

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON

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January 27, 1949

MEMORANDUM FOR: THE COMMITTEE ON A UNIFORM CODE OF MILITARY JUSTICE



Professor Edmund M. Morgan, Jr.
Chairman

Honorable Gordon Gray
Department of the Army Member

Honorable W. John Kenney
Department of the Navy Member

Honorable Eugene M. Zuckert
Department of the Air Force Member

SUBJECT: Drafts of a letter of transmittal to the Secretary of
Defense and a summary of the Uniform Code of Military
Justice.

Attached are drafts of a short letter of transmittal
and a summary of some of the provisions in the Uniform Code of
Military Justice.

The summary follows an outline prepared by Professor
Morgan.

Please let me know whether or not this material is sat-
isfactory. Inasmuch as I believe the assembling of the Articles
of the Code is nearly completed and will probably be ready for
submission to the Congress the latter part of next week, I would
appreciate it if you would supply me with comments at your earli-
est convenience.

FELIX E. LARKIN
Executive Secretary
Committee on a Uniform Code of
Military Justice

Attachments (2)
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Larkin:ls
1/26/49

Dear Mr. Secretary:

In accordance with the instructions contained in your precept dated August 18, 1948, I submit herewith a draft of a Uniform Code of Military Justice.

The Code is in the form of a bill consisting of _____ Articles. Each Article is accompanied by notes and commentary which indicate the source from which it was derived.

You will note that the proposed Uniform Code applies equally to the Departments of the Army, Navy and Air Force. This desirable result has been possible only by the generous cooperation of the three Services and the members of the Committee. The Department of the

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Treasury and the Coast Guard have also made a valuable contribution and, with their consent, the Code, by its provisions, applies to the Coast Guard in time of peace as well as war.

Attached hereto is a summary of some of the more important provisions of the Code.

Respectfully,

FOR: THE COMMITTEE ON A UNIFORM CODE
OF MILITARY JUSTICE

EDMUND M. MORGAN, JR.
Chairman

GORDON GRAY
Department of the Army Member

W. JOHN KENNEY
Department of the Navy Member

EUGENE M. ZUCKERT
Department of the Air Force Member

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SUMMARY

Uniform Code of Military Justice

The proposed Code, which is attached, covers both the substantive and the procedural law governing military justice and its administration in all the armed forces of the United States. It provides the sole authority for:

- (1) The infliction of limited disciplinary penalties for minor offenses without judicial action;
- (2) The establishment of pre-trial and trial procedure;
- (3) The creation and constitution of three classes of courts-martial corresponding to those now in existence;
- (4) The qualifications of members of each of the courts, its officers and counsel;
- (5) The review of findings and sentence and the creation and constitution of the reviewing tribunals; and
- (6) The listing and definition of offenses, redrafted and rephrased in modern legislative language.

The Code is uniformly applicable in all its parts to the Army, the Navy, the Air Force, and the Coast Guard in time of war and peace.

The drafting of the Code was accomplished by the following procedures adopted by the Committee:

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Initially, the differences which existed between the Articles of War and the Articles for the Government of the Navy were isolated. To accomplish this, a Comparative Study of the Articles of War and the Articles for the Government of the Navy was prepared. A brief was written on each of the 121 Articles of War containing:

- (1) The text of the Article of War in question;
- (2) The text of any amendment in Public Law 759 (80th Congress);
- (3) Excerpts from the Army Court-Martial Manual construing the Article;
- (4) The text of the corresponding or similar Article for the Government of the Navy;
- (5) The text of the proposed Articles for the Government of the Navy (S. ____ and H.R. ____, 80th Congress);
- (6) Excerpts from Naval Courts and Boards;
- (7) A discussion of the differences, if any, between the Army and Navy procedures; and
- (8) Excerpts of comments on the subject matter of the Article of War under consideration from the various studies listed in Appendix "A".

This background material enabled the Committee to consider the differences in the Army and Navy systems, to consider the recent amendments to the Army system, and to study, at the same time, various comments, suggestions and recommendations which have been made in the past in connection with military justice.

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A Working Group of military personnel from the Army, Navy and Air Force was appointed, which processed all the material before it was submitted to the Committee. The Working Group discussed the differences in the systems and attempted to reach agreement on a uniform provision. Its views were reported to the Committee, which either adopted, modified or rejected them. Both the members of the Committee and the members of the Working Group consulted with their own Departments on any questions they deemed appropriate.

To the extent possible, tentative drafts of proposed Articles were submitted to the Committee. After consideration and upon decision by the Committee, the Article was drafted in accordance with its instructions and later resubmitted to the Committee for final approval. In addition, the Committee adopted an outline of the new Articles, which was designed to segregate the different provisions into logical subdivisions. Under this plan, all the offenses were placed together and the different parts of the Code were arranged topically.

The precept of the Secretary of Defense instructed the Committee to draft a Code uniform in substance and in interpretation and application, which would protect the rights of those subject to it, with a view to increasing public confidence in military justice and without impairing the performance of military functions. The Committee has drafted the Code in accordance with these instructions and attention is called to the provisions of the Code which are designed to provide for uniformity in the administration of military

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justice, to those designed to assure the accused a fair trial, to those designed to prevent undue control or interference with the administration of military justice, and to those designed to preserve appropriate military functions.

Among the provisions designed to insure uniformity are the following:

- (1) The offenses made punishable by the Code are identical for all armed forces;
- (2) The same system of courts with the same limits of jurisdiction of each court is set up in all the armed forces;
- (3) The procedure for general courts-martial is identical as to institution of charges, pre-trial investigation, action by the convening authority, review by the Board of Review, and review by the Judicial Council in all the armed forces;
- (4) The rules of procedure at the trial, including modes of proof, are equally applicable to all the armed forces;
- (5) The Judge Advocates General of the three Departments are required to make uniform rules of procedure for the Board of Review in each Department;
- (6) The required qualifications for members of the court, law officer and counsel are identical for all the armed forces;
- (7) The single Judicial Council, which finally decides all questions of law, is the court of last resort for each of the armed forces; and

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also acts with the Judge Advocates General of the three Departments as an advisory body with a view to securing uniformity in policy and in sentences and in discovering and remedying defects in the system and its administration.

Among the provisions designed to insure a fair trial are the following:

General Courts-Martial:

- (1) A pre-trial investigation is provided, at which the accused is entitled to be present with counsel to cross-examine available witnesses against him and to present evidence in his own behalf. It has some features of preliminary hearing and some of pre-trial discovery as used in the civil courts.
- (2) A prohibition against referring any charge for trial which does not state an offense or is not shown to be supported by sufficient evidence.
- (3) A mandatory provision for competent, legally trained counsel at the trial for both the prosecution and the defense.
- (4) A prohibition against requesting any statement from the accused without warning, and against compelling self-incrimination, and against reception in evidence of improperly obtained statements.
- (5) Provision for equal process to accused and prosecution for obtaining witnesses and depositions and a provision allowing only the accused to use depositions in a capital case.

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- (6) A provision giving an accused enlisted man the privilege of having enlisted men as members of the court trying his case.
- (7) A provision whereby voting on challenges, findings and sentence is by secret ballot of the members of the court.
- (8) A provision requiring the law officer to instruct the court on the record concerning the elements of the offense, presumption of innocence and the burden of proof.
- (9) A provision for an automatic review of the trial record for errors of law and of fact by a Board of Review with the right of the accused to be represented by legally competent counsel.
- (10) A provision for the review of the record for errors of law by the Judicial Council. This review is automatic in the case where the sentence is death or ~~dismissal~~ ^{affects a general officer} and is upon petition showing probable error of law where the sentence involves more than one year's confinement, with the right to be represented by competent counsel.
- (11) A prohibition against receiving pleas of guilty in capital cases.

Special Courts-Martial:

In addition to certain of the above provisions which also apply to special courts-martial, there is provided as follows:

- (1) The trial counsel and defense counsel must be equally qualified.
- (2) In cases where a bad conduct discharge has been imposed, a full stenographic transcript must be taken and the case is reviewed in the same fashion as a general court-martial record.

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- (3) Peremptory challenge and voting by secret ballot is provided as in a general court-martial.
- (4) Review by Judge Advocate or legal officer is required.

Summary Courts-Martial:

- (1) Provision is made for permitting an accused to refuse trial by summary court upon request.
- (2) Review by a Judge Advocate or legal officer is required.

Among some of the provisions designed to prevent interference with the due administration of justice are the following:

- (1) The convening authority may not refer charges for trial until they ~~are found legally sufficient~~ *have been referred to the* by the staff judge advocate or legal officer. *for consideration and advice.*
- (2) The staff judge advocate or legal officer is authorized to communicate directly with the Judge Advocate General.
- (3) All counsel at a general court-martial trial are required to be lawyers and to be certified by the Judge Advocate General as qualified to perform their legal duties.
- (4) The law officer - a competent lawyer - rules on all questions raised at the trial, except on a motion for a directed verdict and on the issue of the accused's sanity.
- (5) The convening authority must not act on a finding or sentence of a general court-martial without first obtaining the advice of his staff judge advocate or legal officer.

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- (6) The Board of Review, situated in the office of the Judge Advocate General and removed from the convening authority, is composed of legally trained men and reviews the trial record for errors of law and of fact.
- (7) The Judicial Council is composed of civilians and passes finally on all questions of law.
- (8) When counsel appear before the Board of Review and the Judicial Council, both parties must be represented by qualified lawyers.
- (9) Censure by a commanding officer of a court-martial or any member or officer thereof because of any judicial action of the court or any member or officer is forbidden and any attempt improperly to influence official action in any aspect of a trial or its review is prohibited.

Elements of Command:

Among the command functions which are found in the present Articles of War and Articles for the Government of the Navy, the following provisions have been retained:

- (1) Commanding officers refer the charges in general, special and summary courts-martial and convene the courts.
- (2) Commanding officers appoint the members of the courts.
- (3) Commanding officers appoint the law officer and counsel for the trial.

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- (4) Commanding officers retain full power to set aside findings of guilty and to modify or change the sentence, but are not permitted to interfere with verdicts of not guilty nor to increase the severity of the sentence imposed.
- (5) The powers of commanding officers at Mast and Company punishment are retained for minor offenses which require prompt action and for which comparatively light punishments can be imposed. The procedural safeguards in this type of non-judicial punishment are considerably less than in the courts-martial, but are believed to be reasonably adequate.

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OFFICE OF THE SECRETARY OF DEFENSE

February 9, 1949

Memo. for Professor Morgan

For your information.

Felix E. Larkin

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Pentagon Bldg
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THE SECRETARY OF DEFENSE
WASHINGTON

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February 8, 1949

"The text of identical letters addressed by the Secretary of Defense to the Speaker of the House of Representatives and the Chairman of the Senate Committee on Armed Services with the submission of the proposed Uniform Code of Military Justice."

There is transmitted herewith, on behalf of the National Military Establishment, a draft of a proposed bill "To unify, consolidate, revise, and codify the Articles of War, the Articles for the Government of the Navy, and the disciplinary laws of the Coast Guard and to enact and establish a Uniform Code of Military Justice."

The proposed Code is based on a study made by a special committee in this Office, of which Professor Edmund M. Morgan, Jr., of the Harvard Law School was Chairman. The code covers both the substantive and procedural law governing military justice and its administration in all the armed forces of the United States and is uniformly applicable in all its parts to the Army, the Navy, the Air Force, and the Coast Guard in time of war and peace.

The proposed Code provides the sole statutory authority for:

- (1) The infliction of limited disciplinary penalties for minor offenses without judicial action;
- (2) The establishment of pre-trial and trial procedure;
- (3) The creation and constitution of three classes of courts-martial corresponding to those now in existence;
- (4) The eligibility of members of each of the courts and the qualifications of its officers and counsel;
- (5) The review of findings and sentence and the creation and constitution of the reviewing tribunals; and
- (6) The listing and definition of offenses, redrafted and rephrased in modern legislative language.

COPY

Attention is called to the provisions of the Code which was designed to provide for uniformity in the administration of military justice, to those designed to assure the accused a fair trial, to those designed to prevent undue control or interference with the administration of military justice, and to those designed to preserve appropriate military functions.

Among the provisions designed to insure uniformity are the following:

- (1) The offenses made punishable by the Code are identical for all armed forces;
- (2) The same system of courts with the same limits of jurisdiction of each court is set up in all the armed forces;
- (3) The procedure for general courts-martial is identical as to institution of charges, pre-trial investigation, action by the convening authority, review by the Board of Review, and review by the Judicial Council in all the armed forces;
- (4) The rules of procedure at the trial, including modes of proof, are equally applicable to all the armed forces;
- (5) The Judge Advocates General of the three Departments are required to make uniform rules of procedure for the Board of Review in each Department;
- (6) The required qualifications for members of the court, law officer and counsel are identical for all the armed forces;
- (7) The single Judicial Council, which finally decides all questions of law, is the court of last resort for each of the armed forces; and also acts with the Judge Advocates General of the three Departments as an advisory body with a view to securing uniformity in policy and in sentences and in discovering and remedying defects in the system and its administration.

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Among the provisions designed to insure a fair trial are the following:

General Courts-Martial:

- (1) A pre-trial investigation is provided, at which the accused is entitled to be present with counsel to cross-examine available witnesses against him and to present evidence in his own behalf. It has some features of preliminary hearing and some of pre-trial discovery as used in the civil courts.
- (2) A prohibition against referring any charge for trial which does not state an offense or is not shown to be supported by sufficient evidence.
- (3) A mandatory provision for competent, legally trained counsel at the trial for both the prosecution and the defense.
- (4) A prohibition against requesting any statement from the accused without warning, and against compelling self-incrimination, and against reception in evidence of improperly obtained statements.
- (5) Provision for equal process to accused and prosecution for obtaining witnesses and depositions and a provision allowing only the accused to use depositions in a capital case.
- (6) A provision giving an accused enlisted man the privilege of having enlisted men as members of the court trying his case.
- (7) A provision whereby voting on challenges, findings and sentence is by secret ballot of the members of the court.
- (8) A provision requiring the law officer to instruct the court on the record concerning the elements of the offense, presumption of innocence and the burden of proof.
- (9) A provision for an automatic review of the trial record for errors of law and of fact by a Board of Review with the right of the accused to be represented by legally competent counsel.
- (10) A provision for the review of the record for errors of law by the Judicial Council. This review is automatic in the case where the sentence is death or dismissal and is upon petition showing probable error of law where the

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sentence involves more than one year's confinement, with the right to be represented by competent counsel.

- (11) A prohibition against receiving pleas of guilty in capital cases.

Special Courts-Martial:

In addition to certain of the above provisions which also apply to special courts-martial, there is provided as follows:

- (1) The trial counsel and defense counsel must be equally qualified.
- (2) In cases where a bad conduct discharge has been imposed, a full stenographic transcript must be taken and the case is reviewed in the same fashion as a general court-martial record.
- (3) Peremptory challenge and voting by secret ballot is provided as in a general court-martial.
- (4) Review by Judge Advocate or legal officer is required.

Summary Courts-Martial:

- (1) Provision is made for permitting an accused to refuse trial by summary court upon request.
- (2) Review by a Judge Advocate or legal officer is required.

Among some of the provisions designed to prevent interference with the due administration of justice are the following:

- (1) The convening authority may not refer charges for trial until they are found legally sufficient by the staff judge advocate or legal officer.
- (2) The staff judge advocate or legal officer is authorized to communicate directly with the Judge Advocate General.
- (3) All counsel at a general court-martial trial are required to be lawyers and to be certified by the Judge Advocate General as qualified to perform their legal duties.
- (4) The law officer - a competent lawyer - rules on all questions raised at the trial, except on a motion for a directed verdict and on the issue of the accused's sanity.

after reference to the Staff Judge-advocate

- COPY
- (5) The convening authority must not act on a finding or sentence of a general court-martial without first obtaining the advice of his staff judge advocate or legal officer.
 - (6) The Board of Review, situated in the office of the Judge Advocate General and removed from the convening authority, is composed of legally trained men and reviews the trial record for errors of law and of fact.
 - (7) The Judicial Council is composed of civilians and passes finally on all questions of law.
 - (8) When counsel appear before the Board of Review and the Judicial Council, both parties must be represented by qualified lawyers.
 - (9) Censure by a commanding officer of a court-martial or any member or officer thereof because of any judicial action of the court or any member or officer is forbidden and any attempt improperly to influence official action in any aspect of a trial or its review is prohibited.

Elements of Command:

Among the command functions which are found in the present Articles of War and Articles for the Government of the Navy, the following provisions have been retained:

- (1) Commanding officers refer the charges in general, special and summary courts-martial and convene the courts.
- (2) Commanding officers appoint the members of the courts.
- (3) Commanding officers appoint the law officer and counsel for the trial.
- (4) Commanding officers retain full power to set aside findings of guilty and to modify or change the sentence, but are not permitted to interfere with verdicts of not guilty nor to increase the severity of the sentence imposed.
- (5) The powers of commanding officers at Mast and Company punishment are retained for minor offenses which require prompt action and for which comparatively light punishments can be imposed. The procedural safeguards in this

OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON

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January 29, 1949

MEMORANDUM FOR: THE COMMITTEE ON A UNIFORM CODE OF MILITARY JUSTICE

→ Professor Edmund M. Morgan, Jr.
Chairman

Honorable Gordon Gray
Department of the Army Member

Honorable W. John Kenney
Department of the Navy Member

Honorable Eugene M. Zuckert
Department of the Air Force Member

SUBJECT: Final draft of the proposed Uniform Code of Military Justice

I attach hereto the final draft of the proposed Uniform Code of Military Justice. The decisions of the Committee at its last meeting have been incorporated into the pertinent Articles. These Articles have been considered and approved by the Working Group and are as follows:

<u>Articles</u>	<u>Articles</u>
1	51
2	58
6	65
15	72
20	75
29	76
32	110
39	119
42	135
43	137

In addition, the Working Group has considered and approved the proposed enacting and repealing language which forms a part of the bill. In this connection, there is one item on which I would like instructions. It has to do with the provision in the repealing section relative to the effective date of the Code. This problem has not been presented to the Committee,

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but the Working Group has always talked in terms of one year after passage. It is now the recommendation of the military members of the Working Group that the bill provide that the effective date shall be 24 months after passage. Their recommendation is based on the belief that it will take that period of time to write the Manual and to recruit and train additional legal personnel. This recommendation should be considered in the light of the fact that the Congress gave the Army 8 months in the Selective Service Act, and that Mr. Robert Smart of the House Armed Services Committee has informed me that the Committee will resent any attempt to postpone the effective date of the proposed Code beyond one year. Inasmuch as it is the prerogative of the Committee to dictate the length of time which will be provided, I am wondering if it would not be better practice to leave this provision blank and, in our testimony, point out to the Committee the difficulties of implementing the new Code and ask them for as much time as they will give us.

You will note in the copy of the Code which is attached that next to each Article is a reference indicating the source from which the Article was taken and a commentary on the Article. The commentaries have been purposely made brief because of the limited time involved, and, except where the Committee has decided that a specific explanation of the meaning of the Article is necessary, the commentaries do not attempt to construe the different Articles. The Working Group has not had an opportunity to pass on all the commentaries, but it is believed that they are designed to be informative, rather than to be a binding legal construction of the text of the Articles.

I am going forward and extracting the text of each Article and putting it in bill form, preparatory to introducing the Code into the Congress. Senator Tydings and Congressman Vinson have recently been discussing the Code with Secretary Forrestal, and on last Friday Mr. Forrestal directed me to finish the work on the Code in the shortest possible time with a view to its introduction into the Congress next week.

Would you, therefore, at your earliest convenience furnish me with your comments with a view to an official submission of the Code by the Committee to Mr. Forrestal and its immediate introduction into the Congress.

Felix E. Iarkin

FELIX E. IARKIN
Executive Secretary

Attachment
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OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON

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February 8, 1949

MEMORANDUM FOR: THE COMMITTEE ON A UNIFORM CODE OF MILITARY JUSTICE

→ Professor Edmund M. Morgan, Jr.
Chairman

Honorable Gordon Gray
Department of the Army Member

Honorable W. John Kenney
Department of the Navy Member

Honorable Eugene M. Zuckert
Department of the Air Force Member

Attached hereto are three copies of the proposed Uniform Code of Military Justice, which the Committee submitted to the Secretary of Defense on February 7, 1949, with its letter of transmittal.

A copy of the Committee's letter of transmittal was forwarded to you earlier today.

Felix
FELIX E. TARKIN
Executive Secretary
Committee on a Uniform Code of
Military Justice

Attachments (3)
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OFFICE OF THE SECRETARY OF DEFENSE
WASHINGTON

February 7, 1949

Dear Mr. Secretary:

In accordance with the instructions contained in your precept dated August 18, 1948, I submit herewith a draft of a Uniform Code of Military Justice.

The Code is in the form of a bill consisting of 139 Articles. Each Article is accompanied by notes and commentary which indicate the source from which it was derived.

You will note that the proposed Uniform Code applies equally to the Departments of the Army, Navy and Air Force. This desirable result has been possible only by the general cooperation of the three Services and the members of the Committee. The Department of the Treasury and the Coast Guard have also made a valuable contribution and, with their consent, the Code, by its provisions, applies to the Coast Guard in time of peace as well as war.

The provisions of the proposed Code were unanimously adopted by the members of the Committee with the exception of the provisions submitted to you and discussed with you by the Committee on January 7, 1949. The provisions on which the members of the Committee were divided have been drafted and are now submitted in accordance with your decisions. These areas of disagreement and the members of the Committee involved in the dissents are referred to in an attached paper.

Honorable James Forrestal
The Secretary of Defense

Honorable James Forrestal
Page two - continued

Attached hereto is a summary of some of the
more important provisions of the Code.

Respectfully,

(Signed) EDMUND M. MORGAN, JR.

EDMUND M. MORGAN, JR.
Chairman
Committee on a Uniform Code
of Military Justice

(Signed) GORDON GRAY

GORDON GRAY
Department of the Army Member

(Signed) W. JOHN KENNEY

W. JOHN KENNEY
Department of the Navy Member

(Signed) EUGENE M. ZUCKERT

EUGENE M. ZUCKERT
Department of the Air Force Member

cc: Each Member of the Committee
on a Uniform Code of Military
Justice

AREAS OF DISAGREEMENT WITH RECORDED DISSENTS

1. Appellate System.

Assistant Secretary of the Army Gordon Gray records a dissent to the appellate system as provided in the proposed Articles, particularly with reference to the Judicial Council.

2. Functions and Duties of the Law Officer.

Assistant Secretary Gray and Assistant Secretary of the Air Force Eugene M. Zuckert record dissents from the proposed Article which would prohibit the law member from participating as a full member of a general court.

3. Enlisted Men on the Court.

Under Secretary of the Navy W. John Kenney records a dissent to the proposed Article which would provide enlisted men on general and special courts-martial.

AN ACT

To unify, consolidate, revise, and codify the Articles of War, the Articles for the Government of the Navy, and the disciplinary laws of the Coast Guard and to enact and establish a Uniform Code of Military Justice.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a Uniform Code of Military Justice for the government of the armed forces of the United States, unifying, consolidating, revising, and codifying the Articles of War, the Articles for the Government of the Navy, and the disciplinary laws of the Coast Guard, is hereby enacted as follows, and the Articles in this section may be cited as "Uniform Code of Military Justice, Article ____".

UNIFORM CODE OF MILITARY JUSTICE

<u>Part</u>	<u>Article</u>
I. General Provisions.	1.
II. Apprehension and Restraint.	7
III. Non-Judicial Punishment.	15
IV. Courts-Martial Jurisdiction.	16
V. Appointment and Composition of Courts-Martial.	22
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VII. Trial Procedure.	36
VIII. Sentences.	55
IX. Review of Courts-Martial.	59
X. Punitive Articles.	77
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Part I. General Provisions.

Article

1. Definitions.
2. Persons Subject to the Code.
3. Jurisdiction to Try Certain Personnel.
4. Dismissed Officer's Right to Trial by Court-Martial.
5. Territorial Applicability of the Code.
6. Judge Advocates and Legal Officers.

ARTICLE 1. Definitions.

The following terms when used in this Code shall be construed in the sense indicated in this Article, unless the context shows that a different sense is intended, namely:

(1) "Department" shall be construed to refer, severally, to the Department of the Army, the Department of the Navy, the Department of the Air Force, and, except when the Coast Guard is operating as a part of the Navy, the Treasury Department;

(2) "Armed force" shall be construed to refer, severally, to the Army, the Navy, the Air Force, and, except when operating as a part of the Navy, the Coast Guard;

(3) "Navy" shall be construed to include the Marine Corps and, when operating as a part of the Navy, the Coast Guard;

(4) "The Judge Advocate General" shall be construed to refer, severally, to The Judge Advocates General of the Army, Navy, and Air Force, and, except when the Coast Guard is operating as a part of the Navy, the General Counsel of the Treasury Department;

(5) "Officer" shall be construed to refer to a commissioned officer including a commissioned warrant officer;

(6) "Superior officer" shall be construed to refer to an officer superior in rank or command;

(7) "Cadet" shall be construed to refer to a cadet of the United States Military Academy or of the United States Coast Guard Academy;

(8) "Midshipman" shall be construed to refer to a midshipman at the United States Naval Academy and any other midshipman on active duty in the naval service;

(9) "Enlisted person" shall be construed to refer to any person who is serving in an enlisted grade in any armed force;

(10) "Military" shall be construed to refer to any or all of the armed forces;

(11) "Accuser" shall be construed to refer to a person who signs and swears to the charges and to any other person who has an interest other than an official interest in the prosecution of the accused;

(12) "Law officer" shall be construed to refer to an official of a general court-martial detailed in accordance with Article 26;

(13) "Law specialist" shall be construed to refer to an officer of the Navy or Coast Guard designated for special duty (law);

(14) "Legal officer" shall be construed to refer to any officer in the Navy or Coast Guard designated to perform legal duties for a command.

ART. 2. Persons Subject to the Code.

The following persons are subject to this Code:

(1) All persons belonging to a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; all volunteers and inductees, from the dates of their muster or acceptance into the armed forces of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty in or for training in, the armed forces, from the dates they are required by the terms of the call, draft, or order to obey the same;

(2) Cadets, aviation cadets, and midshipmen;

(3) Reserve personnel who are voluntarily on inactive duty training authorized by written orders;

(4) Retired personnel of a regular component of the armed forces who are entitled to receive pay;

(5) Retired personnel of a reserve component who are receiving hospital benefits from an armed force;

- (6) Members of the Fleet Reserve and Fleet Marine Corps Reserve;
- (7) All persons in custody of the armed forces serving a sentence imposed by a court-martial;
- (8) Personnel of the Coast and Geodetic Survey, Public Health Service, and other organizations, when serving with the armed forces of the United States;
- (9) Prisoners of war in custody of the armed forces;
- (10) In time of war, all persons serving with or accompanying an armed force in the field;
- (11) All persons serving with, employed by, accompanying, or under the supervision of the armed forces without the continental limits of the United States and the following territories: that part of Alaska east of longitude one hundred and seventy-two degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands;
- (12) All persons within an area leased by the United States which is under the control of the Secretary of a Department and which is without the continental limits of the United States and the following territories: that part of Alaska east of longitude one hundred and seventy-two degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands.

ART. 3. Jurisdiction to Try Certain Personnel.

(a) Reserve personnel of the armed forces who are charged with having committed, while in a status in which they are subject to this Code, any offense against this Code may be retained in such status or, whether or not such status has terminated, placed in an active duty status for disciplinary action, without their consent, but not for a longer period of time than may be required for such action.

(b) All persons discharged from the armed forces subsequently charged with having fraudulently obtained said discharge shall be subject to trial by court-martial on said charge and shall be subject to this Code while in the custody of the armed forces for such trial. Upon conviction of said charge they shall be subject to trial by court-martial for all offenses under this Code committed prior to the fraudulent discharge.

(c) Any person who has deserted from the armed forces shall not be relieved from amenability to the jurisdiction of this Code by virtue of a separation from any subsequent period of service.

ART. 4. Dismissed Officer's Right to Trial by Court-Martial.

(a) When any officer, dismissed by order of the President, makes a written application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President, as soon as practicable, shall convene a general court-martial to try such officer on the charges on

which he was dismissed. A court-martial so convened shall have jurisdiction to try the dismissed officer on such charges, and he shall be held to have waived the right to plead any statute of limitations applicable to any offense with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the Secretary of the Department shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issuance.

(b) If the President fails to convene a general court-martial within six months from the presentation of an application for trial under this Article, the Secretary of the Department shall substitute for the dismissal ordered by the President a form of discharge authorized for administrative issuance.

(c) Where a discharge is substituted for a dismissal under the authority of this Article, the President alone may reappoint the officer to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowances.

(d) When an officer is discharged from any armed force by administrative action or is dropped from the rolls by order of the President, there shall not be a right to trial under this Article.

ART. 5. Territorial Applicability of the Code.

This Code shall be applicable in all places.

ART. 6. Judge Advocates and Legal Officers.

(a) The assignment for duty of all judge advocates of the Army and Air Force and law specialists of the Navy and Coast Guard shall be subject to the approval of The Judge Advocate General of the armed force of which they are members. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

(b) Convening authorities shall at all times communicate directly with their staff judge advocates or legal officers in matters relating to the administration of military justice; and the staff judge advocate or legal officer of any command is authorized to communicate directly with the staff judge advocate or legal officer of a superior or subordinate command, or with The Judge Advocate General.

(c) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer in any case shall subsequently act as a staff judge advocate or legal officer to any reviewing authority upon the same case.

Part II. Apprehension and Restraint.

Article

7. Apprehension.
8. Apprehension of Deserters.
9. Imposition of Restraint.
10. Restraint of Persons Charged with Offenses.
11. Reports and Receiving of Prisoners.
12. Confinement with Enemy Prisoners Prohibited.
13. Punishment Prohibited Before Trial.
14. Delivery of Offenders to Civil Authorities.

ART. 7. Apprehension.

(a) Apprehension is the taking into custody of a person.

(b) Any person authorized under regulations governing the armed forces to apprehend persons subject to this Code may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(c) All officers, warrant officers, petty officers, and noncommissioned officers shall have authority to quell all quarrels, frays, and disorders among persons subject to this Code and to apprehend persons subject to this Code who take part in the same.

ART. 8. Apprehension of Deserters.

It shall be lawful for any civil officer having authority to apprehend offenders under the laws of the United States or of any State, District, Territory or possession of the United States summarily to apprehend a deserter from the armed forces of the United States and deliver him into the custody of the armed forces of the United States.

ART. 9. Imposition of Restraint.

(a) Arrest is the restraint of a person by an order directing him to remain within certain specified limits not imposed as a punishment for an offense. Confinement is the physical restraint of a person.

(b) An enlisted person may be ordered into arrest or confinement by any officer by an order delivered in person or through other persons subject to this Code. A commanding officer may authorize warrant officers, petty officers, or noncommissioned officers to order enlisted persons of his command or subject to his authority into arrest or confinement.

(c) An officer, a warrant officer, or a civilian subject to this Code may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order delivered in person or by another officer. The authority to order such persons into arrest or confinement may not be delegated.

(d) No person shall be ordered into arrest or confinement except for probable cause.

(e) Nothing in this Article shall be construed to limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified.

ART. 10. Restraint of Persons Charged with Offenses.

Any person subject to this Code charged with an offense under this Code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this Code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform him of the specific wrong of which he is accused and to try him or to dismiss the charges and release him.

ART. 11. Reports and Receiving of Prisoners.

(a) No provost marshal, commander of a guard, or master at arms shall refuse to receive or keep any prisoner committed to his charge by an officer of the armed forces, when the committing officer furnishes a statement, signed by him, of the offense charged against the prisoner.

(b) Every commander of a guard or master at arms to whose charge a prisoner is committed shall, within twenty-four hours after such commitment or as soon as he is relieved from guard, report to the commanding officer the name of such prisoner, the offense charged against him, and the name of the person who ordered or authorized the commitment.

ART. 12. Confinement with Enemy Prisoners Prohibited.

No member of the armed forces of the United States shall be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces of the United States.

ART. 13. Punishment Prohibited Before Trial.

Subject to the provisions of Article 57, no person, while being held for trial or the results of trial, shall be subjected to punishment or penalty other than arrest or confinement upon the charges pending against him, nor shall the arrest or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subjected to punishment during such period for minor infractions of discipline.

ART. 14. Delivery of Offenders to Civil Authorities.

(a) Under such regulations as the Secretary of the Department may prescribe, a member of the armed forces accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(b) When delivery under this Article is made to any civil authority of a person undergoing sentence of a court-martial, such delivery, if followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon request, be returned to military custody for the completion of the said court-martial sentence.

Part III. Non-Judicial Punishment

Article

15. Commanding Officer's Non-Judicial Punishment.

ART. 15. Commanding Officer's Non-Judicial Punishment.

(a) Under such regulations as the President may prescribe any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one of the following disciplinary punishments for minor offenses without the intervention of a court-martial --

(1) upon officers and warrant officers of his command:

(A) withholding of privileges for a period not to exceed two consecutive weeks; or

(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) if imposed by an officer exercising general court-martial jurisdiction, forfeiture of one-half of his pay per month for a period not exceeding three months.

(2) upon other military personnel of his command:

(A) withholding of privileges for a period not to exceed two consecutive weeks; or

(B) restriction to certain specified limits, with or without suspension from duty, for a period not to exceed two consecutive weeks; or

(C) extra duties for a period not to exceed two consecutive weeks, and not to exceed two hours per day, holidays included; or

(D) reduction to next inferior grade if the grade from which demoted was established by the command or an equivalent or lower command; or

(E) confinement for a period not to exceed seven consecutive days; or

(F) confinement on bread and water or diminished rations for a period not to exceed five consecutive days; or

(G) if imposed by an officer exercising special court-martial jurisdiction, forfeiture of one-half of his pay for a period not exceeding one month.

(b) The Secretary of a Department may, by regulation, place limitations on the powers granted by this Article with respect to the kind and amount of punishment authorized, the categories of commanding officers authorized to exercise such powers, and the applicability of this Article to an accused who demands trial by court-martial.

(c) An officer in charge may, for minor offenses, impose on enlisted persons assigned to the unit of which he is in charge, such of the punishments authorized to be imposed by commanding officers as the Secretary of the Department may by regulation specifically prescribe.

(d) A person punished under authority of this Article who deems his punishment unjust or disproportionate to the offense may, through the

proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The officer who imposes the punishment, his successor in command, and superior authority shall have power to suspend, set aside, or remit any part or amount of the punishment and to restore all rights, privileges, and property affected.

(e) The imposition and enforcement of disciplinary punishment under authority of this Article for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this Article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

Part IV. Courts-Martial Jurisdiction.

Article

16. Courts-Martial Classified.
17. Jurisdiction of Courts-Martial in General.
18. Jurisdiction of General Courts-Martial.
19. Jurisdiction of Special Courts-Martial.
20. Jurisdiction of Summary Courts-Martial.
21. Jurisdiction of Courts-Martial Not Exclusive.

ART. 16. Courts-Martial Classified.

There shall be three kinds of courts-martial in each of the armed forces, namely:

- (1) General courts-martial, which shall consist of a law officer and any number of members not less than five;
- (2) Special courts-martial, which shall consist of any number of members not less than three; and
- (3) Summary courts-martial, which shall consist of one officer.

ART. 17. Jurisdiction of Courts-Martial in General.

(a) Each armed force shall have court-martial jurisdiction over all persons subject to this Code. The exercise of jurisdiction by one armed force over personnel of another armed force shall be in accordance with regulations prescribed by the President.

(b) In all cases, departmental review subsequent to that by the officer with authority to convene a general court-martial for the command which held the trial, where such review is required under the provisions of this Code, shall be carried out by the armed force of which the accused is a member.

ART. 18. Jurisdiction of General Courts-Martial.

Subject to Article 17, general courts-martial shall have jurisdiction to try persons subject to this Code for any offense made punishable by this Code and may, under such limitations as the President may prescribe,

adjudge any punishment not forbidden by this Code. General courts-martial shall also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war.

ART. 19. Jurisdiction of Special Courts-Martial.

Subject to Article 17, special courts-martial shall have jurisdiction to try persons subject to this Code for any non-capital offense made punishable by this Code and, under such regulations as the President may prescribe, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this Code except death, dishonorable discharge, dismissal, confinement in excess of six months, hard labor without confinement in excess of three months, forfeiture of pay exceeding two-thirds pay per month, or forfeiture of pay for a period exceeding six months. A bad conduct discharge shall not be adjudged unless a complete record of the proceedings and testimony before the court has been made.

ART. 20. Jurisdiction of Summary Courts-Martial.

Subject to Article 17, summary courts-martial shall have jurisdiction to try persons subject to this Code except officers, warrant officers, cadets, aviation cadets, and midshipmen for any non-capital offense made punishable by this Code, but no person who objects thereto shall be brought to

trial before a summary court-martial unless he has been permitted to refuse punishment under Article 15. Where such objection is made by the accused, trial shall be ordered by special or general court-martial, as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this Code except death, dismissal, dishonorable or bad conduct discharge, confinement in excess of one month, hard labor without confinement in excess of forty-five days, restriction to certain specified limits in excess of two months, or forfeiture of pay in excess of two-thirds of one month's pay.

ART. 21. Jurisdiction of Courts-Martial Not Exclusive.

The provisions of this Code conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war may be tried by such military commissions, provost courts, or other military tribunals.

Part V. Appointment and Composition of Courts-Martial.

Article

22. Who May Convene General Courts-Martial.
23. Who May Convene Special Courts-Martial.
24. Who May Convene Summary Courts-Martial.
25. Who May Serve on Courts-Martial.
26. Law Officer of a General Court-Martial.
27. Appointment of Trial Counsel and Defense Counsel.
28. Appointment of Reporters and Interpreters.
29. Absent and Additional Members.

ART. 22. Who May Convene General Courts-Martial.

- (a) General courts-martial may be convened by --
- (1) the President of the United States;
 - (2) the Secretary of a Department;
 - (3) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army;
 - (4) the Commander in Chief of a Fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the continental limits of the United States;
 - (5) the commanding officer of Air Command, an Air Force, an air division, or a separate wing of the Air Force;

(6) Such other commanding officers as may be designated by the Secretary of a Department; or

(7) any other commanding officer in any of the armed forces when empowered by the President.

(b) When any such commanding officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed desirable by him.

ART. 23. Who May Convene Special Courts-Martial.

(a) Special courts-martial may be convened by --

(1) any person who may convene a general court-martial;

(2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary airfield, or other place where members of the Army or Air Force are on duty;

(3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;

(4) the commanding officer of a wing, group, or separate squadron of the Air Force;

(5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; or of any marine brigade, regiment or barracks;

(6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or

(7) the commanding officer or officer in charge of any other command when empowered by the Secretary of a Department.

(b) When any such officer is an accuser, the court shall be convened by superior competent authority, and may in any case be convened by such authority when deemed advisable by him.

ART. 24. Who May Convene Summary Courts-Martial.

(a) Summary courts-martial may be convened by --

(1) any person who may convene a general or special court-martial;

(2) the commanding officer of a detached company, or other detachment of the Army;

(3) the commanding officer of a detached squadron or other detachment of the Air Force; or

(4) the commanding officer or officer in charge of any other command when empowered by the Secretary of a Department.

(b) When but one officer is present with a command or detachment he shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him.

Summary courts-martial may, however, be convened in any case by superior competent authority when deemed desirable by him.

ART. 25. Who May Serve on Courts-Martial.

(a) Any officer on active duty with the armed forces shall be competent to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(b) Any warrant officer on active duty with the armed forces shall be competent to serve on general and special courts-martial for the trial of any person, other than an officer, who may lawfully be brought before such courts for trial.

(c) Any enlisted person on active duty with the armed forces who is not a member of the same unit as the accused shall be competent to serve on general and special courts-martial for the trial of any enlisted person who may lawfully be brought before such courts for trial, but he shall be appointed as a member of a court only if, prior to the convening of such court, the accused has requested in writing that enlisted persons serve on it. After such a request, no enlisted person shall be tried by a general or special court-martial the membership of which does not include enlisted persons in a number comprising at least one-third of the total membership of the court, unless competent enlisted persons cannot be obtained on account of physical conditions or military exigencies. Where such persons cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

For the purposes of this Article, the word "unit" shall mean any regularly organized body as defined by the Secretary of the Department, but in no case shall it be a body larger than a company, a squadron, or a ship's crew, or than a body corresponding to one of them.

(d)(1) When it can be avoided, no person in the armed forces shall be tried by a court-martial any member of which is junior to him in rank or grade.

(2) When convening a court-martial, the convening authority shall appoint as members thereof such persons as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No person shall be eligible to sit as a member of a general or special court-martial when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

ART. 26. Law Officer of a General Court-Martial.

(a) The authority convening a general court-martial shall appoint as law officer thereof an officer who is a member of the bar of a Federal court or of the highest court of a State of the United States and who is certified to be qualified for such duty by The Judge Advocate General of the armed force of which he is a member. No person shall be eligible to act as law officer in a case when he is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(b) The law officer shall not consult with the members of the court, other than on the form of the findings as provided in Article 39, except in the presence of the accused, trial counsel, and defense counsel, nor shall he vote with the members of the court.

ART. 27. Appointment of Trial Counsel and Defense Counsel.

(a) For each general and special court-martial the authority convening the court shall appoint a trial counsel and a defense counsel, together with such assistants as he deems necessary or appropriate. No person who has acted as investigating officer, law officer, or court member in any case shall act subsequently as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. No person who has acted for the prosecution shall act subsequently in the same case for the defense, nor shall any person who has acted for the defense act subsequently in the same case for the prosecution.

(b) Any person who is appointed as trial counsel or defense counsel in the case of a general court-martial ---

(1) shall be a judge advocate of the Army or the Air Force, or a law specialist of the Navy or Coast Guard, or a person who is a member of the bar of a Federal court or of the highest court of a State;
and

(2) shall be certified as competent to perform such duties by The Judge Advocate General of the armed force of which he is a member.

(c) In the case of a special court-martial --

(1) if the trial counsel is certified as competent to act as counsel before a general court-martial by The Judge Advocate General of the armed force of which he is a member, the defense counsel appointed by the convening authority shall be a person similarly certified; and

(2) if the trial counsel is a judge advocate, or a law specialist, or a member of the bar of a Federal court or the highest court of a State, the defense counsel appointed by the convening authority shall be one of the foregoing.

ART. 28. Appointment of Reporters and Interpreters.

Under such regulations as the Secretary of the Department may prescribe, the convening authority of a court-martial or military commission or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission. Under like regulations the convening authority of a court-martial, military commission, or court of inquiry may appoint an interpreter who shall interpret for the court or commission.

ART. 29. Absent and Additional Members.

(a) No member of a general or special court-martial shall be absent or excused after the accused has been arraigned except for physical disability or as a result of a challenge or by order of the convening authority for good cause.

(b) Whenever a general court-martial is reduced below five members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than five members. When such new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read to the court in the presence of the law officer, the accused, and counsel.

(c) Whenever a special court-martial is reduced below three members, the trial shall not proceed unless the convening authority appoints new members sufficient in number to provide not less than three members. When such new members have been sworn, the trial shall proceed as if no evidence had previously been introduced, unless a verbatim record of the testimony of previously examined witnesses or a stipulation thereof is read to the court in the presence of the accused and counsel.

Part VI. Pre-Trial Procedure

Article

30. Charges and Specifications.
31. Compulsory Self-Incrimination Prohibited.
32. Investigation.
33. Forwarding of Charges.
34. Advice of Staff Judge Advocate and Reference for Trial.
35. Service of Charges.

ART. 30. Charges and Specifications.

(a) Charges and specifications shall be signed by a person subject to this Code under oath before an officer of the armed forces authorized to administer oaths and shall state -

(1) that the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(2) that the same are true in fact to the best of his knowledge and belief.

(b) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him as soon as practicable.

ART. 31. Compulsory Self-Incrimination Prohibited.

(a) No person subject to this Code shall compel any person to incriminate himself or to answer any question the answer to which may tend to incriminate him.

(b) No person subject to this Code shall interrogate, or request any statement from, an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement at all regarding the offense of which he is accused or suspected and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) No person subject to this Code shall compel any person to make a statement or produce evidence before or for use before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him.

(d) No statement obtained from any person in violation of this Article or by any unlawful inducement shall be received in evidence against him in a trial by court-martial.

ART. 32. Investigation.

(a) No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiries as to the truth of the matter set forth in the charges, form of charges, and the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and shall be permitted, upon his own request, to be represented at such investigation by civilian counsel if provided by him, or military counsel of his own selection if such counsel be reasonably available, or by counsel appointed by the officer exercising general court-martial jurisdiction over the command. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the

investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(c) If an investigation of the subject matter of an offense has been conducted prior to the time the accused is charged with the offense, and if the accused was present at such investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subdivision (b) of this Article, no further investigation of that charge is necessary under this Article unless it is demanded by the accused after he is informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence on his own behalf.

(d) The requirements of this Article shall be binding on all persons administering this Code, but failure to follow them in any case shall not constitute jurisdictional error.

ART. 33. Forwarding of Charges.

When a person is held for trial by general court-martial, the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the officer exercising general court-martial jurisdiction. If the same is not practicable, he shall report to such officer the reasons for delay.

ART. 34. Advice of Staff Judge Advocate and Reference for Trial.

(a) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to his staff judge advocate or legal officer for consideration and advice. The convening authority shall not refer a charge to a general court-martial for trial unless it has been found that the charge alleges an offense under this Code and is warranted by evidence indicated in the report of investigation.

(b) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made.

ART. 35. Service of Charges.

The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of the charges upon him, or before a special court-martial within a period of three days subsequent to the service of the charges upon him.

Part VII, Trial Procedure.

Article

36. President May Prescribe Rules.
37. Unlawfully Influencing Action of Court.
38. Duties of Trial Counsel and Defense Counsel.
39. Sessions.
40. Continuances.
41. Challenges.
42. Oaths.
43. Statute of Limitations.
44. Former Jeopardy.
45. Pleas of the Accused.
46. Opportunity to Obtain Witnesses and Other Evidence.
47. Refusal to Appear or Testify.
48. Contempts.
49. Depositions.
50. Admissibility of Records of Courts of Inquiry.
51. Voting and Rulings.
52. Number of Votes Required.
53. Court to Announce Action.
54. Record of Trial.

ART. 36. President May Prescribe Rules.

(a) The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals may be prescribed by the President by regulations which shall, so far as he deems practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States District Courts, but which shall not be contrary to or inconsistent with this Code.

(b) All rules and regulations made in pursuance of this Article shall be reported to the Congress.

ART. 37. Unlawfully Influencing Action of Court.

No authority convening a general, special, or summary court-martial nor any other commanding officer, shall censure, reprimand, or admonish such court or any member, law officer, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this Code shall attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

ART. 38. Duties of Trial Counsel and Defense Counsel.

(a) The trial counsel of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of the proceedings.

(b) The accused shall have the right to be represented in his defense before a general or special court-martial by civilian counsel if provided by him, or by military counsel of his own selection if reasonably available, or by the defense counsel duly appointed pursuant to Article 27. Should the accused have counsel of his own selection, the duly appointed defense counsel, and assistant defense counsel, if any, shall, if the accused so desires, act as his associate counsel; otherwise they shall be excused by the president of the court.

(c) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters as he feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he may deem appropriate.

(d) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when he is qualified to be a trial counsel as required by Article 27, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(e) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when he is qualified to be the defense counsel as required by Article 27, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused.

ART. 39. Sessions.

Whenever a general or special court-martial is to deliberate or vote, only the members of the court shall be present. After a general court-martial has finally voted on the findings, the court may request the law officer and the reporter to appear before the court to put the findings in proper form, and such proceedings shall be on the record. All other proceedings, including any other consultation of the court with counsel or the law officer shall be made a part of the record and be in the presence of the accused, the defense counsel, the trial counsel, and in general court-martial cases, the law officer.

ART. 40. Continuances.

A court-martial may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just.

ART. 41. Challenges.

(a) Members of a general or special court-martial and the law officer of a general court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The court shall determine the relevancy and validity of challenges for cause, and shall not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) The accused and trial counsel shall each be entitled to one peremptory challenge, but the law officer shall not be challenged except for cause.

ART. 42. Oaths.

(a) The law officer, all interpreters, and, in general and special courts-martial, the members, the trial counsel, assistant trial counsel, the defense counsel, assistant defense counsel, and the reporter shall take an oath or affirmation in the presence of the accused to perform their duties faithfully.

(b) All witnesses before courts-martial shall be examined on oath or affirmation.

ART. 43. Statute of Limitations.

(a) A person charged with desertion or absence without leave in time of war, or with aiding the enemy, mutiny, or murder, may be tried and punished at any time without limitation.

(b) Except as otherwise provided in this Article, a person charged with desertion in time of peace or any of the offenses punishable under Articles 119 through 132 inclusive shall not be liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(c) Except as otherwise provided in this Article, a person charged with any offense shall not be liable to be tried by court-martial or punished under Article 15 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under Article 15.

(d) Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this Article.

(e) In the case of any offense the trial of which in time of war is certified to the President by the Secretary of the Department to be detrimental to the prosecution of the war or inimical to the national security, the period of limitation prescribed in this Article shall be extended to six months after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

(f) When the United States is at war, the running of any statute of limitations applicable to any offense --

(1) involving fraud or attempted fraud against the United States or any agency thereof in any manner, whether by conspiracy or not; or

(2) committed in connection with the acquisition, care, handling, custody, control or disposition of any real or personal property of the United States; or

(3) committed in connection with the negotiation, procurement, award, performance, payment for, interim financing, cancellation, or other termination or settlement, of any contract, subcontract or purchase order which is connected with or related to the prosecution of the war, or with any disposition of termination inventory by any war contractor or Government agency;

shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a joint resolution of Congress.

ART. 44. Former Jeopardy.

No person shall, without his consent, be tried a second time for the same offense; but no proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this Article until the finding of guilty has become final after review of the case has been fully completed.

ART. 45. Pleas of the Accused.

(a) If an accused arraigned before a court-martial makes any irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that he has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if he fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though he had pleaded not guilty.

(b) A plea of guilty by the accused shall not be received in a capital case.

ART. 46. Opportunity to Obtain Witnesses and Other Evidence.

The trial counsel, defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe. Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue and shall run to any part of the United States, its Territories, and possessions.

ART. 47. Refusal to Appear or Testify.

(a) Every person not subject to this Code who -
(1) has been duly subpoenaed to appear as a witness before any court-martial, military commission, court of inquiry, or any other

military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such court, commission or board; and

(2) has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the courts of the United States; and

(3) willfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which such person may have been legally subpoenaed to produce;

shall be deemed guilty of an offense against the United States.

(b) Any person who commits an offense denounced by this Article shall be tried on information in a United States District Court or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, and jurisdiction is hereby conferred upon such courts for such purpose. Upon conviction, such persons shall be punished by a fine of not more than \$500, or imprisonment for a period not exceeding six months, or both.

(c) It shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, upon the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute any person violating this Article.

(d) The fees and mileage of witnesses shall be advanced or paid out of the appropriations for the compensation of witnesses.

ART. 48. Contempts.

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder. Such punishment shall not exceed confinement for 30 days or a fine of \$100, or both.

ART. 49. Depositions.

(a) At any time after charges have been signed as provided in Article 30, any party may take oral or written depositions unless an authority competent to convene a court-martial for the trial of such charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate officers to represent the prosecution and the defense and may authorize such officers to take the deposition of any witness.

(b) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(c) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

(d) A duly authenticated deposition taken upon reasonable notice to the other party, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission in any case

not capital, or in any proceeding before a court of inquiry or military board, if it appears -

(1) that the witness resides, or is beyond the State, Territory, or District in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing; or

(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, non-amenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(3) that the present whereabouts of the witness is unknown.

(e) Testimony by deposition may be adduced by the defense in capital cases.

(f) A deposition may be read in evidence in any case in which the death penalty is authorized by law but is not mandatory, whenever the convening authority shall have directed that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

ART. 50. Admissibility of Records of Courts of Inquiry.

(a) In any case not capital and not extending to the dismissal of an officer, 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, may, if otherwise admissible, be read in evidence by any party before

a court-martial or military commission if the accused was a party and was accorded the rights of an accused when before the court of inquiry or if the accused consents to the introduction of such evidence.

(b) Such testimony may be read in evidence only by the defense in capital cases or cases extending to the dismissal of an officer.

(c) Such testimony may also be read in evidence before a court of inquiry or a military board.

ART. 51. Voting and Rulings.

(a) Voting by members of a general or special court-martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(b) The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than a motion for a finding of not guilty, or the question of accused's sanity, shall be final and shall constitute the ruling of the court; but the law officer may change any such ruling at any time during the trial. Unless such ruling be final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in Article 52, *vive voce*, beginning with the junior in rank.

(c) Before a vote is taken on the findings, the law officer of a general court-martial and the president of a special court-martial shall, in the presence of the accused and counsel, instruct the court as to the elements of the offense and charge the court -

(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond reasonable doubt;

(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved in favor of the accused and he shall be acquitted;

(3) that if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no such doubt; and

(4) that the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the Government.

ART. 52. Number of Votes Required.

(a)(1) No person shall be convicted of an offense for which the death penalty is made mandatory by law, except by the concurrence of all the members of the court-martial present at the time the vote is taken.

(2) No person shall be convicted of any other offense, except by the concurrence of two-thirds of the members present at the time the vote is taken.

(b)(1) No person shall be sentenced to suffer death, except by the concurrence of all the members of the court-martial present at the time the vote is taken and for an offense in this Code made expressly punishable by death.

(2) No person shall be sentenced to life imprisonment or to confinement in excess of ten years, except by the concurrence of three-fourths of the members present at the time the vote is taken.

(3) All other sentences shall be determined by the concurrence of two-thirds of the members present at the time the vote is taken.

(c) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote. A tie vote on a challenge shall disqualify the member challenged. A tie vote on a motion for a finding of not guilty or on a question of the accused's sanity shall be a determination against the accused. A tie vote on any other question shall be a determination in favor of the accused.

ART. 53. Court to Announce Action.

Every court-martial shall announce its findings and sentence to the parties as soon as determined.

ART. 54. Record of Trial.

(a) Each general court-martial shall keep a separate record of the proceedings of the trial of each case brought before it, and such record shall

be authenticated by the signature of the president and the law officer. In case the record cannot be authenticated by either the president or the law officer, by reason of the death, disability or absence of such officer, it shall be signed by a member in lieu of him. If both the president and the law officer are unavailable for such reasons, the record shall be authenticated by two members.

(b) Each special and summary court-martial shall keep a separate record of the proceedings in each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may prescribe.

(c) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as authenticated.

Part VIII. Sentences.

55. Cruel and Unusual Punishments Prohibited.
56. Maximum Limits.
57. Effective Date of Sentences.
58. Execution of Confinement.

ART. 55. Cruel and Unusual Punishments Prohibited.

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, shall not be adjudged by any court-martial or inflicted upon any person subject to this Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

ART. 56. Maximum Limits.

The punishment which a court-martial may direct for an offense shall not exceed such limits as the President may prescribe for that offense.

ART. 57. Effective Date of Sentences.

(a) Whenever a sentence of a court-martial as lawfully adjudged and approved includes a forfeiture of pay or allowances in addition to confinement not suspended, the forfeiture may apply to pay or allowances becoming due on or after the date such sentence is approved by the convening authority. No forfeiture shall extend to any pay or allowances accrued before such date.

(b) Any period of confinement not suspended included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial.

(c) All other sentences of courts-martial shall become effective on the date ordered executed.

ART. 58. Execution of Confinement.

(a) Under such instructions as the Department concerned may prescribe, any sentence of confinement adjudged by a court-martial or other military tribunal, whether or not such sentence includes discharge or dismissal, and whether or not such discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces, or in any penal or correctional institution under the control of the United States, or which the United States may be allowed to use; and persons so confined in a penal or correctional institution not under the control of one of the armed forces shall be subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, Territory, District or place in which the institution is situated.

(b) The omission of the words "hard labor" in any sentence of a court-martial adjudging confinement shall not be construed as depriving the authority executing such sentence of the power to require hard labor as a part of the punishment.

Part IX. Review of Courts-Martial.

59. Error of Law; Lesser Included Offense.
60. Initial Action on the Record
61. Same - General Court-Martial Records.
62. Reconsideration and Revision.
63. Rehearings.

64. Approval by the Convening Authority.
65. Disposition of Records After Review by the Convening Authority.
66. Review by the Board of Review.
67. Review by the Judicial Council.
68. Branch Offices.
69. Review in the Office of the Judge Advocate General.
70. Appellate Counsel.
71. Execution of Sentence; Suspension of Sentence.
72. Vacation of Suspension.
73. Petition for a New Trial.
74. Remission and Suspension.
75. Restoration.
76. Finality of Court-Martial Judgments.

ART. 59. Error of Law; Lesser Included Offense.

(a) A finding or sentence of a court-martial shall not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(b) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm, instead, so much of the finding as includes a lesser included offense.

ART. 60. Initial Action on the Record.

After every trial by court-martial the record shall be forwarded to the convening authority, and action thereon may be taken by the officer who convened the court, an officer commanding for the time being, a successor in command, or by any officer exercising general court-martial jurisdiction.

ART. 61. Same - General Court-Martial Records.

The convening authority shall refer the record of every general court-martial to his staff judge advocate or legal officer, who shall submit his written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction and shall be forwarded with the record to The Judge Advocate General of the armed force of which the accused is a member.

ART. 62. Reconsideration and Revision.

(a) If a case before a court-martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(b) Where there is an apparent error or omission in the record or where the record shows improper action by a court-martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned --

- (1) for reconsideration of a finding of not guilty or a ruling which amounts to a finding of not guilty; or
- (2) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

ART. 63. Rehearings.

(a) If the convening authority disapproves the findings and sentence

of a court-martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing, in which case he shall state the reasons for disapproval. If he does not order a rehearing, he shall dismiss the charges.

(b) Every rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence shall be imposed unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory.

ART. 64. Approval by the Convening Authority.

In acting on the findings and sentence of a court-martial, the convening authority shall approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and determines should be approved. Unless he indicates otherwise, approval of the sentence shall constitute approval of the findings and sentence.

ART. 65. Disposition of Records After Review by the Convening Authority.

(a) When the convening authority has taken final action in a general court-martial case, he shall forward the entire record, including his action thereon and the opinion or opinions of the staff judge advocate or legal officer, to the appropriate Judge Advocate General.

(b) Where the sentence of a special court-martial as approved by the convening authority includes a bad conduct discharge, whether or not

suspended, the record shall be forwarded to the officer exercising general court-martial jurisdiction over the command to be reviewed in the same manner as a record of trial by general court-martial or directly to the appropriate Judge Advocate General to be reviewed by a Board of Review. If the sentence as approved by an officer exercising general court-martial jurisdiction includes a bad conduct discharge, whether or not suspended, the record shall be forwarded to the appropriate Judge Advocate General to be reviewed by a Board of Review.

(c) All other special and summary court-martial records shall be reviewed by a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or Treasury Department and shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations.

ART. 66. Review by the Board of Review.

(a) The Judge Advocate General of each of the armed forces shall constitute in his office one or more Boards of Review, each composed of not less than three officers or civilians, each of whom shall be a member of the bar of a Federal Court or of the highest court of a State of the United States.

(b) The Judge Advocate General shall refer to a Board of Review the record in every case of trial by court-martial in which the sentence, as approved, affects a general or flag officer or extends to death, dismissal of an officer, cadet, or midshipman, dishonorable or bad conduct discharge, or confinement for more than one year.

(c) In a case referred to it, the Board of Review shall act only with respect to the findings and sentence as approved by the convening authority. It shall affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines,

on the basis of the entire record, should be approved. In considering the record it shall have authority to weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the Board of Review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. Otherwise it shall order that the charges be dismissed.

(e) Within ten days after any decision by a Board of Review, The Judge Advocate General may refer the case for reconsideration to the same or another Board of Review.

(f) Otherwise, The Judge Advocate General shall, unless there is to be further action by the President or the Secretary of the Department or the Judicial Council, instruct the convening authority to take action in accordance with the decision of the Board of Review. If the Board of Review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) The Judge Advocates General of the armed forces shall prescribe uniform rules of procedure for proceedings in and before Boards of Review and shall meet periodically to formulate policies and procedure in regard to review of court-martial cases in the Offices of the Judge Advocates General and by the Boards of Review.

ART. 67. Review by the Judicial Council.

(a) There is hereby established in the National Military Establishment a Judicial Council. The Judicial Council shall be composed of not less than three members. One-third of the membership shall be appointed by the

Secretary of the Army, one-third by the Secretary of the Navy, and one-third by the Secretary of the Air Force. Each member of the Judicial Council shall be appointed from civilian life and shall be a member of the bar admitted to practice before the Supreme Court of the United States, and each member shall receive compensation and allowances equal to those paid to a judge of a United States Court of Appeals.

(b) Under rules of procedure which it shall prescribe, the Judicial Council shall review the record in the following cases:

(1) All cases in which the sentence, as affirmed by a Board of Review, affects a general or flag officer or extends to death;

(2) All cases reviewed by a Board of Review which The Judge Advocate General orders forwarded to the Judicial Council for review; and

(3) All cases reviewed by a Board of Review in which, upon petition of the accused and on good cause shown, the Judicial Council has granted a review.

(c) The accused shall have 30 days from the time he is notified of the decision of a Board of Review to petition the Judicial Council for a grant of review. The Judicial Council shall act upon such a petition within 15 days of the receipt thereof.

(d) In any case reviewed by it, the Judicial Council shall act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the Board of Review. In a case which The Judge Advocate General orders forwarded to the Judicial Council, such action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, such action need be taken only with respect to issues specified in the grant of review. The Judicial Council

shall take action only with respect to matters of law.

(e) If the Judicial Council sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. Otherwise it shall order that the charges be dismissed.

(f) After it has acted on a case, the Judicial Council may direct The Judge Advocate General to return the record to the Board of Review for further review in accordance with the decision of the Judicial Council. Otherwise, unless there is to be further action by the President, or the Secretary of the Department, The Judge Advocate General shall instruct the convening authority to take action in accordance with that decision. If the Judicial Council has ordered a rehearing, but the convening authority finds a rehearing impracticable, he may dismiss the charges.

(g) The Judicial Council and The Judge Advocates General of the armed forces shall meet annually to make a comprehensive survey of the operation of this Code and report to the Secretary of Defense and the Secretaries of the Departments any recommendations relating to uniformity of sentence policies, amendments to this Code, and any other matters deemed appropriate.

ART. 68. Branch Offices.

(a) Whenever the President deems such action necessary, he may direct The Judge Advocate General to establish a branch office, under an Assistant Judge Advocate General, with any distant command, and to establish in such branch office one or more Boards of Review. Such Assistant Judge Advocate General and any such Board of Review shall be empowered to perform for that command, under the general supervision of The Judge Advocate General, the duties which The Judge Advocate General and a Board of Review in his

office would otherwise be required to perform in respect of all cases involving sentences not requiring approval by the President.

(b) In time of emergency, the President may direct that one or more temporary Judicial Councils be established for the period of the emergency, each of which shall be under the general supervision of the Judicial Council.

ART. 69. Review in the Office of the Judge Advocate General.

Every record of trial by general court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by Article 66, shall be examined in the Office of the Judge Advocate General. If any part of the findings or sentence is found unsupported in law, or if The Judge Advocate General so directs, the record shall be reviewed by a Board of Review in accordance with Article 66, but in such event there will be no further review by the Judicial Council.

ART. 70. Appellate Counsel.

(a) The Judge Advocate General shall appoint in his office one or more officers as Appellate Government Counsel, and one or more officers as Appellate Defense Counsel.

(b) It shall be the duty of Appellate Government Counsel to represent the United States before the Board of Review or the Judicial Council when directed to do so by The Judge Advocate General.

(c) It shall be the duty of Appellate Defense Counsel to represent the accused before the Board of Review or the Judicial Council --

- (1) when he is requested to do so by the accused; or
- (2) when the United States is represented by counsel; or
- (3) when The Judge Advocate General has requested the reconsideration

of a case before the Board of Review or has transmitted it to the Judicial Council.

(d) The accused shall have the right to be represented before the Judicial Council or the Board of Review by civilian counsel if provided by him.

(e) The Appellate Counsel shall also perform such other functions in connection with the review of court-martial cases as The Judge Advocate General shall direct.

ART. 71. Execution of Sentence; Suspension of Sentence.

(a) No court-martial sentence extending to death or involving a general or flag officer shall be executed until approved by the President. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of the sentence or any part of the sentence, as approved by him, except a death sentence.

(b) No sentence extending to the dismissal of an officer, cadet, or midshipman shall be executed until approved by the Secretary of the Department, or such Under Secretary or Assistant Secretary as may be designated by him. He shall approve the sentence or such part, amount, or commuted form of the sentence as he sees fit, and may suspend the execution of any part of the sentence as approved by him. In time of war or national emergency he may commute a sentence of dismissal to reduction to any enlisted grade. A person who is so reduced may be required to serve for the duration of the war or emergency and six months thereafter.

(c) No sentence which includes, unsuspended, a dishonorable or bad conduct discharge, or confinement for more than one year shall be executed until affirmed by a Board of Review and, in cases reviewed by it, the Judicial

Council.

(d) All other court-martial sentences, unless suspended, may be ordered executed by the convening authority when approved by him. The convening authority may suspend the execution of any sentence, except a death sentence.

ART. 72. Vacation of Suspension.

(a) Prior to the vacation of the suspension of a special court-martial sentence which as approved includes a bad conduct discharge, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at such hearing by counsel if he so desires.

(b) The record of the hearing and the recommendations of the officer having special court-martial jurisdiction shall be forwarded for action to the officer exercising general court-martial jurisdiction over the probationer. If he vacates the suspension, the vacation shall be effective, subject to applicable restrictions in Article 71(c), to execute any unexecuted portion of the sentence except a dismissal. The vacation of the suspension of a dismissal shall not be effective until approved by the Secretary of the Department.

(c) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence.

ART. 73. Petition for a New Trial.

At any time within one year after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad

conduct discharge, or confinement for more than one year, the accused may petition The Judge Advocate General for a new trial on grounds of newly-discovered evidence or fraud on the court. If the accused's case is pending before the Board of Review or before the Judicial Council, The Judge Advocate General shall refer the petition to the Board or Council, respectively, for action. Otherwise The Judge Advocate General shall act upon the petition.

ART. 74. Remission and Suspension.

(a) The Secretary of the Department and any Under Secretary, Assistant Secretary or commanding officer designated by the Secretary may remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President.

(b) The Secretary of the Department may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court-martial.

ART. 75. Restoration.

(a) Under such regulations as the President may prescribe, all rights, privileges, and property affected by an executed portion of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed portion is included in a sentence imposed upon the new trial or rehearing.

(b) Where a previously executed sentence of dishonorable or bad conduct discharge is not sustained on a new trial, the Secretary of the Department shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(c) Where a previously executed sentence of dismissal is not sustained on a new trial, the Secretary of the Department shall substitute therefor a form of discharge authorized for administrative issuance and the officer dismissed by such sentence may be reappointed by the President alone to such commissioned rank and precedence as in the opinion of the President such former officer would have attained had he not been dismissed. The reappointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers only insofar as the President may direct. All time between the dismissal and such reappointment shall be considered as actual service for all purposes, including the right to receive pay and allowances.

ART. 76. Finality of Court-Martial Judgments.

The appellate review of records of trial provided by this Code, the proceedings, findings, and sentences of courts-martial as approved, reviewed, or affirmed as required by this Code, and all dismissals and discharges carried into execution pursuant to sentences by courts-martial following approval, review, or affirmation as required by this Code, shall be final and conclusive, and orders publishing the proceedings of courts-martial and all action taken pursuant to such proceedings shall be binding upon all departments, courts, agencies, and officers of the United States, subject only to action upon a petition for a new trial as provided in Article 73 and to action by the Secretary of a Department as provided in Article 74.

Part X. Punitive Articles.

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92. Failure to Obey Order or Regulation.
93. Cruelty and Maltreatment.
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126. Arson.
127. Extortion.
128. Assault.
129. Burglary.
130. Housebreaking.
131. Perjury.
132. Frauds Against the Government.
133. Conduct Unbecoming an Officer and Gentleman.

134. General Article.

ART. 77. Principals.

Any person punishable under this Code who --

- (1) commits an offense punishable by this Code, or aids, abets, counsels, commands, or procures its commission; or
- (2) causes an act to be done, which if directly performed by him would be punishable by this Code;

shall be punished with the punishment provided for the commission of the offense.

ART. 78. Accessory After the Fact.

Any person subject to this Code who, knowing that an offense punishable by this Code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial or punishment shall be punished as a court-martial may direct.

ART. 79. Conviction of Lesser Included Offense.

An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein.

ART. 80. Attempts.

(a) An act, done with specific intent to commit an offense under this Code, amounting to more than mere preparation and tending but failing to effect its commission, is an attempt to commit that offense.

(b) Any person subject to this Code who attempts to commit any offense punishable by this Code shall be punished as a court-martial may direct, unless otherwise specifically prescribed.

(c) Any person subject to this Code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

ART. 81. Conspiracy.

Any person subject to this Code who conspires with any other person or persons to commit an offense under this Code shall, if one or more of the conspirators does an act to effect the object of the conspiracy, be punished as a court-martial may direct.

ART. 82. Solicitation.

(a) Any person subject to this Code who solicits or advises another or others to desert in violation of Article 85 or mutiny in violation of Article 94 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed or attempted, he shall be punished as a court-martial may direct.

(b) Any person subject to this Code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of Article 99 or sedition in violation of Article 94 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but if the offense solicited or advised is not committed, he shall be punished as a court-martial may direct.

ART. 83. Fraudulent Enlistment, Appointment, or Separation.

Any person who --

(1) procures his own enlistment or appointment in the armed

forces by means of knowingly false representations or deliberate concealment as to his qualifications for such enlistment or appointment and receives pay or allowances thereunder; or

(2) procures his own separation from the armed forces by means of knowingly false representations or deliberate concealment as to his eligibility for such separation;

shall be punished as a court-martial may direct.

ART. 84. Unlawful Enlistment, Appointment, or Separation.

Any person subject to this Code who effects an enlistment or appointment in or a separation from the armed forces of any person who is known to him to be ineligible for such enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct.

ART. 85. Desertion.

(a) Any member of the armed forces of the United States who --

(1) without proper authority goes or remains absent from his place of service, organization, or place of duty with intent to remain away therefrom permanently; or

(2) quits his unit or organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(3) without being regularly separated from one of the armed forces enlists or accepts an appointment in the same or another one of the armed forces without fully disclosing the fact he has not been so regularly separated, or enters any foreign armed service except when authorized by the United States;

is guilty of desertion.

(b) Any officer of the armed forces who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(c) Any person found guilty of desertion or attempted desertion shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempted desertion occurs at any other time, by such punishment, other than death, as a court-martial may direct.

ART. 86. Absence Without Leave.

Any person subject to this Code who, without proper authority --

- (1) fails to go to his appointed place of duty at the time prescribed; or
- (2) goes from that place; or
- (3) absents himself or remains absent from his unit, organization, or other place of duty at which he is required to be at the time prescribed;

shall be punished as a court-martial may direct.

ART. 87. Missing Movement.

Any person subject to this Code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court-martial may direct.

ART. 88. Disrespect Towards Officials.

Any officer who uses contemptuous or disrespectful words against the President, Vice President, Congress, Secretary of Defense, or a Secretary of a Department, a Governor or a legislature of any State, Territory or other possession of the United States in which he is on duty or present shall be punished as a court-martial may direct.

ART. 89. Disrespect Towards Superior Officer.

Any person subject to this Code who behaves with disrespect towards his superior officer shall be punished as a court-martial may direct.

ART. 90. Assaulting or Willfully Disobeying Officer.

Any person subject to this Code who --

(1) strikes his superior officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) wilfully disobeys a lawful command of his superior officer; shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, and if the offense is committed at any other time, by such punishment, other than death, as a court-martial may direct.

ART. 91. Insubordinate Conduct Towards Noncommissioned Officer.

Any warrant officer or enlisted person who --

(1) strikes or assaults a warrant officer, noncommissioned officer, or petty officer, while such officer is in the execution of his office; or

(2) willfully disobeys the lawful order of a warrant officer, noncommissioned officer, or petty officer; or

(3) treats with contempt or is disrespectful in language or deportment towards a warrant officer, noncommissioned officer, or petty officer while such officer is in the execution of his office;

shall be punished as a court-martial may direct.

ART. 92. Failure to Obey Order or Regulation.

any person subject to this Code who --

(1) violates or fails to obey any lawful general order or regulation; or

(2) having knowledge of any other lawful order issued by a member of the armed forces, which it is his duty to obey, fails to obey the same; or

(3) is derelict in the performance of his duties;

shall be punished as a court-martial may direct.

ART. 93. Cruelty and Maltreatment.

Any person subject to this Code who is guilty of cruelty toward, or oppression or maltreatment of any person subject to his orders shall be punished as a court-martial may direct.

ART. 94. Mutiny or Sedition.

(a) Any person subject to this Code --

(1) who with intent to usurp or override lawful military authority refuses, in concert with any other person or persons, to

obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(2) who with intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person or persons, revolt, violence, or other disturbance against such authority is guilty of sedition;

(3) who fails to do his utmost to prevent and suppress an offense of mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior or commanding officer of an offense of mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(b) A person who is found guilty of attempted mutiny, mutiny, sedition or failure to suppress or report a mutiny or sedition shall be punished by death or such other punishment as a court-martial may direct.

ART. 95. Arrest and Confinement.

Any person subject to this Code who resists apprehension or breaks arrest or who escapes from custody or confinement shall be punished as a court-martial may direct.

ART. 96. Releasing Prisoner Without Proper Authority.

Any person subject to this Code who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court-martial may direct.

ART. 97. Unlawful Detention of Another.

Any person subject to this Code who, except as provided by law, apprehends, arrests or confines any person shall be punished as a court-martial may direct.

ART. 98. Non-Compliance with Procedural Rules.

Any person subject to this Code who --

- (1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this Code; or
- (2) knowingly and intentionally fails to enforce or comply with any provision of this Code regulating the proceedings before, during, or after trial of an accused;

shall be punished as a court-martial may direct.

ART. 99. Misbehavior Before the Enemy.

Any member of the armed forces who before or in the presence of the enemy --

- (1) runs away; or
- (2) shamefully abandons, surrenders or delivers up any command, unit, place or military property which it is his duty to defend; or
- (3) through disobedience, neglect or intentional misconduct endangers the safety of any such command, unit, place, or military property; or
- (4) casts away his arms or ammunition; or
- (5) is guilty of cowardly conduct; or
- (6) quits his place of duty to plunder or pillage; or
- (7) causes false alarms in any command, unit, or place under control of the armed forces; or

(8) willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture or destroy; or

(9) does not afford all practicable relief and assistance to any troops, combatants, vessels or aircraft of the armed forces belonging to the United States or their allies when engaged in battle; shall be punished by death or such other punishment as a court-martial may direct.

ART. 100. Subordinate Compelling Surrender.

Any person subject to this Code who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or of any body of members of the armed forces to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

ART. 101. Improper Use of Countersign.

Any person subject to this Code who in time of war discloses the parole or countersign to any person not entitled to receive it or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished by death or such other punishment as a court-martial may direct.

ART. 102. Forcing a Safeguard.

Any person subject to this Code who forces a safeguard shall suffer death or such other punishment as a court-martial may direct.

ART. 103. Captured or Abandoned Property.

(a) All persons subject to this Code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody or control.

(b) Any person subject to this Code who --

(1) fails to carry out the duties prescribed in subdivision (a) of this Article; or

(2) buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

ART. 104. Aiding the Enemy.

Any person who --

(1) aids, or attempts to aid the enemy with arms, ammunition, supplies, money or other thing; or

(2) without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with, or holds any intercourse with the enemy, either directly or indirectly;

shall suffer death or such other punishment as a court-martial or military commission may direct.

ART. 105. Misconduct as Prisoner.

Any person subject to this Code who, while in the hands of the enemy in time of war --

(1) for the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) while in a position of authority over such persons maltreats them without justifiable cause;

shall be punished as a court-martial may direct.

ART. 106. Spies.

Any person who in time of war is found lurking or acting as a spy in or about any place, vessel, or aircraft, within the control or jurisdiction of any of the armed forces of the United States, or in or about any shipyard, any manufacturing or industrial plant, or any other place of institution engaged in work in aid of the prosecution of the war by the United States, or elsewhere, shall be tried by a general court-martial or by a military commission and on conviction shall be punished by death.

ART. 107. False Official Statements.

Any person subject to this Code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing

the same to be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct.

ART. 108. Military Property of United States -- Loss, Damage, Destruction, or Wrongful Disposition.

Any person subject to this Code who, without proper authority, --

- (1) sells or otherwise disposes of; or
- (2) willfully or through neglect damages, destroys, or loses; or
- (3) willfully or through neglect suffers to be lost, damaged,

destroyed, sold or wrongfully disposed of;

any military property of the United States, shall be punished as a court-martial may direct.

ART. 109. Property Other Than Military Property of United States -- Waste, Spoil, or Destruction.

Any person subject to this Code who willfully or recklessly wastes, spoils, or otherwise willfully and wrongfully destroys or damages any property other than military property of the United States shall be punished as a court-martial may direct.

ART. 110. Improper Hazarding of Vessel.

(a) Any person subject to this Code who willfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces shall suffer death or such other punishment as a court-martial may direct.

(b) Any person subject to this Code who negligently hazards or suffers to be hazarded any vessel of the armed forces, shall be punished as a court-martial may direct.

ART. 111. Drunken or Reckless Driving.

Any person subject to this Code who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court-martial may direct.

ART. 112. Drunk on Duty.

Any person subject to this Code, other than a sentinel or lookout, who is found drunk on duty, shall be punished as a court-martial may direct.

ART. 113. Misbehavior of Sentinel.

Any sentinel or lookout who is found drunk or sleeping upon his post, or leaves it before he is regularly relieved shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the offense is committed at any other time, by such punishment other than death as a court-martial may direct.

ART. 114. Dueling.

Any person subject to this Code 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 be punished as a court-martial may direct.

ART. 115. Malingering.

Any person subject to this Code who for the purpose of avoiding work, duty, or service --

- (1) feigns illness, physical disablement, mental lapse or derangement; or

(2) intentionally inflicts self-injury;
shall be punished as a court-martial may direct.

ART. 116. Riot or Breach of Peace.

Any person subject to this Code who causes or participates in any riot or breach of the peace shall be punished as a court-martial may direct.

ART. 117. Provoking Speeches or Gestures.

Any person subject to this Code who uses provoking or reproachful words or gestures towards any other person subject to this Code shall be punished as a court-martial may direct.

ART. 118. Murder.

Any person subject to this Code who, without justification or excuse, kills a human being, when he --

- (1) has a premeditated design to kill; or
- (2) intends to kill or inflict great bodily harm; or
- (3) is engaged in an act which is inherently dangerous to

others and evinces a wanton disregard of human life; or

- (4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson, though he has no intent to kill;

is guilty of murder, and shall suffer such punishment as a court-martial may direct, except that if found guilty under paragraph (1) of this Article, he shall suffer death or imprisonment for life as a court-martial may direct.

ART. 119. Manslaughter.

Any person subject to this Code who, without a design to effect death, kills a human being --

(1) in the heat of sudden passion; or

(2) by culpable negligence; or

(3) while perpetrating or attempting to perpetrate an offense, other than those specified in paragraph (4) of Article 118, directly affecting the person;

is guilty of manslaughter and shall be punished as a court-martial may direct.

ART. 120. Rape.

(a) Any person subject to this Code who commits an act of sexual intercourse with a female not his wife by force and without her consent is guilty of rape. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of rape shall be punished by death or such other punishment as a court-martial may direct.

ART. 121. Larceny.

Any person subject to this Code who, with intent to deprive or defraud another of the use and benefit of property or to appropriate the same to his own use or the use of any person other than the true owner, wrongfully takes, obtains, or withholds, by any means whatever, from the possession of the true owner or of any other person any money, personal property, or article of value of any kind, steals such property and is guilty of larceny, and shall be punished as a court-martial may direct.

ART. 122. Robbery.

Any person subject to this Code who with intent to steal takes anything of value from the person or in the presence of another, against his will, by means of force or violence or fear of immediate or future injury to his person or property or the person or property of a relative or member of his family or of anyone in his company at the time of the robbery, is guilty of robbery and shall be punished as a court-martial may direct.

ART. 123. Forgery.

Any person subject to this Code who, with intent to defraud --

(1) falsely makes or alters any signature to, or any part of, any writing which would, if genuine, apparently impose a legal liability on another or change his legal right or liability to his prejudice; or

(2) utters, offers, issues, or transfers such a writing, known by him to be so made or altered;

is guilty of forgery and shall be punished as a court-martial may direct.

ART. 124. Maiming.

Any person subject to this Code who with intent to injure, disfigure, or disable, inflicts upon the person of another an injury which --

(1) seriously disfigures his person by any mutilation thereof;

or

(2) destroys or disables any member or organ of his body; or

(3) seriously diminishes his physical vigor by the injury of any member or organ;

is guilty of maiming and shall be punished as a court-martial may direct.

ART. 125. Sodomy.

(a) Any person subject to this Code who engages in unnatural carnal copulation with another of the same or opposite sex or with an animal is guilty of sodomy. Penetration, however slight, is sufficient to complete the offense.

(b) Any person found guilty of sodomy shall be punished as a court-martial may direct.

ART. 126. Arson.

(a) Any person subject to this Code who willfully and maliciously burns or sets on fire a dwelling in which there is at the time a human being, or any other structure, water craft, or movable, wherein to the knowledge of the offender there is at the time a human being is guilty of aggravated arson and shall be punished as a court-martial may direct.

(b) Any person subject to this Code who willfully and maliciously burns or sets fire to the property of another, except as provided in subdivision (a) of this Article, is guilty of simple arson and shall be punished as a court-martial may direct.

ART. 127. Extortion.

Any person subject to this Code who communicates threats to another with the intention thereby to obtain anything of value or any acquittance, advantage, or immunity of any description is guilty of extortion and shall be punished as a court-martial may direct.

ART. 128. Assault.

(a) Any person subject to this Code who attempts or offers with

unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct.

(b) Any person subject to this Code who --

(1) commits an assault with a dangerous weapon or other means or force likely to produce death or grievous bodily harm; or

(2) commits an assault and intentionally inflicts grievous bodily harm with or without a weapon;

is guilty of aggravated assault and shall be punished as a court-martial may direct.

ART. 129. Burglary.

Any person subject to this Code who, with intent to commit an offense punishable under Articles 118 through 128 inclusive, breaks and enters, in the night time, the dwelling-house of another, is guilty of burglary and shall be punished as a court-martial may direct.

ART. 130. Housebreaking.

Any person subject to this Code who unlawfully enters the building or structure of another with intent to commit a criminal offense therein is guilty of housebreaking and shall be punished as a court-martial may direct.

ART. 131. Perjury.

Any person subject to this Code who in a judicial proceeding or course of justice, willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court-martial may direct.

ART. 132. Frauds Against the Government.

Any person subject to this Code --

(1) who, knowing it to be false or fraudulent, --

(A) makes any claim against the United States or any officer thereof; or

(B) presents to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof; or

(2) who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof, --

(A) makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements;

(B) makes any oath to any fact or to any writing or other paper knowing such oath to be false; or

(C) forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing the same to be forged or counterfeited; or

(3) who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the armed forces thereof, knowingly delivers to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

(4) who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the armed forces 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; shall, upon conviction, be punished as a court-martial may direct.

ART. 133. Conduct Unbecoming an Officer and Gentleman.

Any officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the armed forces.

ART. 134. General Article.

Though not specifically mentioned in this Code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces; and crimes and offenses not capital, of which persons subject to this Code 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.

Part. XI. Miscellaneous Provisions.

135. Courts of Inquiry.

136. Authority to Administer Oaths and to Act as Notary.

137. Articles to be Explained.

138. Complaints of Wrongs.

139. Redress of Injuries to Property.

ART. 135. Courts of Inquiry.

(a) Courts of inquiry to investigate any matter may be convened by any person authorized to convene a general court-martial or by any other person designated by the Secretary of a Department for that purpose whether

or not the persons involved have requested such an inquiry.

(b) A court of inquiry shall consist of three or more officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(c) Any person subject to this Code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this Code or employed by the National Military Establishment who has a direct interest in the subject of inquiry shall have the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and shall have the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(d) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(e) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial.

(g) Courts of inquiry shall make findings of fact but shall not express opinions or make recommendations unless required to do so by the convening authority.

(h) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. In case the record can not be authenticated by the president it shall be signed by a member in lieu of the president and in case the record can not be authenticated by the counsel for the court it shall be signed by a member in lieu of the counsel.

ART. 136. Authority to Administer Oaths and to Act as Notary.

(a) The following persons on active duty in the armed forces shall have authority to administer oaths for the purposes of military administration, including military justice, and shall have the general powers of a notary public and of a consul of the United States, in the performance of all notarial acts to be executed by members of any of the armed forces, wherever they may be, and by other persons subject to this Code outside the continental limits of the United States:

- (1) All judge advocates of the Army and Air Force;
- (2) All law specialists;
- (3) All summary courts-martial;
- (4) All adjutants, assistant adjutants, acting adjutants and personnel adjutants;
- (5) All commanding officers of the Navy and Coast Guard;
- (6) All staff judge advocates and legal officers, and acting or assistant staff judge advocates and legal officers; and
- (7) All other persons designated by regulations of the armed forces or by statute.

(b) The following persons on active duty in the armed forces shall have authority to administer oaths necessary in the performance of their duties:

- (1) The president, law officer, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (2) The president and the counsel for the court of any court of inquiry;
- (3) All officers designated to take a deposition;
- (4) All persons detailed to conduct an investigation;
- (5) All recruiting officers; and

(6) All other persons designated by regulations of the armed forces or by statute.

(c) No fee of any character shall be paid to or received by any person for the performance of any notarial act herein authorized.

(d) The signature without seal of any such person acting as notary, together with the title of his office, shall be prima facie evidence of his authority.

ART. 137. Articles to be Explained.

Articles 2, 3, 7 through 15, 25, 27, 31, 37, 38, 55, 77 through 134, and 137 through 139 of this Code shall be carefully explained to every enlisted person at the time of his entrance on active duty in any of the armed forces of the United States, or within six days thereafter. They shall be explained again after he has completed six months of active duty, and again at the time he re-enlists. A complete text of the Uniform Code of Military Justice and of the regulations prescribed by the President thereunder shall be made available to any person on active duty in the armed forces of the United States, upon his request, for his personal examination.

ART. 138. Complaints of Wrongs.

Any member of the armed forces who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to any superior officer who shall forward the complaint to the officer exercising general court-martial jurisdiction over the officer against whom it is made. That officer shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall,

as soon as possible, transmit to the Department concerned a true statement of such complaint, with the proceedings had thereon.

ART. 139. Redress of Injuries to Property.

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces he may, subject to such regulations as the Secretary of the Department may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three officers and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of such commanding officer directing charges herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

(b) Where the offenders can not be ascertained, but the organization or detachment to which they belong is known, charges totalling the amount of damages assessed and approved may be made in such proportion as may be deemed just upon the individual members thereof who are shown to have been present at the scene at the time the damages complained of were inflicted, as determined by the approved findings of the board.

SEC. 2. If any Article or part thereof, as set out in Section 1 of this Act, shall be held invalid, the remainder shall not be affected thereby.

SEC. 3. No inference of a legislative construction is to be drawn by reason of the Part in which any Article is placed, nor by reason of the catch lines of the Part or the Article as set out in Section 1 of this Act.

SEC. 4. All offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the effective date of this Act under any law embraced in or modified, changed, or repealed by this Act may be prosecuted, punished, and enforced, and action thereon may be completed, in the same manner and with the same effect as if this Act had not been passed.

SEC. 5. This Act shall become effective on the ~~thirtieth~~ ^{last} day of the twelfth calendar month after approval of this Act, *or on July 1, 1950, whichever date is later.*

SEC. 6. Articles of War 107, 108, 112, 113, 119, and 120 (41 Stat. 809, 810, and 811), as amended, are further amended as follows:

- (a) Delete from Article 107, the words "Article 107."
- (b) Delete from Article 108, the words "Article 108."
- (c) Delete from Article 112, the words "Article 112."
- (d) Delete from Article 113, the words "Article 113."
- (e) Delete from Article 119, the words "Article 119."
- (f) Delete from Article 120, the words "Article 120."

These provisions as amended herein shall be construed to have the same force, effect, and applicability as they now have, but shall not be known as "Articles of War."

SEC. 7. (a) Authority of Naval Officers After Loss of Vessel.

When the crew of any naval vessel or aircraft are separated from their vessel or aircraft by means of its wreck, loss, or destruction,

all the command and authority given to the officers of such vessel or aircraft shall remain in full force until such crew shall be regularly discharged or reassigned by competent authority.

(b) Authority of Officers of Separate Organization of Marines.

When a force of marines is embarked on a naval vessel or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the officers of such separate organizations of marines shall be the same as though such organization were serving at a naval station on shore, but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any vessel over the vessel under his command and all persons embarked thereon.

(c) Commanders' Duties of Example and Correction.

All commanding officers and others in authority in the naval service 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; and to 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.

(d) Divine Service.

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

(e) Reverent Behavior.

All persons in the Navy are enjoined to behave themselves in a reverent and becoming manner during divine service.

SEC. 8. Oath of Enlistment.

Every person who is enlisted in any armed force shall take the following oath or affirmation at the time of his enlistment: "I, _____, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice." This oath or affirmation may be taken before any officer.

SEC. 9. Removal of Civil Suits.

When any civil or criminal prosecution is commenced in any court of a State of the United States against any member of the armed forces of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the armed forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing

thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed by law, and the cause shall thereupon be entered on the docket of such district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine said cause.

SEC. 10. Dismissal of Officers.

No officer shall be dismissed from any of the armed forces except by sentence of a general court-martial, or in commutation thereof, or, in time of war, by order of the President; but the President may at any time drop from the rolls of any armed force any officer who has been absent without authority from his place of duty for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a Federal or State penitentiary or correctional institution.

SEC. 11. The proviso of section 3 of the Act of April 9, 1906 (34 Stat. 104, ch. 1370) is amended to read as follows:

"Provided, that such midshipman shall not be confined in a military or naval prison or elsewhere with men who have been convicted of crimes or misdemeanors; and such finding and sentence shall be subject to review in the manner prescribed for general court-martial cases."

SEC. 12. The following sections or parts thereof of the Revised Statutes or Statutes at Large are hereby repealed. Any rights or liabilities existing under such sections or parts thereof prior to the effective date of this Act shall not be affected by this repeal, and this Act shall not be effective to authorize trial or punishment for any offense if such trial or punishment is barred by the provisions of existing law:

(a) Chapter II of the Act of June 4, 1920 (41 Stat. 759, 787-811, ch. 227), as amended, except Articles of War 107, 108, 112, 113, 119 and 120;

(b) Revised Statutes, 1228 through 1230;

(c) Act of January 19, 1911 (36 Stat. 894, ch. 22);

(d) Paragraph 2 of section 2 of the Act of March 4, 1915 (38 Stat. 1062, 1084, ch. 143);

(e) Revised Statutes 1441, 1621, and 1624, Arts. 1 through 14 and 16 through 63, as amended;

(f) The provision of Section 1457, Revised Statutes, which subjects officers retired from active service to the rules and articles for the government of the Navy and to trial by general court-martial;

(g) Section 2 of the Act of June 22, 1874 (18 Stat. 191, 192, ch. 392);

(h) The provision of the Act of March 3, 1893 (27 Stat. 715, 716, ch. 212), under the heading "Pay Miscellaneous", relating to the punishment for fraudulent enlistment and receipt of any pay or allowances thereunder;

(i) Act of January 25, 1895 (28 Stat. 639, ch. 45), as amended;

(j) Provisions contained in the Act of March 2, 1895 (28 Stat. 825, 838, ch. 186), as amended, under the heading "Naval Academy", relating to the power of the Secretary of the Navy to convene general courts-martial for the trial of naval cadets (title changed to "midshipmen" by Act of July 1, 1902, 32 Stat. 662, 686, ch. 1368), his power to approve proceedings and execute sentences of such courts-

martial, and the exceptional provision relating to approval, confirmation, and carrying into effect of sentences of suspension and dismissal;

(k) Sections 1 through 12 and 15 through 17 of the Act of February 16, 1909 (35 Stat. 621, 623, ch. 131);

(l) The provision of the Act of August 29, 1916 (39 Stat. 556, 573, ch. 417), under the heading "Hospital Corps", making officers and enlisted men of the Medical Department of the Navy who are serving with a body of marines detached for service with the Army subject to the rules and articles of war while so serving;

(m) The provisions in the Act of August 29, 1916 (39 Stat. 556, 586, ch. 417), under the heading "Administration of Justice";

(n) Act of October 6, 1917 (40 Stat. 393, ch. 93);

(o) Act of April 2, 1918 (40 Stat. 501, ch. 39);

(p) Act of April 25, 1935 (49 Stat. 161, ch. 81);

(q) The third proviso of section 6, title I, of the Naval Reserve Act of 1938 (52 Stat. 1175, 1176, ch. 690);

(r) Section 301, title III, of the Naval Reserve Act of 1938 (52 Stat. 1175, 1180, ch. 690);

(s) Act of March 22, 1943 (57 Stat. 41, ch. 18);

(t) Act of April 9, 1943 (57 Stat. 58, ch. 36);

(u) Sections 2, 3, 4, 6 and 7 of the Act of May 26, 1906 (34 Stat. 200, 201, ch. 2556);

(v) The provision of the Act of June 5, 1920 (41 Stat. 874, 880, ch. 235), under the heading "Coast Guard", authorizing the trial of enlisted men in the Coast Guard by deck courts.