

2248

3 (1)

TENTATIVE DRAFT

June 16

Notes (1) The Selective Service Act of 1948

Sec 4 Persons "inducted into the land forces
of the U. S."

(b) " " " naval force

(c) " " " air forces

" " "

(2) Natl Security Act of 1947
"establishment of integrated policies and procedures
"to provide 3 military departments, ... for

ARTICLES FOR THE GOVERNMENT
OF THE ARMED SERVICES
OF THE UNITED STATES

"their authoritative coordination and unified
direction under civilian control but not to
merge them

"their operation under unified control
and for their integration into an efficient
team of land, naval and air forces"

Nothing in
the Act
comparable to
this
(over)

There is nothing about military justice.
Certainly "authoritative coordination
and unified direction under civilian
control" would authorize a judicial
council, a court composed of civilians as a
court of last resort for the three gms depts

TENTATIVE DRAFT

Col. Smedekar

Bad quare

202. Provided further
* be administered as
individual spec. depts
by their respective
secretaries, and
all powers and duties
not specifically conferred
upon the Secy of Defense
by this Act shall be
retained by each of
their respective
Secretaries."

- 202(a) (1) Establish genl policies
and programs for
all depts and agencies
(2) Express genl direction
authority and control
over such depts and agencies

"The genl direction auth and
control over military justice -

"with a view to accomplish coordination
and unified direction"

would justify the "jad council"

Exp of Prof E. M. Magan

TABLE OF CONTENTS

- Art. 1 Definitions
- Art. 2 Jurisdiction
- a. as to persons
 - b. as to time
 - c. as to place
 - d. as to offenses
 - e. participants in crime
 - f. recognition of the jurisdiction
of extraordinary military tribunals
- Art. 3 Authority to make arrests
- a. upon reasonable belief as to offense
and offender
 - b. upon commission of offense and
reasonable belief as to offender
 - c. upon reasonable belief that a person
is a spy, etc.
- Art. 4 Punishment powers of commanding officers
- 104
- a. list of authorized punishments
 - b. authority to limit punishment powers
 - c. appeal
 - d. remission and mitigation
- Art. 5 Eligibility for membership on courts martial
- Art. 6 Summary courts martial
- a. convening authority
 - b. constitution
 - c. list of authorized punishments
 - d. authority to limit punishment powers
 - e. clerk of court
 - f. record of proceedings
- Art. 7 Superior courts martial
- a. convening authority
 - b. constitution
 - c. prosecutor and defense counsel
 - d. summoning of witnesses and keeping
record of proceedings
 - e. administration of oaths
 - f. list of authorized punishments
 - g. authority to limit punishment powers

Art. 8

General courts martial

- a. convening authority
- b. preliminary investigation
- c. jurisdiction of court
- d. constitution
- e. judge advocate, prosecutor, and defense counsel
- f. administration of oaths
- g. appointment of new members
- h. authentication of record

Art. 9

Witnesses and related matters

- a. oath or affirmation to be administered to witnesses
- b. process to compel presence of witnesses
- c. contempt by person not subject to AGAS
- d. contempt by persons subject to AGAS
- e. depositions

Art. 10

Continuance, finding, sentence, and brief

- a. continuance
- b. findings
- c. conviction of lesser or included offenses
- d. adequate punishment and recommendation to clemency
- e. qualified majority votes as to punishments and limitation on death sentences
- f. superior court-martial punishments may be used as GCM punishments
- g. prohibited punishments
- h. alternative punishment in lieu of death sentence
- i. limitation of imprisonment in accordance with Federal Criminal Code
- j. punishment limitations by the President
- k. suspension of pay
- l. brief of grievances by defense counsel

Art. 11

Execution and review of sentences

- a. execution of general court-martial sentences
- b. remission or mitigation by convening authority
- c. execution of superior and summary court-martial sentences

- d. review of summary and superior court-martial sentences
- e. review of court-martial records by judge advocate general
- f. sentence review by clemency boards
- g. further review upon request of convicted person
- h. power to set aside, mitigate, etc. of President and Secretaries
- i. reconsideration of acquittals and increase of punishments prohibited
- j. regulations by Secretary of Defense to insure freedom of judicial action

Art. 12 Dismissal of officers and dropping from rolls

Art. 13 Fact-finding bodies

- a. courts of inquiry
- b. boards of investigation and investigations
- c. counsel for courts and boards
- d. defendant's right to cross-examination
- e. rights of interested party
- f. administration of oaths; findings of fact, opinions, and recommendations
- g. authentication of proceedings

Art. 14 Punitive provisions

- a. capital offenses
- b. offenses not capital

Art. 15 Authority of Secretary of Defense to prescribe rules of proceedings

THE ARTICLES FOR THE GOVERNMENT OF THE ARMED SERVICES

The following Articles shall govern the armed services of the United States and such persons not belonging to the armed services as may by law be within the jurisdiction of the Articles, and shall be known as the Articles for the Government of the Armed Services.

AW. 1.
Art. 1. Definitions. The following words when used in these articles shall be construed in the sense indicated in this article, unless the context indicates that a different sense is intended.

a. Officer. The word "officer" shall be construed ^{includes} to refer to commissioned, warrant, and flight officer, male ^{officer officer} or female.

b. Commanding officer. The words "commanding officer" shall be construed to mean only an officer regularly ordered or detailed to, or designated for, command duty.

c. Commissioned officer. The words "commissioned officer" shall be construed to include commissioned warrant officers, in addition to commissioned officers.

d. Superior officer. The words "superior officer" shall be construed to include superior petty officers and superior non-commissioned officers of the service of the subordinate, in addition to superior officers of the service of the subordinate.

e. War. The word "war" shall be construed to include rebellion and insurgency, as well as war.

f. Enemy. The word "enemy" shall be construed to include pirate, rebel, and insurgent, as well as enemy.

g. Enlisted person. The words "enlist", "enlisted", "enlistment", and "enlisted person" shall be construed to include "induct", "inducted", "induction", and "inducted person", respectively, and "muster into", "mustered into", "mastering in", and "mustered-in person", respectively, in addition to "enlist", "enlisted", "enlistment", and "enlisted person", respectively.

h. Term of enlistment. The words "term of enlistment" shall be construed as including "term of induction" and "term of mustering in", in addition to "term of enlistment."

i. Vehicle. The word "vehicle" shall be construed to include boat, vessel, car, automobile, aircraft, and any other contrivance designed for the transportation of a person or persons.

j. Words used in the masculine gender shall be construed to include the feminine gender as well as the masculine gender.

Art. 2 Jurisdiction.

a. As to persons:

The following persons are subject to these Articles:

(1) All persons on active duty in the armed services, including those, not unlawfully detained, awaiting discharge after expiration of their terms of enlistment.

(2) All reserve personnel of the armed services when

(a) called to active duty, or

(b) employed on any duty other than active duty, or

(c) travelling to or from any duty other than active duty, or

(d) while wearing a uniform prescribed for the armed services, or

(e) when in possession, custody, or control of any classified material, or

(f) when having received knowledge or control of any classified information, or

(g) when charged with a violation of any law, order, regulation, or custom concerning classified material, or of any criminal law of the United States providing against espionage or any other offense which can be committed by divulging or transmitting classified material or information to a person not entitled to receive the same.

*What is
classified
material?*

(3) All retired personnel of the armed services entitled to receive pay, or admitted as inmates of a soldiers' or sailors' home operated by the federal government.

(4) All persons discharged from the armed services subsequently charged with having fraudulently obtained said discharge: Provided, That upon conviction by a court martial of this offense, and not otherwise, said discharge shall be null and void ab initio.

*doesn't
belong
here*

(5) All persons in custody of the armed services serving a sentence imposed by a court martial.

(6) Personnel of the Coast Guard, Coast and Geodetic Survey, Public Health Service, and other organizations, when actively serving under the National Military Establishment, or under one of the Departments of the Army, Navy, or Air Force, pursuant to law, as part of the armed forces of the United States.

In time of war or national emergency, in addition to the fore-

going, the following persons shall be subject to these Articles:

(7) Prisoners of war in custody of the armed services.

(8) All persons who come, or act, or are charged as spies or saboteurs, or who have, or are charged with having brought, delivered, or communicated, or attempted to bring, deliver, or communicate, any seducing letter or message from an enemy, or corrupted, conspired to corrupt, or solicited any person subject to these Articles to betray his trust.

(9) All other persons, outside the continental limits of the United States accompanying, serving with, employed by, or under the supervision of the United States armed services; and all other persons within an area leased by the United States which is without the territorial jurisdiction thereof and which is under the control of the Secretary of Defense or of the Army, Navy, or Air Force:

Provided, That the jurisdiction herein conferred shall include the Islands of Palmyra, Midway, Johnston, and that part of the Aleutian Islands west of longitude one hundred and seventy-two degrees west, but shall not extend to Alaska, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, or the Virgin Islands.

b. As to time:

(1) Any person subject to these Articles may be tried or punished thereunder for any offense against these Articles committed whenever he was subject to these Articles, and any person who has deserted from the armed services shall not be relieved from amenability to these Articles by virtue of a separation from any subsequent period of service. Reserve personnel of the armed services who are charged with having committed, while in a status in which they were subject to these Articles, any offense against these Articles may be retained in such status, or, whether or not such

status has terminated, placed in an active duty status, for disciplinary action, without their consent, but not for a longer period of time than may be required for such action. Nothing in this paragraph shall be construed to interfere with the operation of limitations under the law of war or treaties or conventions of the United States and of the limitations set forth in the following paragraphs.

(2) Persons described in paragraph (4) of section a of Article 2 shall initially be subject to these Articles only for trial on allegations based upon the course of action by means of which they obtained their discharge; but upon conviction they shall be subject to these Articles to the same extent as if they had never been discharged.

(3) Except for desertion in time of war or absence from place of duty without authority in time of war, or for mutiny or murder, no person shall be tried or punished under these Articles for any offense unless the order for such trial or punishment is signed within two years next after such offense shall have been committed: Provided, That nothing in this paragraph shall be construed to affect the provisions of the Act of August 24, 1942, ch. 555, sec. 1, 56 Stat. 747, as amended: Provided further, That any period during which the accused was in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the aforesaid period of limitation: And provided further, That the period of limitation so computed shall be extended, if otherwise it would expire sooner, until the expiration of six months after the end of the war in regard to any offense the trial of which in time of war shall be certified by the Secretary of Defense to be detrimental to the

*This not
jurisdiction*

prosecution of the war or inimical to national security: And provided further, That the benefit of the statute of limitations shall not apply to any person fleeing from justice during the period of limitation so computed or extended: And provided further, That before evidence is received on the general issue in any case involving any offense, of desertion in time of war, or absence from place of duty in time of war, or mutiny, or murder, the judge advocate or, if the trial is before a summary or superior court martial, the court, will cause to be noted in the record of proceedings whether the accused desires to plead the limitations on prosecution prescribed in this paragraph in bar of any offense of which he might be convicted under section c of Article 10.

c. As to place:

These Articles shall extend to all places.

d. As to offenses:

The following shall be offenses against these Articles:

(1) Violations of the criminal laws of the United States, whenever enacted, during the time such laws are in force, and any limitation as to territorial jurisdiction shall not apply;

(2) Violations of the treaties or conventions of the United States, whenever adopted, during the time such treaties or conventions are in force;

(3) Violation of such criminal laws of a State, Territory, District, or possession of the United States, or any political subdivision thereof, in which the acts or omissions occurred, as are in force at the date of approval of this Act and at the time they occurred;

(4) Violations of the laws or customs of the armed

*authored
of
War Department
of power to
legislate*

services; and

(5) Violations of the law of war.

e. Participation:

Whoever aids, abets, counsels, commands, induces, entices, or procures the commission of any offense by another is a principal.

f. Recognition of the jurisdiction of extraordinary military tribunals:

The provisions of these Articles relating to courts martial shall not be construed as affecting the jurisdiction, pleading or procedure of extraordinary military tribunals, which are recognized to be established and governed according to the law of nations or martial law, or as preventing the trial of any person subject to these Articles by an extraordinary military tribunal for offenses cognizable by such tribunal.

Art. 3.

a. All persons or classes of persons in the armed services as designated by the Secretaries of the Army, Navy, and Air Force or by persons to whom the authority to designate has been delegated by any of the said Secretaries shall have power to arrest any person subject to these Articles upon reasonable belief that an offense has been committed and that the person arrested committed it.

b. All persons in the armed services other than those designated in accordance with the foregoing paragraph shall have power to arrest any person subject to these Articles if an offense has been committed and there is reasonable belief that the person arrested committed it: Provided, That any of the Secretaries of the Army, Navy, and Air Force may, in his discretion, limit this power to certain designated classes of persons.

c. All persons having power, under the authority of sections a and b of this article, to make arrests shall also have power to arrest any person upon reasonable belief that he is a spy or saboteur, or has brought, delivered, or communicated, or has attempted to bring, deliver, or communicate, any seducing letter or message from an enemy, or has corrupted, conspired to corrupt or solicited any person subject to these Articles to betray his trust.

Art. 4. Punishment powers of commanding officers.

a. Under such regulations as the Secretary of Defense may prescribe all officers empowered to convene superior courts martial, all commanding officers, and such other officers as may be designated by the Secretaries of the Army, Navy, and Air Force, are authorized to impose, for a single offense or at any one time, no other than one of the following punishments:

(1) Upon an officer, regularly or temporarily under their command:

- (a) Private reprimand,
- (b) Loss of pay not exceeding one half of one month's pay,
- (c) Suspension from duty not exceeding ten days, to run consecutively,
- (d) Confinement not exceeding ten days, to run consecutively,

(2) Upon a person, other than an officer, regularly or temporarily under their command:

- (a) Reduction to the next inferior rank or rating,
- (b) Solitary confinement on bread and water not exceeding five days, to run consecutively,
- (c) Close confinement not exceeding ten days, to

(d) Confinement within specified limits not exceeding twenty days, to run consecutively,

(e) Extra duties not exceeding one calendar month,

(f) Loss of pay not exceeding one half of one month's pay.

b. Any of the Secretaries of the Army, Navy, or Air Force may restrict the punishment powers of officers, or classes of officers, designated by them under section a, to the use of one or more, in whole or in part, of the punishments enumerated in that section and may also restrict the exercise of such punishment powers as to time and place.

c. A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may, pending action on such appeal, be required to undergo the punishment imposed.

d. An officer, or his successor in office, shall have the power to remit or mitigate, but not to commute, any punishment imposed by him under the authority of this article.

Art. 5. Eligibility for membership on courts martial.

a. All commissioned officers on active duty in the armed forces are eligible to be appointed and then to serve on courts martial for the trial of any person who may lawfully be brought before such court martial for trial. In no case, where

it can be avoided without injury to the armed services, shall more than one-half, exclusive of the president or senior member, be junior to the person to be tried, or shall less than one-third be of the same corps and service as and senior to the person to be tried.

b. All warrant officers on active duty in the armed forces are eligible to be appointed and then to serve on general and superior courts martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such court martial for trial.

c. Enlisted persons on active duty in the armed forces are eligible to be appointed and then to serve as members of general and superior courts martial convened on land for the trial of any enlisted person who may lawfully be brought before such court martial for trial, if the enlisted person accused has requested in writing that enlisted persons serve as members of the court martial by which he is to be tried. After such request has been made, the enlisted person accused shall be tried by a general or superior court martial the membership of which consists of at least one-third, but less than one-half, enlisted persons belonging to units other than the immediate company or other equivalent unit to which the accused belongs: Provided, That the convening authority may, in time of war, deny the request if, in his discretion, the exigencies of the service so demand, stating in writing the specific reasons for such denial.

Art. 6. Summary courts martial.

a. Under such regulations as the Secretary of Defense may prescribe, all officers who are empowered to convene superior courts martial may convene summary courts martial for the trial of persons, other than officers, regularly or temporarily under their command, for the trial of minor offenses.

b. Summary courts martial shall consist of one experienced commissioned officer, who, while serving in such capacity, shall have the power to administer oaths and to hear and determine cases.

c. A summary court martial shall have power to impose either a part or the whole of any one of the following punishments:

(1) Reduction to the next inferior rank or rating;

(2) Fine or loss of pay not to exceed one month's

pay;

(3) Confinement within specified limits, or within limits to be designated by specified authority, not exceeding forty-five days, to run consecutively;

(4) Fine or loss of pay not to exceed one month's pay; and confinement within specified limits, or within limits to be designated by specified authority, not exceeding forty-five days, to run consecutively;

(5) Close confinement not exceeding one calendar month;

(6) Fine or loss of pay not to exceed one month's pay, and close confinement not exceeding one calendar month;

(7) Solitary confinement on bread and water, with full ration every third day, not exceeding twenty days, to run consecutively;

(8) Fine or loss of pay not to exceed one month's pay; and solitary confinement on bread and water, with full ration every third day, not exceeding twenty days, to run consecutively.

d. Any of the Secretaries of the Army, Navy, or Air Force may restrict the punishment powers of summary courts martial to one or more, in whole or in part, of the punishments enumerated in section c.

e. Any person may, with the approval of the convening authority, act as clerk of a summary court martial.

f. The record of proceedings of summary courts martial shall contain only such matters as are necessary to enable the reviewing authorities to act thereon.

Art. 7. Superior courts martial.

a. Under such regulations as the Secretary of Defense may prescribe, the commanding officer of a regiment, of a naval vessel, or of an air group, and such other officers, and classes of officers, as may be designated by any of the Secretaries of the Army, Navy, or Air Force, may convene superior courts martial for the trial of persons, regularly or temporarily under their command, for offenses deemed deserving of greater punishment than a summary court martial is authorized to impose but not sufficient to require trial by general court martial.

b. A superior court martial shall consist of three members.

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c. For every superior court martial, the convening authority shall appoint a prosecutor, a defense counsel, and may appoint assistant prosecutors and assistant defense counsel, who shall be persons qualified to perform such duties. This provision shall not affect the right of the accused to reasonably available counsel of his own choice.

d. It shall be the duty of the prosecutor, under such rules of practice, pleading, and procedure as the Secretary of Defense may prescribe, (1) to summon all witnesses and (2) to keep the record of proceedings.

e. (1) The senior member of the superior court martial shall administer the following oath or affirmation to the prosecutor "You, A _____ B _____, do swear (or affirm) that you will keep a true record of the evidence which shall be given before this court and of the proceedings thereof."

(2) This oath or affirmation having been duly administered, the following oath or affirmation shall be administered by the prosecutor to the members of the court, before proceeding to trial: "You, C _____ D _____, E _____ F _____, and G _____ H _____, do swear (or affirm) that you will truly try, without prejudice or partiality, all cases which come before this court, according to the evidence which shall be adduced, the laws for the government of the armed services, and your own consciences; and that you will not at any time divulge or disclose the vote or opinion of any particular member of the court unless required so to do before a court of justice in due course of law."

(3) A second oath need not be required of any person to whom the prescribed oath was previously administered in the presence of the accused: provided, That the right of an accused to challenge any member of the court shall not thereby be abridged.

f. A superior court martial shall have power to impose either a part or the whole of any one of the following punishments:

(1) Upon an officer:

(a) Loss of pay not exceeding six month's pay;

(b) Suspension from duty not exceeding six months, to run consecutively;

(c) Confinement within specified limits, or within limits to be designated by specified authority, not exceeding six months, to run consecutively;

(2) Upon a person other than an officer:

(a) Discharge with a bad conduct discharge,

(b) Discharge with a bad conduct discharge, and loss of pay not to exceed three month's pay;

(c) Discharge with a bad conduct discharge; and confinement not exceeding three months, to run consecutively;

(d) Discharge with a bad conduct discharge; loss of pay not to exceed three month's pay; and confinement not exceeding three months, to run consecutively;

(e) Reduction to the next inferior rank or rating;

(f) Fine or loss pay not to exceed six month's pay;

(g) Confinement within specified limits, or within limits to be designated by specified authority, not exceeding six months, to run consecutively;

(h) Fine or loss of pay not to exceed six month's pay; and confinement within specified limits, or within limits to be designated by specified authority, not exceeding six months, to run consecutively;

(i) Close confinement not exceeding six months, to run consecutively;

(j) Fine or loss of pay not to exceed six month's pay; and close confinement not exceeding six months, to run consecutively;

(k) Solitary confinement on bread and water, with full ration every third day, not exceeding thirty days, to run consecutively;

(l) Fine or loss of pay not to exceed six month's pay; and solitary confinement on bread and water, with full ration every third day, not exceeding thirty days, to run consecutively;

g. Any of the Secretaries of the Army, Navy, or Air Force may restrict the punishment powers of superior courts martial to one or more, in whole or in part, of the punishments enumerated in section f.

Art. 8. General courts martial.

a. General courts martial may be convened by the President, the Secretary of Defense, of the Army, Navy, or Air Force,

the commanding officer of an army, the commander in chief of a fleet, the commanding officer of an air force, and such other officers as may be designated by any of the Secretaries of the Army, Navy or Air Force.

b. No person shall be ordered tried by a general court martial until after a thorough and impartial investigation of all alleged offenses shall have been made. This investigation shall include inquiries as to the truth of the allegations, a determination of probable cause for trial of the issues, and a recommendation for the disposition of the case in the interests of justice and discipline. The alleged offender shall be permitted, upon his request, to be represented at such investigation by counsel of his choice, civil counsel if he so provides, or military if such counsel be reasonably available, otherwise by counsel appointed by the person empowered to convene a general court martial for the trial of the case. At such investigation, full opportunity shall be given to the alleged offender to cross-examine available witnesses against him and to present anything he may desire in his own behalf, either in defense or in extenuation, and the investigating officer shall examine available witnesses requested by the alleged offender. The substance of the testimony taken shall be reduced to writing, and, together with the report of the investigating officer, shall be forwarded to the person who ordered the investigation, for his information and decision or recommendation.

c. A general court martial shall have jurisdiction to try and punish any person subject to these Articles for any offense

against these Articles. An accused shall not be tried by a general court martial convened by an officer of one of the armed services other than that to which he belongs, except in accordance with express conditions which the Secretary of Defense shall prescribe.

d. A general court martial shall consist of not less than five members.

e. For every general court martial, the convening authority shall appoint (1) a prosecutor and a defense counsel, who shall be certified by the Judge Advocate General of the Army, Navy, or Air Force as persons qualified to perform such duties, and may appoint one or more assistant prosecutors and assistant defense counsel, but the appointment of such defense counsel and assistant defense counsel shall not affect the right of the person accused to reasonably available counsel of his own choice; and (2) a judge advocate, whose duties it shall be

(a) to advise the court on all matters of law arising during the trial of the case;

(b) to rule on all interlocutory questions, except challenges;

(c) in open court, to instruct the court upon the law of the case; and

(d) to perform such other duties as the Secretary of Defense may prescribe:

Provided, That the judge advocate may be overruled by a majority vote of the court, in which case the reasons therefor shall be

spread upon the record: Provided further, That the judge advocate shall be an officer certified by the Judge Advocate General of the Army, Navy, or Air Force as qualified to perform the duties herein prescribed and who shall be responsible to the Judge Advocate General of the Army, Navy, or Air Force for the performance thereof: And provided further, That the judge advocate shall be subject to challenge.

f. (1) The president of the general court martial shall administer the following oath or affirmation to the judge advocate: "You, A___ B___, do swear (or affirm) that you will discharge all your duties as judge advocate of this court without prejudice or partiality or fear of disfavor."

(2) This oath or affirmation being duly administered, the following oath or affirmation shall be administered by the judge advocate to the members of the court, before proceeding to trial: "You, C___ D___, E___ F___, G___ H___, I___ J___, and K___ L___, do swear (or affirm) that you will truly try, without prejudice or partiality, all cases which come before this court, according to the evidence which shall come before the court, the rules for the government of the armed services, and your own consciences; and that you will not at any time divulge or disclose the vote or opinion of any particular member of the court unless required so to do before a court of justice in due course of law."

(3) A second oath need not be required of any person to whom the prescribed oath was previously administered in the presence of the accused: Provided, That the right of an ac-

cused to challenge any member of the court or the judge advocate shall not thereby be abridged.

g. Whenever a general court martial is reduced below five members, the reduced court may, with the consent of the accused, proceed to a final determination of the case being tried: Provided, That if the accused does not give his consent, the convening authority may appoint new members to be subject to challenge: Provided further, That upon the new members taking their seats the trial may proceed after the recorded testimony of each witness previously examined has been read to the witness in open court and verified by him and after such further examination of the witness thereon as any new member may require.

h. The record of every general court martial shall be authenticated by the signatures of the president and of the judge advocate; but in case the record can not be authenticated by the president and the judge advocate, by reason of death, disability, or absence of either or both of them it shall be signed by a member in lieu of the president and by another member in lieu of the judge advocate.

Art. 9. Witnesses and related matters.

a. An oath or affirmation in the following, or substantially equivalent, form shall be administered to all witnesses, before any court-martial, by the president or senior member thereof: "You do solemnly swear (or affirm) that the evidence you shall give in the case now before this court shall be the truth, the whole truth, and nothing but the truth. So help you God (or this you do under the pains and penalties of perjury).": Provided,

That, whenever authorized by the Secretary of Defense, there may be administered, in lieu of the oath or affirmation prescribed for any witness, deponent, or other person, an oath or affirmation in such form as the officer duly designated to administer the oath or affirmation determines to his satisfaction to be binding upon the person taking the oath or affirmation.

b. A general court martial, a superior court martial, and a court of inquiry shall have power to issue like process to compel witnesses to appear and testify which courts of the United States having criminal jurisdiction may lawfully issue. But such process shall run from and to any part of the United States, its Territories, possessions, and other areas under the control of the United States.

c. Any person not subject to these Articles, duly subpoenaed to appear as a witness before a general court martial, superior court martial, or court of inquiry, who fails to appear or refuses to qualify as a witness or to testify or produce documentary evidence, which such person may have been legally subpoenaed to produce, or who refuses to give his evidence or to give it in the manner provided by these Articles, or behaves with contempt to the court, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States; and it shall be the duty of the United States district attorney, on the certification of the facts to him by such court martial or court of inquiry, to file an information

against and prosecute the person so offending; and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprisonment not to exceed six months, or both, at the discretion of the court: Provided, That the fees of such witness and his mileage in the rates provided for witnesses in the United States district court for said State, Territory, District, or possession shall be duly paid or tendered said witness, such amounts to be paid by the Army, Navy or Air Force out of the appropriations made therefor.

d. Whenever any person subject to these Articles refuses to give his evidence before a general or superior court martial or court of inquiry or to give it in the manner provided by these Articles or behaves with contempt to the court, it shall be lawful for the court to order him confined for any period not exceeding two months.

e. (1) (a) A deposition may be taken either:

First. By agreement of the parties, prior to the assembling of the court, or

Second. Upon reasonable notice to the opposite party, either prior or subsequent to the assembling of the court, if it appears to the satisfaction of the judge advocate of the general court martial, or the senior member of the superior court martial, or the summary court-martial officer, or the president of the court of inquiry, that the evidence sought is otherwise admissible, and either that the witness, by reason of death, age, sickness, bodily infirmity, imprisonment, or military necessity,

is unable to, or that he is not amenable to process and refuses to, appear and testify in person at the place of trial or hearing, or that he resides, is found, or is about to go beyond a distance of one hundred miles from the place of trial or hearing and his testimony does not seem to be determinative of an essential element of the case. When the request to take a deposition is made subsequent to the assembling of the court, the decision of the judge advocate of the general court martial, senior member of the superior court martial, and president of the court of inquiry shall be subject to being overruled by a majority vote of the court.

(b) The accused, or defendant, shall be given an opportunity to confront and to cross-examine any deponent against him and, regardless of his own presence, to have his defense counsel present when such deposition is taken: Provided, That in any case in which either the accused, or defendant, or his counsel is absent, or when both are absent, during the taking of such deposition, the accused, or defendant, shall, upon his request, be represented by a person qualified to perform the duties of such representation. The Secretary of Defense is directed and authorized to prescribe the rules controlling the appointment, rights and duties of such representative.

(2) .A deposition taken as provided for in paragraph (1) of this section may, if duly authenticated and otherwise admissible as evidence, be received in evidence before any

court martial or court of inquiry if it appears to the satisfaction of the judge advocate of the general court martial, such judge advocate being subject to being overruled by a majority vote of the court, or the superior court martial, or the summary court martial, or the court of inquiry that either the witness, by reason of death, age, sickness, bodily infirmity, imprisonment, or military necessity, is unable to, or that he is not amenable to process and refuses to, appear and testify in person at the place of trial or hearing, or that he resides, is found, or is about to go, or went, beyond a distance of one hundred miles from the place of trial or hearing and his testimony does not seem to be determinative of an essential element of the case, or that the present whereabouts of the witness is unknown: Provided, That where the testimony contained in a deposition is used against an accused under the authority of this paragraph, the punishment imposed with respect to the specifications in regard to which the deposition is so used shall not extend to death.

Art. 10. Continuance, finding, sentence and brief.

a. A court martial may, for reasonable cause, grant a continuance for such time and as often as may appear to be just. In time of peace no person shall, against his objection, be brought to trial before a general, superior, or summary court martial, within periods of five days, three days, and 24 hours, respectively, subsequent to the service of specifications upon him.

b. Every finding shall be determined by a majority vote of the members present. A tie vote shall be a determination in favor of the accused. The court shall announce its findings in open court as soon as they have been determined.

c. (1) An offender may be convicted of

(a) an offense committed or

(b) an offense all the elements of which are included in an offense committed or

(c) an offense which is a lesser one than an offense committed or

(d) an offense which is a lesser one than an offense included in an offense committed:

Provided, That he may be convicted only of

(a) an offense alleged or

(b) an offense all the elements of which are included in an offense alleged or

(c) an offense which is a lesser one than an offense alleged or

(d) an offense which is a lesser one than an offense included in an offense alleged.

(2) An offense is lesser than another offense if it does not differ from the other offense except on any one or more of the following grounds, to wit, that it

(a) involves a less culpable state of mind than the other offense,

(b) involves an attempt to commit the other offense,

(c) involves injury to life or property while the other offense involves destruction of such life or property,

(d) involves danger to life or property while the other offense involves injury or destruction of such life or property,

(e) involves property which is not owned by the United States while the other offense is predicated upon ownership of such property by the United States,

(f) occurred during a state of peace while the other offense occurred during a state of war,

(g) is in effect provided for as an offense of a grade or degree lesser than the other offense in the law violated and incorporated into the Articles for the Government of the Armed Services.

d. It shall be the duty of a court martial, in all cases of conviction, to impose a punishment adequate to the nature of the offense; but any member or members thereof may recommend the person convicted as deserving of clemency, and in such event shall state, on the record, the specific action recommended and the specific reasons for so recommending.

e. No person shall be sentenced to death, except by the concurrence of all the members of the court martial present and then only for the offenses for which the punishment of death is expressly provided in Article 14 of these Articles subject to any limitations

which the President may have prescribed under section j of this article; nor sentenced to life imprisonment, nor to confinement for more than ten years, except by the concurrence of three-fourths of all the members present. All other sentences, by general or superior court martial, shall be determined by a two-thirds vote of the members present. When, after a split vote, the court determines that the requisite majority of the members are unable to agree upon a sentence, then the sentence of the court shall be determined by adding the number of votes cast for the most severe punishment to the number of votes cast for the second most severe punishment, so continuing until the total number of votes thus arrived at reaches the required majority number of votes for the sentence which is the mildest of those sentences the number of votes for which have been so added. Every court shall announce in open court the sentence and recommendations to clemency, if any, as soon as determined.

f. A general court martial may impose any sentence not prohibited by law, including any punishment which a superior court martial is authorized to impose.

g. In no case shall punishment by flogging, or any other cruel or unusual punishment be imposed by any court martial or be inflicted upon any person in the armed services. The use of irons, single or double, is prohibited, except for the purpose of safe custody.

h. Court-martial sentences of confinement may, whether or not such sentences include discharges or dismissals, and whether or not such discharges or dismissals have been executed, be carried into execution by confinement or commitment in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use; and persons so confined or committed in

a penal or correctional institution of any State, Territory or District shall be subject to the same discipline and treatment as persons confined or committed by the courts of the State, Territory, or District in which the same may be situated.

i. No court martial shall impose a sentence of imprisonment upon conviction of an offense under the laws specified in paragraph (1) of section d of Article 2 in excess of the period prescribed for that offense in such laws, but such limitations upon the period of imprisonment shall not affect the power to impose any other types of punishment not prohibited by law.

j. The President is authorized to prescribe a limitation of the punishment which may be imposed under any of these Articles; and thereafter, such limitation while in force shall not be exceeded.

k. Whenever a court martial sentences an officer to be suspended, it may suspend his pay and emoluments for the whole or any part of the time of his suspension.

l. In every court-martial proceeding in which the accused pleads not guilty, the defense counsel, if there be one, shall, in the event of conviction, attach to the record of proceedings either a brief of such matters as he believes should be considered on behalf of the accused on review or a signed statement setting forth his reasons for not so doing.

Art. 11. Execution and review of sentences.

a. Every punishment, except death, dismissal, discharge, or reduction in rank or rating, imposed by the sentence of a general court martial shall be executed upon announcement of the sentence by

the court: Provided, That, reduction in rank or rating shall be effective upon the date of the forwarding of the record of proceedings by the convening authority to the Department of the Army, Navy, or Air Force without having remitted or suspended the reduction in rank or rating: Provided further, That a discharge shall be executed only after confirmation by the Secretary of the Army, Navy or Air Force or other authority duly appointed by any of them; that a dismissal shall be executed only after confirmation by the President or, when empowered by the President, by the Secretary of the Army, Navy or Air Force; and that a punishment of death shall be executed only after confirmation by the President.

b. Subject to section h of this article, the convening authority of any court martial shall have the power to remit or mitigate, but not to commute, the punishment imposed by the sentence of any court martial convened by him.

c. Every punishment imposed by the sentence of a superior court martial, except discharge or reduction in rank or rating, or of a summary court martial, except reduction in rank or rating, shall be executed upon announcement of the sentence by the court: Provided, That a discharge shall be executed only after confirmation by the Secretary of the Army, Navy, or Air Force or of other authority duly appointed by any of them: Provided further, That reduction in rank or rating shall be executed upon the date of forwarding of the record of proceedings by the authority exercising the power of legal review to the Department of the Army, Navy, or Air Force, without having remitted or suspended the reduction in rank or rating.

d. The officer empowered to convene general courts martial who is next senior in the chain of command to any convening authority of summary or superior courts martial shall be the reviewing authority as to legality of the proceedings, findings, and sentences thereof, if such reviewing authority be present, or found by the convening authority to be available within such limits as the Secretary of Defense, of the Army, Navy, or Air Force may prescribe: Provided, That if such reviewing authority be neither present nor found to be so available, the convening authority shall review the records of such courts as to legality: Provided further, That the reviewing authority shall have the power to set aside the proceedings, findings, and sentence or to remit or mitigate, but not commute, the punishment imposed by the sentence of any such summary or superior court martial: And provided further, That the power to set aside shall include the power to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of an offense of which the accused might have been convicted under section c of Article 10.

e. The proceedings, findings, and sentence of every general court martial shall, and of any other court martial may, be reviewed as to legality in the Office of the Judge Advocate General of the Army, Navy, or Air Force, as appropriate: Provided, That the Judge Advocate General of the Army, Navy, or Air Force shall have the power to weigh the evidence and to set aside the proceedings, findings, and sentence of any court martial reviewed by him: Provided further, That the power to set aside shall include the power

to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of an offense of which the accused might have been convicted under section c of Article 10.

f. The sentence of every general court martial and of such other courts martial as may be designated by the Secretary of Defense shall, under such regulations as the Secretary of Defense shall prescribe, be reviewed by clemency boards appointed by the Secretaries of the Army, Navy, and Air Force: Provided, That such clemency boards shall have the power to remit, mitigate, or commute the sentence, in whole or in part, imposed by any court martial convened by the Secretary of Defense or of the Army, Navy, or Air Force or by the President, in which cases like power shall repose in the convening authority.

g. The proceedings, findings, and sentence of every court martial shall, upon request by the convicted person made within one year after such person has been informed that the review of his case has been completed and under such regulations as the Secretary of Defense shall prescribe, be reviewed by a board of appeals, such boards to be appointed for their respective services by the Secretaries of the Army, Navy, and Air Force, to serve in the offices of the respective Secretaries: Provided, That such boards of appeals shall have the power to take any action which could have been taken by a Judge Advocate General under section e of this article and by a clemency board under section f of this article: Provided further, That any officer dismissed shall, upon the setting aside or remission of the dismissal upon such subsequent review, be restored, without

further appointment or confirmation and without regard to the number of officers authorized or appropriated for, to the rank and precedence to which he would be entitled if he had not been dismissed; but no pay or allowances shall be held to have accrued from the date of his dismissal to the date of his restoration.

h. The President, the Secretary of Defense, and the Secretaries of the Army, Navy, or Air Force shall each have the power to set aside the proceedings, findings, and sentence, or to remit, or mitigate, or commute the sentence, in whole or in part, of a court martial convened by him: Provided, That, upon the request provided for in section g of this article, such convening authority shall have the power to set aside the proceedings, findings, and sentence, or to remit, or mitigate, or commute the sentence, in whole or in part, of a court martial convened by him, regardless of any previous action by any convening, reviewing, or confirming authority: Provided further, That the effect of the setting aside or remission of a dismissal after execution thereof shall have the same effect as provided in the last proviso of section g of this article.

i. No record of proceedings of a court martial shall be returned to the court for the purpose of reconsidering a finding of "not proved" or "not guilty" or for reconsideration of a sentence with a view to increasing its severity.

j. The Secretary of Defense is authorized and directed to issue such regulations as may be necessary to assure that the members of every court martial shall be free to perform their sworn

duties without any coercion or influence, directly or indirectly, on the part of any person in the armed services.

Art. 12. Dismissal of officers.

No officer shall be dismissed from the armed services except by sentence of a general court martial, or in mitigation or commutation thereof, or, in time of war, by order of the President: Provided, That the President is authorized to drop from the rolls of any of the armed services any officer thereof who is absent without authority from his place of duty for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement or commitment in a penal or correctional institution of the United States, a State, Territory, or District; Provided further, That the provisions of Section 301, Servicemen's Readjustment Act of 1944, as amended, apply to instances in which an officer has hereafter been dismissed, without trial, by order of the President or has been dropped from the rolls by the President except that any authority conferred upon the Secretaries of the Army, Navy, and Air Force by that section shall vest in and be exercised by the President subject to his authority to delegate that authority to the Secretary of Defense, of the Army, Navy, or Air Force.

Art. 13. Fact finding bodies.

a. Courts of inquiry may be convened by any person authorized to convene general courts martial. A court of inquiry

shall consist of three or more commissioned officers.

b. Boards of investigation composed of two or more officers and investigations conducted by one officer may be convened by any person authorized to convene superior courts martial, and by such other officers as any of the Secretaries of the Army, Navy, or Air Force may designate.

c. For every court of inquiry and board of investigation, the convening authority shall appoint a counsel to assist the court or board in its duties.

d. Any person subject to these Articles, or in the employ of the armed services, whose conduct shall be the subject of inquiry, or his counsel, shall have the right to cross-examine all the witnesses.

e. Any person subject to these Articles, or in the employ of the armed services, who has an interest in the subject of inquiry shall have the right to be present and to be represented by reasonably available counsel of his own choice.

f. Courts of inquiry, and, when empowered by the convening authority, boards of investigation and investigations conducted by one officer shall have power to administer oaths. They shall make findings of fact, and, when required so to do, express opinions and make recommendations.

g. (1) The proceedings of courts of inquiry shall be authenticated by the signatures of the president of the court and

of the counsel for the court; but in case the proceedings cannot be authenticated by the signatures of the president and of the counsel by reason of death, disability, or absence of either or both of them, they shall be signed by a member in lieu of the president and by another member in lieu of the counsel.

(2) The sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained shall, if otherwise admissible as evidence, be received in evidence before a court martial in a trial of a person who was a defendant before said court of inquiry: Provided, That where such testimony is used against an accused under the authority of this article, the punishment imposed with respect to the specifications in regard to which such testimony is so used shall not extend to death.

Art. 14. Punitive provisions:

a. Capital offenses. Any person subject to these Articles is punishable by death or by such other punishment as a court martial may impose---

(1) Who, in time of war, is guilty of desertion, desertion being an unauthorized absence from the place of duty and from the control of the authority of the armed services to which he belongs or by which he is employed, accompanied by an

intent never to return to such control, or by an intent permanently to abandon a current status under that armed service, or by an intent to avoid hazardous duty, or by an intent to shirk important duty;

(2) Or makes or participates in a mutiny;

(3) Or, in time of war or national emergency, betrays his trust or corrupts or conspires to corrupt, any person subject to these Articles to betray his trust;

(4) Or strikes the flag to the enemy without proper authority;

(5) Or, without proper authority, gives any intelligence to, or holds or entertains any intercourse with, the enemy;

(6) Or, being in command, or in charge or control of any command, craft, activity, detachment, or organization, neglects, when an engagement is probable, to prepare the same for action;

(7) Or, in time of war, fails to do his utmost to execute a battle mission which it is his duty to perform;

(8) Or misbehaves when in the proximity of the enemy;

(9) Or, in time of war, withdraws from or keeps out of danger to which he should expose himself;

(10) Or, in time of war, while in the hands of the enemy, by conduct not authorized by law, custom, regulation, or other proper authority; acts to ameliorate his condition with

his captors to the detriment of fellow prisoners, whether military or civilian and regardless of their nationality;

(11) Or, in time of war, while held as a prisoner of war and holding any position of authority over other prisoners of war, maltreats, without justifiable cause, any of such other prisoners of war, whether military or civilian and regardless of their nationality;

(12) Or, in time of war, by conduct not authorized by law, custom, regulation, or other proper authority, but short of treason, gives aid and comfort to the personnel of the enemy, whether military or civilian;

(13) Or, in time of war or national emergency, intentionally suffers any vessel, aircraft or combat vehicle of the armed services to be improperly hazarded or destroyed, or wilfully injures any vessel, aircraft or combat vehicle of the armed services, or any part of its equipment, whereby its safety is hazarded or the lives of those on board are exposed to danger;

(14) Or, in time of war, sleeps upon his watch or post;

(15) Or violates any law or treaty or convention incorporated under paragraph (1), (2), or (5) of section d of article 2 of these Articles, the violation of which is, by such law or treaty or convention, punishable by death;

(16) Or is guilty of an attempt, conspiracy, or solicitation to commit any offense made punishable under section a of this article.

b. Offenses not capital. Any person subject to these Articles is punishable by such punishment, other than death, as a court martial may impose -

- (1) Who is absent without authority from his place of duty;
- (2) Or, in time of peace, is guilty of desertion, desertion being defined in paragraph (1) of section a of this article;
- (3) Or resists or breaks arrest, confinement or quarantine;
- (4) Or receives or entertains any deserter from the armed services, knowing him to be such, and does not, without delay, give notice of such deserter to proper military or police authority;
- (5) Or is guilty of disobedience of, other wilful non-compliance with, refusal to obey, or negligent non-compliance with, a lawful order or regulation of a superior officer, the Secretary of Defense, of the Army, Navy, or Air Force, or other proper authority of the armed forces;
- (6) Or is guilty of wilful or negligent non-performance of duty, or is culpably inefficient in the performance of duty; or, in time of peace, sleeps upon his watch or post;
- (7) Or, having a duty to receive or guard prisoners, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismiss them without orders from proper authority;

(8) Or is incapacitated for the proper performance of duty by unauthorized indulgence in alcoholic liquors or narcotic drugs, or by self-injury inflicted with intent to incapacitate, or by refusing to submit to medical or surgical treatment with intent to remain unfit for duty;

(9) Or feigns sickness or any physical disablement or mental lapse or derangement, for the purpose of escaping work or duty;

(10) Or, being witness to or present at any mutiny, fails to do his utmost to suppress it; or, knowing of any intended mutiny or mutinous assembly, fails to employ all practicable means to communicate his knowledge to the commanding officer or, in the absence of the commanding officer, to an officer designated by the commanding officer to act for him in emergencies;

(11) Or, in time of war, without an intent to aid the national interests, fraternizes with the personnel of the armed forces of the enemy;

(12) Or unlawfully receives any message from an enemy or, being aware of the unlawful reception of such message, fails to take the earliest opportunity to inform his superior officer thereof;

(13) Or utters any seditious or mutinous words;

(14) Or is contemptuous or disrespectful in language or deportment to or concerning the President, Vice-President, the Congress of the United States, the Secretary of Defense, of the Army, Navy, or Air Force, or the chief

executive or legislature of any State, Territory, District or other possession of the United States in which he is on duty or present;

(15) Or treats his superior officer with contempt, or is disrespectful to him in language or deportment, while such superior officer is in the execution of his office;

(16) Or uses provoking or reproachful words or gestures toward any person in the armed services;

(17) Or unlawfully, inflicts any bodily injury upon any person, or assaults, or threatens any bodily injury to, any person;

(18) Or endeavors to foment quarrels between other persons in the armed forces;

(19) Or joins in or abets any combination to weaken the lawful authority of, or lessen the respect due to, his commanding officer;

(20) Or maliciously publishes any writing, picture, sign, or other representation which tends to defame any person in the National Military Establishment of the United States, or slanders or threatens any person in the National Military Establishment of the United States;

(21) Or divulges or transmits secret, confidential, or otherwise classified material or information to a person not entitled to receive the same;

(22) Or is guilty of profane swearing;

(23) Or is guilty of any irreverent or unbecoming behavior during divine service;

(24) Or sends or accepts a challenge to fight a duel or acts as a second in a duel;

(25) Or is guilty of falsehood, falsehood being the making of an official statement, with intent to deceive, consisting of a material matter which the person making the statement does not believe to be true, as to some past or existing fact;

(26) Or knowingly makes or signs a false muster;

(27) Or fraudulently enters any of the armed services, through enlistment or otherwise, and receives any pay, allowance, or other valuable consideration thereunder; or fraudulently obtains his separation from any of the armed services through discharge or otherwise;

(28) Or knowingly enlists, or causes to be enlisted, in any of the armed services any person in violation of law;

(29) Or corruptly, or by threat or force, or by any threatening communication, endeavors to influence, intimidate, or impede any witness in any disciplinary proceeding in the armed services, or injures any witness in his person, family, or property on account of the witness attending or having attended such disciplinary proceeding, or an account of the witness testifying or having testified to any matter therein;

(30) Or negligently or, in time of peace, intentionally, suffers any vessel, aircraft or combat vehicle of the armed

services to be improperly hazarded or destroyed, or negligently, or, in time of peace, wilfully injures any vessel, aircraft or combat vehicle of the armed services, or any part of its equipment, whereby its safety is hazarded or the lives of those on board are exposed to danger;

(31) Or unlawfully sets on fire, or otherwise unlawfully injures or destroys, any public property not at the time in possession of the enemy, or fails to do his utmost to prevent the unlawful injury or destruction of public property by others;

(32) Or wastes any public property, or having power to prevent it, knowingly fails to prevent such waste;

(33) Or steals, embezzles, knowingly and wilfully misappropriates, applies to his own use or benefit, or sells or disposes of any money or other property of the United States;

(34) Or knowingly purchases, or receives in pledge for any obligation, any property of the United States from any person not having lawful right to sell or pledge the same;

(35) Who presents, or causes to be presented, to any person in the civil or armed services of the United States, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false, or fraudulent;

(36) Or enters into any agreement to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claims;

(37) Or, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses any writing, or other paper, knowing the same to contain any false or fraudulent statement;

(38) Or having charge, possession, custody, or control of any money or other property of the United States, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt;

(39) Or, being authorized to make or deliver any paper certifying the receipt of any money or other property of the United States, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States;

(40) Or executes any other fraud against the United States; or countenances any fraud or attempted fraud against the United States;

(41) Or obtains any property not his own by any false pretense, expressed or implied, reasonably calculated to deceive the person to whom the pretense is made as to any existing or past fact, knowingly made with intent to defraud, and with intent permanently to deprive the owner thereof of said property;

(42) Or is guilty of forgery or uttering a forgery;

(43) Or embezzles property other than property of the United States;

(44) Or is guilty of burglary or housebreaking;

(45) Or unlawfully, knowingly and wilfully injures or destroys property other than property of the United States;

(46) Or takes out of a prize, a vessel or aircraft seized as a prize, and money or other property, or any part of the equipment thereof, unless it be for the better preservation thereof, or unless such articles are needed for the use of the armed forces of the United States or its allies, before the same is condemned as a lawful prize;

(47) Or uses a vehicle not his own without authority of the owner or lawful custodian thereof;

(48) Or is guilty of extortion or blackmail;

(49) Or, without authority, demands or accepts any compensation for the exercise of any official function;

(50) Or, without authority from the President, or from the Secretary of Defense, of the Army, Navy, or Air Force, demands or accepts any compensation for the receipt or transportation on board the vessel or aircraft to which he is attached or assigned of any article other than precious metals or jewels;

(51) Or is guilty of cruelty toward, or oppression or any other maltreatment or abuse of, any person;

(52) Or unlawfully detains another person;

(53) Or is guilty of seduction;

(54) Or is guilty of sodomy or any other unnatural sexual act;

(55) Or knowingly commits any lascivious or indecent act;

(56) Or, through negligence of any degree not otherwise punishable under these Articles, contributes to or causes the death or injury of another either by the operation, handling, use, or disposition of any vehicle, watercraft, aircraft, engine, machinery, or dangerous weapon, or by the handling, use, disposition or stowage of any fuel, or explosive or poisonous material;

(57) Or, without justifiable cause, and wilfully or with negligence of any degree not otherwise punishable under these Articles, is guilty of or effects the operation, handling, use or disposition of any vehicle, watercraft, or aircraft, engine, machinery or dangerous weapon, or the handling, use, disposition or stowage of any fuel, or explosive or poisonous material in any manner that might jeopardize any person or property; or, without justifiable cause, and without due caution or circumspection, is guilty of, or procures, commands, or induces any conduct which might produce the death or injury of another;

(58) Or, while under the influence of alcoholic liquors or narcotic drugs, operates any aircraft, vessel, automobile, or other motor vehicle;

(59) Or is guilty of any conduct, not otherwise covered by these Articles, to the prejudice of internal good order and discipline of any of the armed services;

(60) Or exhibits a deliberate or dishonorable indifference to his just financial obligations;

(61) Or, in any way other than specifically provided against herein, being an officer, so seriously offends against law, justice, morality, or decorum as to expose the offender, socially as a man or woman, to disgrace, and at the same time to bring, through the nature of the act or the circumstances under which it was committed, dishonor or disrepute upon the profession of arms;

(62) Or is guilty of any conduct, not otherwise covered by these Articles, of a nature to bring discredit upon any of the armed services;

(63) Or is guilty of any violation which is an offense against these Articles under section d of Article 2, except a violation which is an offense under paragraph (15) of section a of Article 14;

(64) Or is guilty of an attempt, conspiracy, or solicitation to commit any offense made punishable under section b of this Article;

(65) Or is an accessory after the fact to the commission of any offense punishable under these Articles.

Art. 15. Authority of Secretary of Defense to prescribe rules of proceedings.

The Secretary of Defense is authorized to prescribe, and to modify from time to time, the rules of pleading and procedure

including modes of proof, in proceedings before courts martial, commanding officers, other military tribunals, and fact finding bodies as will insure the enforcement of discipline and the fair and impartial administration of justice in the United States armed services: Provided, That, in so far as applicable, such modes of proof shall follow the law of evidence prevailing in the district courts of the United States in the trial of criminal cases: Provided further, That the rules prescribed by the Secretary of Defense shall provide that the Judge Advocate General and the board of appeals of the Army, Navy, or Air Force are each authorized, upon application of a convicted person, in their discretion, and upon good cause shown, to grant a new trial if such application is made before the expiration of the period provided for in section g of Article 11 for the request for review by a board of appeals: And Provided further, That nothing contrary to, or inconsistent with, these Articles shall be prescribed: And provided further, That all rules and regulations made in pursuance of this article shall be laid before the Congress.