



Uniform Code of Military Justice

Subject: Dueling, A. W. 91.

I. Army Provisions

1. Articles of War.

"ART. 91. Dueling.-- Any person subject to military law who fights or promotes or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall, if an officer, be dismissed from the service or suffer such other punishment as a court-martial may direct; and if any other person subject to military law, shall suffer such punishment as a court-martial may direct."

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

A. W. 91 was not changed by P. L. 759.

II. Navy Provisions

1. Articles for the Government of the Navy.

"ART. 8..... Such punishment as a court martial may adjudge may be inflicted on any person in the Navy--....."

"Fifth (Duels).-- Or sends or accepts a challenge to fight a duel or acts as a second in a duel;

"Seventeenth (Refusing to apprehend offenders).-- Or refuses, or fails to use, his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose;....."

2. Proposed Navy Bill.

"SEC. 11. Article 14 is renumbered as Art. 9 and amended to read as follows:

'ART. 9. Such punishment other than death as a court martial may adjudge may be inflicted upon any person subject to the Articles for the Government of the Navy--....."

'Fifteenth. Or sends or accepts a challenge to fight a duel or acts as a second in a duel;

'Twenty-seventh. Or refuses, or fails to use, his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose;

'Sixty-first. Or is guilty of any disorder or neglect to the prejudice of good order and discipline or any conduct of a

nature to bring discredit upon the naval service other than any disorder or neglect or conduct mentioned in these Articles;

'Sixty-second. Or is guilty of an attempt, or of a conspiracy, or of a solicitation, to commit any offense against these Articles;.....'"

### III. Differences

1. A. W. 91 is broader than the article in the proposed Navy bill dealing specifically with dueling (Art. 9, Fifteenth). Offenses listed in A. W. 91 which are not covered by Art. 9, Fifteenth, proposed Navy bill, could be charged under Art. 9, Twenty-seventh, Sixty-first, or Sixty-second.

### IV. Recommendations

None.



Uniform Code of Military Justice

Subject: Murder--Rape, A. W. 92.

I. Army Provisions

1. Articles of War.

"ART. 92. Murder--Rape.-- Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace."

2. Manual for Courts-Martial.

"PAR. 148. NINETY-SECOND ARTICLE OF WAR.

"a. Murder.

"Discussion.-- 'In time of peace' contemplates a complete peace, officially proclaimed. (Kahn v Anderson, 255 U. S. 1.)

"Murder is the unlawful killing of a human being with malice aforethought..... The death must take place within a year and a day of the act or omission that caused it, and the offense is committed at the place of such act or omission although the victim may have died elsewhere.

"Among the lesser offenses which may be included in a particular charge of murder are manslaughter, certain forms of assault, and an attempt to commit murder."

(For further discussion of the elements of the crime, see Par. 148a.)

"b. Rape.

"Discussion.-- Rape is the unlawful carnal knowledge of a woman by force and without her consent.....

"So-called statutory rape--that is, carnal knowledge with her consent of a female under the age of consent--is not an offense under this article, but may be an offense under A. W. 96.

"Among the lesser offenses which may be included in that of rape, are assault with intent to commit

rape, assault and battery, assault, and an attempt to commit rape."

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

"SEC. 235. Article 92 is amended to read as follows:

'ART. 92. Murder--Rape.-- Any person subject to military law found guilty of murder shall suffer death or imprisonment for life, as a court-martial may direct; but if found guilty of murder not premeditated, he shall be punished as a court-martial may direct. Any person subject to military law who is found guilty of rape shall suffer death or such other punishment as a court-martial may direct; Provided, That no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace.'"

II. Navy Provisions

1. Articles for the Government of the Navy.

"ART. 6. Murder.-- If any person subject to the Articles for the Government of the Navy commits the crime of murder without the territorial jurisdiction of any particular State, or the District of Columbia, he may be tried by court martial and punished with death. (R. S., sec. 1624, Art. 6; Dec. 4, 1945, c. 554, 55 Stat. 595.)"

"ART. 22. (a) Offenses not specified.-- All offenses committed by persons belonging to the Navy which are not specified in the foregoing articles shall be punished as a court martial may direct (R. S., sec. 1624, Art. 22)."

2. Naval Courts and Boards.

"SEC. 53. Murder.--.....

"Footnote (2) Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing or committed in the perpetration of, or attempt to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree. Any other murder is murder in the second degree.....

"It will be noted that in civil courts of the United States death is mandatory for murder in the first degree unless the jury otherwise provides, in which event life imprisonment is mandatory, and that imprisonment for not less than 10 years is mandatory for murder in the second

degree, but that death is not an authorized punishment for that crime. These provisions of the Code are not controlling in cases tried by naval courts-martial there being no degree of murder recognized in cases of which such courts-martial have jurisdiction (Art. 6, A.G.N.). However, Art. 51, A.G.N., makes it the duty of naval courts-martial to adjudge a punishment 'adequate to the nature of the offense', while Art. 7, A.G.N., empowers a court-martial to adjudge imprisonment at hard labor in any case where it is authorized to adjudge the punishment of death, and in applying the provisions of these articles it is deemed proper that consideration be given to the above-quoted sections of the Criminal Code. Accordingly, murder committed under such circumstances as to fall within the statutory definition of murder in the second degree should not be punished by death. ...."

(Note: Under the revision of Title 18, U. S. Code, the punishment for murder in the second degree is changed to imprisonment for any term of years or for life. Cf. Title 18, U.S.C., 1111).

"SEC. 336. Conditions necessary to show jurisdiction: Limitation of jurisdiction over crime of murder.-- The 6th A.G.N. provides that 'if any person subject to the Articles for the Government of the Navy commits the crime of murder without the territorial jurisdiction of any particular State, or the District of Columbia, he may be tried by court martial and punished with death.' This precludes a court martial taking jurisdiction of murder committed within the boundaries or territorial waters of any of the States of the United States or of the District of Columbia. If the crime is committed on the high seas, or within a territory or possession of the United States, or within a foreign country, a court martial which has assumed jurisdiction thereof may proceed to a final judgment."

"SEC. 121. Rape and carnal knowledge.-- These are provided for under the 22d A.G.N. and by 18 U.S. Code 457 and 458.....

'Elements: Sec. 457 of the Code reads: 'Whoever shall commit the crime of rape shall suffer death.' A court-martial can not adjudge death for this offense.....'"

(Note: Under the revision of Title 18, U.S. Code, the punishment for rape is changed to include death, or imprisonment for any term of years, or for life. Cf. Title 18, U.S.C. 2031. Cf. also proposed Navy bill provisions cited below.)

### 3. Proposed Navy Bill.

"SEC. 3. Article 4 is renumbered as Article 8 and amended as follows:

'ART. 8. The punishment of death, or such other punishment as a court martial may adjudge, may be inflicted on any person subject to the Articles for the Government of the Navy--.....

'Seventeenth. Or violates any law or treaty or convention incorporated under Article 5 (d) (First), (Second), or (Fifth) of these Articles, the violation of which is, by such law or treaty or convention, punishable by death.'

"SEC. 11. Article 14 is renumbered as Article 9 and amended to read as follows:

'ART. 9. Such punishment other than death as a court martial may adjudge may be inflicted upon any person subject to the Articles for the Government of the Navy--.....

'Sixty-third. Or is guilty of any violation which is an offense against the Articles for the Government of the Navy under Article 5 (d).'

"SEC. 47. Art. 5(d). The following shall be offenses against the Articles for the Government of the Navy:

'First. 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.

'Third. Violations 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 the passage of this Act and at the time they occurred. ....'

"SEC. 15. Articles 22 and 23 are repealed."

#### 4. Statutory Provisions.

"Title 18, U. S. C., Sec. 1111. Murder.

"(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempted to perpetrate, any arson, rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

"Any other murder is murder in the second degree.

"(b) Within the special maritime and territorial jurisdiction of the United States,

"Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto 'without capital punishment', in which event he shall be sentenced to imprisonment for life;

"Whoever is guilty of murder in the second degree, shall be imprisoned for any term of years or for life."

"Title 18, U.S.C., Sec. 2031. Special maritime and territorial jurisdiction.

"Whoever, within the special maritime and territorial jurisdiction of the United States, commits rape shall suffer death, or imprisonment for any term of years or for life."

### III. Differences

1. Two degrees of murder, in effect, are recognized under both the amended Articles of War and the proposed Navy bill. (For first degree murder, under the proposed Navy bill, read from new Art. 8, Seventeenth, to new Art. 5(d) First, to Title 18, U. S. C., Sec. 1111; for second degree murder, read from new Art. 9, Sixty-third, to new Art. 5(d) First, to Title 18, U. S. C., Sec. 1111.) The line of distinction for the two degrees, however, will differ under the two systems. A. W. 92 distinguishes the degrees according to whether the murder was premeditated or unpremeditated. Under the Navy bill, the distinction drawn will presumably be according to the delineation made in the U. S. Criminal Code (Title 18, U. S. C., Sec. 1111). Under the Code delineation, murders committed in connection with the perpetration of certain felonies, whether they are premeditated or not, are made first degree murders. Under A. W. 92, an unpremeditated killing, whether or not committed in connection with a felony is, in effect, made second degree murder.
2. The definition of the crime of murder (without regard to degree), as it is now given in the Army Manual for Courts-Martial (Par. 148a), is identical to that given in the U. S. Criminal Code; thus, to the extent that a Naval prisoner is tried for the crime of murder as a violation of the criminal laws of the U.S., the definition of his offense is the same as under the Army definition. However, Navy provisions also make a violation of State criminal laws an offense against the A.G.N., Art. 5(d), Third, proposed Navy bill; under the present A.G.N. violations of state laws are tried under Arts. 8(1) or 22(a). It would therefore be possible to try a Naval prisoner for murder, as that crime is defined by a State statute, and such definition could be much broader than the

definition under A. W. 92. (For example, a State statute could make an accidental, unpremeditated killing, where there was wanton negligence shown, murder in a lesser degree.). There appears to be no question of the jurisdiction of a Navy court-martial to try such a case, although as a matter of practice the man might be surrendered to the State for trial.

3. Under A. W. 92, a punishment of death or life imprisonment is mandatory for the crime of premeditated murder. Under the proposed Navy bill, the punishment for first degree murder may be death or such other punishment as the court may adjudge.
4. Army Manual for Courts-Martial (Par. 148a) states that where the charge is murder, the death must have occurred within a year and a day after the act or omission which caused it. There is no similar requirement under Navy provisions.
5. A. W. 92 provides that no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union or the District of Columbia in time of peace. Under the proposed Navy bill either crime may be tried without regard to any limitation as to territorial jurisdiction (Art. 5(d) First). This changes the rule for jurisdiction of naval courts martial for these offenses under the present A. G. N. (NC&B Sec. 336.)
6. Under the present A.G.N., rape is not an offense punishable by death. Under the proposed Navy bill, it is made an offense punishable by death or such other punishment as a court martial may direct. (Read from new Art. 8, Seventeenth, to new Art. 5(d) First, to Title 18, U.S.C., Sec. 2031). This conforms with the Army punishment.

#### IV. Recommendations

1. Vanderbilt Report, page 13: Amend A. W. 92 to provide that a person convicted of rape shall suffer death or such other punishment as a court martial may direct.
2. Keeffe Report, page 301: Recommendation that civil offenses most likely to occur in the naval service, such as murder, rape, etc. should be specifically listed. The Board criticizes the method used in the proposed McGuire draft of not listing any offenses specifically but referring instead to offenses against the criminal statutes of the U.S. or criminal laws of the various states, territories and possessions. The offenses listed should be defined in Naval Courts and Boards, not in the Articles themselves.

Page 260 ff: Discussion of the territorial limitation in the present A.G.N. on the jurisdiction of a naval court martial in the case of murder. Recommendation that the

limitation be eliminated; in lieu thereof Naval Courts and Boards should contain a provision that certain types of offenses, therein specified, committed within the territorial jurisdiction of the U.S., shall be referred to trial by a civil court when authorized by SecNav. Such provision, however, is not to be considered as a limitation on the jurisdiction of naval courts martial.

FEL-3



Uniform Code of Military Justice

Subject: Various Crimes, A. W. 93.

I. Army Provisions

1. Articles of War.

"ART. 93. Various Crimes.-- Any person subject to military law who commits manslaughter, mayhem, arson, burglary, housebreaking, robbery, larceny, embezzlement, perjury, forgery, sodomy, assault with intent to commit any felony, assault with intent to do bodily harm with a dangerous weapon, instrument, or other thing, or assault with intent to do bodily harm, shall be punished as a court-martial may direct."

"ART. 94..... And if any officer, being guilty, while in the military service of the United States, of embezzlement of ration savings, post exchange, company, or other like funds, or of embezzlement of money or other property intrusted to his charge by an enlisted man or men, receives his discharge, or is dismissed, or is dropped from the rolls, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not been so discharged, dismissed, or dropped from the rolls,"

"ART. 96. General Article.-- Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court."

2. Manual for Courts-Martial.

For definition and discussion of each crime specified in A. W. 93, see Par. 149. Other crimes of a similar nature are discussed in Par. 152, as offenses against A. W. 96.

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

"SEC. 236. Article 93 is amended to read as follows:

'ART. 93. VARIOUS CRIMES.-- Any person subject to military law who commits manslaughter, mayhem, arson, burglary, housebreaking, robbery, larceny, perjury, forgery, sodomy, assault with intent to commit any felony, assault with intent to do bodily harm with a dangerous weapon, instrument, or other thing, or assault with intent to do bodily harm shall be punished as a court-martial may direct: Provided, That any person subject

to military law who commits larceny or embezzlement shall be guilty of larceny within the meaning of this article."

"SEC. 237. Article 94 is amended to read as follows:

'ART. 94.' (12th clause, in part)

'..... If any person, being guilty of any of the offenses aforesaid or who steals or fails properly to account for any money or other property held in trust by him for enlisted persons or as its official custodian while in the military service of the United States, receives his discharge or is dismissed or otherwise separated from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court martial in the same manner and to the same extent as if he had not been so separated therefrom.'

A. W. 96 was not changed by P. L. 759.

II. Navy Provisions

1. Articles for the Government of the Navy,

"ART. 8..... Such punishment as a court martial may adjudge may be inflicted on any person in the Navy--

"First (Scandalous conduct).-- Who is guilty of....., fraud, theft, or any other scandalous conduct tending to the destruction of good morals;

"Third (Quarreling).-- Or.....assaults,....., any person in the Navy; ....."

"ART. 22. (a) Offenses not specified.-- All offenses committed by persons belonging to the Navy which are not specified in the foregoing articles shall be punished as a court martial may direct (R. S., Sec. 1624, Art. 22)."

2. Naval Courts and Boards.

The crimes listed in A. W. 93 are defined and discussed in NC&B as follows:

Manslaughter	Sec. 119	Larceny	Sec. 58
Mayhem	" 122	Perjury	" 115
Arson	" 124	Forgery	" 102, 113
Burglary	" 96	Sodomy	" 108

Housebreaking	Sec. 96	Assault	Sec. 61,120
Robbery	" 123	Embezzlement	" 89,100

Other crimes, not listed under A. W. 93, but which would be offenses under A. W. 96, are defined and discussed in NC&B as follows:

Fraud (not against the U. S.)	Sec. 57
Blackmail and extortion	" 93
Breaking arrest	" 94
Resisting arrest	" 106
Seduction	" 107
Uttering	" 110
Conspiracy	" 112
Bribery	" 114
Aiding escape of person under arrest	" 116
Offenses against the Postal Service	" 117
Offenses against foreign and interstate commerce	" 118
Carnal knowledge	" 121
Receiving stolen goods	" 125
Circulating obscene literature, etc.	" 126
Polygamy, unlawful cohabitation, etc.	" 127
Offenses against the narcotic law	" 128
Offenses against the revenue acts	" 129

### 3. Proposed Navy Bill.

"SEC. 11. Article 14 is renumbered as Art. 9 and amended to read as follows:

"ART. 9. Such punishment other than death as a court martial may adjudge may be inflicted upon any person subject to the articles for the Government of the Navy-----

'Thirteenth. Or uses provoking or reproachful words or gestures toward any person in the naval service, or strikes, threatens to strike, or assaults any person;

'Thirty-ninth. Or is guilty of forgery, uttering a forgery, burglary, housebreaking, seduction, or sodomy or any other unnatural sexual act;

'Forty-first. Or embezzles, or willfully or maliciously injures or destroys, private property not his own;

'Forty-second. Or is guilty of extortion or blackmail;

'Forty-third. 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;

'Forty-fourth. Or maliciously publishes any writing, picture, sign, or other representation which tends to defame any person in the armed services of the United States, or slanders or threatens any person in the armed services of the United States;

'Forty-sixth. Or willfully and corruptly takes any false oath to any material matter, or procures another to do so;

'Sixty-third. Or is guilty of any violation which is an offense against the Articles for the Government of the Navy under Art. 5 (d).'"

"SEC. 47.....

'ART. 5 (d) The following shall be offenses against the Articles for the Government of the Navy:

'First. 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.

'Third. Violations 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 the passage of this Act and at the time they occurred. ....'"

### III. Differences

1. Some of the crimes listed in A. W. 93 are made specific offenses in the proposed Navy bill, new Art. 9. Others will

be offenses against the proposed A.G.N. by virtue of being violations of the criminal laws of the U. S., or of the criminal laws of a State, Territory, District or possession of the U. S. Conversely, certain offenses are listed specifically in the proposed A.G.N. (e.g. seduction, extortion, blackmail, criminal libel, obtaining property by false pretenses etc.) which will be offenses against the Articles of War only by virtue of being violations of A. W. 96.

2. A.W. 93 provides that one who commits embezzlement shall be guilty of larceny within the meaning of the Article. Under the proposed A.G.N. embezzlement is made a specific offense (new Art. 9, Forty-first); larceny is not a specific offense, but being a violation of a criminal law of the U.S., will also be an offense against the Articles.
3. The crimes listed in A.W. 93 are defined and discussed in Army Manual for Courts-Martial (Par. 149). The same crimes, as violations of present A.G.N. 8 or 22(a), are defined and discussed in Naval Courts and Boards. The only apparent difference of definition in the two manuals is in the case of housebreaking. Par. 149(e) defines it as "unlawfully entering another's building with intent to commit a criminal offense therein." The term "criminal offense" includes any act or omission violation of the Articles of War, which is cognizable by courts-martial, except acts or omissions constituting purely military offenses. In Sec. 96, NC&B, housebreaking is defined as the breaking and entering of any building, with intent to commit a felony therein.

The crime of assault with intent to do bodily harm is not defined separately in NC&B.

4. A. W. 94 (12th clause) provides in part that any person who steals or fails properly to account for any money or other property held in trust for enlisted persons or as its official custodian while in the military service shall continue to be liable to be arrested and held for trial and sentence by a court martial although he has received a discharge or dismissal or has been separated from the service otherwise. Navy articles have no similar provision. (This clause in A. W. 94 is more closely related to A. W. 93 since the offenses described in the clause would be chargeable under A. W. 93. See MCM, Par. 149h and Par. 150i).

#### IV. Recommendations

##### 1. Keeffe Report.

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"2. Proposals for Reform

"(a) McGuire Committee Draft:

This draft extends the Articles to all offenses against (i) the criminal laws, treaties, or conventions of the United States; (ii) the criminal laws of a State, Territory or U. S. Possession; (iii) lawful orders or regulations of the Secretary of the Navy; (iv) the customs of the naval service, or of the laws of war; (v) or are recognized military offenses, as the latter may be defined by the Secretary of the Navy. The definition of offenses, and the quantum and mode of proof, shall be such as prevail in the courts of the United States.

"It is to be noted that this proposal would practically eliminate from the Articles for the Government of the Navy all mention of specific offenses." (Offenses punishable by death are specifically listed). "It would authorize a penal code for the Navy which is specific only by reference to a multitude of Federal and State statutes, as well as to much unwritten law....."

"(b) Judge Advocate General Draft:

"This draft extends the Articles to offenses against (i) the criminal laws, treaties, or conventions of the United States, (ii) the laws, regulations, customs or usages of the naval service, or (iii) the laws of war. This classification includes but is not limited to 32 offenses which are specifically set forth. The latter include most of the common law crimes as well as the commonly recognized military offenses.

"This proposal has the merit of specifying most of the offenses which are likely to occur in the naval service. This feature is a distinct improvement over the present Articles, which fail to specify the various civil offenses and many of the military offenses for which persons subject to the Articles are answerable. The draft fails to mention violations of State laws, presumably for the reason that if they do not fit a common law definition, they may be tried as scandalous conduct or conduct to the prejudice of good order and discipline....."

"The Articles proposed by the Judge Advocate General do not mention definition of offenses. Presumably, it is intended that civil crimes such as murder, rape, or manslaughter will carry their common law definition or will be defined by the applicable federal statute and that military offenses will be defined, as at present, in accordance with the customs of the service or by reference to applicable court decisions or court martial orders. Such treatment of the definitions and elements of offenses seems desirable. However, some of the offenses are not well stated in the proposed article. For example, one offense is specified simply as 'carnal knowledge.'

This is strictly a statutory crime and is only an offense if the female is below a certain age limit, which varies under the laws of the different states and under the federal law. The words 'carnal knowledge', standing alone, import merely sexual intercourse and seem insufficient as a description of this statutory offense.

"(c) White Draft:

"The Article on offenses proposed by Commodore White is almost identical with that proposed by the Judge Advocate General. The White Articles, like the McGuire Articles, also include a provision covering offenses against the criminal laws of a State, Territory, or possession of the United States.....

"(d) Tedrow-Finn Articles:

"..... These articles extend to all offenses which are (i) violations of the criminal statutes, treaties, or conventions of the United States, (ii) violations of the criminal laws of a State, Territory, or possession of the United States, where committed, or (iii) violations of the customs or usages of the naval service or of the laws of war. These offenses are to be 'defined and punished as prescribed in the U. S. Criminal Code and the power delegated to the President.....' by the articles. The Article then sets forth 11 of the most serious civil crimes or offenses.

".....

"The Board agrees that the present articles dealing with offenses are inadequate and are ineptly arranged. The most important deficiencies are:

"(i) There is no specific mention of any civil offenses (other than murder) which are offenses against the Articles.

"(ii) .....

"(iii) No specific mention is made of offenses against the criminal laws of the United States, its treaties, or conventions or against the laws of war.

"(iv) It is not stated that violations of certain state laws may also violate the Articles as constituting scandalous conduct or conduct to the prejudice of good order and discipline.

"(v),(vi) .....

"A number of offenses are defined, and their elements set forth, in Chapter II of Naval Courts and Boards. Some of these definitions have been criticized as incomplete, if not partly erroneous, and as being of little help to courts and judge advocates. Much of this criticism is justified.

"The Board is not disposed to recommend the adoption, in toto, of any of the proposals which have been made relating to a new article or articles to take the place of the present Articles covering offenses and punishment. However, certain features of these proposals have great merit and the Board believes that these features should be incorporated in any revision of the Articles. More specifically, the Board makes the following comments:

"(a) It is considered important to list specifically the offenses against the Articles in a manner readily understandable to every person subject to naval law. The language of most of the present punitive articles should be retained, since it is, in general, satisfactory. A few of the Articles are obsolete and should not be retained, but the offenses listed in the other punitive articles are of common occurrence and are clearly set forth.

"(e) Those civil offenses which are most likely to occur in the naval service should be specifically stated. This would correct a serious deficiency of the present Articles, which make no mention of civil offenses, except murder. A person subject to the Articles who is charged with manslaughter will search in vain for any mention of this offense in the present Articles. There is no doubt whatsoever that civil offenses such as manslaughter, rape, larceny, and assault, are also offenses against the Articles, but the failure of the Articles to specifically mention such offenses has been much criticized.

".....

"In all but one of the proposed revised articles, the civil offenses which are most likely to occur in the naval service are enumerated. Article I(d) of the McGuire Articles does not mention specific civil offenses, but refers to offenses against the criminal statutes of the United States or criminal laws of the various states, territories, and possessions. The Tedrow-Finn Articles (Article I(d)), follow the White and Judge Advocate General Articles and list the more common civil offenses. It is believed that the McGuire draft is objectionable, in this respect, for the same reason as the present Articles. Little is done to remove this objection by merely referring to the criminal laws and statutes of various jurisdictions.

"The Board believes that the articles proposed by the Judge Advocate General, in omitting mention of violations of the criminal laws of the several states, is sound. Although no great harm would result from including such a provision, it is believed that the present practice of regarding them, under certain circumstances, as scandalous conduct or as conduct to the prejudice of good order and discipline, has merit and should be continued. The Army holds that such violations may, but need not, constitute offenses under A. W. 96 (the general article) depending upon their seriousness and their effect on discipline. To make all violations of state law automatically offenses under the Articles might result in petty offenses being tried in naval courts without any real necessity therefor. Under the present practice, offenses against the state law (not otherwise offenses against the Articles) are tried by naval courts only if the acts which constitute the offenses are considered to be scandalous conduct or to be prejudicial to good order and discipline.

.....  
 "(h).....

"The Army method is to define offenses and to set forth the elements and necessary proof thereof in the Manual for Courts Martial. The British follow the same method in the Manual of Military Law. The current navy practice is along the same lines. Various sections of Naval Courts and Boards define offenses, their elements, and set forth sample charges and specifications. Providing the official manual is carefully prepared, there is much merit in this practice. There is no legal objection to a statutory provision which states that a certain offense is punishable without defining it. Little is gained by setting forth in the statute the sources from which definitions of offenses may be obtained. So long as the definitions of offenses, the description of their elements, and the quantum of proof necessary to sustain a conviction are accurately and clearly described in the service manual on naval law, no more should be necessary.....

"The present edition of Naval Courts and Boards has been criticized in respect to its definition of offenses in the Naval Justice Journal. A comparison of Naval Courts and Boards with the Manual for Courts-Martial and the British Manual of Military Law shows the need for complete revision of the Naval Courts and Boards. Additional emphasis on the elements which must be present to constitute particular offenses and which must be proved in order to sustain a conviction is needed. Some of the sample specifications set forth in the current Naval Courts and Boards are ineptly worded."

trial of strictly military offenses and to civil offenses committed outside the continental U. S. Civil offenses committed within the geographical limits of the U. S. would be tried by a civil court. The Board rejects the proposal and recommends that all statutory limitations as to place be eliminated, even as to murder. In lieu thereof, Naval Courts and Boards should contain a provision that certain types of offenses, therein specified, committed within the territorial jurisdiction of the U. S., shall be referred to trial by a civil court when authorized by SecNav. Such provision, however, is not to be considered as a limitation on the jurisdiction of naval courts martial. The Advisory Council should consider, from time to time, what types of cases should be referred to civilian tribunals during peace time and advise the Secretary accordingly. In working out a policy as to which cases should be referred, an important consideration is that if naval courts martial are to function well during war time they must acquire experience in handling serious cases during peace time.

FEL-3



Uniform Code of Military Justice

Subject: Frauds Against the Government, A. W. 94.

I. Army Provisions

1. Articles of War.

"ART. 94. Frauds Against the Government.-- Any person subject to military law who makes or causes to be made any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

"Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

"Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

"Who, 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, or procures, or advises the making or use of, any writing or other paper knowing the same to contain any false or fraudulent statements; or

"Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes or procures, or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

"Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures, or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

"Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, 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; or

"Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, 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; or

"Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof; or

"Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same;

"Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid while in the military service of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed. And if any officer, being guilty, while in the military service of the United States, of embezzlement of ration savings, post exchange, company, or other like funds, or of embezzlement of money or other property intrusted to his charge by an enlisted man or men, receives his discharge, or is dismissed, or is dropped from the rolls, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not been so discharged, dismissed, or dropped from the rolls."

## 2. Manual for Courts-Martial.

"Par. 150. NINETY-FOURTH ARTICLE OF WAR.

"a. MAKING OR CAUSING TO BE MADE A FALSE OR FRAUDULENT CLAIM.

"Discussion.-- Making a claim is a distinct act from presenting it.....

"An instance of making a false claim would be where an officer having a claim respecting property lost in the military service knowingly includes articles that were not in fact lost and submits such claim to his commanding officer for the action of the board. ....

"b. PRESENTING OR CAUSING TO BE PRESENTED FOR APPROVAL OR PAYMENT A FALSE OR FRAUDULENT CLAIM.

"Discussion.--.....

"Presenting to a paymaster a false final statement, knowing it to be false, is an example of the offense under discussion. ....

"h. MAKING OR DELIVERING RECEIPT WITHOUT HAVING FULL KNOWLEDGE THAT THE SAME IS TRUE.

"Discussion..... If, with intent to defraud the United States, he signs the paper without such knowledge, he is guilty of a violation of this clause of the article; and signing the paper without such knowledge is prima facie evidence of such intent. ....

"i. STEALING, EMBEZZLEMENT, MISAPPROPRIATION, SALE, ETC., OF MILITARY PROPERTY OR MONEY.

"Discussion.--.....

"Misappropriating means devoting to an unauthorized purpose. Misapplication is where such purpose is for the party's own use or benefit. The misappropriation of the property or money need not be for the benefit of the accused;....."

See MCM, Par. 150, for definitions and discussion of other offenses listed in A. W. 94.

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

"SEC. 237. Article 94 is amended to read as follows:

'ART. 94. FRAUDS AGAINST THE GOVERNMENT.-- Any person subject to military law who makes or causes to be made any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

'Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

'Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

'Who, 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, or procures, or advises the making or use of, any writing or other paper knowing the same to contain any false or fraudulent statements; or

'Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes or procures, or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

'Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures, or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

'Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, 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; or

'Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, 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; or

'Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipment ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof: Provided, That any person, subject to military law, who commits larceny or embezzlement with respect to property of the United States, furnished or intended for the military service thereof, or with respect to other property within the purview of this article, steals said property within the meaning of this article; or

'Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same; or

'Who enters into any agreement or conspires to commit any of the offenses aforesaid;

'Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court martial may adjudge, or by any or all of said penalties. If any person, being guilty of any of the offenses aforesaid or who steals or fails properly to account for any money or other property held in trust by him for enlisted persons or as its official custodian while in the military service of the United States, receives his discharge or is dismissed or otherwise separated from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court martial in the same manner and to the same extent as if he had not been so separated therefrom.'

## II. Navy Provisions

### 1. Articles for the Government of the Navy.

"ART. 14. Persons to whom applicable.-- Fine and imprisonment or such other punishment as a court martial may adjudge, shall be inflicted upon any person in the naval service of the United States--

"First (Presenting false claims).-- Who presents or causes to be presented to any person in the civil, military, or naval service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

"Second (Agreement to obtain payment of false claims).-- Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

"Third (False paper).-- Who, 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, or procures or advises the making or use of, any writing, or other paper, knowing the same to contain any false or fraudulent statement; or

"Fourth (Perjury).-- Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

"Fifth (Forgery).-- Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment



Uniform Code of Military Justice

Subject: General Punitive Articles

I. Army Provisions

1. Articles of War

"ART. 95. Conduct Unbecoming an Officer and Gentleman.-- Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

Note: "Offenses under A.W. 95 and A.W. 96 are not the same, nor established by the same evidence, the former being applicable to officers and cadets; and the conviction of an officer under both articles on the same facts held not illegal as placing him twice in jeopardy for the same offense. (McRae v. Henkes, 273 Fed. 108.) (Dig. J.A.G. 1922, p. 118.)"

"ART. 96: General Article.--Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court."

2. Manual for Courts-Martial

Par. 151. "Nineth-Fifth Article of War. Conduct Unbecoming An Officer and a Gentleman.

"Discussion.--The conduct contemplated is action or behavior in an official capacity which, in dishonoring or disgracing the individual as an officer, seriously compromises his character and standing as a gentleman, or action or behavior in an unofficial or private capacity which, in dishonoring or disgracing the individual personally as a gentleman, seriously compromises his position as an officer and exhibits him as morally unworthy to remain a member of the honorable profession of arms.

"There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty or unfair dealing, of indecency or indecorum, or of lawlessness, injustice, or cruelty. Not every one is or can

be expected to meet ideal standards or to possess the attributes in the exact degree demanded by the standards of his own time; but there is a limit of tolerance below which the individual standards in these respects of an officer or cadet can not fall without his being morally unfit to be an officer or cadet or to be considered a gentleman. This article contemplates such conduct by an officer or cadet which, taking all the circumstances into consideration, satisfactorily shows such moral unfitness.

"This article includes acts made punishable by any other Article of War, provided such acts amount to conduct unbecoming an officer and a gentleman; thus, an officer who embezzles military property violates both this and the preceding article.

"Instances of violation of this article are:

"Knowingly making a false official statement; dishonorable neglect to pay debts; opening and reading another's letters without authority; giving a check on a bank where he knows or reasonably should know there are no funds to meet it, and without intending that there should be; using insulting or defamatory language to another officer in his presence, or about him to other military persons; being grossly drunk and conspicuously disorderly in a public place; public association with notorious prostitutes; cruel treatment of soldiers; committing or attempting to commit a crime involving moral turpitude; failing without a good cause to support his family.

"Proof.--(a) That the accused did or omitted to do the acts; as alleged; and (b) the circumstances, intent, motive, etc., as specified."

Par. 103a. An officer convicted under A.W. 95 alone must only be sentenced to dismissal and nothing more.

Par. 152 "Ninety-Sixth Article of War.

"a. Disorders and Neglects to the Prejudice of Good Order and Military Discipline.

"Discussion.--The disorders and neglects include all acts or omissions to the prejudice of good order and military discipline not made punishable by any of the preceding articles.

"By the term 'to the prejudice', etc., is to be understood directly prejudicial, not indirectly or remotely, merely. An irregular or improper act on the part of an officer or soldier

can scarcely be conceived which may not be regarded as in some indirect or remote sense prejudicing military discipline; but it is hardly to be supposed that the article contemplated such distant effects, and the same is, therefore, confined to cases in which the prejudice is reasonably direct and palpable. (Hinthrop).

"Instances of such disorders and neglects in the case of officers are: Disobedience of standing orders or of the orders of an officer when the offense is not chargeable under a specific article; allowing a soldier to go on duty knowing him to be drunk; rendering himself unfit for duty by excessive use of intoxicants or drugs; drunkenness.

"Instances of such disorders and neglects in the cases of enlisted men are: Failing to appear on duty with a proper uniform; appearing with dirty clothing; malingering; abusing public animals; careless discharge of firearms; personating an officer; making false statements to an officer in regard to matters of duty.

"Among the disorders herein made punishable is the fraudulent enlistment contemplated by A.W. 28, which differs from fraudulent enlistment under A.W. 54 in that the element of the receipt of pay or allowances is not present. The fact that at the time of the alleged fraudulent enlistment the accused was serving in a prior enlistment from which he had not been discharged may be proved, prima facie, by introducing authenticated records of a former unexpired enlistment. If the period of the prior enlistment has elapsed, the fact that there was no discharge from his former enlistment may be proved, prima facie, by the certificate of The Adjutant General or one of his assistants that the files and records of the office of The Adjutant General contain no record of the discharge of the accused from such enlistment.

"For proof of fraudulent enlistment under A.W. 54, see 129 (Proof).

"Proof.—(a) That the accused did or failed to do the acts specified; and (b) the circumstances, etc., as specified.

"b. Conduct of a Nature to Bring Discredit Upon the Military Service.

"Discussion.—'Discredit' as here used means 'to injure the reputation of.' Instances of such conduct on the part of persons subject to military law may include acts in violation

of local law committed under such circumstances as to bring discredit upon the military service. So also is punishable under this clause any discreditable conduct not elsewhere made punishable by any specific Article of War or by one of the other clauses of A.W. 96.

"If an officer or soldier by his conduct in incurring private indebtedness or by his attitude toward it or his creditor thereafter reflects discredit upon the service to which he belongs, he should be brought to trial for his misconduct. He should not be brought to trial unless, in the opinion of the military authorities, the facts and law are undisputed and there appears to be no legal or equitable counterclaim or set-off that may be urged by the officer or soldier. The military authorities will not attempt to discipline officers and soldiers for failure to pay disputed private indebtedness or claims, that is, where there appears to be a genuine dispute as to the facts or the law. An officer may be tried for this offense under either A.W. 95 or A.W. 96, as the circumstances may warrant.

"One object of including this phrase in the general article was to make military offenses those acts or omissions of retired soldiers which were not elsewhere made punishable by the Articles of War but which are of a nature to bring discredit on the service, such as failure to pay debts.

"Proof.--(a) That the accused did or failed to do the acts alleged; and (b) the circumstances, etc., as specified.

"c. Crimes or Offenses not Capital.

"Discussion.--The crimes referred to in this article embrace those crimes, not capital and not made punishable by another Article of War, which are committed in violation of public law as enforced by the civil power. The 'public law' here in contemplation includes that enacted by Congress or under the authority of Congress. For example, it includes (but only as to violations within their respective jurisdictions) the Code of the District of Columbia, and the laws of the several Territories and possessions of the United States. A person subject to military law cannot, however, be prosecuted under this clause of the article for an act done in a State, Territory, or possession which is not a crime in that jurisdiction, merely because the same act would have exposed him to a criminal prosecution in a civil court of the District of Columbia had he done the act within the jurisdiction of such court. But such act, of course, might in a proper

case be made the basis of a prosecution under one of the other clauses of this article as being a disorder, a neglect, or conduct of a nature to bring discredit upon the military service.

"Among the crimes referred to in this article may be those offenses created by statute and given names therein which names are also found in other Articles of War given to offenses which have essentially different elements. For example, in sec. 117 of the Servicemen's Dependents Allowance Act of June 23, 1942 (56 Stat. 385), a false statement is declared to be perjury under certain circumstances although not made under oath. This perjury, however, is not the perjury denounced by A.W. 93. Therefore, the perjury defined by the act is chargeable under A.W. 96.

"So also section 90 of the Federal Penal Code of 1910 provides that a failure by an officer to render accounts for public money received by him unless authorized to retain it as salary, pay, or emolument is an embezzlement of such funds. Such an embezzlement, not being within the general definition of embezzlement as the term is used in A.W. 93 and A.W. 94, would be chargeable under the general article.

"The elements of some of the more common crimes that are chargeable as crimes under this article if committed in violation of public law as enforced by the civil power will now be discussed. ...."

#### "ATTEMPTS

"Discussion.--An attempt to commit a crime is an act done with intent to commit that particular crime, and forming part of a series of acts which will apparently, if not interrupted by circumstances independent of the doer's will, result in its actual commission. (Clark.)

"An intent to commit a crime not accompanied by an overt act to carry out the intent does not constitute an attempt. For example, a purchase of matches with intent to burn a haystack is not an attempt. But it is an attempt where the haystack is actually set on fire, even though it may be immediately put out by rain, blown out by the wind, or otherwise extinguished, with only immaterial damage to the hay. It is not an attempt where if every act intended by accused were completed there would legally be no crime, even though the accused may at the time believe he is committing such crime. Thus, to shoot at a log believing it to be a man would not be an attempt to murder.

"Soliciting another to commit a crime is not an attempt! nor is mere preparation to do a criminal act.

"If an attempt is included in the offense charged it may be found as a lesser included offense in violation of A.W. 96. However, if such attempt is denounced by some specific article it should be found under that article.

"Proof.—(a) That the accused committed an overt act which if not interrupted by circumstances independent of the deed's will would have resulted in the commission of the offense, as alleged; (b) that the accused intended to commit that particular offense (this may usually be shown by the facts and circumstances surrounding the act); and (c) the apparent possibility of committing the offense in the manner indicated."

Par. 104c. Maximum punishments. Offenses not provided for are punishable as authorized by statute or by the custom of the service or by analagous offenses.

### 3. Other Interpretation

#### (a) Violations of Federal Laws

The "crimes or offenses not capital" referred to in Article of War 96 of which courts-martial may take cognizance are limited to those committed in violation of a Federal law in force where the act is committed. The mentioned statutes (Federal statutes on statutory rape, adultery, and fornication) do not apply to offenses committed within the territorial jurisdiction of a state. 4 Bull. JAG 13, Jan. 1945.

The Article expressly excludes from the jurisdiction of courts-martial all capital crimes of military personnel. The exclusion being absolute, the capital crime, however, nearly it may have affected the discipline of the service, cannot be any more legally adjudicated indirectly than directly. Winthrop, Military Law and Precedents, (1920 Reprint) p. 723.

"Accused was found guilty of conspiracy to engage in certain acts, involving the failure to obey a standing order of the theater, in violation of A.W. 96. The defense moved to dismiss the Specification, contending that conspiracy is a common law offense and that since the United States has no common law jurisdiction, it must be shown that the particular conspiracy alleged is denounced by a Federal statute. Held: Under the provisions of sec. 37, Federal Criminal Code (18 U. S. C. 88), a conspiracy against the United States is

established where the object of an unlawful agreement was the commission of some offense against the United States or the doing of some act made an offense by the laws of the United States. Since the failure to obey a lawful standing order constitutes an offense against the United States within the scope of A.W. 96, it follows that a conspiracy to violate such an order falls within the scope of the Federal Criminal Code provisions denouncing conspiracies to commit an offense against the United States." 5 Bull. JAG 340, Nov-Dec. 1946.

Note: The above seems to show the only basis for the trial of conspiracies by courts-martials; however, compare the following which is probably overruled by the above:

"The specification charges a conspiracy to commit theft and robbery. It alleges no overt act, however, and this omission, if the specification were laid under section 37, Federal Penal Code (35 Stat. 1096), would be fatal. But the specification need not have been, and apparently was not, so laid. Conspiracy is also a common-law crime, and differs from the crime defined by section 37, *supra*, in the very material fact that an overt act is not required to be either alleged or proved; that crime exists in the District of Columbia and is punishable by the code thereof. The specification contains everything necessary to charge that crime and must be upheld accordingly. C.M. 112560, 120543 (1918)." Dig. Op. JAG (1912-40) P. 351.

(C.M. 120543 was held at Camp Travis, Texas)

"Accused, a soldier, was charged with having cocaine in his possession, in violation of section 8, Chapter I, of the act of December 17, 1914, commonly known as the Harrison Anti-narcotic Act, the evidence showing that he had a small quantity of the drug in his possession for his personal use. The section of the act referred to applies only to persons required by the act to register, and the possession of a small amount of a drug by a person not required to register, such as accused in this case, does not constitute a violation of the act (U.S. v. Jim Huey Hoy, 225 Fed. 1003, 241 U.S. 394). Such possession is, however, punishable as a violation of A. W. 96 (par. 4, G. O. 25, U. D., 1918); and punishment is limited to dishonorable discharge, total forfeitures, and confinement at hard labor for one year (the maximum punishment under the Executive order of December 10, 1920, for the offense of introducing a habit-forming drug into command, quarters, etc.) in a place other than a penitentiary. C.M. 156134 (1923)." Dig. Op. JAG (1912-40) p. 361.

Note: The above opinion is cited to show that although an offense may be tried as a violation of a federal statute, the accused may be convicted of conduct to the prejudice of good order and conduct.

(b) Violations of State Laws

The test to be applied in determining whether the act is an offense is whether it is a violation of A.W. 96 and not whether it violated a state statute. Nor does the state statute control the maximum punishment that may be imposed. 4 Bull. JAG 342, August 1945.

The violation of a State law is not necessarily a violation of an Article of War unless the acts which constitute the offense under State law would also constitute an offense under the Articles of War regardless of the State statute. 3 Bull. JAG 346, August 1944.

4. U.S. Criminal Code

"Conspiring to commit offense against the United States.-- If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the two parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both." 18 U.S.C. 83.

"Principals.-- Whoever directly commits any act constituting an offense defined in any law of the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal." 18 U.S.C. 550.

(These two statutes are also applicable to the Navy).

The above provisions have been amended by the new Criminal Code:

"§ 371. Conspiracy to commit offense or to defraud United States

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

"If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment

for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor." 18 U.S.C. 371 (1948).

"§ 2. Principals

"(a) Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is a principal.

"(b) Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is also a principal and punishable as such." 18 U.S.C. 2 (1948).

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

No change.

II. Navy Provisions

1. Articles for the Government of the Navy

"ART. 22 (a) Offenses not specified.--All offenses committed by persons belonging to the Navy which are not specified in the foregoing articles shall be punished as a court martial may direct. ...."

"ART. 8. Persons to whom applicable.--Such punishment as a court martial may adjudge may be inflicted on any person in the Navy--

"First (Scandalous conduct).--Who is guilty of profane swearing, falsehood, drunkenness, gambling, fraud, theft, or any other scandalous conduct tending to the destruction of good morals. ...."

2. Naval Courts and Boards

Sec. 22 "General and specific charges.--

"Scandalous conduct tending to the destruction of good morals, conduct to the prejudice of good order and discipline, and conduct unbecoming an officer and a gentleman constitute the general charges. All other charges are specific charges. Since most attempted (but not consummated) offenses have to be laid under a general charge (sec. 42), it follows that one of the general charges is a lesser included offense in most of the specific charges."

## Sec. 26 "Statement of offense--The Charge.--

"If an offense is one specifically provided for, it should be preferred under a specific rather than a general charge. In order to determine this point the following sources should be consulted:

- "(a) Sample charges and specifications.
- "(b) Limitations of punishments.
- "(c) Articles for the government of the Navy.

"When an offense is not specially provided for in the above sources, it shall be preferred under one of the general charges, to wit, 'scandalous conduct tending to the destruction of good morals', or 'conduct to the prejudice of good order and discipline', or 'conduct unbecoming an officer and a gentleman.' In determining which of the general charges should be used, the following general rule should be observed: Acts are of a scandalous nature and, consequently, are properly so charged, that give offense to the conscience or moral feelings; call out condemnation; involve scandal or disgrace to reputation; bring shame or infamy, or because of their evil nature are malum in se."

## Sec. 27. "The Specification,---....."

"It is not essential to state in a specification that an offense was committed in breach of any Federal statute, article of the articles for the government of the Navy, law of the State in which the court is sitting, or general regulation, as the court takes judicial notice of such statute, article, State law, or regulation, under which the charge is laid, but whenever the offense comes directly under any other enactment (foreign law, municipal ordinance, or local ship or station order), the same should be set forth verbatim in the specification and proved like any other fact. ...."

## Sec. 457. "Schedule of offenses and limitations....."

"Offenses	"Limit of Punishment
<p>"Any offense in the act of Congress approved May 4, 1909 (35 Stat. 1088) entitled 'An act to codify, revise, and amend the penal laws of the United States,' or in any other general statute of the United States, which is not specified in the Articles for the Government of the Navy (1).</p>	<p>"Officer: Dismissal and confinement for the period named in the statute as the maximum period of imprisonment.</p>

## "Offenses

"NOTE.--Where the statute does not prescribe any period of imprisonment, dismissal or discharge shall not be adjudged, but loss of numbers not to exceed 10, or confinement not to exceed 3 months, may be adjudged.

"Where the statute prescribes the punishment of death, and a naval court-martial is not authorized by the Articles for the Government of the Navy to adjudge the punishment of death for the offense, the limit of punishment shall be dismissal or dishonorable discharge and confinement for life."

Sec. 42. "How to charge attempts.--

"If an attempt is not provided for as a specific charge it should be alleged under the appropriate general charge."

Sec. 43. "What constitutes an attempt.--

"An attempt to commit a crime consists of three elements: (1) The intention to commit the crime, (2) performance of some act toward the commission of the crime, and (3) the failure to consummate the crime. It follows that one proven actually to have committed an offense cannot be found guilty of an attempt to do so and that a specification alleging such commission does not support a charge of attempt."

Sec. 59. "Scandalous conduct.--.....

"Elements: Most of the offenses specified in the articles for the government of the Navy are of a military character or are against the United States. The bulk of the common law and statutory offenses come under this charge and under the 22d A.G.N.

"Offenses of a scandalous nature for which no specific charges are provided should be laid under this charge. These offenses are so diverse that it is impracticable to set forth the elements of each. Where the offense is similar to that under a specific charge appearing elsewhere in this chapter, the elements set forth thereunder should be examined.

## "Limit of Punishment

"Enlisted man: Confinement for the period named in the statute as the maximum period of imprisonment and dishonorable discharge."

"As a number of attempted or uncompleted offenses are not specified, most such, involving scandalous acts, must be laid under this charge, and it follows that this charge is a lesser included charge in the specific charges of a scandalous nature. ...."

Sec. 98. "Conduct to the prejudice of good order and discipline.--  
....."

"Elements: This charge is to be used for offenses not specified and not of a scandalous character. The remarks in section 59 apply, in general, to this charge also.

"By the term 'to the prejudice', etc.; is to be understood directly prejudicial, not indirectly or remotely merely. An irregular or improper act on the part of an officer or man can scarcely be conceived which may not be regarded as in some indirect or remote sense prejudicing discipline; but such distant effects are not contemplated under this charge; and it is, therefore, deemed properly to be confined to cases in which the prejudice is reasonably direct and palpable.

"Instances of such disorders and neglects in the case of officers are: Disobedience of standing orders, or of the orders of an officer when the offense is not chargeable under a specific article; allowing a man to go on duty knowing him to be drunk; rendering himself unfit for duty by excessive use of intoxicants or drugs.

"Instances of such disorders and neglects in the cases of enlisted men are: Failing to appear on duty with a proper uniform; appearing with dirty clothing; refusing to submit to treatment necessary to render him fit for duty; refusing to submit to a necessary and proper operation not endangering life; missing ship, dishonorable neglect to pay debts, and the instances cited under the succeeding section.

"Another class of offenses coming under this charge are violations, not of a scandalous nature, of local laws in a country, State, Territory, or District. ...."

Sec. 99. "Conduct unbecoming an officer and a gentleman.--....."

"Elements: The conduct contemplated is action or behavior in an official capacity, which, in dishonoring or disgracing the individual as an officer, seriously compromises his character

and standing as a gentleman; or action or behavior in an un-official or private capacity which, in dishonoring or disgracing the individual personally as a gentleman; seriously compromises his position as an officer and exhibits him as morally unworthy to remain a member of the honorable profession of arms.

"There are certain moral attributes common to the ideal officer and the perfect gentleman, a lack of which is indicated by acts of dishonesty or unfair dealing; of indecency or indecorum; of lawlessness, injustice, or cruelty.

"Instances of violation of this charge are: Knowingly making a false official statement; dishonorable neglect to pay debts; opening and reading another's letters; giving a check on a bank where there were no funds to meet it, and without intending that there should be; using insulting or defamatory language to another officer in his presence, or about him to other military persons; being grossly drunk and conspicuously disorderly in a public place; public association with notorious prostitutes; failing without a good cause to support his family. ...."

### 3. Other Interpretation

This Article applies only to offenses "not specified in the foregoing articles", and which are recognized as military offenses by the usages of the naval service. *Smith v. Whitney* (1886) 116 U.S. 167.

This Article is not intended to confer upon a court-martial general criminal jurisdiction, but only jurisdiction over those offenses, not specified in the preceding articles of said section, which are injurious to the order and discipline of the Navy; the jurisdiction being given for the purpose of preserving that order and discipline. (1880) 16 Op. Atty. Gen. 579.

Under the Navy regulations and the A.G.N. all persons in the naval service are subject to discipline and trial by court-martial for any offense committed by them which is a violation of any Federal or State law. CMO 30-1918 p. 28.

The charge of "unauthorized use of an automobile" does not allege an offense in violation of the A.G.N. or any other enactment of Congress. However, the use of such a charge presupposes a statute making such act a criminal offense in the State, Territory, or district where such act takes place, and the

specification should be alleged in the words of the statute concerned. Such a statute should be alleged and proved in order that the accused, the court, and the reviewing authorities may know that the acts of the accused set out in the specification are contrary to the law of the place where committed. CMO 3-1924.

Article 1645 (1) Navy Regulations 1913 prescribes in effect that members of the naval service scrupulously respect and observe the territorial authority of foreign civilized states in amity with the United States. Naval courts may not take judicial notice of foreign law, the existence of said foreign law being a question of fact which must be proved. This, of course, does not prevent a naval court from exercising jurisdiction over an offense against any of the laws or regulations governing a foreign port or the territorial water thereof committed by a member of the naval forces while on liberty ashore under the charge of "scandalous conduct tending to the destruction of good morals" or "conduct to the prejudice of good order and discipline." CMO 109-1918. See also CMO 1-1933, p. 9; CMO 8-1924, p. 3.

#### 4. Proposed Navy Bill

"ART. 5 (d) The following shall be offenses against the Articles for the Government of the Navy:

- "First. 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.
- "Second. Violations of the treaties or conventions of the United States, whenever adopted, during the time such treaties or conventions are in force.
- "Third. Violations 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 the passage of this Act and at the time they occurred.
- "Fourth. Violations of the laws, orders, regulations, or customs of the naval service.
- "Fifth. Violations of the law of war. ...."

ART. 33(a) Above offenses not to be punished by greater imprisonment than specified in such laws.

"ART. 8. The punishment of death, or such other punishment as a court martial may adjudge, may be inflicted on any person subject to the Articles for the Government of the Navy-- .....

"Seventeenth. Or violates any law or treaty or convention incorporated under article 5(d) (First), (Second), or (Fifth) of these Articles, the violation of which is, by such law or treaty or convention, punishable by death."

"ART. 9. Such punishment other than death as a court martial may adjudge may be inflicted upon any person subject to the Articles for the Government of the Navy--.....

"Fifty-ninth. 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 naval profession;

"Sixty-first. Or is guilty of any disorder or neglect to the prejudice of good order and discipline or any conduct of a nature to bring discredit upon the naval service other than any disorder or neglect or conduct mentioned in these Articles;

"Sixty-second. Or is guilty of an attempt, or of a conspiracy, or of a solicitation, to commit any offense against these Articles....."

### III. Differences

#### 1. Violations of Federal Laws.

A. W. 96 gives Army courts-martial direct authority to try offenses against Federal Statutes. Under present naval practice, naval courts-martial have jurisdiction over offenses against Federal Statutes as conduct prejudicial to good order and discipline, such violations having been declared as such. However, under the proposed A.G.N. naval courts-martial would have broader power to punish violations of Federal Statutes, since the proposed Art. 5(d) would make such violations offenses against

the A.G.N. without regard to the territorial jurisdiction of the United States. Under the Articles of War, the acts constituting the offense must occur within the territorial jurisdiction of the United States. Thus, under the proposed A.G.N., a naval court-martial could punish as an offense acts occurring in New York State as an offense against the United States, while such an act occurring in New York is not an offense against either Federal or New York law.

Both the Army and Navy seem to punish offenses against Federal laws, because they are offenses against such law. Both services also seem to follow the Criminal Code as to what elements are necessary to constitute the offense. Query: whether all defenses under federal law are recognized in courts-martial?

Under A.W. 96 Army courts-martial have no jurisdiction over capital offenses not specified in the Articles of War, while there is no such limitation in the proposed A.G.N.

As to double jeopardy, see C.S., A.W. 40.

## 2. Violations of State Laws

Violations of state laws are not necessarily offenses against the Articles of War. The act itself must be conduct of a nature to bring discredit upon the military service or prejudicial to good order and discipline.

Under present Navy practice, any violation of the criminal laws of a state is an offense against the A.G.N. regardless of whether the act in of itself is of a scandalous character or prejudicial to good order and discipline. The mere violation of such law being prejudicial to good order or discipline.

Since the proposed A.G.N. specifically grants jurisdiction over violation of state law, it is to be presumed that present practice is to be followed. Army courts-martial on the other hand do not have jurisdiction to try violations of state laws.

Query: whether under the proposed A.G.N. defenses under state law and state statutes of limitations are binding on naval courts-martial trying offenses against state law?

The proposed A.G.N. would restrict violations of state laws to violations of those laws in force at the date of enactment of the proposed A.G.N.

As to double jeopardy, see C.S., A.W. 40.

### 3. Violations of Treaties, Law of War, and Foreign Law

Under present Army practice, there are no provisions specifically authorizing courts-martial to try persons subject to military law for offenses against the law of war or in violation of treaties or conventions. Querie: whether these offenses are tried as offenses against Federal laws or as conduct of a nature to bring discredit upon the military service? The proposed A.G.N. would make such offenses, offenses against the A.G.N.

As to jurisdiction of general courts-martial to try persons not subject to military law, see C.S., A.W. 12.

Under the present Navy practice, offenses against foreign laws are treated in the same manner as offenses against state law. Querie: whether this practice would be continued under the proposed A.G.N.?

The Army does not try offenses against foreign laws as such.

### 4. Violations of the Laws, Orders, Regulations, or Customs of the Service

These offenses are punishable by Army courts-martial under A.W. 96 as conduct to the prejudice of good order and discipline, while the proposed A.G.N. would punish these offenses under Art. 9, paragraphs Twentieth and Sixty-third.

### 5. Attempts, Conspiracy, and Solicitations

The proposed A.G.N. provides that any attempt, conspiracy, or solicitation to commit an offense against the A.G.N. is in itself an offense against the A.G.N. The Army punishes attempts under A.W. 96 and also tries conspiracies and solicitations to commit offenses against the Articles of War, as conspiracies and solicitations to commit offenses in violation of federal statutes under the "crimes and offenses" clause of A.W. 96.

Appended is a list of offenses specified in the proposed A.G.N., but not specified in the Articles of War and charged under A.W. 96.

### 6. Conduct Unbecoming an Officer and Gentleman.

The only difference between the A.G.N. and A.W. is that the Army provision applies to cadets as well as officers and carries a mandatory sentence of dismissal.

7. Disorders and Neglects to Prejudice of Good Order and Discipline or Conduct to Bring Discredit Upon the Service.

There is no substantial difference between the Army and Navy provisions as to these offenses.

IV. Recommendations

1. As to Offenses

"A. OFFENSES

"1. In General

"Some offenses against naval law are specifically provided for in the present Articles for the Government of the Navy. Some are classified according to punishments under Articles 4, 8, and 14. Others are made punishable by Articles 1, 3, 5, 6, 9, 10, 16, 17, 19, 20, 21, 22(b), 31, 42, and 44. The remaining offenses are covered by one broad provision, Article 22(a), which provides for the punishment of 'all offenses not specified in the foregoing Articles.'

"Common civil offenses such as manslaughter, rape, assault and robbery are not specifically mentioned in the Articles. However, by interpretation, Article 22(a) comprehends common law crimes. Article 22(a) has also been interpreted to include all offenses against the criminal statutes of the United States, offenses against state laws, and various military offenses. The Attorney General has held that this Article is not intended to confer general criminal jurisdiction upon naval courts martial, but is limited to those offenses, not specified in the preceding articles, which are injurious to the order and discipline of the Navy. But where an offense made punishable by the common law or by the statutes of the United States is directly prejudicial to good order and discipline, naval courts martial have jurisdiction to try it. The more common military offenses not specifically mentioned in the Articles but which are, by reason of Article 22(a), offenses by custom of the service are broadly classified as: Neglect of duty, conduct to the prejudice of good order and discipline, and conduct unbecoming an officer and a gentleman.

"It is also possible to try common law and statutory offenses and various military offenses under Article 8(1), which makes punishable 'any other scandalous conduct tending to the destruction of good morals.'

"Definitions of the various offenses are at present based upon common law definitions as found in court opinions, statutory definitions, and the customs of the service. Chapter II of Naval Courts and Boards sets forth the offenses most likely to arise in the service, defines them and lists the essential elements thereof.

"It is evident from the above discussion that the majority of offenses are based upon unwritten law, by virtue of interpretation of Articles 8(1) and 22(a), and that only a few are specifically provided for in the Articles. However, most of the cases actually tried by general court martial are based upon offenses which are specifically mentioned in the Articles, that is to say, desertion and other unauthorized absence. Of the 643 cases reviewed by the Board down to 1 July 1946, at least 505 involved desertion, absence without leave, or absence over leave.

## "2. Proposals for Reform.

"In the draft articles submitted by the McGuire Committee, as also in those recommended by Commodore White and by the Judge Advocate General, a single article under the general heading of jurisdiction covers the entire subject of offenses.

### "(a) McGuire Committee Draft:

"This draft extends the Articles to all offenses against (i) the criminal laws, treaties, or conventions of the United States; (ii) the criminal laws of a State, Territory, or U. S. Possession; (iii) lawful orders or regulations of the Secretary of the Navy; (iv) the customs of the naval service, or of the laws of war; (v) or are recognized military offenses, as the latter may be defined by the Secretary of the Navy. The definition of offenses, and the quantum and mode of proof, shall be such as prevail in the courts of the United States.

"It is to be noted that this proposal would practically eliminate from the Articles for the Government of the Navy all mention of specific offenses. It would authorize a penal code for the Navy which is specific only by reference to a multitude of Federal and State statutes, as well as too much unwritten law. It would not specify military offenses, but would leave the listing and definition thereof to the Secretary of the Navy. This appears to be a delegation of legislative power, the constitutionality of which is open to doubt. The fact that the article uses the words 'recognized military offenses' does not completely remove the question of constitutionality, because wide discretion would still be left with the Secretary.

"(b) Judge Advocate General Draft:

"This draft extends the Articles to offenses against (i) the criminal laws, treaties, or conventions of the United States, (ii) the laws, regulations, customs or usages of the naval service, or (iii) the laws of war. This classification includes but is not limited to 32 offenses which are specifically set forth. The latter include most of the common law crimes as well as the commonly recognized military offenses.

"This proposal has the merit of specifying most of the offenses which are likely to occur in the naval service. This feature is a distinct improvement over the present Articles, which fail to specify the various civil offenses and many of the military offenses for which persons subject to the Articles are answerable. The draft fails to mention violations of State laws, presumably for the reason that if they do not fit a common law definition, they may be tried as scandalous conduct or conduct to the prejudice of good order and discipline. The proposal does not, in listing offenses, distinguish between military offenses and civil offenses, as such. Relatively minor offenses, such as gambling, receive as much notice as more serious offenses, such as murder or mutiny. Moreover, proposed Article 10(c) (4), which lists offenses punishable by death, includes some offenses which are not mentioned at all in proposed Article 6(d), dealing with offenses generally. On the other hand, desertion in time of war is specified in both Articles.

"The Articles proposed by the Judge Advocate General do not mention definition of offenses. Presumably, it is intended that civil crimes such as murder, rape, or manslaughter will carry their common law definition or will be defined by the applicable federal statute and that military offenses will be defined, as at present, in accordance with the customs of the service or by reference to applicable court decisions or court martial orders. Such treatment of the definitions and elements of offenses seems desirable. However, some of the offenses are not well stated in the proposed article. For example, one offense is specified simply as 'carnal knowledge.' This is strictly a statutory crime and is only an offense if the female is below a certain age limit, which varies under the laws of the different states and under the federal law. The words 'carnal knowledge', standing alone, import merely sexual intercourse and seem insufficient as a description of this statutory offense.

"(c) White Draft:

"The Article on offenses proposed by Commodore White is almost identical with that proposed by the Judge Advocate General. The White Articles, like the McGuire Articles, also include a provision covering offenses against the criminal laws of a State, Territory, or possession of the United States. The offenses specified in the White Articles include all but three of those which are set forth in the Judge Advocate General's draft. The Offenses omitted are: (i) neglect of duty, (ii) culpable inefficiency in the performance of duty, and (iii) suffering, through negligence, a vessel of the Navy to be hazarded, run upon a rock or shoal, or stranded.

"The comments made above with respect to the Judge Advocate General draft apply equally to the White proposal, except for the inclusion in the White draft of violations of state laws.

"(d) Tedrow-Finn Articles:

"As stated above, these articles were submitted by the minority members of the Ballantine Committee. These articles extend to all offenses which are (i) violations of the criminal statutes, treaties, or conventions of the United States, (ii) violations of the criminal laws of a State, Territory, or possession of the United States, where committed, or (iii) violations of the customs or usages of the naval service or of the laws of war. These offenses are to be 'defined and punished as prescribed in the U. S. Criminal Code and the power delegated to the President.....' by the articles. The Article then sets forth 11 of the most serious civil crimes or offenses.

"The Tedrow-Finn proposed Articles fail to specify a single military offense. They omit mention of violations of lawful Navy regulations. Like the McGuire and White Articles, they specifically include violations of the criminal laws of States, Territories, or possessions. The comments made above with reference to the proposed Articles of the Judge Advocate General are also applicable to the Tedrow-Finn Articles.

"The Board agrees that the present articles dealing with offenses are inadequate and are ineptly arranged. The more important deficiencies are:

"(i) There is no specific mention of any civil offenses (other than murder) which are offenses against the Articles.

"(ii) Many common military offenses, for which persons subject to the Articles are answerable, are not specified, even by a general reference to the customs of the service.

"(iii) No specific mention is made of offenses against the criminal laws of the United States, its treaties, or conventions or against the laws of war.

"(iv) It is not stated that violations of certain state laws may also violate the Articles as constituting scandalous conduct or conduct to the prejudice of good order and discipline.

"(v) Provisions which specify punishments for various offenses are scattered throughout the Articles in a confusing manner.

"(vi) Some of the punitive Articles are obsolete and might well be eliminated.

"A number of offenses are defined, and their elements set forth, in Chapter II of Naval Courts and Boards. Some of these definitions have been criticized as incomplete, if not partly erroneous, and as being of little help to courts and judge advocates. Much of this criticism is justified.

"The Board is not disposed to recommend the adoption, in toto, of any of the proposals which have been made relating to a new article or articles to take the place of the present Articles covering offenses and punishments. However, certain features of these proposals have great merit and the Board believes that these features should be incorporated in any revision of the Articles. More specifically, the Board makes the following comments:

"(a) It is considered important to list specifically the offenses against the Articles in a manner readily understandable to every person subject to naval law. The language of most of the present punitive articles should be retained, since it is, in general, satisfactory. A few of the Articles are obsolete and should not be retained, but the offenses listed in the other punitive articles are of common occurrence and are clearly set forth.

"(b) There is such to be said in favor of separately stating each of the military offenses not listed. The suggestion that all military offenses be left for statement and definition by the Secretary of the Navy or the President is objectionable, both because of the constitutional question involved and because much of the forcefulness and solemnity of the Articles, as a disciplinary and penal code, would be thereby lost.

"(c) The punitive articles should be grouped together under the general heading of 'Offenses and Punishments.' Much of the clarity and force gained by enumerating and specifying offenses would be lost by including this subject under the heading of 'Jurisdiction of Courts Martial,' as proposed by the McGuire Committee, the Judge Advocate General, and Commodore White. The average person subject to the Articles is not interested in the legal niceties of jurisdiction, but is directly concerned with offenses and the punishment therefor.

"(d) Offenses should be classified according to the punishment therefor, rather than listed under jurisdiction, with punishments set forth elsewhere. The most logical arrangement would be to list offenses in two articles, or in two parts of one article, the first enumerating all capital offenses, the second all offenses not punishable by death. These articles should contain both military and civil offenses, as well as a general clause. This linking of crimes and punishments will accomplish the following results, which are not accomplished by the other proposals: (i) The relative seriousness of offenses would be immediately apparent to all persons subject to the Articles; (ii) There could never be any question in the minds of members of courts martial as to the character of punishment authorized for a particular offense; and (iii) It would be unnecessary to refer to two distinct parts of the Articles to connect punishments with offenses.

"The practice of classifying offenses according to their punishments is supported by long usage, not only in the United States Navy and Army codes, but also in the military and naval codes of England. The present punitive articles, although scattered throughout the entire code, actually employ this practice. The Articles of War, in general, couple offenses with punishments, although the method here proposed of separating capital offenses from others is not followed. The British Army Act classified offenses according to punishments of death, penal servitude, imprisonment, cashiering and lesser punishments. The British Navy code follows the same general pattern. In civil penal codes offenses are usually classified as felonies or as misdemeanors.

"The classification of offenses according to punishments would tend to clarify the Articles and make their reading to the men more useful and impressive than it now is. Although it has been said by some that the reading of the Articles to an assembly of naval personnel fails to accomplish its purpose, nevertheless, it is felt that something is accomplished by this reading and that it should be improved rather than abolished.

"(e) These civil offenses which are most likely to occur in the naval service should be specifically stated. This would correct a serious deficiency of the present Articles, which make no mention of civil offenses, except murder. A person subject to the Articles who is charged with manslaughter will search in vain for any mention of this offense in the present Articles. There is no doubt whatsoever that civil offenses such as manslaughter, rape, larceny, and assault, are also offenses against the Articles, but the failure of the Articles to specifically mention such offenses has been much criticized.

"In the Army, so far back as the Code of 1874, important civil offenses were specifically stated in the Articles of War and made punishable by court martial. The present Articles follow the same procedure. The British Army Act makes the offenses of treason, murder, manslaughter, and rape punishable, and refers generally to 'any other offense made punishable by the law of England.' The British Naval Discipline Act, in referring to offenses punishable by ordinary law, enumerates murder, manslaughter, sodomy, indecent assault, robbery, theft and any other criminal offense made punishable by the law of England.

"In all but one of the proposed revised articles, the civil offenses which are most likely to occur in the naval service are enumerated. Article I(d) of the McGuire Articles does not mention specific civil offenses, but refers to offenses against the criminal statutes of the United States or criminal laws of the various states, territories, and possessions. The Tedrow-Finn Articles (Article I(d)), follow the White and Judge Advocate General Articles and list the more common civil offenses. It is believed that the McGuire draft is objectionable, in this respect, for the same reason as the present Articles. Little is done to remove this objection by merely referring to the criminal laws and statutes of various jurisdictions.

"(f) The more common military offenses, now covered by interpretation of Article 22(a), should be specifically set forth. This should be done for the same reasons as have been advanced in connection with civil offenses. By interpretation

of the broad provisions of Article 22(a), certain acts and omissions are presently punishable as violations of the Articles, having become recognized naval offenses by custom of the service. The customs of the Navy, applied by naval courts martial to situations arising in the administration of naval discipline which are not governed by the written law of the Navy, are comparable in origin and development to the rules of the common law. But just as certain common law crimes have for practical reasons been codified by statute in most jurisdictions, the most common naval offenses should be codified in the Articles.

"It is realized that all of the military offenses which might and do occur could not be specifically enumerated. But some of the more common offenses, such as breaking arrest, being drunk on duty, failing to obey orders, et cetera could and should be listed. There would still have to be general provisions, such as provisions prohibiting conduct to the prejudice of good order and discipline and conduct unbecoming an officer and gentleman. Even though there are general clauses, they are more specific than the present vague phraseology of Article 22(a).

"Neither the McGuire Articles nor the Tedrow-Finn Articles enumerate any military offenses. The Judge Advocate General's proposed articles (Article I(d)) list some military offenses which are presently covered by interpretation of Article 22(a). The White draft (Article I(d)) does the same.

"(g) It is suggested that Article 22 be deleted and that in its stead, in a subdivision of one of the two punitive articles, it be specifically stated that offenses against the Articles include (i) violations of the criminal laws, treaties and conventions of the United States; (ii) violations of the regulations and customs of the naval service, and (iii) violations of the laws of war. Such a provision would cover all those offenses which are presently punishable by interpretation of the general language of Article 22(a). Although the language of (ii) is still very general, it is still more specific than that presently contained in Article 22(a). It is not believed possible to dispense with such general language altogether. The Articles proposed by the Judge Advocate General, Commodore White, the McGuire Committee, and the Tedrow-Finn Articles, include the three provisions recommended above.

"The Board believes that the articles proposed by the Judge Advocate General, in omitting mention of violations of the criminal laws of the several states, is sound. Although no great

harm would result from including such a provision, it is believed that the present practice of regarding them, under certain circumstances, as scandalous conduct or as conduct to the prejudice of good order and discipline, has merit and should be continued. The Army holds that such violations may, but need not, constitute offenses under A.W. 96 (the general article) depending upon their seriousness and their effect on discipline. To make all violations of state law automatically offenses under the Articles might result in petty offenses being tried in naval courts without any real necessity therefor. Under the present practice, offenses against the state laws (not otherwise offenses against the Articles) are tried by naval courts only if the acts which constitute the offenses are considered to be scandalous conduct or to be prejudicial to good order and discipline.

"It should be noted that violations of lawful naval regulations are included in this proposal. Such violations are covered in the present Articles, but for reason of better arrangement, it is recommended that they be included in the general clause here suggested.

"Although it is suggested that offenses against the customs of the service be specifically mentioned, the term 'usages' is not included in accordance with the proposal of the McGuire Articles. It is not believed that mere violation of naval usage should be considered an offense against the Articles, for the reason that there may be naval usages which have never become customs. For a naval usage to become a custom and be recognized as applicable to the determination of cases arising in the administration of naval discipline, it must have been long continued, certain, uniform, and compelling; it must have been applied universally and consistently, and duly recognized as such; and it must not be opposed to the terms or provisions of a statute enacted by Congress or a lawful regulation or order made by proper authority pursuant thereto. Custom has the force of law, usage is merely a fact.

"(h) It is not believed that any attempt should be made to have the Articles define the offenses specified therein, either directly or by reference. A thorough revision of Naval Courts and Boards in this report will accomplish better results. The McGuire Articles delegate to the Secretary of the Navy power to define military offenses. Other offenses are to be as defined by the courts of the United States. The Tedrow-Finn Articles provide that offenses will be defined as prescribed in the U. S. Criminal Code and by the President under the power delegated to him by the Articles. Neither the White Draft nor the Judge Advocate General draft mentions definition of offenses. In this they follow the present Articles. The Articles of War do not attempt to define offenses, (except in A.W. 28 defining 'short desertion'), nor does the British Army Act or Naval Discipline Act.

"The Army method is to define offenses and to set forth the elements and necessary proof thereof in the Manual for Courts Martial. The British follow the same method in the Manual of Military Law. The current navy practice is along the same lines. Various sections of Naval Courts and Boards define offenses, their elements, and set forth sample charges and specifications. Providing the official manual is carefully prepared, there is much merit in this practice. There is no legal objection to a statutory provision which states that a certain offense is punishable without defining it. Little is gained by setting forth in the statute the sources from which definitions of offenses may be obtained. So long as the definitions of offenses, the description of their elements, and the quantum of proof necessary to sustain a conviction are accurately and clearly described in the service manual on naval law, no more should be necessary. The authors of the manual will presumably make use of the definitions of military offenses which have been developed by custom of the service, court martial orders, and court decisions. For civil offenses, they may refer to statutory definitions, interpretations by courts of the United States, common law definitions, and authoritative texts. ...."

The McGuire, White, and Navy JAC recommendations are covered by the Keeffe Report.

The Ballantine and Vanderbilt Reports make no recommendations as to changes in offenses in general.

The Vanderbilt Report recommended further study of the elimination of all mandatory minimum sentences.

House Committee on Military Affairs:

"Recommendation 13.

"That article of war 96 be amended by the omission of the clause 'conduct of a nature to bring discredit on the military service.'" (H.R. 2722 79th Cong., 2d Sess.)

## 2. Officer Offenses

The Vanderbilt Report states:

"A great deal of testimony which we have heard tended to show that officers were not prosecuted as consistently or punished as severely as enlisted men. The critics did not always understand the difficulties of the situation or appreciate the severity of the punishment inflicted upon an officer by

the imposition of a fine or the loss of promotion or reduction in rank, and the devastating effect of this punishment upon his career. Nevertheless, we are convinced that in some instances and in some areas there was foundation for the complaint and it was a general source of criticism among the troops and seriously impaired their morale....."

The Vanderbilt Report also made the following recommendations covered elsewhere:

- Punishment of officers under A.W. 104. (See C. S., A.W. 104).
- Trial of officers by special courts-martial. (See C.S., A.W. 16).
- Reduction of officers to ranks. (See C.S., A.W. 44).

The Keefe Report states:

"3. General Discussion:

"It is probably true, as alleged, that in some instances officers committed offenses and escaped any form of punishment, yet the same would likewise be true with regard to offenses by enlisted personnel. The question remains: Were officers, as alleged, treated more favorably in this regard than enlisted men? There are no available statistics which can answer this question, and guesswork, or the citing of isolated cases, is an interesting but unproductive process. If there has been such disparity of treatment, without sound reason, that situation demands considered attention leading to corrective action. The Board is not prepared to say that because a proportionally greater number of enlisted personnel were tried by naval courts than officer personnel, there was, ipso facto, disparity of treatment. Likewise, where an officer was dismissed from the service for a particular offense but an enlisted man was sentenced to a period of confinement and a dishonorable discharge, the Board is not prepared to say that this is an example of a 'double standard' of justice. All of the factors set forth above must of necessity enter into the matter. It may well be that from a disciplinary standpoint, the same form of punishment for officers and enlisted personnel for similar offenses is neither practicable nor advisable in every case. However, for serious civil offenses there is little justification for disparity of treatment, if it exists. For example, other factors being equal, the punishment for manslaughter should be the same for all persons convicted by naval courts, whether officer or enlisted. In regard to military offenses, other considerations may be present which require punishments to assume different forms, depending upon the status of the accused. This is so even as between

petty officers and non-rated personnel. The Board cannot agree with those who contend that there must be no disparity in the form of quantum of punishment, irrespective of offense or offender.

"The Board is aware of the criticism currently being directed at the Army and Navy to the effect that there is a 'caste system' in the service, and that the administration of justice is not 'even handed.' Moreover, the Board believes that even if this criticism turns out to be unwarranted, its widespread acceptance requires thorough investigation of the problem. This Board has not had the personnel nor has it been authorized to undertake such a study. It believes, however, it is urgent that the Advisory Council, advocated in the introduction of this report, conduct a study of this problem. If the research reveals that the criticisms are unwarranted, the facts on which such conclusion may be based should be given wide publicity. On the other hand, if there is substance to the criticisms, recommendations to effectuate the following policy should be made:

- "(1) No persons, regardless of rank, should escape punishment for an offense against the Articles for the Government of the Navy.
- "(2) Whenever possible, consistent with discipline and the requirements of the service, there should be no disparity in the form of punishment for the same type of offense, whether the offender be a commissioned officer, a warrant officer, or an enlisted man."

The McGuire, White, and Ballantine Reports make a general recommendation as to officer cases.

There are no recommendations as to the offense of conduct unbecoming an officer except as noted above as to mandatory punishments.

### 3. Recommended Provision - Discreditable Disorders and Neglects, etc.

Art.-----. Any disorder or neglect to the prejudice of good order and discipline, or any conduct of a nature to bring discredit upon the armed services other than any neglect or disorder or conduct mentioned in these articles shall be punished as a court-martial may direct.

Uniform Code of Military Justice

Subject: Appendix to C.S., A.W. 95, 96.

Offenses provided for in proposed A.G.N., but not specified in Articles of War.

"ART. 8. The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person subject to the Articles for the Government of the Navy--.....

'Sixth. Or intentionally or willfully suffers any vessel or aircraft of the Navy to be stranded, or run upon rocks or shoals, or improperly hazarded; or maliciously or willfully injures any vessel or aircraft of the Navy, or any part of its tackle, armament, or equipment, whereby the safety of the vessel or aircraft is hazarded or the lives of the crew or passengers exposed to danger;

'Eleventh. Or, being in command of a fleet, group of vessels or aircraft, or vessel or aircraft acting singly, neglects, when an engagement is probable, or when an armed vessel or aircraft of any enemy or rebel is in sight, to prepare his ship or ships or aircraft for action;

'Twelfth. Or does not use his utmost exertions to join in battle, when so ordered;

'Thirteenth. Or fails to encourage, in his own person, his inferior officers and men to fight courageously;

'Fourteenth. Or does not do his utmost to overtake and capture or destroy any vessel or aircraft which it is his duty to encounter;

'Fifteenth. Or does not afford all practicable relief and assistance to vessels or aircraft belonging to the United States or its allies, when engaged in battle;

'Seventeenth. Or violates any law or treaty or convention incorporated under Article 5 (e) (First), (Second), or (Fifth) of these Articles, the violation of which, by such law or treaty or conventions, punishable by death."

"ART. 9. Such punishment other than death as a court-martial may adjudge may be inflicted upon any person subject to the Articles for the Government of the Navy--.....

'Eleventh. Or is guilty of profane swearing, falsehood, or gambling;

'Twelfth. Or is guilty of cruelty toward, or oppression or maltreatment of any person subject to his orders;

P. B

'Thirteenth. Or uses provoking or reproachful words or gestures toward any person in the naval service, or strikes, threatens to strike, or assaults any person; (See C.S., A.W. 93)

'Fourteenth. Or endeavors to foment quarrels between other persons in the naval service; (See C.S., A.W. 68).

'Eighteenth. Or utters any seditious or mutinous words; (See C.S., A.W. 66).

'Nineteenth. Or is negligent or careless in obeying orders, or culpably inefficient in the performance of duty;

'Twenty-first. Or, through inattention or negligence suffers any vessel or aircraft of the naval service to be stranded, or run upon a rock or shoal, or hazarded;

'Twenty-second. Or, when attached to any vessel appointed as escort to any merchant or other vessel, fails diligently to perform his duty, or demands or exacts any compensation for his service; or maltreats the officers or crews of such merchant or other vessel;

'Twenty-third. Or takes, receives, or permits to be received, on board the vessel or aircraft to which he is attached or assigned, any goods or merchandise, for freight, sale, or traffic, except gold, silver, or jewels, for freight or safekeeping; or demands or receives any compensation for the receipt for transportation of any other article than gold, silver, or jewels without authority from the President or Secretary of the Navy;

'Twenty-sixth. Or, when on shore, plunders, abuses, or maltreats any inhabitant;

'Twenty-seventh. Or refuses, or fails to use, his utmost exertions to detect, apprehend, and bring to punishment all offenders, or to aid all persons appointed for that purpose;

'Thirtieth. Or violates or refuses obedience to any lawful general order or regulation issued by the Secretary of the Navy;

'Thirty-fifth. Or is guilty of any irreverent or unbecoming behavior during divine service;

'Thirty-sixth. Or strips off the clothes of, or pillages, or in any manner maltreats, any person taken on board a prize;

P. C.

'Fortieth. Or knowingly commits any lascivious or indecent act, or procures another to do so;

'Forty-first. Or embezzles, or willfully or maliciously injures or destroys, private property not his own;

'Forty-second. Or is guilty of extortion or blackmail;

'Forty-third. 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;

'Forty-fourth. Or maliciously publishes any writing, picture, sign, or other representation which tends to defame any person in the armed services of the United States, or slanders or threatens any person in the armed services of the United States;

'Forty-eighth. Or divulges information of a secret or confidential nature to any person not entitled to receive the same;

'Forty-ninth. Or negligently endangers the life of another;

'Fifty-first. Or unlawfully detains another person;

'Fifty-second. Or uses a vehicle not his own without authority.

'Fifty-third. Or, while under the influence of alcoholic liquors or narcotic drugs, operates any vehicle;

'Fifty-fourth. Or operates any vehicle in a reckless or wanton manner;

'Fifty-fifth. Or is incapacitated for the proper performance of duty by the use of, or previous 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;

'Fifty-sixth. Or feigns sickness or any physical disablement or mental lapse or derangement, for the purpose of escaping work or duty;

'Fifty-seventh. Or, without authority, deliberately and willfully misses his ship or mobile unit;

P. D.

'Fifty-eighth. Or exhibits a deliberate indifference to his just financial obligations;

'Sixtieth. Or fails to comply with or violates any provision of articles 1, 3, 12, and 13 of these Articles;''.

"ART. 1. The commanders of all fleets, squadrons, naval stations, vessels, and aircraft belonging to the Navy, are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them."

"ART. 3. Officers and all others in authority in the naval service shall take all necessary and proper measures, under the laws, regulations, and customs of the naval service to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge."

"ART. 12. No person in the naval service shall procure stores or other articles or supplies for, and dispose thereof to, the officers and enlisted men on vessels of the Navy, or at navy yards or stations, for his own account or benefit."

"ART. 13. Distilled spirits shall be admitted on board naval vessels or aircraft only upon the order and under the control of the commanding officers of such vessels or aircraft, and to be used only for nonbeverage purposes."

FEL-1



Uniform Code of Military Justice

Subject: General Article

See C.S. A.W. 95.



Uniform Code of Military Justice

Subject: Courts of Inquiry -- A.W. 97-103.

I. Army Provisions

1. Articles of War.

"ART. 97. When and by Whom Ordered.-- A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer; but a court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into."

"ART. 98. Composition.-- A court of inquiry shall consist of three or more officers. For each court of inquiry the authority appointing the court shall appoint a recorder."

"ART. 99. Challenges.-- Members of a court of inquiry may be challenged by the party whose conduct is to be inquired into, but only for cause stated to the court. The court shall determine the relevance and validity of any challenge, and shall not receive a challenge to more than one member at a time. The party whose conduct is being inquired into shall have the right to be presented before the court by counsel of his own selection, if such counsel be reasonably available."

"ART. 100. Oath of Members and Recorders.-- The recorder of a court of inquiry shall administer to the members the following oath: 'You, A. B., do swear (or affirm) that you will well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice, or hope of reward. So help you God.' After which the president of the court shall administer to the recorder the following oath: 'You, A.B., do swear (or affirm) that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God.'

"In case of affirmation the closing sentence of adjuration will be omitted."

"ART. 101. Powers; Procedure.-- A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts-martial and the trial judge advocate thereof. Such witnesses shall take the same oath or affirmation that is taken by witnesses before courts-martial. A reporter or an interpreter for a court of inquiry shall, before entering upon his duties, take the oath or affirmation required of a reporter or an interpreter for a

court-martial. The party whose conduct is being inquired into or his counsel, if any, shall be permitted to examine and cross-examine witnesses so as fully to investigate the circumstances in question."

"ART. 102. Opinion on Merits of Case.-- A court of inquiry shall not give an opinion on the merits of the case inquired into unless specially ordered to do so."

"ART. 103. Record of Proceedings.--How Authenticated.-- Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and the recorder thereof, and be forwarded to the convening authority. In case the record can not be authenticated by the recorder, by reason of his death, disability, or absence, it shall be signed by the president and one other member of the court."

2. Manual for Courts-Martial.

No comment on Courts of Inquiry as such.

3. Army Regulations (Synopsis).

AR 600-300 pertain to Courts of Inquiry.

While any commanding officer has statutory power to order a court of inquiry, it is customary to forward the request to the officer having power to convene a court-martial competent to try the offense, if there be a substantial possibility that charges may follow. 2 b.

The convening authority has absolute discretion except in classification proceedings (See A.R. 605-300 as to mandatory courts of inquiry in classification proceedings) to refuse to convene a court. However, the applicant may appeal to higher authority. 2c.

All members should be superior in rank to the applicant. 3c.

The recorder is not a prosecutor or adviser, but is to assist the court, if it so desires, in all matters leading to correct conclusions of law or fact. 3d.

Only persons actually in the service may request a court of inquiry. 5a.

Statute of Limitations does not apply to courts of inquiry. 5b.

The purposes of a court of inquiry are:

- (1) To discover whether there be a trial by court-martial.
- (2) To inform or advise superior authority in cases which appear not to call for trial by court-martial, but rather administrative action. 5d.

Court of inquiry should follow the principles of military law, applying analogies to court-martial procedure where applicable. 10a.

There may be a dissenting report. 15.

Return for revision is not limited. 17.

Efficiency reports should not reflect acts of which an officer has been cleared by an investigation.

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

No change.

## II. Navy Provisions

1. Articles for the Government of the Navy.

"ART. 55. By whom convened.--

"Courts of inquiry may be convened by the President, the Secretary of the Navy, the commander of a fleet or squadron, and by any officer of the naval service authorized by law to convene general courts martial."

"ART. 56. Constitution.--

"A court of inquiry shall consist of not more than three commissioned officers as members, and of a judge advocate, or person officiating as such."

"ART. 57. Powers.--

"Courts of inquiry shall have power to summon witnesses, administer oaths, and punish contempts, in the same manner as courts martial; but they shall only state facts, and shall not give their opinion, unless expressly required so to do in the order for convening."

"ART. 58. Oath of members and judge advocate.--

"The judge advocate, or person officiating as such shall administer to the members the following oath or affirmation: 'You do swear (or affirm) well and truly to examine and inquire, according to the evidence, into the matter now before you,

without partiality.' After which the president shall administer to the judge advocate or person officiating as such, the following oath or affirmation: 'You so swear (or affirm) truly to record the proceedings of this court and the evidence to be given in the case in hearing.'"

"ART. 59. Rights of party or attorney.--

"The party whose conduct shall be the subject of inquiry, or his attorney, shall have the right to cross-examine all the witnesses."

"ART. 60. Proceedings; authentication; use in evidence.--

"The proceedings of courts of inquiry shall be authenticated by the signature of the president of the court and of the judge advocate, and shall, in all cases not capital, nor extending to the dismissal of a commissioned or warrant officer, be evidence before a court martial, provided oral testimony cannot be obtained."

## 2. Naval Courts and Boards.

### "CHAPTER X

#### "COURTS OF INQUIRY AND INVESTIGATIONS

##### "INSTRUCTIONS AND PROCEDURE

"SEC. 720. Purpose.--

"Courts of inquiry and investigations, as the names signify, are primarily fact-finding bodies, and, unless specifically directed by the convening authority in the precept to express opinions or to make recommendations, will confine themselves to findings of fact. The proceedings of these bodies are in no sense a trial of an issue or of an accused person; they perform no real judicial function; they are convened solely for the purpose of informing the convening authority in a preliminary way as to the facts involved in the inquiry, and when directed, to aid him with opinions and recommendations; their conclusions are merely advisory. Convening authorities should remember that any action taken in a matter subsequent to its investigation is taken upon the initiative of the convening authority in his administrative capacity. The function of these bodies is merely to aid such officer in the performance of his administrative duties and not to relieve him of responsibility for his administrative acts.

"A court of inquiry has power to compel the attendance of civilian witnesses, and should be convened or requested where testimony of civilians will likely be desired; the

proceedings of a court of inquiry may under certain conditions be evidence before a court martial; otherwise there is no vital distinction in the power or effectiveness of a court of inquiry and an investigation, and the question which to convene is entirely within the discretion of the convening authority. Whether or not an investigation shall be by a board of officers or by one officer is entirely within his discretion; but in important cases where the facts are various and complicated, where there appears to be reason for suspecting criminality, or where crime has been committed, with uncertainty as to the perpetrator, or where serious blame has been incurred without certainty on whom it ought chiefly to fall, a court of inquiry or a board of investigation affords the best means of collecting, sifting, and methodizing information for the purpose of enabling the convening authority to decide upon the necessity and expediency of further judicial proceedings."

"Sec. 721. By whom convened.--

"A court of inquiry may be convened in accordance with the articles for the government of the Navy. An investigation may be ordered by any officer empowered to convene a court of inquiry, by the commander of a division or large force afloat, and by the senior officer present afloat or ashore."

"Sec. 722. When to be convened.--

"If there is no doubt as to the facts of any particular incident or occurrence, and no reason why sworn testimony to facts fresh in the minds of witnesses should be preserved, a complete administrative report by the commander concerned will be fully as satisfactory as the record of a court of inquiry or of an investigation could be. But ordinarily, owing to legal sequels, the following should be covered by a court of inquiry or board of investigation."

The following sections deal with when a court of inquiry is to be convened:

"Sec. 723. Loss of life from accident or under peculiar or doubtful circumstances."

"Sec. 724. Serious casualties or deficiencies in ships."

"Sec. 724 $\frac{1}{2}$ . Accidental explosions in which.....explosives are destroyed."

"Sec. 725. Loss or stranding of a ship of the Navy."

"Sec. 726. Collision with a merchant ship."

"Sec. 727. Precept.--

"The precept of a court of inquiry or investigation shall, in addition to naming the membership thereof and setting the time and place of meeting, state clearly and consisely the matter that is to be investigated and shall give explicit instructions what the report of the court or investigation shall include and any other matters of procedure deemed necessary. Neither the record of an investigation previously held in reference to the same subject matter nor official opinions of any kind shall be attached to or made a part of the precept. Such records or papers may, however, as a separate matter, be sent to the judge advocate or recorder for the purpose of assisting him to bring out all the facts in regard to the matter under investigation. The precept shall also specifically name as defendants and interested parties all persons who appear to be such from the outset. The convening authority should cause to be notified the complainant and persons who appear to be defendants and interested parties from the outset of their right to be present during the investigation. A confirmation copy, signed by the convening authority, is required when the court or investigation is convened by dispatch.

"In addition to the above, the precept, or letters to an investigating officer, shall refer to the statutory authority therefor.

"Unless the power is expressly given by the convening authority in the precept, investigations will take no testimony under oath. When such power is given by the convening authority, all testimony shall be taken under oath."

"Sec. 728. Membership.--

"(a) A court of inquiry shall consist of not more than three commissioned officers as members and of a judge advocate.

"(b) A board of investigation shall ordinarily consist of three officers as members.

"(c) The composition of a court of inquiry or board of investigation, both in regard to rank of members and the corps to which they belong, shall be regulated by the circumstances to be investigated. The number of officers to constitute such bodies is within the discretion and judgment of the convening authority, who must consider the importance of the matter to be investigated and the availability of officers for the purpose. When important material under the cognizance of one of the material bureaus of the Navy Department, is involved, an officer especially trained or experienced in such material shall, whenever practicable, be appointed a member.

In case the conduct or character of an officer may be implicated in the investigation, no member of the court of investigation shall, if practicable, be his junior in rank; and should such officer not be of the line, it is proper, if the exigencies of the service permit, that one or more officers of the corps to which he belongs be detailed for duty on the court of investigation. If it can possibly be avoided, no officer shall be named as a member who has personal knowledge of the subject matter of the investigation. An officer who is ordered to duty as a member and who knows or has due reason to believe that he will be designated as a defendant, should immediately so advise the convening authority, and upon receipt of such information such officer should be relieved from duty on said body.

"Whenever, in the judgment of the convening authority, it may be necessary or desirable, counsel to the judge advocate may be appointed.

"A separate recorder need not be named on a board of investigation if there is no likelihood of there being any defendants. In such case the junior member acts as recorder.

"(d) An investigation is composed of one officer."

"Sec. 729. Clerical assistance, interpreter, and orderly.--

"The provisions for courts martial with respect to clerical assistance and services of interpreters govern a court of inquiry or investigation. At the request of the judge advocate or recorder, the commanding officer of the immediate command within which the body is to sit shall direct an orderly to attend upon its meetings and execute its orders."

"Sec. 730. Rule of assembling.--

"Courts of inquiry and investigations shall assemble at the place and, as nearly as practicable, at the time named in the order convening them, but may adjourn, when desirable, to such place as may be convenient to the inquiry. The members thereof shall take their seats in the same order of rank or seniority as on courts martial; that is, the senior member at the head or center of the table and the other members in order of rank at his right and left alternately."

"Sec. 731. Duties of president or senior member.--

"Such officer shall administer the oath to the judge advocate or recorder, and the witnesses, preserve order, decide upon matters relating to the routine of business, such as recess, and may adjourn the court or investigation

from day to day, at and to such hours as in their judgment will be most convenient and proper for the transaction of the business before them; but should an objection be made by any other member, a vote shall be taken with regard to it, and the decision of the majority shall govern."

"Sec. 732. Duties of the judge advocate or recorder.--

"(a) To summon all the witnesses required for the investigation and to lay before the court or investigation a list of them.

"(b) To administer the oath or affirmation to the members.

"(c) To record the proceedings and to make up the record.

"(d) To conduct the examination of witnesses.

"(e) To assist in systematizing the information received, to minute in the proceedings the opinion and recommendation, if called for, and to render such assistance as will enable the court or investigation to lay all the circumstances of the case before the convening authority in a clear and explicit manner.

"(f) In conjunction with the president or senior member, to authenticate the proceedings by his signature.

"(g) In general, he is the prosecutor and is responsible for bringing out all the facts.

"In case the junior member of a board of investigation is acting as recorder (a recorder not having been designated in the convening order), he will not act in any sense as prosecutor, but the board will act in an unbiased manner to obtain all pertinent information available."

"Sec. 733. General rules and procedure.--

"(a) Courts of inquiry and investigations are usually cleared until the order constituting them and the instructions contained therein are read and the mode of procedure has been decided upon. The judge advocate or recorder does not withdraw when the court or investigation is cleared. Whether the investigation shall be held with closed or open doors must depend on the nature of the matter to be investigated, and, if not specified by the convening authority, must be decided by the court or investigation. The fact that the investigation is held with closed doors can not work to exclude parties to the inquiry and their counsel. The body may be cleared at any

time for deliberation, whereupon the parties and their counsel will withdraw. Clearing the court may be dispensed with under the general principles of section 373.

"Boards of investigation, although they shall collect material information from apparent or known facts, or from written evidence which they may possess, and shall record the declarations of persons examined before them, will not take testimony under oath except in important cases in which the precept expressly states that such board is authorized to administer oaths in accordance with the provisions of 5 U.S. Code 93, in which case all testimony shall be taken under oath.

"When a board of investigation is not required by its precept to take testimony under oath, the record of such board can not be introduced as evidence in subsequent proceedings, except as provided in section 222. Therefore a wider latitude is permissible and the rules of evidence need not be strictly observed; the function of such board being solely to obtain information for the convening and higher authority. The same rule applies to an investigation not under oath made by an investigating officer or clerk.

"(b) After the mode of procedure has been decided upon, the complainant and defendants, if any, must be called before the court and the precept read to them by the judge advocate or recorder.

"(c) Need not meet daily.-- Courts of inquiry and investigations need not meet from day to day, but have power to adjourn for such period as may be necessary without requesting permission of the convening authority. When the suspension of business is from one part of a day to another part of the same day it should be recorded as a recess; when from one day to another, as an adjournment.

"(d) Challenges.-- Parties to an inquiry have the right to challenge any member, as set forth in sections 561 and 562.

"(e) Members must determine according to the evidence.-- The oath taken by the members of a court of inquiry requires them to examine and inquire 'according to the evidence' the matter before them.

"(f) Witnesses shall be examined apart from each other.-- It is improper for witnesses, unless they are otherwise connected with the inquiry, to hear the testimony of other witnesses. The court shall inform each witness, other than a member of the court, the judge advocate, or a party to the inquiry, immediately after the witness has been sworn,

of the subject matter of the inquiry. All witnesses, except the judge advocate, a member, or a party to the inquiry, shall be warned, after testifying, in accordance with the provisions of section 297. While it is not legally necessary that defendants should be warned that what they say may be used against them (when a witness under oath), it is desirable that in practice this be done and that they be further informed of their rights, particularly when they are without counsel.

"(g) Summoning and examination of witnesses.-- The summoning and examination of witnesses is conducted in the same manner as before a court martial, except that a board of investigation and an investigation can not compel the attendance of civilian witnesses. The attendance of such witnesses, therefore, is optional, and the subpoena for same should not include mention of a penalty for failure. Such witnesses can be subpoenaed by the recorder at Government expense only with the approval of the convening authority, and the approval of the Secretary of the Navy is necessary to subpoena such witnesses from a distance which would require such authority if the attendance of the witnesses were desired before a general court martial.

"The judge advocate or recorder first calls witnesses; the complainant, if there be one, is then entitled, when the judge advocate or recorder rests his case, to introduce evidence; defendants may then introduce evidence, and after they rest their cases, interested parties may call witnesses. If, at the end of the testimony of the above witnesses, the court or investigation desires further information, it may call witnesses. All witnesses shall be examined in accordance with court martial procedure; that is, the order of their examination shall be direct, cross, redirect, and recross.

"(h) No business other than an adjournment shall be transacted unless a majority of the members be present, except when the convening authority so orders.

"(i) No member shall fail in his attendance at the appointed times unless prevented by illness or some insuperable difficulty, ordered away by competent authority, or excused by the convening authority, except that a short temporary absence may be allowed by the president or senior member of the court or investigation; nor shall a member leave the vicinity of the assembly place unless authorized to do so by the convening authority or his superior.

"In case of the absence of a member, the senior officer shall inform the convening authority of the fact, and also of the reasons for the absence, if known to him, in order that the vacancy may be filled, if deemed necessary.

"A member absent during the investigation of any matter or case shall not vote upon a decision with regard to it unless, if necessary to arrive at a conclusion, a reinvestigation takes place in the presence of that member and of the parties."

"Sec. 734. Parties.--

"(a) Complainant.-- When an inquiry is ordered into facts in connection with accusation or complaint made by any person to the convening authority, such person is known as the complainant and may be allowed to remain in court during the inquiry and make suggestions.

"(b) Defendant.-- A person whose conduct is the subject of investigation is a defendant. Should it appear at any time that any person in the naval service or employ not named as a defendant in the precept becomes involved in such a way that an accusation against him may be implied, it is the duty of the court to inform such person through official channels that he is a defendant.

"In informing a person that he is a defendant, he shall be notified of the gist of the evidence that tends to implicate him and instructed that he will be accorded the rights of an accused before a court martial, namely, the right to be present, to have counsel, to challenge members, to introduce and cross-examine witnesses, to introduce new matter pertinent to the inquiry, to testify or declare in his own behalf at his own request, and to make a statement and argument. He has the right of any witness to refuse to answer incriminating or degrading questions. Conversely, should it become apparent at any time that a person who has been designated a defendant is involved in an insignificant degree, the court should inform him that he is not longer a defendant.

"No person outside of the naval service or employ may be named a defendant.

"(c) Interested party.-- Any person, not a complainant or defendant, who has an interest in the subject matter of the inquiry may, within the discretion of the convening authority, be designated, in the precept as an interested party. (See sec. 726.) Should it at any time during the course of the inquiry appear that any person not named in the precept has such interest, he may, within the discretion of the court, be designated an interested party. In either case the person shall be notified that he will be allowed to be present during the inquiry, examine witnesses, and introduce new matter pertinent to the inquiry in the same manner as a defendant. The granting of these privileges to such a person may, but need not be, at his own request. A person granted

the privileges of an interested party may be called as a witness, but, of course, can not be required to incriminate himself. The foregoing provisions do not apply to collision cases, which are governed by section 726.

"It should be borne in mind that the status of a party to the inquiry is at all times subject to change, depending on the evidence adduced. Thus, a person not named in the precept might be designated an interested party by the court during the course of the inquiry, at some later stage of the proceedings become implicated in the matter under investigation in such a way as to make him a defendant thereto, and subsequently cease to be a defendant because involved in an insignificant degree.

"If the rights of a defendant be not accorded when they should be, the court of inquiry or investigation, so far as concerns the person denied his rights, will be held of no evidential effect. This is one of the most important rules to be observed.

"(d) Right to counsel.-- The complainant, defendants, and interested parties before a court of inquiry or investigation have the right to the aid of counsel. Should a defendant waive his right to counsel, the president or senior member shall warn him that sworn testimony is admissible as evidence before courts-martial, as provided in the 60th A. G. N. or the general rules of evidence, and again advise him to provide himself with counsel, informing him that counsel will be assigned him should he so desire. A statement that this section has been complied with shall be entered upon the record of proceedings in any case where an enlisted man so involved waives this right."

"Sec. 735. Deliberation.--

"(a) After all the evidence is in and statements and arguments, if any, have been received, the court of inquiry or investigation should be cleared, the proceedings read over, and the instructions contained in the convening order carefully examined and scrupulously followed.

"After mature deliberation on the testimony recorded during the inquiry, the body shall proceed to report the facts, and, if so directed, an opinion or conclusion drawn from the facts and a recommendation as to what further action, if any, should be had. (A fact is an action; a thing done, a circumstance.) Unless an opinion is called for, care should be taken to state only facts. The body must weigh the evidence and include in its finding of facts those things which it believes the evidence established to have been done, and nothing further. If the body recommends

that further proceedings be had in the matter, it should state in its recommendation the name of the person or persons against whom, and the specific matter upon which, the proceedings should be conducted, together with the nature of the proceedings.

"(b) The report of the court or investigation shall include a full statement of injuries received by personnel and damages to material and an opinion regarding line of duty and misconduct in accordance with section 723.

"(c) If a member does not concur with the findings, opinion, or recommendations of the court or investigation, he shall append his reasons for dissent and subscribe his name thereto. The report shall be based on the opinion of the majority.

"(d) It is held to be a breach of discipline on the part of any member to disclose or publish the opinion, findings, or recommendation of the court or investigation, or of the individual members thereof, without the sanction of the convening authority.

"(e) Ordinarily an opinion should not be requested of an investigation in view of the fact that but one officer constitutes such investigation.

"(f) The proceedings of a court of inquiry or investigation must be authenticated by the signature of the president and the judge advocate, but all the members should sign the record. In the case of a minority report, the respective reports must be signed by the concurring members of the court and the record must be authenticated by the signatures of the president and judge advocate. The record of proceedings is then to be submitted to the convening authority for his consideration, after which the court may adjourn temporarily to await his further instructions."

"Sec. 736. Reviewing authority.--

"(a) Court of inquiry and investigation records are reviewed by the convening authority and by those officers, if any, through whom the record is forwarded (the record is forwarded through regular channels), who shall take such further action upon the matters disclosed by the inquiry as they may deem appropriate, and shall submit the proceedings to the Judge Advocate General. If any disciplinary is taken, or will be taken by the convening or reviewing authority, a statement thereof shall be made in his action.

"(b) The reviewing authority may record his disapproval of the proceedings in whole or in part or may return the record to the convening authority with recommendation to the latter to change his action or to have the court revise the record. Such recommendation, however, is purely advisory. The general principles of section 473 apply.

"(c) In case of failure to accord the rights of a defendant to a person who should properly have been made such, the convening authority should return the record to the court or investigation for revision, and direct that in such revision these rights be accorded. If for any reason this cannot be accomplished the record of proceedings shall be referred to such person for a statement before any action on the proceedings is taken by the convening authority or other reviewing authority which reflects adversely upon such person's official record. Such statement shall be attached to and made a part of the record of proceedings.

"(d) The proceedings of a court of inquiry or investigation may be revised as often as the convening authority may deem necessary. New evidence may be received and recorded on every such revision, and any of the previous witnesses may be recalled and reexamined with a view to eliciting further information, provided that all parties to the inquiry are afforded an opportunity to be present."

### 3. Other

"Whenever a reviewing authority, including Chief of Naval Personnel or Commandant of the Marine Corps, recommends in an endorsement on a court of inquiry, board of investigation or investigation record, that said record be held to contain matter of interest which within the purview of the reference, relates to the record of any particular officer, the normal procedure upon approval thereof by the Secretary of the Navy, is for the Judge Advocate General to inform all concerned by an endorsement in form following the enclosure. A copy is filed in the record of the officer concerned." (Letter Col. J.E. Curry U.S.M.C. of Office of Navy JAG, dated 16 Aug. 1948).

### 4. Proposed Navy Bill

"ART. 42.

"(a) Courts of inquiry may be convened by an 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 courts of inquiry, and by such other officers as the Secretary of the Navy 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 naval service, 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 naval service, who has an interest in the subject of inquiry, shall have the right to be present and to be represented by counsel of his own choice."

"ART. 43.

"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."

"ART. 44.

"The proceedings of courts of inquiry shall be authenticated by the signature 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. 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 be evidence before a court martial of a defendant before said court of inquiry: Provided, That where such testimony is used in evidence against the accused person, other than under the general rules of evidence, the punishment imposed shall not extend to death."

Witnesses before courts of inquiry are covered in the same provisions as witnesses before courts-martial.

### III. Differences

#### 1. Nature

The Navy court of inquiry is a fact-finding body which performs functions similar to those of an Army pre-trial investigation except that it is much more formal and evidence before the court of inquiry may be used in a subsequent court-martial of a person treated as a defendant before the court of inquiry. A Navy court of inquiry makes investigations such as inquests, courts of collisions, etc. The Army court of inquiry appointed by the President is somewhat similar, except that the record may not be introduced in a subsequent

court-martial without the consent of the accused. Army courts of inquiry, except those appointed by the President, may only be convened at the request of the person whose conduct is being inquired into.

The Army court of inquiry is most commonly used in classification proceedings. See AR 605-200.

Thus, the Navy court of inquiry seems to be a regular and usual procedure for the benefit of the naval service, while the Army court of inquiry is an extraordinary and special proceeding for the benefit of an individual.

In both services, courts of inquiry are merely fact-finding bodies and do not render opinions or recommendations unless specially ordered to do so.

The Navy also has boards of investigation which differ from courts of inquiry in that they are less formal, the record thereof, except under special circumstances, is not admissible in a subsequent court-martial, and they may consist of less than three officers. The Army does not have such boards of investigation in its military justice procedure.

An act of an Army officer, of which he has been cleared by a court of inquiry, may not be considered in classification proceedings, while the report of a Navy board of inquiry may be considered by a board of examination.

## 2. Convening Authority

Only persons authorized to convene Navy general courts-martial may convene Navy courts of inquiry, while under the Articles of War, the President or any commanding officer may convene courts of inquiry. However, an Army commanding officer may only convene a court of inquiry at the request of the person whose conduct is to be inquired into, and if the commanding officer refuses, the petitioner may appeal to the next higher authority.

## 3. Composition

No difference as to number of members.

The Navy court of inquiry has a counsel, while the Army court of inquiry has a recorder, who performs functions similar, but not as extensive, as the Navy counsel.

## 4. Parties

In an Army court of inquiry, the only "party" is a person in actual service whose conduct is being inquired

into, while in a Navy court of inquiry, any person subject to the AGN, or in the employ of the naval service, whose conduct is being inquired into or who has an interest in the subject of inquiry, is a "party."

When a Navy court-martial is ordered as a result of a complaint, the complainant may be allowed to be present and make suggestions.

#### 5. Procedure

As to oaths, see C.S., A. W. 19.

The power to summon and examine witnesses is the same as for courts-martials. See C.S., A. W. 22, 23.

Procedure as to challenges is the same, as both allow only challenges for cause.

The provisions to the authentication of records are the same, except that the A. W. make no provision for authentication when the president is disabled.

#### IV. Recommendations

##### McGuire Articles:

##### "Article 7. Courts of inquiry.

"(a) Convening authority. Courts of inquiry may be convened by any person authorized to convene a general court-martial.

"(b) Constitution. (1) A court of inquiry shall consist of three (3) or more commissioned officers of the naval service or of organizations serving as a part of the Navy.

"(2) For every court of inquiry, the convening authority shall appoint a recorder.

"(c) Powers. Courts of inquiry shall have power to summon witnesses, administer oaths, and punish contempts, in the same manner as general courts-martial. They shall make findings of facts, and, when required so to do, express opinions and make recommendations."

"Article 8. Investigations. Boards of investigation and one-officer investigations may be convened and appointed by such officers, and under such rules and regulations, as the Secretary of the Navy may determine."

## White Articles:

"Article 15. Courts of Inquiry, Boards of Investigation, Investigations.

"(a) Convening authority and composition. 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 of the naval service or of organizations serving with the Navy. For every court of inquiry, the convening authority shall appoint a judge advocate who shall have powers similar to the judge advocate of general courts-martial.

"(b) Boards of investigation and investigations conducted by one officer may be convened by such officers, and under such rules and regulations, as the Secretary of the Navy may prescribe.

"(c) Powers. Courts of inquiry, boards of investigation and investigations conducted by one officer shall have power to summon witnesses and administer oaths. They shall make findings of facts, and when required so to do, express opinions and make recommendations."

The Keefe, Ballantine, and Vanderbilt Reports make no recommendations as to courts of inquiry.

FEL-1



Uniform Code of Military Justice

Subject: Composition

See C.S., A. W. 97 -- Courts of Inquiry



Uniform Code of Military Justice

Subject: Challenges.

See C.S., A. W. 97 -- Courts of Inquiry.



Uniform Code of Military Justice

Subject: Oath of Members and Recorders.

See C.S., A. W. 97 -- Courts of Inquiry.