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Publication Notice

The views expressed in articles printed herein are not to be regarded as those of the Judge Advocates Association or its officers and directors or of the editor unless expressly so stated.

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Notice

DIRECTORY OF MEMBERS

WE ARE PREPARED to go to press with a new issue of the "Directory of Members," but pursuant to the directions of the Board of Directors only those members of the Association who have paid dues in 1950 are eligible for listing. The present membership in good standing numbers about 1200. There are about 900 members who have not yet paid their 1950 dues. A more satisfactory and useful Directory, however, could be published if we could list all of our 2100 members. With this thought in mind, we are deferring the press deadline for ten days after distribution of this issue of the Journal. We want to list each and all of you in the Directory. All you have to do, if you have not already paid your 1950 dues, is to send your check for \$5.00 at this time.

Torts and the Judge Advocate

By Fred Wade*

The Judge Advocates of the Army, Navy and Air Force find themselves today right in the middle of the tort law by reason of the passage of the Federal Tort Claims Act.¹ They must be prepared to pass on the liability of the United States for the negligent or wrongful acts or omissions of Government employees causing property damage, personal injuries or death. They also must pass on transportation losses, commandeering and irregular procurement losses as well

as many other types of meritorious claims. In addition to the vast field of obligations that can be settled administratively and by private relief bills, there are those that must be settled in the courts under the provisions of this new law which waives immunity of the United States to suit for its torts.

Before this Act was passed all damage claims were settled by the Department under the administrative acts or by private relief legislation. The principal acts that provide for administrative settlement of claims include the Military Claims Act,² the Foreign Claims Act,³ the Military Personnel Claims Act of 1945,⁴ claims under AW 105⁵ and the Meritorious Claims Act.⁶ All of these acts were limited in scope and maximum limitations which resulted in too many claims filed against the Government being processed by way of deficiency bills and private relief bills.

In the days of horse artillery and slow moving infantry, there was a minimum amount of damage caused to property and personal injury to persons caused by military personnel. Due to complexities of modern warfare, this situation has changed, which calls for jet aircraft, fast PT boats, 6x6 trucks, powerful tanks, tractors, high explosives, and many other items of machinery classified by some states as "Dangerous Instrumentalities." The damages that resulted necessarily from the operation of these instruments created numerous claims against the United States

*NOTE: The author is a Lt. Col. on active duty status in the Office of the Judge Advocate General, Department of the Air Force. He holds the rank of Reserve Colonel, USAFR. Col. Wade received his law degree at the University of Tennessee and has been admitted to practice in Tennessee, Kentucky, and Ohio. He had long experience in claims and insurance practice in civilian life. During World War II he served with the Foreign Claims Service in France, the Philippines, Japan and Korea. He has had extensive experience in the Zone of Interior with military claims and claims under the Federal Tort Claims Act.

¹28 U.S.C. 2671-80 (62 Stat. 982).

²Act of 3 July 1943, as amended (57 Stat. 372; 31 U.S.C. 223b) and as repealed in part by sec 424(a), Act 2 August 1946 (60 Stat. 846).

³Sec 1, Act 2 Jan 1942 (55 Stat. 880; 31 U.S.C. 224d), as amended.

⁴Act of 29 May 1945 (59 Stat. 225; 31 U.S.C. 222c).

⁵Art. 105, Act 4 June 1920 (41 Stat. 808; 10 U.S.C. 1577; M.C.M. USAF, App. 1) as amended by Act of 24 June 1948 (62 Stat. 627) and Act of 25 June 1948 (62 Stat. 1014); Exec Order 10026, 4 Jan 1949.

⁶31 U.S.C. 236.

and made it impossible to settle them expeditiously in the old manner through the administrative claims acts and through private relief bills in Congress.

The Federal Tort Claims Act has changed all the law heretofore applicable to the settlement of damages caused by tortious acts of Government employees acting within the scope of their employment. The Government has made itself liable as a private individual for negligent and wrongful acts and omissions of its employees. It provides for administrative settlement not to exceed one thousand dollars, and an unlimited amount by way of compromise after suit is filed. It is believed all lawyers will agree that this Act places the responsibility where it belongs, on the courts, to adjudicate complicated negligence cases rather than on the Congress.

In order to get properly oriented on a discussion of the Federal Tort Claims Act, which not only provides administrative relief but relief in the courts for tort liability within the continental limits of the United States and its territories it will be necessary to discuss the history of the Doctrine of Sovereign Immunity as applied in the United States:

There are many explanations for this ancient doctrine. One theory is that since all processes of law were issued by command of the King, he could not or would not summons himself before his own courts. Another explanation is found in the ancient saying, "The King can do no wrong." If the King could do no wrong, there was no occasion for him to be in Court as a wrongdoer. In those early days, the King was almost an absolute

monarch. There was no established way in the law for bringing the King before his own Courts. And they were his Courts and they were his royal writs which authorized such Courts to hear cases and dispense justice. All the justices and the personnel of the Courts were his appointees. It is very easy to understand, therefore, how this fiction of the King's unerring character came into being, how the Courts would not entertain suits against him and how the doctrine of sovereign immunity started, and took root in the English Common Law. Of course, the people were not completely powerless or completely fooled. The King was a human being and could do wrong in his personal acts as well as his public acts. When his wrongs without redress became unbearable you had revolutions and executions. But the doctrine, firmly established in the Common Law, carried on.

At the time of the American Revolution the doctrine of sovereign immunity was taken over and made a part of the law of this country. It is the law of this country today, except insofar as Congress and the sovereign states have modified it by opening the courts to suits against them on their own terms. The Federal and State Governments are not liable to individuals for the misfeasance, non-feasance or malfeasance of their agents, unless they choose to hold themselves liable, and only insofar as they choose to hold themselves liable. And if the Government chooses to hold itself liable, it can surround that liability with any restrictions and qualifications it desires.

Bear in mind that the Government can act in its sovereign capacity, that is where its acts are public and gen-

eral in their nature and scope and where they apply to all the people or to classes of people. The Government may also act in capacity of an individual, as where one of its authorized agents makes a contract with X or one of its authorized agents runs down and injures Y. Under the doctrine of sovereign immunity, the Government is not liable in its Courts either for its sovereign acts or for its acts as a contractor or a tortfeasor. Without congressional action, its obligations in contract and tort are binding only on the conscience of the sovereign, and there is no right of action independent of the sovereign will to confer that right of action. There is no doubt about it, this is a harsh and unpopular doctrine.

During the Revolutionary War and until the adoption of the Federal Constitution in 1789 this doctrine of sovereign immunity was adhered to, and persons with contract claims against the colonies could not sue in the Courts but brought their claims before various Congressional committees and commissions. The decisions of these bodies were final and there was no appeal to the Courts. The Courts of this country have consistently held that the United States is not liable in the Courts for its acts unless Congress has specifically consented.

Congress has been in the past reluctant to relinquish this immunity of the Federal Government and has never passed a law abolishing it altogether. It has passed laws opening part-way the doors of the courts to suits against the Government. But they are open only part way, and the doctrine of sovereign immunity is still a very live one and is asserted successfully as a defense in the Courts

today.

The first law passed by Congress opening a Federal Court to suits against the Federal Government was on February 24, 1855. Prior to that time no Court had the power or jurisdiction to hear and determine claims against the Federal Government. This Act, as amended, setting up the Court of Claims, is known as the Tucker Act or the Court of Claims Act. This Court was given jurisdiction to hear and determine all claims "upon any contract, express or implied, with the Government of the United States." Its present citation is Section 1, Chapter 646 of the Act of June 25, 1948, 28 U.S.C. Sec. 1491, 62 Stat. 940. Prior to 1855, if the Government refused to honor its contract obligations, the only recourse was a special bill to the Congress for relief. The difficulty with this was that it was slow. Also, the increasing burden on the Committees in Congress assigned to consider the claims was so great that something had to be done to relieve Congress of this work, which was judicial rather than legislative in character. The Court of Claims was the result.

A further modification of the Doctrine of Sovereign Immunity is found in the various statutes of Congress permitting the administrative settlement of claims against the Government which statutes are the legal basis for the regulations that have been promulgated by the Army, Navy and Air Force. Among those statutes are those mentioned in paragraph two.

One of the most recent laws passed by Congress waiving sovereign immunity is the Federal Tort Claims Act passed by Congress on 2 August 1946.

Due to the fact the sovereign is involved, it is necessary for the Judge Advocates of the military services to keep in mind the problems which do not confront the general practitioner in damage and negligence cases who represent Casualty Insurance Companies, Public Utility Companies, Railroads, Airlines and other corporations and individuals who operate trucks, automobiles, ships, and other instruments that have a tendency because of the nature of their power and speed to create many property damage and personal injury law suits.

Some of these problems have been decided by the Courts during the limited time that the Federal Tort Claims Act has been effect. However, there are still many problems that need judicial determination before the civilian lawyers as well as Judge Advocates will be able to give their clients proper advice.

It should be of interest to outline some of the questions that have been raised to date and those that have been answered by the courts.

Military personnel have been considered proper claimants under the Tort Act where their private property, automobiles, etc., have been damaged by employees of the government negligently acting within the scope of their employment.

As to personal injury and death claims of military personnel, the Government agencies, including the Department of Justice, originally took

⁷169 Fed 2nd 840; 69 S. Ct. 405, 337 U.S. 49.

⁸74 Fed Sup. 209; 77 Fed Sup. 706.

⁹U.S.C. of App., 4th Cir., 7 Nov 1949; 177 Fed 2nd 914.

¹⁰177 F. 2nd 535.

the position that military personnel had adequate remedies under the Veterans Act of 1924, as amended, but the courts have modified this interpretation considerably. The Supreme Court in the case of Brooks vs United States⁷ held that the plaintiff, driving his own automobile while on leave and injured by collision with a Government vehicle driven negligently by a Government employee within the scope of his employment, could recover; however, he was required to credit the judgment with sums that he received under the Veterans Act. There was an inference in the Brooks case that indicated that had the accident been incident to service, there might have been a different decision.

In the case of Jefferson vs United States,⁸ which is the well known case where a military surgeon sewed the towel up in the patient's stomach, now pending the Supreme Court of the United States, the United States Court of Appeals, 4th Circuit, held that Jefferson could not recover under the Tort Act, Jefferson being a soldier and the act causing the personal injury being incident to service.

In the case of Eleazer vs United States,⁹ United States Circuit Court of Appeals, 4th Circuit, reversed the decision of the District Court holding the United States liable. The plaintiff was injured by a private car driven by Lt. James Talley, who was changing stations and whose orders read "Private Travel Authorized." In another case, Feres vs United States,¹⁰ United States Circuit Court of Appeals, 2nd Circ., affirmed a judgment dismissing the action in the case where an Army lieutenant was killed in a barracks fire on the post, on ground that his legal representative

may collect under the Veterans Act. One United States District Judge allowed military personnel to recover for pain and suffering in a suit filed under 28 U.S.C. 1346b based on the theory that there is no provision under the Veterans statutes providing for damage for personal injury or death, and a rule that holds otherwise would be discrimination against military litigants and civilian litigants who can collect such damages according to law of the place where the injury or death caused by the *negligent* or *wrongful* act or omission of government employees while acting within the scope of his employment. Keep in mind, this law covers wrongful acts and omissions as well as negligent acts.

Prior to October 14, 1949, on which date the United States Employment Compensation Act of 1916 was further amended, there was some question regarding civilian employees of the Government who were injured on the job who qualify under the Compensation Act. Before that time it was generally conceded that the employee had the right of election. He could either proceed under the Compensation Act or the Tort Act. The amendment, however, of October 14, 1949, makes the Compensation Act the exclusive remedy. Therefore, in the future, there should be very little question on this point.

Numerous cases have been litigated which were filed under this Act involving the question of *involuntary assignments and subrogees*. Keep in mind that the question as to *voluntary assignments* has not been presented. A *mere volunteer* has at most a second mortgage on the fund in the hands of the stakeholder, as against an equitable subrogee.

The best example of true subrogation can be brought out by reviewing a hypothetical construction project such as a highway contract, bridge or building contract, wherein a bond is required guaranteeing the payment of labor and material bills. Suppose when the contract is one-third finished, the contractor goes broke. Prior to that time he borrowed \$5,000 from John Doe and as security gave an assignment of the balance of the estimates. The owner and holder of the contract fund was served notice of this assignment. The evidence also shows that the contractor used the money he borrowed from John Doe to pay labor and material bills on the job. At the time the contractor went broke, there was still outstanding \$10,000 in unpaid labor and material bills which the bonding company was forced to pay under the terms of its bond. There was also \$10,000 owing on the contract. The bonding company and John Doe both filed suit. The bonding company claimed the entire \$10,000 in the contract fund as an equitable subrogee and John Doe claimed \$5,000 of the contract fund based on the assignment. Under a situation like this, the bonding company would recover the entire \$10,000 on the ground that the bonding company became subrogated to the contract fund on the date of the execution of the contract and bond, while John Doe was a *mere volunteer* and his assignment against the \$10,000 contract fund was secondary to the bonding company's subrogation claim. This distinction must be borne in mind when considering claims filed under the Tort Act.

Most of these military subrogation law suits will arise on indemnity

clauses found in casualty (collision) and fire policies subrogating the insurer upon payment of a loss to all the rights of the insured against the tort-feasor. In most jurisdictions it has been held by the courts of last resort that this right is independent of contract, and even in the absence of an agreement equity will subrogate the insurer to the rights of the insured. Decisions in the 2nd, 3rd, 6th, 9th and 10th United States Circuit Courts of Appeal, and a large number of United States District Courts, favored allowing subrogation claims of insurance companies. Subrogee claims have been allowed under the Admiralty Act, and Congress consistently recognized subrogation claims under the Small Tort Claims Act. The majority of the opinions held that if Congress had intended to exclude subrogation claims in the Tort Act, it would have been enumerated in Section 2680, the Exception Section, of the act. The majority of the decisions held that the Anti-Assignments Act, R. S. 3477, was not applicable since subrogation, being a transfer by operation of law, is beyond the purview of the Anti-Assignment statute. Anyway, this is one question that has been decided by the Supreme Court of the United States. In the case of *Aetna Casualty Insurance Company vs United States*¹¹ in which the court went further than the majority of the United States District Courts, it held that even if involuntary assignments were otherwise within the Anti-Assignment Act, the Tort Claims Act carves out an implied exception. Even though the Aet-

na case cleared up some part of the subrogation question, already many additional problems have arisen. For example, the administrative limit¹² is \$1000. Can a subrogee collect \$900.00 and subrogor collect \$700.00 on "any claim" or will it be necessary to sue if "any claim" is over \$1000, even though respective interest of subrogee and subrogor in "any claim" is less than \$1000? What about assignees who do not meet the requisite of an equitable subrogee? Also consider the situation where two or more are claiming the same fund, as subrogees, and where subrogor protests subrogee's right to fund in hands of the United States as tort-feasor.

Does the act permit the joinder of the United States as a co-defendant with an alleged joint tort-feasor? In the *Englehardt vs United States* case, District Court of Maryland 69, Fed. Supp. 451, the court held joinder permissible, and the District Judge presided at a single trial where he was called upon to decide against the United States without a jury, and a jury heard the case against the co-defendant. The jury found for the plaintiff in the sum of \$3,000. The judge found the United States liable for \$3,000. The case was not appealed, and we understand the judgment was paid off \$1,500, each. You can see there are a number of impediments to joinder. No jury is permitted when the United States is a defendant. Diversity of citizenship, and the amount in controversy are jurisdictional requisites to suits in federal courts as between individuals, but is not a requirement when the suit is against the United States. This is one of the undecided problems incident to joinder.

At the present time, the United

¹¹70 S. Ct. 207.

¹²28 U.S.C. 2672.

States insists that a plaintiff suing under the Tort Act has elected to proceed against the United States alone and may not join or interplead the employee in the same suit. The act provides that compromise of a claim or a judgment by a claimant in an action against the United States constitutes a complete release to the employee of the government. District Courts have agreed with the government in this position. I doubt if this problem will ever be decided by the courts because the practical side of the question will make a solution unnecessary. No one who has a right to sue the government will insist on making the employee a party, who, in many cases, would have no property subject to execution. There is nothing to prevent, prior to judgment or compromise settlement, the plaintiff from suing the employee, if he so desires.

The question of whether personnel of PX's, Ships Stores, Reserve Officers Training Corps, Civilian Air Patrol and National Guard acting within the scope of their employment can make the United States liable in tort will no doubt be the subject of much litigation in the future. There have already been some suits filed against the United States growing out of activities of the National Guard and Civilian Air Patrol. For the time being, the PX is no problem due to the fact that the PX is adequately covered by insurance. We insist that the ROTC boys in summer camp, even though paid by the United States, are not employees of the United States, and thereby cannot create liability. The government insists that the Civilian Air Patrol and National Guard units, who have not been called in to Federal service, even though they use

equipment furnished by the Federal government and receive certain benefits, are not employees of the Federal government and therefore cannot create liability against the United States under the Tort Act. Waiver of immunity under the terms of the act renders the government liable for damages caused by negligent or wrongful acts or omissions of any employee of the government while acting in the scope of his employment or office. What is meant by the term "employee of government?" Employee of government, by a definition contained in the act includes officers or employees of any federal agency, members of the military and naval forces, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently employed, with or without compensation. It will take some court decisions to clear up this question.

The act makes the United States liable in tort in accordance with the law of the place. State law is controlling in matters of substantive law where the tort is committed within the boundaries of a state, even though upon property owned by the United States. Procedure is covered by the federal rules. The *law of the place* and the federal rules *are inoperative* to the extent of any *conflict* with the express provisions of the act itself. Despite a California statute imposing liability on automobile owners irrespective of the doctrine of *Respondeat Superior*, it has been held that there could be no recovery for the tort of United States truck driver committed "on a frolic of his own." The act reads, "while acting within the scope of . . . employment."

Generally speaking, the law of the

place—the State law where the accident occurs—will determine whether the government employee was acting within the scope of his employment in such a manner as to make the government liable. Those State statutes creating liability, such as the Dangerous Instrumentality Doctrine¹³ and Owners Liability Doctrine¹⁴ such as followed in Florida and California would of course not apply since the government has not waived its immunity except in those cases where the employee is acting within the scope of his employment. There is one phrase in the Act that will no doubt be the subject of much litigation. It is “acting within the scope of his office or employment,” in the case of a member of the military or naval forces of the United States, means *acting in “line of duty.”*¹⁵ Line of duty is, and always has been, a status used to determine as between the United States and those in its military service for the purpose of determining eligibility for pay and benefits. Not until the Federal Tort Claims Act was passed was line of duty declared to be synonymous with scope of employment in the sense that this phrase is used to fix liability upon the United States to third parties on torts of those in its military service. Line of duty has been con-

strued many times to be much broader than what is commonly understood to be “scope of employment,” for one is in line of duty when on furlough, pass or leave, though performing no duties whatsoever within his employment by the United States. This question has been before District Courts. In one case, *Rutherford vs United States*,¹⁶ United States was sued as a result of an accident Rutherford had with a Navy man, who was driving home in his own car after he had completed all his duties for the government. In spite of the language in the Act, the District Judge held that Winiger, the Navy man, was not acting in the scope of his office or employment. This appears to be a sound interpretation of this phrase in the Act. Subject to exceptions referred to—scope of employment is decided by the law of the state where the accident occurs.

One of the exceptions in the Act is that it is not applicable in foreign countries.¹⁷ The continental United States and its territorial possessions is all the ground that the Act encompasses. Torts happening in foreign countries must be settled by some other means. This act does not cover torts occurring within the boundaries of 99 year leases in foreign countries such as the ones we have in Bermuda, Newfoundland, and others. The Supreme Court passed on the 99 year lease question in the case of *Lillian Spelar vs United States*.¹⁸

Suits under the Tort Act must be filed in the District where the plaintiff is a resident, or in the District where the accident occurred. Judgments of the District Courts are reviewable in either the Circuit Court of Appeals by the regular process or

¹³Green vs Miller 136 So. 532; Chapter 320, Fla. Vehicle Code, Sec. 320.01; Bogg vs Butler, 129 Fla. 324; 176 So. 174.

¹⁴Chapter 1, Sec. 402a, Cal. Vehicle Code; Bayliss vs Mull 50 App 2d 66; Henrietta vs Evans 10 Cal App 2nd 75.

¹⁵28 U.S.C. 2671.

¹⁶168 Fed 2nd 70.

¹⁷28 U.S.C. 2680K.

¹⁸70 S. Ct. 10.

in the Court of Claims with the written consent of all appellees.¹⁹

The original Act provided claimants would have one year from the date of the accident to bring their suits. Public Law 55, 81st Congress, amended this provision giving the claimants two years from date of accident to start suit. The Statute of Limitations also provides that if the claimant has filed an administrative claim with a government agency, that he shall have six months to file suit following notice of final action taken by agency or from the date of withdrawal of his claim.²⁰

Judgment constitutes a complete bar to any action by the claimant by reason of the subject matter of the action against both the government and employee whose act gave rise to the claim.²¹ Rejection by a government agency of an administrative claim does not bar a suit. A judgment against the government under this Act like all other judgments is paid by appropriations made by Congress for that particular purpose. The judgment will bear interest at the rate of 4% until Congress appropriates the money for payment.

The Attorney General of the United States is authorized to arbitrate and settle law suits after they are filed.²²

As time goes on very few cases will be tried as the lawyers of the government agencies will become experts in tort and negligence law and will not permit any case to go to trial unless the government has a good chance to prevail. In fact, the attorneys in the

Judge Advocate Generals' Offices should become the experts as far as this new tort law is applied to the Army, Navy and Air Force. They have the opportunity to see the picture as a whole, while the United States attorneys are afforded the opportunity of examining but a limited number of cases. In drawing an order of compromise it is important that the proper action of the court is indicated thereon, which makes the compromise payable out of funds already appropriated. This will preclude delay in getting the compromise paid.

It will be some time before we will know exactly under what conditions military personnel may sue, the status of National Guard instructors, the status of Civil Air Patrol instructors and personnel and many other questions. However, there seems to be a tendency to give broad meaning to the statute as to jurisdiction.

In years past, courts have uniformly held to a rigid interpretation on statutes waiving governmental immunity. In recent years the trend has been to liberalize the interpretation of statutes of this nature. One judge stated: "in performing my duties in administering this act, I feel that I should heed the admonition of Jean Bodin of the 16th century when he said, 'to bend it now gently, now firmly, taking care not to break it.'" In other words, the judge felt that he should interpret this act liberally so long as he stayed within its boundaries.

All in all it can be said that the present method available for the settlement of tort claims against the United States has the approval of all lawyers, judges and the public.

¹⁹28 U.S.C. 1504.

²⁰28 U.S.C. 2401.

²¹28 U.S.C. 2676.

²²28 U.S.C. 2677.

Promotion of Officers in the New Organized Reserve Corps Program

The new Organized Reserve Corps program provides for an Active Reserve, an Inactive Reserve, and an Honorary Reserve. The Active Reserve includes an Organized Reserve and a Volunteer Reserve. Only Reserve officers in the Active Reserve will be promoted under the provisions of SR 140-155-1 effective 1 April 1950. Promotions in the Organized Reserve will be made to fill existing position vacancies in T/O&E and T/D Units and Regular Army T/O&E and T/D augmentations for mobilization designation. Promotions will be made to fill vacancies occurring within the authorized allocation for officers in the Volunteer Reserve. Vacancies in training units will not provide a basis for promotion. The authorized allocation for officers in the Volunteer Reserve will be made in accordance with periodic instructions from Headquarters, Department of the Army.

The grade structure in the T/O&E and T/D Units in the Organized Reserve will depend upon the established Tables of Organization. The grade structure in augmentations to Regular Army T/O&E Units (mobilization designations) in the Organized Reserve will not exceed the following percentages:

- a. For Reserve officers of field grade, 25% of the T/O&E authorized field grade strength by grade.
- b. For Reserve company grade officers, 40% of the T/O&E authorized company grade strength by grade.

The grade structure in T/D augmentations for mobilization designa-

tions will also depend upon established Organizational Tables. Tentatively approved T/Ds will not, however, be considered as a basis for position vacancies for promotion to the grade of colonel. In exceptional cases, where officers of the authorized grade are unavailable, position vacancies in tentatively approved T/Ds may be used as a basis for promotion to and including the grade of lieutenant colonel.

The grade structure for the authorized allocation of officers in the Volunteer Reserve will be established by the application of the following percentage grade distribution table to the total authorized allocation of such officers within each area command:

Colonel	1.4
Lieutenant Colonel	3.8
Major	9.0
Captain	25.2
Lieutenants	60.6

In the Volunteer Reserve the vacancies for promotion of officers will be determined by deducting the actual grade structure of such officers within the area command from the authorized grade structure computed in the table shown above. Authorization of over-strength in units may be authorized specifically by Headquarters, Department of the Army, and if such authorization is obtained, will create additional position vacancies in the unit.

Minimum age-in-grade limitations for each officer recommended for promotion are as follows:

	1st Lt	Capt	Maj	Lt Col	Col
JAGC	21	23	28	31	35
Each JAGC officer recommended					

for promotion must not exceed the following maximum age-in-grade limitations:

	1st Lt	Capt	Maj	Lt Col	Col
Until—					
31 Dec 50	43	46	51	55	60
Beginning—					
1 Jan 51	41	45	50	55	60
1 Jan 52	39	44	50	55	60
1 Jan 53	38	43	49	55	60
1 Jan 54	36	42	49	55	60
1 Jan 55	34	41	48	55	60

Upon attainment of maximum age-in-grade the officer will be considered for promotion. If fully qualified he will be promoted to fill any existing vacancy. If no vacancy exists he will be retained in the Active Reserve in his present grade for an additional two years. If, at the end of that time, no vacancy occurs, the following action will be taken:

a. First Lieutenants will be promoted to the grade of captain without regard to vacancy.

b. Captains, majors, and lieutenant colonels will be transferred to the Inactive Reserve in the grade held at the time of consideration.

Each officer recommended for promotion must have served a minimum time-in-grade in years as follows:

	1st Lt	Capt	Maj	Lt Col
JAGC	2	5	3	4

All prior service in grade, while the reserve officer was on active duty or in the Active Reserve, will be considered as time-in-grade.

Candidates for promotion to or within the field grades must have accomplished one of the following:

a. Completion of the regular or associate advanced course of the appropriate branch school.

b. Completion of appropriate Army extension courses.

c. Demonstrated qualifications by

actual performance of the duties of the higher grade for a minimum of six consecutive months on active duty between 7 December 1941 and 31 December 1945.

d. Demonstrated qualifications by actual performance of the duties of the higher grade for a cumulative minimum of one year of Reserve duty or temporary active duty training subsequent to 31 December 1945, accumulated in periods of no less than three consecutive months each.

e. Acquired professional knowledge and experience adequate to the next higher grade in a civilian occupation closely paralleling military duty.

Determination to be made by the Chief, Army Field Forces in coordination with The Judge Advocate General.

Candidates for promotion to captain must have accomplished one of the following:

a. Completion of the regular or associate basic course of the appropriate branch school.

b. Same as b above.

c. Same as c above.

d. Same as d above.

e. Same as e above.

Officers who complete or who have completed one year of extended active duty in grade and whose efficiency rating for that year reflects an acceptable manner of duty performance will be considered as having met the minimum training requirements for promotion to the Reserve grade next higher than that grade held while on extended active duty.

Each officer shall have satisfactorily passed a final-type physical examination within one year prior to

the date of recommendation for promotion.

Officers who are over-age-in-grade are eligible for promotion provided they are otherwise qualified therefor, and have been granted waivers under the provisions of SR 140-160-1. Officers of the Active Reserve who by virtue of their age upon appointment or promotion are unable to complete the minimum time-in-grade for eligibility for consideration for promotion prior to attainment of maximum age-in-grade will be retained in the Active Reserve until completion of the minimum time-in-grade require-

ments.

Promotions will be accomplished by selective procedures to secure the best qualified among those officers reasonably available. The area commander will convene a sufficient number of boards of officers at such times and in such locations as deemed appropriate for consideration and selection of the best qualified applicants. The area commander concerned will review the recommendations of the selection boards and make final selection of those officers best qualified to fill existing position vacancies within his jurisdiction.

:: *Book Review* ::

Effective Appellate Advocacy

By Frederick Bernays Wiener

(Prentice-Hall, New York, N. Y., 591 pp, Price \$8.50.)

Col. "Fritz" Wiener, whom most of us met in one or other of the theatres of World War II (he served in all), has written a very entertaining and much needed book. It is a little remarkable that, so far as I know, it is the only book on the subject, though tremendous stakes are won and lost in appellate advocacy. I put this down to the curious obsession, fostered by certain high-falutin' law professors and judges, that law as an art or craft is of no permanent importance, and any textbook teaching it will smack of chicanery and had best not be written. Hence the reams of articles, mostly unred, from the dens of jurisprudence, but hardly anything (except Prentice-Hall) on how to ask a non-leading question or put in a prima-facie case of libel. The doctors and the engineers know better and

deliberately write to make better doctors and engineers.

It is, therefore, a pleasure to note that Col. Wiener, having worn out several pairs of striped pants waiting around appellate courts for his case to be reached, and observing the dismal doings therein, determined to do something about it himself and wrote the present book which reflects his own keen insight into the special problems of appellate advocacy. The book is a legal tour-de-farce and is packed with wit and common sense.

Col. Wiener sets the stage by disclosing, court by court, how the various Federal and state appellate courts operate, whether they read the briefs before or after argument, (or during it, as I've noticed), and their methods of considering the case later. He then proceeds to state the essentials of an effective brief. Three chapters, comprising sixty-four sections, are devoted to the Brief, and three chapters, of forty-three sections, to

the Oral Argument. Seven chapters give verbatim examples of successful and unsuccessful briefs and the final chapter gives a complete transcript of an oral hearing in a closely contested Supreme Court case. The entire book comprises 591 pages.

Col. Wiener's method is to state the principle and then give the example, good or bad. There is a case for every point and hundreds of illustrations and anecdotes. The foundation stone of a good brief, he says, is, of course, clear thought and clear, forceful English and in this respect good briefs resemble good opinions. As to the latter, I note with pleasure the author's preference for the style of the late Chief Justice Charles Evans Hughes, who is humble enough to wish to convince us, to the Olympian assertiveness of the sainted Holmes. Holmes' opinions always remind me of a very clever father giving the children the answer to a particularly smart self-concocted riddle. Sometimes the children get the answer right away but, in any event, father has fun. Maybe you are the "thousandth" man for whom father wrote the riddle.

Col. Wiener's book has a great many helpful hints. He is a believer in the argumentative heading: instead of "Point II: The Question of Laches," he would put "Point II: This Suit is Barred by Laches Because Brought 25 Years Late." He says he follows the American newspapers which would headline "Bums Down Braves, 9-2" instead of the very English "Test Match at Lords." He warns against putting the argument in the footnotes. This latter seems slightly suspect to me as the footnotes are

liable to be interesting, being frequently choice quotes. I guess I am just an old footnote hound.

Our author is a great believer in facts and stresses the necessity of an effective statement of facts. There is a saying of Lord Lyndhurst, that his statement of facts was worth anyone else's argument. Col. Wiener devotes almost twenty pages to this very important subject.

As to oral argument, Col. Wiener is adamant: *never read it*. He gives good reasons. (p. 178) But how many "name" lawyers today read their oral arguments! I remember my surprise when, as an A.B. undergraduate, I wandered into the old Supreme Court one day (in the Capitol) and saw a very dignified looking gentleman reading what I thought was his brief. When I inquired I was told it was William D. Guthrie, a name of great power in those days, and that he always read his oral arguments. Maybe he's the one to blame for the entire practice. Nowadays everyone reads everything; there hasn't been an Inaugural Address "spoken" since Grover Cleveland. And yet, what a wave of confidence spread over the country when Cleveland quietly moved forward and, putting his right hand upon his expansive chest, proceeded to hand it out to the country for one hour without a note. In contrast, I heard a mighty cabinet officer the other night read two whole sentences over television. What paltry leaders, who can't lead and haven't even the guts to speak! There is a sort of art to the reading business, however. Some years ago when the practice was in its infancy, I argued a case before the Second C.C.A. and was genuinely

puzzled by my opponent; I couldn't tell whether he was reading or not. He "weaved" back and forth with great spirit, wandered all around the lectern (a thing our author warns against) and made a pretty good sort of canned speech. I finally deduced from the lack of questioning and the fatal turning of the leaves that he was reading it, but I must admit he did it very cleverly. I understand there is some sort of school up North that teaches prominent people how to do these things. Our author, however, will have none of it and says if you can't make a "live" speech, stay home.

Part IV of Col. Wiener's book contains examples of the art he teaches. Entire briefs are used. Examples are given of briefs that successfully sought discretionary Supreme Court review (Certiorari) and briefs that successfully resisted review. The latter are not so hard to write as we all know. In fact, no matter what you write, you'll win four out of five. Following these, Col. Wiener gives examples of successful briefs on the merits arguing legal questions and successful briefs arguing facts. A very useful chapter is devoted to how to present Statements of Facts; in particular, how to state facts in such a way as to advance one's case. A chapter is devoted to the Reply Brief and its functions and to Petitions for Rehearing, of which, it is pleasant to note, seventeen out of six hundred were granted by the Supreme Court during the 1946-1948 Terms. The last chapter contains complete transcripts of oral arguments in close cases.

I conclude this essay with what is not a criticism but a slight personal "beef." Under the heading of "Use

of Essentially Historical Materials," Col. Wiener suggests exploration of constitutional roots deep in the common law and cites the Government Brief in *U.S. v. Wood*, 299 U.S. 123, as a classic example. The question was whether, in criminal cases, the Sixth Amendment permitted Government employees to sit on District of Columbia juries. I wrote the Brief for Wood and contended that when the Sixth Amendment was adopted, the guarantee of an impartial jury excluded Government employees and that an "impartial jury," as used in the Constitution, meant an impartial jury as it was known at common law. I cited Blackstone as authority that at common law Government employees were excluded from juries. I claimed that the colonists followed Blackstone, whose "Commentaries" were almost their sole guide as to the common law. In fact, according to Edmund Burke, more copies were sold in the colonies than in England. The Government countered with the curious argument that Blackstone was *wrong* and proved it by translating *for the first time* from the Norman-French of the Yearbooks. In other words, the test of what the colonists meant by "impartial jury" was a *fact* the colonists never heard of, a fossil dug up by a legal archeologist in 1936. I still think the Supreme Court's reasoning very queer.

Col. Wiener's book is not only the last word on the subject but it's the kind of book you'll find yourself dipping into for this, that or the other line of authorities. It is not only readable but stealable.

—William J. Hughes, Jr.

Col. J.A.G.C., USAR

Uniform Code of Military Justice

President Truman on May 6, 1950, signed the Uniform Code of Military Justice. The new Code will become effective May 31, 1951.

For some weeks now a committee, composed of officers of each of the Armed Services, has been taking preliminary steps toward the writing of a new manual for courts-martial. The new manual will be the "one book" for all the Armed Forces, just as the new Code provides one statute law.

So that our members may have a timely understanding of the new law and a copy of the statute readily at hand, we set forth in this issue the complete text of P.L. 506, 81st Congress, 2nd Session, being the Uniform Code of Military Justice.

PART I—GENERAL PROVISIONS

ARTICLE 1. Definitions.

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

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

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

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

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

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

cer;

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

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

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

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

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

(11) "Accuser" shall be construed to refer to a person who signs and swears to charges, to any person who directs that charges nominally be signed and sworn by another, and to any other person who has an interest other than an official interest in the prosecution of the accused;

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

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

(14) "Legal officer" shall be construed to refer to any officer in the Navy or Coast Guard designated to perform legal duties for a command; ART. 2. Persons subject to the code.

The following persons are subject to this code:

(1) All persons belonging to a regular component of the armed forces, including those awaiting discharge after expiration of their terms of enlistment; all volunteers from the time of their muster or acceptance into the armed forces of the United States; all inductees from the time of their actual induction into the armed forces of the United States, and all other persons lawfully called or ordered into, or to duty in or for training in,

the armed forces, from the dates they are required by the terms of the call or order to obey the same;

(2) Cadets, aviation cadets, and midshipmen;

(3) Reserve personnel while they are on inactive duty training authorized by written orders which are voluntarily accepted by them, which orders specify that they are subject to this code;

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

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

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

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

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

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

(10) In time of war, all persons serving with or accompanying an armed force in the field;

(11) Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, all persons serving with, employed by, or accompanying the armed forces without the continental limits of the United States and without the following territories: That part of Alaska east of longitude one hundred and seventy-two degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands;

(12) Subject to the provisions of any treaty or agreement to which the United States is or may be a party or to any accepted rule of international law, all persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under control of the Secretary of a Department and which is without the continental limits of

the United States and without the following Territories: That part of Alaska east of longitude one hundred and seventy-two degrees west, the Canal Zone, the main group of the Hawaiian Islands, Puerto Rico, and the Virgin Islands.

ART. 3. Jurisdiction to try certain personnel.

(a) Subject to the provisions of article 43, any person charged with having committed, while in a status in which he was subject to this code, an offense against this code, punishable by confinement of five years or more and for which the person cannot be tried in the courts of the United States or any State or Territory thereof or of the District of Columbia, shall not be relieved from amenability to trial by courts-martial by reason of the termination of said status.

(b) All persons discharged from the armed forces subsequently charged with having fraudulently obtained said discharge shall, subject to the provisions of article 43, be subject to trial by court-martial on said charge and shall after apprehension be subject to this code while in the custody of the armed forces for such trial. Upon conviction of said charge they shall be subject to trial by court-martial for all offenses under this code committed prior to the fraudulent discharge.

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

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

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

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

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

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

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

ART. 5. Territorial applicability of the code.

This code shall be applicable in all places.

ART. 6. Judge advocates and legal officers.

(a) The assignment for duty of all judge advocates of the Army and Air Force and law specialists of the

Navy and Coast Guard shall be made upon the recommendation of The Judge Advocate General of the armed force of which they are members. The Judge Advocate General or senior members of his staff shall make frequent inspections in the field in supervision of the administration of military justice.

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

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

PART II—APPREHENSION AND RESTRAINT

ART. 7. Apprehension.

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

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

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

ART. 8. Apprehension of deserters.

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

custody of the armed forces of the United States.

ART. 9. Imposition of restraint.

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

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

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

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

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

ART. 10. Restraint of persons charged with offenses.

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

ART. 11. Reports and receiving of prisoners.

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

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

ART. 12. Confinement with enemy prisoners prohibited.

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

ART. 13. Punishment prohibited before trial.

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

ART. 14. Delivery of offenders to civil authorities.

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

(b) When delivery under this article is made to any civil authority of a person undergoing sentence of a court-martial, such delivery, if fol-

lowed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for his offense shall, upon the request of competent military authority, be returned to military custody for the completion of the said court-martial sentence.

PART III—NON-JUDICIAL PUNISHMENT

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

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

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

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

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

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

(2) upon other military personnel of his command:

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

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

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

(D) reduction to next inferior grade if the grade from which demoted was established by the

command or an equivalent or lower command; or

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

(F) if imposed upon a person attached to or embarked in a vessel, confinement on bread and water or diminished rations for a period not to exceed three consecutive days.

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

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

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

(e) The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not prop-

erly punishable under this article; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

PART IV—COURTS-MARTIAL JURISDICTION

ART. 16. Courts-martial classified.

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

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

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

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

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

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

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

ART. 18. Jurisdiction of general courts-martial.

Subject to article 17, general courts-martial shall have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this code, including the penalty of death when specifically authorized by this code. General courts-martial shall also have jurisdiction to try any person who by the law of war is subject to trial by a military tribunal and

may adjudge any punishment permitted by the law of war.

ART. 19. Jurisdiction of special courts-martial.

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

ART. 20. Jurisdiction of summary courts-martial.

Subject to article 17, summary courts-martial shall have jurisdiction to try persons subject to this code except officers, warrant officers, cadets, aviation cadets, and midshipmen for any noncapital offense made punishable by this code. No person with respect to whom summary courts-martial have jurisdiction shall be brought to trial before a summary court-martial if he objects thereto, unless under the provisions of article 15 he has been permitted and has elected to refuse punishment under such article. Where objection to trial by summary court martial is made by an accused who has not been permitted to refuse punishment under article 15, trial shall be ordered by special or general court-martial, as may be appropriate. Summary courts-martial may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this code except death, dismissal, dishonorable or bad-conduct discharge, confinement in excess of one month, hard labor without confinement in excess of forty-five days, restriction to certain specified

limits in excess of two months, or forfeiture of pay in excess of two-thirds of one month's pay.

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

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

PART V—APPOINTMENT AND
COMPOSITION OF COURTS-
MARTIAL

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

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

- (1) the President of the United States;
- (2) the Secretary of a Department;
- (3) the commanding officer of a Territorial Department, an Army Group, an Army, an Army Corps, a division, a separate brigade, or a corresponding unit of the Army or Marine Corps;
- (4) the commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the continental limits of the United States;
- (5) the commanding officer of an air command, an air force, an air division, or a separate wing of the Air Force or Marine Corps;
- (6) such other commanding officers as may be designated by the Secretary of a Department; or
- (7) any other commanding officer in any of the armed forces when empowered by the President.

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

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

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

- (1) any person who may convene a general court-martial;
- (2) the commanding officer of a district, garrison, fort, camp, station, Air Force base, auxiliary air field, or other place where members of the Army or Air Force are on duty;
- (3) the commanding officer of a brigade, regiment, detached battalion, or corresponding unit of the Army;
- (4) the commanding officer of a wing, group, or separate squadron of the Air Force;
- (5) the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing group, separate squadron, station, base, auxiliary airfield, or other place where members of the Marine Corps are on duty;
- (6) the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or
- (7) the commanding officer or officer in charge of any other command when empowered by the Secretary of a Department.

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

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

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

- (1) any person who may convene a general or special court-martial;
- (2) the commanding officer of a detached company, or other de-

tachment of the Army;

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

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

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

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

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

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

(c) (1) Any enlisted person on active duty with the armed forces who is not a member of the same unit as the accused shall be eligible to serve on general and special courts-martial for the trial of any enlisted person who may lawfully be brought before such courts for trial, but he shall serve as a member of the court only if, prior to the convening of such court, the accused personally has requested in writing that enlisted persons serve on it. After such request, no enlisted person shall be tried by a general or special court-martial the membership of which does not include enlisted persons in a number comprising at least one-third of the total membership of the court, unless eligible enlisted persons cannot be obtained on account of physical conditions or military exigencies. Where such persons cannot be obtained, the

court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

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

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

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

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

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

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

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

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

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

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

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

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

(1) if the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel appointed by the convening authority shall be a person similarly qualified; and

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

ART. 28. Appointment of reporters and interpreters.

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

ART. 29. Absent and additional members.

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

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

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

PART VI—PRETRIAL PROCEDURE

ART. 30. Charges and specifications.

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

the armed forces authorized to administer oaths and shall state—

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

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

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

ART. 31. Compulsory self-incrimination prohibited.

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

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

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

(d) No statement obtained from any person in violation of this article, or through the use of coercion, unlawful influence, or unlawful inducement shall be received in evidence against him in a trial by court-martial.

ART. 32. Investigation.

(a) No charge or specification shall be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include in-

quiries as to the truth of the matter set forth in the charges, form of charges, and the disposition which should be made of the case in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and of his right to be represented at such investigation by counsel. Upon his own request he shall be represented by civilian counsel if provided by him, or military counsel of his own selection if such counsel be reasonably available, or by counsel appointed by the officer exercising general court-martial jurisdiction over the command. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

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

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

ART. 33. Forwarding of charges.

When a person is held for trial by

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

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

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

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

ART. 35 Service of charges.

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

PART VII—TRIAL PROCEDURE

ART. 36. President may prescribe rules.

(a) The procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals may be prescribed by the President

by regulations which shall, so far as he deems practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts, but which shall not be contrary to or inconsistent with this code.

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

ART. 37. Unlawfully influencing action of court.

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

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

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

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

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

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

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

ART. 39. Sessions.

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

ART. 40. Continuances.

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

ART. 41. Challenges.

(a) Members of a general or special court-martial and the law officer

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

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

ART. 42. Oaths.

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

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

ART. 43. Statute of limitations.

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

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

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

over the command or before the imposition of punishment under article 15.

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

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

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

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

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

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

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

ART. 44. Former jeopardy.

(a) No person shall, without his consent, be tried a second time for the same offense.

(b) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this article until the finding of guilty has become final after review of the case has been fully completed.

(c) A proceeding which, subsequent to the introduction of evidence but prior to a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused shall be a trial in the sense of this article.

ART. 45. Pleas of the accused.

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

(b) A plea of guilty by the accused shall not be received to any charge or specification alleging an offense for which the death penalty may be adjudged.

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

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

ART. 47. Refusal to appear or testify.

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

(1) has been duly subpoenaed to appear as a witness before any

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

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

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

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

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

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

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

ART. 48. Contempts.

A court-martial, provost court, or military commission may punish for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder. Such punishment shall not exceed confine-

ment for thirty days or a fine of \$100, or both.

ART. 49. Depositions.

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

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

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

(d) A duly authenticated deposition taken upon reasonable notice to the other party, so far as otherwise admissible under the rules of evidence, may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or military board, if it appears—

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

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

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

(e) Subject to the requirements of subdivision (d) of this article, testi-

mony by deposition may be adduced by the defense in capital cases.

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

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

(a) In any case not capital and not extending to the dismissal of an officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court-martial or military commission if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

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

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

ART. 51. Voting and rulings.

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

(b) The law officer of a general court-martial and the president of a special court-martial shall rule upon interlocutory questions, other than challenge, arising during the proceedings. Any such ruling made by the law officer of a general court-martial upon any interlocutory question other than a motion for a finding of not

guilty, or the question of accused's sanity, shall be final and shall constitute the ruling of the court; but the law officer may change any such ruling at any time during the trial. Unless such ruling be final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in article 52, viva voce, beginning with the junior in rank.

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

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

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

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

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

ART. 52. Number of votes required.

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

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

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

this code made expressly punishable by death.

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

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

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

ART. 53. Court to announce action.

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

ART. 54. Record of trial.

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

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

(c) A copy of the record of the proceedings of each general and spe-

cial court-martial shall be given to the accused as soon as authenticated.

PART VIII—SENTENCES

ART. 55. Cruel and unusual punishments prohibited.

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

ART. 56. Maximum limits.

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

ART. 57. Effective date of sentences.

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

(b) Any period of confinement included in a sentence of a court-martial shall begin to run from the date the sentence is adjudged by the court-martial, but periods during which the sentence to confinement is suspended shall be excluded in computing the service of the term of confinement.

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

ART. 58. Execution of confinement.

(a) Under such instruction as the Department concerned may prescribe, any sentence of confinement adjudged by a court-martial or other military tribunal, whether or not such sentence includes discharge or dismissal, and whether or not such discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the armed forces, or in any penal or correctional institu-

tion under the control of the United States, or which the United States may be allowed to use; and persons so confined in a penal or correctional institution not under the control of one of the armed forces shall be subject to the same treatment as persons confined or committed by the courts of the United States or of the State, Territory, District, or place in which the institution is situated.

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

PART IX—REVIEW OF COURTS-MARTIAL

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

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

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

ART. 60. Initial action on the record.

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

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

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

force of which the accused is a member.

ART. 62. Reconsideration and revision.

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

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

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

(2) for reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of this code; or

(3) for increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory.

ART. 63. Rehearings.

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

(b) Every rehearing shall take place before a court-martial composed of members not members of the court-martial which first heard the case. Upon such rehearing the accused shall not be tried for any offense of

which he was found not guilty by the first court-martial, and no sentence in excess of or more severe than the original sentence shall be imposed unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings or unless the sentence prescribed for the offense is mandatory.

ART. 64. Approval by the convening authority.

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

ART. 65. Disposition of records after review by the convening authority.

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

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

(c) All other special and summary court-martial records shall be re-

viewed by a judge advocate of the Army or Air Force, a law specialist of the Navy, or a law specialist or lawyer of the Coast Guard or Treasury Department and shall be transmitted and disposed of as the Secretary of the Department may prescribe by regulations.

ART. 66. Review by the board of review.

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

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

(c) In a case referred to it, the board of review shall act only with respect to the findings and sentence as approved by the convening authority. It shall affirm only such findings of guilty, and the sentence or such part or amount of the sentence, as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record it shall have authority to weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses.

(d) If the board of review sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing, it shall order that the charges be dismissed.

(e) The Judge Advocate General shall, unless there is to be further action by the President or the Secretary of the Department or the Court

of Military Appeals, instruct the convening authority to take action in accordance with the decision of the board of review. If the board of review has ordered a rehearing but the convening authority finds a rehearing impracticable, he may dismiss the charges.

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

Art. 67. Review by the Court of Military Appeals.

(a) (1) There is hereby established a Court of Military Appeals, which shall be located for administrative purposes in the Department of Defense. The Court of Military Appeals shall consist of three judges appointed from civilian life by the President, by and with the advice and consent of the Senate, for a term of fifteen years. Not more than two of the judges of such court shall be appointed from the same political party, nor shall any person be eligible for appointment to the court who is not a member of the bar of a Federal court or of the highest court of a State. Each judge shall receive a salary of \$17,500 a year and shall be eligible for reappointment. The President shall designate from time to time one of the judges to act as Chief Judge. The Court of Military Appeals shall have power to prescribe its own rules of procedure and to determine the number of judges required to constitute a quorum. A vacancy in the court shall not impair the right of the remaining judges to exercise all the powers of the court.

(2) The terms of office of the three judges first taking office after the effective date of this subdivision shall expire, as designated by the President at the time of nomination, one on May 1, 1956, one on May 1, 1961, and one on May 1, 1966. The terms of of-

fice of all successors shall expire fifteen years after the expiration of the terms for which their predecessors were appointed, but any judge appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor.

(3) Judges of the Court of Military Appeals may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, or upon the ground of mental or physical disability, but for no other cause.

(4) If any judge of the Court of Military Appeals is temporarily unable to perform his duties because of illness or other disability, the President may designate a judge of the United States Court of Appeals to fill the office for the period of disability.

(b) The Court of Military Appeals shall review the record in the following cases:

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

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

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

(c) The accused shall have thirty days from the time he is notified of the decision of a board of review to petition the Court of Military Appeals for a grant of review. The court shall act upon such a petition within thirty days of the receipt thereof.

(d) In any case reviewed by it, the Court of Military Appeals shall act only with respect to the findings and sentence as approved by the convening authority and as affirmed or set aside as incorrect in law by the board of review. In a case which The Judge Advocate General orders forwarded

to the Court of Military Appeals, such action need be taken only with respect to the issues raised by him. In a case reviewed upon petition of the accused, such action need be taken only with respect to issues specified in the grant of review. The Court of Military Appeals shall take action only with respect to matters of law.

(e) If the Court of Military Appeals sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If it sets aside the findings and sentence and does not order a rehearing it shall order that the charges be dismissed.

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

(g) The Court of Military Appeals and The Judge Advocates General of the armed forces shall meet annually to make a comprehensive survey of the operation of this code and report to the Committees on Armed Services of the Senate and of the House of Representatives and to the Secretary of Defense and the Secretaries of the Departments the number and status of pending cases and any recommendations relating to uniformity of sentence policies, amendments to this code, and any other matters deemed appropriate.

ART. 68. Branch offices.

Whenever the President deems such action necessary, he may direct The Judge Advocate General to establish a branch office, under an Assistant Judge Advocate General, with any distant command, and to establish in

such branch office one or more boards of review. Such Assistant Judge Advocate General and any such board of review shall be empowered to perform for that command, under the general supervision of The Judge Advocate General, the duties which The Judge Advocate General and a board of review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval by the President.

ART. 69. Review in the office of The Judge Advocate General.

Every record of trial by general court-martial, in which there has been a finding of guilty and a sentence, the appellate review of which is not otherwise provided for by article 66, shall be examined in the office of The Judge Advocate General. If any part of the findings or sentence is found unsupported in law, or if The Judge Advocate General so directs, the record shall be reviewed by a board of review in accordance with article 66, but in such event there will be no further review by the Court of Military Appeals except pursuant to the provisions of article 67 (b) (2).

ART. 70. Appellate counsel.

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

(b) It shall be the duty of appellate Government counsel to represent the United States before the board of review or the Court of Military Appeals when directed to do so by The Judge Advocate General.

(c) It shall be the duty of appellate defense counsel to represent the accused before the board of review or the Court of Military Appeals—

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

(2) when the United States is represented by counsel; or

(3) when The Judge Advocate General has transmitted a case to the Court of Military Appeals.

(d) The accused shall have the

right to be represented before the Court of Military Appeals or the board of review by civilian counsel if provided by him.

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

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

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

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

(c) No sentence which includes, unsuspended, a dishonorable or bad-conduct discharge, or confinement for one year or more shall be executed until affirmed by a board of review and, in cases reviewed by it, the Court of Military Appeals.

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

ART. 72. Vacation of suspension.

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

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

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

ART. 73. Petition for a new trial.

At any time within one year after approval by the convening authority of a court-martial sentence which extends to death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more, the accused may petition The Judge Advocate General for a new trial on grounds of newly discovered evidence or fraud on the court. If the accused's case is pending before the board of review or before the Court of Military Appeals, The Judge Advocate General shall refer the petition to the board or court, respectively, for action. Otherwise The Judge Advocate General shall act upon the petition.

ART. 74. Remission and suspension.

(a) The Secretary of the Department and, when designated by him, any Under Secretary, Assistant Sec-

retary, Judge Advocate General, or commanding officer may remit or suspend any part or amount of the unexecuted portion of any sentence, including all uncollected forfeitures, other than a sentence approved by the President.

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

ART. 75. Restoration.

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

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

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

ART. 76. Finality of court-martial judgments.

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

PART X—PUNITIVE ARTICLES

ART. 77. Principals.

Any person punishable under this code who—

(1) commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

(2) causes an act to be done which if directly performed by him would be punishable by this code;

is a principal.

ART. 78. Accessory after the fact.

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

ART. 79. Conviction of lesser included offense.

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

ART. 80. Attempts.

(a) An act, done with specific intent to commit an offense under this

code, amounting to more than mere preparation and tending but failing to effect its commission, is an attempt to commit that offense.

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

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

ART. 81. Conspiracy.

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

ART. 82. Solicitation.

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

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

ART. 83. Fraudulent enlistment, appointment, or separation.

Any person who—

(1) procures his own enlistment or appointment in the armed forces by means of knowingly false representations or deliberate concealment as to his qualifications

for such enlistment or appointment and receives pay or allowances thereunder; or

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

shall be punished as a court-martial may direct.

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

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

ART. 85. Desertion.

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

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

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

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

is guilty of desertion.

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

(c) Any person found guilty of desertion or attempted desertion shall be punished, if the offense is commit-

ted in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempted desertion occurs at any other time, by such punishment, other than death, as a court-martial may direct.

ART. 86. Absence without leave.

Any member of the armed forces who, without proper authority—

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

(2) goes from that place; or

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

shall be punished as a court-martial may direct.

ART. 87. Missing movement.

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

ART. 88. Contempt towards officials.

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

ART. 89. Disrespect towards superior officer.

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

ART. 90. Assaulting or willfully disobeying officer.

Any person subject to this code who—

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

(2) willfully disobeys a lawful command of his superior officer; shall be punished, if the offense is committed in time of war, by death

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

ART. 91. Insubordinate conduct towards noncommissioned officer.

Any warrant officer or enlisted person who—

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

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

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

shall be punished as a court-martial may direct.

ART. 92. Failure to obey order or regulation.

Any person subject to this code who—

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

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

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

shall be punished as a court-martial may direct.

ART. 93. Cruelty and maltreatment.

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

ART. 94. Mutiny or sedition.

(a) Any person subject to this code—

(1) who with intent to usurp or override lawful military authority refuses, in concert with any other person or persons, to obey orders or otherwise do his duty

or creates any violence or disturbance is guilty of mutiny;

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

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

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

ART. 95. Arrest and confinement,

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

ART. 96. Releasing prisoner without proper authority.

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

ART. 97. Unlawful detention of another.

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

ART. 98. Noncompliance with procedural rules.

Any person subject to this code who—

(1) is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

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

shall be punished as a court-martial may direct.

ART. 99. Misbehavior before the enemy.

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

(1) runs away; or

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

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

(4) casts away his arms or ammunition; or

(5) is guilty of cowardly conduct; or

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

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

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

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

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

ART. 100. Subordinate compelling surrender.

Any person subject to this code who compels or attempts to compel a commander of any place, vessel, aircraft, or other military property, or

of any body of members of the armed forces, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished by death or such other punishment as a court-martial may direct.

ART. 101. Improper use of countersign.

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

ART. 102. Forcing a safeguard.

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

ART. 103. Captured or abandoned property.

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

(b) Any person subject to this code who—

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

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

(3) engages in looting or pillaging;

shall be punished as a court-martial may direct.

ART. 104. Aiding the enemy.

Any person who—

(1) aids, or attempts to aid, the

enemy with arms, ammunition, supplies, money, or other thing; or

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

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

ART. 105. Misconduct as a prisoner.

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

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

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

shall be punished as a court-martial may direct.

ART. 106. Spies.

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

ART. 107. False official statements.

Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, or makes any other false official statement knowing the same to be false, shall be punished as a court-martial may direct.

ART. 108. Military property of United States—Loss, damage, destruc-

tion, or wrongful disposition.

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

(1) sells or otherwise disposes of; or

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

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

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

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

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

ART. 110. Improper hazarding of vessel.

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

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

ART. 111. Drunken or reckless driving.

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

ART. 112 Drunk on duty.

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

ART. 113. Misbehavior of sentinel.

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

the offense is committed at any other times, by such punishment other than death as a court-martial may direct.

ART. 114. Dueling.

Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court-martial may direct.

ART. 115 Malingerer.

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

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

(2) intentionally inflicts self-injury;

shall be punished as a court-martial may direct.

ART. 116. Riot or breach of peace.

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

ART. 117. Provoking speeches or gestures.

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

ART. 118. Murder.

Any person subject to this code who, without justification or excuse, unlawfully kills a human being, when he—

(1) has a premeditated design to kill; or

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

(3) is engaged in an act which is inherently dangerous to others and evinces a wanton disregard of human life; or

(4) is engaged in the perpetration or attempted perpetration of burglary, sodomy, rape, robbery, or aggravated arson;

is guilty of murder, and shall suffer such punishment as a court-martial

may direct, except that if found guilty under paragraph (1) or (4) of this article, he shall suffer death or imprisonment for life as a court-martial may direct.

ART. 119. Manslaughter.

(a) Any person subject to this code who, with an intent to kill or inflict great bodily harm, unlawfully kills a human being in the heat of sudden passion caused by adequate provocation is guilty of voluntary manslaughter and shall be punished as a court-martial may direct.

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

(1) by culpable negligence; or

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

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

ART. 120. Rape and carnal knowledge.

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

(b) Any person subject to this code who, under circumstances not amounting to rape, commits an act of sexual intercourse with a female not his wife who has not attained the age of sixteen years, is guilty of carnal knowledge and shall be punished as a court-martial may direct.

(c) Penetration, however slight, is sufficient to complete these offenses.

ART. 121. Larceny and wrongful appropriation.

(a) Any person subject to this code who wrongfully takes, obtains, or withholds, by any means whatever, from the possession of the true owner or of any other person any money, personal property, or article of value of any kind—

(1) with intent permanently to deprive or defraud another per-

son of the use and benefit of property or to appropriate the same to his own use or the use of any person other than the true owner, steals such property and is guilty of larceny; or

(2) with intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate the same to his own use or the use of any person other than the true owner is guilty of wrongful appropriation.

(b) Any person found guilty of larceny or wrongful appropriation shall be punished as a court-martial may direct.

ART. 122. Robbery.

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

ART. 123. Forgery.

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

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

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

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

ART. 124. Maiming.

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

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

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

(3) seriously diminishes his phy-

sical vigor by the injury of any member or organ; is guilty of maiming and shall be punished as a court-martial may direct.

ART. 125. Sodomy.

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

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

ART. 126. Arson.

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

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

ART. 127. Extortion.

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

ART. 128. Assault.

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

(b) Any person subject to this code who—

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

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

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

ART. 129. Burglary.

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

ART. 130. Housebreaking.

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

ART. 131. Perjury.

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

ART. 132. Frauds against the Government.

Any person subject to this code—

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

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

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

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

(A) makes or uses any writing or other paper knowing the

same to contain any false or fraudulent statements; or

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

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

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

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

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

ART. 133. Conduct unbecoming an officer and gentleman.

Any officer, cadet, or midshipman who is convicted of conduct unbecoming an officer and a gentleman shall be punished as a court-martial may direct.

ART. 134. General article.

Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the armed forces, all conduct of a nature to bring discredit upon the armed forces, and crimes and offenses not capital, of which persons subject to this code may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and

punished at the discretion of such court.

PART XI—MISCELLANEOUS PROVISIONS
ART. 135. Courts of inquiry.

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

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

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

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

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

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

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

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

case the record cannot be authenticated by the counsel for the court it shall be signed by a member in lieu of the counsel.

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

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

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

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

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

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

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

ART. 137. Articles to be explained.

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

ART. 138. Complaints of wrongs.

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

ART. 139. Redress of injuries to property.

(a) Whenever complaint is made to any commanding officer that willful damage has been done to the property of any person or that his property has been wrongfully taken by members of the armed forces he may, subject to such regulation as the Secretary of the Department may

prescribe, convene a board to investigate the complaint. The board shall consist of from one to three officers and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damage made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be charged against the pay of the offenders. The order of such commanding officer directing charges herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the damages so assessed and approved.

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

ART. 140. Delegation by the President.

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

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

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

SEC. 4. All offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the effective date of this Act under any law embraced in or modified, changed, or repealed by this Act may be prose-

cuted, punished, and enforced, and action thereon may be completed, in the same manner and with the same effect as if this Act had not been passed.

SEC. 5. This Act shall become effective on the last day of the twelfth month after approval of this Act, or on July 1, 1950, whichever date is later: *Provided*, That the provisions of article 67 (a) of this Act shall become effective in the last day of the ninth month after approval of this Act: *Provided further*, That the provisions of section 12 of this Act shall become effective on the date of the approval of this Act.

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

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

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

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

(b) AUTHORITY OF OFFICERS OF SEPARATE ORGANIZATION OF MARINES.—When a force of marines is embarked on a naval vessel or vessels, as a separate organization, not a part of the authorized complement thereof, the authority and powers of the offi-

cers of such separate organizations of marines shall be the same as though such organization were serving at a naval station on shore, but nothing herein shall be construed as impairing the paramount authority of the commanding officer of any vessel over the vessel under his command and all persons embarked thereon.

(c) **COMMANDERS' DUTIES OF EXAMPLE AND CORRECTION.**—All commanding officers and others in authority in the naval service are required to show in themselves a good example of virtue, honor, patriotism, and subordination; to be vigilant in inspecting the conduct of all persons who are placed under their command; to guard against and suppress all dissolute and immoral practices, and to correct, according to the laws and regulations of the Navy, all persons who are guilty of them; and to take all necessary and proper measures, under the laws, regulations, and customs of the naval service, to promote and safeguard the morale, the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge.

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

(e) **REVERENT BEHAVIOR.**—All persons in the Navy are enjoined to behave themselves in a reverent and becoming manner during divine service.

OATH OF ENLISTMENT

SEC. 8. Every person who is enlisted in any armed force shall take the following oath or affirmation at the time of his enlistment: "I, _____, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them hon-

estly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice." This oath or affirmation may be taken before any officer.

REMOVAL OF CIVIL SUITS

SEC. 9. When any civil or criminal prosecution is commenced in any court of a State of the United States against any member of the armed forces of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the armed forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed by law, and the cause shall thereupon be entered on the docket of such district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine said cause.

DISMISSAL OF OFFICERS

SEC. 10. No officer shall be dismissed from any of the armed forces except by sentence of a general court-martial, or in commutation thereof, or, in time of war, by order of the President; but the President may at any time drop from the rolls of any armed force any officer who has been absent without authority from his place of duty for a period of three months or more, or who, having been found guilty by the civil authorities of any offense, is finally sentenced to confinement in a Federal or State penitentiary or correctional institution.

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

"Provided, That such midshipman

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

SEC. 12. Under such regulations as the President may prescribe, The Judge Advocate General of any of the armed forces is authorized upon application of an accused person, and upon good cause shown, in his discretion to grant a new trial, or to vacate a sentence, restore rights, privileges, and property affected by such sentence, and substitute for a dismissal, dishonorable discharge, or bad-conduct discharge, previously executed, a form of discharge authorized for administrative issuance, in any court-martial case involving offenses committed during World War II in which application is made within one year after termination of the war, or after its final disposition upon initial appellate review whichever is the later: *Provided*, That only one such application for a new trial may be entertained with regard to any one case: *And provided further*, Within the meaning of this section and of article of war 53, World War II shall be deemed to have ended as of the effective date of this Act.

QUALIFICATIONS OF THE JUDGE ADVOCATES GENERAL

SEC. 13. Hereafter The Judge Advocate General of an armed force, exclusive of the present incumbents and exclusive of the Coast Guard, shall be appointed from among those officers who at the time of such appointment are members of the bar of a Federal court or the highest court of a State or Territory and who have had not less than a total of eight years' experience in legal duties as commissioned officers.

SEC. 14. The following sections or parts thereof of the Revised Statutes or Statutes at Large are hereby repealed. Any substantive rights or liabilities existing under such sections or parts thereof prior to the effective date of this Act shall not be affected

by this repeal, and this Act shall not be effective to authorize trial or punishment for any offense if such trial or punishment is barred by the provisions of existing law:

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

(b) Revised Statutes, 1228 through 1230;

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

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

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

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

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

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

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

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

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

(l) The provision of the Act of August 29, 1916 (39 Stat. 556, 573,

ch. 417), under the heading "Hospital Corps", making officers and enlisted men of the Medical Department of the Navy who are serving with a body of marines detached for service with the Army subject to the rules and articles of War while so serving;

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

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

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

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

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

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

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

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

(u) Title 14, United States Code, sections 4 (f) and 758;

(v) All of chapter 15 of title 14, United States Code, including the chapter number, the analysis, and the reference thereto in the table of contents to part I.

SEC. 15. Section 227 of title 14, United States Code, is amended by striking out the word "dismissal" and inserting in lieu thereof the word "discharge" in the catchline; and by striking out the word "dismiss" and inserting in lieu thereof the word "discharge" in the text.

SEC. 16. (a) Chapter 13 of title 14, United States Code is amended by adding at the end thereof the following new sections:

"§ 508. Deserters; arrest of by civil authorities; penalties.

"(a) Any civil officer having authority to arrest offenders under the laws of the United States or of any State, Territory, or District, may arrest summarily a deserter from the Coast Guard and deliver him into the custody of Coast Guard authorities. The Commandant may, pursuant to applicable regulations, provide for reimbursement for the transportation and other necessary expenses to effectuate such delivery.

"(b) No person who is convicted by court-martial for desertion from the Coast Guard in time of war, and as the result of such conviction is dismissed or dishonorably discharged from the Coast Guard shall afterwards be enlisted, appointed, or commissioned in any military or naval service under the United States, unless the disability resulting from desertion, as established by this section, is removed by a board of commissioned officers of the Coast Guard convened for consideration of the case, and the action of the board is approved by the Secretary; or unless he is restored to duty in time of war.

"§ 509. Prisoners; allowances to; transportation.

"(a) Persons confined in prisons in pursuance of the sentence of a Coast Guard court shall, during such confinement, be allowed a reasonable sum, not to exceed \$3 per month, for necessary prison expenses, and shall upon discharge be furnished with suitable civilian clothing and paid a gratuity, not to exceed \$25. Such allowance shall be made in amounts to be fixed by, and in the discretion of, the Secretary and only in cases where the prisoners so discharged would otherwise be unprovided with suitable clothing or without funds to meet their immediate needs.

"(b) The Commandant may transport to their homes or places of enlistment, as he may designate, all discharged prisoners; the expense of such transportation shall be paid out of any money to the credit of prisoners when discharged."

(b) The analysis of chapter 13 of said title 14, United States Code, is

amended by adding at the end thereof the following new items:

"508. Deserters; arrest of by civil authorities; penalties.

"509. Prisoners; allowances to; transportation."

SEC. 17. There is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the purposes of this Act.

What The Members Are Doing

CALIFORNIA

Army reserve personnel of the Los Angeles area produced a moot court drama during April, 1950, which had a four day run. The production included a cast of thirty-five Reserve Corps personnel and professional actors. Major Leonard B. Stallcup wrote the script and acted as Trial Judge Advocate. The trial was based upon the charge of larceny, desertion and breaking arrest. Col. Andrew J. Copp filled the role of President of the Court and Col. C. E. Yudelson was the Law Member. Major Carl Brewster portrayed the role of Defense Counsel. Majors David Lippert, 25th Off., and William E. Miller were members of the cast.

Henry C. Clausen, 4th Off., reports that the San Francisco JAG's are forming a local organization of the Association and Jack Finger, 5th Off., is acting as Vice Chairman.

FLORIDA

W. Palmer VanArsdale, 14th Off., reports from Ft. Lauderdale that he is the Judge Advocate of the 3481st Station Complement, a reserve training organization there. VanArsdale served as one of General MacArthur's JA's at Manila and after separation formed a law firm there. He has since returned to Florida for its health-giving climate.

LOUISIANA

Judge John T. Hood, Jr., 18th Off.,

is Judge of the 14th Judicial District Court of the State of Louisiana, with his office in Lake Charles.

Dr. Joseph Dainow, 8th Off., was granted a leave of absence for one semester to serve as visiting professor in the Law School of the University of Puerto Rico. He will resume his duties at the Louisiana State University Law School in June. In addition to his duties as Professor of Law at the Louisiana State University Dr. J. Denson Smith, 5th Off., serves as Director of the Louisiana Law Institute. At a special session in March the Legislature adopted the Revised Statutes as codified by the Institute after several years of constant study. A second major project assigned to the Institute is the preparation of a draft for a proposed new constitution for the State.

Hermann Moyses, 8th Off., has been appointed Director of the Law Section of the School of Banking of the South, a joint project of the Bankers Associations of nine Southern States, which will hold its first session at the Louisiana State University in June.

MONTANA

Raymond Hildebrand of Glendive, State Chairman for Montana, reports:

John W. Bonner of Helena is the present Governor of Montana.

Paul B. Bowen has resumed the practice of law at Billings. The same is true of Cale J. Crowley. Hildebrand

was Montana Chairman of March of Dimes.

NEW JERSEY

Frank Verga, 1st Off., of Jersey City is serving a tour of two months active duty in the Office of the Judge Advocate, Headquarters First Army.

Jerome L. Kessler, 25th Off., of Newark, formerly Assistant Prosecutor of Essex County, was recently elected State Chairman of the Junior Section of the New Jersey Bar Association, one of the more active arms of the organized Bar of the State.

Sol Chasnoff of North Arlington was recently re-elected Commander of the United Veterans Organization for the third term. He is Judge Advocate of the Jewish War Veterans and a member of the Kearny Housing Authority developing a program of veterans housing.

Howard K. Shaw, 1st Off., of Trenton, is serving as President of the Mercer County Bar Association. He is also Civilian Defense Director of the City of Trenton. Shaw is engaged in private practice.

Col. A. A. Melniker, who was the Executive Officer of the Judge Advocate Office of the Second Service Command, Governors Island, 1941 to 1944, and subsequently a member of a Board of Review in the JAGO, is presently engaged in private practice in Jersey City.

Isidore Hornstein of 921 Bergen Avenue, Jersey City, would like to hear from any of the officers and men that he served with. Hornstein is a member of the 1388th JAG Training Unit and recently conducted a mock trial at Kearny for the instruction of regular Army and reserve units.

Edward A. Levy, 2nd Off., of Pas-

saic, reports that he is indulging somewhat in the general practice of law.

Robert Carey, Jr., who is engaged in practice in Newark, says that from his office on the 31st floor of the Raymond-Commerce Building on a clear day he can see great hordes of clients entering the office of Frank Verga in Jersey City. If Frank gets overburdened, perhaps he can put some of them on the bus and send them over to Bob.

Lt. Col. Harry V. Osborne, Jr. of Newark, is in the general practice of the law as a member of the firm of Osborne, Cornish & Scheck. Col. Osborne is the SJA, 78th Infantry Division (Reserve).

Lt. Col. Robert A. Hitch is Chief, Special Assignments Division, JAG Section of the First Army Augmentation Unit at Governors Island. Col. Hitch is an attorney in the Legal Division of the Veterans Administration Regional Office at Newark, is active in the American Legion, and in his spare time is taking a course at Rutgers University toward his Master's degree.

Julius R. Pollatschek of Union, 27th Off., is the State Representative of New Jersey on the National Executive Committee of Amvets. Pollatschek is associated in the general practice with the firm of Kein and Scotch, is active in Bar Association activities, and is serving on several of its committees.

NEW YORK

H. W. William Caming, after an extended vacation at Miami Beach, has returned to New York and will soon enter the private practice of law.

Major Louis N. Tischler has been elected President of the Phoenix Wid-

ow and Orphan Aid Society. Major Tischler is Historian of the Bronx Chapter ROA and recently completed a tour of active duty in the JA Section of Headquarters 1st Army.

Lt. Col. Alton W. Teale of Haverstraw recently resigned as Referee in Bankruptcy for the U.S. District Court, Southern District of New York. He is presently Corporation Counsel for Suffern and is a member of the National Committee of Zoning and Planning, National Institute of Municipal Law Officers. He was recently elected Vice President of the Lafayette Bank and Trust Company of Suffern, and engages in private practice as member of the firm of Kennedy, Teale & Kennedy, with offices at Suffern and Haverstraw. He is attached to the 1569th JAG Training Center, Headquarters 1st Army.

George J. Banigan has become a member of the firm of Dean, Magill, Huber & Horrigan with offices at 55 Broadway. Ed Huber, who is a member of the firm, serves as member of the Board of Directors of the Association.

Col. Arthur Levitt has been designated commandant of a school to be conducted for reserve officers of the JAGC at Fort Totten, New York, from 18 through 30 June 1950. The student body will consist of 150 reserve JAG officers on active duty status, drawn from the New England area.

It is expected that the greater part of the student body will come from New York city and environs, the balance from New Jersey and the New England states. The faculty will be drawn principally from his own unit, the 1568th JAGC Training Center,

which includes in its roster a number of officers with wartime experience as instructors at the JAG Officer Candidate School at Ann Arbor. Instructors will report at the school on 12 June.

The course of instruction will cover the usual subjects of special interest to officers of the Corps and, in addition, the basic military subjects, thus, newly commissioned JAG officers will be given training and all will be provided refresher courses in such subjects as map reading, customs of the service, the pistol and carbine and the like.

Officers interested in attending, either as instructors or as students, are advised to communicate with the Commandant, Colonel Arthur Levitt, 369 Lexington Avenue, New York 17, N. Y.

On January 12, 1950, members of the 9th Officer Candidate Class, JAG School, met for dinner at the Washington Square Inn, New York City, in order to commemorate, on the Fifth Anniversary thereof, their commissioning as Second Lieutenants on January 12, 1945 at Ann Arbor. There were present; E. James Bennett, Jersey City, N. J.; William J. Haft, Highland Falls, N. Y.; James H. Mathias, New York City; Robert O. Muller, New York City; Gerald T. O'Hara, Boston, Mass.; Milton Sandberg, New York City; James E. Sapp, Jr., Maplewood, N. J.; William J. Sullivan, Rockville Centre, N. Y.; and George F. Wenger, Albany, N. Y.

Notice of the anniversary dinner was sent to all 86 members of the class and communications were received from all over the country from about half of the members. From the

communications received and from the memers in attendance at the dinner, the following information may be of some general interest:

John C. Bauman is Assistant General Counsel to the Board of Governors of the Federal Reserve System.

John H. Else is Administrative Assistant to U. S. Senator Harry Darby of Kansas.

Horace G. Geer is Assistant Corporation Counsel of Tacoma, Washington.

Preston W. Gunther, we are told, has forsaken the law and is in the lumber business in Washington.

Delmas C. Hill is U. S. District Judge for the District of Kansas.

Alden A. Stockard is Secretary to U. S. Senator James P. Kem of Missouri.

Jack Wilson is Judge of a division of the Circuit Court of Tennessee.

So far as can be gathered, the balance of the members of the class are happily and actively engaged in the practice of the law, many of them retaining an active interest in the army reserve or national guard; except that we are informed that Lt. Col. John W. McLeod, now overseas, is making a career of the Army.

In conclusion we regret that Herbert F. Fuller, New Smyrna Beach, Florida, one of the most highly respected and loved members of the class, passed on suddenly of a heart attack in November, 1948.

OREGON

Lt. Col. Alexander Brown, City Attorney of Portland, Oregon, was elected as one of the five members on the Executive Council of the Portland Chapter of the R.O.A. for the ensuing year.

Virgil H. Langtry, 12 O.C., Chief Deputy City Attorney of Portland, who was commissioned a 2nd Lt. in the JAGC out of the 12th officer candidate class at Ann Arbor, Michigan, just returned from Washington, D. C., where, representing the City of Portland and the Portland Chamber of Commerce, he argued before the Civil Aeronautics Board for an extension of the Alaska Air Lines to Portland, Oregon, their present terminus being Seattle, Washington.

TENNESSEE

James O. Bass, 6th Off., State Chairman of Tennessee, reports that:

Dudley Porter, Jr., 2nd O.C., formerly with the National Life & Accident Insurance Company in Nashville, Tennessee, is now Associate General Counsel of the Provident Life & Accident Insurance Company in Chattanooga.

William J. Bowe, 3rd O.C., is Professor of Law at Vanderbilt University, Nashville, and is the author of a recent book in the field of estate planning, "Tax Planning for Estates."

James Malcolm Shull, 11th O.C., formerly of Elizabethton, is now residing in Nashville, and is an Assistant State Attorney-General.

TEXAS

William Burrow, 4th Off., of Dallas reports that Hawkins Golden was recently elected President of the Dallas Bar Association. Both Burrow and Golden are members of the firm of Leake, Henry, Golden & Burrow.

Leon Jaworski, 4th Off., of Houston, reports that Ralph Yarborough, 9th Off., of Austin, is serving as a member of the State Board of Law Examiners of the State of Texas, and

that he has recently moved his offices to the Littlefield Building so as to have more commodious facilities for his large and growing practice.

UTAH

Judge Advocates in the Salt Lake City area have indicated continuing interest in the HR 4080—the Uniform Military Justice legislation. On April 9, 1950, there was held at Ft. Douglas, Utah, a seminar covering this legislation. Participating therein were not only the Reserve Officers, but also, the regular Army officers stationed at Ft. Douglas; National Guard officers, and the advanced ROTC students of all three services at the University of Utah. Brigadier General J. Wallace West, Adjutant General of Utah, Colonel W. C. Goesling, Commanding Officer of Ft. Douglas, and Colonel H. M. Cole, PMS&T at the University, gave valuable assistance in the program. Reserve Judge Advocates led the discussion.

On March 28, 1950, at Utah State

College, at Logan, Brigadier General Franklin Riter presented to the advance ROTC students of the College, and the Reserve and National Guard officers of northern Utah, two lectures on the New Uniform Military Justice Bill. There was a large attendance at both sessions and unusual interest was indicated by all participants.

WEST VIRGINIA

Col. Abraham Pinsky, 1st O.C., of Wellsburg, recently and successfully brought a Naval court-martial case up to Admiral Russell, the Judge Advocate General of the Navy. The questions involved in the case were quite interesting in that a conviction was secured upon the basis of a confession of the accused given without any warning of his rights and upon the apparent theory no warning was necessary when the confession was not to be reduced to writing and signed. Col. Pinsky did not receive a favorable ruling until he had brought the case all the way up through channels to the Navy's Judge Advocate General.

Annual Meeting

The annual meeting of the Association will be held in Washington, D. C. coincident with the convention of the American Bar Association during the week, September 17-23. The Association will have its annual dinner on the evening of September 19 and its annual business meeting during the afternoon of September 20. General Brannon heads the committee on arrangements, which is composed of Col. King, Col. Wade, Col. Gasch, and Major Love. Judge Advocates General would be

pleased to arrange seminars upon any subject of military law, such as the Uniform Code of Military Justice during the week of the convention provided sufficient numbers of persons are interested and will send to the national offices of the Association some indication of their interest and subject matter.

Washington is quite pleasant during September and should be a delightful convention city. Many of the members, we are sure, will wish to use the A.B.A. convention and our

own annual meeting as a "legal excuse" for their clients for their absence from their offices in September for an excellent opportunity to visit the Capitol city. We suggest that early reservations be placed for your hotel accommodations since we know

that the attendance at this annual convention will be large.

As an assistance to your committee on arrangements, we ask that as many of you as are able now to make tentative plans to attend the annual meeting, drop us a postal card.

Lost Members - Bad Addresses

Recent mailings indicate that the following named members have become lost to us by reason of bad addresses. If you have any information concerning the present address of any of these members, it will be greatly appreciated if you will advise the national offices of the Association, or the member so that we may re-establish contact with him and correct our mailing list accordingly.

CALIFORNIA

Mervyn A. Aggeler, Los Angeles
Robert E. Michalski, Pasadena
Charles D. Smith, Santa Barbara

DISTRICT OF COLUMBIA

Charles P. Muldoon

FLORIDA

Ely R. Katz, Miami

ILLINOIS

Walter A. Edmiston, Chicago

Baird Victor Helfrich, Peoria
MISSOURI

Russell T. Boyle, Kansas City

Bert T. Combs, Lamar

Wright Conrad, Kansas City

Robert G. Maysack, University City

Henry J. Schmandt, St. Louis

NEW YORK

Joel R. Parker, New York City

OHIO

Arthur F. Radcliffe, Williamsport

RHODE ISLAND

Edward J. Noons, Providence

SOUTH CAROLINA

John J. Hurth, Anderson

TENNESSEE

William O. Gordon, Memphis

TEXAS

James E. Henderson, Dallas

Louis E. Marshall, San Antonio

Julian E. Weisler, Brenham

Overflow Crowd of Reservists Greet The Judge

Advocate General at Headquarters Fifth Army Meeting

Major General E. M. Brannon, The Judge Advocate General of the United States Army, on 21 April 1950, addressed a meeting of approximately 150 Judge Advocate Reserve Officers assembled from the thirteen states of the Fifth Army area. Major Glenn R. Bowen, JAGC, Headquarters Fifth Army, was in charge of arrangements.

General Brannon undertook a brief analysis of the revised ORC training program recently announced by the Secretary of the Army, and discussed the part to be played therein by Judge Advocate Reservists. The key provisions of the Uniform Code of Military Justice for the Armed Forces, now awaiting final action by Congress, were also discussed.

Other speakers at the meeting included Lieutenant General Chamberlain, Commanding General Fifth Army; Brigadier General Eastwood, Chief of Staff Fifth Army; Captain J. A. Roberts, U. S. Navy, Headquarters Ninth Naval District Legal Officer; and Colonel Robert M. Springer, Fifth Army Judge Advocate.

An instructional Manual prepared by the Judge Advocate Section, Fifth Army, containing material relating to all major Judge Advocate activities at Army level, was distributed to those in attendance.

Before returning to Washington Saturday night, General and Mrs. Brannon and their party were guests on a little cruise through the Chicago Canal and along the southern shore of Lake Michigan.

A strong Association can serve you better. Pay your annual dues. Stay active. Recommend new members. Remember the Judge Advocates Association represents the lawyers of all components of all the Armed Forces.



If you have not already paid your 1950 dues, remember all that you have to do to be restored to good standing is to send your check for \$5.00. Take care of this matter within the next ten days so that you may be listed in the forthcoming issue of the Directory of Members.

