

Uniform Code of Military Justice

Subject: Receiving and Keeping Prisoner.
A.W. 71, 73.

I. Army Provisions

1. Articles of War

"ART. 71. Refusal to Receive and Keep Prisoners.--No provost marshal or commander of a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States, provided the officer committing shall, at the time, deliver an account in writing, signed by himself, of the crime or offense charged against the prisoner. Any officer or soldier so refusing shall be punished as a court-martial may direct."

"ART. 73. Releasing Prisoner Without Proper Authority.--Any person subject to military law who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any prisoner so committed to escape, shall be punished as a court-martial may direct."

2. Manual for Courts-Martial

"Par. 140. SEVENTY-THIRD ARTICLE OF WAR

"a. Releasing a Prisoner Without Proper Authority.

"The words 'any prisoner' include a civilian or military prisoner.

"While a commander of the guard must receive a prisoner properly committed by any officer, the power of the commanding officer ceases as soon as he has committed the prisoner, and he is not, as such committing officer, a 'proper authority' to order a release.

"An officer may receive in his charge a prisoner not committed in strict compliance with the terms of A. W. 71 or other law, and such prisoner having been so received has been 'duly committed'

.....

"b. Suffering a Prisoner to Escape Through Neglect.

"The word 'neglect' is here used in the sense of the word 'negligence.'

"It is defined in law as the absence of due care. The legal standard of care is that which would have been taken by a reasonably prudent man in the same or similar circumstances. This test looks

to the standard required of persons acting in the capacity in which the accused was acting.

"A prisoner can not be said to have escaped until he has overcome the opposition that restrained him and shaken off immediate pursuit. If he escapes, the fact that he returns, is taken in a fresh pursuit, is killed, or dies, is not a defense to a charge of having suffered him to escape through neglect.

"c. Suffering a Prisoner to Escape Through Design.

"In law a wrongful act is designed when it is intended or when it results from conduct so shockingly and grossly devoid of care as to leave room for no inference but that the act was contemplated as an extremely probable result of the course of conduct followed. Thus, on a charge of suffering a prisoner to escape through design, evidence of gross negligence may be received as probative of design.....

"It does not at all follow that such an escape is to be considered as designed. The conduct of the responsible custodian is to be examined in the light of all the circumstances of the case, the gravity of the crime with which the prisoner is charged, the probability of his return, and the intention and motives of the custodian."

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

No change.

II. Navy Provisions

1. Articles for the Government of the Navy

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

"Eighteenth (Refusing to receive prisoners).--Or, when rated or acting as master-at-arms, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismisses them without orders from the proper authority;....."

2. Naval Courts and Boards

No comment.

3. Proposed Navy Bill

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

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

"Twenty-eighth. Or, having a duty to receive or guard prisoners, refuses to receive such prisoners as may be committed to his charge, or, having received them, suffers them to escape, or dismisses them without orders from the proper authority;....."

III. Differences

1. Refusal to Receive or Keep Prisoners.

Under the provisions of A. W. 71, it shall be incumbent upon all officers and soldiers vested with the authority to receive and keep prisoners to accept prisoners upon presentation of an account, signed by an officer, of the offense charged. A.G.N. 9(28), on the other hand, provides that any person having a duty to receive or guard prisoners shall not refuse to receive any prisoner as may be committed to his charge. There is no requirement that a prisoner shall be committed unless accompanied by a statement, signed by an officer, of the offense charged. In practice, however, a prisoner will not be confined except by order, oral or written, of the officer of the day or the commanding officer.

2. Releasing Prisoner Without Proper Authority.

There is no substantial difference between A. W. 73 and A.G.N. 9(28).

IV. Recommendations

There are no specific recommendations.

Uniform Code of Military Justice

Subject: Report of Prisoners Received.

I. Army Provisions

1. Articles of War

"ART. 72. Report of Prisoners Received.-- Every commander of a guard to whose charge a prisoner is committed shall, within twenty-four hours after such confinement, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the offense charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court-martial may direct."

2. Manual for Courts-Martial

No comment.

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

No change.

II. Navy Provisions

1. Articles for the Government of the Navy

There is no article in the A.G.N. which corresponds with A. W. 72.

2. Naval Courts and Boards

No comment.

3. Proposed Navy Bill

No change.

III. Differences

Under the provisions of A. W. 72, the commander of a guard to whose charge a prisoner has been committed shall report in writing, within twenty-four hours or as soon as he is relieved from duty, to the commanding officer thereof, the name of the prisoner, the offense charged, and the officer committing him. Although there is no corresponding provision in the Navy bill, Art. 13(29), Navy regulations, 1920, provides a similar rule.

IV. Recommendations

No specific recommendations.

Uniform Code of Military Justice

Subject: Releasing Prisoner Without Proper Authority.

See C.S., A.W. 71 -- Receiving and Keeping Prisoner.

Uniform Code of Military Justice

Subject: Delivery of Offenders to Civil Authorities.
A. W. 74.

I. Army Provisions

1. Articles of War

"ART. 74. Delivery of Offenders to Civil Authorities.--When any person subject to military law, except one who is held by the military authorities to answer, or who is awaiting trial or result of trial, or who is undergoing sentence for a crime or offense punishable under these articles, is accused of a crime or offense committed within the geographical limits of the States of the Union and the District of Columbia, and punishable by the laws of the land, the commanding officer is required, except in time of war, upon application duly made, to use his utmost endeavor to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending and securing him, in order that he may be brought to trial. Any commanding officer who upon such application refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil authorities or to aid officers of justice in apprehending and securing him shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

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

2. Manual for Courts-Martial

"Par. 11. Courts-Martial--Jurisdiction in General--Exclusive and nonexclusive.--

"Courts-martial have exclusive jurisdiction of purely military offenses. But a person subject to military law is, as a rule, subject to the municipal law applicable to persons generally, and if by one act or omission he violates an Article of War and the local criminal law, such act or omission may be made the basis of a prosecution before a court-martial or before the proper civil tribunal, and in some cases before both, the jurisdiction which first attaches in any case being in general

entitled to proceed. If in a case where an application under A. W. 74 for delivery to the civil authorities is anticipated, good reason exists for the primary exercise of military jurisdiction, charges should be promptly preferred....."

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

A. W. 74 was not changed by P.L. 759.

4. Digest of Opinions, JAG, Army.

"Dig. J.A.G. 1912, pp. 134-36: When any civil official of the State of * * * attempts to arrest any person subject to military law upon the military reservation at Fort * * *, the person whose arrest is sought must inform the civil official that he is required to make the arrest through the post commander and that the person whose arrest is sought can not otherwise submit. If, after this, the civil official persists, the arrest will be prevented unless the procedure indicated under the 74th Article of War is followed." (The foregoing instruction by a corps area commander was held subject to no objection. (See Dig. J.A.G. 1925, p. 1.)")

Dig. J.A.G. 1912-40, p. 58: Civil rights, immunity from arrest:

"R. S. 1237 provides: No enlisted man shall, during his term of service, be arrested on mesne process, or taken or charged in execution for any debt, unless it was contracted before his enlistment, and amounted to twenty dollars when first contracted. R.S. 1237; 10 U.S.C. 610.

"A writ for the arrest of an enlisted man was issued by State authorities in a civil proceeding for debt under the laws of the state relating to absconding debtors, the enlisted man sought being about to leave the jurisdiction under military order.

"Held, that the writ of arrest, not being in a criminal action but being an auxiliary process in a civil proceeding, and therefrom mesne process, and the debt having been contracted after the soldier's enlistment, the arrest would be illegal in view of R. S. 1237, supra."

Dig. J.A.G. 1912-40, pp. 299 ff. contains a number of opinions interpreting A. W. 74: under what circumstances a man should be delivered up to civil authorities, and when he need not be surrendered. Cf. also the subsequent monthly J.A.G. bulletins.

II. Navy Provisions

1. Naval Courts and Boards

"APPENDIX C.-- Delivery of Men to Civil Authorities--Habeas Corpus Proceedings.

"C-1. Commanding officer must notify department and await instructions before delivering men to civil authorities.--In no case will commanding officers of vessels or shore stations of the Navy or Marine Corps deliver to the civil authorities, State or Federal, any person in their custody or under their control without first communicating with the Secretary of the Navy and awaiting his instructions. The Secretary of the Navy will promptly issue the necessary orders in the case or make request upon the Attorney General, in accordance with title 5, U.S. Code, to furnish such legal assistance to the commanding officer concerned as the interests of the United States involved in such case may demand.

"C-2. Same: Refers to all cases.--The words 'in no case', as used in the above section, are intended to refer to every case in which the civil authorities, Federal or State, request or demand the delivery to them of any officer or enlisted man in the Navy or Marine Corps, whether for the purpose of determining the legality of his detention by the naval authorities; or of trying him for a violation of the Federal or State laws, or of securing the testimony of a naval prisoner as a witness in a civil court. The instructions contained in the above paragraph accordingly apply to and include all cases in which writs of habeas corpus; requisitions of the governor or chief executive of any State, warrants ad testificandum, or other civil process of any kind are served on commanding officers of the Navy or Marine Corps, afloat or ashore, including navy yards where the State has retained jurisdiction for service of process, for the purpose of securing the delivery of any person under their control to such civil authorities.

"C-5. Foregoing applies to navy yards where State has retained jurisdiction.--The foregoing sections apply to cases where the delivery of a person in the Navy or Marine Corps attached to a navy yard or station, or serving on board a vessel at such yard or station, is demanded by the civil authorities of the State in which such navy yard or station is located, although such State has expressly retained jurisdiction to serve civil or criminal process within the limits of the navy yard or station in question.

"C-10. Naval prisoners wanted by civil authorities for trial.--In any case in which the delivery of a person in the Navy or Marine Corps for trial is desired by the civil authorities, Federal or State, and such person is a naval prisoner

(which includes any person serving sentence of court martial or in custody awaiting trial by court martial or disposition of charges against him), he will not, in general, be delivered to the Federal or State authorities until he has served the sentence of the naval court martial, or his case has otherwise been finally disposed of by the naval authorities. However, if the Federal or State authorities desire the surrender of the party under the above circumstances upon a serious charge, such as felonious homicide, and the interests of justice would be better served by his delivery, the Secretary of the Navy may, in his discretion, discharge the man from naval custody and from his contract of enlistment and deliver him to the civil authorities for trial.

"C-12. Men released by civil authorities on bail.--Where a person in the Navy or Marine Corps is arrested by the Federal or State authorities for trial and returns to his ship or station on bail, the commanding officer may grant him leave of absence to appear for trial on the date set upon an official statement by the judge, prosecuting attorney, or clerk of the court, reciting the facts, giving the date on which the appearance of the man is required, and the approximate length of time that should be covered by such leave of absence....."

(See also other sections in Appendix C).

III. Differences

1. Army commanding officers are directed to deliver persons charged with a civil offense to civil authorities on request, except in time of war, or except if the person is awaiting a court martial or is serving a court martial sentence. Navy commanding officers are forbidden to deliver a man to civil authorities under any circumstances until it has been authorized for the individual case by SecNav.
2. If a man who is serving a sentence of a court martial is delivered to the civil authorities by the Army, and such delivery is followed by conviction for a civil offense, the execution of the court-martial sentence is interrupted until the other sentence is served. The man is then returned to military authorities for completion of the court-martial sentence.

Under Navy provisions a person who is awaiting trial by court-martial or the disposition of charges against him, or who is serving sentence of a court-martial, will not in general be turned over to civil authorities until he has served the sentence, or his case is otherwise disposed of by naval

authorities. But, if the civil offense is a serious one, SecNav may order him to be turned over, in which case the man is discharged from naval custody and from his contract of enlistment. (Cf. Appendix C-10).

IV. Recommendations

No specific recommendations.

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Uniform Code of Military Justice

Subject: Misbehavior Before the Enemy
A. W. 75, 76.

I. Army Provisions

1. Articles of War

"ART. 75. Misbehavior Before the Enemy.-- Any officer or soldier who, before the enemy, misbehaves himself, runs away, or shamefully abandons or delivers up or by any misconduct, disobedience, or neglect endangers the safety of any fort, post, camp, guard, or other command which it is his duty to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, or by any means whatsoever occasions false alarms in camp, garrison, or quarters, shall suffer death or such other punishment as a court-martial may direct."

"ART. 76. Subordinates Compelling Commander to Surrender.-- Any person subject to military law who compels or attempts to compel any commander of any garrison, fort, post, camp, guard, or other command, to give it up to the enemy or to abandon it shall be punishable with death or such other punishment as a court-martial may direct."

2. Manual for Courts-Martial

"Par. 141. SEVENTY-FIFTH ARTICLE OF WAR

"a. MISBEHAVIOR BEFORE THE ENEMY

"Discussion.-- Misbehavior is not confined to acts of cowardice. It is a general term, and as here used it renders culpable under the article any conduct by an officer or soldier not conformable to the standard of behavior before the enemy set by the history of our arms. Running away is but a particular form of misbehavior specifically made punishable by this article.

"'The enemy' imports any hostile body that our forces may be opposing, such as a rebellious mob, a band of renegades, or a tribe of Indians. Whether a person is 'before the enemy' is not a question of definite distance; but is one of tactical relation. For example, where accused was in the rear echelon of his battery about 12 or 14 kilometers from the front, the forward echelon of the battery being at the time engaged with the enemy, he was guilty of misbehavior before the enemy by leaving his organization without authority although his echelon was not under fire.

On the other hand, an organization some distance from the front, and which is not a part of a tactical movement then going on or in immediate prospect, is not 'before the enemy' within the meaning of this article.

"Under this clause may be charged any act of treason, cowardice, insubordination, or like conduct committed by an officer or soldier in the presence of the enemy.

"Proof.--(a) That the accused was serving in the presence of an enemy; and (b) acts or omissions of the accused as alleged."

"b. RUNNING AWAY BEFORE THE ENEMY

"Discussion.-- See 141a.

"Proof.--(a) That the accused was serving in the presence of an enemy; and (b) that he misbehaved himself by running away."

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

No change.

II. Navy Provisions

1. Articles for the Government of the Navy

"Article 4.The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service--

'Twelfth (Striking flag or treacherously yielding).-- Or strikes or attempts to strike the flag to any enemy or rebel, without proper authority, or, when engaged in battle, treacherously yields or pusillanimously cries for quarter;

'Thirteenth (Cowardice in battle).-- Or, in time of battle, displays cowardice, negligence, or disaffection, or withdraws from or keeps out of danger to which he should expose himself;

'Fourteenth (Deserting duty in battle).-- Or, in time of battle, deserts his duty or station, or entices others to do so;

'Fifteenth (Neglecting orders to prepare for battle).-- Or does not properly observe the orders of his commanding officer, and use his utmost exertions to carry them into execution, when ordered to prepare or join in, or when actually engaged in battle, or while in sight of an enemy;

'Sixteenth (Neglecting to clear for action).-- Or, being in command of a fleet, squadron, or vessel acting singly, neglects, when an engagement is probable, or when an armed vessel of an enemy or rebel is in sight, to prepare and clear his ship or ships for action;

'Seventeenth (Neglecting to join on signal for battle).-- Or does not, upon signal for battle, use his utmost exertions to join in battle;

'Eighteenth (Failing to encourage men to fight).-- Or fails to encourage, in his own person, his inferior officers and men to fight courageously;

'Nineteenth (Failing to seek encounter).-- Or does not do his utmost to overtake and capture or destroy any vessel which it is his duty to encounter;

'Twentieth (Failing to afford relief in battle).-- Or does not afford all practicable relief and assistance to vessels belonging to the United States or their allies, when engaged in battle.'" "

2. Naval Courts and Boards

There is no discussion of battle offenses in Naval Courts and Boards.

3. Proposed Navy Bill

These sections are renumbered Art. 8, Seventh through Fifteenth.

The word "aircraft" is added whenever the word "ship" appears in the present article.

III. Differences

In general, the naval offenses are more specific than the Army offenses, and although the offenses are not equivalents, they cover the same sort of conduct. The Army offenses of misbehavior before the enemy and endangering the safety of a command by misconduct, disobedience, or neglect probably would include all the naval offenses.

The AGN battle offenses do not cover the Army offenses of (1) quitting a post or colors to plunder or pillage, and (2) occasioning false alarms.

The naval offenses require more diligence than do A.W. 75 and 76, especially in regard to pursuit of the enemy.

IV. Recommendations

McGuire Articles:

"Misconduct before an enemy:

- "(i) Striking or attempting to strike the flag to an enemy without proper authority;
- "(ii) Displaying cowardice, negligence or disaffection in battle;
- "(iii) Treacherously yielding;
- "(iv) Failing properly to observe orders of his commanding officer or to use his utmost exertions to execute them when ordered to prepare for or join in or when engaged in battle, or when engagement is probable;
- "(v) Being a commanding officer, neglecting to prepare his ship, aircraft or command for action when engagement is probable;
- "(vi) Being an officer, failing to encourage, in his own person, his subordinate to fight courageously;
- "(vii) Being a commanding officer, failing to do his utmost to overtake and capture or destroy any enemy ship, aircraft or force;
- "(viii) Being a commanding officer, failing to afford all practicable relief and assistance to any United States ship, aircraft or command or that of an ally or allies, when engaged in battle."

The White Articles retain the present Navy battle offenses.

The Ballantine, Keefe, and Vanderbilt Reports make no comment on these provisions.

A.W. 76

Uniform Code of Military Justice

Subject: Subordinates Compelling Commander to Surrender.

See C.S., A. W. 75 - Misbehavior Before the Enemy.

Uniform Code of Military Justice

Subject: Improper Use of Countersign - Secret or Confidential Information.
A. W. 77.

I. Army Provisions

1. Articles of War

"ART. 77. Improper Use of Countersign.-- Any person subject to military law who makes known the parole or countersign to any person not entitled to receive it according to the rules and discipline of war, or gives a parole or countersign different from that which he received, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct."

2. Manual for Courts-Martial

No discussion of this offense.

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

No change.

II. Navy Provisions

1. Articles for the Government of the Navy

No similar provision.

2. Naval Courts and Boards

No comment.

3. Proposed Navy Bill

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

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

III. Differences

A. W. 77 forbids the disclosure of a countersign or parole to a person not entitled to it, while A.G.N. 9, forty-eighth, forbids the disclosure of any confidential or secret information to any person not entitled to it. Therefore, the Navy provision

is much broader and more comprehensive.

Disclosure of confidential or secret information probably would be tried under A. W. 96.

The AGN has no offense comparable to giving a parole or countersign other than that received (except perhaps negligently endangering life - AGN 9, Forty-ninth).

Violations of AGN 9, forty-eighth, are not punishable by death, while violations of A.W. 77 may be punished by death.

IV. Recommendations

There is no comment on these provisions in the McGuire, White, Vanderbilt, Ballantine, or Koeffe recommendations.

Uniform Code of Military Justice

Subject: Forcing a Safeguard.
A. W. 78.

I. Army Provisions

1. Articles of War

"ART. 78. Forcing a Safeguard.-- Any person subject to military law who, in time of war, forces a safeguard shall suffer death or such other punishment as a court-martial may direct."

2. Manual for Courts-Martial

No discussion of this offense.

Sample specification 57, p. 245.

"57. In that _____ did, at _____, on or about _____, 19____, force a safeguard, known by him to have been placed over the premises occupied by _____, at _____, by (overwhelming the guard posted for the protection of the same) (_____)."

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

No change.

II. Navy Provisions

No comparable provision.

III. Differences

There is no similar offense in the A.G.N.

Presumably the Army in time of peace and the Navy would try this offense as assault or some other offense depending on the circumstances involved.

IV. Recommendations

There is no comment on this provision in the White, McGuire, Ballantine, Keeffe, Vanderbilt, or Navy JAG Recommendations.

Uniform Code of Military Justice

Subject: Captured Property to be Secured for
Public Service, A. W. 79.

I. Army Provisions

1. Articles of War.

"ART. 79. Captured Property to be Secured for Public Service.-- All public property taken from the enemy is the property of the United States and shall be secured for the service of the United States, and any person subject to military law who neglects to secure such property or is guilty of wrongful appropriation thereof shall be punished as a court-martial may direct."

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

A. W. 79 was not changed by P. L. 759.

II. Navy Provisions

1. Articles for the Government of the Navy.

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

"Ninth (.....)-- Or is negligent or careless in obeying orders, or culpably inefficient in the performance of duty;....."

"ART. 16. Removing property from a prize.-- No person in the Navy shall take out a prize, or vessel seized as a prize, any money, plate, goods, or any part of her equipment, unless it be for the better preservation thereof, or unless such articles are absolutely needed for the use of any of the vessels or armed forces of the United States, before the same are adjudged lawful prize by a competent court; but the whole, without fraud, concealment, or embezzlement, shall be brought in, in order that judgment may be passed thereon; and every person who offends against this article shall be punished as a court martial may direct (R. S. Sec. 1624, Art. 16)."

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

2. Proposed Navy Bill.

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

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

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

'Thirty-seventh. Or takes out of a prize, or vessel or aircraft seized as a prize, any money, plate, goods, or any part of the equipment thereof, unless it be for the better preservation thereof, or unless such articles are absolutely needed for the use of any of the vessels, aircraft, or armed forces of the United States or its allies, before the same is condemned as a lawful prize;

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

"SEC. 47.....

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

'First. Violations of the criminal laws of the United States, whenever enacted, during the time such laws are in force; and any limitation as to Territorial jurisdiction shall not apply,"

3. Statutory Provisions.

"50 USCA 217: Trading in captured or abandoned property. All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them; and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this chapter, and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section, shall be deemed guilty of a misdemeanor, and shall be fined not more than \$5,000, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same. (R. S. § 5313.)"

III. Differences

1. It is not expressly stated in Navy provisions that all public property taken from the enemy is the property of the United States, but this idea is implicit in 50 USCA 217 in the clause reading "and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this chapter, and to turn the same over to such agent without delay." Neglecting to secure such property for the service of the U. S., or wrongfully misappropriating it, could, in view of this clause, be made an offense against Art. 8, Ninth, or Art. 22(a) of the present A.G.N., or new Art. 9, Nineteenth, or new Art. 5(d), First, of the proposed Navy bill.
2. Art. 16 of the present A.G.N, and new Art. 9, Thirty-Seventh, proposed Navy bill, deal with the wrongful appropriation of property out of a prize. Articles of War have no specific provision relating to prize property.

IV. Recommendations

None

Uniform Code of Military Justice

Subject: Dealing in Captured or Abandoned Property,
A. W. 80.

I. Army Provisions

1. Articles of War.

"ART. 80. Dealing in Captured or Abandoned Property.-- Any person subject to military law who buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or to any other person directly or indirectly connected with himself, or who fails whenever such property comes into his possession or custody or within his control to give notice thereof to the proper authority and to turn over such property to the proper authority without delay, shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial, military commission, or other military tribunal may adjudge, or by any or all of said penalties."

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

A. W. 80 was not changed by P. L. 759.

II. Navy Provisions

1. Articles for the Government of the Navy.

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

2. Proposed Navy Bill.

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

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

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

"SEC. 47....."

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

'First. Violations of the criminal laws of the United States, whenever enacted, during the time such laws are in force; and any limitation as to Territorial jurisdiction shall not apply.'"

3. Statutory Provisions.

"50 USCA 217: Trading in captured or abandoned property. All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them; and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this chapter, and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section, shall be deemed guilty of a misdemeanor, and shall be fined not more than \$5,000, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same. (R. S. § 5313.)"

III. Differences

1. None. Trading in captured or abandoned property is not covered expressly in A. G. N., but is made an offense indirectly under Art. 22(a) of the present A.G.N., and Art. 5(d), First, of the proposed Navy bill.
2. Navy articles dealing with the wrongful appropriation of property out of a prize are also related to A. W. 80. See C.S., A. W. 79, Captured Property to be Secured for Public Service.

IV. Recommendations

None.