

81ST CONGRESS
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H. R. 4080

A 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.

By Mr. BROOKS

APRIL 7, 1949

Referred to the Committee on Armed Services

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IN THE HOUSE OF REPRESENTATIVES

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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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That a Uniform Code of Military Justice for the government
4 of the armed forces of the United States, unifying, consoli-
5 dating, revising, and codifying the Articles of War, the Ar-
6 ticles for the Government of the Navy, and the disciplinary
7 laws of the Coast Guard, is hereby enacted as follows, and
8 the articles in this section may be cited as "Uniform Code
9 of Military Justice, Article ".

1 UNIFORM CODE OF MILITARY JUSTICE

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2 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.

3 ARTICLE 1. Definitions.

4 The following terms when used in this code shall be
 5 construed in the sense indicated in this article, unless the
 6 context shows that a different sense is intended, namely:

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

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

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

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

9 (5) "Officer" shall be construed to refer to a commis-
10 sioned officer including a commissioned warrant officer;

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

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

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

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

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

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

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

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

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

14 ART. 2. Persons subject to the code.

15 The following persons are subject to this code:

16 (1) All persons belonging to a regular component of
17 the armed forces, including those awaiting discharge after
18 expiration of their terms of enlistment; all volunteers and in-
19 ductees, from the dates of their muster or acceptance into the
20 armed forces of the United States; and all other persons law-
21 fully called ^{drafted,} or ordered into, or to duty in or for training in,
22 the armed forces, from the dates they are required by the
23 terms of the call ^{draft,} or order to obey the same;

24 (2) Cadets, aviation cadets, and midshipmen;

25 (3) Reserve personnel ^{who are voluntarily} while they are on inactive duty

1 training authorized by written orders which are voluntarily
2 accepted by them, which orders specify that they are subject
3 to this code;

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

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

8 (6) Members of the Fleet Reserve and Fleet Marine
9 Corps Reserve;

10 (7) All persons in custody of the armed forces serving
11 a sentence imposed by a court-martial;

12 (8) Personnel of the Coast and Geodetic Survey, Public
13 Health Service, and other organizations, when assigned to
14 and serving with the armed forces of the United States;

15 (9) Prisoners of war in custody of the armed forces;

16 (10) In time of war, all persons serving with or accom-
17 panying an armed force in the field;

18 (11) All persons serving with, employed by, or accom-
19 panying the armed forces without the supervision of the continental limits of
20 the United States and the following Territories: That part
21 of Alaska east of longitude one hundred and seventy-two
22 degrees west, the Canal Zone, the main group of the
23 Hawaiian Islands, Puerto Rico, and the Virgin Islands;

24 (12) All persons within an area leased by the United
25 States which is under the control of the Secretary of a

1 Department and which is without the continental limits of
2 the United States and the following Territories: That part
3 of Alaska east of longitude one hundred and seventy-two
4 degrees west, the Canal Zone, the main group of the Hawai-
5 ian Islands, Puerto Rico, and the Virgin Islands.

6 ART. 3. Jurisdiction to try certain personnel.

7 ~~(a) Subject to the provisions of article 42, any person~~
8 (a) Reserve personnel of the armed forces who are
9 charged with having committed, while in a status in which
10 they are subject to this code, any offense against this code
11 may be retained in such status or, whether or not such status
12 has terminated, placed in an active-duty status for disci-
13 plinary action, without their consent, but not for a longer
14 period of time than may be required for such action,
15 to trial by courts-martial by reason of the termination of
16 said status.

17 (b) All persons discharged from the armed forces sub-
18 sequently charged with having fraudulently obtained said
19 discharge shall after apprehension be subject to trial by
20 court-martial on said charge and shall be subject to this
21 code while in the custody of the armed forces for such
22 trial. Upon conviction of said charge they shall be subject
23 to trial by court-martial for all offenses under this code com-
24 mitted prior to the fraudulent discharge.

25 (c) Any person who has deserted from the armed forces
shall not be relieved from amenability to the jurisdiction of

1 this code by virtue of a separation from any subsequent period
2 of service.

3 ART. 4. Dismissed officer's right to trial by court-martial.

4 (a) When any officer, dismissed by order of the
5 President, makes a written application for trial by court-
6 martial, setting forth, under oath, that he has been wrong-
7 fully dismissed, the President, as soon as practicable, shall
8 convene a general court-martial to try such officer on the
9 charges on which he was dismissed. A court-martial so
10 convened shall have jurisdiction to try the dismissed offi-
11 cer on such charges, and he shall be held to have waived
12 the right to plead any statute of limitations applicable to
13 any offense with which he is charged. The court-martial
14 may, as part of its sentence, adjudge the affirmance of the
15 dismissal, but if the court-martial acquits the accused or if
16 the sentence adjudged, as finally approved or affirmed,
17 does not include dismissal or death, the Secretary of the
18 Department shall substitute for the dismissal ordered by the
19 President a form of discharge authorized for administrative
20 issuance.

21 (b) If the President fails to convene a general court-
22 martial within six months from the presentation of an ap-
23 plication for trial under this article, the Secretary of the
24 Department shall substitute for the dismissal ordered by

1 the President a form of discharge authorized for administra-
2 tive issuance.

3 (c) Where a discharge is substituted for a dismissal
4 under the authority of this article, the President alone may
5 reappoint the officer to such commissioned rank and pre-
6 cedence as in the opinion of the President such former of-
7 ficer would have attained had he not been dismissed. The
8 reappointment of such a former officer shall be without
9 regard to position vacancy and shall affect the promotion
10 status of other officers only insofar as the President may di-
11 rect. All time between the dismissal and such reappoint-
12 ment shall be considered as actual service for all purposes,
13 including the right to receive pay and allowances.

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

18 ART. 5. Territorial applicability of the code.

19 This code shall be applicable in all places.

20 ART. 6. Judge advocates and legal officers.

21 (a) The assignment for duty of all judge advocates
22 of the Army and Air Force and law specialists of the Navy
23 and Coast Guard shall be subject to the approval
24 made upon the recommendation of
25 The Judge Advocate General of the armed force of which
they are members. The Judge Advocate General or senior

1 members of his staff shall make frequent inspections in the
2 field in supervision of the administration of military justice.

3 (b) Convening authorities shall at all times communi-
4 cate directly with their staff judge advocates or legal offi-
5 cers in matters relating to the administration of military
6 justice; and the staff judge advocate or legal officer of any
7 command is authorized to communicate directly with the
8 staff judge advocate or legal officer of a superior or subordi-
9 nate command, or with The Judge Advocate General.

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

15 **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.

16 **ART. 7. Apprehension.**

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

19 (b) Any person authorized under regulations govern-
20 ing the armed forces to apprehend persons subject to this

1 code may do so upon reasonable belief that an offense has
2 been committed and that the person apprehended com-
3 mitted it.

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

9 ART. 8. Apprehension of deserters.

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

16 ART. 9. Imposition of restraint.

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

21 (b) An enlisted person may be ordered into arrest or
22 confinement by any officer by an order, oral or written,
23 delivered in person or through other persons subject to
24 this code. A commanding officer may authorize warrant
25 officers, petty officers, or noncommissioned officers to order

1 enlisted persons of his command or subject to his authority
2 into arrest or confinement.

3 (c) An officer, a warrant officer, or a civilian subject
4 to this code may be ordered into arrest or confinement only
5 by a commanding officer to whose authority he is subject,
6 by an order, oral or written, delivered in person or by
7 another officer. The authority to order such persons into
8 arrest or confinement may not be delegated.

9 (d) No person shall be ordered into arrest or confine-
10 ment except for probable cause.

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

15 ART. 10. Restraint of persons charged with offenses.

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

25 ART. 11. Reports and receiving of prisoners.

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

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

12 ART. 12. Confinement with enemy prisoners prohibited.

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

17 ART. 13. Punishment prohibited before trial.

18 Subject to the provisions of article 57, no person, while
19 being held for trial or the results of trial, shall be subjected
20 to punishment or penalty other than arrest or confinement
21 upon the charges pending against him, nor shall the arrest
22 or confinement imposed upon him be any more rigorous than
23 the circumstances require to insure his presence, but he may
24 be subjected to punishment during such period for minor in-
25 fractions of discipline.

1 ART. 14. Delivery of offenders to civil authorities.

2 (a) Under such regulations as the Secretary of the De-
3 partment may prescribe, a member of the armed forces ac-
4 cused of an offense against civil authority may be delivered,
5 upon request, to the civil authority for trial.

6 (b) When delivery under this article is made to any civil
7 authority of a person undergoing sentence of a court-martial,
8 such delivery, if followed by conviction in a civil tribunal,
9 shall be held to interrupt the execution of the sentence of the
10 court-martial, and the offender after having answered to the
11 civil authorities for his offense shall, upon the request of
12 competent military authority, be returned to military
13 custody for the completion of the said court-martial sen-
14 tence.

15 PART III—NON-JUDICIAL PUNISHMENT

Article

15. Commanding officer's non-judicial punishment.

16 ART. 15. Commanding officer's non-judicial punishment.

17 (a) Under such regulations as the President may pre-
18 scribe, any commanding officer may, in addition to or in
19 lieu of admonition or reprimand, impose one of the following
20 disciplinary punishments for minor offenses without the in-
21 tervention of a court-martial—

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

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

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

6 (C) if imposed by an officer exercising general
7 court-martial jurisdiction, forfeiture of not to exceed
8 one-half of his pay per month for a period not
9 exceeding three one month;

10 (2) upon other military personnel of his command:

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

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

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

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

22 (E) if imposed upon a person attached to or
23 embarked in a vessel, confinement for a period not
24 to exceed seven consecutive days; or

25 (F) if imposed upon a person attached to or

1 embarked in a vessel, confinement on bread and
2 water or diminished rations for a period not to
3 exceed five consecutive days.

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

7 ized, the categories of commanding officers authorized to
8 exercise such powers, and the applicability of this article to
9 an accused who demands trial by court martial.

10 (c) An officer in charge may, for minor offenses, im-
11 pose on enlisted persons assigned to the unit of which he is
12 in charge, such of the punishments authorized to be imposed
13 by commanding officers as the Secretary of the Department
14 may by regulation specifically prescribe, as provided in
15 subdivisions (a) and (b).

16 (d) A person punished under authority of this article
17 who deems his punishment unjust or disproportionate to the
18 offense may, through the proper channel, appeal to the next
19 superior authority. The appeal shall be promptly forwarded
20 and decided, but the person punished may in the meantime
21 be required to undergo the punishment adjudged. The officer
22 who imposes the punishment, his successor in command,
23 and superior authority shall have power to suspend, set
24 aside, or remit any part or amount of the punishment and
25 to restore all rights, privileges, and property affected.

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

10 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.

11 ART. 16. Courts-martial classified.

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

14 (1) General courts-martial, which shall consist of
15 a law officer and any number of members not less than
16 five;

17 (2) Special courts-martial, which shall consist of
18 any number of members not less than three; and

19 (3) Summary courts-martial, which shall consist
20 of one officer.

1 ART. 17. Jurisdiction of courts-martial in general.

2 (a) Each armed force shall have court-martial juris-
3 diction over all persons subject to this code. The exercise of
4 jurisdiction by one armed force over personnel of another
5 armed force shall be in accordance with regulations pre-
6 scribed by the President.

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

13 ART. 18. Jurisdiction of general courts-martial.

14 Subject to article 17, general courts-martial shall have
15 jurisdiction to try persons subject to this code for any offense
16 made punishable by this code and may, under such limita-
17 tions as the President may prescribe, adjudge any punish-
18 ment not forbidden by this code, including the penalty of
19 death when specifically authorized by this code. General
20 courts-martial shall also have jurisdiction to try any person
21 who by the law of war is subject to trial by a military
22 tribunal and may adjudge any punishment permitted by the
23 law of war.

1 ART. 19. Jurisdiction of special courts-martial.

2 Subject to article 17, special courts-martial shall have
3 jurisdiction to try persons subject to this code for any non-
4 capital offense made punishable by this code and, under such
5 regulations as the President may prescribe, for capital of-
6 fenses. Special courts-martial may, under such limitations
7 as the President may prescribe, adjudge any punishment
8 not forbidden by this code except death, dishonorable dis-
9 charge, dismissal, confinement in excess of six months, hard
10 labor without confinement in excess of three months, for-
11 feiture of pay exceeding two-thirds pay per month, or for-
12 feiture of pay for a period exceeding six months. A bad-
13 conduct discharge shall not be adjudged unless a complete
14 record of the proceedings and testimony before the court has
15 been made.

16 ART. 20. Jurisdiction of summary courts-martial.

17 Subject to article 17, summary courts-martial shall have
18 jurisdiction to try persons subject to this code except offi-
19 cers, warrant officers, cadets, aviation cadets, and midship-
20 men for any noncapital offense made punishable by this
21 code, but no person who objects thereto shall be brought to
22 trial before a summary court-martial unless he has been
23 permitted to refuse punishment under article 15. Where
24 such objection is made by the accused, trial shall be ordered
25 by special or general court-martial, as may be appropriate.

1 Summary courts-martial may, under such limitations as the
 2 President may prescribe, adjudge any punishment not for-
 3 bidden by this code except death, dismissal, dishonorable or
 4 bad-conduct discharge, confinement in excess of one month,
 5 hard labor without confinement in excess of forty-five days,
 6 restriction to certain specified limits in excess of two months,
 7 or forfeiture of pay in excess of two-thirds of one month's
 8 pay.

9 ART. 21. Jurisdiction of courts-martial not exclusive.

10 The provisions of this code conferring jurisdiction upon
 11 courts-martial shall not be construed as depriving military
 12 commissions, provost courts, or other military tribunals of
 13 concurrent jurisdiction in respect of offenders or offenses that
 14 by statute or by the law of war may be tried by such mili-
 15 tary commissions, provost courts, or other military tribunals.

16 PART V—APPOINTMENT AND COMPOSITION OF
 17 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.

18 ART. 22. Who may convene general courts-martial.

19 (a) General courts-martial may be convened by—

20 (1) the President of the United States;

1 (2) the Secretary of a Department;

2 (3) the commanding officer of a Territorial De-
3 partment, an Army Group, an Army, an Army Corps,
4 a division, a separate brigade, or a corresponding unit
5 of the Army;

6 (4) the Commander in Chief of a Fleet; the com-
7 manding officer of a naval station or larger shore activity
8 of the Navy beyond the continental limits of the United
9 States;

10 (5) the commanding officer of an Air Command,
11 an Air Force, an air division, or a separate wing of the
12 Air Force;

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

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

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

21 ART. 23. Who may convene special courts-martial.

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

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

25 (2) the commanding officer of a district, garrison,

1 fort, camp, station, Air Force base, auxiliary air field,
2 or other place where members of the Army or Air Force
3 are on duty;

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

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

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

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

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

18 (b) When any such officer is an accuser, the court shall
19 be convened by superior competent authority, and may in
20 any case be convened by such authority when deemed ad-
21 visable by him.

22 ART. 24. Who may convene summary courts-martial.

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

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

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

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

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

8 (b) When but one officer is present with a command or
9 detachment he shall be the summary court-martial of that
10 command or detachment and shall hear and determine all
11 summary court-martial cases brought before him. Summary
12 courts-martial may, however, be convened in any case by
13 superior competent authority when deemed desirable by him.

14 ART. 25. Who may serve on courts-martial.

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

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

24 (c) (1) Any enlisted person on active duty with the
25 armed forces who is not a member of the same unit as the

competent

1 accused shall be eligible to serve on general and special
2 courts-martial for the trial of any enlisted person who may
3 lawfully be brought before such courts for trial, but he shall be appointed
4 serve as a member of a court only if, prior to the convening
5 of such court, the accused personally has requested in writing
6 that enlisted persons serve on it. After such a request, no
7 enlisted person shall be tried by a general or special court-
8 martial the membership of which does not include enlisted
9 persons in a number comprising at least one-third of the total
10 membership of the court, unless competent eligible enlisted persons
11 cannot be obtained on account of physical conditions or mili-
12 tary exigencies. Where such persons cannot be obtained,
13 the court may be convened and the trial held without them,
14 but the convening authority shall make a detailed written
15 statement, to be appended to the record, stating why they
16 could not be obtained.

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

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

25 (2) When convening a court-martial, the convening

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

8 ART. 26. Law officer of a general court-martial.

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

18 (b) The law officer shall not consult with the members
19 of the court, other than on the form of the findings as pro-
20 vided in article 39, except in the presence of the accused, trial
21 counsel, and defense counsel, nor shall he vote with the mem-
22 bers of the court.

23 ART. 27. Appointment of trial counsel and defense counsel.

24 (a) For each general and special court-martial the
25 authority convening the court shall appoint a trial counsel

1 and a defense counsel, together with such assistants as he
2 deems necessary or appropriate. No person who has acted
3 as investigating officer, law officer, or court member in any
4 case shall act subsequently as trial counsel, assistant trial
5 counsel, or, unless expressly requested by the accused, as
6 defense counsel or assistant defense counsel in the same case.
7 No person who has acted for the prosecution shall act sub-
8 sequently in the same case for the defense, nor shall any
9 person who has acted for the defense act subsequently in the
10 same case for the prosecution.

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

13 (1) shall be a judge advocate of the Army or the
14 Air Force, or a law specialist of the Navy or Coast
15 Guard, who is a graduate of an accredited law school
16 or a person who is a member of the bar of a Federal court or of the
17 highest court of a State; or shall be a person who is a
18 member of the bar of a Federal court or of the highest
19 court of a State; and

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

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

24 (1) if the trial counsel is certified as competent
25 to act as counsel before a general court-martial by The

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1 Judge Advocate General of the armed force of which
2 he is a member, the defense counsel appointed by the
3 convening authority shall be a person similarly certi-
4 fied; and

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

10 ART. 28. Appointment of reporters and interpreters.

11 Under such regulations as the Secretary of the Depart-
12 ment may prescribe, the convening authority of a court-
13 martial or military commission or a court of inquiry shall
14 have power to appoint a reporter, who shall record the
15 proceedings of and testimony taken before such court or
16 commission. Under like regulations the convening author-
17 ity of a court-martial, military commission, or court of
18 inquiry may appoint an interpreter who shall interpret for
19 the court or commission.

20 ART. 29. Absent and additional members.

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

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

9 (c) Whenever a special court martial is reduced below
10 three members, the trial shall not proceed unless the con-
11 vening authority appoints new members sufficient in num-
12 ber to provide not less than three members. When such
13 new members have been sworn, the trial shall proceed as
14 if no evidence had previously been introduced, unless a
15 verbatim record of the testimony of previously examined
16 witnesses or a stipulation thereof is read to the court in the
17 presence of the accused and counsel.

18 PART VI—PRETRIAL 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.

19 ART. 30. Charges and specifications.

20 (a) Charges and specifications shall be signed by a
21 person subject to this code under oath before an officer of

1 the armed forces authorized to administer oaths and shall
2 state—

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

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

7 (b) Upon the preferring of charges, the proper au-
8 thority shall take immediate steps to determine what dispo-
9 sition should be made thereof in the interest of justice and
10 discipline, and the person accused shall be informed of the
11 charges against him as soon as practicable.

12 ART. 31. Compulsory self-incrimination prohibited.

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

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

24 (c) No person subject to this code shall compel any
25 person to make a statement or produce evidence before

or for use before
1 any military tribunal if the statement or evidence is not
2 material to the issue and may tend to degrade him.

3 (d) No statement obtained from any person in viola-
4 tion of this article or by any unlawful inducement shall be
5 received in evidence against him in a trial by court-martial.

6 ART. 32. Investigation.

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

14 (b) The accused shall be advised of the charges against
15 him and of his right to be represented at such investigation
16 by counsel. Upon his own request he shall be represented at such investigation
17 by civilian counsel if provided by him, or military counsel
18 of his own selection if such counsel be reasonably available,
19 or by counsel appointed by the officer exercising general
20 court-martial jurisdiction over the command. At such in-
21 vestigation full opportunity shall be given to the accused to
22 cross-examine witnesses against him if they are available
23 and to present anything he may desire in his own behalf,
24 either in defense or mitigation, and the investigating officer
25 shall examine available witnesses requested by the accused.

1 If the charges are forwarded after such investigation, they
2 shall be accompanied by a statement of the substance of the
3 testimony taken on both sides and a copy thereof shall be
4 given to the accused.

5 (c) If an investigation of the subject matter of an of-
6 fense has been conducted prior to the time the accused is
7 charged with the offense, and if the accused was present at
8 such investigation and afforded the opportunities for repre-
9 sentation, cross-examination, and presentation prescribed in
10 subdivision (b) of this article, no further investigation of
11 that charge is necessary under this article unless it is de-
12 manded by the accused after he is informed of the charge.
13 A demand for further investigation entitles the accused to
14 recall witnesses for further cross-examination and to offer
15 any new evidence in his own behalf.

16 (d) The requirements of this article shall be binding
17 on all persons administering this code, but failure to follow
18 them in any case shall not constitute jurisdictional error.
19 ART. 33. Forwarding of charges.

20 When a person is held for trial by general court-martial,
21 the commanding officer shall, within eight days after the
22 accused is ordered into arrest or confinement, if practicable,
23 forward the charges, together with the investigation and
24 allied papers, to the officer exercising general court-martial

1 jurisdiction. If the same is not practicable, he shall report
2 to such officer the reasons for delay.

3 ART. 34. Advice of staff judge advocate and reference for
4 trial.

5 (a) Before directing the trial of any charge by general
6 court-martial, the convening authority shall refer it to his
7 staff judge advocate or legal officer for consideration and
8 advice. The convening authority shall not refer a charge
9 to a general court-martial for trial unless it been
10 that the charge alleges an offense under this code and is war-
11 ranted by evidence indicated in the report of investigation.

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

18 ART. 35. Service of charges.

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

- 1 before a special court-martial within a period of three days
 2 subsequent to the service of the charges upon him.

3 **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.

4 **ART. 36. President may prescribe rules.**

5 (a) The procedure, including modes of proof, in cases
 6 before courts-martial, courts of inquiry, military commissions,
 7 and other military tribunals may be prescribed by the Presi-
 8 dent by regulations which shall, so far as he deems prac-
 9 ticable, apply the principles of law and the rules of evidence
 10 generally recognized in the trial of criminal cases in the
 11 United States district courts, but which shall not be contrary
 12 to or inconsistent with this code.

13 (b) All rules and regulations made in pursuance of this
 14 article shall be uniform insofar as practicable and shall be
 15 reported to the Congress.

1 ART. 37. Unlawfully influencing action of court.

2 No authority convening a general, special, or summary
3 court-martial, nor any other commanding officer, shall cen-
4 sure, reprimand, or admonish such court or any member,
5 law officer, or counsel thereof, with respect to the findings
6 or sentence adjudged by the court, or with respect to any
7 other exercise of its or his functions in the conduct of the
8 proceeding. No person subject to this code shall attempt to
9 coerce or, by any unauthorized means, influence the action
10 of a court-martial or any other military tribunal or any mem-
11 ber thereof, in reaching the findings or sentence in any case,
12 or the action of any convening, approving, or reviewing
13 authority with respect to his judicial acts.

14 ART. 38. Duties of trial counsel and defense counsel.

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

19 (b) The accused shall have the right to be represented
20 in his defense before a general or special court-martial by
21 civilian counsel if provided by him, or by military counsel
22 of his own selection if reasonably available, or by the defense
23 counsel duly appointed pursuant to article 27. Should the
24 accused have counsel of his own selection, the duly appointed

1 defense counsel, and assistant defense counsel, if any, shall,
2 if the accused so desires, act as his associate counsel; other-
3 wise they shall be excused by the president of the court.

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

10 (d) An assistant trial counsel of a general court-martial
11 may, under the direction of the trial counsel or when he is
12 qualified to be a trial counsel as required by article 27, per-
13 form any duty imposed by law, regulation, or the custom
14 of the service upon the trial counsel of the court. An
15 assistant trial counsel of a special court-martial may perform
16 any duty of the trial counsel.

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

22 ART. 39. Sessions.

23 Whenever a general or special court-martial is to delib-
24 erate or vote, only the members of the court shall be present.
25 After a general court-martial has finally voted on the find-

1 ings, the court may request the law officer and the reporter
2 to appear before the court to put the findings in proper
3 form, and such proceedings shall be on the record. All
4 other proceedings, including any other consultation of the
5 court with counsel or the law officer shall be made a part
6 of the record and be in the presence of the accused, the
7 defense counsel, the trial counsel, and in general court-
8 martial cases, the law officer.

9 ART. 40. Continuances.

10 A court-martial may, for reasonable cause, grant a con-
11 tinuance to any party for such time and as often as may
12 appear to be just.

13 ART. 41. Challenges.

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

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

1 ART. 42. Oaths.

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

7 (b) All witnesses before courts-martial shall be exam-
8 ined on oath or affirmation.

9 ART. 43. Statute of limitations.

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

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

21 (c) Except as otherwise provided in this article, a per-
22 son charged with any offense shall not be liable to be tried
23 by court-martial or punished under article 15 if the offense
24 was committed more than two years before the receipt of
25 sworn charges and specifications by an officer exercising sum-

1 mary court-martial jurisdiction over the command or before
2 the imposition of punishment under article 15.

3 (d) Periods in which the accused was absent from ter-
4 ritory in which the United States has the authority to ap-
5 prehend him, or in the custody of civil authorities, or in the
6 hands of the enemy, shall be excluded in computing the per-
7 iod of limitation prescribed in this article.

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

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

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

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

23 (3) committed in connection with the negotiation,
24 procurement, award, performance, payment for, interim
25 financing, cancellation, or other termination or settle-

1 ment, of any contract, subcontract or purchase order
2 which is connected with or related to the prosecution of
3 the war, or with any disposition of termination inventory
4 by any war contractor or Government agency;
5 shall be suspended until three years after the termination of
6 hostilities as proclaimed by the President or by a joint resolu-
7 tion of Congress.

8 ART. 44. Former jeopardy.

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

15 ART. 45. Pleas of the accused.

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

24 (b) A plea of guilty by the accused shall not be

in a capital case.

1 received to an offense for which the death penalty may be
2 adjudged.

3 ART. 46. Opportunity to obtain witnesses and other evidence.

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

13 ART. 47. Refusal to appear or testify.

14 (a) Every person not subject to this code who—

15 (1) has been duly subpoenaed to appear as a wit-
16 ness before any court-martial, military commission, court
17 of inquiry, or any other military court or board, or
18 before any military or civil officer designated to take a
19 deposition to be read in evidence before such court,
20 commission or board; and

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

24 (3) willfully neglects or refuses to appear, or re-

1 fuses to qualify as a witness or to testify or to produce
2 any evidence which such person may have been legally
3 subpoenaed to produce;

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

6 (b) Any person who commits an offense denounced
7 by this article shall be tried on information in a United
8 States district court or in a court of original criminal juris-
9 diction in any of the territorial possessions of the United
10 States, and jurisdiction is hereby conferred upon such courts
11 for such purpose. Upon conviction, such persons shall be
12 punished by a fine of not more than \$500, or imprisonment
13 for a period not exceeding six months, or both.

14 (c) It shall be the duty of the United States district
15 attorney or the officer prosecuting for the Government in
16 any such court of original criminal jurisdiction, upon the
17 certification of the facts to him by the military court, com-
18 mission, court of inquiry, or board, to file an information
19 against and prosecute any person violating this article.

20 (d) The fees and mileage of witnesses shall be ad-
21 vanced or paid out of the appropriations for the compensation
22 of witnesses.

23 ART. 48. Contempts.

24 A court-martial, provost court, or military commission

1 may punish for contempt any person who uses any menacing
2 words, signs, or gestures in its presence, or who disturbs its
3 proceedings by any riot or disorder. Such punishment shall
4 not exceed confinement for thirty days or a fine of \$100, or
5 both.

6 ART. 49. Depositions.

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

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

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

22 (d) A duly authenticated deposition taken upon reason-
23 able notice to the other party, so far as otherwise admissible
24 under the rules of evidence, may be read in evidence before

1 any military court or commission in any case not capital,
2 or in any proceeding before a court of inquiry or military
3 board, if it appears—

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

8 (2) that the witness by reason of death, age, sick-
9 ness, bodily infirmity, imprisonment, military necessity,
10 nonamenability to process, or other reasonable cause,
11 is unable or refuses to appear and testify in person at
12 the place of trial or hearing; or

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

15 (e) Subject to the requirements of subdivision (d) of
16 this article, testimony by deposition may be adduced by the
17 defense in capital cases.

18 (f) Subject to the requirements of subdivision (d) of
19 this article, a deposition may be read in evidence in
20 any case in which the death penalty is authorized by law
21 but is not mandatory, whenever the convening authority
22 shall have directed that the case be treated as not capital,
23 and in such a case a sentence of death may not be adjudged
24 by the court-martial.

1 ART. 50. Admissibility of records of courts of inquiry.

2 (a) In any case not capital and not extending to the
3 dismissal of an officer, the sworn testimony, contained in the
4 duly authenticated record of proceedings of a court of inquiry,
5 of a person whose oral testimony cannot be obtained, may,
6 if other ^{wise} admissible under the rules of evidence, be read in
7 evidence by any party before a court-martial or military com-
8 mission if the accused was a party and was accorded the
9 rights of an accused when before the court of inquiry and
10 if the same issue was involved or if the accused consents to
11 the introduction of such evidence.

12 (b) Such testimony may be read in evidence only
13 by the defense in capital cases or cases extending to the dis-
14 missal of an officer.

15 (c) Such testimony may also be read in evidence be-
16 fore a court of inquiry or a military board.

17 ART. 51. Voting and rulings.

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

1 (b) The law officer of a general court-martial and
2 the president of a special court-martial shall rule upon in-
3 terlocutory questions, other than challenge, arising during
4 the proceedings. Any such ruling made by the law officer
5 of a general court-martial upon any interlocutory question
6 other than a motion for a finding of not guilty, or the ques-
7 tion of accused's sanity, shall be final and shall con-
8 stitute the ruling of the court; but the law officer may
9 change any such ruling at any time during the trial. Un-
10 less such ruling be final, if any member objects thereto, the
11 court shall be cleared and closed and the question decided
12 by a vote as provided in article 52, viva voce, beginning
13 with the junior in rank.

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

19 (1) that the accused must be presumed to be inno-
20 cent until his guilt is established by legal and competent
21 evidence beyond reasonable doubt;

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

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

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

7 ART. 52. Number of votes required.

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

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

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

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

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

1 (c) All other questions to be decided by the members
2 of a general or special court-martial shall be determined by
3 a majority vote. A tie vote on a challenge shall disqualify
4 the member challenged. A tie vote on a motion for a find-
5 ing of not guilty or on a motion relating to the question of
6 the accused's sanity shall be a determination against
7 the accused. A tie vote on any other question shall be a
8 determination in favor of the accused.

9 ART. 53. Court to announce action.

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

12 ART. 54. Record of trial.

13 (a) Each general court-martial shall keep a separate
14 record of the proceedings of the trial of each case brought
15 before it, and such record shall be authenticated by the
16 signature of the president and the law officer. In case the
17 record cannot be authenticated by either the president or
18 the law officer, by reason of the death, disability, or absence
19 of such officer, it shall be signed by a member in lieu of
20 him. If both the president and the law officer are unavail-
21 able for such reasons, the record shall be authenticated by
22 two members.

23 (b) Each special and summary court-martial shall keep
24 a separate record of the proceedings in each case, which
25 record shall contain such matter and be authenticated in

1 such manner as may be required by regulations which the
2 President may prescribe.

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

6 PART VIII—SENTENCES

Article

55. Cruel and unusual punishments prohibited.

56. Maximum limits.

57. Effective date of sentences.

58. Execution of confinement.

7 ART. 55. Cruel and unusual punishments prohibited.

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

13 ART. 56. Maximum limits.

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

17 ART. 57. Effective date of sentences.

18 (a) Whenever a sentence of a court-martial as law-
19 fully adjudged and approved includes a forfeiture of pay or
20 allowances in addition to confinement not suspended, the
21 forfeiture may apply to pay or allowances becoming due
22 on or after the date such sentence is approved by the con-

1 vening authority. No forfeiture shall extend to any pay
2 or allowances accrued before such date.

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

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

8 ART. 58. Execution of confinement.

9 (a) Under such instructions as the Department con-
10 cerned may prescribe, any sentence of confinement adjudged
11 by a court-martial or other military tribunal, whether or not
12 such sentence includes discharge or dismissal, and whether
13 or not such discharge or dismissal has been executed, may
14 be carried into execution by confinement in any place of
15 confinement under the control of any of the armed forces,
16 or in any penal or correctional institution under the con-
17 trol of the United States, or which the United States may
18 be allowed to use; and persons so confined in a penal or
19 correctional institution not under the control of one of the
20 armed forces shall be subject to the same discipline and treat-
21 ment as persons confined or committed by the courts of the
22 United States or of the State, Territory, District, or place
23 in which the institution is situated.

24 (b) The omission of the words "hard labor" in any
25 sentence of a court-martial adjudging confinement shall

1 not be construed as depriving the authority executing such
 2 sentence of the power to require hard labor as a part of
 3 the punishment.

4 PART IX—REVIEW OF COURTS-MARTIAL

Article

- 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 Court of Military Appeals.
- 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.

5 ART. 59. Error of law; lesser included offense.

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

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

13 ART. 60. Initial action on the record.

14 After every trial by court-martial the record shall be
 15 forwarded to the convening authority, and action thereon

1 may be taken by the officer who convened the court, an
2 officer commanding for the time being, a successor in com-
3 mand, or by any officer exercising general court-martial
4 jurisdiction.

5 ART. 61. Same—General court-martial records.

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

14 ART. 62. Reconsideration and revision.

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

20 (b) Where there is an apparent error or omission in
21 the record or where the record shows improper action by a
22 court-martial with respect to a finding or sentence which can
23 be rectified without material prejudice to the substantial
24 rights of the accused, the convening authority may return

1 the record to the court for appropriate action. In no case,
2 however, may the record be returned—

3 (1) for reconsideration of a finding of not guilty
4 or a ruling which amounts to a finding of not guilty; or

5 (2) for increasing the severity of the sentence un-
6 less the sentence prescribed for the offense is mandatory.

7 ART. 63. Rehearings.

8 (a) If the convening authority disapproves the find-
9 ings and sentence of a court-martial he may, except where
10 there is lack of sufficient evidence in the record to support
11 the findings, order a rehearing, in which case he shall state
12 the reasons for disapproval. If he does not order a rehear-
13 ing, he shall dismiss the charges.

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

1 ART. 64. Approval by the convening authority.

2 In acting on the findings and sentence of a court-martial,
3 the convening authority shall approve only such findings
4 of guilty, and the sentence or such part or amount of the
5 sentence, as he finds correct in law and fact and as he in his
6 discretion determines should be approved. Unless he indi-
7 cates otherwise, approval of the sentence shall constitute
8 approval of the findings and sentence.

9 ART. 65. Disposition of records after review by the con-
10 vening authority.

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

16 (b) Where the sentence of a special court-martial as
17 approved by the convening authority includes a bad-conduct
18 discharge, whether or not suspended, the record shall be
19 forwarded to the officer exercising general court-martial juris-
20 diction over the command to be reviewed in the same manner
21 as a record of trial by general court-martial or directly to the
22 appropriate Judge Advocate General to be reviewed by a
23 board of review. If the sentence as approved by an officer
24 exercising general court-martial jurisdiction includes a bad-
25 conduct discharge, whether or not suspended, the record

1 shall be forwarded to the appropriate Judge Advocate Gen-
2 eral to be reviewed by a board of review.

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

9 ART. 66. Review by the board of review.

10 (a) The Judge Advocate General of each of the armed
11 forces shall constitute in his office one or more boards of re-
12 view, each composed of not less than three officers or civilians,
13 each of whom shall be a member of the bar of a Federal
14 court or of the highest court of a State of the United States.

15 (b) The Judge Advocate General shall refer to a board
16 of review the record in every case of trial by court-martial
17 in which the sentence, as approved, affects a general or flag
18 officer or extends to death, dismissal of an officer, cadet, or
19 midshipman, dishonorable or bad-conduct discharge, or con-
20 finement for more than one year.
one year or more.

21 (c) In a case referred to it, the board of review shall
22 act only with respect to the findings and sentence as ap-
23 proved by the convening authority. It shall affirm only
24 such findings of guilty, and the sentence or such part or
25 amount of the sentence, as it finds correct in law and fact

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

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

Otherwise.

24 (e) Within ten days after any decision by a board of
 1 review, the Judge Advocate General may refer the case
 2 for reconsideration to the same or another board of re-
 3 view.

11 convening authority to take action in accordance with the deci-
 15 sion of the board of review. If the board of review has
 16 ordered a rehearing but the convening authority finds a
 17 rehearing impracticable, he may dismiss the charges.

18 (f) The Judge Advocates General of the armed forces
 19 shall prescribe uniform rules of procedure for proceedings
 20 in and before boards of review and shall meet periodically
 21 to formulate policies and procedure in regard to review
 22 of court-martial cases in the offices of the Judge Advocates
 23 General and by the boards of review.

Judicial Council.

24 ART. 67. Review by the Court of Military Appeals.

25 (a) There is hereby established in the National Mili-

1 tary Establishment a Judicial Council. The Judicial Council
20 shall be composed of not less than three members. Each
21 member of the Judicial Council shall be appointed by the
22 President from civilian life and shall be a member of the
23 bar admitted to practice before the Supreme Court of the
24 United States, and each member shall receive compensation
1 and allowances equal to those paid to a judge of the United
2 States Court of Appeals.

8 tary Appeals shall hold office during good behavior and
9 shall receive the compensation, allowances, perquisites, and
10 retirement benefits of judges of the United States Court of
11 Appeals.

12 (b) Under rules of procedure which it shall prescribe,
13 the Judicial Council
14 the Court of Military Appeals shall review the record in
15 the following cases:

16 (1) All cases in which the sentence, as affirmed
17 by a board of review, affects a general or flag officer or
18 extends to death;

19 (2) All cases reviewed by a board of review which
20 The Judge Advocate General orders forwarded to the
21 Judicial Council
22 Court of Military Appeals for review; and

23 (3) All cases reviewed by a board of review in
24 which, upon petition of the accused and on good cause
25 shown, the Judicial Council
26 Court of Military Appeals has granted a
27 review.

(c) The accused shall have thirty days from the time

1 he is notified of the decision of a board of review to petition
 2 the Judicial Council Court of Military Appeals for a grant of review. The
 3 Judicial Council court shall act upon such a petition within fifteen
 4 of the receipt thereof.

5 (d) In any case reviewed by it, the Judicial Council
 6 Appeals shall act only with respect to the findings and
 7 sentence as approved by the convening authority and as
 8 affirmed or set aside as incorrect in law by the board of
 9 review. In a case which The Judge Advocate General
 10 Judicial Council orders forwarded to the Court of Military Appeals, such
 11 action need be taken only with respect to the issues raised
 12 by him. In a case reviewed upon petition of the accused,
 13 such action need be taken only with respect to issues specified
 14 in the grant of review. The Judicial Council Court of Military Appeals shall
 15 take action only with respect to matters of law.

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

21 (f) After it has acted on a case, the Judicial Council
 22 Appeals may direct The Judge Advocate General to return
 23 the record to the board of review for further review in accord-
 24 ance with the decision of the Judicial Council court. Otherwise, unless
 25 there is to be further action by the President, or the

1 Secretary of the Department, The Judge Advocate General
2 shall instruct the convening authority to take action in
3 accordance with that decision. If the court has ordered
4 a rehearing, but the convening authority finds a rehearing
5 impracticable, he may dismiss the charges.

6 (g) The Judicial Council
7 Court of Military Appeals and The Judge
8 Advocates General of the armed forces shall meet annually
9 to make a comprehensive survey of the operation of this code
10 and report ^{to} ~~the~~ the Committees on Armed Services of the Sen-
11 ate and of the House of Representatives and to the Secretary
12 of Defense and the Secretaries of the Departments the
13 number and status of pending cases ^{and} any recommendations
14 relating to uniformity of sentence policies, amendments to
15 this code, and any other matters deemed appropriate.

16 ART. 68. Branch offices.

17 Whenever the President deems such action necessary,
18 he may direct The Judge Advocate General to establish
19 a branch office, under an Assistant Judge Advocate General,
20 with any distant command, and to establish in such branch
21 office one or more boards of review. Such Assistant Judge
22 Advocate General and any such board of review shall be
23 empowered to perform for that command, under the general
24 supervision of The Judge Advocate General, the duties
25 which The Judge Advocate General and a board of review
in his office would otherwise be required to perform in

1 respect of all cases involving sentences not requiring ap-
2 proval by the President.

17 (b) In time of emergency, the President may ate
18 that one or more temporary Judicial Councils be e
19 for the period of the emergency, each of which sh ch
20 the general supervision of the Judicial Council.

7 late review of which is not otherwise provided for by article
8 66, shall be examined in the office of The Judge Advocate
9 General. If any part of the findings or sentence is found
10 unsupported in law, or if The Judge Advocate General so
11 directs, the record shall be reviewed by a board of review
12 in accordance with article 66, but in such event there will
13 be no further review by the Judicial Council
Court of Military Appeals.

14 ART. 70. Appellate counsel.

15 (a) The Judge Advocate General shall appoint in his
16 office one or more officers as appellate Government counsel,
17 and one or more officers as appellate defense counsel who
18 shall be qualified under the provisions of Article 27 (b) (1).

19 (b) It shall be the duty of appellate Government coun-
20 sel to represent the United States before the board of review
21 Judicial Council
21 or the Court of Military Appeals when directed to do so by
22 The Judge Advocate General.

23 (c) It shall be the duty of appellate defense counsel to
24 represent the accused before the board of review or the
25 Judicial Council
Court of Military Appeals.

1 (1) when he is requested to do so by the accused;
2 or

3 (2) when the United States is represented by coun-
4 sel; or

5 (3) when The Judge Advocate General has re-
6 quested the reconsideration of a case before the board of
7 review or has transmitted ^{it} a case to the Judicial Council
8 Court of Military Appeals.

9 (d) The accused shall have the right to be represented
10 before the Judicial Council
11 Court of Military Appeals or the board of review
12 by civilian counsel if provided by him.

13 (e) ^{Military} The appellate counsel shall also perform such other
14 functions in connection with the review of court-martial
15 cases as The Judge Advocate General shall direct.

16 ART. 71. Execution of sentence; suspension of sentence.

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

24 (b) No sentence extending to the dismissal of an
25 officer, cadet, or midshipman shall be executed until ap-
proved by the Secretary of the Department, or such Under

1 Secretary or Assistant Secretary as may be designated
2 by him. He shall approve the sentence or such part, amount,
3 or commuted form of the sentence as he sees fit, and may
4 suspend the execution of any part of the sentence as ap-
5 proved by him. In time of war or national emergency he
6 may commute a sentence of dismissal to reduction to any
7 enlisted grade. A person who is so reduced may be re-
8 quired to serve for the duration of the war or emergency
9 and six months thereafter.

10 (c) No sentence which includes, unsuspended, a dis-
11 honorable or bad-conduct discharge, or confinement for
12 more than one year ~~one year or more~~ shall be executed until affirmed by a board
13 of review and, in cases reviewed by it, the Judicial Council
14 Appeals.

15 (d) All other court-martial sentences, unless suspended,
16 may be ordered executed by the convening authority when
17 approved by him. The convening authority may suspend
18 the execution of any sentence, except a death sentence.
19 ART. 72. Vacation of suspension.

20 (a) Prior to the vacation of the suspension of a special
21 court-martial sentence which as approved includes a bad-
22 conduct discharge, or of any general court-martial sentence,
23 the officer having special court-martial jurisdiction over the
24 probationer shall hold a hearing on the alleged violation of

1 probation. The probationer shall be represented at such
2 hearing by counsel if he so desires.

3 (b) The record of the hearing and the recommenda-
4 tions of the officer having special court-martial jurisdiction
5 shall be forwarded for action to the officer exercising gen-
6 eral court-martial jurisdiction over the probationer. If he
7 vacates the suspension, the vacation shall be effective, sub-
8 ject to applicable restrictions in article 71 (c), to execute
9 any unexecuted portion of the sentence except a dismissal.
10 The vacation of the suspension of a dismissal shall not be
11 effective until approved by the Secretary of the Department.

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

16 ART. 73. Petition for a new trial.

17 At any time within one year after approval by the con-
18 vening authority of a court-martial sentence which extends
19 to death, dismissal, dishonorable or bad-conduct discharge,
20 or confinement for more than one year,
21 or confinement for one year or more, the accused may
22 petition The Judge Advocate General for a new trial on
23 grounds of newly discovered evidence or fraud on the court.
24 If the accused's case is pending before the board of review or
Judicial Council,
before the Court of Military Appeals, The Judge Advocate

1 General shall refer the petition to the board ^{Council.} or [^] court,
2 respectively, for action. Otherwise The Judge Advocate
3 General shall act upon the petition.

4 ART. 74. Remission and suspension.

5 (a) The Secretary of the Department and, when desig-
6 nated by him, any Under Secretary, Assistant Secretary,
7 Judge Advocate General, or commanding officer, [^] may remit
8 or suspend any part or amount of the unexecuted portion of
9 any sentence, including all uncollected forfeitures, other than
10 a sentence approved by the President.

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

15 ART. 75. Restoration.

16 (a) Under such regulations as the President may pre-
17 scribe, all rights, privileges, and property affected by an
18 executed portion of a court-martial sentence which has been
19 set aside or disapproved, except an executed dismissal or dis-
20 charge, shall be restored unless a new trial or rehearing is
21 ordered and such executed portion is included in a sentence
22 imposed upon the new trial or rehearing.

23 (b) Where a previously executed sentence of dishonor-
24 able or bad-conduct discharge is not sustained on a new trial,
25 the Secretary of the Department shall substitute therefor a

1 form of discharge authorized for administrative issuance un-
2 less the accused is to serve out the remainder of his enlistment.

3 (c) Where a previously executed sentence of dismissal
4 is not sustained on a new trial, the Secretary of the Depart-
5 ment shall substitute therefor a form of discharge authorized
6 for administrative issuance and the officer dismissed by such
7 sentence may be reappointed by the President alone to such
8 commissioned rank and precedence as in the opinion of the
9 President such former officer would have attained had he
10 not been dismissed. The reappointment of such a former
11 officer shall be without regard to position vacancy and shall
12 affect the promotion status of other officers only insofar as
13 the President may direct. All time between the dismissal and
14 such reappointment shall be considered as actual service for
15 all purposes, including the right to receive pay and allow-
16 ances.

17 ART. 76. Finality of court-martial judgments.

18 The appellate review of records of trial provided by this
19 code, the proceedings, findings, and sentences of courts-
20 martial as approved, reviewed, or affirmed as required by
21 this code, and all dismissals and discharges carried into
22 execution pursuant to sentences by courts-martial following
23 approval, review, or affirmation as required by this code,
24 shall be final and conclusive, and orders publishing the pro-
25 ceedings of courts-martial and all action taken pursuant to

1 such proceedings shall be binding upon all departments,
 2 courts, agencies, and officers of the United States, subject
 3 only to action upon a petition for a new trial as provided in
 4 article 73 and to action by the Secretary of a Department
 5 as provided in article 74, and the authority of the President.

6 PART X—PUNITIVE ARTICLES

- Article
77. Principals.
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 79. Conviction of lesser included offense.
 80. Attempts.
 81. Conspiracy.
 82. Solicitation.
 83. Fraudulent enlistment, appointment, or separation.
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 88. Disrespect towards officials.
 89. Disrespect towards superior officer.
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 97. Unlawful detention of another.
 98. Non-compliance with procedural rules.
 99. Misbehavior before the enemy.
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 101. Improper use of countersign.
 102. Forcing a safeguard.
 103. Captured or abandoned property.
 104. Aiding the enemy.
 105. Misconduct as prisoner.
 106. Spies.
 107. False official statements.
 108. Military property of United States—Loss, damage, destruction, or wrongful disposition.
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 110. Improper hazarding of vessel.
 111. Drunken or reckless driving.
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Article

- 115. Malingering.
- 116. Riot or breach of peace.
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- 120. Rape, and carnal knowledge.
- 121. Larceny.
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- 123. Forgery.
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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.

1 ART. 77. Principals.

2 Any person punishable under this code who—

3 (1) commits an offense punishable by this code, or
 4 aids, abets, counsels, commands, or procures its com-
 5 mission; or

6 (2) causes an act to be done which if directly
 7 performed by him would be punishable by this code; ^{VI}
 8 shall be punished with the punishment provided for the
 9 is a principal. commission of the offense.

9 ART. 78. Accessory after the fact.

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

1 ART. 79. Conviction of lesser included offense.

2 An accused may be found guilty of an offense neces-
3 sarily included in the offense charged or of an attempt to
4 commit either the offense charged or an offense necessarily
5 included therein.

6 ART. 80. Attempts.

7 (a) An act, done with specific intent to commit an
8 offense under this code, amounting to more than mere prep-
9 aration and tending but failing to effect its commission, is
10 an attempt to commit that offense.

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

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

18 ART. 81. Conspiracy.

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

24 ART. 82. Solicitation.

25 (a) Any person subject to this code who solicits or

1 advises another or others to desert in violation of article 85
2 or mutiny in violation of article 94 shall, if the offense
3 solicited or advised is attempted or committed, be punished
4 with the punishment provided for the commission of the
5 offense, but if the offense solicited or advised is not committed
6 or attempted, he shall be punished as a court-martial may
7 direct.

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

16 ART. 83. Fraudulent enlistment, appointment, or separa-
17 tion.

18 Any person who—

19 (1) procures his own enlistment or appointment
20 in the armed forces by means of knowingly false repre-
21 sentations or deliberate concealment as to his qualifica-
22 tions for such enlistment or appointment and receives
23 pay or allowances thereunder; or

24 (2) procures his own separation from the armed
25 forces by means of knowingly false representations or

1 deliberate concealment as to his eligibility for such
2 separation;

3 shall be punished as a court martial may direct.

4 ART. 84. Unlawful enlistment, appointment, or separation.

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

11 ART. 85. Desertion.

12 (a) Any member of the armed forces of the United
13 States who—

14 (1) without proper authority goes or remains ab-
15 sent from his place of service, organization, or place of
16 duty with intent to remain away therefrom perma-
17 nently; or

18 (2) quits his unit or organization or place of duty
19 with intent to avoid hazardous duty or to shirk im-
20 portant service; or

21 (3) without being regularly separated from one
22 of the armed forces enlists or accepts an appointment
23 in the same or another one of the armed forces without
24 fully disclosing the fact he has not been so regularly

1 separated, or enters any foreign armed service except
2 when authorized by the United States;

3 is guilty of desertion.

4 (b) Any officer of the armed forces who, having ten-
5 dered his resignation and prior to due notice of the accept-
6 ance of the same, quits his post ^{or} ~~at~~ proper duties without
7 leave and with intent to remain away therefrom perma-
8 nently is guilty of desertion.

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

15 ART. 86. Absence without leave.

16 Any person subject to this code who, without proper
17 authority—

18 (1) fails to go to his appointed place of duty at the
19 time prescribed; or

20 (2) goes from that place; or

21 (3) absents himself or remains absent from his
22 unit, organization, or other place of duty at which he
23 is required to be at the time prescribed;

24 shall be punished as a court-martial may direct.

1 ART. 87. Missing movement.

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

6 ART. 88. Disrespect towards officials.

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

13 ART. 89. Disrespect towards superior officer.

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

17 ART. 90. Assaulting or willfully disobeying officer.

18 Any person subject to this code who—

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

22 (2) willfully disobeys a lawful command of his
23 superior officer;

24 shall be punished, if the offense is committed in time of war,
25 by death or such other punishment as a court-martial may

1 direct, and if the offense is committed at any other time,
2 by such punishment, other than death, as a court-martial
3 may direct.

4 ART. 91. Insubordinate conduct towards noncommissioned
5 officer.

6 Any warrant officer or enlisted person who—

7 (1) strikes or assaults a warrant officer, noncom-
8 missioned officer, or petty officer, while such officer is
9 in the execution of his office; or

10 (2) willfully disobeys the lawful order of a war-
11 rant officer, noncommissioned officer, or petty officer; or

12 (3) treats with contempt or is disrespectful in lan-
13 guage or deportment towards a warrant officer, non-
14 commissioned officer, or petty officer while such officer
15 is in the execution of his office;

16 shall be punished as a court-martial may direct.

17 ART. 92. Failure to obey order or regulation.

18 Any person subject to this code who—

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

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

24 (3) is derelict in the performance of his duties;
25 shall be punished as a court-martial may direct.

1 ART. 93. Cruelty and maltreatment.

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

5 ART. 94. Mutiny or sedition.

6 (a) Any person subject to this code---

7 (1) who with intent to usurp or override lawful
8 military authority refuses, in concert with any other
9 person or persons, to obey orders or otherwise do his
10 duty or creates any violence or disturbance is guilty
11 of mutiny;

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

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

24 (b) A person who is found guilty of attempted mutiny,
25 mutiny, sedition, or failure to suppress or report a mutiny

1 or sedition shall be punished by death or such other pun-
2 ishment as a court-martial may direct.

3 ART. 95. Arrest and confinement.

4 Any person subject to this code who resists apprehen-
5 sion or breaks arrest or who escapes from custody or con-
6 finement shall be punished as a court-martial may direct.

7 ART. 96. Releasing prisoner without proper authority.

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

12 ART. 97. Unlawful detention of another.

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

16 ART. 98. Noncompliance with procedural rules.

17 Any person subject to this code who—

18 (1) is responsible for unnecessary delay in the
19 disposition of any case of a person accused of an of-
20 fense under this code; or

21 (2) knowingly and intentionally fails to enforce
22 or comply with any provision of this code regulating
23 the proceedings before, during, or after trial of an
24 accused;

25 shall be punished as a court-martial may direct.

1 ART. 99. Misbehavior before the enemy.

2 Any member of the armed forces who before or in the
3 presence of the enemy—

4 (1) runs away; or

5 (2) shamefully abandons, surrenders, or delivers
6 up any command, unit, place, or military property which
7 it is his duty to defend; or

8 (3) through disobedience, neglect, or intentional
9 misconduct endangers the safety of any such command,
10 unit, place, or military property; or

11 (4) casts away his arms or ammunition; or

12 (5) is guilty of cowardly conduct; or

13 (6) quits his place of duty to plunder or pillage; or

14 (7) causes false alarms in any command, unit, or
15 place under control of the armed forces; or

16 (8) willfully fails to do his utmost to encounter,
17 engage, capture, or destroy any enemy troops, com-
18 batants, vessels, aircraft, or any other thing, which it
19 is his duty so to encounter, engage, capture, or destroy;
20 or

21 (9) does not afford all practicable relief and assist-
22 ance to any troops, combatants, vessels, or aircraft of
23 the armed forces belonging to the United States or their
24 allies when engaged in battle;

1 shall be punished by death or such other punishment as a
2 court-martial may direct.

3 ART. 100. Subordinate compelling surrender.

4 Any person subject to this code who compels or at-
5 tempts to compel a commander of any place, vessel, air-
6 craft, or other military property, or of any body of members
7 of the armed forces, to give it up to an enemy or to abandon
8 it, or who strikes the colors or flag to an enemy without
9 proper authority, shall be punished by death or such other
10 punishment as a court-martial may direct.

11 ART. 101. Improper use of countersign.

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

19 ART. 102. Forcing a safeguard.

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

23 ART. 103. Captured or abandoned property.

24 (a) All persons subject to this code shall secure all

1 public property taken from the enemy for the service of the
2 United States, and shall give notice and turn over to the
3 proper authority without delay all captured or abandoned
4 property in their possession, custody, or control.

5 (b) Any person subject to this code who—

6 (1) fails to carry out the duties prescribed in sub-
7 division (a) of this article; or

8 (2) buys, sells, trades, or in any way deals in or
9 disposes of captured or abandoned property, whereby
10 he shall receive or expect any profit, benefit, or advan-
11 tage to himself or another directly or indirectly con-
12 nected with himself; or

13 (3) engages in looting or pillaging;

14 shall be punished as a court-martial may direct.

15 ART. 104. Aiding the enemy.

16 Any person who—

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

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

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

1 ART. 105. Misconduct as prisoner.

2 Any person subject to this code who, while in the hands
3 of the enemy in time of war—

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

9 (2) while in a position of authority over such per-
10 sons maltreats them without justifiable cause;

11 shall be punished as a court-martial may direct.

12 ART. 106. Spies.

13 Any person who in time of war is found lurking as a spy
14 or acting as a spy in or about any place, vessel, or aircraft,
15 within the control or jurisdiction of any of the armed forces of
16 the United States, or in or about any shipyard, any manufac-
17 turing or industrial plant, or any other place ^{or} ~~of~~ institution
18 engaged in work in aid of the prosecution of the war by the
19 United States, or elsewhere, shall be tried by a general
20 court-martial or by a military commission and on conviction
21 shall be punished by death.

22 ART. 107. False official statements.

23 Any person subject to this code who, with intent to de-
24 ceive, signs any false record, return, regulation, order, or

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

4 ART. 108. Military property of United States—Loss, dam-
5 age, destruction, or wrongful disposition.

6 Any person subject to this code who, without proper
7 authority—

8 (1) sells or otherwise disposes of; or

9 (2) willfully or through neglect damages, destroys,
10 or loses; or

11 (3) willfully or through neglect suffers to be lost,
12 damaged, destroyed, sold or wrongfully disposed of;

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

15 ART. 109. Property other than military property of United
16 States—Waste, spoil, or destruction.

17 Any person subject to this code who willfully or reck-
18 lessly wastes, spoils, or otherwise willfully and wrongfully
19 destroys or damages any property other than military prop-
20 erty of the United States shall be punished as a court-martial
21 may direct.

22 ART. 110. Improper hazarding of vessel.

23 (a) Any person subject to this code who willfully and
24 wrongfully hazards or suffers to be hazarded any vessel of

1 the armed forces shall suffer death or such other punishment
2 as a court-martial may direct.

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

6 ART. 111. Drunken or reckless driving.

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

10 ART. 112. Drunk on duty.

11 Any person subject to this code, other than a sentinel
12 or look-out, who is found drunk on duty, shall be punished
13 as a court-martial may direct.

14 ART. 113. Misbehavior of sentinel.

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

22 ART. 114. Dueling.

23 Any person subject to this code who fights or ~~promotes~~
24 promotes, or is concerned in or connives at fighting a duel,

1 or who, having knowledge of a challenge sent or about to
2 be sent, fails to report the fact promptly to the proper au-
3 thority, shall be punished as a court-martial may direct.

4 ART. 115. Malingering.

5 Any person subject to this code who for the purpose of
6 avoiding work, duty, or service—

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

9 (2) intentionally inflicts self-injury;

10 shall be punished as a court-martial may direct.

11 ART. 116. Riot or breach of peace.

12 Any person subject to this code who causes or partici-
13 pates in any riot or breach of the peace shall be punished
14 as a court-martial may direct.

15 ART. 117. Provoking speeches or gestures.

16 Any person subject to this code who uses provoking or
17 reproachful words or gestures towards any other person sub-
18 ject to this code shall be punished as a court-martial may
19 direct.

20 ART. 118. Murder.

21 Any person subject to this code who, without justifica-
22 tion or excuse, unlawfully kills a human being, when he—

23 (1) has a premeditated design to kill; or

24 (2) intends to kill or inflict great bodily harm; or

25 (3) is engaged in an act which is inherently dan-

1 gerous to others and evinces a wanton disregard of
2 human life; or

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

6 is guilty of murder, and shall suffer such punishment as a
7 court-martial may direct, except that if found guilty under
8 paragraph (1) or (4) of this article, he shall suffer death or
9 imprisonment for life as a court-martial may direct.

10 ART. 119. MANSLAUGHTER.

11 (a) Any person subject to this code who, without a design
12 to effect death, kills a human being with an intent
13 to kill or inflict great bodily harm, unlawfully kills a human
14 being in the heat of sudden passion caused by adequate
15 provocation is guilty of voluntary manslaughter and shall be
16 punished as a court martial may direct.

17 (b) Any person subject to this code who, without an
18 intent to kill or inflict great bodily harm, unlawfully kills a
19 human being—

20 (1) by culpable negligence; or

21 (2) while perpetrating or attempting to perpetrate
22 an offense, other than those specified in paragraph (4)
23 of article 118, directly affecting the person;

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

1 ART. 120. Rape and Carnal Knowledge.

2 (a) Any person subject to this code who commits an
3 act of sexual intercourse with a female not his wife, by
4 force and without her consent, is guilty of rape and shall
5 be punished by death or such other punishment as a court-
6 martial may direct.

7 (b) Any person subject to this code who, under cir-
8 cumstances not amounting to rape, commits an act of sexual
9 intercourse with a female not his wife who has not attained
10 the age of sixteen years, shall be punished as a court-martial
11 may direct.

12 (c) Penetration, however slight, is sufficient to complete
13 the offense.
14 these offenses.

14 ART. 121. Larceny.

15 Any person subject to this code who, with intent to de-
16 prive or defraud another of the use and benefit of property
17 or to appropriate the same to his own use or the use of any
18 person other than the true owner, wrongfully takes, obtains,
19 or withholds, by any means whatever, from the possession
20 of the true owner or of any other person any money, per-
21 sonal property, or article of value of any kind, steals such
22 property and is guilty of larceny, and shall be punished as
23 a court-martial may direct.

24 ART. 122. Robbery.

25 Any person subject to this code who with intent to

1 steal takes anything of value from the person or in the
2 presence of another, against his will, by means of force or
3 violence or fear of immediate or future injury to his person
4 or property or the person or property of a relative or mem-
5 ber or his family or of anyone in his company at the time
6 of the robbery, is guilty of robbery and shall be punished
7 as a court-martial may direct.

8 ART. 123. Forgery.

9 Any person subject to this code who, with intent to
10 defraud—

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

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

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

19 ART. 124. Maiming.

20 Any person subject to this code who, with intent to
21 injure, disfigure, or disable, inflicts upon the person of an-
22 other an injury which—

23 (1) seriously disfigures his person by any mutila-
24 tion thereof; or

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

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

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

7 ART. 125. Sodomy.

8 (a) Any person subject to this code who engages in
9 unnatural carnal copulation with another of the same or
10 opposite sex or with an animal is guilty of sodomy. Pene-
11 tration, however slight, is sufficient to complete the offense.

12 (b) Any person found guilty of sodomy shall be pun-
13 ished as a court-martial may direct.

14 ART. 126. Arson.

15 (a) Any person subject to this code who willfully and
16 maliciously burns or sets on fire an inhabited dwelling, or
17 any other structure, water craft, or movable or immovable, wherein to the
18 knowledge of the offender there is at the time a human
19 being, is guilty of aggravated arson and shall be punished
20 as a court-martial may direct.

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

1 ART. 127. Extortion.

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

7 ART. 128. Assault.

8 (a) Any person subject to this code who attempts or
9 offers with unlawful force or violence to do bodily harm to
10 another person, whether or not the attempt or offer is con-
11 summated, is guilty of assault and shall be punished as a
12 court-martial may direct.

13 (b) Any person subject to this code who—

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

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

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

21 ART. 129. Burglary.

22 Any person subject to this code who, with intent to

23 commit a criminal offense therein, breaks and enters, in the
24 an offense punishable under articles 118 through 128 inclusive,
nighttime, the dwelling house of another, is guilty of burglary

25 and shall be punished as a court-martial may direct.

1 ART. 130. Housebreaking.

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

6 ART. 131. Perjury.

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

13 ART. 132. Frauds against the Government.

14 Any person subject to this code—

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

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

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

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

25 (A) makes or uses any writing or other paper

1 knowing the same to contain any false or fraud-
2 ulent statements;

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

6 (C) forges or counterfeits any signature upon
7 any writing or other paper, or uses any such signa-
8 ture knowing the same to be forged or counter-
9 feited; or

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

16 (4) who, being authorized to make or deliver any
17 paper certifying the receipt of any property of the
18 United States furnished or intended for the armed forces
19 thereof, makes or delivers to any person such writing
20 without having full knowledge of the truth of the state-
21 ments therein contained and with intent to defraud the
22 United States;

23 shall, upon conviction, be punished as a court-martial may
24 direct.

1 ART. 133. Conduct unbecoming an officer and gentleman.

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

5 ART. 134. General article.

6 Though not specifically mentioned in this code, all
7 disorders and neglects to the prejudice of good order and
8 discipline in the armed forces, all conduct of a nature to
9 bring discredit upon the armed forces, and crimes and
10 offenses not capital, of which persons subject to this code
11 may be guilty, shall be taken cognizance of by a general
12 or special or summary court-martial, according to the na-
13 ture and degree of the offense, and punished at the discre-
14 tion of such court.

15 PART XI—MISCELLANEOUS PROVISIONS

Article

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.

140. Delegation by the President.

16 ART. 135. Courts of inquiry.

17 (a) Courts of inquiry to investigate any matter may
18 be convened by any person authorized to convene a general
19 court-martial or by any other person designated by the
20 Secretary of a Department for that purpose whether or
21 not the persons involved have requested such an inquiry.

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

4 (c) Any person subject to this code whose conduct is
5 subject to inquiry shall be designated as a party. Any
6 person subject to this code or employed by the National
7 Military Establishment who has a direct interest in the sub-
8 ject of inquiry shall have the right to be designated as a
9 party upon request to the court. Any person designated as
10 a party shall be given due notice and shall have the right
11 to be present, to be represented by counsel, to cross-examine
12 witnesses, and to introduce evidence.

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

15 (e) The members, counsel, the reporter, and inter-
16 preters of courts of inquiry shall take an oath or affirmation
17 to faithfully perform their duties.

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

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

24 (h) Each court of inquiry shall keep a record of its
25 proceedings, which shall be authenticated by the signatures

1 of the president and counsel for the court and forwarded to
2 the convening authority. In case the record cannot be
3 authenticated by the president it shall be signed by a mem-
4 ber in lieu of the president and in case the record cannot be
5 authenticated by the counsel for the court it shall be signed
6 by a member in lieu of the counsel.

7 ART. 136. Authority to administer oaths and to act as notary.

8 (a) The following persons on active duty in the armed
9 forces shall have authority to administer oaths for the pur-
10 poses of military administration, including military justice,
11 and shall have the general powers of a notary public and
12 of a consul of the United States, in the performance of all
13 notarial acts to be executed by members of any of the
14 armed forces, wherever they may be, and by other persons
15 subject to this code outside the continental limits of the
16 United States:

17 (1) All judge advocates of the Army and Air
18 Force;

19 (2) All law specialists;

20 (3) All summary courts-martial;

21 (4) All adjutants, assistant adjutants, acting ad-
22 jutants, and personnel adjutants;

23 (5) All commanding officers of the Navy and
24 Coast Guard;

25 (6) All staff judge advocates and legal officers,

1 and acting or assistant staff judge advocates and legal
2 officers; and

3 (7) All other persons designated by regulations
4 of the armed forces or by statute.

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

8 (1) The president, law officer, trial counsel, and
9 assistant trial counsel for all general and special courts-
10 martial;

11 (2) The president and the counsel for the court of
12 any court of inquiry;

13 (3) All officers designated to take a deposition;

14 (4) All persons detailed to conduct an investi-
15 gation;

16 (5) All recruiting officers; and

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

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

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

1 ART. 137. Articles to be explained.

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

13 ART. 138. Complaints of wrongs.

14 Any member of the armed forces who believes himself
15 wronged by his commanding officer, and, upon due applica-
16 tion to such commander, is refused redress, may complain to
17 any superior officer who shall forward the complaint to the
18 officer exercising general court-martial jurisdiction over the
19 officer against whom it is made. That officer shall examine
20 into said complaint and take proper measures for redressing
21 the wrong complained of; and he shall, as soon as possible,
22 transmit to the Department concerned a true statement of
23 such complaint, with the proceedings had thereon.

24 ART. 139. Redress of injuries to property.

25 (a) Whenever complaint is made to any commanding

1 officer that willful damage has been done to the property
2 of any person or that his property has been wrongfully
3 taken by members of the armed forces he may, subject to
4 such regulations as the Secretary of the Department may
5 prescribe, convene a board to investigate the complaint.
6 The board shall consist of from one to three officers and
7 shall have, for the purpose of such investigation, power to
8 summon witnesses and examine them upon oath or affirma-
9 tion, to receive depositions or other documentary evidence,
10 and to assess the damages sustained against the responsible
11 parties. The assessment of damages made by such board
12 shall be subject to the approval of the commanding officer,
13 and in the amount approved by him shall be charged against
14 the pay of the offenders. The order of such commanding
15 officer directing charges herein authorized shall be conclusive
16 on any disbursing officer for the payment by him to the
17 injured parties of the damages so assessed and approved.

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

1 ART. 140. Delegation by the President.

2 The President is authorized to delegate any authority
3 vested in him under this code, and to provide for the
4 subdelegation of any such authority.

5 SEC. 2. If any article or part thereof, as set out in sec-
6 tion 1 of this Act, shall be held invalid, the remainder shall
7 not be affected thereby.

8 SEC. 3. No inference of a legislative construction is to
9 be drawn by reason of the part in which any article is placed
10 nor by reason of the catch lines of the part or the article
11 as set out in section 1 of this Act.

12 SEC. 4. All offenses committed and all penalties, for-
13 feitures, fines, or liabilities incurred prior to the effective date
14 of this Act under any law embraced in or modified, changed,
15 or repealed by this Act may be prosecuted, punished, and en-
16 forced, and action thereon may be completed, in the same
17 manner and with the same effect as if this Act had not been
18 passed.

19 SEC. 5. This Act shall become effective on the last day
20 of the calendar twelfth month after approval of this Act, or on July 1,
21 1950, whichever date is later: Provided, That section 12 of
22 this Act shall become effective on the date of the approval
23 of this Act.

24 SEC. 6. Articles of War 107, 108, 112, 113, 119, and

1 120 (41 Stat. 809, 810, 811), as amended are further
2 amended as follows:

3 (a) Delete from article 107, the words "Article 107."

4 (b) Delete from article 108, the words "Article 108."

5 (c) Delete from article 112, the words "Article 112."

6 (d) Delete from article 113, the words "Article 113."

7 (e) Delete from article 119, the words "Article 119."

8 (f) Delete from article 120, the words "Article 120."

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

12 SEC. 7. (a) AUTHORITY OF NAVAL OFFICERS AFTER
13 LOSS OF VESSEL OR AIRCRAFT.—When the crew of any
14 naval vessel or naval aircraft are separated from their vessel
15 or aircraft by means of its wreck, loss, or destruction, all the
16 command and authority given to the officer of such vessel or
17 aircraft shall remain in full force until such crew shall be
18 regularly discharged or reassigned by competent authority.

19 (b) AUTHORITY OF OFFICERS OF SEPARATE ORGANI-
20 ZATION OF MARINES.—When a force of marines is embarked
21 on a naval vessel or vessels, as a separate organization, not
22 a part of the authorized complement thereof, the authority
23 and powers of the officers of such separate organizations of
24 marines shall be the same as though such organization were

1 serving at a naval station on shore, but nothing herein shall
2 be construed as impairing the paramount authority of the
3 commanding officer of any vessel over the vessel under his
4 command and all persons embarked thereon.

5 (c) **COMMANDERS' DUTIES OF EXAMPLE AND CORREC-**
6 **TION.**—All commanding officers and others in authority in
7 the naval service are required to show in themselves a good
8 example of virtue, honor, patriotism, and subordination; to
9 be vigilant in inspecting the conduct of all persons who are
10 placed under their command; to guard against and suppress
11 all dissolute and immoral practices, and to correct, accord-
12 ing to the laws and regulations of the Navy, all persons
13 who are guilty of them; and to take all necessary and proper
14 measures, under the laws, regulations and customs of the
15 naval service, to promote and safeguard the morale, the phy-
16 sical well-being, and the general welfare of the officers and
17 enlisted persons under their command or charge.

18 (d) **DIVINE SERVICE.**—The commanders of vessels and
19 naval activities to which chaplains are attached shall cause
20 divine service to be performed on Sunday, whenever the
21 weather and other circumstances allow it to be done; and it
22 is earnestly recommended to all officers, seamen, and others
23 in the naval service diligently to attend at every performance
24 of the worship of Almighty God.

25 (e) **REVERENT BEHAVIOR.**—All persons in the Navy

1 are enjoined to behave themselves in a reverent and becom-
2 ing manner during divine service.

3

OATH OF ENLISTMENT

4 SEC. 8. Every person who is enlisted in any armed
5 force shall take the following oath or affirmation at the time
6 of his enlistment: "I, -----, do solemnly swear (or
7 affirm) that I will bear true faith and allegiance to the
8 United States of America; that I will serve them honestly
9 and faithfully against all their enemies whomsoever; and
10 that I will obey the orders of the President of the United
11 States and the orders of the officers appointed over me,
12 according to regulations and the Uniform Code of Military
13 Justice." This oath or affirmation may be taken before
14 any officer.

15

REMOVAL OF CIVIL SUITS

16 SEC. 9. When any civil or criminal prosecution is com-
17 menced in any court of a State of the United States against
18 any member of the armed forces of the United States on
19 account of any act done under color of his office or status,
20 or in respect to which he claims any right, title, or authority
21 under any law of the United States respecting the armed
22 forces thereof, or under the law of war, such suit or prosecu-
23 tion may at any time before the trial or final hearing thereof
24 be removed for trial into the district court of the United

1 States in the district where the same is pending in the man-
2 ner prescribed by law, and the cause shall thereupon be en-
3 tered on the docket of such district court, which shall proceed
4 as if the cause had been originally commenced therein and
5 shall have full power to hear and determine said cause.

6 DISMISSAL OF OFFICERS

7 SEC. 10. No officer shall be dismissed from any of the
8 armed forces except by sentence of a general court-martial,
9 or in commutation thereof, or, in time of war, by order of the
10 President; but the President may at any time drop from the
11 rolls of any armed force any officer who has been absent with-
12 out authority from his place of duty for a period of three
13 months or more, or who, having been found guilty by the
14 civil authorities of any offense, is finally sentenced to con-
15 finement in a Federal or State penitentiary or correctional
16 institution.

17 SEC. 11. The proviso of section 3 of the Act of April
18 9, 1906 (34 Stat. 104, ch. 1370), is amended to read
19 as follows:

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

25 SEC. 12. Under such regulations as the President may

1 prescribe, The Judge Advocate General of any of the armed
2 forces is authorized upon application of an accused person, and
3 upon good cause shown, in his discretion to grant a new trial,
4 or to vacate a sentence, restore rights, privileges, and prop-
5 erty affected by such sentence, and substitute for a dismissal^{al}
6 dishonorable discharge, or bad-conduct discharge, previously
7 executed a form of discharge authorized for administrative
8 issuance, in any court-martial case involving offenses com-
9 mitted during World War II in which application is made
10 within one year after termination of the war, or after its
11 final disposition upon initial appellate review whichever is
12 the later: *Provided*, That only one such application for
13 a new trial may be entertained with regard to any one case:
14 *And provided further*, Within the meaning of this section
15 and of article of war 53, World War II shall be deemed to
16 have ended as of the effective date of this Act.

17 QUALIFICATIONS OF THE JUDGE ADVOCATES GENERAL

18 SEC. 13. Notwithstanding any other provision of law,
19 the Judge Advocates General, exclusive of the present
20 incumbents, shall be members of the bar of a Federal court
21 or of the highest court of a State, shall be judge advocates
22 or law specialists and shall have at least eight years cum-
23 ulative experience in a Judge Advocate's Corps, Depart-
24 ment or Office, the last three years of which, prior to
25 appointment, shall be consecutive: *Provided*, That in time

1 of peace the provisions of this section shall not be applicable
2 to the Coast Guard.

3 SEC. 14. The following sections or parts thereof of the
4 Revised Statutes or Statutes at Large are hereby repealed.
5 Any rights or liabilities existing under such sections or parts
6 thereof prior to the effective date of this Act shall not be
7 affected by this repeal, and this Act shall not be effective
8 to authorize trial or punishment for any offense if such trial
9 or punishment is barred by the provisions of existing law:

10 (a) Chapter II of the Act of June 4, 1920 (41 Stat.
11 759, 787-811, ch. 227), as amended, except Articles of
12 War 107, 108, 112, 113, 119, and 120;

13 (b) Revised Statutes, 1228 through 1230;

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

15 (d) Paragraph 2 of section 2 of the Act of March 4,
16 1915 (38 Stat. 1062, 1084, ch. 143) ;

17 (e) Revised Statutes 1441, 1621, and 1624, articles
18 1 through 14 and 16 through 63, as amended;

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

23 (g) Section 2 of the Act of June 22, 1874 (18 Stat.
24 191, 192, ch. 392) ;

25 (h) The provision of the Act of March 3, 1893 (27

1 Stat. 715, 716, ch. 212), under the heading "Pay, Miscel-
2 laneous", relating to the punishment for fraudulent enlistment
3 and receipt of any pay or allowances thereunder;

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

6 (j) Provisions contained in the Act of March 2, 1895
7 (28 Stat. 825, 838, ch. 186), as amended, under the head-
8 ing "Naval Academy", relating to the power of the Secre-
9 tary of the Navy to convene general courts-martial for the
10 trial of naval cadets (title changed to "midshipmen" by Act
11 of July 1, 1902, 32 Stat. 662, 686, ch. 1368), his power
12 to approve proceedings and execute sentences of such courts-
13 martial, and the exceptional provision relating to approval,
14 confirmation, and carrying into effect of sentences of suspen-
15 sion and dismissal;

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

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

24 (m) The provisions in the Act of August 29, 1916 (39

1 Stat. 556, 586, ch. 417), under the heading "Adminis-
2 tration of Justice";

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

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

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

6 (q) The provision of section 6, title I, of the Naval
7 Reserve Act of 1938 (52 Stat. 1175, 1176, ch. 690),
8 making members of the Fleet Reserve and officers and
9 enlisted men who have been or may be transferred to the
10 retired list of the Naval Reserve Force or the Naval Reserve
11 or the honorary retired list with pay subject to the laws,
12 regulations, and orders for the government of the Navy;

13 (r) Section 301, title III, of the Naval Reserve Act of
14 1938 (52 Stat. 1175, 1180, ch. 690);

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

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

17 (u) Sections 2, 3, 4, 6 and 7 of the Act of May 26,
18 1906 (34 Stat. 200, 201, ch. 2556);

19 (v) The provision of the Act of June 5, 1920 (41 Stat.
20 874, 880, ch. 235), under the heading "Coast Guard",
21 authorizing the trial of enlisted men in the Coast Guard by
22 deck courts.