

Case of

Julius J. Allen,
Seaman second class,
U. S. Naval Reserve, et al.
14 September - 24 October 1944.

RECORD OF PROCEEDINGS
OF A
GENERAL COURT MARTIAL
CONVENED AT U. S. NAVAL TRAINING AND DISTRIBUTION
CENTER, SAN FRANCISCO, CALIFORNIA,
BY ORDER OF
THE COMMANDANT, TWELFTH NAVAL DISTRICT
AND COMMANDER, NAVAL OPERATING BASE,
SAN FRANCISCO, CALIFORNIA.

This record consists of six volumes:

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VOLUME VI

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Encl. (A)

Office Of The Secretary
 JAG:I:MMH:lja
 MM-Allen, Julius J./A17-20

DEPARTMENT OF THE NAVY
 WASHINGTON 25, D. C.

17 May 1945

To: The Commandant, Twelfth Naval District and Commander, Naval Operating Base.

Subject: Trial by general court martial of Julius J. Allen, seaman second class, U.S. Naval Reserve, et al., on 14 September 1944, et seq.

1. The record of proceedings of the general court martial convened by your office in the case of the subject named man and forty-nine other accused is forwarded herewith with the request that it be returned to the court.

2. The Secretary of the Navy notes that in a number of instances throughout the case for the prosecution evidence was admitted concerning alleged declarations made by various unidentified individuals. Attention is directed specifically to the following:

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The foregoing testimony was introduced by the prosecution for the purpose of showing the existence of a conspiracy, acts in furtherance thereof, and the intent necessary to convict the accused of Making a Mutiny, the charge preferred against each of them. Vehement objection was made by the accused to this type of testimony. It was hearsay and would be properly admissible only as

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an exception to the general rule which forbids testimony concerning statements made by persons other than the witness upon the stand. The judge advocate offered the evidence on the grounds that the statements were part of the res gestae and were made by co-conspirators.

3. The admission in evidence of the above-mentioned testimony was error. Since the declarants in each instance were unidentified, they could not be considered to be members of the alleged conspiracy. In order for such testimony to be admissible, it is first necessary that a conspiracy be proved. A conspirator's declarations may then be admissible against any co-conspirator on trial. Wharton's Criminal Evidence, eleventh edition, page 1183. Even had the proof in this case clearly shown that a conspiracy existed and that each of the accused was a member thereof, still the declarations could not properly be admitted against them without a showing that the declarants likewise were members of the conspiracy. Since the persons making the statements were in some instances specifically stated to be individuals other than any of the accused and in no case were identified, they could not be said to be co-conspirators. Nor were the declarations admissible as res gestae on the theory that they were evidence of the event speaking through the participants (Wharton, page 745), for the failure to identify the speakers once again is a bar. The fact that in one or two instances the declarants were identified as being members of a group who refused to obey orders two days prior to the alleged mutiny was not sufficient to establish that they were participants in any conspiracy.

4. This testimony was incompetent because it was never legally connected with any of the accused in this case and therefore it should have been stricken by the court from the record. As the court may have been influenced by the above evidence of statements of unidentified persons, upon reconsideration by the court as set forth in paragraph 8 hereof, you will admonish the court not to permit such testimony to influence in any way its deliberations, findings, and sentences, and you will direct the court that in its reconsideration it will wholly disregard all such evidence, and will treat all such evidence as stricken from the record in its entirety including arguments relating thereto.

5. You will inform the court that in its reconsideration of its findings, wholly disregarding the above evidence, the court will consider whether the prosecution has proven beyond a reasonable doubt independent of the overt act (alleged in the specifications as occurring on or about 11 August 1944) the existence of the specific intent to usurp, subvert, or override superior military authority. Naval Courts and Boards, sec. 151. "Mutiny consists in an unlawful opposition or resistance to or defiance of superior military authority with a deliberate purpose to usurp, subvert, or override the same." Naval Courts and Boards, sec. 46. Simple violence or disobedience of orders without proof of the intent to usurp, subvert, or override the military authority is not mutiny. The requisite specific intent is an essential element and, when present, the offense is completed by the occurrence of one or more overt acts which are in unlawful opposition or resistance to, or in defiance of, superior military authority. The specific intent to "usurp, subvert, or override" may contemplate the intent "to assume unrightfully, to render void and inoperative, or to set aside, supersede, annul." The intent to usurp, subvert, or override may be inferred from persistent and concerted disobedience of orders which has the effect of render-

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ing void and inoperative the constitutional power in a military authority to freely exercise the essential functions of his command.

6. In its reconsideration, wholly disregarding the incompetent evidence discussed in paragraphs 3 and 4 hereof, you will inform the court that the following findings as to each accused are open to the court:

- (a) Guilty or not guilty of Making a Mutiny as charged.
- (b) Guilty or not guilty of lesser included offenses. (See Sections 46 and 430, Naval Courts and Boards).

7. The court shall not consider anything stated herein as expressing an opinion as to the guilt or innocence of the accused; the court is the sole judge of the facts and credibility of the witnesses, and has the exclusive duty of determining whether each of the accused is guilty or not guilty.

8. You will direct the court to reconvene for the purpose of reconsidering the findings and sentences (which latter in no case may exceed those appearing in the record). At the conclusion of the proceedings in revision, you will indicate your action thereon and return the record to the Navy Department.

/s/ RALPH A. BARD
Acting Secretary of the Navy

Enclosure (1)
Record of Proceedings.

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