



Uniform Code of Military Justice

Subject: Copy of Record of Trial, A. W. 111.

I. Army Provisions

1. Articles of War.

"ART. 111. Copy of Record of Trial.-- Every person tried by a general court-martial shall, on demand therefor, made by himself or by any person in his behalf, be entitled to a copy of the record of trial."

2. Manual for Courts-Martial.

Par. 56..... "After the introduction of the accused and his counsel the reporter will be sworn, and the accused, in the case of trial by general court-martial, will be asked if he desires a copy of the record of trial. ...."

Par. 85b..... Attached to record will be certificate of delivery or receipt for copy of record delivered to accused.

3. Public Law 759--80th Congress, Chapter 625--2D Session.

No change.

II. Navy Provisions

1. Articles for the Government of the Navy.

No similar article.

2. Naval Courts and Boards.

"SEC. 521. Copy of record for accused.-- The accused is entitled to a copy of the proceedings of a general court martial, certified as true by the judge advocate. It is the duty of the judge advocate to furnish such copy upon completion of the trial and it shall be noted on the cover page that this has been complied with. The copy should contain a record of all the proceedings except the findings, sentence, recommendation to clemency, and action of the convening authority. These latter may be obtained by the accused, however, upon application to the Navy Department (J. A. G.).

"The accused is also entitled to a certified copy of a record in revision to the same extent as he is to a copy of the original proceedings."

"SEC. 522. Same: Receipt appended.-- The receipt of the accused for his copy of the proceedings shall be the last document appended to the record of a general court martial."

3. Proposed Navy Bill.

No similar provision.

III. Differences

Although both services furnish copies of the record of trial by general court-martial to the accused, the Army provision is statutory and the Navy provision by Regulation. However, the Army accused must ask for the copy, while the Navy accused is automatically furnished with a copy.

IV. Recommendations

The McGuire, White, Ballantine, Keefe, and Vanderbilt Reports make no comment.



Uniform Code of Military Justice

Subject: Disposition of Effects of Deceased, A.W. 112.

I. Army Provisions

1. Articles of War.

"ART. 112. Effects of Deceased Persons.-- Disposition of.-- In case of the death of any person subject to military law the commanding officer of the place of command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters; and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects, and said summary court shall have authority to collect and receive any debts due decedent's estate by local debtors and to pay the undisputed local creditors of decedent in so far as any money belonging to the deceased which may come into said summary court's possession under this article will permit, taking receipts therefor for file with said court's final report upon its transactions to the War Department; and as soon as practicable after the collection of such effects said summary court shall transmit such effects and any money collected, through the Quartermaster Department, at Government expense, to the widow or legal representative of the deceased, if such be found by said court, or to the son, daughter, father, provided the father has not abandoned the support of his family, mother, brother, sister, or the next of kin in the order named, if such be found by said court, or the beneficiary named in the will of the deceased, if such be found by said court, and said court shall thereupon make to the War Department a full report of its transactions; but if there be none of the persons hereinabove named, or such persons or their addresses are not known to or readily ascertainable by said court, and the said court shall so find, said summary court shall have authority to convert into cash, by public or private sale, not earlier than thirty days after the death of the deceased, all effects of deceased except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposits, any will or other papers of value belonging to the deceased, any sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, together with an inventory of the effects secured by said summary court, and a full account of its transactions, to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of accounts of deceased officers and enlisted men of the Army.

"The provisions of this article shall be applicable to inmates of the United States Soldier's Home who die in any United States military hospital outside of the District of Columbia where sent from the home for treatment."

2. Manual for Courts-Martial.

No comment.

3. Public Law 759--80th Congress, Chapter 625--2D Session.

No change.

II. Navy Provisions

1. Articles for the Government of the Navy.

No corresponding article.

Title 34, U.S.C. 942 provides for disposition of effects of deceased naval personnel.

III. Differences

Since these provisions have no connection with military justice, differences will not be discussed.

IV. Recommendations

The Statutory Revision Group of the Office of the Army Comptroller recommends that this provision be placed elsewhere than in the Articles of War. Letter CSACM-L, 6 Aug. 48.



Uniform Code of Military Justice

Subject: Inquests. A. W. 113

I. Army Provisions

1. Articles of War.

"ART. 113. Inquests.-- When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States, any person shall have been found dead under circumstances which appear to require investigation, the commanding officer will designate and direct a summary court-martial to investigate the circumstances attending the death; and, for this purpose, such summary court-martial shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death."

2. Manual for Courts-Martial.

No comment.

3. Public Law 759--80th Congress, Chapter 625--2D Session.

No change.

II. Navy Provisions

1. Articles for the Government of the Navy.

No corresponding article.

2. Naval Courts and Boards.

Par. 723. When to be convened (Court of Inquiry): "Loss of life from accident or under peculiar or doubtful circumstances.--

"In such cases it must be determined, if possible, whether the death was caused in any manner by the intent, fault, negligence, or inefficiency of any person or persons in the naval service or connected therewith. Where decedent was in the naval service or connected therewith the court or board will be required to give its opinion whether or not death was in the line of duty and due to misconduct (in this connection see Chapter IX), and will always find and record the facts as to the status of the deceased as to duty, authorized liberty, or otherwise. Unless the body has been lost the court of inquiry or board of investigation will perform the duties of an inquest. The advisability of having a medical officer on the court or board in such a case is apparent. After convening, the court or board will first proceed to the place where the body may be,

carefully identify it, and note the surroundings if pertinent; the court or board will summon such medical witnesses as may be advisable, including always, if possible, the doctor who performed the autopsy if one was made, or a doctor who assisted in or witnessed it, and will ascertain from them the exact condition of the body and the medical opinion of the cause of death. (1)

"If homicide is indicated, the moment suspicion points towards any person, he should be accorded the rights of a defendant.

"Where death resulted from a motor vehicle accident, the following facts, while not exhaustive, are nearly always pertinent; (a) speed of vehicle (s) involved; (b) condition of road; (c) condition of traffic; (d) traffic laws and regulations in force; (e) weather conditions; (f) mechanical condition of the vehicle (s), including brakes, steering gear, lights, tires, etc.; (g) sobriety of driver(s)."

3. Proposed Navy Bill.

No change.

### III. Differences

Under Army practice an inquest is held by a summary court, while under Navy practice a court of inquiry is used. See C.S., A. W. 97-103.

### IV. Recommendations

The McGuire, White, Ballantine, Keefe, or Vanderbilt Reports do not comment.



Uniform Code of Military Justice

Subject: Authority to Administer Oaths.

See C.S., A.W. 19.



Uniform Code of Military Justice

Subject: Appointment of Reporters and Interpreters,  
A. W. 115.

I. Army Provisions

1. Articles of War.

"ART. 115. Appointment of Reporters and Interpreters.-- Under such regulations as the Secretary of War may from time to time prescribe, the president of a court-martial or military commission or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. Under like regulations the president of a court-martial or military commission, or court of inquiry, or a summary court, may appoint an interpreter, who shall interpret for the court or commission."

2. Manual for Courts-Martial.

"Par. 46. COURTS-MARTIAL--PERSONNEL--Reporter.--

"a. Authority for appointment or detail.--.....

"Enlisted men may be detailed to serve as stenographic reporters for general courts-martial, courts of inquiry, military commissions, and retiring boards. (Act of August 24, 1912, 37 Stat. 575.)

"Subject to such exceptions as may be made by appointing authorities, and within the limitations of the statutes quoted above, the appointment of reporters or the detail of enlisted men to serve as stenographic reporters is hereby authorized, except for summary courts-martial and except for special courts-martial, when the appointing authority does not direct that the testimony be reduced to writing, .....

"b. Duties; oath; compensation.--

"He shall record the proceedings of and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. (A. W. 115). If a question is raised as to whether any particular matter is included in the term, 'proceedings, of and testimony taken,' the court will determine the question in accordance with applicable law and regulations.

"He will be required to discharge his duties as promptly as practicable under the circumstances. He will prepare one carbon copy of the typewritten parts of general court-martial record, and such additional carbon copies thereof as may be

required by the trial judge advocate, not exceeding the number authorized by the appointing authority.

"See 95 as to oath, and AR 35-4120 as to compensation."

Par. 47. "COURTS-MARTIAL--PERSONNEL--Interpreter.--

"a. Authority for appointment.--

"Under such regulations as the Secretary of War may from time to time prescribe, the president of a court-martial or military commission, or court of inquiry, or a summary court, may appoint an interpreter. (A. W. 115.) Interpreters may be employed for courts-martial whenever necessary without application to the appointing authority.

"b. Duties; oath; compensation.--

"He shall interpret for the court. (A. W. 115.)

"In questioning a witness through an interpreter the question should be put in the same form as when questioning a witness not through an interpreter. Thus, ask 'What is your name?' instead of telling the interpreter to ask the witness what his name is.

"The interpreter should translate questions and answers as given to him. Thus, if the question is 'What is your name?' that question should be asked in the language of the witness, and the interpreter should not use such a form as 'They want to know what your name is.'"

3. Public Law 759--80th Congress, Chapter 625--2D Session.

No change.

## II. Navy Provisions

1. Articles for the Government of the Navy.

"ART. 64. (c) Recorder.-- Any person in the Navy under command of the officer by whose order a deck court is convened may be detailed to act as recorder thereof (Feb. 16. 1909, c. 131, Sec. 3, 35 Stat. 621). ....."

2. Naval Courts and Boards.

"SEC. 361. Clerical assistance and interpreter.--

"In all trials by court martial, when practicable and necessary, the convening authority shall provide for the furnishing of clerical assistance. In cases where there is no competent stenographer assigned, the court may require that all communications, motions, and questions be reduced to

writing and read to the court.

"Wherever practicable the convening authority, if not present at the place where the court is to meet, shall direct some officer present there to detail clerical assistance from either the enlisted or civilian personnel under his jurisdiction.

"If a reporter or interpreter be employed, he should be sworn. He should be present when the court is open but should not be allowed to be present during closed court."

### 3. Proposed Navy Bill.

Art. 64(c) is renumbered 16(d)

#### III. Differences

No reporter is authorized for Army summary courts, while a clerk for Navy deck courts is authorized by statute.

Only difference between the Army and Navy provisions as to interpreters is that the former is statutory, while the latter is by regulations.

#### IV. Recommendations

There is no comment in the McGuire, Keefe, White, Ballantine, or Vanderbilt Reports.



ARTICLE OF WAR 116

SEE. C.S., A. W. - 17.



Uniform Code of Military Justice

Subject: Removal of Civil Suits. A.W. 117.

I. Army Provisions

## 1. Articles of War

"ART. 117. Removal of Civil Suits.—When any civil or criminal prosecution is commenced in any court of a State against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed in section 33 of the act entitled, 'an Act to codify, revise, and amend the laws relating to the judiciary,' approved March 3, 1911, and the cause shall thereupon be entered on the docket of said district court and shall proceed therein as if the cause had been originally commenced in said district court and the same proceedings had been taken in such suit or prosecution in said district court as shall have been had therein in said State court prior to its removal, and said district court shall have full power to hear and determine said cause."

§ 76. (Judicial Code, section 33, amended.) Removal of Suits and prosecutions against revenue officers.

"When any civil suit or criminal prosecution is commenced in any court of a State against any officer appointed under or acting by authority of any revenue law of the United States, or against any person acting under or by authority of any such officer, on account of any act done under color of his office, or of any such law, or on account of any right, title, or authority claimed by such officer or other person under any such law, or is commenced against any person holding property or estate by title derived from any such officer and affects the validity of any such revenue law, or against any officer of the courts of the United States for or on account of any act done under color of his office or in the performance of his duties as such officer, or when any civil suit or criminal prosecution is commenced against any person for or on account of anything done by him while an officer of either House of Congress in the discharge of his official duty in executing any order of such House, the said suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court next to be holden in the district where the same is pending upon the petition of such defendant to said district court and in the following manner: Said petition shall set forth the nature of the suit or prosecution and be verified by affidavit

and, together with a certificate signed by an attorney or counselor at law of some court of record of the State where such suit or prosecution is commenced or of the United States stating that, as counsel for the petitioner, he has examined the proceedings against him and carefully inquired into all the matters set forth in the petition, and that he believes them to be true, shall be presented to the said district court, if in session, or if it be not, to the clerk thereof at his office, and shall be filed in said office. The cause shall ~~thereupon~~ be entered on the docket of the district court and shall proceed as a cause originally commenced in that court; but all bail and other security given upon such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. When the suit is commenced in the State court by summons, subpoena, petition, or any other process except *capias*, the clerk of the district court shall issue a writ of *certiorari* to the State court requiring it to send to the district court the record and the proceedings in the cause. When it is commenced by *capias* or by any other similar form of proceeding by which a personal arrest is ordered, he shall issue a writ of *habeas corpus cum causa*, a duplicate of which shall be delivered to the clerk of the State court or left at his office by the marshal of the district or his deputy or by some other person duly authorized thereto; and thereupon it shall be the duty of the State court to stay all further proceedings in the cause, and the suit or prosecution, upon delivery of such process, or leaving the same as aforesaid, shall be held to be removed to the district court, and any further proceedings, trial, or judgment therein in the State court shall be void. If the defendant in the suit or prosecution be in actual custody on mesne process therein, it shall be the duty of the marshal, by virtue of the writ of *habeas corpus cum causa*, to take the body of the defendant into his custody, to be dealt with in the cause according to law and the order of the district court, or, in vacation, of any judge thereof; and if, upon the removal of such suit or prosecution, it is made to appear to the district court that no copy of the record and proceedings therein in the State court can be obtained, the district court may allow and require the plaintiff to proceed *de novo* and to file a declaration of his cause of action, and the parties may ~~thereupon~~ proceed as in actions originally brought in said district court. On failure of the plaintiff so to proceed, judgment of non *prosequitur* may be rendered against him, with costs for the defendant." 28 U.S.C. 767

## 2. Manual for Courts Martial

No comment.

## 3. Other Interpretation

A soldier of the United States who murders a citizen of the state has no right to the removal of a prosecution from a state

court to a federal court under this section, where it is not contended that the act was done under of his office or status.  
Funk v. State (1919) 208 S.W. 509, 84 Tex. Cr. 402.

4. Public Law 759—80th Congress, Chapter 625—2D Session

"ART. 117. REMOVAL OF CIVIL SUITS.—

"When any civil or criminal prosecution is commenced in any court of a State of the United States against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed by law, and the cause shall thereupon be entered on the docket of such district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine said cause."

II. Navy Provisions

1. Articles for the Government of the Navy

There is no corresponding provision in the AGN, however, the general statute as to removal would apply to naval personnel acting in an official capacity:

"§ 71. (Judicial Code, section 28, amended.) Removal of suits from State Courts.

"Any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the district courts of the United States are given original jurisdiction,\* in any State court, may be removed by the defendant or defendants therein to the district court of the United States for the proper district.".....28 U.S.C. 71.

III. Differences

Under A. W. 117, military personnel have special powers to remove suits against them from state to federal courts. Naval personnel, however, may only remove suits when the suit falls within one of the general removal statutes. 28 U.S.C. 71-77.

Suits of a civil nature against naval personnel acting in

an official capacity would fall within the category of suits arising under the Constitution and laws of the United States of the general removal statute, 28 U.S.C. 71. The removal of such suits is limited to those of which a district court would have original jurisdiction. A district court would have original jurisdiction of such a suit if a question of federal law is determinative of the outcome of the suits and if the amount in controversy exceeds \$3000.

Under A. W. 117, there is no requirement that the suit be one of which a district court would have original jurisdiction.

Assuming that due to the legislative history of A. W. 117, the procedure of removal will continue to be that prescribed by Sec. 33 of the Judicial Code, naval personnel will have to use different procedure as to removal.

A. W. 117 authorizes removal of criminal prosecutions as well as civil suits, while the general removal statute is limited to suits of a civil nature.

#### IV. Recommendations

There is no comment in the McGuire, White, Ballantine, Keeffe, or Vanderbilt Reports.

Since A. W. 118 has only a collateral relationship to military justice, it has been suggested that this article be placed elsewhere in the U. S. Code instead of the Articles of War. See letter Statutory revision Group, Office of Army Comptroller, CSACM-L, 6 Aug, 48.



Uniform Code of Military Justice

Subject: Officers, Separation From Service, and  
Right of Trial of Officers Dismissed  
by President.  
A. W. 118.

I. Army Provisions

1. Articles of War

"ART. 118. Officers, Separation From Service.-- No officer shall be discharged or dismissed from the service except by order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof; but the President may at any time drop from the rolls of the Army any officer who has been absent from duty three months without leave or who has been absent in confinement in a prison or penitentiary for three months after final conviction by a court of competent jurisdiction."

"ART. 1. Definitions.-- The following words when used in these articles shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

"(a) The word 'officer' shall be construed to refer to a commissioned officer;....."

2. Public Law 759--80th Congress, Chapter 625, 2D Session

A. W. 118 was not changed by P. L. 759.

A. W. 1 was amended by P. L. 759, but the portion of the article quoted above was not changed.

3. Statutory Provisions

"10 USC 573. Trial of Officers Dismissed by President.--

"When any officer, dismissed by order of the President, makes, in writing, an application for trial; setting forth, under oath, that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial, to try such officer on the charges on which he shall have been dismissed. And if a court-martial is not so convened within six months from the presentation of such application for trial, or if such court, being convened, does not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void. (R.S. § 1230.)"

## 4. Decisions

In *Wallace v U. S.* (1920) 55 Ct. Cl. 396, affirmed (1922) 257 U. S. 541 it was held that the right of the President to dismiss an Army officer, insofar as it may have been limited by what is now Sec. 573 of Title 10, is now unimpaired, as that section was superseded by Sec. 1590 (i.e. by A. W. 118).

In *Blake v U. S.* (Ct. Cl. 1881) 103 U.S. 227, 236 it was held that it was not the purpose of Sec. 1590 (A. W. 118) to withdraw from the President the power to supersede or remove an officer of the Army by the appointment, by and with the advice and consent of the Senate, of his successor.

## 5. JAG, Army, Opinions.

Dig. J.A.G., Army, 1912-1940, page 36: "A. W. 118, which provides that 'in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court-martial or in mitigation thereof', does not apply to warrant officers, that article being limited by the definition of the word 'officer' contained in A. W. 1."

II. Navy Provisions

## 1. Articles for the Government of the Navy

"ART. 36. Dismissal of Officers.--

"No officer shall be dismissed from the naval service except by the order of the President or by sentence of a general court martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a general court martial or in mitigation thereof: Provided, That the President is authorized to drop from the rolls of the Navy or Marine Corps any officer thereof who is absent from duty without leave 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 in a State or Federal penitentiary: Provided further, That no officer so dropped shall be eligible for reappointment....."

"ART. 37. Officer dismissed by President may demand trial.--

"When any officer, dismissed by order of the President since March 3, 1865, makes, in writing, an application for trial, setting forth, under oath that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court martial to try such officer on the charges on which he shall have been dismissed. And if such court martial

shall not be convened within six months from the presentation of such application for trial, or if such court, being convened, shall not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void: Provided, That the accounting officers are prohibited from making any allowance to any officer of the Navy who has been, or may hereafter be, dismissed from the service and restored to the same under the provisions of this article, to exceed more than pay as on leave for six months from the date of dismissal, unless it shall appear that the officer demanded in writing, addressed to the Secretary of the Navy, and continued to demand as often as once in six months, a trial as provided for in this article....."

"B-73. Meaning of 'officers' and 'superior officers' as used in the Articles for the Government of the Navy.--

"Within the meaning of the Articles for the Government of the Navy, unless there be something in the context or subject matter repugnant to or inconsistent with such construction, officers shall mean commissioned and warrant officers;....."

## 2. Naval Courts and Boards

"SEC. 334. Conditions necessary to show jurisdiction: When jurisdiction over persons terminates.--

"The jurisdiction of courts martial over officers, midshipmen, nurses, and enlisted men ordinarily ends when they become regularly separated from the service by acceptance of resignation or discharge.....

"The general rule is subject to the following exceptions:

"(b) An officer dismissed from the service in time of war by the President may be tried by court martial on his own application, in accordance with the provisions of the 37th article, A.G.N, ....."

## 3. Proposed Navy Bill

"SEC. 26. Article 36 is renumbered as Art. 40 and amended to read as follows:

"ART. 40. No officer shall be dismissed from the naval service 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 the Navy or Marine Corps

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 in a State or Federal penitentiary: Provided further, That no officer so dropped shall be eligible for reappointment."

"SEC. 27. Article 37 is renumbered as Article 41, and amended by deleting the words 'since 3rd, March 1865.'"

### III. Differences

1. A. W. 118 does not apply to Army warrant officers. A.G.N. 36 applies to Navy warrant and commissioned warrant officers as well as to commissioned officers.
2. Under Navy provisions, an officer who is dismissed from the service by the President, in time of war, is given the right to demand a trial by court-martial. (Cf. A.G.N. 37; NC&B, Sec. 334). Sec. 573 of 10 U.S. Code contains an identical provision applicable to Army officers, but by decision the provision has been held to have been superseded by the later enactment of A. W. 118, which was construed as giving the President an absolute right to dismiss an officer in time of war. *Wallace v U. S.* 55 Ct. Cl. 396 (1920), affirmed 257 U.S. 541 (1922). Thus, an Army officer dismissed by the President in time of war does not have the right to demand a trial by court-martial.

The construction of A. W. 118 in *Wallace v U.S.* raises the question of whether its counterpart in A.G.N., Art. 36, (Art. 40 in proposed Navy bill) does not make Art. 37 (Art. 41 in proposed Navy bill) of no effect. The case would appear to be good authority for construing that the power to dismiss given to the President in time of war is a summary power, the exercise of which can not be voided later by the failure to appoint a court-martial, or by the action of a court in giving a sentence other than death or dismissal. However, the decision in the *Wallace* case rests largely on the fact that the Articles of War, including what is now A. W. 118, were enacted subsequently to the Act which is now codified as 10 U.S.C. 573, and that the act containing the Articles of War expressly provided that anything inconsistent with them was repealed. The right to trial of an officer dismissed in time of war being held to be inconsistent with the summary power given to the President by A. W. 118 to dismiss an officer in time of war, the act giving the right to trial was held to be inoperative. A.G.N. 36 and 37, on the other hand, were enacted together, so the

reasoning of the Wallace decision, insofar as it depends on the sequence of enactment of the two acts it deals with, is not wholly applicable. It should be noted, however, that A.G.N. 37 (up to the proviso) was derived from an act originally passed March 3, 1865, which is also the original source of the provision in 10 USC 573. Similarly, A.G.N. 36 (up to the first proviso) is derived from an act originally passed July 13, 1866, which is also the original source of the first two clauses of A. W. 118. Thus the construction of A. W. 118, and its effect on the provision contained in 10 USC 573, are relevant to the construction of A.G.N. 36 and its relation to A.G.N. 37. Also, in their original enactment, the provision in A.G.N. 36 was subsequent to the provision in A.G.N. 37. Also, the Wallace case was not decided until 1920, which was subsequent to the simultaneous enactment of A.G.N. 36 and 37, so there was no precedent at the time for their meaning.

On the other hand, the two articles are again to be enacted simultaneously in the proposed Navy bill, but this may have been done without consideration of the effect of the Wallace decisions.

#### IV. Recommendations

None.



Uniform Code of Military Justice

Subject: Rank Between Components and Command When Different Commands Join, A. W. 119, 120.

I. Army Provisions

1. Articles of War

"ART. 119. Rank and Precedence Among Regulars, Militia, and Volunteers.-- That in time of war or public danger, when two or more officers of the same grade are on duty in the same field, department, or command, or of organization thereof, the President may assign the command of the forces of such field; department, or command, or of any organization thereof, without regard to seniority of rank in the same grade."

"ART. 120. Command When Different Corps or Commands Happen to Join.-- When different corps or commands of the military forces of the United States happen to join or do duty together, the officer highest in rank of the line of the Regular Army, Marine Corps, forces drafted or called into the service of the United States, or Volunteers, there on duty, shall, subject to the provisions of the last preceding article, command the whole and give orders for what is needful in the service, unless otherwise directed by the President."

2. Manual for Courts-Martial

No comment.

3. Public Law 759--80th Congress, Chapter 625, 2D Session

No change.

II. Navy Provisions

1. Articles for the Government of the Navy

No corresponding articles.

2. Naval Courts and Boards

No comment.

3. Proposed Navy Bill

No corresponding articles.

### III. Differences

There are no articles in the A.G.N. corresponding to A.W. 119, 120. Chapter 4 of Title 34 U.S.C. (Sec. 241-261) contains statutes as to the rank and precedence of naval officers.

### IV. Recommendations

There is no comment in the McGuire, White, Ballantine, Keefe, or Vanderbilt studies.

Since A.W. 119 and 120 have no direct relation to military justice, it has been suggested that these provisions be deleted from the Articles of War and placed elsewhere in the U. S. Code. See letter Statutory Revision Group, Office of the Army Comptroller, CSACH-L, 6 Aug. 48.



Uniform Code of Military Justice

Subject: Command When Different Corps or Commands Happen to Join.

See C. S., A. W. 119 - Rank Between Components, and  
Command When Different Commands Join.



Uniform Code of Military Justice

Subject: Complaints of Wrongs, A.W. 121.

I. Army Provisions

## 1. Articles of War

"ART. 121. Complaints of Wrongs.-- Any officer or soldier who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to the general commanding in the locality where the officer against whom the complaint is made is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon."

## 2. Manual for Courts-Martial

No comment.

## 3. Public Law 759--80th Congress, Chapter 625, 2D Session

"ART. 121. COMPLAINTS OF WRONGS.--

"Any officer or soldier who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to the officer exercising general court-martial jurisdiction over the officer against whom the complaint is made. That officer shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of the Army, a true statement of such complaint, with the proceedings had thereon."

II. Navy Provisions

## 1. Articles for the Government of the Navy

No corresponding provision.

## 2. Naval Courts and Boards

"SEC. 75. Violating general orders or regulations.--....."

P. 2

## "CHARGE II

"VIOLATION OF A LAWFUL REGULATION ISSUED BY THE SECRETARY  
OF THE NAVY

## "Specification 8

" \* \* \*, on board said ship, address and cause to be delivered to the Secretary of the Navy and to Rear Admiral Q \_\_\_\_\_ R: S. \_\_\_\_\_, U. S. Navy, an application for redress of wrong, bearing thereon a number of signatures of enlisted men of the U. S. Navy, and being in tenor as follows: 'We, the men whose names are on this paper, are dissatisfied with the conditions on the U. S. S. \_\_\_\_\_. If conditions can not be remedied, we request to be TRANSFERRED,' he the said P \_\_\_\_\_, having failed to make said application in writing through his immediate commanding officer to the commander in chief of the fleet (or squadron) to which he, the said P \_\_\_\_\_, was then and there attached (or to the senior officer present, as the case may be) (15)."

## 3. Navy Regulations

ART. 99. Any application for redress of wrong shall be made in writing through the immediate commanding officer to the commander in chief of the fleet or squadron, or to the senior officer present, and it shall be the duty of the latter to take such action in the matter as, in his judgment, justice and the good of the service demand.

## 4. Proposed Navy Bill

No provision.

III. Differences

The Army provision for complaints of wrongs is in the Articles of War, while the Navy provision is in Navy Regulations.

Under the Articles of War, the petitioner must first seek redress from his commanding officer. Then, if redress is refused, he may write the officer having general court-martial jurisdiction over the commanding officer.

Under Navy regulations there is no requirement that the petitioner first seek redress from his commanding officer, but he must make his application through his commanding officer to the fleet or squadron commander.

Under the Articles of War, a report must be made to the Department of the Army, (Querie: what officer?), while under Navy Regulations, no report is required.

A. W. 121 applies only to wrongs by the petitioner's commanding officer; Navy regulations apply to any wrong.

IV. Recommendations

There is no comment in the McGuire, White, Ballantine, or Keefe Reports.

The Vanderbilt Report recommends:

"Special emphasis should be placed upon the education and instruction of enlisted men with respect to Army justice. The Articles of War should not only be read; they should be explained. The instructions should not be confined to Articles relating to punishment of enlisted men, but should include the Articles dealing with the rights and the protection of enlisted men, such as Articles of War 24, 97, and 121."

APPENDIX

Uniform Code of Military Justice

Subject: Authority of Officers After Loss of Vessel, AGN 4.

I. Army Provisions

No similar provision.

II. Navy Provisions

1. Articles for the Government of the Navy.

"Article 21. Authority of officers after loss of vessel.—

"When the crew of any vessel of the United States are separated from their vessel by means of her wreck, loss, or destruction, all the command and authority given to the officers of such vessel shall remain in full force until such ship's company shall be regularly discharged from or ordered again into service, or until a court martial or court of inquiry shall be held to inquire into the loss of said vessel. And if any officer or man, after such wreck, loss, or destruction, acts contrary to the discipline of the Navy, he shall be punished as a court martial may direct."

2. Proposed Navy Bill

"ART. 4.

"When the crew of any vessel or aircraft of the United States are separated from their vessel or aircraft by means of its wreck, loss, or destruction, all the command and authority given to the officers of such vessel or aircraft shall remain in full force until such crew shall be regularly discharged from or ordered again into service, or until a court martial or court of inquiry shall be held to inquire into the loss of said vessel or aircraft."

III. Differences

The Articles of War contain no comparable provision.

IV. Recommendations

None.

APPENDIX

Uniform Code of Military Justice

Subject: Divine Service. A.G.N. 2.

I. Army Provisions

Provisions relating to Chaplains and duties of commanding officers in regard to divine services are in AR 60-5.

II. Navy Provisions

1. Articles for the Government of the Navy

"Article 2, Divine service.—

"The commanders of vessels and naval stations to which chaplains are attached shall cause divine service to be performed on Sunday, whenever the weather and other circumstances allow it to be done; and it is earnestly recommended to all officers, seamen, and others in the naval service diligently to attend at every performance of the worship of Almighty God."

2. Proposed Navy Bill

No change.

III. Differences

No discussion, as not within purview of military justice.

IV. Recommendations

None.

Comment: As this provision is not related to military justice, it might be placed elsewhere in naval statutes.

APPENDIX

Uniform Code of Military Justice

Subject: Authority of Officers of Separate Organization  
of Marines, AGN 46.

I. Army Provisions

No comparable provisions.

II. Navy Provisions

1. Articles for the Government of the Navy.

"ART. 67. Authority of officers of separate organization of marines.-- When a force of marines is embarked on a naval vessel, or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organizations of marines shall be the same as though such organization were serving at a navy yard on shore, but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any naval vessel over the vessel under his command and all persons embarked thereon (Aug. 29, 1916, c. 417, 39 Stat. 586)."

2. Proposed Navy Bill.

Article 67 is renumbered as Art. 46 and the "navy yard" are changed to "naval station."

III. Differences

The Articles of War contain no comparable provision.

IV. Recommendations

None.