

# ESTABLISHMENT OF MILITARY JUSTICE

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## HEARINGS

BEFORE A

### SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

FIRST SESSION

ON

## S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

Printed for the use of the Committee on Military Affairs



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1919

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# ESTABLISHMENT OF MILITARY JUSTICE—PROPOSED AMENDMENT OF THE ARTICLES OF WAR.

SATURDAY, AUGUST 2, 1919.

UNITED STATES SENATE,  
SUBCOMMITTEE ON MILITARY AFFAIRS,  
Washington, D. C.

The subcommittee met, pursuant to the call of the chairman, in the room of the Committee on Appropriations, at 1.30 o'clock p. m., Senator Francis E. Warren presiding.

Present, Senators Warren (chairman), Lenroot, and Chamberlain.

The bill under consideration by the subcommittee is here printed in full as follows:

S. 64. A BILL To establish military justice.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this act shall be known as the military justice act, and the articles included in this section shall be known as the Army articles and shall at all times and in all places govern the Army of the United States.*

## I. PRELIMINARY PROVISIONS.

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

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

(b) The word "soldier" shall be construed as including a noncommissioned officer, a private, or any other enlisted man;

(c) The word "company" shall be understood as including a troop or battery; and

(d) The word "battalion" shall be understood as including a squadron.

ART. 2. PERSONS SUBJECT TO MILITARY LAW.—The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law," or "persons subject to military law," whenever used in these articles: *Provided*, That nothing contained in this act, except as specifically provided in this article, shall be construed to apply to any person under the United States naval jurisdiction, unless specifically provided by law.

(a) All members of the military forces of the United States, including all officers and soldiers belonging to the Regular Army, all cadets of the United States Military Academy, all members of the Army Nurse Corps, and all contract surgeons, all volunteers from the dates of their muster or acceptance into the military service of the United States, and all other persons lawfully called, drafted, or ordered, into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft, or order to obey the same; and all officers of the Marine Corps when detached for service with the armies of the United States by order of the President: *Provided*, That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment ceases; and all other persons who now are or may hereafter be made members of the Military Establishment by law;

(b) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the

armies of the United States in the field, both within and without the territorial jurisdiction of the United States though not otherwise subject to these articles;  
 (c) All persons under sentence adjudged by courts-martial.

## II. COURTS-MARTIAL.

ART. 3. COURTS-MARTIAL CLASSIFIED.—Courts-martial shall be of three kinds, hereinafter designated and hereafter to be known as—

General courts;  
 Special courts; and  
 Summary courts.

### A. COMPOSITION.

ART. 4. WHO MAY SERVE ON COURTS-MARTIAL.—All officers and soldiers in the military service of the United States and officers and soldiers of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on general and special courts, and all such officers shall be competent to serve on summary courts for the trial of any persons who may lawfully be brought before such courts for trial, except as may be hereinafter otherwise provided.

ART. 5. GENERAL COURTS.—General courts shall consist of eight members, three of whom in the case of the trial of a private soldier shall be privates, and in the case of the trial of a noncommissioned officer or warrant officer shall be noncommissioned or warrant officers, respectively.

ART. 6. SPECIAL COURTS.—Special courts shall consist of three members, one of whom in the case of the trial of a private soldier shall be a private, and in the case of the trial of a noncommissioned or warrant officer shall be a noncommissioned or warrant officer, respectively.

ART. 7. SUMMARY COURTS.—A summary court shall consist of one officer who shall be the officer of the command deemed by the appointing authority best qualified therefor by reason of rank, experience, and judicial temperament.

### B. BY WHOM APPOINTED.

ART. 8. GENERAL COURTS.—The President of the United States, the commanding officer of a territorial division or department, the superintendent of the Military Academy, the commanding officer of an Army corps, a tactical division, or of any isolated body of troops consisting of a regiment or more which, by reason of delay and difficulty of communication with it, the President shall find it necessary to constitute a separate general court jurisdiction, may appoint general courts; but when the organization of the forces is such as to justify such a course the President may direct that any commanding officer herein named shall not exercise such power.

ART. 9. SPECIAL COURTS.—The commanding officer of a district, a brigade, a regiment, or any isolated body of troops consisting of a battalion or more, which superior authority may deem it necessary to constitute a separate special court jurisdiction, or authority superior to such commanding officer, when deemed desirable by him so to do, may appoint special courts; but superior authority may convene a special court for the trial of a member of any isolated body of troops less than a battalion when in any particular case it is found by him to be necessary; and such superior authority, when the organization of the forces is such as to justify such a course, may direct that any commanding officer herein named shall not exercise such power.

ART. 10. GENERAL AND SPECIAL COURTS, HOW ORGANIZED.—The appointing authority of a general or special court shall designate a panel, which he shall increase as may be found necessary, consisting of those who are by him deemed fair and impartial and competent to try the cases to be brought before them, and from such panel the court shall be constituted, as hereinafter provided.

ART. 11. SUMMARY COURTS.—The commanding officer of a regiment or of any detachment of troops may appoint summary courts, but such summary courts may in any case be appointed by superior authority when by the latter deemed desirable. When but one officer is present with the command, he shall be the summary court of that command.

ART. 12. APPOINTMENT OF COURT JUDGE ADVOCATES.—The authority appointing a general or a special court shall appoint for the court a judge advocate. No person shall be appointed judge advocate for a general court unless at the time of his appointment he is an officer of the Judge Advocate General's Department, except that when an officer of that department is not available the appointing authority shall appoint an officer recommended by the Judge Advocate General of the Army as specially qualified by reason of legal learning and experience to act as judge advocate, and the

officer appointed as judge advocate of a special court may be an officer of the Judge Advocate General's Department if such an officer is available, and whenever such officer is not available the appointing authority shall select that available officer of his command whom he deems best qualified therefor by reason of legal learning or aptitude and judicial temperament. The judge advocate shall not be a member of the court, but shall sit with it at all times in open session and shall fairly, impartially, and in a judicial manner perform the following duties and such others not inconsistent herewith as may be prescribed by the President in virtue of article 41:

- (a) To organize the court from those on or added to the panel designated by the appointing authority for the purpose;
- (b) Rule upon all questions of law properly arising in the proceedings, including challenges and questions touching the competency and impartiality of the court;
- (c) Advise the court and convening authority of any legal deficiency in the constitution and composition of the court or in the charge before it for trial;
- (d) At the conclusion of the case and before the court proceeds to deliberate upon the findings, sum up the evidence in the case and discuss the law applicable to it, unless both he and the court consider it unnecessary;
- (e) Take care that the accused does not suffer any disadvantage in consequence of his position as such, or of his ignorance or incapacity, and for that purpose the judge advocate may call and examine such witnesses as may appear to him necessary or desirable to elicit the truth;
- (f) Approve a finding of guilty and approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense, when as a matter of law the evidence of record requires such action; and such action shall be held to be the action of the court;
- (g) Announce the findings of the court-martial and upon conviction of the accused impose sentence upon him;
- (h) Suspend in whole or in part any sentence that does not extend to death or dismissal.

His rulings and advice given in the performance of his duties and made of record shall govern the court-martial. If the judge advocate dies, or from illness or any cause whatever is unable to attend, the court shall adjourn and another judge advocate or law member shall be appointed by the proper authority, who shall act for the residue of the trial or until the judge advocate or law member returns.

### C. JURISDICTION.

**ART. 31. GENERAL COURTS.**—General courts shall have power to try any persons subject to military law for any crime or offense for which the punishment prescribed by these articles involves death, dismissal, or dishonorable discharge, and any other person who by the law of war is subject to trial by a military tribunal: *Provided*, That no officer shall be brought to trial before a general court appointed by the Superintendent of the Military Academy.

**ART. 14. SPECIAL COURTS.**—Special courts shall have power to try any person subject to military law for any crime or offense not capital made punishable by these articles, and any other person who by the law of war is subject to trial by a military tribunal; but special courts shall not have power to adjudge death, dismissal, loss of files, dishonorable discharge, confinement for more than six months, or any other penalty which under article 48 may not be imposed in lieu or in addition to confinement for six months or less.

**ART. 15. SUMMARY COURTS.**—Summary courts shall have power to try any person subject to military law except an officer, a cadet, or a soldier holding the privileges of a certificate of eligibility to promotion, for any crime or offense for which the punishment authorized by these articles does not involve death or dishonorable discharge; but summary courts shall not have power to adjudge confinement for more than one month, nor restriction to limits for more than three months, nor forfeiture or detention of pay for more than three months.

**ART. 16. NOT EXCLUSIVE.**—The provisions of these articles conferring jurisdiction upon courts shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by statute or by the law of war may be triable by such military commissions, provost courts, or other military tribunals.

**ART. 17. OFFICERS—HOW TRIABLE.**—In no case shall an officer when it can be avoided be tried by officers inferior to him in rank.

## D. PROCEDURE.

**ART. 18. PREFERRING CHARGES.**—No charge shall be preferred for trial before a general or special court unless it shall be signed by a person subject to military law who shall make oath that he has actual personal knowledge as to the truth of the matters set forth in said charge and that the same are true in substance and in fact, or who in case he has not such personal knowledge shall make oath that he has personally investigated the matters set forth in said charge and that the same are true, in substance and in fact, to the best of his knowledge and belief.

**ART. 19. REFERRING AND FORWARDING CHARGES FOR TRIAL.**—No officer with authority to appoint a special court shall refer any charge to such court for trial nor shall any commanding officer charged with such duty forward any charge to an officer having authority to appoint general courts until he shall have made or caused to be made a thorough investigation as to the truth of the matter set forth in the charge, and he shall not refer such charge for trial unless he believes that the charge can be sustained and in the interests of the service and of justice can not be disposed of without trial, nor shall such officer forward any charge to any appointing authority of a general court until he shall have made or caused to be made a thorough investigation as to the truth of the matters set forth in said charge, in which he shall hear whatever the accused may desire to say in his own behalf and any available witnesses requested by the accused, and in so forwarding any charge he shall accompany it with statements of the substance of the testimony taken on both sides during the investigation and all other evidence, including such statement, if any, as the accused may have voluntarily made during the investigation.

**ART. 20. CHARGE MUST BE LEGALLY SUFFICIENT.**—No charge shall be referred to or be tried by a general court unless an officer of the Judge Advocate General's Department charged with such duty shall have indorsed in writing upon the charge that in his opinion an offense made punishable by these articles is charged with legal sufficiency against the accused and that it has been made to appear to him that there is prima facie proof that the accused is guilty of the offense charged, nor unless the officer referring the charge believes that in the interests of the service and of justice the charge can not be disposed of except by trial by general court-martial.

**ART. 21. APPOINTMENT OF PROSECUTORS.**—For each general or special court the appointing authority shall appoint a prosecutor and for each general court one or more assistant prosecutors, when necessary, each of whom shall be competent to perform all the duties of the prosecutor. The prosecutor shall prosecute in the name of the United States. Such prosecutor may be an officer of the Judge Advocate General's Department, and if such an officer be not available, the prosecutor shall, whenever practicable, be an officer or enlisted man deemed by the appointing authority specially qualified for the duty by reason of learning in or aptitude for the law.

**ART. 22. RIGHT OF COUNSEL.**—In all court proceedings, except a summary court, the accused shall have the assistance of and be represented by military counsel of his own selection, and he may have the like assistance of civil counsel if he so provides. Such civil counsel shall be civilian lawyers and such military counsel shall be officers or soldiers; and any officer or soldier under command of the appointing authority who shall be selected by the accused shall be assigned as counsel unless the appointing authority shall furnish the court with a certificate which shall be placed in the record that such assignment can not be made without serious injury to the service and setting forth the reasons therefor. If military counsel be not selected by the accused, the appointing authority shall assign as military counsel to assist in his defense an officer who is well qualified as to rank and experience in the service and who has, if any such there be within the command, special learning in or aptitude for the law.

In any case before a general court in which the accused is without civil counsel and in which he shall make it appear to the judge advocate that he needs, but is without available means to procure, the assistance of civil counsel, the judge advocate shall employ civil counsel, wherever it is practicable so to do, and fix the amount of compensation for his services, which shall be paid out of any funds available for the purpose; and if the trial shall result in a lawful conviction, the judge advocate may order that the Government be reimbursed by a stoppage of such amount, or any part thereof, against the pay of accused at the rate of two-thirds of his monthly pay until the amount ordered stopped be paid.

**ART. 23. CHALLENGES.**—An accused before a general court shall have the right to two peremptory challenges and before a special court to one peremptory challenge; and he shall have the right to challenge members of a general or special court for cause stated, which shall include the grounds for principal challenge and challenge to the favor as recognized at common law. If the accused shall file in the proceedings

an affidavit of prejudice, accompanied by a certificate of counsel of record that such affidavit is made in good faith, alleging specific grounds to show that the officer appointing the court has bias or prejudice against him or that the court, by reason of any matter touching its constitution or composition can not do justice, the court shall proceed no further until the judge advocate shall decide whether it is able to proceed with absolute impartiality in the pending case, and if he decides that the court can not proceed with absolute impartiality the court shall not be competent for the trial of the pending case, and he shall report to the appointing authority; thereupon the next superior authority may appoint a court for the trial of said case. And whenever an accused shall file a like affidavit alleging bias or prejudice of the judge advocate, such judge advocate shall proceed no further in the case, but another shall be appointed.

**ART. 24. OATHS.**—The judge advocate of the court shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation:

“You and each of you do swear (or affirm) that you will well and truly try and determine according to the evidence the matter now before you between the United States of America and the person to be tried, and that you will duly administer justice without respect to the rank or position of the person to be tried or of any other person, and without partiality, favor, or affection, according to the law and the evidence, to the best of your understanding; and you and each of you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be announced in open court. Neither will you disclose or discover the vote or opinion of any particular member of the court unless required to give evidence thereon as a witness by a court of justice in due course of law, so help you God.”

When the oath of affirmation has been administered to the members, the president of the court shall administer to the judge advocate an oath or affirmation in the following form:

“You do solemnly swear (or affirm) that you will administer justice without respect to the rank or position of the person to be tried or of any other person, and that you will faithfully and impartially discharge and perform all the duties incumbent upon you, according to the best of your abilities and understanding and agreeably to law, so help you God.”

And the judge advocate of the court shall then administer to the prosecutor, and to each assistant prosecutor, if any, an oath or affirmation in the following form:

“You, A B, do swear (or affirm) that you will faithfully, fairly, and to the best of your ability perform your duties as prosecutor (or as assistant prosecutor) before this court, so help you God.”

All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form:

“You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth, so help you God.”

Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form:

“You swear (or affirm) that you will faithfully perform the duties of reporter to this court, so help you God.”

Every interpreter, in the trial of any case before a court-martial, shall before entering upon his duties make oath or affirmation in the following form:

“You swear (or affirm) that you will truly interpret in the case now in hearing, so help you God.”

In case of affirmation, the closing sentence of adjuration will be omitted. The oath of a witness, reporter, and interpreter will be administered by the judge advocate of a general or special court-martial or by the summary court-martial.

**ART. 25. CONTINUANCES.**—The judge advocate of a court may for reasonable cause grant a continuance to either party for such time and as often as may appear to be just.

**ART. 26. REFUSAL OR FAILURE TO PLEAD.**—When an accused arraigned before a court fails or refuses to plead, or answers foreign to the purpose, or after a plea of guilty makes a statement inconsistent with the plea, or makes a plea of guilty improvidently or through lack of understanding of its meaning and effect, the judge advocate of the court or the summary court shall direct that a plea of not guilty be entered, and the court shall thereupon proceed accordingly.

**ART. 27. PROCESS TO OBTAIN WITNESSES.**—Every judge advocate of a court and every summary court shall have power to issue the like process to compel witnesses to appear and testify which courts of the United States having criminal jurisdiction may lawfully issue; but such process shall run to any part of the United States, its Territories and possessions and such judge advocate or summary court shall give notice to such persons subject to military law as may appear to be necessary as witnesses for

the Government and for the defense to appear and testify at a certain time and place, and such persons so notified shall immediately make application for the necessary orders enabling them to appear at the time and place specified; and the said judge advocate or summary court shall subpoena such number of civilian witnesses on behalf of the Government and of the defense as may appear to be necessary and material, and the fees of which witnesses for the accused shall be paid by the Government and in the same manner as its witnesses: *Provided*, That the accused makes application under oath before the trial or, in case of necessity, during the trial, setting forth the names of such witnesses and what he expects to prove by them, in order that the judge advocate or summary court may be advised whether or not the testimony be material to the issue.

ART. 28. REFUSAL TO APPEAR OR TESTIFY.—Every person not subject to military law who, being duly subpoenaed to appear as a witness before any court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, jurisdiction being hereby conferred upon such courts for such purpose; and it shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, on the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprisonment not to exceed six months, or both, at the discretion of the court: *Provided*, That the fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States, shall be duly paid or tendered said witness, such amounts to be paid out of the appropriation for the compensation of witnesses.

ART. 29. COMPULSORY SELF-INCRIMINATION PROHIBITED.—No witness before a court, commission, court of inquiry, board, or before any officer conducting an investigation or any officer, military or civil, designated to take a deposition to be read in evidence before a court, commission, court of inquiry, or board, or officer conducting an investigation, shall be compelled to incriminate himself or to answer any question that may tend to incriminate him or to answer any question not material to the issue that tends to degrade him.

ART. 30. DEPOSITIONS—WHEN ADMISSIBLE.—A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence for the Government before any special or summary court or before any military commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or district in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing, but testimony by deposition may be adduced for the defense before all military tribunals and in all cases.

ART. 31. RESIGNATION WITHOUT ACCEPTANCE DOES NOT RELEASE OFFICER.—Any officer who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to absent him. If permanently therefrom shall be deemed a deserter.

ART. 32. CLOSED SESSIONS.—Whenever a general or special court shall sit in closed session, the judge advocate, the prosecutor, and the assistant prosecutor, if any, shall withdraw; and when the legal advice or assistance of the judge advocate is required, it shall be obtained in open court.

ART. 33. ORDER OF VOTING.—Members of a general or special court in giving their votes shall begin with the junior in rank.

ART. 34. ACCUSED IMMEDIATELY TO BE INFORMED OF ACQUITTAL.—When an accused is acquitted of all charges and specifications the court shall not reconsider nor be directed to reconsider its findings, but the judge advocate of the court of the summary court shall immediately inform the accused and the officer by whose authority he may be in custody, of his acquittal, and such officer shall thereupon immediately release the accused from custody unless he is in custody for reasons other than the pendency of the charges of which he has been acquitted.

ART. 35. CONTEMPTS.—A court may punish as for contempt any person who uses any menacing words, signs, or gestures in his presence, or who disturbs its proceedings by any riot or disorder, and any person lawfully called before it as a witness who refuses to qualify, or to testify, or to answer any question lawfully put to him; but such punishment shall in no case exceed that which may be awarded by a summary court-martial, and such punishment of a witness shall be a bar to prosecution for the same misconduct under article 28.

ART. 36. RECORDS—GENERAL COURTS.—Each general court shall keep a separate record of its proceedings in the trial of each case brought before it, which record shall be authenticated by the signature of the president and the judge advocate; but in case the record can not be authenticated by the judge advocate, by reason of his death, disability, or absence, it shall be signed by the president and one other member of the court.

ART. 37. RECORDS, SPECIAL AND SUMMARY COURTS.—Each special court and each summary court shall keep a record of its proceedings, separate for each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may from time to time prescribe.

ART. 38. DISPOSITION OF RECORDS—GENERAL COURTS.—The judge advocate of each general court shall, with such expedition as circumstances may permit, forward the original record of the proceedings of such court in the trial of each case to the appointing authority or to his successor in command, who shall without delay transmit the same to the Judge Advocate General of the Army.

ART. 39. DISPOSITION OF RECORDS—SPECIAL AND SUMMARY COURTS.—The record of a special court or the report of a summary court shall be transmitted without delay to the officer appointing the court or to his successor in command, who shall transmit such record or report to such general headquarters as the President may designate in regulations. The judge advocate at such headquarters shall, with powers of review similar to those prescribed in article 52, review and revise all such records and reports for errors of law prejudicial to the accused. When no longer of use, the reports of summary courts may be destroyed.

ART. 40. IRREGULARITIES—EFFECT OF.—The proceedings of a court shall not be held invalid, nor the findings or sentence disapproved, in any case on the ground of improper admission or rejection of evidence or for any error as to any matter of pleading or procedure or for any other error of law unless after an examination of the entire proceedings it shall appear that the error complained of has injuriously affected the substantial rights of an accused.

ART. 41. RULES OF EVIDENCE TO GOVERN—RULES OF PROCEDURE.—Courts shall, except in so far as Congress has prescribed or may hereafter prescribe different rules especially applicable to such tribunals, apply the rules of evidence which are generally recognized in the trial of criminal cases in the district courts of the United States.

The President may from time to time prescribe rules not inconsistent with these articles to govern the procedure of all military tribunals, except the court of military appeals, and such rules shall be laid before the Congress annually.

#### E. LIMITATIONS UPON PROSECUTIONS.

ART. 42. AS TO TIME.—Except for desertion committed in time of war, or for murder or mutiny, no person subject to military law shall be liable to be tried or punished by a court for any crime or offense committed more than two years before the arraignment of such person: *Provided*, That for desertion in time of peace or for any crime or offense punishable under articles 82 and 95 of this code the period of limitations upon trial and punishment shall be three years: *Provided further*, That the period of any absence of the accused from the jurisdiction of the United States, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitation: *And provided further*, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law.

ART. 43. AS TO NUMBER.—No person shall be prosecuted for an offense for which he has once been tried, and a person shall be held to have been once tried when the proceedings in his case have resulted in a lawful sentence or whenever the Government, without his consent entered upon the record, withdraws the charge or otherwise discontinues the prosecution after the arraignment.

## F. PUNISHMENTS.

ART. 44. CRUEL AND UNUSUAL PUNISHMENTS PROHIBITED.—Cruel and unusual punishments of every kind, including flogging, branding, marking, or tattooing on the body, are prohibited.

ART. 45. PLACE OF CONFINEMENT—WHEN LAWFUL.—When the accused has been convicted and sentenced to confinement for more than one year a penitentiary may be designated as the place of confinement in the following cases only:

(a) When confinement in a penitentiary is prescribed in these articles.

(b) When conviction is for a civil offense denounced by some statute of the United States or of the District of Columbia, or by the common law as the same exists in the District of Columbia and made punishable thereunder with confinement in a penitentiary for more than one year.

(c) When a sentence of death has been commuted to confinement in a penitentiary.

When the accused has been convicted of two or more offenses, any one of which is punishable with confinement in a penitentiary, the entire sentence to confinement may be executed in a penitentiary. Confinement in a penitentiary hereby authorized may be served in any penitentiary directly or indirectly under the jurisdiction of the United States. Persons sentenced to dishonorable discharge and to confinement not in a penitentiary shall be confined in the United States Disciplinary Barracks or elsewhere, as the Secretary of War or the authority executing the sentence may direct, but not in a penitentiary. Any sentence of confinement at hard labor, except confinement served in a penitentiary, may, when so ordered by proper authority, be served in any military unit that may be organized for penal servitude or in the performance of any work necessary in or incident to the Military Establishment, under such restrictions as proper authority may impose and with or without imprisonment.

ART. 46. NUMBER TO CONVICT—DEATH SENTENCES.—Conviction of an offense by a general court shall require the concurrence of three-fourths of the members, but no death penalty shall be imposed except for an offense in these articles expressly made punishable by death and when the finding of guilty is concurred in by all the members of the court or when the death penalty is mandatory. Conviction of an offense by a special court shall require the concurrence of two-thirds of the members of the court.

ART. 47. AMOUNT OF PAY FORFEITABLE.—In any sentence which does not include confinement in a penitentiary or in the disciplinary barracks a court shall not adjudge forfeiture or detention of pay at a rate greater than two-thirds of the pay per month.

ART. 48. PUNISHMENTS AUTHORIZED.—Whenever confinement for a period longer than six months is authorized by these articles as a punishment for an offense, the court may impose in lieu thereof, with or in addition thereto, any one or more of the following punishments:

(a) In case of an officer—

Dismissal;

Loss of files;

Suspension from rank, command, or duty, with or without pay or part of pay, for a period not in excess of the maximum authorized period of confinement;

Forfeiture of pay for a period not in excess of said period;

Hard labor for a period not in excess of said period;

Restriction to limits for a period not in excess of said period; and

Reprimand.

(b) In the case of a soldier—

Dishonorable discharge;

Reduction to the ranks;

Forfeiture or detention of pay not in excess of the maximum authorized period of confinement;

Restriction to limits for a period not in excess of said period;

Hard labor for a period not in excess of said period.

Whenever the maximum period of confinement authorized by these articles is six months or less, the court may impose in lieu thereof or in addition thereto any of the above-mentioned punishments except dismissal, loss of files, and dishonorable discharge.

## G. PROCEDURE AFTER TRIAL.

ART. 49. APPROVAL AND EXECUTION OF SENTENCE.—No sentence of death shall be carried into execution until approved upon review as prescribed in article 52 and, in addition, confirmed and ordered executed by the President, and no sentence of dismissal or dishonorable discharge shall be executed until approved upon review as

prescribed in said article, and any death sentence when thus approved, confirmed, and ordered executed, and any sentence of dismissal or dishonorable discharge when thus approved will upon notification to him to that effect, be carried into execution by the officer appointing the court or by the officer commanding for the time being, or by any specially designated military authority, and every other sentence will be carried into execution upon the receipt of the record or report of the proceeding by the officer appointing the court or by the officer commanding for the time being, or by any specially designated military authority; but nothing herein contained shall operate to deprive any officer of the power of mitigation, remission, and suspension of sentence conferred upon him by article 50.

ART. 50. MITIGATION, REMISSION AND SUSPENSION OF SENTENCE.—Any officer having authority to appoint a court may mitigate, remit or suspend, in whole or in part, any sentence not extending to death or dismissal or not confirmed or commuted by the President that is being served by any person under his command and that was imposed by a court of a kind not higher than such officer is empowered to appoint, and may vacate said order of suspension at any time: *Provided*, That when a sentence of dishonorable discharge has been suspended the order of suspension shall be vacated only by authority of the Secretary of War, and no sentence of any person serving in the disciplinary barracks or any branch thereof or in any military unit organized for the purpose of penal servitude shall be suspended, mitigated, or remitted or, if suspended, be ordered executed, except by the authority of the Secretary of War, and the period during which a sentence of confinement is suspended shall be deemed a part of the sentence served.

The power of remission and mitigation shall extend to all uncollected forfeitures adjudged by sentence of a court, and the death or honorable discharge of a person under suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence.

ART. 51. JUDGE ADVOCATE GENERAL TO RECEIVE RECORDS; COURT RECORDS ARE PUBLIC.—The Judge Advocate General of the Army shall receive and file the record of the proceedings of all general courts, courts of inquiry, and military commissions and shall immediately transmit to the court of military appeals the record of all proceedings which carry sentences involving death, dismissal, or dishonorable discharge or confinement for a period of more than six months. The records of and reports upon the proceedings of all courts and military commissions, wherever filed, shall be public records and subject as such to public examination.

ART. 52. REVISION BY COURT OF MILITARY APPEALS.—There is hereby created a court of military appeals which, for convenience of administration only, shall be located in the Office of the Judge Advocate General, and which shall consist of three judges appointed by the President by and with the advice and consent of the Senate, each of whom shall be learned in the law, shall hold office during good behavior, and shall have the pay and emoluments, including the privilege of resignation and retirement upon pay, of a circuit judge of the United States. Unless the accused when sentence is pronounced upon him shall make the statement in open court that he does not desire that his case be reviewed by the court of military appeals, which statement shall be made a matter of record by the judge advocate, or unless he shall thereafter notify said court of appeals in writing that he does not wish his case reviewed, said court shall review the record of the proceedings of every general court or military commission which carries a sentence involving death, dismissal, or dishonorable discharge or confinement for a period of more than six months, for the correction of errors of law evidenced by the record and injuriously affecting the substantial rights of an accused without regard to whether such errors were made the subject of objection or exception at the trial; and such power of review shall include the power—

(a) To disapprove a finding of guilty and approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense.

(b) To disapprove the whole or any part of a sentence.

(c) To advise the proper convening or confirming authority of the further proceedings that may and should be had, if any, upon the disapproval of the whole of a sentence; and in any case in which all the findings and the sentence are disapproved because of such error of law in the proceedings the appointing authority may lawfully order a new trial by another court.

(d) To make a report to the Secretary of War for transmission to the President, recommending clemency in any case in which the sentence, though valid, shall appear to the court to be unjust or unduly severe.

Said judges may select the presiding judge of the court and may prescribe its rules and procedure. In case any judge shall become temporarily incapacitated for the performance of his duties, the President at the request of the court may assign to duty upon the court a judge advocate deemed qualified for such duty who upon assign-

ment and taking the oath of office shall have the power and shall perform the duties of a judge of said court; and the Judge Advocate General shall assign to duty with the court such officers, enlisted men and civilian employees in the Judge Advocate General's department as the court may find necessary for the thorough and expeditious performance of its duties.

Each judge before entering upon the duties of his office shall take the oath prescribed for the judge advocate of a general court.

And said court of military appeals shall have like jurisdiction to review and revise any sentence of death, dismissal, or dishonorable discharge approved for any offense committed and tried since the 6th day of April, 1917, and any sentence of death, dismissal, or discharge in the case of any person now serving confinement as a result of such sentence, upon application to that end made by the accused within six months after the passage of this act: *Provided*, That in no case in which the sentence has heretofore been approved shall be tried again: *And provided further*, That the revision or reversal of the sentence in any such case shall not be effective to retain in the military service any person who has been dismissed or discharged therefrom in execution of such sentence thus reviewed, or to entitle any person to any pay or allowances, but shall be limited in its effect to the final determination that the separation from the service was honorable instead of dishonorable.

### III. PUNITIVE ARTICLES.

#### A. ENLISTMENT; MUSTER; FALSE STATEMENTS.

ART. 53. FRAUDULENT ENLISTMENT.—Any person who shall procure himself to be enlisted in the military service of the United States by means of willful misrepresentation or concealment as to his qualifications for enlistment and shall receive pay or allowances under such enlistment, and any soldier who without having first received a regular discharge from the organization in which he last served enlists himself in another organization shall be guilty of fraudulent enlistment and shall be punishable with confinement for not more than six months.

ART. 54. FALSE MUSTER AND OFFICIAL STATEMENTS.—Any officer who makes a false muster, return, certificate, or official statement, in due course of military administration, knowing the same to be false and with intent to deceive, shall be dismissed the service, and in case the offense be committed in time of war, shall in addition be punishable with confinement for not more than ten years.

#### B. DESERTION; ABSENCE WITHOUT LEAVE.

ART. 55. DESERTION.—Any person subject to military law who quits the military service with the deliberate and fixed intent not to return to it, or who quits his organization or place of duty with the intent to avoid hazardous duty, shall be guilty of desertion and shall, if the offense be committed in time of war, be punishable with death or confinement for life or for a fixed period, and if the offense be committed in time of peace, by confinement for not more than two years. And any person subject to military law who attempts to desert shall be punishable with the punishment authorized for desertion.

ART. 56. ADVISING OR AIDING ANOTHER TO DESERT.—Any person subject to military law who advises or persuades or knowingly assists another to desert the service of the United States shall be punishable with the punishment authorized for desertion.

ART. 57. ENTERTAINING A DESERTER.—Any officer who, after having discovered that a soldier in his command is a deserter from the military or naval service or from the Marine Corps, retains such deserter in his command without informing superior authority or the commander of the organization to which the deserter belongs, shall be punishable with the punishment authorized for desertion.

ART. 58. ABSENCE WITHOUT LEAVE.—Any person subject to military law who fails to repair at the fixed time to the properly appointed place of duty or goes from the same without proper leave, or absents himself from his command, guard, quarters, station, or camp without proper leave for a period of not more than sixty days, shall be punishable with confinement for not more than six months, and if the absence without leave is for a period of more than sixty days, with confinement for not more than one year.

## C. DISRESPECT; INSUBORDINATION; MUTINY.

ART. 59. DISRESPECT TOWARD THE PRESIDENT, VICE PRESIDENT; CONGRESS, SECRETARY OF WAR, GOVERNORS, LEGISLATURE.—Any person subject to military law who uses contemptuous or disrespectful words against the President, Vice President, the Congress, the Secretary of War, or the governor or legislature of any State, Territory, or other possession of the United States in which he is quartered, shall be punishable with confinement for not more than one year.

ART. 60. DISRESPECT TOWARD SUPERIOR OFFICER.—Any person subject to military law who behaves himself with disrespect toward his superior officer shall be punishable with confinement for not more than six months.

ART. 61. ASSAULTING SUPERIOR OFFICER.—Any person subject to military law who knowingly assaults or strikes his superior officer, being in the execution of his office, shall be punishable with confinement for not more than one year, in addition to the punishment authorized elsewhere in these articles to be imposed for assaulting or striking.

ART. 62. WILLFUL DISOBEDIENCE OF LAWFUL COMMAND.—Any person subject to military law who willfully and with intent to defy lawful authority disobeys any lawful command given to him by his superior officer, being in the execution of his office, whether the same is given orally or in writing or otherwise, shall be punishable with death or confinement for life or for a fixed period.

ART. 63. ASSAULTING NONCOMMISSIONED OFFICER.—Any soldier who assaults or strikes a noncommissioned officer, in the execution of his office, shall be punishable with confinement for not more than six months, in addition to the punishment authorized elsewhere in these articles to be imposed for the assault or striking.

ART. 64. DISOBEDIENCE OF ORDERS OF NONCOMMISSIONED OFFICER.—Any soldier who disobeys any lawful order of a noncommissioned officer, in the execution of his office, shall be punishable with confinement for not more than six months.

ART. 65. MUTINY.—Any person subject to military law who, in concert with another or others, unlawfully opposes, resists, or defies superior military authority, with the deliberate and fixed intent to usurp or subvert the same, shall be guilty of mutiny and shall be punishable with death or confinement for life or for a fixed period; and any person subject to military law who attempts to create or who begins, excites, causes or joins in any mutiny, shall be punishable with the punishment authorized for mutiny.

ART. 66. FAILURE TO SUPPRESS MUTINY.—Any officer or soldier who, being present at any mutiny, does not use his utmost endeavor to suppress the same or, knowing or having reason to believe that a mutiny is to take place, does not without delay give information thereof to his commanding officer shall be punishable with death or confinement for life or for a fixed period.

ART. 67. QUARRELS, FRAYS, AND DISORDERS.—All officers and noncommissioned officers have power to part and quell all quarrels, frays, and disorders among persons subject to military law and to order officers who take part in the same into arrest, and other persons subject to military law who take part in the same into arrest or confinement, as circumstances may require, until their proper superior officer is acquainted therewith, and whosoever, being so ordered, refuses to obey such officer or noncommissioned officer, draws a weapon upon or otherwise threatens or does violence to him shall be punishable with confinement for not more than one year.

## D. ARREST; CONFINEMENT.

ART. 68. ARREST OR CONFINEMENT OF ACCUSED PERSONS.—An officer charged with crime or with a serious offense under these articles shall be placed in arrest by the commanding officer, and in exceptional cases an officer so charged may be placed in confinement by the same authority. A soldier charged with crime or with a serious offense under these articles shall be placed in confinement, and when charged with a minor offense he may be placed in arrest. Any person subject to military law, except an officer or a soldier, charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; and when charged with a minor offense such person may be placed in arrest. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters, or tent unless such limits shall be enlarged by proper authority; and any person subject to military law who escapes from confinement or who breaks his arrest before he is set at liberty by proper authority shall be punishable with confinement for not more than one year.

ART. 69. INVESTIGATION OF AND ACTION UPON CHARGES.—No person put in confinement shall be continued therein more than eight days or until such time as a court

can be assembled. When any person is put in arrest for the purpose of trial, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days, unless postponement be had at the request or with the consent of the accused. If a copy of the charges be not served, or the arrested or confined person be not brought to trial as herein required, the arrest or confinement shall cease and the officer holding the accused in custody shall immediately release him, and any accused thus released from arrest or confinement shall not thereafter be tried for the crime or offense upon which he was placed in arrest or confinement: *Provided*, That in time of peace no person shall against his objection be brought to trial before a general court within a period of five days subsequent to the service of charges upon him. Any officer whose duty it is to make the release from arrest or confinement as herein required or any officer who fails or refuses to make the investigation or to perform the other duties required of him by articles 19 and 20 shall be punishable with confinement for not more than six months.

ART. 70. REFUSAL TO RECEIVE AND KEEP PRISONERS.—No provost marshal or commander of a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall at the time deliver a specific account in writing, signed by himself, of the crime or offense charged against the prisoner. Any officer or soldier so refusing shall be punishable with confinement for not more than six months.

ART. 71. REPORTING PRISONERS RECEIVED.—Every commander of a guard to whose charge a prisoner is committed shall, within twenty-four hours after such confinement or as soon as he is released from his guard, report in writing to the commanding officer the name of such prisoner, the offense charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punishable with confinement for not more than six months.

ART. 72. RELEASING PRISONER WITHOUT PROPER AUTHORITY.—Any person subject to military law who, without proper authority, releases any prisoner duly committed to his charge or who through neglect or design suffers any prisoner so committed to escape shall be punishable with confinement for not more than one year.

ART. 73. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES.—When any person subject to military law, except one who is held by the military authorities to answer, or who is awaiting trial or result of trial, or who is undergoing sentence for a crime or offense punishable under these articles, is accused of a crime or offense committed within the geographical limits of States of the Union and the District of Columbia, and punishable by the laws of the land, the commanding officer is required, except in time of war, upon application duly made, to use his utmost endeavor to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending and securing him, in order that he may be brought to trial. Any commanding officer who upon such application refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil authorities or to aid the officers of justice in apprehending and securing him shall be dismissed from the service and in addition be punishable with confinement for not more than one year.

When, under the provisions of this article, delivery is made to the civil authorities of an offender undergoing sentence of a court-martial, such delivery, if followed by conviction, shall be held to interrupt the execution of the sentence of the court-martial, and the offender shall be returned to military custody, after having answered to the civil authorities for his offense, for the completion of the said court-martial sentence.

#### E. WAR OFFENSES.

ART. 74. MISBEHAVIOR BEFORE THE ENEMY.—Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons or delivers up any fort, post, camp, guard, or other command which it is his duty to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, or by any means whatsoever occasions false alarms in camp, garrison, or quarters shall be punishable with death or confinement for life or for a fixed period.

ART. 75. SUBORDINATES COMPELLING COMMANDER TO SURRENDER.—Any person subject to military law who compels or attempts to compel any commander of any garrison, fort, post, camp, guard, or other command to give it up to the enemy or to abandon it, shall be punishable with death or confinement for life or for a fixed period.

ART. 76. IMPROPER USE OF COUNTERSIGN.—Any person subject to military law who makes known the parole or countersign to any person not entitled to receive it accord-

ing to the rules and discipline of war, or gives a parole or countersign different from that which he received, shall, if the offense be committed in time of war, be punishable with death or confinement for life or for a fixed period.

ART. 77. FORCING A SAFEGUARD.—Any person subject to military law who, in time of war, forces a safeguard, shall be punishable with death or confinement for life or for a fixed period.

ART. 78. CAPTURED PROPERTY TO BE SECURED FOR PUBLIC SERVICE.—All public property taken from the enemy is the property of the United States and shall be secured for the service of the United States, and any person subject to military law who neglects to secure such property or is guilty of wrongful appropriation thereof shall be punishable with confinement for not more than twenty years.

ART. 79. DEALING IN CAPTURED OR ABANDONED PROPERTY.—Any person subject to military law who buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect to receive any profit, benefit, or advantage to himself or to any other person directly or indirectly connected with himself, or who fails whenever such property comes into his possession or custody or within his control to give notice thereof to the proper authority and to turn over such property to the proper authority without delay, shall, on conviction thereof, be punishable with confinement for not more than twenty years.

ART. 80. RELIEVING, CORRESPONDING WITH, OR AIDING THE ENEMY.—Whoever relieves or attempts to relieve the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall be punishable with death or confinement for life or for a fixed period.

ART. 81. SPIES.—Any person who in time of war shall be found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States or elsewhere shall be tried by a general court or by a military commission, and shall, on conviction thereof, suffer death.

#### F. MISCELLANEOUS CRIMES AND OFFENSES.

ART. 82. MILITARY PROPERTY—WILLFUL OR NEGLIGENT LOSS, DAMAGE, OR WRONGFUL DISPOSITION OF.—Any person subject to military law who, willfully, or through neglect, suffers to be lost, spoiled, damaged, or wrongfully disposes of any military property belonging to the United States shall make good the loss or damage and be punishable, if the property is more than \$50 in value, with confinement for not more than two years and, if the property is less than \$50 in value, with confinement for not more than six months.

ART. 83. WASTE OR UNLAWFUL DISPOSITION OF MILITARY PROPERTY ISSUED TO SOLDIERS.—Any soldier who sells or wrongfully disposes of or willfully or through neglect injures or loses his horse, arms, ammunition, accoutrements, equipment, clothing, or other property issued to him for use in the military service shall be punishable, if the property is more than \$50 in value, with confinement for not more than two years, and if the property is less than \$50 in value, with confinement for not more than six months.

ART. 84. DRUNK ON DUTY.—Any person subject to military law who is found drunk on duty shall, if the offense be committed in time of war and in the zone of combat, be punishable with death or with confinement for life or for a fixed period; and if the offense be committed at any other time or place, it shall be punishable with confinement for not more than one year.

ART. 85. MISBEHAVIOR OF SENTINEL.—Any sentinel who is found drunk or sleeping upon his post, or who leaves it before he is regularly relieved, shall, if the offense be committed in time of war and in the zone of combat, be punishable with death or confinement for life or for a fixed period; and if the offense be committed at any other time or place, it shall be punishable with confinement for not more than one year.

ART. 86. GOOD ORDER TO BE MAINTAINED AND WRONGS REDRESSED.—All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or willfully destroys any property whatsoever (unless by order of his commanding officer), or commits any kind of depredation or riot shall be punishable with confinement for not more than six months; and any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, in so far as the offender's pay shall go toward such reparation, shall be punishable with confinement for not more than one year.

ART. 78. DUELING.—Any person subject to military law who fights or promotes or is concerned in or connives at fighting a duel, or who having knowledge of a challenge

sent or about to be sent fails to report the fact promptly to the proper authority, shall be punishable with confinement for not more than one year.

ART. 88. FRAUDS AGAINST THE GOVERNMENT.—Any person subject to military law who makes or causes to be made any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

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

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

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures, or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statement; or

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

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

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

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States, furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States; or

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

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

Shall, on conviction thereof, be punishable with a fine of not more than \$5,000 or with confinement for not more than five years, or with both. And if any person, being guilty of any of the offenses aforesaid while in the military service of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

ART. 89. RIOT.—Any person subject to military law who is guilty of riot or of participating in a riot, either by being present personally or by instigating, promoting, or aiding the same, is punishable with confinement for not more than two years.

ART. 90. OPENING LETTERS.—Any person subject to military law who willfully and without authority opens or reads or causes to be opened or read a sealed letter, telegram, or private paper shall be punishable with confinement for not more than six months.

ART. 91. SUPPRESSING EVIDENCE.—Any person subject to military law who practices any deceit or fraud or uses any threat, menace or violence with intent to prevent any party to a proceeding before any military tribunal from obtaining or producing therein any book, paper or other thing of evidential value in said proceedings, or from procuring the attendance or testimony of any witness therein, or with intent to prevent any person having in his possession any book, paper or other thing of evidential value in such proceedings, or to prevent any person knowing any fact material thereto from producing or disclosing the same shall be punishable with confinement for not more than one year.

ART. 92. SODOMY.—Any person subject to military law who carnally knows any male or female person by the anus or by or with the mouth, or who voluntarily

submits to such carnal knowledge, or who carnally knows in any manner any animal or bird, is guilty of sodomy and shall be punishable with confinement in a penitentiary or other authorized place for not more than five years.

ART. 93. MURDER; RAPE.—Any person subject to military law who commits murder or rape shall be punishable with death or confinement for life, or for a fixed period, but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace.

ART. 94. CONSPIRACY.—Any person subject to military law who conspires with another or others to commit any offense authorized to be punished by any of these articles with death, dismissal, or confinement for one year or more, and one or more of the persons conspiring to any act to effect the object of the conspiracy, shall be punishable with confinement for not more than one year.

ART. 95. VARIOUS CRIMES.—Any person subject to military law who in any place commits any crime or offense denounced by any statute of the United States or by any statute for the District of Columbia, and not specifically denounced by these articles, shall be punishable with confinement for a period not exceeding the maximum period of confinement prescribed by said statutes: *Provided*, That whenever a statute of the United States and a statute for the District of Columbia denounce the same offense, the former shall govern.

ART. 96. GENERAL ARTICLE.—Any person subject to military law who commits any act or is guilty of any omission which constitutes conduct to the prejudice of good order and military discipline or of a nature to bring discredit upon the military service, and which is not punishable by any other article herein, shall be punishable with confinement for not more than six months.

ART. 97. CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN.—Any officer or cadet who is convicted of conduct unbecoming an officer and gentleman shall be dismissed from the service.

ART. 98. FAILURE TO ACQUAINT SOLDIERY WITH THESE ARTICLES.—It shall be the duty of any officer who enlists, musters, or inducts any soldier into the military service, at that time or within ten days thereafter, to read and explain to him these articles, and it shall be the duty of the commanding officer of every garrison, regiment, or company once every six months to read and explain these articles to the soldiers of his command; and every such officer failing or neglecting to perform such duty shall be punishable with confinement for not more than six months.

#### IV. COURTS OF INQUIRY.

ART. 99. WHEN AND BY WHOM ORDERED.—A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer; but a court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into.

ART. 100. COMPOSITION.—A court of inquiry shall consist of three or more officers. For each court of inquiry the authority appointing the court shall appoint a recorder.

ART. 101. CHALLENGES.—Members of a court of inquiry may be challenged by the party whose conduct is to be inquired into, but only for cause stated to the court. The court shall determine the relevancy and validity of any challenge, and shall not receive a challenge to more than one member at a time. The party whose conduct is being inquired into shall have the right to be represented before the court by counsel of his own selection, if such counsel be reasonably available.

ART. 102. OATH OF MEMBERS AND RECORDERS.—The recorder of a court of inquiry shall administer to the members the following oath: "You, A. B., do swear (or affirm) that you will well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of award. So help you God." After which the president of the court shall administer to the recorder the following oath: "You, A. B., do swear (or affirm) that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

In cases of affirmation the closing sentence of adjuration will be omitted.

ART. 103. POWERS; PROCEDURE.—A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts and the judge advocate thereof. Such witnesses shall take the same oath or affirmation that is taken by witnesses before courts. A reporter or an interpreter for a court of inquiry shall, before entering upon his duties, take the oath or affirmation required of a reporter or an interpreter for a court-martial. The party whose conduct is being

inquired into or his counsel, if any, shall be permitted to examine and cross-examine witnesses so as fully to investigate the circumstances in question.

ART. 104. OPINION ON MERITS OF CASE.—A court of inquiry shall not give an opinion on the merits of the case inquired into unless specially ordered to do so.

ART. 105. RECORD OF PROCEEDINGS—HOW AUTHENTICATED.—Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and the recorder thereof, and be forwarded to the convening authority. In case the record can not be authenticated by the recorder, by reason of his death, disability, or absence, it shall be signed by the president and by one other member of the court.

#### V. MISCELLANEOUS PROVISIONS.

ART. 106. DISCIPLINARY POWERS OF COMMANDING OFFICERS.—Under such regulations as the President may prescribe, and which he may from time to time revoke, alter, or add to, the commanding officer of any detachment, company, or higher command may, for minor offenses not denied by the accused, impose disciplinary punishments upon persons of his command without the intervention of a court, unless the accused demands trial by a court.

The disciplinary punishments authorized by this article may include admonition, reprimand, withholding of privileges, extra fatigue, and restriction to certain specified limits, but shall not include forfeiture of pay or confinement under guard. A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by a court for a crime or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

ART. 107. INJURIES TO PERSON OR PROPERTY, REDRESS OF.—Whenever complaint is made to any commanding officer that damage has been done to the property of any person or that his property has been wrongfully taken by persons subject to military law, such complaint shall be investigated by a board consisting of any number of officers from one to three, which board shall be convened by the commanding officer and shall have, for the purpose of such investigation, power to summon witnesses and to examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damage made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

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

ART. 108. ARREST OF DESERTERS BY CIVIL OFFICIALS.—It shall be lawful for any civil officer having authority under the laws of the United States, or of any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States.

ART. 109. SOLDIERS TO MAKE GOOD TIME LOST.—Every soldier who in an existing or subsequent enlistment deserts the service of the United States, or without proper authority absents himself from his organization, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or through the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement, or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve.

**ART. 110. SOLDIERS; SEPARATION FROM THE SERVICE.**—No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present; and no enlisted man shall be discharged from said service before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court.

**ART. 111. OATH OF ENLISTMENT.**—At the time of his enlistment every soldier shall take the following oath or affirmation: "I, \_\_\_\_\_, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the Rules and Army Articles." This oath or affirmation may be taken before any officer.

**ART. 112. COPY OF RECORD OF TRIAL.**—Every person tried by a general court shall, on demand therefor, made by himself or by any person in his behalf, be entitled to a copy of the record of the trial.

**ART. 113. EFFECTS OF DECEASED PERSONS—DISPOSITION OF.**—In case of the death of any person subject to military law, the commanding officer of the place of command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters, and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects; and said summary court shall have authority to collect and receive any debts due decedent's estate by local debtors; and as soon as practicable after the collection of such effects said summary court shall transmit such effects, and any money collected, through the Quartermaster Department, at Government expense, to the widow or legal representative of the deceased, if such be found by said court, or to his son, daughter, father, mother, brother, or sister, in the order named, if such be found by said court, or to the beneficiary named by the deceased, if such be found by said court, and such court shall thereupon make to the War Department a full report of its transactions; but if there be none of the persons hereinabove named, or such persons or their addresses are not known to, or readily ascertainable by, said court, and the court shall so find, said summary court shall have authority to convert into cash, by public or private sale, not earlier than thirty days after the death of the deceased, all effects of the deceased, except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposits, any will or other papers of value belonging to the deceased, any sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, together with an inventory of the effects secured by said summary court, and a full account of its transactions to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of the accounts of deceased officers and enlisted men of the Army.

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

**ART. 114. INQUESTS.**—When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States, any person shall have been found dead under circumstances which appear to require investigation, the commanding officer will designate and direct a summary court to investigate the circumstances attending the death; and, for this purpose, such summary court shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death.

**ART. 115. AUTHORITY TO ADMINISTER OATHS.**—Any judge advocate or acting judge advocate, the president of a general or special court, any summary court, the judge advocate of a general or special court, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant of any command shall have power to administer oaths for the purposes of the administration of military justice and for other purposes of military administration; and in foreign places where the Army may be serving shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and all other forms of notarial acts to be executed by persons subject to military law.

**ART. 116. APPOINTMENT OF REPORTERS AND INTERPRETERS.**—Under such regulations as the Secretary of War may from time to time prescribe, the president of a court or military commission or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. Under like regulations the president of a court or military commission, or court of inquiry, or a summary court, may appoint an interpreter, who shall interpret for the court or commission.

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

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

**ART. 119. RANK AND PRECEDENCE AMONG REGULARS, MILITIA, AND VOLUNTEERS.**—That in time of war or public danger, when two or more officers of the same grade are on duty in the same field, department, or command, or of organizations thereof, the President may assign the command of the forces of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade. In the absence of such assignment by the President, officers of the same grade shall rank and have precedence in the following order, without regard to date of rank or commission as between officers of different classes, namely: First, officers of the Regular Army and officers of the Marine Corps detached for service with the Army by order of the President; second, officers of forces drafted or called into the service of the United States; and, third, officers of the volunteer forces: *Provided*, That officers of the Regular Army holding commissions in forces drafted or called into the service of the United States or in the volunteer forces shall rank and have precedence under said commissions as if they were commissions in the Regular Army; the rank of officers of the Regular Army under commissions in the National Guard as such shall not, for the purposes of this article, be held to antedate the acceptance of such officers into the service of the United States under said commissions.

**ART. 120. COMMAND WHEN DIFFERENT CORPS OR COMMANDS HAPPEN TO JOIN.**—When different corps or commands of the military forces of the United States happen to join or do duty together the officer highest in rank of the line of the Regular Army, Marine Corps, forces drafted or called into the service of the United States, or Volunteers, there on duty, shall, subject to the provisions of the last preceding article, command the whole and give orders for what is needful in the service, unless otherwise directed by the President.

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

**SEC. 2.** That section 1342 of the Revised Statutes of the United States as amended and all other acts and parts of acts in conflict herewith are hereby repealed.

**SEC. 3.** That the provisions of this act shall take effect and be in force on and after the thirtieth day following the approval of this act, except that article 52 shall take effect immediately upon approval of this act.

SEC. 4. That all offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking of effect of this act may be prosecuted, punished, and enforced in the same manner and with the same effect as if this act had not been passed.

Senator WARREN. The committee will come to order. We have before us Maj. Runcie, and we shall proceed to hear him now.

You understand, Maj. Runcie, that we are considering the Articles of War, and that the bill which is before us seeks to, as you may say, reorganize the Articles of War entirely; and hence, in your testimony, when you allude to them, will you allude to the corresponding portions in the two, and state the differences from the present Articles of War that are necessary, in your opinion?

**STATEMENT OF MAJ. J. E. RUNCIE, UNITED STATES ARMY  
(RETIRED).**

Maj. RUNCIE. I doubt that I would be prepared to discuss the detailed provisions of this proposed legislation, which I did not see until yesterday, but I think that the real underlying question which the bill raises is a question as to whether military discipline shall be enforced by law or by the exercise of arbitrary and often capricious authority by military commanders.

I would like to say that after long experience of both the military law and the civil law, I was long ago convinced, and have for many years maintained, that there is not and never has been anything in our military system that deserves to be called military law.

Senator LENROOT. Now, Major, might I ask you, preliminary to your statement, to state what your experience has been, and your occupation?

Maj. RUNCIE. I was graduated from the Military Academy in 1879. I served at the Military Academy as instructor of mathematics and as instructor of law from 1880 to 1884.

I served after that in a great variety of duties, among them as judge advocate of a military division and department. I have sat as a member of a great many courts-martial and have been judge advocate of many such courts—that is, I have acted as prosecutor. I have frequently acted also as counsel for accused persons—officers and enlisted men.

I was retired from active service, and having been admitted to the bar I practiced law for 24 or 25 years.

I retired from the practice of the law, voluntarily, about five years ago, since which time I have been the librarian at the Military Academy at West Point.

Senator LENROOT. Proceed.

Maj. RUNCIE. Now, to continue what I was saying, when I say that there is not any such thing as military law I mean, as the fundamental principle of law is that it shall be something established, a rule, something capable of being known or ascertained and determined, that there has been nothing of law in that sense in the military administration during all my acquaintance with it. In all that time every court-martial, together with the reviewing authority that convened it, has been absolutely independent of every other court or authority in the exercise of its jurisdiction. That means that the decisions of those courts on questions of law may be as conflicting as the imagination can conceive, and there is absolutely no

means of reconciling them. It is possible, and I have known it in my own experience, for two military courts convened by the same authority, sitting within two or three miles of each other, to reach absolutely opposing decisions on a very important question of law, with no possible means of determining which of the two was correct, so that in those two cases it was a mere matter of chance how the court before which a defendant was arraigned would decide on the law. In one case the defendant was discharged, and in the other the defendant was convicted and given a sentence of a term of years at hard labor, the two cases being on all fours.

The same is true in respect to what constitutes a military offense. There is no authority which can determine a question of that nature. And so through the whole procedure of military courts. There is uncertainty because of the lack of any controlling legal authority which can speak decisively as to what the law is, and whose decisions courts shall be obliged to follow absolutely. Now, that is what I mean by saying that there is no such thing as military law.

Senator CHAMBERLAIN. You are familiar with the present Articles of War?

Maj. RUNCIE. In general, yes.

Senator CHAMBERLAIN. Under the present Articles of War, how are offenses defined?

Maj. RUNCIE. Offenses, as I remember it, are defined, except in special cases, in very general terms only; but a state of facts which contains no element of a military offense may be described as a military offense, and the accused be brought to trial, convicted, and punished.

Senator WARREN. Major, as I understand, I do not know that I ought to say it was the origin of, but largely the Civil War was responsible for, the present Articles of War as they read, and they are supposed to have grown out of experience in the field in time of war. Have you, with your views, considered just what might be done and what should be done in war, at the front, as, for instance, during the late war in France and Germany—speaking, of course, of law and legal procedure? You would, of course, proceed under these Articles of War?

Maj. RUNCIE. Yes, sir.

Senator WARREN. In what way would you remedy the inadequacy which you describe?

Maj. RUNCIE. That could not be remedied in time of war; and I think you are in error in thinking that the present Articles of War are the outgrowth of conditions existing at the time of the Civil War. The character of the Articles of War dates very far back of the Civil War.

Senator WARREN. Do not understand me as saying that they originated there; but the shaping of them and the trying out of them was gauged largely afterwards, as I understand, by the application during the Civil War, of course. That is my understanding.

Maj. RUNCIE. I have not understood it that way.

Senator WARREN. I wanted to get your idea about it.

Maj. RUNCIE. Yes. The Articles of War from which ours came were not based on law; they were based on the authority of the Crown. The law-making power had nothing to do with them whatever.

We took over those Articles of War very hastily at the time of the formation of the armies of the War of Independence, and while the British system has fundamentally changed since that time, and the military law of the United Kingdom is now based on parliamentary enactments and is administered as law, our system has continued on the basis which the British abandoned long ago; the basis of military command, not of military law.

Senator CHAMBERLAIN. We took over the British Articles of War of 1774?

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. And they were adopted in 1776, as I understand, without any discussion.

Maj. RUNCIE. Under the emergency which then existed.

Senator CHAMBERLAIN. Yes; and I believe, from a statement that I have read somewhere, that it was a surprise to the fathers that they were taken over without public discussion.

Maj. RUNCIE. Yes, sir. I think you will find an account of that in the memoirs of John Adams, who sat on that committee.

Senator CHAMBERLAIN. Those Articles of War which were taken over in 1776 have been revised only two or three times since they were adopted?

Maj. RUNCIE. Yes; and only in details, never in system.

Senator CHAMBERLAIN. The last change in the Articles of War I had a good deal to do with, and I know something about it. It was largely a change of phraseology to make the articles apply to the colonial possessions of the United States. If I do not state this correctly, you will correct me about it.

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. The fundamental change made at that time was to give them some power for the exercise of parole, and return of young men to the colors, for good conduct. It extended the military powers.

Maj. RUNCIE. Yes.

Senator WARREN. My observation, also, is this: Maj. Runcie states that the Articles of War go back almost to the foundation of the Government. We were in the Civil War for a very long time, and of course we were also in the War with Mexico. In the real sense I take it that military justice was administered under these Articles of War very much as now; and I thought perhaps in your criticism of them you might point out how they worked then, wherein they failed, and if they failed what remedy was suggested or attempted to be supplied; in other words, how came we in the position in which we now are?

Maj. RUNCIE. I think you will find that they worked very badly, even then, and the evidence of that fact is to be found in the collected orders of that time and immediately following the Civil War, where the executive authority was called on in a great number of cases to correct failures of the military courts and their abuses of authority.

There is another historic case, that of Gen. Fitz-Johnsen Porter, which I think illustrates very well the deplorable consequences of a lack of competent review at the time. It was almost 20 years after the Civil War before Gen. Porter was able to get justice; and then he got it not by any procedure under the military code. An almost extra-legal tribunal had to be devised which could act merely in an advisory

capacity, and the Congress and the Executive, after a long delay, were brought to concur in the findings of that board and to do justice to Gen. Porter.

After the Civil War a rather remarkable phenomenon occurred in our history, namely, the total collapse of all interest in military matters. I think you will find that after the Civil War there was no military interest, other than private and personal interests, that received the attention of the public or the Congress. The same conditions have followed after all of our wars.

Senator LENROOT. At what period would you say that began; how soon after the war?

Maj. RUNCIE. Within a very short time after the Civil War; within five years, I think, the Army was reduced, first to 30,000 and then to 25,000 men. In fact, I think it can safely be said that our country has never had an army except in time of war. That is why there has been no public interest in military affairs. We have had an organization which we called an army. It was nominally organized and administered as a military force. As a matter of fact it was a police force. We had a long frontier, in a very wild country, and swarms of savages, to be looked after. That was the only real duty of the Army for at least 25 years—perhaps 30 years—after the Civil War.

Those duties were important. They called for courage and endurance and self-sacrifice, and all that. But they were not the duties of an army.

Senator CHAMBERLAIN. That very lack of interest has been largely the cause of failure to revise in time of peace these very Articles of War?

Maj. RUNCIE. That was what I was about to call attention to.

Senator CHAMBERLAIN. Do you not find the same case now, largely?

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. Except in individual cases and where there have been actual hardships, there is a lack of interest on the part of the public?

Maj. RUNCIE. Yes. Our public is never really interested in military affairs. The military establishment does not touch the people closely. If it did, if they were in daily contact with it all over the country as they are with the postoffice, and in many places with the customs service, the military service would receive that measure of public attention which it never has received except in time of war.

Senator CHAMBERLAIN. Getting down to a concrete proposition, a great many of these cases that have been tried by court-martial have come to my attention since the close of the war, and the impression I have received from them is that the fundamental trouble is that the commanding officer is given too much power. For instance, the commanding officer appoints the court and the judge advocate. The man who defends the prisoner is appointed by the same appointing power. There is nobody except the commanding officer who can revise the sentence of the court-martial. He sets aside the findings of the court-martial in cases where a defendant has been acquitted, and reconvenes the court, and orders the same man convicted; and beyond that there is no power of appeal, as I understand it. Now, is that a fair statement of the situation?

Maj. RUNCIE. So far as it goes; but I think that it is not the commanding officer alone who is chargeable with those consequences. Every officer participates in that responsibility to some extent, and that condition results from the condition under which the Army acted as a police force, without military duties, and without real military administration.

We no longer look upon the Army as a police force. The Army no longer has any police duties. But the customs and the practices of the period during which it was nothing but a police force have been sought to be carried over into the time when we have tried to make an army. For instance, it is perfectly possible for an officer to prefer an accusation against an enlisted man on a statement of facts which contains no element of a military offense, and the commanding officer, if the accuser himself does not happen to be the commanding officer, can refer the matter to a court-martial of his own appointment. The case is tried and it comes back to the commanding officer, who is the immediate superior of the members of the court, dwelling in the same command, in the same military bailiwick. There is not much assurance of justice in a case like that.

Senator WARREN. In a case like that, and in time of war, give us a suggestion of what you would propose.

Maj. RUNCIE. That is very difficult, because all of the conditions which have given rise to the controversies now pending, and which have aroused personal interest in military questions, are not conditions that were developed by the war, but are the outgrowth of those conditions which existed during time of peace and will continue to exist in time of peace.

Senator WARREN. Yes; but practically—because that is what we are to do in this bill—the question is how to make new provisions for the old ones that are defective.

Maj. RUNCIE. Practically, Senator, I do not know how it can be done. I do not see how provisions such as you propose to make will ever effect a cure of these evils. You are considering only the symptoms of the disease, not the causes.

Senator WARREN. What advice have you to give us as legislators along that line?

Maj. RUNCIE. Such legislation should be enacted for the Army as will assure a purely military organization and purely military administration for purely military purposes, with nothing in view but the public service. As it is now, the public service can be entirely ignored, and often is.

I mean that it will be, I think, perfectly useless to enact such legislation as is here proposed if the Army is to continue to be distributed in small posts which do not constitute military establishments, but which are military villages or colonies. If the Army is organized in commands of not less than brigades and preferably division commands and if in such establishments there shall be none but persons in or employed by the military service, you will then be able to have an organization that will administer military law. You can not provide an officer of the Judge Advocate General's Department for every petty post that now exists throughout the United States.

Senator WARREN. Excuse me. I asked the practical question, because I make no pretensions to technical knowledge of law and its operations, and I am thinking of it now along the line of your

last remark. Just now, for instance, I understand they have distributed troops in company units along the Mexican frontier. The trouble we are having with Mexico is such that they can not hold brigades or divisions together where they may be under division command or brigade command, and the troops are scattered along the border. I do not want to interrupt or embarrass your remarks at all, but I want to have you keep in mind the practical side, and I want to ask you for your personal advice.

Maj. RUNCIE. Yes, sir. Now, that is a command in the field, and of course the conditions are quite different. But what I have had in mind in the statement so far as it has gone is the permanent establishment which I understand is contemplated for the training of troops, a really military establishment, from which at any time such divisions or brigades or greater commands could be put into the field, carrying with them the same military organization, and in particular the same organization for the administration of military justice, that they had in their garrison; just as they would carry with them their supply officers, medical officers, ordnance officers, and others of the staff.

Senator CHAMBERLAIN. Do you think that any system, any military code, is proper which vests such power in the commanding officer of a district or a department—we will say the commanding officer of the smaller unit first, and then of the next larger unit, and so on up to the largest unit. Do you think any system is proper which vests such power in the commanding officer?

Maj. RUNCIE. No, sir.

Senator CHAMBERLAIN. Why?

Maj. RUNCIE. Because any such commanding officer is independent of every other commander in his view of the law, and every court that may be appointed by him is independent of every other court in its view of the law, unless there is provided, as this bill does provide, a competent revising authority, whose decision on every question of law shall be final.

Senator CHAMBERLAIN. That is what I want to get at.

Maj. RUNCIE. And, so far as I have observed, there is lacking in this bill a provision, such as the rule of *stare decisis*, which shall make the decisions of the military court of appeals binding on the inferior courts.

Senator CHAMBERLAIN. In other words, under the present system the commanding officer is supreme?

Maj. RUNCIE. Yes, sir, supreme in his interpretation and application of the law, except when a stubborn court refuses to be coerced.

Senator CHAMBERLAIN. And the judgments of courts-martial are lenient or severe according to his own humor; is not that true?

Maj. RUNCIE. That is true; but that is only a small part of it. The court may be wrong and the commanding officer may be right.

Senator WARREN. There are some systems of appeal under the law as to the officers who may call a court, and as to review by particular officers, I believe?

Senator CHAMBERLAIN. None whatever. That is the trouble with the old Articles of War.

Maj. RUNCIE. There are none whatever.

Senator WARREN. I do not read the Articles of War that way.

Senator CHAMBERLAIN. That is the interpretation that has been placed on that. Gen. Crowder has undertaken to say that under the power given to review and modify on the part of the Judge Advocate General, that power does not give power to reverse or modify, and that the only power of the Judge Advocate General is to ascertain if the court had jurisdiction of the proceedings and that the proceedings have been regular.

Senator WARREN. I spoke of it before it gets to that point. That is, some of those court findings are reviewed, we will say, in the field, if it happens to be there, as I understand it, and they go up to the President, and, you may say, to the Judge Advocate General's office.

Senator CHAMBERLAIN. What is the proceeding of the Judge Advocate General's office now?

Maj. RUNCIE. Nothing but advisory; it has no control over the actions of courts or of reviewing authorities.

Senator CHAMBERLAIN. We will take a case that has been tried and in which judgment has been rendered by the court. In case the defendant wants to go higher, what is the process?

Maj. RUNCIE. He can not by any legal proceeding.

Senator CHAMBERLAIN. There is no way in which he can get his case before a higher tribunal?

Maj. RUNCIE. There is no higher tribunal. There is no such thing as an appeal or a writ of error or certiorari; nothing of that nature.

Senator WARREN. Either in the law or regulations, do you mean?

Maj. RUNCIE. No, sir. By extra legal action—illegal and extra-legal—he can cause intercession to be made by his friends to the reviewing authority.

Senator CHAMBERLAIN. To the reviewing authority. What is the power of the reviewing authority?

Maj. RUNCIE. To approve, to disapprove, or to modify.

Senator CHAMBERLAIN. That is the next higher authority?

Maj. RUNCIE. That is the officer who convenes the court.

Senator CHAMBERLAIN. Is there any appeal from him?

Maj. RUNCIE. Not an appeal exactly. In grave cases affecting life or involving dismissal of an officer his action is not final. It must go to the President.

Senator CHAMBERLAIN. But only in those two cases?

Maj. RUNCIE. But that is not an appeal.

Senator CHAMBERLAIN. That is true only in those two cases?

Maj. RUNCIE. Yes, sir; that is all.

Senator CHAMBERLAIN. Where a court has convened and has found a defendant guilty and a severe sentence has been imposed, that goes from the court up to the commanding officer who convened the court, and he approves or disapproves?

Maj. RUNCIE. Really, to give the procedure in detail, it goes to his judge advocate, who reads the record and makes a recommendation to the convening authority. The convening authority may or may not regard that recommendation. He often disregards it.

Senator CHAMBERLAIN. If he approves it, then he approves the findings of the court?

Maj. RUNCIE. Yes; and orders execution in all except those cases which are reserved for the action of higher authority.

Senator CHAMBERLAIN. We will say that the commanding officer who convened the court has approved the findings of the court. Then what becomes of it?

Maj. RUNCIE. The record is transmitted to the office of the Judge Advocate General and filed.

Senator CHAMBERLAIN. At the Capital?

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. And has he the power of setting aside?

Maj. RUNCIE. No, sir.

Senator CHAMBERLAIN. He only has the power of advising?

Maj. RUNCIE. Yes, sir.

Senator WARREN. What happens in case the reviewing officer refuses to accept and does not approve the finding of the court?

Maj. RUNCIE. He can then disapprove the proceedings in the entire case and practically set them aside.

Senator WARREN. Then I do not believe that you and I differ at all. Perhaps we do in terms. But it does not occur that one set of men passes judgment on a man and that is the end of it, as a matter of fact, in all cases, because of course they get this review—what you call a review. It may be incompetent, but I am speaking of it as a second step.

Maj. RUNCIE. It is not a review in the legal sense. I mean, it does not involve a re-examination of the legal questions which may have been raised; as, for instance, to the sufficiency of the evidence. And, again, it leaves it to the arbitrary judgment of the convening authority as to what he will do. I have had, in my experience, a case or two in which it was extremely difficult to keep the convening authority from doing grave injustice. It came so close to it once that the commanding general, who was my chief at the time, insisted on sending to prison a man as to whose very identity there was grave question, a man who denied that he had ever been in the military service, whose identity was not established by the evidence in the record, and to whom the court had denied sufficient time to produce evidence which he said, would show that at the time he was supposed to be in the military service he was working at his trade in a State 2,000 miles away. But the commanding general said he was morally convinced of the guilt of that man; and when he was assured that men could be punished not by moral assurance of their guilt but only by legal conviction, he said he would take a chance. And he said that civil courts anyway could have nothing to do with the case; and when he was advised that, far from that being the fact, the civil courts could, by writ of habeas corpus in a case of that kind, in which the question in issue was one of the jurisdiction of the court, interfere at once, he said, well, he relied on the judge advocate to protect him in that case; which his judge advocate said he would decline to do, whereupon the commanding general changed his mind, and the man was released.

Senator CHAMBERLAIN. Of course the difference between Gen. Ansell and Gen. Crowder, from the legal viewpoint, was and is this: I think Gen. Crowder's contention is that the Judge Advocate General has no power to reverse or to modify or to change the sentence of a court-martial, but that he can, if he thinks there is any insufficiency of evidence or any irregularity, simply advise the commanding officer, if you please, concerning the propriety of the sentence. Gen. Ansell, on the other hand, claims that under the power given by the Articles of War the Judge Advocate General has power to review and revise and modify the judgment of the court-martial.

There is the difference between those two gentlemen, both very distinguished officers of the Army.

Assuming, as the Secretary of War has assumed, that Gen. Crowder's contention is the correct contention, do you think there ought to be some power somewhere that would have the right to review, revise, and modify the sentence of a court-martial?

Maj. RUNCIE. Yes, sir; I think that is the indispensable step to establishing government of law instead of government by caprice.

Senator CHAMBERLAIN. Have you examined the provisions in these revised Articles of War which cover that point?

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. Do you think they are sufficient to do it?

Maj. RUNCIE. Yes, sir.

Senator CHAMBERLAIN. That is really the main contention between these two distinguished men.

Maj. RUNCIE. That, of course, is purely a question of the interpretation of the statutes.

Senator CHAMBERLAIN. Absolutely, that is all.

Maj. RUNCIE. On the whole, I do not think that any such revisory authority is vested in the Judge Advocate General.

Senator CHAMBERLAIN. You differ with Gen. Ansell on that?

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. That is Gen. Crowder's view of it.

Maj. RUNCIE. But that is perhaps the principal of all the existing conditions that calls for a remedy, and the remedy is provided here; and as to the details of the exercise of the revisory jurisdiction, I think—well, I have not had time to look into it. As I say, I saw this proposed legislation for the first time yesterday.

Senator CHAMBERLAIN. There is no analogy for the system we now have anywhere in the civil courts?

Maj. RUNCIE. No, nor in any other military establishment or system that I have any knowledge of.

Senator CHAMBERLAIN. So that, in the last analysis, it leaves the enlisted man or the noncommissioned officer, who is summoned before a court-martial, entirely at the mercy of the commanding officer who acts in a revisory capacity after the finding?

Maj. RUNCIE. And of the court.

Senator CHAMBERLAIN. Yes.

Maj. RUNCIE. The court is responsible in more cases, I think, than the commanding officer; because it is absurd, I think, to expect a court composed of men, mostly young men, inexperienced men, with no training whatever in the consideration of questions of law, to pass on questions which affect the liberty, the resources and the lives of enlisted men; or of their brother officers, for that matter. It is not only absurd, it is unjust to young officers, destitute of training or experience, to impose on them such grave duties and to require them to exercise such weighty powers without the guidance of officers trained and experienced in dealing with such questions. A lieutenant is not permitted to command a platoon until he has had ample instruction in the duties of a platoon commander, but as soon as he receives a commission and procures a uniform he is deemed qualified to take part in decisions of questions of law affecting the good name, the liberty, and even the life of a fellow soldier. It is unjust to the young officer, as well as to the soldier in whose case he sits in judgment.

Senator WARREN. You have noticed, of course, in the Chamberlain bill, the proposition that in courts-martial—you were speaking of this trouble—that there may be included, or shall be included, in fact, enlisted men, in the trial of enlisted men and noncommissioned officers?

Maj. RUNCIE. Yes.

Senator WARREN. You were speaking of the inexperience and ignorance of officers, and of course that would apply below as well as above; and I agree with you that probably there is more trouble about that than about anything else.

Maj. RUNCIE. Yes.

Senator WARREN. Would you like to tell us what you think about that proposition?

Maj. RUNCIE. I think it is a very doubtful expedient, because, of course, as you very justly remarked, an enlisted man would be very much less competent, in general, to pass on those questions than an officer. And, again, in the Army as it now exists—I mean in time of peace—the enlisted man will probably be entirely subordinate to his officers who are on the court.

Senator CHAMBERLAIN. Why?

Maj. RUNCIE. Because the relation that exists between the officer and the enlisted man in our Army is not a military relation; it is a feudal relation; it is a social relation.

Senator CHAMBERLAIN. I wish you would explain that.

Maj. RUNCIE. It is a relation that exists between men of a superior cast and men of an inferior cast.

Senator CHAMBERLAIN. I would like you to enlarge on that and tell us just what you mean, because it is along that line that complaints have been made to me within recent months, by enlisted men and the friends of enlisted men, claiming—and I am only giving the claim, not that I have knowledge of it—that the enlisted man is looked upon as not the equal of the officer socially or mentally or otherwise, no matter what his standing may have been before he went into the service. That complaint is everywhere met. Now, you called it to my attention by making the statement you did as to the relation of the feudal system. How did it originate?

Maj. RUNCIE. If you will have patience enough to let me go back to a statement I made a while ago, I think it is owing to the same conditions that existed when the Army was a frontier police, when the enlisted men were recruited from, perhaps, the inferior strata of the community; when the officers were first allowed only to bring their families into these little police posts; whereupon the enlisted man began to be regarded as available for domestic wants of the officer, to take care of his domestic establishment. The enlisted men who were permitted to have their families at the post of course found their families depended upon, also, to supply the wants of officers' families. I think that if it were not for the presence of the families of officers in military posts, the relation between the officer and the man would become purely military. As it is, naturally, the soldier whose wife is a laundress and whose daughter is a waitress finds himself looked upon as one of the menial class rather than of a military class. That is, it has come to be regarded that the officer is one kind of man and the enlisted man is another kind of man; that the difference is one of class, not of position, as it ought to be and as it is in other armies.

Now, that goes to such lengths that it may be in point to exemplify it. Soon after we found ourselves engaged in war, when the Red Cross people sent around to different communities expert women instructors in the kind of work which the women of our country took up so enthusiastically, the preparation of bandages and surgical dressings and comforts for the relief of the wounded and sick, one of these instructors came to a very large post at which there were many officers and many officers' families and many enlisted men with their families. The course of instruction having begun, the wives and daughters of some of the enlisted men requested that they might be permitted to receive the instruction. They were as much interested in the accomplishment of the desired end as the officers' families were. The instructor was perfectly willing, but the officers' wives and daughters announced that that would not do; that if the enlisted men's women were permitted to come to the class in which the instruction was given, they would withdraw; that social distinctions must be preserved.

Senator CHAMBERLAIN. Was it enforced?

Maj. RUNCIE. It was, so far as I know.

Senator CHAMBERLAIN. Does that condition exist between the officer and the enlisted man at West Point?

Maj. RUNCIE. I think it exists practically everywhere in the Army. It has been my experience that it does; that the relation between the officer and the enlisted man, instead of being merely that of a military superior and a military subordinate, is primarily that of a social superior and that of a social inferior. That did not work any great harm so long as the Army was small and could be recruited from the class of the community which was willing to occupy that position; but, exactly as the troubles which have arisen in the administration of military justice in time of war have their roots in the conditions which exist unchallenged in time of peace, so this social relation of superiority and inferiority in time of peace is inevitably carried into the time of war, when the class of enlisted men is totally different from that which used to fill the ranks at the old frontier police posts. Why, you were asked here a short time ago to appropriate a large sum of money for the construction and maintenance of a hotel at West Point, to convert the military academy more than ever into an amusement resort. At the hotel that now exists there, there has stood, and for all I know still stands, a rule which excludes any enlisted man from the accommodations of the hotel. And after the war had begun for us, the question arose whether enlisted men, voluntarily enlisted or included in the selective draft, could visit the hotel to visit their friends there, or, if they came to West Point to visit their friends, could go to the hotel for accommodations.

Senator CHAMBERLAIN. How was it determined?

Maj. RUNCIE. I think the rule was perhaps suspended in that case; but at any rate permission had to be asked. Now, I cite that only as an illustration of the conditions which in my opinion absolutely prevent a really military establishment.

Senator LENROOT. Is this hotel open to the public generally?

Maj. RUNCIE. Except to enlisted men.

Senator LENROOT. That is what I say, except as to enlisted men? Any one can have the accommodation except enlisted men, on paying for it?

Maj. RUNCIE. Exactly.

Senator CHAMBERLAIN. Is that a regulation of the Academy?

Maj. RUNCIE. I think not. I think it is simply a quiet rule.

Senator WARREN. Is that the old hotel that stands on the grounds?

Maj. RUNCIE. Yes, sir.

Senator WARREN. It is an unwritten law that the enlisted men understand and that the officers understand?

Maj. RUNCIE. Yes.

Senator WARREN. As a general rule you can not get in there—it is impossible for anybody?

Maj. RUNCIE. The attractions of the place come periodically, and of course the pressure on the hotel accommodations comes periodically. But why a hotel should be a part of that military establishment I have never been able to understand.

Senator CHAMBERLAIN. Does the cadet at West Point imbibe that class distinction from the time of his entry into the establishment?

Maj. RUNCIE. It is impossible for him to avoid it.

Senator CHAMBERLAIN. He comes from the class, as a rule, from which the enlisted men of the Army come?

Maj. RUNCIE. I think a majority of them do.

Senator CHAMBERLAIN. Yes.

Maj. RUNCIE. But the cadet stays there four years, as a rule, and he finds there enlisted men engaged not in military duties but in the care of a vast village. Many of them have no arms, have no other uniforms than those of working men—laborers and artisans. They do nothing but take care of that vast village. The inevitable result is that the cadet, after he has been exposed during the formative period of his character for four years to such surroundings, comes out not so much with the feeling that it is his duty to serve, as that it is his privilege to be served.

Senator CHAMBERLAIN. You think that he carries that into the service with him?

Maj. RUNCIE. I know that he does.

Senator CHAMBERLAIN. With that feeling of class distinction, with the officer having that feeling of superiority, do you feel that under the present system it is possible for a man to deal as justly with the enlisted men as with those of his own class?

Maj. RUNCIE. I feel that it is utterly impossible.

Senator CHAMBERLAIN. Do you not feel that where an enlisted man is tried by court-martial for some trivial offense he may be given a much longer sentence than a commissioned officer who may be found guilty of a much more serious offense?

Maj. RUNCIE. That frequently happens; but it goes much further than that. The enlisted man may be tried and convicted for something which is not an offense at all.

Senator LENROOT. You mean an offense not defined by any law?

Maj. RUNCIE. For an act or omission that contains not a single element of a military offense. There was a case, which excited some unpleasant comment, of an enlisted man who was accused, arraigned, tried, and convicted before a military court for lack of respect or lack of obedience, or something of that kind, to an officer's wife.

Now, there is absolutely no military relation, and should be none, between any person in the military service and any woman, because she happens to be an officer's wife. This conviction was not for such conduct towards any woman as would have been reprehensible and would have subjected the man to proper punishment in the case of any woman; but the case rested on the conviction which has grown up in the military service, that there is a measure of military respect and obedience due from the enlisted man as such, not only to the officer but to all of the officer's family, and to all of that social class.

Senator LENROOT. Where was this case?

Maj. RUNCIE. At West Point.

Senator LENROOT. When did it occur?

Maj. RUNCIE. I think it was about two years ago.

Senator WARREN. Of course, the law, as I understand it, prior to some late additions, did not presume that officers in the Army had families, or provide for any families. That is, the matter of families did not enter into Army provisions at all. The woman does not appear anywhere in such provisions.

Maj. RUNCIE. That shows how things grow without regard to law.

Senator WARREN. There has been some legislation to change that lately. The proposition is illustrated very plainly at a post, where naturally an officer may have a wife and a number of children; and he may have spent a lot of money keeping his place up, but if his commission dates a day later than that of another officer who comes to that post, the man who has just come there may walk in and say, "Get out of here; I want this house." In fact, you will find that in early times officers in speaking to their men, in haranguing the crowd, advised against marriage. They said there was no provision made for families; that there was no provision for carrying baggage, and all that.

Maj. RUNCIE. I think, if you will look back to about 1835, around the time of Gen. Scott's regulations, you will find that it was not contemplated that officers' families should be admitted into garrisons at all, and I do not think there has ever been any declaration of that as a right at all. But in the old police force it was easy to set troops to work to chop down cottonwood trees and build a little addition to an officer's cabin for the accommodation of his family.

Senator WARREN. That has been changed by law since, so that the men can not be asked to do such service. I do not know whether that law is observed.

Maj. RUNCIE. I do not remember any provision of law that recognizes the right of an officer's family to live in a military establishment.

Senator WARREN. No; but I was speaking of using the men. An officer can not use men now in that kind of service.

Maj. RUNCIE. Yes; but it is done right along.

Senator WARREN. Yes; but when an officer does that he is violating the law and is subject to court-martial.

Maj. RUNCIE. Yes; but he gets away from that by saying that he himself does not employ the man; that his wife employs him.

Senator CHAMBERLAIN. It is a rule that does not work both ways.

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. Now, let me call your attention to this. I think that class spirit exists not only at West Point, but at the Naval Academy.

Maj. RUNCIE. That is possibly true; I do not know. But it exists throughout the whole military service.

Senator CHAMBERLAIN. You will remember the instance where a cadet a few years ago took a nurse, a respectable lady, to a cadet dance, and he was practically ostracized by his fellows for having done so.

But, going back to this proposition, let me call your attention to one thing for which you will not find a parallel in the laws of this or any other country. Article 96 on page 53 of the existing law provides:

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

As I read that article there is not a thing under the sun that has anything to do with the military establishment that can not be denounced as a military offense and punishable by a commanding officer.

Maj. RUNCIE. By a court, and with the approval of the commanding officer.

Senator CHAMBERLAIN. In the last analysis it is the same thing.

Maj. RUNCIE. Yes, it is. That article will cover any statement of facts which the authority which convenes the court chooses to regard as a military offense, although legally there is not one element of a military offense in it.

Senator CHAMBERLAIN. Yes; and the grossest injustices have been perpetrated under it. For instance, take a man who is absent without leave, it may be for a day or two, and comes back again. There have been cases where men absent without leave for five days have been sentenced to 20 years in the penitentiary, and sometimes, on being absent for a less time, have received a lighter sentence. Can a man absent without leave be punished under that section for desertion?

Maj. RUNCIE. No; he would have to be charged with desertion, because that is provided for under a special article.

Senator CHAMBERLAIN. Absence without leave can be punished under that article, as though he had been charged with desertion, can it not?

Maj. RUNCIE. No; I think not.

Senator CHAMBERLAIN. Is there any other provision of the Articles of War which provides for punishment for absence without leave?

Maj. RUNCIE. I am not sufficiently familiar with the new articles to say.

Senator CHAMBERLAIN. I mean in the articles as they are now enforced.

Senator WARREN. I think there is unlimited latitude allowed for conviction because of the various grades. You might find him innocent or you might fine him a dollar. For instance, if he had left when an action was expected, to avoid battle, and had been caught away, of course that would be true desertion.

Maj. RUNCIE. That would be cowardice.

Senator CHAMBERLAIN. There is no limit, then, to the punishment that may be fixed?

Maj. RUNCIE. That is true. That was formerly known as "the devil's article." It was the catch-all for everything that nobody had thought of putting specifically among the offenses triable by a court. It makes punishment possible, therefore, for any action which, though not involving any real offense, a commanding officer may choose to regard as prejudicial to good order and military discipline. If he can appoint a court that will accept his view of the matter or that he can coerce into agreeing with him, he can punish a man for almost anything.

This article serves another purpose also. It is available to defeat the ends of justice as well as to perpetrate injustice. If, for instance, an officer has been guilty of acts that would properly be described as "conduct unbecoming an officer and gentleman," the penalty for which is dismissal from the service—I mean that upon conviction under such a charge the sentence of dismissal is mandatory, the court having no discretion in the matter—and if for any reason the commanding officer does not desire to expose the accused officer to the risk of dismissal, he may cause the charge against him to be brought under this ninety-sixth article for "conduct to the prejudice." Then, in the event of a conviction, the court has a range of discretion as to the penalty to be imposed, and the commanding officer as reviewing authority can mitigate or remit the penalty imposed by the court. I give that just as an example.

Senator CHAMBERLAIN. Take the instance that you spoke of, disrespect to an officer's wife; that would come under it?

Maj. RUNCIE. If you chose so to regard it.

Senator WARREN. It would have to be disrespect "to a lady," rather than "to an officer's wife," specifically in the charges?

Maj. RUNCIE. Yes; almost anything would do, as the practice now is.

Senator WARREN. They would hardly have the cheek to do it otherwise, I think.

Senator CHAMBERLAIN. I make no claim to the authorship of this bill. At the request of the committee last year, when I was chairman of the Committee on Military Affairs, I asked Gen. Ansell to prepare revised Articles of War, and this bill is the result. In order to cure the section you speak of there, this rule has been suggested:

ART. 96. *General article.*—Any person subject to military law who commits any act or is guilty of any omission which constitutes conduct to the prejudice of good order and military discipline or of a nature to bring discredit upon the military service, and which is not punishable by any other article herein, shall be punishable with confinement for not more than six months.

That limits the amount of punishment.

Maj. RUNCIE. That limits the amount of punishment, but does not limit the discretion—

Senator CHAMBERLAIN. No.

Maj. RUNCIE (continuing). As to what constitutes a military offense.

Senator CHAMBERLAIN. Do you not think it ought to limit the discretion, also?

Maj. RUNCIE. It is very much like cases of disorderly conduct coming before a police court or a municipal magistrate.

Senator CHAMBERLAIN. Yes.

Maj. RUNCIE. But of course those minor civil courts are guided by a long course of experience and legal precedents; but the military courts have no such experience and they are under no obligation to be guided by precedents.

Senator CHAMBERLAIN. Now this, I presume, is under regulation rather than by law. Where it is suggested to a commanding officer that a complaint ought to be made, accusing an enlisted man, he has an inspector look into it, and the inspector is on the Government's side of the controversy, and the complaint is based on that. I understand that it is not the rule, and that it is rather forbidden, that the opposing view shall be inquired into by the inspector. Do you know about that?

Maj. RUNCIE. I do not know what the present practice is about that. The actions of inspectors are liable to be perfunctory.

Senator WARREN. It is on the ground that it is a sort of grand jury?

Senator CHAMBERLAIN. Yes; but a grand jury hears both sides.

Senator WARREN. Yes; it does, if it does its duty.

Senator CHAMBERLAIN. In a criminal court where the defendant chooses not to disclose his case, then it is his own fault.

Maj. RUNCIE. In a court-martial the defendant's side is heard if he wants it to be heard.

But all this legislation, I think, will be ineffective unless measures of purely military administration can be introduced into the Army and maintained. There is, in my opinion, no more reason why an officer's family affairs, his domestic concerns, and his social relations, should be mingled with and even take precedence over his official duties than there is for having the post office filled with the families of all the employees, from the postmaster down to the letter carriers. The conditions which permitted that system to grow up, in the days when the Army was a police force, no longer exist.

Senator WARREN. They do not exist by any positive assurances of law, now.

Maj. RUNCIE. No. I mean the conditions of an officer's life and service in remote places, in small detachments which were not military forces but police forces, in which the presence of officers' families to a limited extent did not materially interfere with the discharge of police duties. Those conditions no longer exist. But because the officers' domestic establishments were allowed—were tolerated—at those old, little posts, one-company posts, two-company posts, it has come to be considered that an officer has an undoubted right to accommodations for his family and to a supply of almost everything that his family may want at the public expense.

It is impossible to maintain a military spirit and a military establishment in a democratic country with such conditions as those. I say this after having had considerable experience in the Military Establishment, and quite as much outside of the Military Establishment, and having no interest in the question in either way.

Senator CHAMBERLAIN. You have observed that very severe sentences have been passed upon enlisted men for very trivial offenses, have you not?

Maj. RUNCIE. Yes, sir.

Senator CHAMBERLAIN. It may be claimed that that was necessary in order to maintain discipline. But in your opinion, from the

experience you have had, do you not believe that most of these cases could have been tried by minor courts and the same discipline maintained?

Maj. RUNCIE. I would go further than that and say that such an abuse of military discretion is destructive of real discipline, the sole purpose of which is to secure good and efficient service.

Senator CHAMBERLAIN. It is destructive of morale?

Maj. RUNCIE. It substitutes servitude for honorable service.

Senator CHAMBERLAIN. Let me give you an illustration, and ask you if any such system as would warrant this can be sustained, in morals at least: There was a young lieutenant in France who was the keeper of the company funds, who lost the money—or lost his books, rather. His things were put with those of the others, into a dump heap, at the place where they landed. He lost his books, and, finding that they were lost, in his efforts to find them he was absent without leave for a while. The inspector reported that he ought to be prosecuted, and he was tried for absence without leave. He produced the money in court, what he did have, and produced evidence to show what he should have had, although he did not have his books. He was found guilty of embezzlement and of absence without leave, and he was dismissed from the Army. That was the beginning and the end of his punishment.

Then, when the matter was brought to the attention of his commanding officer, he ordered the court to be reconvened, because, as he said, an officer guilty of embezzlement and absence without leave should have been dishonorably discharged from the Army. The court was reconvened and found him guilty, as before, of embezzlement and of absence without leave, and sentenced him to be dishonorably discharged from the Army and to forfeit his pay, and sentenced him to imprisonment in Fort Leavenworth for a term. Is there anything in that case that would justify such a punishment as that?

Maj. RUNCIE. Nothing whatever in the statement you make; and a competent legal officer with the record of such a case before him, even though his power was nothing more than advisory, would recommend that the entire proceeding be set aside and the officer restored to duty.

Senator CHAMBERLAIN. That case came here, and I am glad to say that the clemency court recommended the remission of the extreme penalty. The young man did not go to Leavenworth, although he was on the way, all right; and yet the stigma of conviction of a felony clings to him. There is no way for him to get rid of it.

Maj. RUNCIE. There is absolutely no way of removing the record of his conviction.

Senator CHAMBERLAIN. There are thousands of cases, not on all fours with that, but thousands of cases where the same hardship has been imposed. The best evidence of it, Major, is the fact that the clemency court have reduced the aggregate of 28,000 years of sentences to a little over 6,000 years. That ought to be pretty good evidence that the sentences imposed are extreme.

Maj. RUNCIE. You are considering the matter in the officers' direction. I have known many cases in which officers should have been prosecuted for delinquency in dealing with the public funds and with public property in which prosecution has been omitted on

condition that the officer make restitution. Extreme leniency is just as destructive of discipline as extreme severity, and so long as it is left to the option—to the whim or caprice—of a man acting in a personal and not in a judicial capacity, to determine whether a man shall be let off or prosecuted to conviction, I can not see that there is a government of law.

Senator CHAMBERLAIN. It is distinctively a government of men, is it not?

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. Now, there is another question I want to ask. Do you not think a man's right to have counsel of his own selection ought to be safeguarded in whatever this committee undertakes to do?

Maj. RUNCIE. Yes; I would have no great hope or great expectation of the protection of the rights of an inferior, of an ignorant man, by such counsel as would be available in most cases under the present organization and administration of the Army. The counsel selected is usually some young man of whom it is supposed that he has not too much to do. He himself is ignorant of the law; and sometimes those men make the most amusing mistakes.

I have heard recently of a case in which an enlisted man was prosecuted for making and uttering a forgery. His wife had run away from him, and he got hold of her allotment check, and not being disposed to have his runaway wife get the benefit of his pay, he endorsed the check with her name, and cashed it, which resulted in his being accused of making and uttering a forgery. The young officer assigned to defend him is reported to have declined to plead to such an unintelligible accusation, on the ground that a forgery is something written, and that "utterance" applies only to something spoken, and he could not intelligently plead to such a specification as that. The court was about to send the charge back to the convening authority to have the mistake corrected, when some thoughtful member said that the law had queer words, and the lawyers had queer ways of using words, and that they had better look this up; so somebody was detailed to make a trip to the nearest available dictionary and it was found that it was possible to "utter" a forgery; whereupon the trial proceeded. The defendant whose rights are intrusted to haphazard counsel like that and to a court like that, does not stand much show for justice.

Senator LENRCOT. To what extent are graduates of the Military Academy educated in military law?

Maj. RUNCIE. Very little. In fact, speaking as a graduate of the Academy and as a former instructor of law at the Military Academy, I will say that for the purpose of administering criminal law the course of instruction at West Point is of very trivial value. It is not really a study of the law; it is an exercise in mnemonics for most of them.

Senator LENRCOT. Is there any reason why it should not be regarded as a part of the course?

Maj. RUNCIE. Yes. As we depend on the medical schools of the country to furnish us with medical officers, I think we ought to depend on the law schools to furnish us with legal officers. I do not think there is room or time or opportunity at the Military Acad-

emy for sufficient instruction in law to qualify anybody to take part in the administration of law.

Senator WARREN. In that case, you would have a law department, which would, like the medical department, have its officers follow the troops to the front, wherever an army might be?

Maj. RUNCIE. Yes, sir.

Senator WARREN. And which would be distributed wherever the men were located, at the hospitals, and elsewhere? You would have at the camps, where the men were to be tried, those who were particularly educated in law?

Maj. RUNCIE. Yes.

Senator WARREN. By the way, apropos of what you say about detailing counsel, I understand that the accused always has the privilege of selecting his counsel, within certain lines.

Maj. RUNCIE. Yes; if the counsel he selects chooses to serve.

Senator WARREN. In case of the refusal of one not called upon by duty to serve, then, I presume, the court appoints some one as counsel, as the civil courts do?

Maj. RUNCIE. The commanding officer appoints counsel. The court has no authority to detail an officer to any duty.

Senator WARREN. Yes; that is right; the Articles of War do so provide.

Senator CHAMBERLAIN. Is it not true in that connection that nobody is appointed until the court convenes and they come to the trial, and then the accused generally names some young lieutenant who is in the room, who probably knows nothing about the facts, to serve as his counsel?

Senator WARREN. Or otherwise, that the commanding officer does it?

Maj. RUNCIE. No.

Senator WARREN. The court does it?

Maj. RUNCIE. No; it is done on the application of the accused, I should say.

Senator CHAMBERLAIN. I have in mind a case where a bystander was appointed, a lieutenant or some higher officer, and had no opportunity to talk to his client or to learn the facts.

Maj. RUNCIE. Yes; I became aware recently of a case in which there was a sentence of imprisonment for life, where the counsel said in open court that he knew nothing about the case and had not seen the accused until about an hour before the trial.

Senator CHAMBERLAIN. I think it frequently happens, judging from the records that have been submitted to me, that the most, or all, that the counsel does, is to advise the accused to plead guilty, in the hope that he will get a lighter sentence.

Maj. RUNCIE. That often happens.

Senator CHAMBERLAIN. I remember one case where a man was sentenced to be shot, over in France, and if I recollect the record correctly he pleaded guilty without making any statement as to his own case.

Maj. RUNCIE. Yes, sir.

Senator WARREN. Advising the accused to plead guilty is, I think, unfortunately becoming very common in our civil procedure.

Senator CHAMBERLAIN. Yes. It ought not to be done, but it is done sometimes.

Senator WARREN. In our western country it is done quite often. I wanted to ask the major one more question. I asked about enlisted men on courts-martial. I wanted to ask, if they were to serve, the enlisted men working together as they do, with very strong likes and very strong dislikes among each other, would that probably affect their judgment and findings, or would they be judicial, and act without regard to their affiliations or feelings, with their fellow men?

Maj. RUNCIE. I would not expect to find judicial characteristics of a high order among enlisted men.

Senator WARREN. Perhaps I ought not to have put it that way, but I meant to ask whether their feelings, their likes and dislikes, would bear the test of cool judgment?

Maj. RUNCIE. I am afraid they would not.

Senator WARREN. Excuse me for interrupting, Senator.

Senator CHAMBERLAIN. That is all right. I have asked the major about all the questions that I wanted to ask.

Maj. RUNCIE. In the absence of any experience of that kind with enlisted men, it is mere conjecture.

Senator CHAMBERLAIN. The differences between modern administration of law in the Army and the old-time administration of it are illustrated by the case of a very distinguished Senator who says that when as a private, during the Civil War, he was on duty as a sentinel and went to sleep at his post and his commanding officer came along while he was asleep and took his gun away from him and then waked him up; and he said his commanding officer just put his hand on his shoulder and told him that he had been guilty of an offense which under ordinary circumstances would have caused him to be shot, but, he said, he would not say anything about it, and he asked the soldier not to say anything about it; he excused him, and advised him as a father might advise a son. That man made a splendid soldier and he certainly has made a splendid Senator; but under the modern theory that man would have been shot.

Maj. RUNCIE. It would be a matter of accident whether he would be shot or not, because the latitude of these courts—well—it covers 180 degrees.

I sat on a court-martial, once, at the time of the War with Spain, which tried a sentinel for being asleep on post. Of course he was an ignorant and inexperienced volunteer; State troops, you know, mustered into the service of the United States. He had seen no occasion to spend an uncomfortable two hours as sentinel over a quartermaster's corral, so he pulled down a bale of hay and opened it out, and made himself comfortable and turned in and went to sleep. On his trial his counsel moved for a change of venue, a thing utterly unknown to the military procedure. That having been disposed of, the case proceeded, and the man was found guilty. By the rules under which courts-martial proceed, the mildest sentence proposed must be the first one voted upon, and the first one offered in this case was that he be fined \$1 and costs. (Laughter.) Those officers could not conceive that it was different from a police court trial in their home towns for some trivial offense.

Senator WARREN. Now, returning to your idea of a legal division as compared with the medical division of the Army, that brings another thought to my mind. Of course, of the Army and Navy of

the United States the President of the United States is Commander in Chief. Start and come down from there through the various ranks all the way down to the private without reference, as you might say, to civil life or civil procedure or civil courts. Of course the kind of happenings that are liable to take place in the Army, which are supposed to take place, especially if the troops are in the field, at war, are different, and very different from what they are in civil life, and of course the enormity of a transgression, the weight of it, or whether it is weak or strong, is oftentimes judged by the surrounding circumstances. For instance, a man in a camp down here in this country goes to town to have a little fun and he is gone a day and then gets back; that is one thing. If a man is in the trenches with his fellows and he gets out and is gone at the time when a battle with the enemy is expected, that is another thing. I do not understand that you would expect to have all of that matter considered in the home courts afterwards, that the papers may show, without reference to what the conditions may have been or the circumstances which made that offense black or only slightly colored. Am I right about it?

Maj. RUNCIE. Yes; you are perfectly right. The record should show all those conditions.

Senator WARREN. Unfortunately, I think that it does not show enough.

Maj. RUNCIE. Yes; but it should show, and with a proper organization in the time of peace for the administration of military justice we would not have all these troubles in time of war. The sole purpose of maintaining an army for our country now is preparation for war. We should not permit ourselves to prepare in time of peace a military establishment which is to be destroyed in time of war in order to make something that will fit the conditions of war, and we should have, especially in the matter of administration of military justice, something which is determinate from the beginning to the end; something that will compare with the steps in the procedure in criminal cases in courts of law and the corresponding steps of procedure in civil courts, and will see that at every step in military procedure everything in the nature of personal, arbitrary, capricious interference is done away with.

In the matter of accusation, to begin, I would like to say here that I do not see any reason why in the pending bill provision should be made that only an officer or an enlisted man may prefer charges. I think that an affidavit by anybody which sets up a state of facts which involves a military offense should be accepted as a basis for charges, just as you have it in a civil court.

Then the military authority should not be at liberty, in a proper case, to say whether there shall or shall not be a prosecution.

Again referring to my own experience, I recall the case of an officer of rather high rank who was twice accused on grave charges. The court for his trial was called each time, the second time occurring some months or about a year after the first, as I remember, and everything was ready in each case to proceed when an arbitrary order was received from higher authority stopping the whole thing. Nothing was done. The officer could not be brought to trial.

In another case, many years ago, an officer followed for years a course of what in the case of any civilian would have been called plain

swindling. Other officers for single acts of the same character were tried, dismissed, and even sent to penal servitude, but nothing could be done to bring to justice the officer who was repeatedly guilty of the identical offense. As I recall the case, he was never punished at all. When such things can and do occur, it is nonsense to talk about "military law" as law.

When the case goes to trial the action of the court is quite often determined not in absolute and deliberate violation of law, but in ignorance of law; much more so than in civil cases. I am not reproaching the officers. They can not be expected to know how to deal with these questions. They might just as well try to deal with the diagnosis of a medical or surgical case—a difficult case.

Then when the trial is over other openings are reached for the arbitrary interference of the reviewing authority; and finally, even when that has been successfully passed, I think you will find in the Judge Advocate General's Office here records of cases that have never been finally acted upon. Presumably an officer has been convicted, and it is inconvenient—

Senator WARREN. You mean the punishment has not been carried into effect?

Maj. RUNCIE. Nothing whatever has been done. It was inconvenient to proceed further, and the case died; exactly as if after a jury had returned its verdict and judgment had been entered, the court did not proceed to sentence and execution; or it did not proceed to judgment even.

Senator WARREN. Is that the fault of the law, or is it because of criminal neglect of duty on the part of officers, under the law? Because of course that is inexcusable and wicked.

Maj. RUNCIE. I recall one such case. There may be others. You can not at any stage insure the action of the legal machine, as you can in the criminal courts of the land.

Senator CHAMBERLAIN. It is almost impossible, sometimes, to get the records in these cases.

Maj. RUNCIE. They are not public records. They are not accessible, I think.

Senator CHAMBERLAIN. They ought to be.

Maj. RUNCIE. I think so.

Senator CHAMBERLAIN. I do not see why a man who is convicted in a military court should not have the same right to have the light turned in on the proceedings as a man convicted in a civil case.

Maj. RUNCIE. The person tried by general court-martial always has the right to a complete copy of the proceedings.

Senator LENROOT. Not until after it is fully completed. I have a case now in my desk where an officer was tried 20 weeks ago, and he can get no information, and I can get no information.

Maj. RUNCIE. Until the record is complete, he has no right to it.

Senator CHAMBERLAIN. Is it not true, Major, that many times the proceedings are held behind closed doors, where these trials are had?

Maj. RUNCIE. Only in that part of the proceedings in which the court reaches its findings and imposes the sentence, in case of a conviction. But, as a rule, all of the other proceedings of courts-martial are open.

Senator WARREN. Major, when nations can not agree they go to war, just as sometimes towns get into difficulties which are beyond

the reach of town governments and county governments and they declare martial law. As I understand you, you appreciate the fact that the military establishment must have immediate action in law-making and trials, as towns declare martial law; but you desire, in the first place, that they shall be tried by those who are well educated and grounded in the law, when it comes to trial?

Maj. RUNCIE. Yes.

Senator WARREN. And then you want their cases reviewed by a reviewing court, which is entirely outside of military lines?

Maj. RUNCIE. Yes, sir; because the Army is supposed to be governed by law; not law prescribed by military authority, but by the Congress of the United States. That is the fundamental difference.

Senator WARREN. Now, if I understand you correctly, you want this last court of refuge to be absolutely outside of the Army; is that right?

Maj. RUNCIE. Outside of military control in the discharge of their function as a court, but within the Army, if you please—attached to it.

Senator CHAMBERLAIN. I so understood him. You think they ought to wear a uniform?

Maj. RUNCIE. Yes, though I think that unimportant.

Senator CHAMBERLAIN. And be a part of the Army?

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. But be outside of the jurisdiction of the commanding officer.

Maj. RUNCIE. Yes, sir; in the exercise of their judicial duties.

Senator WARREN. They should be of the Army and serving regularly?

Maj. RUNCIE. Yes; but the Judge Advocate General, if he possessed, for instance, the revisory power which Gen. Ansell contends he does possess—

Senator CHAMBERLAIN. In which you do not agree?

Maj. RUNCIE. I do not accept that; but in the exercise of that power, if he did possess it, he should be absolutely free from that control by the General Staff which the law now imposes on him.

Senator WARREN. He should be, in one sense, next to the President.

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN. Instead of being the adviser of the military authorities, he should be independent of them?

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN (continuing). And determine whether the court had jurisdiction—

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN (continuing). Whether the proceedings had been regular—

Maj. RUNCIE. Yes.

Senator CHAMBERLAIN (continuing). And whether, under all the circumstances, the case ought to be modified, reversed, or annulled?

Maj. RUNCIE. Yes, sir.

Senator WARREN. Of course in the great multitude of these minor affairs that happen to-day and are punished to-morrow the sentence is completed in a week or two, and you could hardly expect such cases to reach that court?

Maj. RUNCIE. Oh, no.

Senator WARREN. You are speaking now of the really important matters?

Maj. RUNCIE. Important matters; yes, sir.

Senator LENROOT. I did not quite understand whether you were in favor of giving to the judge advocate's office, as such, powers of revision?

Maj. RUNCIE. Oh, no.

Senator LENROOT. Or for the creation of a court or both?

Maj. RUNCIE. Oh, no. I just made a hypothetical case, if the Judge Advocate General's office did possess those powers. I think it would be much better if they were vested in a court.

Senator LENROOT. You stated that you thought wherever a charge was made a court-martial should follow; that there should not be a discretion in the commanding officer to decline?

Maj. RUNCIE. Oh, no. When a charge is made, such proceedings should be had as that before a committing magistrate or before the grand jury in a criminal case; that is, it should be submitted to the law officer of the commanding officer.

Senator LENROOT. Is not that the practice now?

Maj. RUNCIE. Not always.

Senator LENROOT. It has been my limited experience that where charges are made the matter is referred to an investigator for a full report before a court-martial is ordered.

Maj. RUNCIE. I think that is true in the cases of officers, but in a great majority of the cases of enlisted men that come before the minor courts-martial, because of course I have been for a long time out of touch with it and am not familiar with details—

Senator WARREN. I think that is true, although matters of hurry and worry and lack of evidence may sometimes cause cases to be taken up that have not been investigated.

Maj. RUNCIE. Yes; but in any case, for instance, if a civilian feels himself aggrieved by the action of an officer, on submitting proper affidavits setting forth the facts, it should not be left entirely to the discretion of a commanding officer and the officer's legal advisor, who is, of course, his subordinate, whether the charges shall or shall not be tried. If the commanding officer to whom the charge is submitted disapproves or refuses to proceed, there should be an appeal, as from a committing magistrate to a grand jury.

Senator CHAMBERLAIN. What harm could result from the creation of an appellate tribunal in connection with the Military Establishment? What harm could happen to the Government or the Military Establishment after a man was tried for a crime and the commanding officer approved his sentence (it might be for 20 years' imprisonment) if an appeal could be taken by him from the commanding officer to the appellate tribunal? All of the time until the tribunal disposed of his case he would be in confinement, and what harm could result from that course of procedure?

Maj. RUNCIE. None at all; but benefit, as in the case I have referred to.

Senator CHAMBERLAIN. It would give any man the benefit of a trial before such a tribunal.

Maj. RUNCIE. Yes. If there had been such a tribunal at any time after the Civil War, I have no doubt that the gross injustice done to Gen. Fitz-John Porter would have been remedied by legal process.

Senator CHAMBERLAIN. Within a few months?

Maj. RUNCIE. Within a year, at most.

Senator WARREN. As it was, it was not done for a long time?

Maj. RUNCIE. It went for 20 years.

Senator CHAMBERLAIN. It got into political channels, finally.

Maj. RUNCIE. Yes. On that court-martial which convicted Gen. Porter there were some officers who for certain reasons objected to his rehabilitation, and I think that at the end of that inquiry there was no dissension, in military opinion, as to Gen. Porter's conduct at the second Manassas.

Senator CHAMBERLAIN. I have no other questions to ask unless the other Senators have. May I ask you one other thing? In a few words, what are the inherent vices of the present court-martial system?

Senator LENROOT. Before he answers that, I would like to ask a question or two.

Senator CHAMBERLAIN. Certainly. Go ahead.

Senator LENROOT. I understood you to say in the beginning of your testimony that you did not think there was any cure for this condition unless the Army was consolidated into brigades and divisions.

Maj. RUNCIE. Not necessarily; but I mean, in more general terms, unless it be made a purely military organization; that it should have no civil functions; that the War Department should not be concerned with building bridges over navigable streams, and things like that. All of those excrescences on the Military Establishment are inheritances from conditions that no longer exist.

Senator LENROOT. That is a distinct division, is it not, that does that work?

Maj. RUNCIE. No; it is a part of the Military Establishment.

Senator LENROOT. It is a part of the Military Establishment, so far as it is concerned. That only relates to the board of engineers.

Maj. RUNCIE. Yes; but the Judge Advocate General, for instance, is counsel of the Secretary of War in all those matters that relate to navigable waters and riparian rights; and they have all sorts of things. Those things have no place in a military establishment. But 100 or 140 years ago, when our Government was young and the executive departments were only four in number, the only engineers in this country were the military engineers, a few that we had gotten from France and who were the fathers of all the engineering in our country. Just as the Treasury Department continued for many years to be a catch-all for all executive functions which did not specially belong to any other department, the War Department became the receptacle for what really amounts to a department of public works.

Senator LENROOT. Yes; but there is a very good reason for that with this matter of the engineers, and certainly you could not expect the Government to educate and maintain a large body of engineers with nothing to do, merely in preparation for their services to be utilized in time of war, when we have a war, nobody utilizing them in efficient public service. When the war came on, we took practically every one of those men and sent them to France, and they could render most efficient service.

Maj. RUNCIE. That really raises another question. The Corps of Military Engineers should be limited to the needs of the military service. The great bulk of the engineering work is not done by the Corps of Engineers. The engineers are administrators and disbursing officers.

Senator LENROOT. Who does the engineering work?

Maj. RUNCIE. The thousands of civil engineers whom they employ.

Senator LENROOT. I think you are mistaken.

Maj. RUNCIE. I have been acquainted with them for 40 years.

Senator CHAMBERLAIN. You go to any of these district engineer's offices and you will find two or three of them only are engineers, and all the rest of the force in the office are clerical force and draftsmen, and so on.

Senator LENROOT. Of the office force; but in every case that I have ever observed, and I am very familiar with that, the chief, the district engineer, is a competent qualified man. He does not get superior qualities from his assistants.

Senator CHAMBERLAIN. Probably not.

Maj. RUNCIE. There might be different opinions as to that; but the result is the introduction into the military establishment of an incompatible and nonmilitary element. The Engineer officer who has been sitting in an office and looking, however well, after river and harbor work, loses his military character.

Senator LENROOT. What would he do if he did not do that?

Maj. RUNCIE. If we had brigade and division posts, every one of them would have its complement of engineer officers, as well as of medical officers and ordnance officers, and they would devote themselves to the preparation of the military material which falls to the part of their corps, to the construction and maintenance of military works and the training of engineer troops. I think there is no question but that the engineering talent of our country developed by the engineering schools of our country is quite competent to take care of the civil engineering that our Government has to have done.

Senator LENROOT. It is quite competent to do it; but, having in mind the condition of the Treasury, it becomes somewhat of an element if we can utilize to do that work, without loss of efficiency in their own sphere, these men we have educated.

Maj. RUNCIE. The engineer who distinguishes himself in engineering work is educated at his own expense. If we want military engineers we should take educated engineers and give them the necessary training to equip them for military work, I think, instead of reversing the process.

Senator LENROOT. Then, you would not educate engineers as such at West Point at all?

Maj. RUNCIE. No, not any more than we educate medical officers. We do not educate engineers at West Point. We can not make an engineer with six months of engineering at that school.

Senator LENROOT. Is that all that he has?

Maj. RUNCIE. Yes; that is practically all.

Senator CHAMBERLAIN. They just appoint the first five in each class to the engineering class.

Maj. RUNCIE. That is it. We might as well just take the first six men in the class and send them to a medical school for six months' instruction in medicine, and then call them medical officers.

Senator WARREN. Nearly all the men go into the Infantry and Cavalry afterwards.

Maj. RUNCIE. That raises, of course, another question which I think should receive serious attention. It costs approximately \$20,000 to put a cadet through the Military Academy.

Senator WARREN. It costs the Government that?

Maj. RUNCIE. Yes.

Senator WARREN. And it costs the cadet something, too?

Maj. RUNCIE. Nothing.

Senator WARREN. It costs him in certain ways?

Maj. RUNCIE. Nothing.

Senator WARREN. In other words, he can not pay for his uniforms and living from the money taken from his salary. At least, they do not, most of them.

Maj. RUNCIE. The income of a cadet, what he actually receives in value while he is also receiving his education, is, or was until a short time ago, at least, greater than the income of the average wage-earning family in the United States.

Senator WARREN. It was intended to cover his expenses, I understand.

Maj. RUNCIE. Yes; but it is greater than that of the average wage-earning family of the United States. Less than two years ago the Secretary of the Interior, as chairman of the board that looked into the remuneration of railroad employees, found—I am quoting only from memory—that something over 50 per cent of the railroad employees of the country received not more than \$75 per month, and that something like 80 per cent of them received not more than \$100 a month. The pay and allowances of a cadet while receiving his education will be at least \$100 a month, and in addition to that approximately three times as much will be spent on him as is given to him.

Senator LENROOT. To get back: If I understand you, in your mind there are two paramount evils to be remedied. One is the lack of all authoritative interpretation of law binding on courts-martial.

Maj. RUNCIE. Yes.

Senator LENROOT. And, second, is the arbitrary power of the commanding officer as to courts-martial?

Maj. RUNCIE. Yes.

Senator LENROOT. If we had a military court of appeals, with their decisions to be published and building up a body of military law, with the doctrine, as you said, of stare decisis binding on all courts-martial, would we not do a very great deal to remedy present conditions?

Maj. RUNCIE. I think you would overcome at least three-fourths of the injustice that results not only in positive wrong, but in failure to do justice, by omission, at present.

Senator CHAMBERLAIN. What remedy have you for the other one-fourth that it would not reach?

Maj. RUNCIE. I leave that quarter, as we say in the courts of law, with which we are all familiar—

Senator CHAMBERLAIN. It is hard to find a remedy?

Maj. RUNCIE. It is hard to find a remedy. We charge that to the fallibility of human judgment and intelligence, even with the best of motives.

But even underlying all this is a much more serious question. All of this legislation treats only symptoms; it does not go to the cause of the disease; and until there is a military establishment, legislation will fail to cure the defects of our present organization.

Senator CHAMBERLAIN. That is all I care to ask the major.

Senator WARREN. Have you anything further to submit?

Maj. RUNCIE. No, sir.

(Thereupon, at 3.20 o'clock p. m., the subcommittee adjourned to meet at 1 o'clock p. m. on Monday, August 18, 1919.)