

Uniform Code of Military Justice

Subject: Relieving, Corresponding With, or Aiding the Enemy.
A. W. 81.

I. Army Provisions

1. Articles of War

"ART. 81. Relieving, Corresponding With, or Aiding the Enemy.-- Whosoever relieves or attempts to relieve the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death or such other punishment as a court-martial or military commission may direct."

2. Manual for Courts-Martial

"Par. 142. EIGHTY-SECOND ARTICLE OF WAR.

"Discussion.....

"A person living in occupied territory who, without dissimulation, merely reports what he sees or what he hears through agents to the enemy, may be charged under A. W. 81 with communicating or giving intelligence to the enemy, but he may not be charged under this article with being a spy.
....."

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

A. W. 81 and A. W. 96 were not changed by P. L. 759.

II. Navy Provisions

1. Articles for the Government of the Navy

"ART. 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--.....

"Fourth (Intercourse with an enemy).--Or gives any intelligence to; or holds or entertains any intercourse with, an enemy or rebel; without leave from the President, the Secretary of the Navy, the commander in chief of the fleet, the commander of the squadron, or, in case of a vessel acting singly, from his commanding officer;

"Fifth (Messages from an enemy).-- Or receives any message or letter from an enemy or rebel, or, being aware of the unlawful

reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof;

2. Proposed Navy Bill

"Sec. 3. Article 4 is renumbered as Art. 8 and amended as follows:

'ART. 8. The punishment of death, or such other punishment as a court martial may adjudge, may be inflicted on any person subject to the Articles for the Government of the Navy--.....

'Second. Or gives any intelligence to, or holds or entertains any intercourse with, an enemy or rebel, without leave from the President; the Secretary of the Navy, the commander in chief of the fleet, the commander of the squadron, or, in case of a vessel or aircraft acting singly, from his commanding officer;

"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--.....

'Thirty-third. Or unlawfully receives any message or letter from any enemy or rebel, or, being aware of the unlawful reception of such message or letter, fails to take the earliest opportunity to inform his superior or commanding officer thereof;

'Sixty-second. Or is guilty of an attempt, or of a conspiracy, or of a solicitation, to commit any offense against these Articles;.....'

"Sec. 47. Art. 5. (a) The following persons shall be subject to the Articles for the Government of the Navy:.....

'In time of war or national emergency, in addition to the foregoing, the following persons shall be subject to the Articles for the Government of the Navy:.....

'Ninth. All persons alleged to be spies or saboteurs, or to have brought or delivered, or to have attempted to bring or deliver, any seducing letter or message from an enemy or rebel, or to have endeavored to corrupt any person subject to these Articles to betray his trust.

'Tenth. All persons, other than persons in the military service of the United States, outside the continental limits of the United States accompanying or serving with the United States Navy, the Marine Corps, or the Coast Guard when serving as a part of the Navy, including but not limited to persons employed by the Government directly, or by contractors or subcontractors engaged in naval projects, and all persons, other than persons in the military service of the United States, within an area leased by the United States which is without the territorial jurisdiction thereof and which is under the control of the Secretary of the Navy:.....'"

III. Differences

1. A. W. 81 lists six offenses specifically. New Art. 8, Second, proposed Navy bill, lists one corresponding specific offense (giving intelligence); the other Army offenses would have to be brought within the general clause in the Navy article "holds or entertains any intercourse with an enemy." There is doubt whether the Army offense of attempting to relieve the enemy with supplies, etc., can be brought within this clause. It might be charged instead as an attempt to commit an offense under new Art. 9, Sixty-second, proposed Navy bill, in which case the maximum sentence would be less than death. Under A. W. 81, a death sentence could be given for an attempt to relieve the enemy.
2. The offenses under A. W. 81 can be committed by direct or indirect actions. The Navy article does not specify whether actions must be direct or may be indirect.
3. A. W. 81 provides the offenses of harboring, or protecting, or holding correspondence with, or giving intelligence to the enemy must be committed knowingly. The Navy article is not specific on this point.
4. New Art. 9, Thirty-third, proposed Navy bill makes it an offense to receive unlawfully any message or letter from the enemy. This offense could possibly be brought within the clause "or holds correspondence with,.....the enemy" in A. W. 81 and charged under that article. If it were, a death sentence could be given, whereas under the Navy article a death sentence is not permissible for the offense. Such an offense might, however, be charged under A. W. 96 instead, in which case a death sentence could not be imposed.
5. New Art. 9, Thirty-third, also makes it an offense for one to fail to inform his superior or commanding officer at once if he knows of the unlawful reception of a message or letter from an enemy. Such an offense is not covered in A. W. 81, but could be charged under A. W. 96.

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6. A. W. 81 makes it an offense to deal etc. with an enemy. The two Navy articles specify "enemy or rebel." These terms are not defined in either Manual.
7. A. W. 81 applies to "whosoever relieves etc." Under it, a person living in occupied territory who, without dissimulation, merely reports what he sees, or hears through agents, to the enemy, may be charged with communicating or giving intelligence to the enemy. (MCM, Par. 142). Such an offense would not be chargeable at all under Art. 4, Fourth, of the present A.G.N., since that article applies only to persons in the naval service. Article 8, Second, of the proposed Navy bill, applies to all persons subject to the A.G.N. Persons subject to the A.G.N., as defined in Art. 5(a), Tenth, proposed Navy bill, include "all persons, other than persons in the military service of the United States, outside the continental limits of the United States accompanying or serving with the United States Navy, the Marine Corps, or the Coast Guard when serving as a part of the Navy, including but not limited to persons employed by the Government directly, or by contractors or subcontractors engaged in naval projects, and all persons, other than persons in the military service of the United States, within an area leased by the United States which is without the territorial jurisdiction thereof and which is under the control of the Secretary of the Navy:....." The offense above could be charged under Art. 8, Second, only as to these persons.

IV. Recommendations

None.

Uniform Code of Military Justice

Subject: Spies. A. W. 82.

I. Army Provisions

1. Articles of War

"ART. 82. Spies.— Any person who in time of war shall be found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be tried by a general court-martial or by a military commission, and shall, on conviction thereof, suffer death."

2. Manual for Courts-Martial

"Par. 142. EIGHTY-SECOND ARTICLE OF WAR.

"BEING A SPY

"Discussion.— The words 'any person' bring within the jurisdiction of courts-martial and military commissions all persons of whatever nationality or status who may be accused of the offense denounced by the article.

"The principal characteristic of this offense is a clandestine dissimulation of the true object sought, which object is an endeavor to obtain information with the intention of communicating it to the hostile party. Thus, soldiers not wearing disguise, dispatch riders, whether soldiers or civilians, and persons in aircraft who carry out their missions openly and who have penetrated hostile lines are not to be considered spies, for the reason that, while they may have resorted to concealment, they have practiced no dissimulation.

"It is necessary to prove an intent to communicate information to the hostile party. This intent will very readily be inferred on proof of a deceptive insinuation of the accused among our forces, but this inference may be overcome by very clear evidence that the person had come within the lines for a comparatively innocent purpose, as to visit his family or that he has assumed a disguise in order to reach his own lines.

"It is not essential that the accused obtain the information sought or that he communicate it. The offense is complete with the lurking or dissimulation with intent to accomplish these objects.

"'A spy, who, after rejoining the army to which he belongs, is subsequently captured by the enemy * * * incurs no responsibility for his previous acts of espionage.' (Rules of Land Warfare.)

"A person living in occupied territory who, with dissimulation, merely reports what he sees or what he hears through agents to the enemy, may be charged under A. W. 91 with communicating or giving intelligence to the enemy, but he may not be charged under this article with being a spy."

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

A. W. 82 was not changed by P. L. 759.

II. Navy Provisions

1. Articles for the Government of the Navy

"ART. 5. Spies.-- All persons who, in time of war, or of rebellion against the supreme authority of the United States, come or are found in the capacity of spies, or who bring or deliver any seducing letter or message from an enemy or rebel, or endeavor to corrupt any person in the Navy to betray his trust, shall suffer death, or such other punishment as a court martial may adjudge."

2. Naval Courts and Boards

"SEC. 333. Conditions necessary to show jurisdiction: Jurisdiction as to persons.--....."

"In addition to the foregoing classes of persons, those named in the 5th (Spies),.....Article(s) for the Government of the Navy are subject to the provisions of the A.G.N. and amenable to trial by court martial....."

3. Proposed Navy Bill

"SEC. 3. Article 4 is renumbered as Art. 8 and amended as follows:

'ART. 8. The punishment of death, or such other punishment as a court martial may adjudge, may be inflicted on any person subject to the Articles for the Government of the Navy--....."

'Sixteenth. Or, in time of war, or of rebellion against the supreme authority of the United States, comes or is found in the capacity of a spy or saboteur, or who brings or delivers any seducing letter or message from an enemy or rebel, or endeavors to corrupt any person subject to these Articles to betray his trust;.....'"

"SEC. 47. Art. 5. (a) The following persons shall be subject to the Articles for the Government of the Navy:.....

'Ninth. Or persons alleged to be spies or saboteurs, or to have brought or delivered, or to have attempted to bring or deliver, any seducing letter or message from any enemy or rebel, or to have endeavored to corrupt any person subject to these Articles to betray his trust,'"

III. Differences

1. A. W. 82 applies only to spies, while A.G.N., Art. 8, paragraph Sixteenth, also applies to saboteurs and persons who carry seducing messages for the enemy or try to corrupt any person subject to the A.G.N. However, these additional offenses might be tried as relieving or corresponding with the enemy. See C.S., A. W. 81.
2. A. W. 82 applies only "in time of war" while the corresponding Navy article applies "in time of war or rebellion."
3. The Army provision requires the accused to be found in or about a fortification, post, quarters, or an encampment, while the Navy provision has no such requirement.
4. The Army carries a mandatory punishment of death, while the Navy provision provides for death or other punishment as a court-martial may adjudge.

IV. Recommendations

None.

Uniform Code of Military Justice

Subject: Injuries to or Wrongful Disposal of Property.
A.W. 83,84, 89

I. Army Provisions

1. Articles of War

"ART. 83. Military Property--Willful or Negligent Loss, Damage or Wrongful Disposition.--Any person subject to military law who willfully, or through neglect, suffers to be lost, spoiled, damaged, or wrongfully disposed of, any military property belonging to the United States, shall make good the loss or damage and suffer such punishment as a court-martial may direct."

"ART. 84. Waste or Unlawful Disposition of Military Property Issued to Soldiers.--Any soldier who sells or wrongfully disposes of or willfully or through neglect injures or loses any horse, arms, ammunition, accouterments, equipment, clothing, or other property issued for use in the military service, shall be punished as a court-martial may direct."

"ART. 89. Good Order to be Maintained and Wrongs Redressed.--All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or willfully destroys any property whatsoever (unless by order of his commanding officer), or commits any kind of depredation or riot, shall be punished as a court-martial may direct."

As to Redress of Wrongs, see C.S., A.W. 105.

2. Manual for Courts-Martial

"Par. 143. EIGHTY-THIRD ARTICLE OF WAR

"Suffering Military Property to be Lost, etc.

"Discussion.--The loss, etc., may be said to be willfully suffered by one, who knowing the loss, etc., to be imminent or actually going on, takes no steps to prevent it, as where a sentinel seeing a small and readily extinguishable fire in a stack of hay on his post allows it to burn up. A suffering through neglect implies an omission to take such measures as were appropriate under the circumstances to prevent a probable loss, damage, etc..

"The willful or neglectful sufference specified by the article may consist in a deliberate violation or positive disregard of some specific injunction of law, regulations, or orders; or it may be evidenced by such circumstances as a reckless or unwarranted personal use of the property; causing or allowing it to remain exposed to the

weather, insecurely housed, or not guarded; permitting it to be consumed, wasted, or injured by other persons; loaning it to an irresponsible person by whom it is damaged, etc. (Winthrop.)

"Proof.--(a) That certain military property belonging to the United States was lost, spoiled, damaged, or wrongfully disposed of in the manner alleged; (b) that such loss, etc., was suffered by the accused through a certain omission of duty on his part; (c) that such omission was willful, or negligent, as alleged; and (d) the value of the property, as alleged.

"Although there may be no direct evidence that the property was military property belonging to the United States, still circumstantial evidence such as evidence that the property shown to have been lost, spoiled, damaged, or wrongfully disposed of by the accused was of a type and kind issued for use in, or furnished and intended for the military service, might warrant the court in inferring that it was such military property."

"Par. 144. EIGHTY-FOURTH ARTICLE OF WAR

"a. Selling or Wrongfully Disposing of Military Property

"Discussion.--The article applies to any property issued for use in the military service, and the fact that the property sold, disposed of, lost, or injured was issued to someone other than the accused is immaterial. 'Clothing' includes all articles of clothing whether issued under a clothing allowance or otherwise.

"Proof.--(a) That the accused soldier sold or otherwise disposed of certain property in the manner alleged; (b) that such disposition was wrongful; (c) that the property was issued for use in the military service; and (d) the value of the property as alleged.

"Although there may be no direct evidence that the property was issued for use in the military service, still circumstantial evidence such as evidence that the property shown to have been sold or otherwise disposed of by the accused soldier was of a type and kind issued for use in the military service might warrant the court in inferring that it was so issued.

"b. Willfully or Through Neglect Injuring or Losing Military Property

"Discussion.--See 144a. A willful injury or loss is one that is intentionally occasioned. A loss or injury is occasioned through neglect when it is the result of a want of such attention to the nature or probable consequences of an act or omission as was appropriate under the circumstances.

"Proof.--(a) That certain property was injured in a certain way or lost, as alleged; (b) that such property was issued for use in the military service; (c) that such injury or loss was willfully caused by

the accused in a certain manner, as alleged; or that such injury or loss was the result of neglect on the part of the accused; and (d) the value of the property, as alleged.

"Where it is shown by either direct or circumstantial evidence that the property was issued to the accused, it may be presumed that the injury or loss shown unless satisfactorily explained was due to the neglect of the accused."

"Par. 147. EIGHTY-NINTH ARTICLE OF WAR

"a. Committing Any Waste or Spoil

"Discussion.--The terms 'waste' or 'spoil' as used in this article refer to such acts of voluntary destruction of a permanent damage to real property as burning down buildings, tearing down fences, cutting down shade or fruit trees, and the like.

"Proof.--(a) That the accused being with a certain command in quarters, camp, garrison, or on the march, committed waste or spoil on certain property in the manner alleged; and (b) that such acts were not ordered by his commanding officer.

"b. Willfully Destroying Property

"Discussion.--To be destroyed it is not necessary that the property be completely demolished or annihilated. It is sufficient if it is so far injured as to be useless for the purpose for which it was intended.

"Proof.--(a) That the accused being with a certain command in quarters, camp, garrison, or on the march, destroyed certain property, as alleged; and (b) that such destruction was willful and was not ordered by his commanding officer.

"c. Committing Depredation or Riot

"Discussion.--The term 'any kind of depredation' includes plundering, pillaging, robbing, and any willful damage to property not included in the preceding specific terms of the article.

"A riot is a tumultuous disturbance of the peace by three or more persons assembled together of their own authority, with the intent mutually to assist one another against anyone who shall oppose them in the execution of some enterprise of a private nature, and who afterwards actually execute the same in a violent and turbulent manner, to the terror of the people, whether the act intended was of itself lawful or unlawful.

"Proof.--That the accused being with a certain command in quarters, camp, garrison, or on the march, committed certain acts of depredation on certain property, or certain acts of rioting, as alleged."

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

Art. 83. No change.
Art. 84. No Change.

"ART. 89. GOOD ORDER TO BE MAINTAINED AND WRONGS REDRESSED.--

"All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or wrongfully destroys any property whatsoever or commits any kind of depredation or riot, shall be punished as a court-martial may direct."

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--

'Tenth (Preventing destruction of public property).--Or does not use his best exertions to prevent the unlawful destruction of public property by others;

'Sixteenth (Plundering on shore).--Or, when on shore, plunders, abuses, or maltreats any inhabitant, or injures his property in any way;!'"

"ART. 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--

'Eleventh (Unlawful destruction of public property).--Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of any enemy, pirate, or rebel;....!'"

2. Naval Courts and Boards

"Sec. 52. Destruction of public property.--This is provided for in the 4th A.G.N., paragraph 11.

"Charge:

"Unlawfully setting on fire)
"Unlawfully destroying) public property

"Elements: The intent to set on fire or destroy must be proved. The word 'unlawfully' is necessary in the specification because it appears in the statute."

"Sec. 68. Preventing destruction of public property.--This is provided for in the 8th A.G.N., paragraph 10.

"Charge: Not using his best exertions to prevent the unlawful destruction of public property.

"Elements: 'Best' in this charge means most likely to succeed in the prevention. It must be shown that the accused knew that the destruction was unlawful and that he failed to take any steps to prevent it, or that he knowingly took steps which he knew or should have known were not the most likely to succeed in preventing the destruction"

"Sec. 71. Waste or public property.--This is provided for in the 8th A.G.N., paragraph 15.

"Charges:

"1. Wasting (ammunition
(provisions
(public property

"2. Having the power to) ammunition)
prevent waste of) provisions) knowingly
public property) permitting it.

"Elements: Waste may consist in not taking proper care of the ammunition, etc., and thus allowing it to be lost or damaged; in recklessly expending in firings; giving it away, etc."

"Sec. 72. Plundering, etc., on shore.--This is provided for in the 8th A.G.N., paragraph 16.

"Charges:

"1. When on shore (plundering)
(abusing) an inhabitant.
(maltreating)

"2. When on shore injuring the property of an inhabitant.

"A person or corporation resident or incorporated within the state or country where the act is committed is an inhabitant. If the person or corporation is not an inhabitant the offense must be laid under one of the specific charges, or, if no appropriate one can be found, under scandalous conduct. In any case, the specific charge, if there be one, is to be preferred."

"Sec. 111. Wilful destruction of property.--This is provided for under the 22nd A.G.N. If the property is of the United States, the offense is charged as shown in section 52. If the property is not of the United States but the conditions of the 8th A.G.N., paragraph 16, are satisfied, the offense should be laid thereunder, as shown in section 72.

"Charge.

"Wilfully destroying property.

"Elements:

"This offense consists of any wilful physical injury to property of another from ill will or resentment toward the owner or from wantonness.

"Lesser included offense:

"Conduct to the prejudice of good order and discipline."

"Sec. 92. Affray or disorder, riot, rout, and unlawful assembly.--
This is provided for under the 22nd A.G.N.

"Elements: An affray is the fighting of two or more persons, by mutual consent or otherwise, in a public place, to the terror of the people. A disorder is any conduct of such a character that it disturbs and annoys the peace and quiet of the community. Instances are, loud crying out or singing or other noisy conduct, swearing, or cursing, indecent exposure of the person, etc.

"An unlawful assembly is an assembly of three or more persons with intent to commit a crime by open force, or with intent to carry out any common purpose, lawful or unlawful, in such a manner as to give firm and courageous persons reasonable grounds to apprehend a breach of the peace.

"A riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the public; or a lawful assembly may become a riot if the persons assembled form and proceed to execute an unlawful purpose to the terror of the public, although they had not that purpose when they assembled.

"A rout is an unlawful assembly which had made a motion towards the execution of the common purpose of the persons assembled."

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--.....

'Twentieth. Or unlawfully sets on fire, or otherwise unlawfully destroys, any public property not at the time in possession of an enemy, pirate, or rebel, or does not use his best exertions to prevent the unlawful destruction of such public property by others;

'Twenty-fifth. Or wastes any ammunition, provisions, or other public property, or having power to prevent it, knowingly permits such waste;

'Twenty-sixth. Or, when on shore, plunders, abuses, or maltreats any inhabitant;

'Forty-first. Or embezzles, or willfully or maliciously injures or destroys, private property not his own."

III. Differences

1. The proposed A.G.N. differentiates between public and private property, while the Articles of War distinguish military property from other property.

Wrongful sale, disposal, stealing, or misappropriation of military property of the U.S. is also covered by A.W. 94 and A.G.N. 9, Eighth, so that there is an overlap in the Articles of War. See C.S., A.W. 94.

2. The proposed A.G.N. do not specifically cover injuries to public property other than destruction or setting it afire, while A.W. 89 covers injury to any property.

3. The proposed A.G.N. provides for the prevention of the destruction of public property, while the Articles of war provide for the prevention of injury to military property.

4. A.W. 83 provides for reparation for the loss or damage of military property suffered to be lost or damaged, while the A.G.N. do not.

5. Proposed A.G.N. Article 9, paragraph Twenty-sixth, covers only "inhabitants" while A.W. 89 covers depredations against any person.

6. A.W. 89 specifically provides for riots and disorders, while the A.G.N. punishes these offenses under the general articles.

IV. Recommendations

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

Uniform Code of Military Justice

Subject: Waste or Unlawful Disposition of Military
Property Issued to Soldiers.

See C.S., A. W. 83 -- Injuries to or Wrongful Disposal of Property.

Uniform Code of Military Justice

Subject: Drunkenness - A.W. 85.

I. Army Provisions

1. Articles of War

"ART. 85. Drunk on Duty.-- Any officer who is found drunk on duty shall, if the offense be committed in time of war, be dismissed from the service and suffer such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall be punished as a court-martial may direct. Any person subject to military law, except an officer, who is found drunk on duty, shall be punished as a court-martial may direct."

2. Manual for Courts-Martial

"Par. 145. EIGHTY-FIFTH ARTICLE OF WAR

"BEING FOUND DRUNK ON DUTY

"Discussion.-- Under this article it is necessary that accused be found to be drunk while actually on duty, but the fact that he became drunk before going on duty while material in extenuation is immaterial on the question of guilt. A person is not found drunk on duty in the sense of this article, 'if he is simply discovered to be drunk when ordered, or otherwise required, to go upon the duty, upon which, because of his condition, he does not enter at all.' (Winthrop) But the article does apply although the duty may be of a merely preliminary or anticipatory nature, such as attending an inspection by a soldier designated for guard, or an awaiting by a medical officer of a possible call for his services.

"The term 'duty' as used in this article means of course military duty. But, it is important to note, every duty which an officer or soldier is legally required, by superior military authority, to execute, and for the proper execution of which he is answerable to such authority, is necessarily a military duty. (Winthrop.)

"The commanding officer of a post, or of a command, or detachment in the field in the actual exercise of command, is constantly on duty. In the case of other officers, or of enlisted men, the term 'on duty' relates to duties of routine or detail, in garrison or in the field, and does not relate to those periods when, no duty being required of them by orders or regulations, officers and men occupy the status of leisure known to the service as 'off duty.' (See Davis.)

"In time of war and in a region of active hostilities the circumstances are often such that all members of a command may properly be considered as being continuously on duty within the meaning of this article.

"So, also, an officer of the day and members of the guard are on duty during their entire tour within the meaning of this article, but a sentinel found drunk on post should ordinarily be charged under A.W. 86.

"The offense of a person who absents himself from his duty and is found drunk while so absent, or who is relieved from duty at a post and ordered to remain there to await orders, and is found drunk during such status, is not chargeable under this article.

"Whether the drunkenness was caused by liquor or drugs is immaterial; and any intoxication which is sufficient sensibly to impair the rational and full exercise of the mental and physical faculties is drunkenness within the meaning of the article.

"Proof.--(a) That the accused was on a certain duty, as alleged, and (b) that he was found drunk while on such duty.

"On an issue of drunkenness, admissible testimony is not confined to a description of the conduct and demeanor of the accused, and the testimony of a witness that the accused was drunk or was sober is not inadmissible on the ground that it is an expression of opinion."

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

"ART. 85. DRUNK ON DUTY.--

"Any person subject to military law, who is found drunk on duty, shall be punished as a court-martial may direct."

II. Navy Provisions

1. Articles for the Government of the Navy

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

'First (Scandalous conduct):--Who is guilty of profane swearing, falsehood, drunkenness, gambling, fraud, theft, or any other scandalous conduct tending to the destruction of good morals;!'

2. Naval Courts and Boards

"Sec. 55. Drunkenness.-- This is provided for in the 8th A.G.N., paragraph 1.

"Charge: Drunkenness.

"Elements: Any intoxication from alcoholic liquor which is sufficient sensibly to impair the rational and full exercise of the mental and physical faculties to a degree that will incapacitate for the proper performance of any duty which a person of the rank or rate of the accused could properly be called upon to perform, constitutes drunkenness.

"If the drunkenness occur on duty this must be alleged as an aggravation, as a greater limit of punishment is provided in such a case."

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--.....

'Fifty-third. Or, while under the influence of alcoholic liquors or narcotic drugs, operates any vehicle;

'Fifty-fifth. Or is incapacitated for the proper performance of duty by the use of, or previous indulgence in, alcoholic liquors or narcotic drugs,.....!'

III. Differences

A. W. 85 makes drunkenness on duty an offense, while A.G.N. 9, fifty-fifth, makes being incapacitated for duty due to the use of intoxicants an offense. The Army offense applies only when a person is on duty, while the Navy offense comprehends being intoxicated at any time. However, the Navy treats drunkenness on duty as an aggravation of the offense.

A.G.N. 9, fifty-third, provides for operating a vehicle while under the influence of alcohol or drugs, while the Articles of War contain no such specific offense.

Other drunkenness offense in the Army are treated under A.W. 96.

An Army sentinel found drunk on post is punished under A. W. 86.

IV. Recommendations

White Study, No. 2, would make "drunkenness" an offense.

Vanderbilt Report:

"4. Article of War 85 should be amended so that it will read as follows:

"Art. 85. Drunk on Duty. Any person subject to military law who is found drunk on duty shall be punished as a court-martial may direct."

"The purpose of this amendment is to eliminate a motive for the unwarranted acquittal of an officer charged with drunkenness on duty. As the article is now written an officer convicted of drunkenness in time of war, must be sentenced to dismissal."

House Representatives Report No. 1034, 80th Congress, 1st Session. (Committee on Armed Services):

"A lesser punishment than dismissal from service for officers drunk during time of war has been provided."

Uniform Code of Military Justice

Subject: Misbehavior of Sentinel, A. W. 86.

I. Army Provisions

1. Articles of War

"ART. 86. Misbehavior of Sentinel.-- Any sentinel who is found drunk or sleeping upon his post, or who leaves it before he is regularly relieved, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall suffer any punishment, except death, that a court-martial may direct."

2. Manual for Courts-Martial

"Par. 146. EIGHTY-SIXTH ARTICLE OF WAR

"a. BEING FOUND DRUNK ON POST

"The term 'sentinel' does not include a watchman or an officer or a noncommissioned officer of the guard unless posted as such.

"A sentinel is on post within the meaning of this article not only when he is walking a duly designated sentinel's post, as is ordinarily the case in garrison, but also, for example, when he may be stationed in observation against the approach of the enemy, or on post to maintain internal discipline, or to guard stores, or to guard prisoners while in confinement or at work.

"A sentinel's post is not limited to an imaginary line, but includes, according to orders or circumstances, such contiguous area within which he may walk as may be necessary for the protection of property committed to his charge or for the discharge of such other duties as may be required by general or special orders. The sentinel who goes anywhere within such area for the discharge of his duties does not leave his post, but if found drunk or sleeping within such area he may be convicted of a violation of this article.

"The fact that the sentinel was not posted in the regular way is not a defense.

"Proof.--(a) That the accused was posted as a sentinel, as alleged; and (b) that he was found drunk while on such post.

"b. BEING FOUND SLEEPING ON POST

"Discussion.--See 146a. The fact that the accused had been

previously overtaxed by excessive guard duty is not a defense, although evidence to that effect may be received in extenuation of the offense.

"Proof.--(a) That the accused was posted as a sentinel, as alleged; and (b) that he was found sleeping while on such post.

"c. LEAVING POST BEFORE BEING RELIEVED

"Discussion.--Sec 146a. The offense of leaving post is not committed when a sentinel goes an immaterial distance from the point, path, area, or object which was proscribed as his post.

"Proof.--(a) That the accused was posted as a sentinel, as alleged; and (b) that he left such post without being regularly relieved."

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, Persons to whom applicable.-- The punishment of death, or such other punishment as a court-martial may adjudge, may be inflicted on any person in the naval service--.....

'Eighth (Sleeping on watch).-- Or sleeps upon his watch;

'Ninth (Leaving station).-- Or leaves his station before being regularly relieved;'"

2. Naval Courts and Boards

No discussion of elements of above offenses.

3. Proposed Navy Bill

"ART. 8. The punishment of death, or such other punishment as a court martial may adjudge, may be inflicted on any person subject to the Articles for the Government of the Navy--.....

'Fifth. Or sleeps upon his watch;

'Ninth. Or, in time of battle, deserts his duty or station, or entices others to do so;'"

"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-ninth. Or is absent without authority from his place of duty;"

III. Differences

The A.G.N. does not specifically provide for drunkenness of a sentinel; therefore drunkenness on watch during time of war would not be punishable by death, unless it is included in betrayal of trust. AGN, Art. 8, par. 4. See C.S., A.W. 85.

The Army offense of sleeping on post is punishable by death only in time of war, while the Navy offense is punishable by death at any time.

The Army offense of leaving one's post without being relieved is similar to the Navy offense of deserting his station in time of battle, except that the Army offense applies in time of war, while the Navy offense applies only in time of battle.

The same act at other times would be punishable as A.W.O.L. by the Navy.

IV. Recommendations

The McGuire Articles and the White Study, No. 2, would make "sleeping on watch in time of War" a capital offense.

Uniform Code of Military Justice

Subject: Interest in Sale of Provisions, A.W. 87.

I. Army Provisions

1. Articles of War,

"ART. 87. Personal Interest in Sale of Provisions.-- Any officer commanding in any garrison, fort, barracks, camp, or other place where troops of the United States may be serving who, for his private advantage, lays any duty or imposition upon or is interested in the sale of any victuals or other necessaries of life brought into such garrison, fort, barracks, camp, or other place for the use of troops, shall be dismissed from the service and suffer such other punishment as a court-martial may direct."

2. Manual for Courts-Martial.

MCM does not discuss A. W. 87.

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

No change.

II. Navy Provisions

1. Articles for the Government of the Navy.

"Article 11. Dealing in supplies.--

"No person in the naval service shall procure stores or other articles or supplies for, and dispose thereof to, the officers or enlisted men on vessels of the Navy, or at navy yards or naval stations, for his own account or benefit."

2. Naval Courts and Boards.

No discussion of Art. 11.

3. Proposed Navy Bill.

Article 11 is renumbered as Article 12.

"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--.....

'Sixtieth. Or fails to comply with or violates any provision of articles 1, 3, 12 and 13 of these Articles;..
.....'"

III. Differences

A. W. 87 applies to commanding officers, while A.G.N. 12 applies to any person in the Navy.

A. W. 87 applies to victuals or other necessities of life, while A.G.N. 12 applies to all articles.

A. W. 87 applies to laying any duty upon or being interested in the sale of such articles, while A.G.N. forbids the procuring and disposing of such articles for one's own account or benefit.

IV. Recommendations

The McGuire and White proposed A.G.N. do not mention this offense.

The Vanderbilt Report recommends repeal of A. W. 87 as obsolete.

Uniform Code of Military Justice

Subject: Unlawfully Influencing Actions of Court.
A. W. 88.

I. Army Provisions

1. Articles of War

Present A.W. 88, relating to intimidation of persons bringing provisions, has been repealed.

2. Manual for Courts-Martial

"Par. 87. COURTS-MARTIAL--ACTION--Reviewing Authority.--

"b. Powers and duties--general--.....Neither an acquittal or a finding of 'not guilty' requires approval or confirmation; and neither should be disapproved.....The reviewing authority may, however, properly advise the members of the court by letter of his nonconcurrence in an acquittal or in a finding of not guilty, and the reasons for such non-concurrence....."

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

"Sec. 233. Article 88 is amended to read as follows:

"ART. 88. UNLAWFULLY INFLUENCING ACTION OF COURT.-- No authority appointing a general, special, or summary court-martial nor any other commanding officer, shall censure, reprimand, or admonish such court, or any member thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise, by such court or any member thereof, of its or his judicial responsibility. No person subject to military law shall attempt to coerce or unlawfully influence the action of a court-martial or any military court or commission, or any member thereof, in reaching the findings or sentence in any case, or the action of an appointing or reviewing or confirming authority with respect to his judicial acts."

II. Navy Provisions

1. Articles for the Government of the Navy

There is no article in the present A.G.N. making it a specific offense to coerce or influence the member of a court-martial. The offense is probably punishable under Art. 22(a), the general article covering offenses not specified.

2. Naval Courts and Boards

"Sec. 472 $\frac{1}{2}$. Action of reviewing authority on acquittal.--

"No action shall be taken by a reviewing authority which purports to approve or disapprove an acquittal or finding of not guilty or not proved.....If a reviewing authority does not concur in the finding of the court, he may so state in his action upon the record, giving such reasons as he may deem appropriate for the information of the members of the court and other reviewing authority....."

"Sec. 473. Power of reviewing authority: Returning record.--
....."

"It is not in the power of the convening authority to compel a court to reverse its decision upon a motion or plea, when the court's ruling has terminated the trial, or to change its findings or sentence, when, upon being reconvened by him, it has declined to modify them, nor either directly or indirectly to enlarge the measure of punishment imposed by a court martial, nor to coerce a court to adopt his view upon any question arising in the course of its proceedings. When the proceedings, findings, or sentence of a court are illegal, the convening authority should set them aside.

"The convening authority in his remarks returning a record for revision should not, in effect, threaten disciplinary action against the members of the court."

3. Proposed Navy Bill

"Sec. 39. Article 53 is renumbered as Article 39 and amended to read as follows:

"ART. 39."

"(j) The Secretary of the Navy is authorized and directed to issue such regulations as may be necessary to assure that the members of every court martial shall be free to perform their sworn duties without any coercion or influence, directly or indirectly, on the part of any person in the naval service."

"Sec. 11. Article 14 is renumbered as Article 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--....."

"Forty-fifth. Or corruptly; or by threat or force, or by any threatening communication, endeavors to influence, intimidate, or impede any witness in any disciplinary proceeding in the naval service, or injures any witness in his person or property on account of the witness attending or having attended such disciplinary proceeding, or on account of the witness testifying or having testified to any matter therein;

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

"Sec. 47....."

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

"Fourth. Violations of the laws, orders, regulations, or customs of the naval service....."

III. Differences

1. Army provisions write into the Articles of War a specific prohibition against the censuring of a court martial by the convening authority, or its coercion by any person. A violation of these prohibitions will be punishable under A. W. 96. The Navy will prohibit the same kind of conduct by means of regulations promulgated by SecNav, the violation of which will be punishable under new Art. 9, Sixty-third.
2. The proposed Navy bill makes a specific offense of influencing, intimidating, or impeding a witness in any disciplinary proceeding (Sec. 11, new Art. 9, 45th). Articles of War do not have a similar specific offense.

IV. Recommendations

1. Vanderbilt Report (Page 6 ff). RECOMMENDATIONS:

a) "The Manual for Courts-Martial, United States Army, should provide that it is improper and unlawful for any person to attempt to influence the action of an appointing or reviewing authority or the action of any court-martial, general, special, or summary, in reaching its verdict or pronouncing sentence, except persons connected with the work of the court, such as members of the court, attorneys, and witnesses; and this prohibition should be made expressly applicable to the appointing or reviewing

authority. It should be stated that any violation will be considered conduct of a nature to prejudice military discipline and to bring discredit upon the military service in violation of Article of War 96.

b) "The Manual should also contain an express prohibition against the reprimand of the court or its members in any form. The reprimand sometimes given a jury by a judge in a civil court for an erroneous verdict furnishes no parallel or excuse for the present Army practice. The jury upon its discharge returns to the body of the people, but the members of a court-martial remain in the service subject to the will of superior officers as to promotions, assignments to duty, and transfers. The statement on page 74 of the Manual that the reviewing authority may properly advise members of a court by letter of his non-concurrence in an acquittal should be expunged. It is a relic of the power formerly possessed by the reviewing authority to return a record of trial to the court for reconsideration of findings of not guilty. This power was taken away in the amendment of the Articles of War and regulations after the First World War and the spirit of the repeal should be respected..
.....

c) "The Manual should contain a statement that it is the duty of courts-martial to exercise their own judgment in imposing sentences and that they should not pronounce sentences which they know to be excessive, relying on the reviewing authority to reduce them"

2. Ballantine Report '43 (Page 23): Comment on the desirability of providing greater independence to the judicial function:

"There is a substantial risk that members of courts, judge advocates and defense counsel may not be altogether free from pressure and restraint by superior authority exercised not in violation but as a part of the system. Convening authorities, for example, not only convene the courts from among those under their command but also order men to trial, and, since it is not their practice to order a man to trial unless reasonably convinced of his guilt, acquittal may be considered tantamount to an expression of disagreement with a superior officer. The opinions of convening authorities respecting adequacy of sentences, not infrequently known to the courts convened by them, may result in the imposition of unduly severe sentences....."

3. Keefe Report (Page 194 ff):

"(iv) The convening authority's power of review carries with it a large measure of indirect control over the court and its actions. If the convening authority does not agree with

the findings of the court, or believes that the sentence is inadequate, even though he may be powerless to change the result in the particular case, he can express his opinion in his action or in a letter to the court. This cannot but have its effect on subsequent cases. The mere knowledge that it can take place is apt to influence a court, without any expression of disapproval or non-concurrence ever being made by the convening authority."

"Nor will palliatives solve the problem. The proposal has sometimes been made that the reviewing authority be prohibited from criticizing a court for its action in a particular case. Obviously this deals with only a surface manifestation, and fails to get at the heart of the difficulty."

The Keeffe Board recommends that the convening authority should not have any power to review the findings and sentence of the court at all; his control of the case should cease upon references of the charges to trial. The Board feels that any minor reforms short of this will not really solve the problem of command domination of the court.

4. McGuire Report, Page 5:

"This has been found to be the most serious criticism against the administration of naval justice, because the thought has been expressed with considerable acerbity, that the verdict or finding in a large number of cases strangely comports to what is felt is the desire of the convening authority. There is more than a modicum of truth here. A fair system of justice can only be had where the judges and other officers of the court are outside the reach and influence of either party.

"It has been sought to obviate this vicious defect, in the new Articles, by making the function of the Judge Advocate conform to what the term itself connotes. He would act in fact as a Judge - thus making certain the protection of those fundamental concepts of justice referred to and with the added certitude that as a consequence they will be given something more than a nod.

"But more than that - and most important, he would under the proposal referred to supra be, from the standpoint of function, under the sole and exclusive jurisdiction of the Judge Advocate General - thus making him as independent as is conceivably possible, and outside the control and the influence of the convening authority....."

Uniform Code of Military Justice

Subject: Good Order to be Maintained and Wrongs
Redressed.

See C.S., A. W. 83 -- Injuries to or Wrongful Disposal of
Property.

Uniform Code of Military Justice

Subject: Provoking Speeches or Gestures, A. W. 90.

I. Army Provisions

1. Articles of War.

"ART. 90. Provoking Speeches or Gestures.-- No person subject to military law shall use any reproachful or provoking speeches or gestures to another; and any person subject to military law who offends against the provisions of this article shall be punished as a court-martial may direct."

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

A. W. 90 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--....."

"Third (Quarreling).-- Or quarrels with, strikes, or assaults, or uses provoking or reproachful words, gestures, or menaces toward, any person in the Navy;

"Fourth (Fomenting quarrels).-- Or endeavors to foment quarrels between other persons in the Navy;....."

2. Naval Courts and Boards.

"SEC. 61. Quarreling.--....."

"A quarrel not resulting in an assault would very rarely be a court-martial offense."

"SEC. 62. Reproachful words.--....."

"Elements: The words of the charge must be taken in their usual acceptation. To constitute the offense it is essential that the person toward whom the words, gestures, or menaces were directed was actually present at the time. ..."

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--....."

"Thirteenth. Or uses provoking or reproachful words or gestures toward any person in the naval service, or strikes, threatens to strike, or assaults any person;

"Fourteenth. Or endeavors to foment quarrels between other persons in the naval service;....."

III. Differences

1. None. The Navy article contains offenses other than that specified in A. W. 90, but these are covered in other Articles of War. See C.S., A. W. 93, Various Crimes, and C.S., A. W. 96, General Article. See also C.S., A. W. 68, Quarrels; Frays; Disorders.

IV. Recommendations

None