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THE UNIFORM CODE OF MILITARY JUSTICE
TENTATIVE DRAFT OF JANUARY 7, 1949

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The attached draft of the Uniform Code of Military Justice is a reorganization of the Articles which have been decided upon by the Committee on a Uniform Code of Military Justice. Certain editorial changes have been made and, in order to present a complete Code, certain provisions have been included which have yet to receive approval. Among these provisions are the following Articles or subsections: 4, 39, 46, 49(a), 51(b), ^{54(d)}~~53(d)~~, 66(g), 67(g), 68(b), 73(a), 74(b), 75, 120, 138, 139, and 141.

Certain Articles of War and Articles for the Government of the Navy which have no place in a code of military justice but which should continue to be law will either be transposed or reenacted in the legislation for enactment of the Code. These Articles are as follows: AGN ²¹~~4~~ and ⁶⁷~~46~~, A. W. 107-109, 112, 113, 117-120.

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UNIFORM CODE OF MILITARY JUSTICE

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~~Law~~ Specialist
Legal Officer
~~Law Officer~~

Uniform Code of Military Justice

Art. 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 including the Marine Corps, the Air Force, and, except when operating as a part of the Navy, the Coast Guard.

(3) "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.

(4) "Officer" shall be construed to refer to a commissioned officer including a commissioned warrant officer.

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

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

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

(8) "Accuser" shall be construed to refer to the person who signs and swears to the charges and to any other person

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Proposed Article 1

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has an interest other than official ~~in~~
who ~~originates or~~ investigates the prosecution of the accused.

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

~~(10) Words used in the masculine gender shall be construed to
include the feminine gender.~~

Midshipman

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Proposed Article 2
Page 1

Uniform Code of Military Justice

Art. 2. Persons Subject to the Code

The following persons are subject to this ~~Military Justice Code~~ *CP*

- (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 and inductees, from the dates of their muster or acceptance into the armed forces of the United States; and all other persons lawfully called, drafted, 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, draft, or order to obey the same;
- (2) Cadets, Aviation Cadets and Midshipmen ~~at the Naval Academy~~;
- (3) Reserve personnel who are voluntarily on inactive duty training authorized by written orders;
- (4) Retired personnel of ~~a regular or~~ ^{regular} reserve component of the armed forces, who are ~~entitled to receive pay~~ ^{receiving hospital benefits} from the armed force in which they served;
- (5) Members of the Fleet Reserve and Fleet Marine Corps Reserve;
- (6) All persons in custody of the armed forces serving a sentence imposed by a court-martial;
- (7) Personnel of the Coast and Geodetic Survey, Public Health Service, and other organizations, when serving with the armed forces of the United States;
- (8) Prisoners of war in custody of the armed forces;
- (9) All persons serving with, employed by, accompanying,

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Proposed Article 2

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or under the supervision of the armed forces without the continental limits of the United States ^{was the limit of} and the following territories, ^{by name,} 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;

(10) In time of war, all persons serving with, ^(employed by,) or accompanying the armed forces away from the seat of the government: and

(11) All persons within an area leased by the United States which is under the control of the Secretary of a Department and which is without the continental limits of the United States ^{was the limit of} and ^{of} the following territories; ^{and} 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.

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Proposed Article 3
Page 1

Uniform Code of Military Justice

Art. 3. Jurisdiction to Try Certain Personnel

(a) Reserve personnel of the armed forces who are charged with having committed, while in a status in which they are subject to this Code, any offense against this Code may be retained in such status, or, whether or not such status has terminated, placed in an active duty status, for disciplinary action, without their consent, but not for a longer period of time than may be required for such action. ~~Nothing in this paragraph shall be construed to modify any provision of the law of war, treaties or conventions of the United States, or Article 28 of this Code.~~

(b) All persons discharged from the armed forces subsequently charged with having fraudulently obtained said discharge shall be subject to trial by court-martial on said charge and shall 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.

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Proposed Article 4
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Uniform Code of Military Justice

Art. 4. Dismissed Officer's Right to Trial by Court-Martial.

(a) When any officer, dismissed by order of the President, makes, ^{a written} ~~in writing,~~ an application for trial by court-martial, setting forth, under oath, that he has been wrongfully dismissed, the President shall, as soon as practicable, ^{shall convene} ~~conv.~~ 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 the offenses with which he is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the sentence adjudged, as finally approved or affirmed, does not include dismissal or death, the ^{Secretary of the Department} ~~Judge Advocate General~~ of the armed force of which the officer was a member 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} ~~Judge Advocate General~~ of the armed force of which the officer was a member 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 ^{by an acquittal or otherwise} under the authority of this article, the President alone may reappoint

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Proposed Article 4

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the officer in the same manner as provided in Art. 75.

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

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Proposed Article 5
Page 1

Uniform Code of Military Justice

Art. 5. Territorial Applicability of this Code

This Code shall be applicable in all places.

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Proposed Article 6
Page 1

Uniform Code of Military Justice

Art. 6. Judge Advocates and Legal Officers.

(a) All judge advocates of the Army and Air Force and all ^{law} legal specialists of the Navy and Coast Guard shall be assigned as prescribed by The Judge Advocate General of the armed force of which they are members after appropriate consultation ^{or his authorized representative} with ~~commanders~~ ^{with which} on whose staffs they may serve; and 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.

shall be assigned as determined by the J.A.

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Proposed Article 7
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Uniform Code of Military Justice

Art. 7. Apprehension.

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

(b) Any person authorized under regulations ^{governing} ~~of~~ the armed forces to apprehend persons subject to this Code 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.

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Proposed Article 8
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Uniform Code of Military Justice

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 the custody of the armed forces of the United States.

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Proposed Article 9
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Uniform Code of Military Justice

Art. 9. Imposition of Restraint.

(a) Arrest is the restraint of a person by an order directing him to remain within certain specified limits not imposed as a punishment for an offense. 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 delivered in person or through other persons subject to this Code. A commanding officer ^{authorize} may ~~delegate~~ to warrant, petty, or noncommissioned officers ~~authority~~ 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 may be ordered into arrest or confinement only by a commanding officer to whose authority he is subject, by an order delivered in person or ^{by an} ~~through~~ other officers. 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.

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Proposed Article 10
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Uniform Code of Military Justice

Art. 10. Restraint of Persons Charged with Offenses.

Any person subject to this Code charged with a serious offense under this Code shall be ordered into arrest or confinement, as circumstances may require; but when charged with a ^{only} minor offense only, such persons 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} ~~will~~ be taken ^{to inform him of the specific wrong of which he is accused and} to try ~~the person accused~~ ^{him} or to dismiss the charges and release him.

normally tried by
a summary court
martial

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Proposed Article 11
Page 1

Uniform Code of Military Justice

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.

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Proposed Article 12
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Uniform Code of Military Justice

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.

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Proposed Article 13
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Uniform Code of Military Justice

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 upon the charges pending against him, nor shall the restraint or confinement imposed upon him be any more rigorous than the circumstances require to insure his presence, but he may be subject to punishment ~~by the commanding officer~~ during such period for minor infractions of discipline.

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Proposed Article 14
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Uniform Code of Military Justice

Art. 14. Delivery of Offenders to Civil Authorities.

(a) Under such regulations as the Secretary of the Department ~~concerned~~ 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 followed by conviction in a civil tribunal, shall be held to interrupt the execution of the sentence of the court-martial, and the offender shall ^{upon request} be returned to military custody, after having answered to the civil authorities for his offense, for the completion of the said court-martial sentence.

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Proposed Article 15
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Uniform Code of Military Justice

Art. 15. Commanding Officer's Nonjudicial 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:

f.c. (A) ~~with~~ 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) forfeiture of one-half of his pay per month for a period not exceeding three months providing such forfeiture is imposed by an officer exercising general court-martial jurisdiction.

(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

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The Secy of a Department may by regulation (1) put further limitations upon punishments imposable under this article and (2) provide for trial by a summary court in lieu of such punishment at the option of the alleged offender.

Transpose (b) and (c)

equivalent or lower command; or

(E) confinement for a period not to exceed seven consecutive days; or

(F) confinement on bread and water or diminished rations for a period not to exceed five consecutive days; or

(G) forfeiture of one-half of his pay for a period not exceeding one month, providing such forfeiture is imposed

by an officer exercising special court-martial jurisdiction

S
the key of a Dept may regulate further limitations upon
(b) The punishments authorized by this article may be limited *to be imposed upon members of the Dept by its* further for any one of the armed forces, or for any class of commanding officers (of any one of the armed forces), by the Secretary of the Department concerned. *and (2) provide for substitution for such punishment at the request of*

enlisted persons
(c) An officer-in-charge may, for minor offenses, impose on *military personnel other than officers* assigned to the unit of which he is in charge, such of the *enlisted persons* punishments authorized to be imposed by commanding officers as the Secretary of the Department concerned may by regulation specifically prescribe.

(d) A person punished under authority of this article, who deems his punishment unjust or disproportionate *not* 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 commanding 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

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Proposed Article 15

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or omission, and not properly 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.

(H) -

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Proposed Article 16
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Uniform Code of Military Justice

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 any number of members not less than five; *and a law officer*

(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.

The law officer of a court-martial is not a member of the court-martial

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Uniform Code of Military Justice

Art. 17. Jurisdiction of Courts-Martial in General.

(a) Each armed force shall have court-martial jurisdiction over ~~its own personnel and over all other persons~~ ^{before armed force personnel of other armed forces} subject to this Code. The exercise of jurisdiction over such other persons 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.~~ ^{made as if the trial had been by a court-martial}

This strictly does not cover judicial review
shall be made by the reviewing tribunals provided for review of cases
begin in

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Proposed Article 18
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Uniform Code of Military Justice

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. 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.

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Proposed Article 19
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Uniform Code of Military Justice

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 non-capital offense made punishable by this Code, and under such regulations as ~~may be prescribed by~~ ^{P may prescribe,} the President, for capital offenses. Special courts-martial may, under such limitations as the President may prescribe, ² adjudge any punishment not forbidden by this Code, except death, dishonorable discharge or 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.

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Proposed Article 20
Page 1

Uniform Code of Military Justice

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 at the Naval Academy,

for any non-capital offense made punishable by this Code, but no person ~~except one who has requested trial by summary court-martial~~ who objects thereto shall be brought to trial before a summary court-

martial. Where such objection is made by the accused, 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, discharge, confinement in excess of one month, hard labor without confinement in excess of 45 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.

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aviation cadets?

*But what of
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Uniform Code of Military Justice

Art. 21. Jurisdiction of Courts-Martial. Jurisdiction 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.

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Art. 22. Appointment of General Courts-Martial.

(a) General courts-martial may be appointed 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, and Army Corps, a division, a separate brigade, or a corresponding unit of the Army;
- (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;
- (6) Such other commanding officers as may be designated by the Secretary of a Department;
- (7) Any other commanding officer in any of the armed forces when empowered by the President.

other than official
(b) When any such commanding officer ^{*is an accuser*} has a ~~private or personal~~ interest in the case of the person or persons to be tried, the court shall be appointed by superior competent authority and may in any case be appointed by ^{*such*} superior authority when by the latter deemed desirable *by him*.

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Uniform Code of Military Justice

Art. 23. Appointment of Special Courts-Martial.

*Air Force base
auxiliary air
field,*

(a) Special courts-martial may be appointed by --

(1) Any person who may appoint a general court-martial;

(2) The commanding officer of a district, garrison, fort, camp, station, 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; or of any marine brigade, regiment or barracks;

(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 has ~~a private or personal interest~~ *is an accused* in the case of the person or persons to be tried, the court shall be appointed by superior ^{*competent*} authority, and may in any case be appointed by ^{*sash*} superior authority when ~~by the latter~~ *deemed advisable by him.*

Uniform Code of Military JusticeArt. 24. Appointment of Summary Courts-Martial.

(a) Summary courts-martial may be appointed by --

(1) Any person who may appoint a general or special court-martial;

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

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

(b) ⁽⁴⁾ 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 appointed in any case by superior authority when ^{competent} ~~by him~~ deemed desirable ^{by him}.

(4) The c.o. of any other command when authorized by the Secy of the Dept.

Uniform Code of Military Justice

art. 25. Who May Serve on Courts-Martial.

(a) ~~Commissioned Officers~~. Any officer on active duty in the armed forces shall be competent to serve on all courts-martial for the trial of any persons who may lawfully be brought before such courts for trial.

(b) ~~Warrant Officers~~. Any warrant officer on active duty in the armed forces shall be competent to serve on general and special courts-martial for the trial of any persons, other than officers, who may lawfully be brought before such courts for trial.

(c) ~~Enlisted Persons~~. Any enlisted person on active duty in the armed forces who is not a member of the same unit as the accused shall be competent to serve on general and special courts-martial for the trial of any enlisted persons who may lawfully be brought before such courts for trial, but he shall be appointed as a member of a court only if, prior to the convening of such court, the accused has requested in writing that enlisted persons serve on it. After such a 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 competent enlisted persons cannot be obtained ^{on account of} ~~due~~ to 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.

For the purposes of this subsection, the word "unit" shall mean any regularly organized body as defined by the Secretary of the Department ~~concerned~~, but in no case shall it be a body larger than a company, a ~~company~~ ^{and a fire squadron} squadron, or a ship's crew, or than a body corresponding to ^{one of} them.

(d) ~~Qualifications of Members of Courts-Martial.~~

(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 appointing ^a courts-martial, the convening authority shall detail 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 investigation ^{ing} officer or as counsel in the same case.

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Art. 26. Law Officer of General Courts-Martial

(a) The authority appointing a general court-martial shall detail as law officer thereof ^{for} 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 detail 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 court except in open session ^{and} ~~nor~~ shall he ^{not} vote with the court, *except as to the*

JDS *sentence to be imposed upon an accused who has been found guilty)*

(c) The appointing authr of a sp. cm shall detail as law member thereof an officer who is a member of the bar of a Federal or the highest of a state of the U.S. if such an officer is (available). He and where was

(c) The appt authr of a sp. cm shall detail a law officer therefor who a qualified person is available who is a member of the bar of a Federal court or of the highest court of a state, if such a person is available. May vote with the court.

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Uniform Code of Military Justice

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 ^{subsequently} act as trial counsel, assistant trial counsel, defense counsel, or assistant defense counsel in the same case. No ^{person who has acted for the prosecution} member of the prosecution shall act subsequently in the same case ^{as a member of} the defense, nor shall ^{any member of the} ~~any member of the~~ defense act subsequently in the same case ^{as a member of} ~~as a member of~~ the prosecution.

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

- (1) (A) a judge advocate of the Army or the Air Force; or
- (B) a legal specialist of the Navy or Coast Guard; or
- (C) a person who is a member of the bar of a

Federal court or of the highest court of a State; and

(2) 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 certified as competent to act as counsel before a general court-martial by the Judge Advocate General of the armed force of which he is a member,

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the defense counsel shall be a person similarly certified;

and

(2) If the trial counsel is a judge advocate, or a legal specialist, or a member of the bar of a Federal Court or the highest court of a State, the defense counsel shall be one ~~or~~ ~~another~~ of the foregoing.

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Uniform Code of Military Justice

Art. 28. Appointment of Reporters and Interpreters.

Under such regulations as the Secretary of the Department ~~concerned~~ ^{appointing authority} may prescribe, the ~~president~~ of a court-martial or military commission or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission. Under like regulations the ~~president~~ ^{appointing authority} of a court-martial or military commission, or court of inquiry ~~or a summary court~~, may appoint an interpreter, who shall interpret for the court or commission.

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Uniform Code of Military Justice

Art. 29. Absent and Additional Members.

(a) No member of a ³ special or ² general ¹ 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 ^{or special} general court-martial is reduced below ^{the} five ~~members~~, ^{required number} the trial shall not proceed unless the convening ^{appointing} authority appoints new members sufficient in number to provide not less than ~~five~~ ^{the} ~~members~~, ^{required number} such new members ^{shall} be subject to challenge. ^{When} ~~such~~ new members have been sworn, the trial may proceed after the recorded testimony of each witness previously examined has been read in open session.

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Uniform Code of Military Justice

Art. 30. Charges and Specifications.

(a) Charges and specifications ^{shall} ~~must~~ be signed by a person subject to this Code under oath before an officer of the armed forces authorized to administer oaths and ^{shall} ~~must~~ 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.

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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 at all regarding the offense of which he is accused or being investigated and that any statement made by him may be used as evidence against him in a trial by court-martial.

(c) ~~No~~ statement obtained from any person in violation of this Article or by any ^{and the provisions of} ~~unlawful inducement~~ (from any person) shall ~~not~~ be received in evidence against ^{him (as an accused)} such person in a trial by court-martial.

(d) ~~No~~ person subject to this Code shall compel any person to make a statement or produce evidence before or for use before any military tribunal ^{if the} ~~which~~ statement or evidence is not ^{material} ~~relevant~~ to the issue and may tend to degrade him.

transpose (c) and (d) ←

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Uniform Code of Military Justice

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 inquiries as to the truth of the matter set forth in the charges, ^{the} form of charges, and ^{the} ~~what~~ ^{which stands} disposition of the case should be made in the interest of justice and discipline.

(b) The accused shall be advised of the charges against him and shall be permitted, upon his own request, to be represented at such investigation 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) In the event that an investigation of the subject matter of the offense charged has been ^{previously} conducted in the normal course of administration, the requirements of this article shall be deemed satisfied if the accused ^{so agrees and if he} was present at such investigation and afforded the opportunity for representation, cross-examination and presentation prescribed in sub-

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section (b) of this Article, (and if agreeable to the accused.)

(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.

affect the jurisdiction of the court martial

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unless the accused demands a further investigation, at which he may recall witnesses for further cross-examination and may offer such new matter as any new evidence

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Uniform Code of Military Justice

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} ~~is~~ not practicable, he shall report to superior authority the reasons for delay.

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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; and ~~no charge will be referred to a general court-martial for trial unless it has been found~~ ^{The court shall} ~~that such charge is legally sufficient to allege an offense under these articles, and is sustained by evidence indicated in the report of investigation.~~ ^{not refer a charge} ~~in~~ ^{he finds}

(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, such changes in the charges and specifications as are needed to make them conform to the evidence and formal corrections may be made.

such
and shall not refer to a ^{genl} court-martial for trial any charge ^{unless} which he is advised that it states an offense punishable under these articles and is sustained by the evidence etc.

or He shall not refer ^{the charge} to a genl cm for trial ~~any charge~~ ^{which} unless he finds the g a or legal officer advises him etc

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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 be 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, nor before a special court-martial within a period of three days subsequent to the service of ^{the} charges upon him.

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Art. 36. President May Prescribe Rules.

(a) The President may, by regulations, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, ^{and} other military tribunals, which regulations shall, insofar as he shall deem practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the ^{U.S.} district courts ~~of the United States.~~

(b) Nothing contrary to or inconsistent with this Code shall be so prescribed.

(c) All rules and regulations made in pursuance of this Article shall be ^{reported to} laid before the Congress.

The procedure, including modes of proof, in cases before may be prescribed by the Pres by regulations which etc.

but shall not be contrary to or inconsistent with any provision of this Code.

(c)

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Uniform Code of Military Justice

Art. 37. Unlawfully Influencing Action of Court.

No authority appointing a general, special, or summary court-martial ^{and no} ~~nor any~~ other commanding officer, shall censure, reprimand, or admonish such court, or any member thereof, or law officer, (or counsel), with respect to the findings or sentence adjudged by the court, or with respect to any other exercise, of its or his ^{functions in a court-martial proceeding} ~~judicial responsibility~~. 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 the ^{convening} ~~appointing or reviewing or confirming~~ authority with respect to his judicial acts.

If counsel is to be included
"judicial responsibility" won't do.

in the conduct

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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 direction 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 such counsel be reasonably available~~, or by the defense counsel duly appointed ~~for the court 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, ~~attach~~ ^{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 ~~devolved~~ ^{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 devolved

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by law, regulation, or the custom of the service upon counsel for the accused.

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Art. 39. Sessions.

General and special courts-martial shall sit either in closed or open sessions. When such courts-martial sit in closed session, only members of the court shall be present. When the court sits in open session, ~~the law officer, if any, the accused, counsel for the accused, and the trial~~ *and in a general court the law officer* counsel shall be present. When the court wishes to consult counsel or the law officer, the proceeding shall be in open session and entered on the record.

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Art. 40. Continuances.

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

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Art. 41. Challenges.

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(a) Members and the law officer of a general or special 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 ~~the~~ challenges for cause} thereof, 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) The accused and trial counsel shall each be entitled to one peremptory challenge, but the law officer shall not be challenged except for cause.

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Uniform Code of Military Justice

Art. 42. Oaths.

(a) Each member and the law officer, if any, of a general or special court-martial shall, before entering upon his duties, make the following oath or affirmation:

"You, A. B., do swear (or affirm) that you will well and truly try and determine, according to ^{the law and} the evidence, the matters now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the Uniform Code of Military Justice and of the rules and articles for the government of the armed forces of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority or duly announced by the court, except to the trial counsel, assistant trial counsel, the accused, and counsel for the accused; neither will you disclose or discover the vote or opinion of any particular member of the court-martial upon a challenge or upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

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(b) When the members of the court have been sworn, the trial counsel, and assistant trial counsel, if any, shall make the following oath or affirmation:

"You, A. B.; do swear (or affirm) that you will faithfully and impartially perform the duties of a trial counsel, and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

(c) After the trial counsel has been sworn, counsel for the accused including assistants and associates, if any, shall make the following oath or affirmation:

"You, A. B., do swear (or affirm) that you will faithfully and impartially perform the duties of counsel for the accused and will not divulge the findings or sentence of the court to any but the accused until they shall be duly disclosed. So help you God."

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

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

(e) Every reporter of the proceedings of a court-martial shall, before entering on his duties, make the following oath or affirmation:

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"You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

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

"You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God."

(g) In case of affirmation the closing sentence of adjuration shall be omitted.

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was in any place or territory
beyond the control of the United
States

was in any territorial
place beyond

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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, ~~rape~~, or any of the offenses punishable under Articles 12 through 133 inclusive shall not be liable to be tried by court-martial if the offense was committed more than three years before the signing of charges and specifications ~~to be~~ preferred against him.

(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 signing of charges and specifications ~~to be~~ preferred against him, or before the imposition of punishment under Article 15.

(d) Periods in which the accused was absent from the jurisdiction of the U. S. ^{United States}, or was in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation ^{under} for trial or punishment. ^{this article (b) and (c) this word do = period for preparing charges and specifications for punishment}

(e) In the case of any offense the trial of which in time of war shall be certified by the Secretary of the Department concerned to the President to be detrimental to the prosecution of the war or inimical to the Nation's 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 concurrent resolution of Congress.

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(f) When the United States is at war the running of any statute of limitations applicable to any offense (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 contract or Government agency, shall be suspended until three years after the termination of hostilities as proclaimed by the President or by a concurrent resolution of Congress.

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Art. 44. Former Jeopardy.

No person shall, without his consent, be tried a second time for the same offense; but 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 final authority with power to order a rehearing in the case has approved or affirmed the finding.

bound
~~after review of the case has been fully completed~~
the finding of guilty has become final after review of the case has been fully completed.

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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 in a capital case.

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Art. 46. Opportunity to Obtain Witnessed 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.

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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 or other} military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court or inquiry, 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) wilfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or ^{to} produce ^{any} documentary 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 of the United States ~~or of the District of Columbia~~ 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,

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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.

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Uniform Code of Military Justice

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 confinement for 30 days or a fine of \$100, or both.

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Uniform Code of Military Justice

Art. 49. Depositions.

(a) At any time after charges have been signed as provided in Article 30, either party may take ^{oral or written} depositions unless an authority competent to ^{convene} appoint a court-martial for the trial of such charges forbids it for good cause. If ^a ~~the~~ 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 at 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 officer, military or civil, 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 to ~~the satisfaction of the court, commission or board~~ —

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

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(2) that the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, non-amenability 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) Testimony by deposition may be adduced by the defense in capital cases.

(f) 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 appointing authority shall have directed that the case be treated as not capital, and in such a case a sentence of death may not be adjudged by the court-martial.

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Uniform Code of Military Justice

Art. 50. Admissibility of Records of Courts of Inquiry

(a) 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, be read in evidence by ^{any party before} ~~either side~~ a court-martial or military commission in any case not capital ^{not} ~~or~~ extending to the dismissal of an officer if the accused was a party and was accorded the rights of an accused before the court of inquiry 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.

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51 (t) Law officer of a genl or
special cm, ~~shall be~~ or
the pres of a sp cm having no
law officer

(t) and the law member of a sp cm, if
any or the pres of sp cm if no law member

(e) and the law member of a special ct
- if any, or the pres of sp cm if
no law member)

Uniform Code of Military Justice

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, ^{and the} ~~which~~ ⁿ ~~court~~ 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 or the president of the special court-martial shall rule in open session upon interlocutory questions, other than challenges, arising during the proceedings. If a member objects to a ruling by the law officer ^(of a general court-martial) upon a motion for an acquittal or on the question of the accused's sanity or to any ruling by the president of a special court-martial, the court shall be cleared and closed and the question decided by a vote as provided in Article ⁵² ~~48~~, viva voce, beginning with the junior in rank.

(c) It shall be the duty of the law officer ^(of a general court-martial) or the president of a special court-martial before a vote is taken on the findings to instruct the court in open session as to the elements of the offense ^{applicable to} ~~and the law of the case~~ and in addition,

(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

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is no such doubt; and

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

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~~If (2) is 3/4 enlisted
men can block any such
sentence~~

~~if 3/4 of the~~

For the purpose of this article
the law officer shall be
deemed a member of the
Court-martial

Uniform Code of Military Justice

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 ~~all~~ 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 law officer and} 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, ^{if 1/4 of the members refuse or fail to concur} except by the concurrence of ~~the law officer and~~ ^{2/3} three-fourths of all the members ^{of the court-martial} present, at the time the vote is taken.

^{2/3} (3) All other sentences shall be determined by the concurrence of ~~all~~ ^{the majority of} the members present at the time the vote is taken. ^{2/3}

(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 acquittal or on a 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.

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Uniform Code of Military Justice

Art. 53. Court to Announce Action

Every court-martial shall announce its findings and sentence
in open session as soon as determined.



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Uniform Code of Military Justice

Art. 54. Record of Trial.

(a) Each general court-martial shall keep a separate record of the proceedings ^{of} in the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the ~~trial counsel~~ ^{Law officer}. In case the record cannot be authenticated by the president ~~and the trial counsel~~ ^{or Law officer}, by reason of the death, disability or absence of either or both of them, it shall be signed by a member in lieu of the president ^{or the law officer} and by an ~~assistant trial counsel~~ ^{other member}, if there ~~be one, in lieu of the trial counsel~~; otherwise by another member of the court.

(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 ~~from time to time~~ prescribe.

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

(d) The records of special and summary courts-martial may be destroyed after the Judge Advocate General of the armed force of which the accused is a member has determined that they are no longer of use either to the accused or to the Department.

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Uniform Code of Military Justice

Art. 55. Cruel and Unusual Punishments Prohibited.

Punishment by flogging, or by branding, marking or tattocing on the body, or any other cruel or unusual punishment, shall not be adjudged by any court-martial nor be inflicted upon any person subject to this Code. The use of irons, single or double, except for the purpose of safe custody, is prohibited.

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Uniform Code of Military Justice

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.

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Uniform Code of Military Justice

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 shall ^{apply to pay and allowances} become effective as of the ^{on and after the} date such sentence was approved by the convening authority. No forfeiture shall extend to any pay or allowances accrued before such date. ^{which began}

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

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

Date of when forfeiture shall begin

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Proposed Article 58

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Art. 58. Execution of Confinement.

(a) Under such instructions as the Department concerned may prescribe, any court-martial sentence of confinement, 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 institution 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 discipline and 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.

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Proposed Article 59
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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, a finding of guilty of a lesser included offense. *so much of the* *as*
includes a *X*

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Proposed Article 60
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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 appointed the court, an officer commanding for the time being, a successor in command, or by any officer exercising general court-martial jurisdiction.

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Proposed Article 61.
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Uniform Code of Military Justice

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.

See 65 a

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Proposed Article 62
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Uniform Code of Military Justice

Art. 62. Revision

(a) If a case 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 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 or a ruling which amounts to a finding of not guilty; or

(2) for increasing the severity of the sentence (lawfully imposed.)

*unless a more severe sentence prescribed for the offense is made mandatory under these articles
as per 63*

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Uniform Code of Military Justice

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} ~~insuffi-~~ ^{in the record} ~~cient~~ evidence to support the findings, order a rehearing, in which case he shall state the reasons for disapproval. If he 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.

If reversed

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Uniform Code of Military Justice

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 determines should be approved. Unless he indicates otherwise, approval of the sentence shall constitute approval of the findings and sentence.

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*to the next superior officer or
to me*

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Uniform Code of Military Justice

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 Judge Advocate General of the armed force of which the accused is a member.

(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.~~ If the sentence as approved by ~~such officer~~ *the Convening Authority* includes a bad conduct discharge, whether or not suspended, the record shall be forwarded to The Judge Advocate General of the armed force of which the accused is a member to be reviewed in the same manner as the record of a general court-martial.

(c) All other special, and summary court-martial records shall be reviewed and transmitted as provided by such regulations as the President may prescribe, but such records ~~shall~~ *shall* be reviewed by a judge advocate of the Army or Air Force, or a ~~legal specialist~~ *law* of the Navy or Coast Guard, and shall be transmitted and be ~~otherwise~~ *subject to such further review and disposition* as the President may prescribe by *regulations prescribed by the President*

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Uniform Code of Military Justice

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 of 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 state of the United States.

(b) The Judge Advocate General shall refer to a Board of Review the record in every case of trial by general court-martial in which the sentence, as approved by the Convening Authority, affects a general ^{or flag} officer or extends to death, dismissal of an officer or cadet, or midshipman ~~at the Naval Academy~~, dishonorable discharge, bad-conduct discharge, or confinement for more than one year.

(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~~ the setting aside is based on lack of

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sufficient evidence to support the findings, order a rehearing. Otherwise it shall order that the charges be dismissed.

(e) Within ten days after any decision by a Board of Review, the Judge Advocate General may request a reconsideration or a rehearing before ~~such~~ ^a Board of Review.

(f) Otherwise, the Judge Advocate General shall, unless there is to be further action by the President or the Secretary of the Department or the Judicial Council, 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.

(g) The Judge Advocates General^s of the armed forces shall ^{periodically} meet annually to formulate policies and procedures in regard to review of court-martial cases in the Offices of the Judge Advocates General and by the Boards of Review.

uniform rules of procedure for the proceedings in and before the Bds of Review and shall

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Uniform Code of Military Justice

Art. 67. Review by the Judicial Council.

(a) There is hereby established in the National Military Establishment a Judicial Council. The Judicial Council shall be composed of not less than three members. One-third of the membership shall be appointed by the Secretary of the Army, one-third by the Secretary of the Navy, and one-third by the Secretary of the Air Force. Each member of the Judicial Council shall be appointed from civilian life and shall be a member of the Bar admitted to practice before the Supreme Court of the United States, and each member shall receive compensation and allowances equal to those paid to a judge of a United States Court of Appeals.

(b) Under rules of procedure which it shall prescribe, the Judicial Council shall review the record in the following ~~types of~~ cases: ✓

(1) All cases in which the sentence, as affirmed by the Board of Review, affects a ^{a flag} general officer or extends to death;

(2) All cases which the Judge Advocate General orders forwarded to the Judicial Council for review; and

(3) All cases in which, upon petition of the accused and on good cause shown, the Judicial Council has granted a review.

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(c) The accused shall have 30 days from the time he is notified of a decision of the Board of Review to petition the Judicial Council for a grant of review. The Judicial Council shall act upon such a petition within 15 days of the receipt thereof.

(d) In any case reviewed by it, the Judicial Council 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 Judicial Council, 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 Judicial Council shall take action only with respect to matters of law.

(e) If the Judicial Council sets aside the findings and sentence, it may, except where the setting aside is based on lack of sufficient evidence to support the findings, order a rehearing. Otherwise it shall order that the charges be dismissed.

(f) After it has acted on a case, the Judicial Council 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 Judicial Council. 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 Judicial Council has ordered a rehearing, but the Convening Authority finds a rehearing impracticable, he may dismiss the charges.

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(g) The Judicial Council and the Judge Advocates General of the armed forces shall meet annually in September to make a comprehensive survey of the operation of this code and report to the Secretary of Defense and the Secretaries of the Departments any recommendations relating to uniformity of sentence policies, amendments to this code and any other matters deemed appropriate.

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Uniform Code of Military Justice

Art. 6C. Branch Offices

(a) 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 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 the 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.

(b) In time of emergency, the President may direct that one or more temporary Judicial Councils be established for the period of the emergency, each of which shall be under the general supervision of the Judicial Council.

More specific ??

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Art. 69. Review in the Office of the Judge Advocate General.

Every record of ^{trial} ~~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~~ ^(in fact) Advocate General so directs, the record shall be reviewed by the Board of Review in accordance with Article 66, ~~except that~~ ^{but in such event} there will be no further review by the Judicial Council.

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Officers

each of whom shall have
the qualifications specified
for counsel in Article 27

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Uniform Code of Military Justice

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.

(b) It shall be the duty of Appellate Government Counsel to represent the United States before the Board of Review or the Judicial Council 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 Judicial Council--

- 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 requested the reconsideration of a case before the Board of Review or has transmitted it to the Judicial Council.

(d) The accused shall have the right to be represented before the Judicial Council or the Board of Review by civilian counsel if provided by him.

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

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Uniform Code of Military Justice

Art. 71. Execution of Sentence: Suspension of Sentence.

(a) No sentence extending to death or involving a general 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. *or flag*

(b) No sentence extending to the dismissal of an officer, cadet, or midshipman at the Naval Academy 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 discharge, a bad-conduct discharge, or imprisonment for more than one year shall be executed until affirmed by the Board of Review and, in cases reviewed by it, the Judicial Council.

(d) All other 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.

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DEPARTMENT OF THE NAVY
OFFICE OF NAVAL RESEARCH
WASHINGTON 25, D. C.

13 January 1949

IN REPLY REFER TO

EXOS:ONR:N-106

MEMORANDUM

To: Mr. Robert Haydock
Office of the Secretary of Defense

Subj: Uniform Code of Military Justice - Article 71 (d) and (e).

1. Subsections (X) and (Y) of Section 71 of the Uniform Code of Military Justice read as follows:

"(X) No sentence which includes, unsuspended, a dishonorable discharge, a bad-conduct discharge, or imprisonment for more than one year shall be executed until affirmed by the Board of Review and, in cases reviewed by it, the Judicial Council.

"(Y) All other 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."

2. Article 44 of the Uniform Code reads as follows:

"Art. 44. Former Jeopardy.

"No person shall, without his consent, be tried a second time for the same offense; but 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 final authority with power to order a rehearing in the case has approved or affirmed the finding."

3. The question arises whether an order of execution under 71(e) would bar a new trial on the ground of double jeopardy. In view of the clear language of Article 44, I should not think so, if Article 44 is constitutional in all respects. The problem of constitutionality was of the predecessor Article (AW 40), which was involved in Hunter against Wade, 169 F.(2d) 973 CCA 10th, 7 September 1948 rehearing denied 8 October 1948, certiorari granted 10 January 1949, but was not squarely decided.

4. Under the old articles the problem was handled as follows: AW 40 provided that "no proceeding in which ~~executed~~ ^{an accused} has been found guilty * * * shall be held to be a trial in the sense of this article until the review ^{and}, and, if there be one, the ~~convening~~ authority shall have taken final action ^{upon} on the case."

conforming

upon

Article 50 $\frac{1}{2}$ provided that no authority should order execution of any sentence involving death, dismissal, dishonorable discharge in suspension or penitentiary confinement, until the Board of Review and the Judge Advocate had held the record legally sufficient (Board of Review cases). The procedure in this type of case was for the Reviewing authority to withhold issuance of the order of execution until the approval had been obtained from the Board of Review and the Judge Advocate.

Review
X. In other cases (for example, cases in which the dishonorable discharge was suspended by the Reviewing authority), the order of execution was issued by the Reviewing authority at the time he took his reviewing action, even though such order might involve suspension of part of the sentence. Such cases were thereafter in the Military Justice Section and not sent to the Board of Review unless the Military Justice Section thought them legally insufficient. If the Board of Review concurred, the record was forwarded to the Secretary of War for action by him or by the President. If the Secretary of War or the President agreed that the case was legally insufficient it was set aside. Since, however, the sentence had previously been ordered executed, it was held that the Reviewing authority had taken final action and that therefore, there had been a trial within the meaning of AW 40. Consequently, it would be double jeopardy to have a rehearing and in such cases a rehearing or a new trial could not be ordered. The new Articles of War seem to involve a combination of the two approaches. AW 40 has not been amended. AW 50(e) reads as follows:

"No authority shall order the execution of any sentence of a court-martial involving dishonorable discharge not suspended, bad-conduct discharge not suspended, or confinement in a penitentiary unless and until the appellate review required by this article shall have been completed and unless and until any confirming action required shall have been completed. Every record of trial by general or special court-martial involving a sentence to dishonorable discharge or bad-conduct discharge, whether such discharges be suspended or not suspended, and every record of trial by general court-martial involving a sentence to confinement in a penitentiary, other than records of trial examination of which is required by paragraph d of this article, shall be examined by the Board of Review * * * *."

Article 52 provides as follows:

"When any reviewing or confirming authority disapproves a sentence or when any sentence is vacated by action of the Board of Review or Judicial Council and the Judge Advocate General, the reviewing or confirming authority or the Judge Advocate General may authorize or direct a rehearing."

Apparently the intention was to permit a rehearing whether or not the sentence had previously been ordered executed. Article 53 authorizing a new trial applies whether or not the sentence had previously been ordered executed.

6. I would conclude therefore that our approach is at least as sound as that of the present articles, which as you know were drafted by General Hoover who must have been aware of the problem. We have improved the situation by

clarifying AW 40 which the new Articles failed to do. There still remains the thorny question of the overall constitutionality of the new Article 44, but I do not see how we can resolve that problem in drafting this Code.

Robert S. Pasley

Robert S. Pasley

~~Counsel, OWR~~

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Uniform Code of Military Justice

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, ^{an} ~~the~~ officer having special court-martial jurisdiction 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, ^{who may vacate} ~~the~~ suspension. ^{Such} ~~the~~ vacation shall be effective to ^{carry into execution} ~~execute~~ any unexecuted portion of the sentence except a dismissal. The vacation of the suspension of ^{the} ~~a~~ dismissal shall not be effective until approved by the Secretary of the Department concerned.

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

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Uniform Code of Military Justice

Art. 73. Petition for a New Trial

(a) At any time within one year after approval by the convening authority of a sentence which ~~either as acted upon in any subsequent review or pending further review~~ extends to death, dismissal, dishonorable discharge, bad-conduct discharge, or confinement for more than one year, the accused may petition the Judge Advocate General for a new trial on grounds of newly-discovered evidence or fraud on the court. ??

(b) If the accused's case is pending ~~review~~ before the Board of Review or before the Judicial Council, the Judge Advocate General shall refer ~~any such~~ ^{the} petition to the Board or Council, respectively, for action. Otherwise the Judge Advocate General shall act upon the petition.

Who will appoint?

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Art. 74. Remission and Suspension

(a) The Secretary of the Department and any Under Secretary, Assistant Secretary or commanding officer designated by the Secretary 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.

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(b) Under such regs as the Pres may prescribe, all rights privileges and prop affected by an executed portion of a sentence which has been set aside or disapproved, except a ~~dismissal~~ an executed dismissal or discharge, shall be restored unless such ~~executed portion~~ is included in a sentence imposed ~~on~~ upon a new trial or rehearing.

all rights ~~priv~~ affected by
where any
~~where~~ a part of a sentence originally imposed ~~has been executed and is~~
~~a new trial or rehearing,~~
not included in the sentence imposed
as a result of a nt or rehearing, all
rights ~~priv~~
shall be restored in the manner and
to the extent prescribed

The President by regulation shall provide for the restoration of all rights ~~priv~~ affected by the executed portion of a sentence which has ~~been~~ ^{been} ~~dismissed~~ ^{dismiss} or disapproved, unless such executed portion is included in the sentence imposed upon a new trial or rehearing.

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Uniform Code of Military Justice

Art. 75. Restoration.

(a) Under such regulations as the President may prescribe, when any executed sentence of a court-martial or any portion thereof is set aside or disapproved without a new trial or rehearing being ordered, all rights, privileges, and property of the accused affected by the sentence or such portion thereof shall be restored.

(b) Under such regulations as the President may prescribe, where the results of ^{imposed} a new trial or rehearing ^{do not include any portion of} the original sentence, ^{which has been} previously executed, ^{of which} all rights, privileges, and property affected by ^{an executed} such portion of the sentence, ^{which} other than a dismissal, dishonorable discharge, or bad conduct discharge, shall be restored, ^{unless} ~~such executed portion is included in a sentence imposed at a new trial~~ ^{such executed portion is included in a sentence imposed at a new trial}

(c) Where a previously executed sentence of dishonorable or bad conduct discharge is not sustained on a new trial, The Judge Advocate General of the armed force of which the accused is a member shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(d) Where a previously executed sentence of dismissal is not sustained on a new trial, The ^{Secretary of the Dept} Judge Advocate General of the armed force of which the accused is a member shall substitute therefor a form of discharge authorized for administrative issuance and the officer dismissed by such sentence may be appointed 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 appointment of such a former officer shall be without regard to position vacancy and shall affect the promotion status of other officers thereafter only insofar as the President

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may direct. All time between the dismissal and such ^{re-}appointment shall be considered as actual service, ^{including} ~~but no pay or allowances shall be accrued~~ during such period.

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Uniform Code of Military Justice

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 ~~60 A~~^{73.}

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Uniform Code of Military Justice

X. PUNITIVE ARTICLES

GENERAL PROVISIONS

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;

shall be punished with the punishment provided for the commission of the offense.

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.

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 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.

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(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} a ~~crime~~ although it appears on the trial that the ~~crime~~ ^{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 ^{tending} 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

(1) desert in violation of Article 85; or

(2) 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, or if the offense solicited ^{or advised} is not ~~committed or attempted~~ 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

(1) misbehavior before the enemy in violation of Article 99; or

(2) sedition in violation of Article 94;

shall, if the offense ^{or advised} solicited is ~~committed~~ be punished with the ^{shall}

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punishment provided for the commission of the offense, ^{but} or if the offense solicited ^{or advised} is not committed ^{shall} be punished as a court-martial may direct.

MILITARY OFFENSES

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

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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~~ enlists or accepts 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 in time of war, shall be punished by death or such other punishment as a court-martial may direct; 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 person subject to this Code who, without proper authority:

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

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(2) goes from that place, or

(3) absents himself, or remains absent from his unit,

~~at~~ 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 person subject to this Code who, 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. Disrespect Towards the President, Vice President, Congress, Secretary of Defense, or Secretaries of the Departments, Governors, Legislatures.

Any officer who uses contemptuous or disrespectful words against the President, Vice President, Congress, Secretary of Defense, or ^a Secretaries of the Departments, ^a Governor^a or ^a legislatures of ~~any~~ ^a State, Territory or other possession of the United States in which he is on duty or present shall be dismissed from the service or suffer such other punishment 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,

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(?)

(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, non-commissioned 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 towards a warrant officer, noncommissioned officer, or petty officer while, such person 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

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such authority

(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 who

(1) 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; ~~or~~

(2) 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 the ^{such authority} State is guilty of sedition; ~~or~~

(3) 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~~ 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. Non-Compliance 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 ^{before or} who in the presence of the
enemy;

(1) runs away; or

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

or

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

of the armed forces; or

(8) willfully fails to ^{do his utmost to} encounter, capture or destroy
any enemy troops, combatants, vessels, aircraft, or any ^{other}
thing, which it is his duty so to encounter, 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 subsection (a) above; 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) knowingly harbors or protects or gives intelligence to, or communicates or corresponds with, or holds any intercourse with, the enemy, either directly or indirectly, without proper authority;

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

Art. 105. Misconduct as 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 a 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

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(2) while in a position of authority over such persons
maltreats them without justifiable cause;
shall be punished as a court-martial may direct.

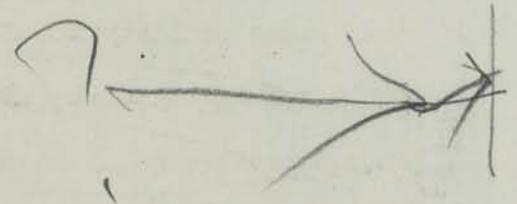
Art. 106. Spies

Any person who in time of war is found lurking 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, may be tried by
general court-martial or military commission and on conviction be
punished by death.

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MISCELLANEOUS CRIMES AND OFFENSES

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. Wrongful Disclosure

~~Any person subject to this Code who by neglect or design discloses, contrary to law, order or regulation any matter, shall be punished as a court-martial may direct.~~

Art. 109. Military Property of United States -- Loss, Damage, Destruction, 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. 110. Property: Other Than 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.

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Proposed Article 111

Art. 111. Improper Hazarding of Vessel or Aircraft

(a) Any person subject to this Code who willfully and wrongfully hazards or suffers to be hazarded any vessel ~~or aircraft~~ or willfully and wrongfully exposes the lives of those on board to danger shall suffer death or such other punishment as a court-martial may direct.

Art. 112. Drunken or Reckless Driving

Any person subject to this Code who operates any vehicle:

- (1) while drunk; or
- (2) in a reckless or wanton manner;

shall be punished as a court-martial may direct.

Art. 113. Drunk on Duty

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

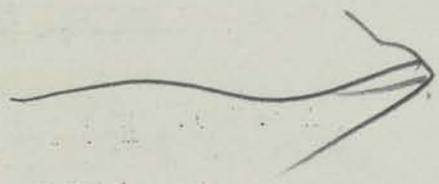
Art. 114. Misbehavior of a Sentinel

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

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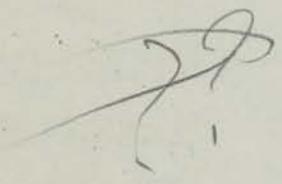
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Art. 115. Dueling

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. 116. Malingering

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. 117. Lascivious or Indecent Act

Any person subject to this Code who knowingly commits any lascivious or indecent act shall be punished as a court-martial may direct.

Art. 118. 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. 119. Murder

Any person subject to this Code who kills another human being, unless it is excusable or justifiable, when the offender -

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- (1) has a premediated design to kill; or
- (2) intends to 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 aggravated arson, burglary, sodomy, rape, or robbery, though he has no intent to kill,

is guilty of murder, and shall suffer such punishment as a court-martial may direct, but if found guilty under paragraph (1) of this Article, shall suffer death or imprisonment for life as a court-martial may direct.

Art. 120. Manslaughter

Any person subject to this Code who without a design to effect death, kills another human being -

- (1) in the heat of passion; or
- (2) by culpable negligence in performing a lawful act, or an act required by law; or
- (3) while perpetrating or attempting to perpetrate an offense, other than those specified in Article 119, directly affecting the person,

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

Art. 121. Rape

(a) Any person subject to this Code who perpetrates an act of sexual intercourse with a female not his wife by force and without her

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consent is guilty of rape. Penetration, however slight, is sufficient to complete the crime.

(b) Any person found guilty of rape shall be punished by death or such other punishment as a court-martial may direct.

Art. 122. Larceny

Any person subject to this Code who, with intent to deprive or defraud another 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, 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, steals such property and is guilty of larceny, and shall be punished as a court-martial may direct.

Art. 123. Robbery

Any person subject to this Code who with intent to steal takes any thing 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. 124. Forgery

Any person subject to this Code who with intent to defraud,

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(1) falsely makes or alters any signature, 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, with intent to defraud, a forged writing, known by the offender to be a forged writing,

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

Art. 125. 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 physical vigor by the injury of

any member or organ,

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

Art. 126. Sodomy

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

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

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REC'D JAN 11 1949

THE UNDER SECRETARY OF THE NAVY
WASHINGTON

10 January 1948

MEMORANDUM FOR PROFESSOR MORGAN

There is attached for your information a copy of a memorandum I received from the Judge Advocate General of the Navy, concerning the proposed Article 127 of the Uniform Code of Military Justice.

A handwritten signature in blue ink, consisting of a stylized 'W' and 'K' followed by a period.

W. JOHN KENNEY

cc: Secretary Gray
Secretary Zuckert
Mr. Larkin

NAVY DEPARTMENT
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON 25, D. C.

4 January 1949

MEMORANDUM TO MR. KENNEY:

Subject: Redress of wrongs and injuries to property as provided for by the Articles of War (Articles 89 and 105), and proposed Article 127 of the UCMJ--Army comment thereon dated 29 December 1948.

Reference: (a) Memo from Col. Dinsmore to Mr. Felix Larkin dtd 29 Dec 1948 on the subject matter.

1. Captain Woods, who attended the Ad Hoc Committee meeting on 29 December 1948, informs me that the Committee may, with certain modifications, adopt proposed Article 127 of the Uniform Code. The modifications referred to provide for the enforcement of this article subject to rules to be prescribed by the Secretary of the Department concerned; for confining damage to property wilfully injured or property wrongfully taken; limiting such damage to \$500; and restricting the collective payment feature to payment by those at the scene. While these modifications properly restrict the original wide scope of applicability of this article, they do not, in my opinion, change the mandatory tenor of the proposed article.

2. I note with interest Army's views relative to the subject matter contained in reference (a) which has just come to my attention. I am unable to subscribe to these views for the reasons and to the extent set forth below.

3. As to subparagraph (a) of reference, I have no objection to incorporating in the Uniform Code the admonitory provisions of AW 89 that persons subject to the Code conduct themselves in an orderly manner while on the march and otherwise; but the punitive provisions against commanding officers, which tie this article with AW 105, in view of later comment, should not be included in the Code.

4. Subparagraph (b) of the Army memorandum is as follows:

"b. Passing to the reparations feature, mention is made of ordinary civil remedies against offenders. The impracticability of such remedies is well-known considering the transient status of military personnel and the difficulty of enforcing money judgments against them."

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The Army comment in this subparagraph is based entirely upon two assumptions: (1) That it is impracticable to seek an ordinary civil remedy against a man in the armed services because of "the transient status of military personnel"; and (2) that there exists an insurmountable "difficulty of enforcing money judgments against them." With respect to the first assumption, it does not appear that except in time of actual war, military personnel are in a constant or even predominant "transient status". The vast majority of such personnel are assigned tours of duty of reasonable duration, and during such tours are hardly to be considered in "transient status". Whatever additional difficulty may result from the fact that service personnel are transferred from time to time is probably more than offset by the fact that any individual in the armed services can be located through the personnel authorities of the respective services. This, of course, makes military personnel more conveniently available for location for service of process on civil remedies than civilians whose whereabouts are not ascertainable from any central source. Certainly it does not appear that the fact that military personnel are subject to transfer depending upon the needs of the service, is sufficient reason for subjecting them to a summary collection process which allows them no day in a civil court to defend against a civil demand. Many large classes of civilians are much more constantly in a "transient status" than service personnel in peacetime, yet no such discriminatory type of collection process has been found necessary as against them. So far as the second assumption is concerned, although the pay of service personnel is not subject to garnishment, the personnel authorities in the naval service at least have never experienced any practical difficulty in seeing that money judgments were taken care of by the individuals concerned. The very existence of a judgment is a guarantee that the individual involved has had his chance of his day in a civil court and, therefore, that he is not being oppressed by the application of official pressure toward payment of the judgment.

5. Army memorandum subparagraph (c) is as follows:

"c. There is a statement to the effect that the Government has assumed all such civil liabilities through various claims statutes. However, as illustrated in paragraph 4, AR 25-80, those statutes have not, in fact, gone so far. There remains a field of individual violence which no act of Congress has endeavored to adopt as governmental acts and for which the subject articles provide an administrative means of satisfaction from the pay of the offending individual."

The comment in this paragraph is based largely on the assumption that AR 25-80, paragraph 4, illustrates the application of all the applicable

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claims statutes. It is noted that the date of AR 25-80 appears to be 29 May 1945. It is difficult to understand how AR 25-80 can be considered to have dealt with the potential liabilities of the Government under the Federal Tort Claims Act, which is the most comprehensive of the governmental claims statutes, since this statute was not enacted until 2 August 1946. It should be pointed out, however, that the Navy memorandum is not properly to be understood as stating that the Government has assumed "all such civil liabilities through various claims statutes". With respect to the second sentence of the Army memorandum's subparagraph (c), this statement is not accurate insofar as it relates to the Navy. The Act of 11 July 1919 (41 Stat. 132; 45 Stat. 990) authorizes the Secretary of the Navy to pay up to \$500 for damage to or loss of privately owned property "for which damage or loss men in the Naval Service or the Marine Corps are found to be responsible." It should be emphasized that payment is authorized and is made under this statute without any limitation as to whether the acts complained of are "governmental acts", and the authority is not limited to negligent as distinguished from wilful acts.

6. Subparagraph (d) requires no comment.

7. With respect to subparagraph (e), it is not denied that the same act may give rise to both criminal and civil liabilities. The American custom, however, in civil as well as criminal matters, is to give each man his day in court, and the fact that he has entered the Armed Forces should not deprive him of that fundamental right. In my opinion, the administrative determination of a civil liability without the consent of a person whose pay is checked by reason of such determination has no sanction in civil law and should have none in military law. Long usage, Army's reason for incorporating AW 105 in the Uniform Code, in my opinion, in violation of a fundamental American principle, is not a sufficient warrant for adoption of such an article.

8. As to subparagraph (f), I am unable to subscribe to the philosophy that a collective liability should be enforced against the members of a unit because the wrongdoer in that unit cannot be identified. To punish the guilty with the innocent basically does violence to the American sense of justice.

9. As to subparagraph (g), regardless of the regulatory construction that the Army seeks to place upon the clear, unambiguous terms of Article 127 of the Uniform Code, I am of the opinion that these provisions are mandatory, and reliance on construction of these provisions by Army Regulations (AR 25-80 of 29 May 1945) in no manner makes them permissive.

Memo to Mr. Kenney
4 January 1949

10. While the above reasons, in my opinion, amply support the Navy view expressed in my memorandum to you of 1 November 1948, I understand that the Ad Hoc Committee has decided to incorporate an article on the order of proposed Article 127. Under these circumstances, I believe that such article should be clearly permissive and not mandatory as is the present draft, so that the limiting provisions of the rules to be issued by the Secretary of the Department concerned may not be regarded as altering the terms of the statute. I do not think that merely adding the prefatory words "Under such regulations as the Secretary of the Department concerned may prescribe" accomplishes this. The below draft is suggested in lieu of the proposed Article 127 draft of 12/14/48 as amended on 29 December 1948:

"Under such regulations as the Secretary of the Department concerned may prescribe, the commanding officer shall investigate complaints made to him that damage has been done wilfully to the property of any person or that his property has been wrongfully taken by persons subject to this Code; and such investigation may be made by a board consisting of any number of officers from one to three convened by the commanding officer 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 not exceeding \$500.00 against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him may be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

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

Very respectfully,

G. L. RUSSELL
Judge Advocate General

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Proposed Article 127

Art. 127. Arson

(a) Any person subject to this Code who willfully and maliciously burns or sets on fire a dwelling in which there is at the time a human being, or any other structure, water craft, or movable, 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 subsection (a) of this Article, is guilty of simple arson and shall be punished as a court-martial may direct.

Art. 128. Extortion

Any person subject to this Code who communicates threats to another 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. 129. 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

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Proposed Article 130

(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. 130. Perjury

Any person subject to this Code who willfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, in a judicial proceeding or course of justice, 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. 131. Burglary

Any person subject to this Code who with intent to commit an offense punishable under Articles 119 through 129 inclusive, breaks and enters, in the night time, the dwelling-house of another, is guilty of burglary and shall be punished as a court-martial may direct.

Art. 132. Housebreaking

Any person subject to this Code who unlawfully enters the building or the 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. 133. Frauds Against the Government

(a) Any person subject to this Code who knowing it to be false or fraudulent,

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Proposed Article 133

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

(2) 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

(b) Who for the purpose of obtaining the approval, allowance, or payment of any claim against the United States or any officer thereof;

(1) makes or uses any writing or other paper knowing the same to contain any false or fraudulent statements; or

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

(3) 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

(c) ^{he}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

(d) ^{he}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.

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Proposed Article 134

Art. 134. Conduct Unbecoming an Officer and Gentleman

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

Art. 135. 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.

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Uniform Code of Military Justice

Art. 136. Courts of Inquiry.

(a) Courts of inquiry to investigate ~~any occurrence, event,~~ ^{any matter} ~~transaction, or incident~~ may be appointed by any person authorized to appoint a general court-martial or by any other person designated by the Secretary of the Department concerned 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 appointing authority shall also appoint counsel for the court.

(c) Any person subject to this Code whose conduct shall be subject to inquiry shall be designated as a party. Any person subject to this Code or employed by the National Military Establishment 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.

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

(e) (1) The Counsel for the court shall administer to the members the following oath:

"You, A.B., do swear (or affirm) that you will well and truly examine and inquire, according to the evidence, into the matter now before you without partiality, favor, affection, prejudice, or hope of reward. So help you God."

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(2) The president of the court shall administer to the counsel for the court the following oath:

"You, A.B., do swear (or affirm) that you will faithfully and impartially perform the duties of counsel for the court. So help you God."

(3) Reporters, interpreters, and witnesses shall be sworn as in courts-martial.

(4) In case of affirmation the closing sentence of adjuration will be omitted.

(f) Witnesses may be summoned to appear and testify and be examined before courts of inquiry as provided for courts-martial. Insofar as applicable, courts of inquiry shall follow the rules of evidence and procedure prescribed 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 appointing 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 can not be authenticated by the president and the counsel for the court, it shall be signed by a member in lieu of the president and by another member in lieu of the counsel for the court.

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Uniform Code of Military Justice

art. 137. 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 legal specialists of the Navy or Coast Guard;
- (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; and
- (6) All staff judge advocate and legal officers, and acting or assistant staff judge advocates or legal officers.

(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, ^{officer} law member, trial counsel, and assistant trial counsel of all general and special courts-martial;
- (2) The president and the counsel for the court of all courts of inquiry;
- (3) All officers designated to take a deposition;
- (4) All persons detailed to conduct an investigation;

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(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.

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Uniform Code of Military Justice

Art. 138. Delegation by 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.

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Uniform Code of Military Justice

Art. 139. Certain Articles of the Uniform Code of Military Justice to be Read or Explained.

The Preamble to this Code, and Articles 1, 2, 3, 7, 9, 10, 12, 13, 15, 25, 27, 31, 37, 38, 55, 77-135, 140, 141, and 142 shall be ~~read or~~ 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, and shall be read or explained once every six months to every ~~enlisted person on active duty in the armed forces of the United States.~~

A complete text of the Uniform Code of Military Justice and of the Manual of Military Justice 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.

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Uniform Code of Military Justice

Art. 140. 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 the officer exercising general court-martial jurisdiction over the officer against whom the complaint 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.

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Uniform Code of Military Justice

Art. 141. Redress of Injuries to Property.

Whenever complaint is made to any commanding officer that willfull 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 ~~shall~~^{may}, subject to such regulations 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, ~~not exceeding \$500~~, against the responsible parties. The assessment of damages 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.

Where the offenders can not be ascertained, but the organization or detachment to which they belong is known, charges totalling the amount of damages assessed and approved ~~shall~~^{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.

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