obtain in the mode of inflicting punishments of an inferior kind on officers and seamen: what may be regarded as a slight penalty inflicted on the one would be considered as of great magnitude to the other. Habits and education create essential differences in the minds and manners of men. To dismiss an officer from his Majesty's service would be esteemed a heavy punishment; whereas a common sailor would look upon it, in many cases, as a favour conferred upon him. Corporal punishment, which seldom operates on the feelings of common seaman or soldier, must affect a petty officer (such as a midshipman) so sensibly, if he has the sentiments of a gentleman, as to render his future life a burden to him.¹

After the judges had reached a verdict and selected an appropriate sentence, their decisions were put in writing and signed by each member of the tribunal. Thereupon the court reconvened, the defendant was brought back in and the audience and witnesses readmitted to hear the judge advocate announce the justices' findings before the assembly. The proceedings then concluded and the judicial body was dissolved. Prisoners found innocent were freed immediately; those convicted were turned over to the provost martial to await their punishment.

The entire tribunal was conducted with great solemnity to impress upon both the defendant and the audience the gravity of the affair. On the morning of the day appointed for the trial, a cannon was fired and the union flag was flown from the top of the mainmast of the ship upon which the court was to assemble. Throughout the proceedings, the sober judges,

¹Delafons, pp. 271–2.

in full dress uniform, sat at a long table on either side of the presiding officer in descending order of seniority. During the examination of witnesses, the provost marshal stood next to the prisoner with sword drawn.¹ And, it was ritual for the justices to cover their heads while the judge advocate publicly announced their findings.²

The judge advocate was the pivotal figure of the proceedings. Appointed by either the Lords Commissioners of the Admiralty or the commander in chief of a station, he read the warrant to convene the court and administered the oaths to both the judges and the witnesses alike. Moreover, he advised the magistrates at sea ‘of the proper forms’ and rendered opinions on problems as they arose during the trial. Furthermore, he questioned witnesses, directed the deliberations of the justices and drew up as well as announced the sentence. And, most important for the present purpose, he took the minutes of the proceedings, which he read to the members of the tribunal so that errors could be identified and revised.³ As McArthur succinctly wrote, ‘the judge advocate may be said to be the *primum mobile* of a court martial, as not only impelling it to action, but as being the person to whom, in great measure, depends that harmony of motion so necessary to constitute a regular court’.⁴

III

Both editions of the *Regulations and Instructions* required judge advocates to send their Lordships the ‘original sentences’, the minutes and accompanying documents of every court martial. The transcripts of these trials were collected and stored at the Admiralty.⁵ They were arranged chronologically in bound volumes. Some time in the nineteenth century they were transferred to the Public Record Office, now The National Archives of the United Kingdom. For the period under consideration, there are now 122 volumes each covering from one month to over a year, bearing the references ADM 1/5330 to ADM 1/5452. While there is sufficient evidence to suggest that not all transcripts have survived, more than enough have to provide a clear picture of naval jurisprudence. Indeed, it is more likely than not that most of the records have been preserved. These documents vary greatly in detail. Some are meticulous records of

¹R. R. S. Fisher, ‘Courts Martial’, *The Mariner’s Mirror*, 56 (1970), p. 239.

²Dudley Pope, *Life in Nelson’s Navy* (London: George Allen and Unwin, 1981), p. 243.

³*Regulations and Instructions*, 2nd edn, p. 406.

⁴McArthur, vol. 1, p. 279.

⁵See R. B. Pugh, ‘The Early History of the Admiralty Record Office’, in J Conway Davies (ed.), *Studies Presented to Sir Hilary Jenkinson* (London: Oxford University Press, 1957), pp. 326–36.

individual trials, offering a wealth of evidentiary and procedural data; others are mere drafts, consisting of nothing more than bare-boned notes.

Nevertheless, because of the abundance of the surviving records, several criteria for inclusion in the present compilation had to be imposed: First, the documents had to have been generated some time between 1793 and 1815. Second, the originals had to have been written in a legible hand that could be reproduced clearly by the copying service at The National Archives. Third, they could be no longer than ten handwritten pages (however, the remaining evidence dictates that this rule be set aside in some instances). Fourth, they had to contain cases representative of all types of crime adjudicated by naval tribunals, drawn from foreign as well as home stations. And fifth, they had to include examples of trials for these offences not only in which the defendant was found guilty, but also in which he was found innocent.

In presenting materials that meet these criteria, the following arrangement has been adopted. [Chapter 1](#) deals with procedural matters. [Chapter 2](#) covers trials arising from accusations of one kind of social crime – that is, transgressions of the laws of Georgian and Regency society such as drunkenness, theft, violence and homosexuality. [Chapter 3](#) is devoted to proceedings against single types of naval offence, that is challenges to authority or maritime efficiency such as mutiny, insolence, desertion or loss of ship. [Chapter 4](#) treats cases involving adjudications for multiple infractions.

The documents contained herein are complete transcriptions, with the exception of such extraneous passages as the salutations and conclusions of letters and the like in conformity with the Navy Records Society's editorial conventions. Thus archaic spelling has been modernized according to British orthographic practice as has punctuation and grammar, without – it is hoped – altering the intended meaning of the authors of the manuscripts. Moreover, all abbreviations used in the originals have been preserved. And the names of ships and officers mentioned in this volume have been rendered as they are found in such standard references as J. J. Colledge's *Ships of the Royal Navy: An Historical Index*, 2 vols (Newton Abbott: David and Charles, 1969–70); David Lyon's *The Sailing Navy List: All the Ships of the Royal Navy, Built, Purchased and Captured, 1688–1860* (London: Conway Maritime Press, 1983); and *The Commissioned Sea Officers of the Royal Navy, 1660–1815* edited by David Syrett and R. I. DiNardo (NRS Occasional Publications Vol. 1).

PROCEDURE

The documents in the present chapter have been selected to illustrate the precepts and practices of late eighteenth and early nineteenth century naval courts martial. The first four provide the legal and administrative framework within which his Majesty's tribunals at sea operated. Although several of the records that follow demonstrate that specific courts violated this or that axiom of law, these trials were the exception, not the rule. On the whole justice afloat abided by the rules established in *An Act for Amending, Explaining and Reducing into One Act of Parliament the Laws relating to the Government of His Majesty's Ships, Vessels and Forces by Sea* and the several editions of *Regulations and Instructions relating to His Majesty's Service at Sea* [1–4].

The various statutes and regulations governing justice afloat were very specific about how charges were to be drawn up and about the limited jurisdiction of naval courts martial. Once again, while a few courts violated these proscriptions [5, 43], most followed them closely. Thus, examples of compliance are much more common than violations. Indeed, inaccuracies in the charges or charges deemed beyond the purview of naval tribunals routinely led to the dismissal of cases [6, 15, 17, 19, 21, 28, 34, 38, 45].

Courts martial were not intended to deal with trivial offences. One device used to uphold this intention was the court of inquiry. Such courts commonly were ordered to determine if there were sufficient grounds to warrant the convention of a naval tribunal [30, 35, 41]. Moreover, courts martial were meant to instil a sense of their majesty in those who witnessed them by making examples of the individuals who were brought before them [16, 22]. Towards this end, justice afloat followed the same methods used by eighteenth-century common law courts. In *Crime and Punishment in the Royal Navy*, I argued that Douglas Hay's thesis that Georgian criminal trials ashore were based on an ideology of justice, terror and mercy was equally applicable to naval courts martial during the period under discussion [11, 23, 24].¹

¹Byrn, pp. 54–63.

Although such devices as courts of inquiry were safeguards against the terror and majesty of naval tribunals becoming too common (thus lessening their example), occasionally weak, frivolous or mute cases did reach trial. These cases usually resulted from the failure of either the prosecutor or defendant to appear [14, 36]. However, a few were the consequence of a lack of evidence.

Trials of this nature must have been particularly aggravating to commanders in chief of both foreign and home stations. Courts martial entailed, at times, much inconvenience. Because the Consolidation Act of 1749 specifically stated that courts martial must be composed of at least five captains and commanders, prisoners, particularly on foreign stations, could languish in confinement for months, if not years, until the minimum number of officers could be assembled [9, 10]. For this reason, when enough qualified officers were present on a station to hold a naval tribunal, that tribunal often disposed of a number of disparate cases at the same time [18, 29].

Whether a court martial tried one or more cases, its most important participant was the judge advocate. Judge advocates normally were well versed in the laws and regulations pertaining to naval tribunals. Often, they were men of much experience with justice afloat; in an extreme example, Moses Greetham was deputy judge advocate at Portsmouth for forty-five years, beginning as a substitute in 1785 and retiring in 1830. The documents presented below that pertain to judge advocates have not been selected to illustrate the important functions they performed (see the Introduction), as these are evident in all the transcripts in this volume; rather, materials have been chosen that shed light on their pay [12, 47], their appointment [20] and their requests to the Admiralty [46].

Part of the reason why judge advocates and officers composing judicial panels were able to follow the letter of the law as well as they did was that they could, and did, consult His Majesty's solicitor general for advice through the Lords Commissioners of the Admiralty. Questions to the solicitor ranged from petitions to carry out death sentences [37] to whether miscreants could be tried [44] to, on occasion, thorny points of law [27, 48, 49, 50].

Finally, a few of the documents in this chapter have been chosen to demonstrate various aspects of naval courts martial. For example, states evidence was known and used by the King's justice at sea [7]. At the same time, naval tribunals were, at least for officers, courts of honour [26]. Thus sentences of acquittal for members of the quarterdeck were often couched in terms that absolved the defendant of all dishonour [13]; conversely loss of rank, which was a common punishment for petty officers deemed guilty by courts martial, led not only to ill repute but also financial hardship [25].

In a similar vein, tribunals at sea enquiring into the loss of ships often 'honourably acquitted' the officers and crew, who usually were tried together. However, in rare cases where either a member or members of the group acted in a particularly opprobrious manner during the loss, he or they were tried either individually or as a group for their offences [31, 32]. Therefore, the materials contained herein are intended to give the reader a sense of the principles and procedures employed at courts martial in the Royal Navy during the period under consideration.

1. *An Act for Amending, Explaining and Reducing into One Act of Parliament the Laws relating to the Government of His Majesty's Ships, Vessels and Forces by Sea*

[22 Geo. II c. 33]

Whereas the several laws relating to the sea service made at different times and on different occasions have been found by experience not to be so full, so clear, so expedient or consistent with each other as they ought to be; for amending and explaining the said laws and for reducing them into one uniform Act of Parliament, be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled and by the authority of the same, that from and after the twenty fifth day of December one thousand seven hundred and forty nine, an Act passed in the thirteenth year of the reign of King Charles the Second, entitled *An Act for Establishing Articles and Orders for the Regulating and Better Government of His Majesty's Navies, Ships of War and Forces by Sea*; and also so much of an Act passed in the second year of the reign of King William and Queen Mary, entitled *An Act Concerning the Commissioners of the Admiralty*, as directs the form of an oath to be taken by every officer present upon all trials of offenders by courts martial to be held by virtue of any commission to be granted by the Lord High Admiral or the commissioners for executing the office of Lord High Admiral; and also so much of an Act passed in the sixth year of the reign of King George the First, entitled *An Act for Making Perpetual so much of an Act made in the Tenth Year of the Reign of Queen Anne for the Reviving and Continuing Several Acts of Parliament therein Mentioned as Relates to the Building and Repairing County Gaols*; and also an Act of the eleventh and twelfth years of the reign of King William the Third for the more effectual suppression of piracy and for making more effectual the Act of the thirteenth year of the reign of King Charles the Second, entitled *An Act for Establishing Articles and Orders for the Regulating and Better Government of His Majesty's Navies, Ships of War and Forces by Sea*, as relates to the trial and punishment of persons who shall commit any of the crimes or offences mentioned in the said articles upon the shore, in any foreign part or parts; and also so much of an Act passed in the eighth year of the reign of King George the First, entitled *An Act for the More Effectual Suppressing of Piracy*, as directs the punishment to be inflicted by a court martial upon any captain, commander or other officer of any His Majesty's ships or vessels of war, who shall receive on board or permit to be received on board any goods or merchandizes whatsoever in order

to trade or merchandize with the same (except the goods and merchandizes therein excepted); and also an Act passed in the eighteenth year of the reign of His present Majesty, entitled *An Act for the Regulating and Better Government of His Majesty's Navies, Ships of War and Forces by Sea; and for Regulating the Proceedings upon Courts Martial in the Sea Service*; and also an Act passed in the twenty first year of the reign of His present Majesty, entitled *An Act for Further Regulating the proceedings upon Courts Martial in the Sea Service; and for Extending the Discipline of the Navy to the Crews of His Majesty's Ships Wrecked, Lost or Taken; and for Continuing to Them their Wages upon Certain Conditions*, shall be and the same are hereby repealed to all intents and purposes whatsoever.

II. And for the regulating and better government of His Majesty's navies, ships of war and forces by sea, whereon, under the good providence of God, the wealth, safety and strength of this kingdom chiefly depend, be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled and by the authority of the same that from and after the twenty fifth day of December one thousand seven hundred and forty nine, the articles and orders herein after following as well in time of peace as in time of war shall be duly observed and put in execution in manner herein after-mentioned.

1. All commanders, captains, and officers, in or belonging to any of His Majesty's ships or vessels of war, shall cause the public worship of Almighty God, according to the liturgy of the Church of England established by law, to be solemnly, orderly and reverently performed in their respective ships; and shall take care that prayers and preaching, by the chaplains in holy orders of the respective ships, be performed diligently; and that the Lord's day be observed according to law.
2. All flag officers, and all persons in or belonging to His Majesty's ships or vessels of war, being guilty of profane oaths, cursings, execrations, drunkenness, uncleanness, or other scandalous actions, in derogation of God's honour, and corruption of good manners, shall incur such punishment as a court martial shall think fit to impose, and as the nature and degree of their offence shall deserve.
3. If any officer, mariner, soldier, or other person of the fleet, shall give, hold, or entertain intelligence to or with any enemy or rebel, without leave from the King's majesty, or the Lord High Admiral, or the Commissioners for executing the office of Lord High Admiral,

commander in chief, or his commanding officer, every such person so offending, and being thereof convicted by the sentence of a court martial, shall be punished with death.

4. If any letter or message from any enemy or rebel, be conveyed to any officer, mariner, or soldier, or other in the fleet, and the said officer, mariner, soldier, or other as aforesaid, shall not, within twelve hours, having opportunity so to do, acquaint his superior officer or the officer commanding in chief with it or if any superior officer being acquainted therewith, shall not in convenient time reveal the same to the commander in chief of the squadron, every such person so offending and being convicted thereof by the sentence of the court martial, shall be punished with death or such other punishment as the nature and degree of the offence shall deserve and the court martial shall impose.
5. All spies, and all persons whatsoever, who shall come, or be found, in the nature of spies, to bring or deliver any seducing letters or messages from any enemy or rebel or endeavour to corrupt any captain, officer, mariner or other in the fleet, to betray his trust, being convicted of any such offence by the sentence of the court martial, shall be punished with death or such other punishment as the nature and degree of the offence shall deserve and the court martial shall impose.
6. No person in the fleet shall relieve an enemy or rebel with money, victuals, powder, shot, arms, ammunition or any other supplies whatsoever, directly or indirectly, upon pain of death or such other punishment as the court martial shall think fit to impose and as the nature and degree of the crime shall deserve.
7. All the papers, charter parties, bills of lading, passports, and other writings whatsoever, that shall be taken, seized or found aboard any ship or ships which shall be surprised or taken as prize, shall be duly preserved and the very originals shall by the commanding officer of the ship which shall take such prize, be sent entirely and without fraud to the Court of Admiralty or such other court of commissioners, as shall be authorized to determine whether such prize be lawful capture, there to be viewed, made use of, and proceeded upon according to law, upon pain that every person offending herein shall forfeit and lose his share of the capture and shall suffer such further punishment as the nature and degree of his offence shall be found to deserve, and the court martial shall impose.
8. No person in or belonging to the fleet shall take out of any prize, or ship seized for prize, any money, plate or goods, unless it shall be necessary for the better securing thereof, or for the necessary use

- and service of any of His Majesty's ships or vessels of war, before the same be adjudged lawful prize in some Admiralty Court; but the full and entire account of the whole, without embezzlement, shall be brought in and judgement passed entirely upon the whole without fraud, upon pain that every person offending herein shall forfeit and lose his share of the capture and suffer such further punishment as shall be imposed by a court martial or such Court of Admiralty, according to the nature and degree of the offence.
9. If any ship or vessel shall be taken as prize, none of the officers, mariners or other persons on board her shall be stripped of their clothes or in any sort pillaged, beaten or evil-entreated upon pain that the person or persons so offending shall be liable to such punishment as a court martial shall think fit to inflict.
 10. Every flag officer, captain and commander in the fleet, who upon signal or order of fight, or sight of any ship or ships which it may be his duty to engage or who, upon likelihood of engagement, shall not make the necessary preparations for fight and shall not in his own person and, according to his place, encourage the inferior officers and men to fight courageously shall suffer death or such other punishment, as from the nature and degree of the offence a court martial shall deem him to deserve and, if any person in the fleet shall treacherously or cowardly yield or cry for quarter, every person so offending and being convicted thereof by the sentence of a court martial shall suffer death.
 11. Every person in the fleet, who shall not duly observe the orders of the admiral, flag officer, commander of any squadron or division, or other his superior officer, for assailing, joining battle with, or making defence against any fleet, squadron, or ship, or shall not obey the orders of his superior officer as aforesaid in time of action, to the best of his power, or shall not use all possible endeavours, to put the same effectually in execution, every such person so offending and being convicted thereof by the sentence of the court martial shall suffer death or such other punishment, as from the nature and degree of the offence a court martial shall deem his to deserve.
 12. Every person in the fleet, who through cowardice, negligence, or disaffection, shall in time of action withdraw or keep back, or not come into the fight or engagement, or shall not do his utmost to take or destroy every ship which it shall be his duty to engage, and to assist and relieve all and every of His Majesty's ships, or those of his allies, which it shall be his duty to assist and relieve, every such person so offending and being convicted thereof by the sentence of a court martial shall suffer death.

13. Every person in the fleet, who through cowardice, negligence, or disaffection, shall forbear to pursue the chase of any enemy, pirate, or rebel, beaten or flying or shall not relieve or assist a known friend in view to the utmost of his power, being convicted of any such offence by the sentence of a court martial, shall suffer death.
14. If when action, or any service shall be commanded, any person in the fleet shall presume to delay or discourage the said action or service, upon pretence of arrears of wages, or upon any pretence whatsoever, every person so offending, being convicted thereof by the sentence of the court martial, shall suffer death or such other punishment as from the nature and degree of the offence a court martial shall deem him to deserve.
15. Every person in or belonging to the fleet, who shall desert to the enemy, pirate, or rebel, or run away with any of His Majesty's ships or vessels of war, or any ordnance, ammunition, stores, or provision belonging thereto, to the weakening of the service, or yield up the same cowardly or treacherously to the enemy, pirate, or rebel, being convicted of any such offence by the sentence of the court martial, shall suffer death.
16. Every person in or belonging to the fleet, who shall desert or entice others so to do, shall suffer death or such other punishment as the circumstances of the offence shall deserve and a court martial shall judge fit; and if any commanding officer of any of His Majesty's ships or vessels of war shall receive or entertain a deserter from any other of His Majesty's ships or vessels, after discovering him to be such deserter and shall not with all convenient speed give notice to the captain of the ship or vessel to which such deserter belongs or if the said ships or vessels are at any considerable distance from each other, to the secretary of the Admiralty or to the commander in chief, every person so offending, and, being convicted thereof by the sentence of the court martial, shall be cashiered.
17. The officers and seamen of all ships appointed for convoy and guard of merchant ships, or of any other, shall diligently attend upon that charge, without delay, according to their instructions in that behalf; and whosoever shall be faulty therein, and shall not faithfully perform their duty, and defend the ships and goods in their convoy, without either diverting to other parts or occasions, or refusing or neglecting to fight in their defence, if they be assailed, or running away cowardly, and submitting the ships in their convoy to peril and hazard; or shall demand or exact any money or other reward from any merchant or master for conveying of any ships or vessels entrusted to their care, or shall misuse the

masters or mariners thereof; shall be condemned to make reparation of the damage to the merchants, owners, and others, as the Court of Admiralty shall adjudge, and also be punished criminally according to the quality of their offences, be it by pains of death, or other punishment, according as shall be adjudged fit by the court martial.

18. If any captain, commander, or other officer of any of His Majesty's ships or vessels shall receive on board or permit to be received on board such ship or vessel any goods or merchandizes whatsoever, other than for the sole use of the ship or vessel, except gold, silver, or jewels, and except the goods and merchandizes belonging to any merchant, or other ship or vessel which may be shipwrecked, or in imminent danger of being shipwrecked, either on the high seas, or in any port, creek or harbour, in order to the preserving them for their proper owners, and except such goods or merchandizes as he shall at any time be ordered to take or receive on board by order of the Lord High Admiral of Great Britain, or the Commissioners for executing the office of Lord High Admiral for the time being; every person so offending, being convicted thereof by the sentence of the court martial shall be cashiered and be for ever afterwards rendered incapable to serve in any place or office in the naval service of His Majesty, his heirs and successors.
19. If any person in or belonging to the fleet shall make or endeavour to make any mutinous assembly upon any pretence whatsoever, every person offending herein, and being convicted thereof by the sentence of the court martial, shall suffer death: and if any person in or belonging to the fleet shall utter any words of sedition or mutiny, he shall suffer death, or such other punishment as a court martial shall deem him to deserve and if any officer, mariner or soldier in or belonging to the fleet, shall behave himself with contempt to his superior officer, such superior officer being in the execution of his office, he shall be punished according to the nature of his offence by the judgement of a court martial.
20. If any person in the fleet shall conceal any traitorous or mutinous practice or design, being convicted thereof by the sentence of a court martial, he shall suffer death, or such other punishment as a court martial shall think fit; and if any person, in or belonging to the fleet, shall conceal any traitorous or mutinous words spoken by any, to the prejudice of His Majesty or government, or any words, practice, or design, tending to the hindrance of the service, and shall not forthwith reveal the same to the commanding officer, or being present at any mutiny or sedition, shall not use his utmost endeavours

- to suppress the same, he shall be punished as a court martial shall think he deserves.
21. If any person in the fleet shall find cause of complaint of the unwholesomeness of the victual, or upon other just ground, he shall quietly make the same known to his superior, or captain, or commander in chief, as the occasion may deserve, that such present remedy may be had as the matter may require; and the said superior, captain, or commander in chief, shall, as far as he is able, cause the same to be presently remedied; and no person in the fleet, upon any disturbance, upon pain of such or other pretence, shall attempt to stir up any disturbance, upon pain of such punishment as a court martial shall think fit to inflict, according to the degree of the offence.
 22. If any officer, mariner, soldier, or other person in the fleet shall strike any of his superior officers or draw or offer to draw or lift up any weapon against him, being in the execution of his office, on any pretence whatsoever, every such person being convicted of any such offence, by the sentence of a court martial, shall suffer death; and if any officer, mariner, soldier, or other person in the fleet, shall presume to quarrel with any of his superior officers, being in the execution of his office, or shall disobey any lawful command of any of his superior officers; every such person being convicted of any such offence, by the sentence of a court martial, shall suffer death, or such other punishment, as shall, according to the nature and degree of his offence, be inflicted upon him by the sentence of a court martial.
 23. If any person in the fleet shall quarrel or fight with any other person in the fleet, or use reproachful or provoking speeches or gestures, tending to make any quarrel or disturbance, he shall, upon being convicted thereof, suffer such punishment as the offence shall deserve, and a court martial shall impose.
 24. There shall be no wasteful expense of any powder, shot, ammunition, or other stores in the fleet, nor any embezzlement thereof, but the stores and provisions shall be carefully preserved, upon pain of such punishment to be inflicted upon the offenders, abettors, buyers, and receivers (being persons subject to naval discipline) as shall be by a court martial found just in that behalf.
 25. Every person in the fleet, who shall unlawfully burn or set fire to any magazine or store of powder, or ship, boat, ketch, hoy or vessel, or tackle or furniture thereunto belonging, not then appertaining to an enemy, pirate, or rebel, being convicted of any such offence, by the sentence of a court martial, shall suffer death.

26. Care shall be taken in the conducting and steering of any of His Majesty's ships that through wilfulness, negligence, or other defaults, no ship be stranded or run upon any rocks or sands, or split or hazarded, upon pain, that such as shall be found guilty therein, be punished by death, or such other punishment, as the offence by a court martial shall be judged to deserve.
27. No person in or belonging to the fleet shall sleep upon his watch, or negligently perform the duty imposed on him or forsake his station upon pain of death or such other punishment as a court martial shall think fit to impose and as the circumstances of the case shall require.
28. All murders committed by any person in the fleet, shall be punished with death by the sentence of a court martial.
29. If any person in the fleet shall commit the unnatural and detestable sin of buggery or sodomy with man or beast, he shall be punished with death by the sentence of a court martial.
30. All robbery committed by any person in the fleet, shall be punished with death, or otherwise, as a court martial, upon consideration of circumstances, shall find meet.
31. Every officer or other person in the fleet, who shall knowingly make or sign a false muster or muster book, or who shall command, counsel, or procure the making or signing thereof, or who shall aid or abet any other person in the making or signing thereof, shall, upon proof of any such offence being made before a court martial, be cashiered, and rendered incapable of further employment in His Majesty's naval service.
32. No provost martial belonging to the fleet shall refuse to apprehend any criminal, whom he shall be authorized by legal warrant to apprehend, or to receive or keep any prisoner committed to his charge, or wilfully suffer him to escape, being once in his custody, or dismiss him without lawful order, upon pain of such punishment as a court martial shall deem him to deserve; and all captains, officers, and others in the fleet, shall do their endeavour to detect, apprehend, and bring to punishment all offenders, and shall assist the officers appointed for that purpose therein, upon pain of being proceeded against, and punished by a court martial, according to the nature and degree of the offence.
33. If any flag officer, captain, or commander, or lieutenant belonging to the fleet, shall be convicted before a court martial of behaving in a scandalous, infamous, cruel, oppressive, or fraudulent manner, unbecoming the character of an officer, he shall be dismissed from His Majesty's service.

34. Every person being in actual service and full pay, and part of the crew in or belonging to any of His Majesty's ships or vessels of war, who shall be guilty of mutiny, desertion, or disobedience to any lawful command, in any part of His Majesty's dominions on shore, when in actual service relative to the fleet, shall be liable to be tried by a court martial, and suffer the like punishment for every such offence as if the same had been committed at sea on board any of His Majesty's ships or vessel of war.
35. If any person, who shall be in the actual service and full pay of His Majesty's ships and vessels or war, shall commit upon the shore, in any place or places out of His Majesty's dominions, any of the crimes punishable by these articles and orders, the person so offending shall be liable to be tried and punished for the same, in like manner, to all intents and purposes, as if the said crimes had been committed at sea on board any of His Majesty's ships or vessels of war.
36. All other crimes not capital committed by any person or persons in the fleet, which are not mentioned in this Act, or for which no punishment is hereby directed to be inflicted, shall be punished according to the laws and customs in such cases used at sea.

III. Provided always that no person convicted of any offence shall, by the sentence of any court martial to be held by virtue of this Act, be adjudged to be imprisoned for a longer term than the space of two years.

IV. Provided also that nothing in this Act contained shall extend, or be construed to extend, to empower any court martial to be constituted by virtue of this Act to proceed to the punishment or trial of any of the offences specified in the several articles contained in this Act or of any offence whatsoever (other than the offences specified in the fifth, thirty fourth and thirty fifth of the foregoing articles and orders) which shall not be committed upon the main sea, or in great rivers only, beneath the bridges of the said rivers nigh to the sea, or in any haven, river or creek within the jurisdiction of the Admiralty and which shall not be committed by such persons as at the time of the offence committed shall be in actual service and full pay in the fleet or ships of war of His Majesty, his heirs or successors, such persons only excepted and for such offences only as are described in the fifth of the foregoing articles and orders.

V. Provided also that nothing in this Act contained shall extend, or be construed to extend, to empower any court martial to be constituted by virtue of this Act to proceed to the punishment or trial of any land officer or soldier on board any transport ship for any of the offences specified in the several articles contained in this Act.

VI. And it is hereby further enacted that from and after the twenty fifth day of December one thousand seven hundred and forty nine the Lord High Admiral of Great Britain or the Commissioners for executing the Office of Lord High Admiral of Great Britain for the time being shall have full power and authority to grant commissions to any officer commanding in chief any fleet or squadron of ships of war to call and assemble courts martial consisting of commanders and captains and that in case any officer commanding in chief any fleet or squadron of ships of war (who shall be authorized by the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral for the time being to call and assemble courts martial in foreign parts) shall happen to die or be recalled or removed from his command, then the officer upon whom the command of the said fleet or squadron shall devolve, and so, from time to time, the officer who shall have the command of the fleet or squadron shall have the same power to call and assemble courts martial as the first commander in chief of the said fleet or squadron was invested with.

VII. Provided always, and it is hereby enacted and declared, that no commander in chief of any fleet or squadron of His Majesty's ships or detachment thereof consisting of more than five ships shall preside at any court martial in foreign parts, but that the officer next in command to such officer commanding in chief shall hold such court martial and preside thereat, any law, custom or usage to the contrary notwithstanding.

VIII. And it is hereby further enacted that from and after the twenty fifth day of December one thousand seven hundred and forty nine, in case any commander in chief in any fleet or squadron of His Majesty's ships or vessels of war in foreign parts shall detach any part of such fleet or squadron, every commander in chief shall and he is hereby authorized and required, by writing under his hand, to empower the chief commander of the squadron or detachment so ordered on such separate service (and in case of his death or removal, the officer to whom the command of such separate squadron or detachment shall belong) to hold courts martial during the time of such separate service or until the commander of the said detachment for the time being shall return to his commander in chief or shall come under the command of any other his superior officer or return to Great Britain or Ireland.

IX. Provided always, and it is hereby further enacted, that if any five or more of His Majesty's ships or vessels of war shall happen to meet together in foreign parts, then and in such case it shall be lawful for the senior officer of the said ships or vessels to hold courts martial and preside thereat from time to time as there shall be occasion during so long time as the said ships or vessels of war or any five or more of them shall continue together.

X. Provided nevertheless, and be it also enacted, that where any material objection occurs, which may render it improper for the person who is next in command to the senior officer or commander in chief of any fleet or squadron of His Majesty's ships of war in foreign parts to hold courts martial or preside thereat, in such cases it shall be lawful for the Lord High Admiral or Commissioners for executing the office of Lord High Admiral for the time being, as also the commander in chief of any such fleet or squadron of His Majesty's ships in foreign parts respectively to appoint the third officer in command to preside at or hold such court martial.

XI. And it is hereby further enacted that from and after the twenty fifth day of December one thousand seven hundred and forty nine, it shall be lawful for the Lord High Admiral of Great Britain or Commissioners for executing the office of Lord High Admiral for the time being, and they are hereby respectively authorized from time to time as there shall be occasion, to direct any flag officer or captain of any of His Majesty's ships of war who shall be in any port of Great Britain or Ireland to hold courts martial in any such port, provided such flag officer or captain be the first, second or third in command of such port as shall be found most expedient and for the good of His Majesty's service; and such flag officer or captain so directed to hold courts martial shall preside at such court martial, anything herein contained to the contrary notwithstanding.

XII. And it is hereby further enacted that from and after the twenty fifth day of December one thousand seven hundred and forty nine, no court martial, to be held or appointed by virtue of this present Act, shall consist of more than thirteen or less than five persons to be composed of such flag officers, captains or commanders then and there present as are next in seniority to the officer who presides at the court martial.

XIII. Provided always, and be it enacted by the authority aforesaid, that nothing herein contained shall extend, or be construed to extend, to authorize or empower the Lord High Admiral or the Commissioners for executing the office of Lord High Admiral or any officer empowered to order or hold courts martial to direct or ascertain the particular number of persons of which any court martial to be held or appointed by virtue of this present Act shall consist.

XIV. Provided always, and it is hereby enacted and declared, that in case any court martial shall, by virtue of this Act, be appointed to be held at any place where there are not less than three nor yet so many as five officers of the degree and denomination of a post captain or of a superior rank to be found, then it shall be lawful for the officer at the place appointed for holding such court martial who is to preside at the same to call to his assistance as many of the commanders of His Majesty's vessels

under the rank and degree of a post captain as, together with the post captains then and there present, will make up the number of five to hold such court martial.

XV. And it is hereby further enacted that from and after the twenty fifth day of December one thousand seven hundred and forty nine, no member of any court martial after the trial is begun shall go on shore till sentence be given, but remain on board the ship in which the court shall first assemble, except in case of sickness, to be judged of by the court upon pain of being cashiered from His Majesty's service; nor shall the proceedings of the said court be delayed by the absence of any of its members, provided a sufficient number doth remain to compose the said court, which shall and is hereby required to sit from day to day (Sunday always excepted) until the sentence be given.

XVI. And it is hereby further enacted that from and after the twenty fifth day of December one thousand seven hundred and forty nine, upon all trials of offenders by any court martial, all the officers present who are to constitute the said court martial shall, before they proceed to such trial, take such oath as is herein after-mentioned upon the holy evangelists before the court, which oath the judge advocate, or his deputy or the person appointed to officiate as such, is hereby authorized and required to administer in the words following (that is to say):

I, A. B., do swear that I will duly administer justice according to the articles and orders established by an Act passed in the twenty second year of the reign of His Majesty, King George the Second, for *Amending, Explaining and Reducing into One Act of Parliament the Laws Relating to the Government of His Majesty's Ships, Vessels and Forces by Sea*, without partiality, favour or affection; and if any case shall arise, which is not particularly mentioned in the said articles and orders, I will duly administer justice according to my conscience, the best of my understanding, and the custom of the navy in the like cases; and I do further swear that I will not upon any account, at any time whatsoever, disclose or discover the vote or opinion of any particular member of this court martial, unless thereunto required by Act of Parliament.

So help me God.

And so soon as the said oath shall have been administered to the respective members, the president of the court is hereby authorized and required to administer to the judge advocate, or the person officiating as such, an oath in the following words:

I, A. B., do swear that I will not upon any account at any time whatsoever disclose or discover the vote or opinion of any particular

member of this court martial, unless thereunto required by Act of Parliament.

So help me God.

XVII. And it is hereby further enacted that from and after the twenty fifth day of December one thousand seven hundred and forty nine, in case any person in the fleet, being called upon to give evidence at any court martial, shall refuse to give his evidence upon oath or shall prevaricate in his evidence or behave with contempt to the court, it shall and may be lawful for such court martial to punish every such offender by imprisonment at the discretion of the court, such imprisonment not to continue longer than three months, in case of such refusal or prevarication, nor longer than one month in the case of such contempt; and that all and every person and persons who shall commit any wilful perjury in any evidence or examination upon oath at any such court martial or who shall corruptly procure or suborn any person to commit such wilful perjury shall and may be prosecuted in His Majesty's Court of King's Bench by indictment or information; and every issue joined in any such indictment or information shall be tried by good and lawful men of the county of Middlesex, or such other county as the said Court of King's Bench shall direct; and all and every person and persons being lawfully convicted upon any such indictment or information shall be punished with such pains and penalties as are inflicted for the like offences respectively by two Acts of Parliament, the one made in the fifth year of the reign of Queen Elizabeth, entitled *An Act for Punishment of Such Persons as shall Procure or Commit any Wilful Perjury*, and the other made in the second year of the reign of His present Majesty entitled *An Act for the More Effectual Preventing and Further Punishment of Forgery, Perjury and Subornation of Perjury and to Make it Felony to Steal Bonds, Notes or other Securities for Payment of Money*.

XVIII. And be it further enacted by the authority aforesaid that in every information or indictment to be prosecuted by virtue of this Act for any such offence, it shall be sufficient to set forth the offence charged upon the defendant without setting forth the commission or authority for holding the court martial and without setting forth the particular matter tried or to be tried or directed or intended to be tried before such court.

XIX. And it is hereby further enacted that from and after the twenty fifth day of December one thousand seven hundred and forty nine, no sentence of death given by any court martial held within the narrow seas (except in cases of mutiny) shall be put in execution till after the report of the proceedings of the said court shall have been made to the Lord High Admiral or the Commissioners for executing the office of Lord High

Admiral and his or their directions shall have been given therein; and, if the said court shall have been held beyond the narrow seas, then such sentence of death shall not be carried into execution but by order of the commander of the fleet or squadron wherein sentence was passed; and in cases where sentence of death shall be passed in any squadron detached from any other fleet or squadron upon a separate service, then such sentence of death (except in cases of mutiny) shall not be put in execution, but by order of the commander of the fleet or squadron from which such detachment shall have been made or of the Lord High Admiral or Commissioners for executing the office of Lord High Admiral; and in cases where sentence of death shall be passed in any court martial held by the senior officer of five or more of His Majesty's ships, which shall happen to meet together in foreign parts pursuant to the power herein before given, then such sentence of death (except in cases of mutiny) shall not be carried into execution but by order of the Lord High Admiral or Commissioners for executing the office of Lord High Admiral.

XX. And it is hereby further enacted and declared that from and after the twenty fifth day of December one thousand seven hundred and forty nine, the judge advocate of any fleet for the time being or his deputy shall have full power and authority and is hereby required to administer an oath to any witness at any trial by court martial; and in the absence of the judge advocate and his deputy, the court martial shall have full power and authority to appoint any person to execute the office of judge advocate.

XXI. And be it further enacted by the authority aforesaid that from and after the twenty fifth day of December one thousand seven hundred and forty nine, all the powers given by the several articles and orders established by this Act shall remain and be in full force with respect to the crews of such of His Majesty's ships as shall be wrecked or be otherwise lost or destroyed; and all the command, power and authority given to the officers of the said ship or ships shall remain and be in full force as effectually as if such ship or ships to which they did belong were not so wrecked, lost or destroyed until they shall be regularly discharged from His Majesty's further service or removed into some other of His Majesty's ships of war or until a court martial shall be held pursuant to the custom of the navy in such cases to enquire into the causes of the loss of the said ship or ships; and if upon such enquiry it shall appear by the sentence of the court martial that all or any of the officers or seaman of the said ship or ships did their utmost to preserve, get off or recover the said ship or ships and since the loss thereof have behaved themselves obediently to their superior officers according to the discipline of the navy and the said articles and orders herein before established, then all the pay and wages of the said officers and seamen, or such of them as shall have

done their duty as aforesaid, shall continue and go on and be paid to the time of their discharge or death; or if they shall be then alive, to the time of the holding of such court martial or removal into some other of His Majesty's ships of war and every such officer and seaman of any of His Majesty's ships of war, who after the wreck or loss of his ship shall act contrary to the discipline of the navy and the several articles and orders herein before established or any of them, shall be sentenced by the said court martial and punished as if the ship to which he did belong was not so wrecked, lost or destroyed.

XXII. And be it further enacted that from and after the twenty fifth day of December one thousand seven hundred and forty nine, all the pay and wages of such officers and seamen of any of His Majesty's ships as are taken by the enemy and upon enquiry at a court martial shall appear by the sentence of the said court to have done their utmost to defend the said ship or ships, and, since the taking thereof, to have behaved themselves obediently to their superior officers according to the discipline and the said articles and orders herein before established shall continue and go on and be paid from the time of their being so taken to the time of the holding of such court martial, or until they shall be regularly discharged from His Majesty's service or removed into some other of His Majesty's ships of war, or (if they shall die in captivity or not live to the time of the holding of such court martial) to the time of their death in such manner, and not otherwise, as if the said ship or ships to which they did belong respectively was not or were not so taken.

XXIII. Provided always, and be it further enacted, that no person or persons not flying from justice shall be tried or punished by any court martial for any offence to be committed against this Act, unless the complaint of such offence be made in writing to the Lord High Admiral or to the Commissioners for executing the Office of Lord High Admiral for the time being, or any commander in chief of His Majesty's squadrons or ships empowered to hold courts martial, or unless a court martial to try such offender shall be ordered by the said Lord High Admiral, or the said Commissioners, or the said commander in chief either within three years after such offence shall be committed or within one year after the return of the ship, or of the squadron, to which such offender shall belong into any of the ports of Great Britain or Ireland; or within one year after the return of such offender into Great Britain or Ireland.

XXIV. And whereas by the said Act, entitled *An Act for the More Effectual Suppressing of Piracy*, it is amongst other things enacted in the following words: 'that the said captain, commander or other officer of the said ship or vessel of war and all and every of the owners or proprietors of such goods and merchandizes put on board such ship or vessel of war

as aforesaid shall lose, forfeit and pay the value of all and every such goods and merchandizes so put on board as aforesaid; one moiety of such full value to such person or persons as shall make the first discovery and give information of or concerning the said offence, the other moiety of such full value to and for the use of Greenwich Hospital; all which forfeitures shall and may be sued for and recovered in the High Court of Admiralty;’ now for making the said in part recited Act more useful and effectual, be it enacted by the authority aforesaid that from and after the twenty fifth day of December one thousand seven hundred and forty nine, if any captain, commander or other officer of any of His Majesty’s ships or vessels shall receive on board or permit or suffer to be received on board such ship or vessel any goods or merchandizes contrary to the true intent and meaning of the eighteenth article in this Act before mentioned and hereby enacted, every such captain, commander or other officer shall, for every such offence over and above any punishment inflicted by this Act, forfeit and pay the value of all and every such goods or merchandizes so received, or permitted or suffered to be received on board as aforesaid, or the sum of five hundred Pounds of lawful money of Great Britain at the election of the informer or person who shall sue for the same so that no more than one of these penalties or forfeitures shall be sued for and recovered by virtue of this and the said in part recited Act, or either of them, against the same person for one and the same offence, one moiety of which penalties or forfeitures shall be forfeited and paid to the person who shall inform or sue for the same and the other moiety thereof, to and for the use of the Royal Hospital at Greenwich, which forfeiture shall be sued for and recovered by action of debt, bill, plaint or information in any of His Majesty’s courts of record at Westminster or in the High Court of Admiralty at the election of the informer or person who shall sue for the same; and the court shall award such costs to the parties as shall be just and in all cases where judgement or sentence shall be given against any such offender, the court, where such judgement or sentence shall be given, shall, with all convenient speed, certify the same to the Lord High Admiral or to the Commissioners for executing the said Office.

XXV. Provided always that nothing in this Act contained shall extend or be construed to extend to take away from the Lord High Admiral of Great Britain or the Commissioners for executing the office of Lord High Admiral of Great Britain, or any vice admiral, or any judge or judges of the Admiralty, or his or their deputy or deputies, or any other officers or ministers of the Admiralty, or any others having or claiming any admiral power, jurisdiction or authority within this realm or any other the King’s dominions, or from any person or court whatsoever, any power, right, jurisdiction, pre-eminence or authority, which he or they, or any of them

lawfully hath, have or had, or ought to have and enjoy before the making of this Act so as the same person shall not be punished twice for the same offence.

XXVI. Provided nevertheless and be it enacted that the repeal of the said before recited statutes, or any part thereof, or anything herein contained shall not extend or be deemed to extend to discharge or avoid, or prevent any prosecution or suit commenced or at any time hereafter to be commenced against any person or persons for any offence committed on or before the said twenty fifth day of December, one thousand seven hundred and forty nine or to be committed against the said statutes or any part or parts thereof, but that all persons who have been or shall, before said twenty fifth day of December, be guilty of any such offence shall and may be prosecuted, sued, condemned and punished for the same as well as before the said twenty fifth day of December as if the said statutes had not been repealed.

2. *An Act to Explain and Amend an Act Made in the Twenty Second Year of the Reign of His Late Majesty King George the Second, Entitled An Act for Amending, Explaining and Reducing into One Act of Parliament the Laws Relating to the Government of His Majesty's Ships, Vessels and Forces by Sea*

[19 Geo. III c. 17]

Whereas by an Act made in the twenty second year of the reign of His late Majesty King George the Second, entitled *An Act for Amending, Explaining and Reducing into One Act of Parliament the Laws Relating to the Government of His Majesty's Ships, Vessels and Forces by Sea*, it is, among other things, enacted, 'that from and after the twenty fifth day of December, one thousand seven hundred and forty nine, no member of any court martial, after the trial is begun, shall go on shore till sentence be given, but remain on board the ship in which the court shall first assemble, except in case of sickness to be judged of by the court, upon pain of being cashiered from His Majesty's service; nor shall the proceedings of the said court be delayed by the absence of any of its members, provided a sufficient number doth remain to compose the said court, which shall and is thereby required to sit from day to day (Sunday always excepted) until the sentence be given:' and whereas it hath been found by experience that the confining members of courts martial to the ship in which such courts martial shall first assemble until sentence be given hath been attended with great inconveniences and prejudice to the healths of officers summoned to attend as members of courts martial; and

it is highly necessary and expedient that such inconveniences should be prevented in future, may it therefore please your Majesty that it may be enacted and be it enacted by the King's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal and commons in this present Parliament assembled, and by the authority of the same that so much and such part of the said recited Act as directs that no member of any court martial, after the trial is begun, shall go on shore till the sentence be given, but remain on board the ship in which the court shall first assemble, except in case of sickness to be judged of by the court, upon pain of being cashiered from His Majesty's service and that the proceedings of the said court shall not be delayed by the absence of any of its members provided a sufficient number doth remain to compose the said court, which is thereby required to sit from day to day (Sunday always excepted) until the sentence be given, shall be and the same is hereby repealed and made void to all intents and purposes whatsoever.

II. Provided always, and be it enacted, that the proceedings of any court martial shall not be delayed by the absence of any of its members, provided a sufficient number doth remain to compose such court, which shall and is hereby required to sit from day to day (Sunday always excepted) until the sentence be given, anything herein before contained to the contrary thereof in anywise notwithstanding; and no member of the said court martial shall absent himself from the said court during the whole course of the trial upon pain of being cashiered from His Majesty's service, except in case of sickness or other extraordinary and indispensable occasion to be judged of by the said court.

III. And whereas by two clauses in the said Act passed in the twenty second year of the reign of His late Majesty King George the Second, it is enacted and declared, that 'every person in the fleet, who through cowardice, negligence, or disaffection, shall in time of action withdraw or keep back, or not come into the fight or engagement, or shall not do his utmost to take or destroy every ship which it shall be his duty to engage, and to assist and relieve all and every of His Majesty's ships, or those of his allies, which it shall be his duty to assist and relieve, and being convicted thereof by the sentence of a court martial, shall suffer death'; and also that 'every person in the fleet, who through cowardice, negligence, or disaffection, shall forbear to pursue the chase of any enemy, pirate, or rebel, beaten or flying; or shall not relieve or assist a known friend in view, to the utmost of his power; and being convicted of any such offence by the sentence of a court martial, shall suffer death': And whereas the restraining of the power of the court martial to the inflicting of the punishment of death in the several cases recited in the said clauses may be attended with great hardship and inconvenience; be it enacted,

that, from and after the passing of this Act, it shall and may be lawful in the several cases recited in the said clauses for the court martial to pronounce sentence of death or to inflict such other punishment as the nature and degree of the offence shall be found to deserve.

3. *Chapter on Courts Martial in Regulations and Instructions of 1731*

[*Regulations and Instructions Relating to His Majesty's Service at Sea*, 1st edn, pp. 3–6]

Of Courts Martial

Article I

All courts martial are to be held, offences tried, sentence pronounced and execution of such sentence to be done according to the Articles and Orders contained in an Act of Parliament made in the thirteenth year of the reign of King Charles the Second, entitled *An Act for the Establishing Articles and Orders for the Regulating and better Government of His Majesty's Navy, Ships of War and Forces by Sea*, which Act all officers concerned are duly to peruse for their instruction herein.

II

All commissions or general powers for holding courts martial are to be understood to be in force no longer than during the expedition.

III

Courts martial shall always be held in the forenoon and in the most public place of the ship, where all who will may be present; and the captains of all His Majesty's ships in company, which take post, have a right to assist thereat.

IV

All complaints at sea or in foreign parts, upon which the summoning a court martial is to be grounded, shall be made in writing to the commander in chief (unless where the said commander in chief shall see cause of himself to call the same) in which are to be set forth the particular facts, with the place, time, and in what manner they were committed. And if any captain, who is entitled by his rank to sit in the court, be personally concerned in the matter to be tried, he shall not be admitted to sit at the said trial.

V

The judge advocate is to examine the witnesses upon oath, take down their depositions in writing, and show the same to the commander in chief, who is to order him to send timely before the trial an attested copy of the charge or accusation to the party accused in order to his being the better prepared for his defence.

VI

When the court is sitting, the judge advocate is to take minutes of their proceedings and to advise them of the proper forms when there shall be occasion, and to deliver his opinion in any doubts or difficulties in their methods that may arise in the course of the trial.

VII

When the court shall have gone through the examination and heard all parties, the person accused shall be removed and the standers by ordered to withdraw; after which the matters being fully considered and debated by the court, the president is to state and put the several questions agreed by them, in which the youngest officer shall vote first, proceeding in order up to the president, who, having delivered his own opinion, is to collect the numbers and settle the determination of the court according to the majority of voices.

VIII

The judge advocate is to draw up in writing the sentence of the court, which being approved and signed by them, all persons shall be admitted; and the party accused being present, the judge advocate, by direction of the president, is to pronounce the same.

IX

When sentence of death is to be executed upon any criminal, notice is to be first given from the ship by a signal and firing a gun, upon which, the captains of all the ships present shall summon their companies upon deck to be spectators thereof and shall make known to them the crime for which the punishment is inflicted.

X

The judge advocate is always to send the original sentence and affidavits, as also the minutes which he has taken of the proceedings of the court to the Secretary of the Admiralty.

4. *Chapter on Courts Martial in the Regulations and Instructions of 1806*

[*Regulations and Instructions Relating to His Majesty's Service at Sea*, 1806 edn, pp. 404–10]

Chapter II
Of Courts Martial

ARTICLE I.

Courts martial are to be assembled and held, offences tried, sentence pronounced, and execution of such sentence to be done, according to the articles and orders contained in an Act of Parliament made in the 22nd year of the reign of King George 2nd, intituled, *An Act for Amending, Explaining, and Reducing into One Act of Parliament, the Laws Relating to the Government of His Majesty's Ships, Vessels, and Forces by Sea* and also an Act made in the 19th year of the reign of His present Majesty, intituled *An Act to Explain and Amend the Foregoing Act*. In addition to the Articles and rules contained in the said acts, the following regulations are to be observed.

II.

All representations, or complaints, intended as the foundation of a court martial, are to be made in writing, setting forth the particular facts, when and where, and in what manner the same were committed.

III.

When a court martial is appointed to be held, the officer, who is to preside thereat, is to take care that a copy of the charge or complaint be delivered to the person accused, as soon as may be, after he shall have received the order to hold such court martial, and not less than twenty-four hours before the trial.

IV.

Courts martial are to be assembled and held in the most convenient and public place of the ship; and all persons, excepting such as are intended to give evidence, are to be admitted.

V.

If any officer, entitled by his rank to sit at a court martial, be personally concerned in the matter to be tried, he is not to be permitted to be of the number of members, by whom the court shall be composed.

VI.

A junior officer commanding a post ship, shall, in sitting at courts-martial, take precedence of his senior officer commanding a sloop.

Captains and commanders appointed to the temporary command of His Majesty's Ships shall be considered as liable to sit on courts-martial, in the same manner as if they were actually the captains or commanders of such ships. Lieutenants shall not be permitted to sit as members at a court martial, although they may be in the temporary command of ships by order.

VII.

When a court is assembled, the person to be tried, as also the accuser, if any, are to be brought before them; the judge advocate is to read the warrant or power authorizing the court to assemble; and immediately after to administer to the members, and to take himself, the oath prescribed by the Act first mentioned; he is next to read the charge, or complaint against the person to be tried, and thereupon the court may proceed to call witnesses: but they are not to question the said witnesses until an oath hath been administered by the judge advocate in the words following, which the witness is to repeat:

'I, A. B., do most solemnly swear, that in the evidence I shall give before the court, respecting the present trial, I will, whether demanded of me by question or not, and whether favourable or unfavourable to the prisoner, declare the truth, the whole truth and nothing but the truth; So help me God.'

VIII.

In the examination of witnesses the following method is to be observed: first, to call such as are in support of the charge, who are to be questioned by the accuser, if any, the court, or judge advocate, and afterwards by the party upon trial. Such as are produced to invalidate a charge are next to be examined, and the party accused is to begin with his interrogatories, if he shall think fit. If a question proposed is objected to, the opinion of the court is to be admitted or dropt as the majority shall agree.

IX.

A witness may be called in, as often as the court, or judge advocate, with the consent thereof, shall think proper; and they may call for and examine any person as a witness, whom they think can give information, though not desired by the accuser, or accused; it being the duty of the court to attain the fullest insight they possibly can into the matter before them.

X.

The judge advocate is to take down in writing the evidence given by each witness and read the same to the Court in his hearing, that, in case of a mistake, it may be corrected.

XI.

When the evidence is closed, the accused person is to be removed, and the accuser and standers-by are to withdraw; the court is then to consider the matter in evidence before it, and the judge advocate, by the direction of the court, is to draw up such questions as shall be agreed upon, whereon to form a determination in regard to the innocence or guilt of the person upon trial. If the party be found guilty of a breach of any of the Articles of War established by law, the court is to consider and to determine on the punishment proper to be inflicted conformably thereto. The judge advocate is to draw up the sentence accordingly, being careful to specify therein the charge, or substance of it, and the same is to be signed by every member of the court by way of attestation, notwithstanding any difference of opinion there may have been among them.

XII.

In taking the opinion of the court upon all questions, the youngest officer shall vote first, proceeding in order up to the president, and should the members of the court disagree upon any previous question, and upon a division the votes be equal, the point is to be re-considered; but if an equality of votes still continues, the matter in debate must remain as it stood before the question was put. If there should be an equality upon the main question, whether the charge or charges be proved, or not, and it continues so after re-consideration, the favourable construction is to take place.

XIII.

The judge advocate is to take minutes of the proceedings of the court; he is to advise the court of the proper forms, when there shall be occasion, and to deliver his opinion in any doubts or difficulties that may arise in the course of the trial.

XIV.

After the sentence is drawn up and signed, all persons are to be re-admitted; and, the party accused being also present, the judge advocate is, by direction of the court, to pronounce the same.

XV.

The judge advocate is to send the original sentence, and an attested copy of the minutes of the evidence and proceedings of the court, to the Secretary of the Admiralty, by the first opportunity.

[X]VI.

When sentence of death is to be executed, or other public punishment to be inflicted, upon any criminal, notice is to be first given from the ship by a signal and firing a gun, upon which the captains of all the ships present are to summon their companies upon deck, to be spectators thereof, and to make known to them the crime for which the punishment is inflicted.

5. *Court Martial of Joseph Piper*

[ADM 1/5330]

Minutes of the proceedings of a court martial assembled and held on board His Majesty's Ship *St. George* in Hamoze the 11th January 1793 for the trial of Joseph Piper, alias John Joseph Pearson, a Seaman belonging to the *Charon*, for desertion.

Captains Robertson and Keats, being unable to attend thro' illness, and the same being certified on oaths, the court proceeded to trial.

Mr. W. H. Read, Clk. of the *Lowenstoffe*, sworn.

Court:

Q. – Have you the *Lowenstoffe's* ship's books?

A. – Yes, here they are.

Q. – Do you know the prisoner?

A. – Yes, he entered for the *Lowenstoffe* in the name of John Joseph Pearson.

Court to the prisoner:

Q. – Have you any question to ask this evidence?

A. – None.

John Miles, a Seaman belonging to the *Charon* and left at the hospital, sworn.

Q. – Do you know the prisoner?

A. – Yes.

Q. – Under what name?

A. – Piper, I do not recollect his Christian name.

Q. – Was you on board the *Charon* at the time she was paid the two months advance?

A. – Yes.

- Q. – Was the prisoner on board when the two months was paid?
 A. – Yes.
 Q. – Do you know whether he did or did not receive the two months advance?
 A. – I was ill and do not.
 Q. – How long did you remain on board after the two months advance was paid before you went to the hospital?
 A. – I went to the hospital the day after.
 Q. – Had the desertion taken place before you went to the hospital?
 A. – Not as I know of.
 Court to the prisoner:
 Q. – Have you any question to ask this evidence?
 A. – None.

Morris McLaughlin, another Seaman from the hospital, sworn.

Court:

- Q. – How long did you belong to the *Charon* before she sailed?
 A. – Five weeks.
 Q. – Do you know the prisoner?
 A. – Yes. I saw him on board the *Charon*; he belonged to her.
 Q. – Under what name did he go on board the *Charon*?
 A. – I don't know.
 Q. – Was you on board the *Charon* at the time the two months advance was paid?
 A. – Yes.
 Q. – Was the prisoner on board at the time?
 A. – I don't know.
 Q. – How long were you at the hospital before the desertion of the five men took place?
 A. – I don't know. The two months advance was paid on the Saturday and I went to the hospital on the Sunday.

Court to the prisoner:

- Q. – Have you any question to ask this evidence?
 A. – None.

Mr. Bleech [?], Boatswain of the *Magnanime*, called to the prisoner's character.

Court:

- Q. – Do you know the prisoner?
 A. – Yes, he was with me about three years and a half, as a servant, in the *Magnanime*; during which time he was honest, and I had no fault to find with him, which is all I have to say.

Prisoner threw himself on the mercy of the court.

5A. *Report of the Court Martial of Joseph Piper*

[ADM 1/5330]

At a court martial assembled and held onboard His Majesty's ship *St George* in Hamoze the 11th day of January 1793.

Present

Sir Thomas Rich, Bar^t, Captain of His Majesty's ship *Culloden* and second officer in the command of His Majesty's ships and vessels at Plymouth, President.

Captains

Thomas Hicks
William Wolseley
Joseph Ellison
Will^m Alb^y Otway

Richard Boger
Thomas Byard
Will^m Hancock Kelly
Edward Buller

The court, in pursuance to an order from the Right Honourable the Lords Commissioner of the Admiralty dated the 7th instant and directed to Sir Thomas Rich, Bar^t, Captain of His Majesty's ship *Culloden* and second officer in the command of His Majesty's ships and vessels at Plymouth, proceeded to try Joseph Piper (alias John Joseph Pearson) belonging to His Majesty's ship *Charon*, for desertion and the court, having accordingly heard the evidence produced in support of the charge as well as what the prisoner had to offer in his own defence and very maturely and deliberately considered the same, is of opinion that the charge is proved and therefore adjudge him to receive one hundred lashes on his bare back with a cat o' nine tails onboard of, or alongside, such ship or ships in Hamoze at such time, or times, and in such manner and proportion as the commander in chief of His Majesty's ships and vessels at this port shall direct; and the said Joseph Piper (alias John Joseph Pearson) is hereby sentenced to receive the same accordingly.

...

6. *Report of the Court Martial of William Clark and John Rolfe*

[ADM 1/5330]

At a court martial assembled and held onboard His Majesty's Ship *Alfred* at Chatham on Tuesday the 26th day of March 1793.

Present

Thomas Pasley, Esq^f, Captain of His Majesty's ship *Bellerophon* and second officer in the command of His Majesty's ships and vessels in the River Medway and at the buoy of the Nore, President.

Captains

The H^{ble} Geo Keith Elphinston
 Henry Harvey
 John Bazely
 The Hon^{ble} Hugh S. Conway
 Charles Cotton
 R^t Hon^{ble} Lord Cranstown

James Pigott
 William Parker
 Peter Rainer
 Horatio Nelson
 John Nich Inglefield
 Thomas Drury

The order for assembling the court martial being read and the oath directed by the Act of Parliament administered, the books of the *Medusa* and *Audacious* and the surgeon of the hospital's report were produced; and on examining them, it appeared that no such man as William Clark was upon the books of the *Audacious*, and that no such man as John Rolfe appeared upon the books of the *Medusa*, the court was thereupon cleared, and they were unanimously of opinion that the prisoners so described in their Lordships' order could not be tried. ...

7. *Commander Thomas Archibald Orrok to Sir Peter Parker, Bart.*

[ADM 1/5331]

Orestes. Portsmouth.
 July 4, 1794

... Whereas in the night of the 20th & 21st of June last the bread room of His Majesty's sloop under my command was broke open and a considerable quantity of slops stolen from thence, and as I have every reason to apprehend that the offence above mention'd was committed by the persons whose names hereafter follow, viz. Samuel Mose, Thomas Jones, Samuel Powdrill, William Todd (Marines), John Bonny, George Hall and James Cains (Seamen), I have therefore to request that you will be pleased to order the three Marines whose names are first mentioned to be tried by a court martial and to allow the four others to be admitted as witnesses on the trial, not having otherwise evidence sufficient to convict them. ...

8. *Court Martial of William Walker*

[ADM 1/5331]

Minutes of the proceedings of a court martial held on board His Majesty's ship the *Britannia* in Leghorn Road, the 13th day of September 1794.

Present

William Hotham, Esq^r., Vice Admiral of the Red, PresidentRobert Linzee, Esq^r., Rear Admiral of the White

Captain	Robert Man	Captain	Samuel Reeve
"	Horatio Nelson	"	Thomas Lenox Frederick
"	John Holloway	"	John Knight
"	Benjamin Hallowell	"	Edward Cook
"	Robert Gambier Middleton		

The prisoner was brought into court and the evidence and audience admitted.

The order was then read from the Right Honourable Lord Hood, Admiral of the Blue and Commander in Chief, &c, &c, &c, dated the 11th instant and directed to William Hotham, Esqr., Vice Admiral of the Red, to try Lieutenant William Walker of the *Rose* cutter on a representation 'of his having been guilty of practices highly disgraceful to His Majesty's navy, by taking money for giving protection to the trade between Bastia and this port.'

The members of the court and judge advocate then respectively took the oaths prescribed by Act of Parliament.

The charge against the prisoner was read and all the witnesses ordered to withdraw, the first to be sworn excepted, and the court proceeded to trial.

Captain John Gore of *La Fleche* was then sworn.

Court Please relate to the court what you know respecting the charge against the prisoner.

Answer The only circumstance I know relative to the charge against the prisoner proceeds from a conversation between the prisoner and myself.

Court Please relate to the court what that conversation was.

Answer Upon my taxing the prisoner with a supposition I had of his being guilty of the charge, he informed me he had been ignorant of the consequences and supposed there was no harm in receiving a present from foreigners for a convoy, that he had not received anything, but was told when the vessels arrived safe at Leghorn, he was to be recompensed for his trouble by a handsome present.

- Court What reason had you for that supposition?
- Answer Merely from repeated applications from the merchants to order the prisoner to take those vessels under his convoy from Bastia to Leghorn and the prisoner's applying himself also to me for an order for that purpose.
- Court Do you know whether the prisoner ever did receive money for any convoy between Bastia and this port?
- Answer I do not.
- Court Might not the application from the merchants have proceeded from the prisoner's care and attention to convoys?
- Answer I know not whether the prisoner ever did convoy vessels from Bastia before, having always ordered the cutters not to do so, as they mostly went from Bastia with dispatches.
- Court Had you ever any complaint from merchants or masters of their having paid money to the prisoner for taking their vessels under convoy?
- Answer None from any person whatever.
- Prisoner to evidence At what time did I apply to you for an order to convoy vessels of any kind?
- Answer To the best of my recollection, about the 27th or 28th of last month.
- Neither the court or prisoner having any further questions to ask this evidence, he was ordered to withdraw.
- Captain William Shield of the *Sincere* was then called in and sworn.
- Court You will please to relate to the court what you know relative to the charge against the prisoner?
- Answer In conversation with Captain Gore, he told me the prisoner had been making an agreement with some masters of tartans¹ to give him money for convoying them to Leghorn.
- Court Do you, from your own knowledge, know that the prisoner ever did receive money for convoy?
- Answer I do not.
- Court Did you ever hear any person say they had given him money for that purpose?
- Answer Never.

¹According to the 1815 edition of Falconer's *Universal Dictionary of the Marine* edited by William Burney, a tartan was 'a small coasting vessel navigated in the Mediterranean Sea and having only one mast and a bowsprit ...' [s.v. tartan].

Neither the court or prisoner having any further questions to ask this evidence, he was ordered to withdraw.

The evidence in support of the charge being finished, the prisoner was called upon to make his defence, when he produced a written deposition from Salvator Arbib and Co., merchants in Leghorn, stating that he had never convoyed any vessels belonging to them between Bastia and Leghorn, nor had they ever paid him any money or made him any present whatever for convoys.

The master of the *Rose* cutter (M^r. Edward Older) was then called in and sworn.

Court Relate to the court whether you know that the prisoner ever gave convoy between Bastia and Leghorn.

Answer Never to any other vessel than a Danish ship from Bastia to Leghorn, which was our prize.

Neither the court or prisoner having any further questions to ask this evidence, he was desired to withdraw and here the prisoner rested his defence, when the court proceeded to deliberate upon the sentence, the audience being directed to withdraw.

8A. *Report of the Court Martial of William Walker*

[ADM 1/5331]

... And the court, having heard the evidence in support of the charge, as well as what the prisoner had to offer in his defence and having maturely and deliberately weighed and considered the same, is of opinion that the charge is not proved and do therefore acquit the said Lieutenant William Walker of the whole and every part thereof.

And he is hereby acquitted accordingly. ...

9. *Captain Edward James Foote to Evan Nepean*

[ADM 1/1795]

Niger at St. Helens,
Tuesday, May 19th 1795

... Daniel Roy, Seaman of His Majesty's ship *Niger* under my command, having manifested the utmost contrition for his improper conduct, I am induced to hope in consequence of the sense he has of his guilt and the length of his confinement their Lordships will be pleased to allow me to

withdraw my letter of the 21st of last month requesting he might be tried by a court martial.

It is but justice in me to mention that Daniel Roy wrote to me, when the *Niger* had a skirmish on the French coast, to beg I would allow him to go to his quarters. ...

[Adm Note]

20 May. Orders to withdraw the w^l. for court martial. Let Cap^l. Foote know it. NB – The order for this c. martial (owing to the *Niger*'s going to sea) had not been dispatch'd before this letter was rec^d requesting it might be withdrawn and there was therefore no entry made of it.

10. *Courts Martial of Patrick Tarney, William Perkins, Henry Perkins, Patrick Morgan and John M^cLaughlin*

[ADM 1/5333]

Minutes of a court martial assembled and held on board His Majesty's ship *Assistance* in S^t John's Harbour, Newfoundland, the 26 day of August 1795, for the several trials of Pat., alias Phil., Tarney, W^m Perkins, Henry Perkins, Pat. Morgan, John M^cLaughlin, Seamen, belonging to His Majesty's ship *Romney*, for desertion, *viz.*

Present

Henry Mowat, Esq^r, Captain of His Majesty's ship *Assistance* and senior captain of His Majesty's ships and vessels in St John's Harbour, Newfoundland, President.

Captains

Henry D. Darby
Thomas Wolley

Frank Sotheron
Ambrose Crofton

John Hall, deputy judge advocate

The prisoners being brought into court and audience admitted, the order of Vice Admiral Sir James Wallace, Kn^t., Commander in Chief of His Majesty's ships and vessels employed, and to be employed, at and about the island of Newfoundland, dated the 24 inst., directed to Henry Mowat, Esq^r, Captain of His Majesty's ship *Assistance* and senior captain of His Majesty's ships and vessels in St John's Harbour, Newfoundland, for the several trials of Pat, alias Phil. Tarney, William Perkins, Henry Perkins, Patrick Morgan and John M^cLaughlin, seamen of His Majesty's ship *Romney*, for desertion, was read; the members of the court and deputy

judge advocate then, in open court and before they proceeded to trial, respectively took the oath enjoined by Act of Parliament. The letter of Captain Sotheron of His Majesty's ship *Romney*, enclosing one from Thomas Hand, first Lieutenant of the same ship, to Vice Admiral Sir James Wallace (containing the charges against the prisoners) were both read and all the witnesses, being ordered to withdraw and attend the examination separately, together with all the prisoners, except Pat., alias Phil. Tarney and the first witness to be sworn, they withdrew accordingly and the court proceeded to trial as follows:

The evidence in support of the charge, Thomas Rotherford, Seaman of His Majesty's ship *Romney*, sworn and examined.

Court Do you know the prisoner?

Evidence I know the man.

Court Was you coxswain of the boat in July last?

Evidence Yes.

Court Did the prisoner belong to that boat at that time?

Evidence Yes.

Court Did he absent himself from duty whilst on shore?

Evidence He left the boat.

Court Did he since return to the boat or ship till brought on board a prisoner?

Evidence No.

The prisoner was asked by the court if he had any questions to put to the witness, which he answered in the negative.

William Balcombe, Clerk to Captain Sotheron, was then sworn, who produced the muster book of His Majesty's ship *Romney*, by which it appeared the prisoner was run¹ the 14th July last.

The evidence in support of the charge being finished, the prisoner was called upon for his defence, but having none to offer, he called the prosecutor, Lieutenant Hand, to speak to his character, who said he always behaved well and very regular and, as a reward for his good behaviour, he had removed him from the waist to the main top.

Minutes of a court martial assembled and holden [*sic*] on board His Majesty's ship *Assistance* in S^t John's Harbour, Newfoundland, the 26th day of August 1795, for the trial of William Perkins and Henry Perkins, two Seamen belonging to His Majesty's ship *Romney* for desertion, *viz.*:

... The prisoners being brought into court, William Learson, Boatswain of His Majesty's ship *Romney*, was sworn.

¹If a mariner in the Royal Navy was absent from three consecutive musters, an R, signifying 'run' or 'runaway', was placed on his line in the muster book.

- Court Do you know the prisoners, William and Henry Perkins?
- Evidence I do.
- Court Was you ashore in the launch a day or two before the *Romney* last sailed?
- Evidence I was.
- Court Did the prisoners belong to the boat?
- Evidence They did at the time.
- Court Was the boat on duty?
- Evidence It was.
- Court Did they return in the boat?
- Evidence They did not.
- Court Have they since returned to the boat or ship till brought on board as prisoners?
- Evidence They have not.
- Court How often have the Articles of War been read on board the *Romney* since you left England?
- Evidence Every month.
- The prisoners asked by the court if they had any questions to put to the evidence, who answered in the negative.
- Robert Pierce, Master of His Majesty's sloop *Lutin*, sworn.
- Court Do you know these men?
- Evidence Yes.
- Court Did you know them to belong to the *Romney* when you apprehended them?
- Evidence No.
- Court Why then did you apprehend them?
- Evidence I went on shore with Captain Crofton to attend at the jolly boat at the wharf to stop all seamen, who should attempt to go from the wharf. After remaining there a quarter of an hour, Captain Crofton came down on the wharf and hailed me; in consequence of that, I landed and went with Captain Crofton to Mr McCormack's stores, one of the doors was open and, in a cot, he found the prisoners stowed away. The captain's coxswain went up and got them out of the cot, and Captain Crofton desired me to take them on board in the jolly boat; I took them on board the *Lutin*.
- Court Did you know they were deserters?
- Evidence He knew they were deserters, but from what ship, he did not know.
- Court Did the prisoners give themselves up as deserters from a man of war?

Evidence Not to me, but they said they belonged to a brig alongside the wharf.

Court Were they confined on board the *Lutin*?

Evidence They were in irons.

Court Were they in liquor when you took them up?

Evidence They did not appear so to me.

Court Do you recollect what day of the month they were taken up?

Evidence No, the day after the *Romney* sailed.

It appear'd the *Romney* sailed the 28th July. Here the witness closed his evidence and the court asked if the prisoners had any questions to put to him, which they answered in the negative.

The muster book was produced in court by William Balcombe, Captain's Clerk, by which it appeared the prisoners were run 22 July last on the *Romney's* books.

The court asked the prisoners if they had anything to say in their defence, which they answered in the negative, but wished to call the boatswain and prosecutor to give them a character.

Wm Learson, the Boatswain, gave them a good character; whilst on board, he had no fault to find with them.

Court to the prosecutor What do you think of them?

Prosecutor They have been regular, sober, orderly, well behaved men.

Minutes of a court martial assembled and held on board His Majesty's ship *Assistance* in S^t John's Harbour, Newfoundland, the 26 day of August 1795, for the trial of Patrick Morgan, a Seaman belonging to His Majesty's ship *Romney* for desertion, *viz.*:

... The prisoner being brought into court; James Ayscough, Midshipman of His Majesty's ship *Romney*, was sworn and examined.

Court Do you know the prisoner?

Evidence Yes.

Court Does he belong to the *Romney*?

Evidence Yes.

Court Was he ever employed in a party on shore under your direction?

Evidence Yes.

Court Do you recollect, some time in the month of July last, his having left that party?

Evidence Yes.

Court Did he ever since return, to your knowledge, until brought on board a prisoner?

Evidence Not to his knowledge.

Here the evidence closed on the part of the prosecution, when the court asked the prisoner if he had any questions to put to the evidence, who answered in the negative, or if he could bring any officer to give him a character; the prisoner called upon the prosecutor, who said that he always behaved well.

The prisoner then called upon William Learson, Boatswain of His Majesty's ship *Romney*, who said, 'He always behaved very well.'

The muster book was produced in court by William Balcombe, Clerk to Captain Sotheron of His Majesty's ship *Romney*, by which it appeared the prisoner was Run 18 July last.

Minutes of a court martial assembled and held on board His Majesty's ship *Assistance* in St John's Harbour, Newfoundland, the 26th day of August 1795, for the trial of John M^cLaughlin, Seaman belonging to His Majesty's ship *Romney*, for desertion, *viz.*

... The prisoner being brought into court, Lieutenant William Shippard of His Majesty's ship *Romney* was sworn and examined.

Court Do you know the prisoner?

Evidence Yes I do.

Court Do you recollect his having left the boat in July last?

Evidence I remember one of the boat's crew was missing; I do not know that he was the man.

Court Do you know the prisoner to have belonged to the *Romney*?

Evidence Yes I do.

The witness, having delivered his evidence, the prisoner was asked by the court if he had any questions to put to the witness, which he answered in the negative. The evidence then withdrew and John Sewell, Seaman of His Majesty's ship *Romney*, was sworn and examined.

Court Do you know the prisoner by the name of John M^cLaughlin?

Evidence Yes.

Court Does he belong to the *Romney*?

Evidence Yes.

Court Do you recollect in July last the prisoner having left the boat when you steered the boat with Lieutenant Shippard on board on shore?

Evidence I do.

Court Did he ever return to the boat or ship till brought on board a prisoner?

Evidence I never saw him.

Here the evidence closed on the part of the prosecution, when the court asked the prisoner if he had any questions to put to the evidence, which [he?] answered in the negative; the court desired to know if he would call upon anyone for a character. He called upon the prosecutor, who said, 'He has always conducted himself with peculiar satisfaction to me; when fitting out the ship at Plymouth, he was mentioned to me by the gunner, in whose crew he was, as a very sober, deserving man.'

The muster book was then produced by William Balcombe, Clerk to Capt. Sotheron of His Majesty's ship *Romney*, by which it appeared the prisoner was Run 20th July last.

There being no other witness to examine, either in support of the charge against the present, or the prisoners before tried, viz.: Pat., alias Phil., Tarney, W^m Perkins, Henry Perkins, Patrick Morgan, and John M^cLaughlin, the court was cleared and, having maturely considered the whole, agreed that the charges against the several prisoners were fully proved, when the court was again opened, audience admitted and the sentence hereunto annexed was delivered by the deputy judge advocate accordingly.

10A. *Report of the Courts Martial of Patrick Tarney, William Perkins, Henry Perkins, Patrick Morgan and John M^cLaughlin*

[ADM 1/5333]

... having heard read the charge exhibited against them in a letter from Lieutenant Hand of His Majesty's ship *Romney* to Vice Admiral Sir James Sotheron as well as the evidence in support of the said charge and also what the prisoners had to offer in their own defence respectively, and, having maturely and deliberately considered the whole and every part thereof with the minutest attention, the court is of opinion that the charge is fully proved against them, do adjudge the said Patrick, alias Phil., Tarney, William Perkins, Henry Perkins, [and?] Patrick Morgan to receive eighty lashes only on their bare backs with a cat with nine tails in consequence of their former good behaviour and to John M^cLaughlin forty lashes only in consideration of his particular good character, the said lashes to be received alongside such ships and at such times as the commander in chief shall think proper. And the court does further recommend the said John M^cLaughlin to the clemency of the commander in chief.

10B. *Hand to Sotheron*

[ADM 1/5333]

Romney, St John's,
August 24th 1795

... I beg leave to inform you that the seamen as p. margin [Pat^k., alias Phil., Tarney, W^m Perkins, Hen^y Perkins, Pat. Morgan, Jn^o M^cLaughlin], belonging to His Majesty's ship *Romney* under your command (and who were lately sent on board as prisoners from His Majesty's ship *Adamant*) did in the month of July ult. severally absent themselves from their respective duties when employed on shore. ...

11. *Members of the Court Martial of the mutineers of the Defiance to Evan Nepean*

[ADM 1/5334]

HMS *Jupiter*, Sheerness Harbour
February the 11th, 1796

... We, the members of the court martial, who have sat on the trial of the mutineers belonging to His Majesty's ship *Defiance*, beg permission particularly to recommend Joseph Flint (from his extreme youth) to their Lordships as an object for mercy. ...

12. *Members of the Court Martial of the Mutineers of the Defiance to Nepean*

[ADM 1/5334]

Sheerness,
12 February 1796

... We, the members of the court martial on the mutineers of the *Defiance*, considering the great length of the trial, the extra trouble and expense as well as the unremitting attention of the judge advocate, beg leave to recommend to their Lordships that he may be paid for the trial of each individual separately. ...

12A. *Enclosure in the Court Martial of the Mutineers of the Defiance Members of the Court to Nepean*

[ADM 1/5334]

These are to certify that Mr. Benjamin Stow officiated as judge advocate at a court martial at which I presided, held on board His Majesty's Ship,

the *Jupiter* in Sheerness Harbour for the separate and respective trials of William Parker 1st, Robert McLawrin, George Wythick, Martin Ealey, William Froud, John McDonald, John Sullivan, William Handy, George Harden, John Prime, Joseph Flint, Michael Cox, John Lawson, William Morrison, John Graham 1st, Charles Pick, and William Avery belonging to His Majesty's ship *Defiance* for mutiny, which court continued sitting from the 20th January 1796 to the 11th February following, Sundays excepted.

Given on board His Majesty's ship *Sandwich* at the Nore, the 9th March 1796 ...

12B. *Nepean's notes to Lords of the Admiralty*

[ADM 1/5334]

Courts Martial

12 Jan^{ry} 1793 – M^r. Greetham paid 30. 5. 0. for the minutes of the trial of the mutineers of the *Bounty*, being 25 Guineas in addition to the established 4 –.

The minutes consist of 166 pages; and the trial lasted from the 12 Sept. to the 18 Sept. 1792

23 Jan^{ry} 1795 – M^r. Greetham paid for 18 days at the rate of 8/s for the minutes of the court martial held on the mutineers of the *Culloden*

The minutes consisted of 129 pages; and the trial continued from the 14th to 20 December 1794

Deputy judge advocates who have not yet been p^d.

M^r. Brown for the trial of Captain Bridges and Lieut^t Croke. It was a reciprocal prosecution.

The minutes occupy 144 pages, including both trials and the court sat from the 4 to 20 March 1795 (one Sunday included).

M^r. Greetham for the trial of Captain Molloy

The minutes extend to 290 pages close writing; and the trial lasted from the 28 April to 15 May 1795 (two Sundays included).

M^r. Stow for the trial of the mutineers of the *Defiance*.

The minutes fill 250 pages, each of which page occupies the entire surface of the sheet in the manner of a lawyer's brief; the trial continued from the 20

January to 11 February 1796 (three Sundays included).

...

It is however proper to observe that in many instances their Lordships have considered the sum of four Pounds for each court martial as an averaged compensation. M^r. Greetham was paid only £4 Pounds for the minutes of the trial of Captain Dawson, which was very bulky and continued from the 7th to the 20th Nov. 1788; and the like reward was paid for the minutes on Lieut. Hill, which filled 100 pages. The trial lasted from the 12 to the 16 March 1795. M^r. Greetham was Dep. Jud. Adv. in both the preceding trials.

13. *Court Martial of John Styles*

[ADM 1/5335]

Minutes of the proceedings of a court martial assembled and held on board His Majesty's ship *Cambridge* in Hamoze on Tuesday the 23d of February 1796 to enquire into the conduct of Lieutenant John Styles, late commanding the *Castor*, a tender hired into His Majesty's service, respecting the escape of twenty three pressed men from the said ship tender on the morning of the 18th of November last whilst he, the said Lieutenant Styles, was on shore at Liverpool and to try him for the same.

Present

Smith Child, Esqr., Captain of His Majesty's ship *Le Commerce de Marsailles* and third officer in the command of his Majesty's ships and vessels at Plymouth, President.

Captains

Thomas Taylor

Joseph Ellison

Geo. Martin

Hon^{ble}. Rob^t. Stopford

John Oakes Hardy

H^{ble}. Arthur Kaye Legge

Captains

John Manley

Richard Grindall

Maurice Delgarno

Wm. Lechmere

Joseph Sidney Yorke

Frank Sothoron

The surgeons of His Majesty's ships *Magnificent*, *Cambridge* and *Tremendous* attended to certify the inability of Captains Squire, Boger and Aylmer to attend through ill health.

M^r. W^m. Johns, Midshipman, swn.

C. Relate to the court what you know respecting the charges you have heard against the prisoner.

Answer On the 18th of November last in the morning between 7 & 8 o'clock, M^r. W^m. Hutton, Mid., having charge of the deck, James Powell, sentinel, with a cutlass in his hand over the hatchway, M^r. Walter Wylie, the Mate, being in the after hold, & myself in bed ill, I heard a noise and jumped out of bed and found the pressed men in possession of the tender. For some time till they got into the boat, I was kept below by the pressed men; but so soon as I got upon deck, I presented a pistol at them in the boat. I could not get a pistol to go off and then took a musket and fired at them, but they got off.

C. Who was commanding officer at the time?

A. I considered myself as commanding officer over the pressed men, but not over the ship.

C. Have you ever before been left as commanding officer of the tender?

A. Yes.

C. Did Lieutenant Styles leave his orders with you when he went ashore himself?

A. Yes.

C. What were those orders?

A. To keep a good look over these men.

C. Were the sentinels placed by you or by Lieutenant Styles before he went out of the ship?

A. They were placed by me that morning.

C. Were they placed in the same manner as when Lieut. Styles placed them?

A. Yes, as usual.

C. Relate in what manner.

A. One at the main hatchway.

C. Where were the pressed men, in general, kept?

A. In the pressed room.

C. Was the sentinel at the main hatchway at the time these men rose and made their escape?

A. I believe he was.

C. As commanding officer was any report made to you of the pressed men having forced the sentinel from his post?

A. No report; I heard them myself.

- C. At any time before, do you know of the pressed men on board the *Castor* having attempted to run?
- A. Many times.
- C. Was there a sentinel placed there in consequence of these attempts, or was it usual to have one there?
- A. It was usual to place one there.
- C. Was there any additional sentinels in consequence of these attempts?
- A. At night, there were two or four, agreeable to the number of men on board.
- C. Who was considered as officer of the watch at the time those men rose and run?
- A. M^r. W^m. Hutton, Acting Midshipman.
- C. I think, sir, you've said that Lieutenant Styles left orders with you; at what time did he leave his last orders?
- A. Between 3 and 4, the evening before.
- C. Was the master of the tender on board at the time?
- A. I cannot tell.
- C. What number of men belonged to the tender?
- A. I cannot possibly say.
- C. How happens it you do not know the number of men belonging to the *Castor*?
- A. I understand 14 to be the complement besides the gang, but I do not know what number was on board at that time.
- C. Was it not customary for the lieutenant to muster the people?
- A. Sometimes he did so. The last time they were mustered by Captain Uzuld.
- C. When was the last time you remember their being mustered?
- A. It was the day before the men run.
- C. Do you recollect if the number was on board that ought to be?
- A. There was not.
- C. Do you know the number of men the gang ought to consist of?
- A. Two midshipman & 8 men.
- C. Was that number on board?
- A. No, there was not.
- C. What number was on board?
- A. I cannot tell.
- C. Were any of the gang on board?
- A. I believe two.

- C. Do you know the cause why your lieutenant was absent on shore that night?
- A. He complained that he was ill.
- C. Was it usual for your lieutenant to sleep on board the tender?
- A. It was when there was volunteers or pressed men on board.
- C. When the pressed men deserted, had you any other boat on board than the one they went away with?
- A. We had one astern.
- C. You've said you endeavour'd to fire a pistol at the deserters and, afterwards, you discharged a musket at them with two balls; did those balls appear to wound any of them?
- A. I cannot tell. I saw one go by the side of the boat and one right amongst them.
- C. At what distance was the main hatchway from the pressed room door?
- A. Almost close to it.
- C. Was there any regular watch bill in the tender?
- A. No, there was not.
- C. Was the lieutenant frequently absent from the vessel?
- A. More on shore than on board.
- C. How long has Lieutenant Styles commanded the *Castor*?
- A. About a twelvemonth.
- C. What number of men has deserted from the *Castor* since Lieutenant Styles commanded her?
- A. I cannot tell, but there has been many.
- C. The charge states that a good number have deserted before the 23 that run away on the 18th; is that true?
- A. It is.
- C. During the time you've been in the tender, did the pressed men run away before with the boat?
- A. Yes, once, but not during Lieut. Styles' command.
- C. You've said many men have deserted before those 23 since Lieutenant Styles commanded the tender, inform the court by what means they effected their escape?
- A. By force.
- C. Were the sentinels taken from the men belonging to the tender or from the gang immediately under the command of the lieutenant?
- A. In turn from both.
- Thomas Paul, Steward & Coxswain, swm.
- C. Who checked the men when they absented themselves from the tender?

- A. I did, by the master's orders.
- C. Do you know from your own knowledge that all the men that are mark'd run deserted from the tender?
- A. I cannot to all, but can to the greater part.
- C. Were you on board the 18th of November?
- A. Yes.
- C. Relate what you know respecting the desertion that took place on that day?
- A. In the morning, just after I got out of bed, I went into the cabin. The cabin boy was lighting the fire when I heard a great noise upon deck; and, when I went to go upon deck, the boy told me there was one of the pressed men standing over the scuttle. I then went back. After the men had got into the boat, I went upon deck and saw them in the boat about 20 yards from the ship.
- C. Were all the men in one boat.
- A. Yes, in the cutter.
- C. Do you recollect M^r. Johns, the Midshipman, firing at them?
- A. Yes, I do.
- C. Do you know the reason of the lieutenant being on shore?
- A. Yes, he complained of being ill.
M^r. Walter Wylie, Mate, sworn.
- C. Relate to the court what you know respecting the charge you have heard against the prisoner.
- A. About 8 o'clock in the morning of the 18th of Nov^r. last, I went down to clear the hold and send up a cask of beer. Whilst I was below, I heard a noise and came out of the hold betwixt deck to go upon deck and found two men, one with a cutlass and the other with a handspike, over the hatchway; and I was obliged to stay below till they got into the boat. When I got upon deck, they were gone off. The lieutenant and master being on shore, one boat, being over the stern, was lowered down to send on shore for the long boat; and the man that was lowered in her cut the painter and went on shore to acquaint the lieutenant and master with what had happened and the master and the man immediately came off.
- C. Do you know the reason why the lieutenant was on shore that night?
- A. No, I do not.
- C. Was he frequently on shore?
- A. Sometimes.
- C. How long have you belonged to the *Castor*?
- A. Ever since she was taken into the service.

- C. Have you ever known the pressed men to make attempts to escape from the ship before the 18th Nov^r.?
- A. Yes.
- C. Did you consider one sentinel sufficient to guard the men in the press room, provided they were inclined to go away?
- A. No, I do not.
- C. How was the sentinel arm'd?
- A. With a cutlass only.
- C. Do you recollect that one sentinel was at the hatchway when the men before that time escaped?
- A. Yes.
- C. Do you think that there was sufficient care taken on the part of the officers to hinder the press men from running away?
- A. No, I do not.
- C. During the time you have been in the tender, do you know of any press men before these effecting their escape from the press room?
- A. No, I do not.
- C. In what manner did the great number of people run effect their escape?
- A. In general, jump overboard and swim on shore, one or two at a time.
- C. Is there a regular watch kept when the ship is in harbour?
- A. Yes.
- C. How was the press room secured?
- A. Lock'd down with bars.
- C. Was the sentinel placed in charge of those locks?
- A. Yes, over the hatchway.
- C. Had he any authority to open them without orders from the commanding officer?
- A. No.
- C. Was you not the principal officer on board on the 18th of November when the men ran?
- A. Yes, but I had no command over the hatchway; the midshipmen had the charge.
- C. Who generally kept the keys?
- A. The midshipman.
- C. What was the name of the midshipman who had the keys that day?
- A. Mr. Hutton.
- C. Do you know how the hatchway happened to be opened so early as 8 o'clock?

- A. I do not.
James Powell, Sentinel, sworn.
- C. Was you the sentinel at the scuttle of the press room on board the *Castor* tender on the 18th of November last when the press men made their escape?
- A. I was.
- C. What time was it?
- A. About ½ past 8 in the morning.
- C. Who placed you there?
- A. M^r. W^m Hutton, the officer of the watch.
- C. Had you the keys of the bars of the hatchway in your possession?
- A. No, I had not.
- C. Relate to the court what you know respecting the charge you have heard against the prisoner.
- Answer M^r. William Hutton, Midshipman, placed me sentinel on the 18th of November about 7 o'clock in the morning, at which time, according to his orders, I let up two men. They walked the quarter deck a considerable time; and there was a cutlass left behind the companion by the morning watch, and one of those two men got the cutlass in his hand. One of the men below, wanting to come up, cried out for the rope and, as I stood over the hatchway telling him I wou'd not give him the rope, one of the men on deck caught hold of me behind and pinioned me. The other held the cutlass up to me and told me he would run it through my heart, by which means they both wrenched the cutlass out of my hand and then drove me aft and the officer of the watch forward. The men belonging to the ship were stowing the after hold. By the time they got up out of the hold, to the best of my knowledge, there were 10 or 12 of the pressed men on deck and got to the hand spikes. Some of them let down the ladder and one stood over the hatchway, flourishing a cutlass until such time as they'd lower'd the boat and, to the best of my knowledge, 22 or 23 got into the boat. While they were shoving off the boat, we got arms out of the cabin; some of them wou'd, some wou'd not go off and no person was hurt by them. We detected 6 of them going down the side and put them in the press room again. Those in the boat made their escape to Chester Side.
- C. You've said that when the press men broke loose, the men belonging to the ship were stowing the after hold; where were the men belonging to the lieutenant's gang?

- A. They were asleep in the forecastle.
 C. Do you know how many of them were on board?
 A. They were all on board, but none on deck but me.
 C. Was it customary for part of them to keep watch?
 A. Yes, it was.
 C. What number in each watch?
 A. Two of the gang and two of the ship's company.
 C. Had you a surgeon or surgeon's mate belonging to the *Castor*?
 A. No.
 C. Do you know the cause of Lieutenant Styles being on shore the night before the desertion?
 A. No.
- Prosecution closed.

The prisoner read the following defence:

I beg leave to offer to the court the following particulars relative to that affair, for which my conduct is now called in question:

On the afternoon of the 17th of November last, in consequence of a severe hurt I received on the 28th of October (by particular advice of the Surgeon and Agent of the Sick and Hurt at Liverpool), I went on shore for the better administering of medicines &c. prescribed by him.

Previous to my leaving the *Castor*, I gave charge of her to the master and left strict orders with him to take care of the impressed men, as I did also to M^r. Johns, the Midshipman, and to William Hutton, a volunteer (who acted in that capacity).

On the said 17th of November, in consequence of my very bad state of health, I wrote to the Lords Commissioners of the Admiralty, representing to them my inability to proceed to sea in the *Castor*, and requested their Lordships to supersede me.

M^r. Charles Sims, Master, sworn.

- Prisoner Did I not on the afternoon of the 17th of Nov^r. last just before I went on shore desire you to take charge of the tender and take all possible care of the pressed men?
 A. No.
 Court Relate to the court what Lieutenant Styles did say to you at the time.
 A. 'I am going on shore,' and then spoke to the mid. about the pressed men.
 Prisoner Do you know the reason of my going on shore?

- A. M^r. Styles had been complaining before some days of his being unwell.
- C. Had you any surgeon on board?
- A. No.
W^m. Johns, Midshipman.
- Prisoner On my leaving the *Castor* on the 17th of Nov^r. to go on shore, what orders did I leave with you?
- A. To keep the best look out.
- P. Did I not always give strict orders to this purpose whenever I quitted the ship?
- A. You always did.
- P. When on board, do you not think I always paid strict attention to my duty?
- A. Yes.

Sentence

‘The court is of opinion that Lieutenant John Styles is not reprehensible on account of the desertion of these men and do therefore fully acquit him from any culpability therein; and he is therefore fully acquitted accordingly. It appearing to this court that the state of Lieutenant Styles’ health was such as to make it absolutely necessary for his going on shore, there being no medical assistance to be had on board the tender.’

...

14. *Court Martial of Henry Hone Haviland*

[ADM 1/5337]

Minutes of the proceedings of a court martial assembled on board His Majesty’s ship *Barfleur*, in Mortilla Bay, the twentieth day of October, one thousand, seven hundred and ninety-six.

Present

The Honourable William Waldgrave, Vice Admiral of the Blue, &c^a, &c^a, &c^a, President.

Captain	Robert Calder	Captain	Thomas Lenox Frederick
	Captain of the Fleet		
	John Pakenham		Sir Charles Henry Knowles, Bar ^t .
	James Richard Dacres		Thomas Troubridge
	Thomas Southby		Samuel Hood
	Thomas Foley		Benjamin Hallowell
	George Grey		Shuldham Peard

The prisoner being brought into court and audience admitted, the order from Sir John Jervis, Knight of the Bath, Admiral of the Blue, and Commander in Chief of His Majesty's ships and vessels employed, and to be employed, in the Mediterranean, dated at four o'clock p. m. the eighteenth instant, and directed to the Honble. William Waldegrave, Vice Admiral of the Blue and second in command in the absence of Vice Admiral Sir Hyde Parker, Kn^t &c^a, &c^a, &c^a, for the trial of Lieutenant Henry Hone Haviland of the Marines of His Majesty's ship *Blanche* on the charges exhibited against him by Captain Sawyer, late commander of the said ship, for having been guilty of a breach of part of the twentieth Article of War and for having behaved disrespectfully towards him, the said Captain Sawyer, was read.

The members of the court and judge advocate then, in open court and before they proceeded to trial, respectively took the oaths directed by an Act of Parliament made and passed in the twenty second year of the reign of His late Majesty King George the Second, entitled *An Act for Amending, Explaining and Reducing into One Act of Parliament the Laws relating to the Government of His Majesty's Ships, Vessels, & Forces by Sea*.

Then a letter from Captain Sawyer to Admiral Sir John Jervis, K.B. &c^a, &c^a, &c^a, was read by the judge advocate as follows:

Blanche 5th September 1796

...

Lieutenant Henry Hone Haviland of the Marines of His Majesty's ship under my command, having been guilty of a breach of part of the 20th Article of War and having behaved himself disrespectfully towards me,

I have to request, sir, that you will be pleased to order a court martial to be assembled to try him for the several offences set forth against him.

...

The signal for assembling the court¹ having been made at eight o'clock and no prosecutor or evidences in support of the charges appearing at twelve o'clock, the court asked the judge advocate if he had summoned any evidences in support of the charges, who answered that he had not and assigned as his reasons for not having done so that the prosecutor had previously acquainted him that it was not his intention to prosecute the charges he had exhibited to the commander in chief against the prisoner.

¹This signal was the Union Flag flying from the upper corner of the yard or gaff sloping from a mast (Timothy Wilson, *Flags at Sea: A Guide to the Flags Flown at Sea by Ships of the Major Maritime Nations from the 16th Century to the Present Day, Illustrated from the Collections of the National Maritime Museum* (Annapolis, MD: Naval Institute Press, 1999) p. 109).