

Statement of

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Before The  
Committee on Armed Services  
House of Representatives

On

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THE UNIFORM CODE OF MILITARY JUSTICE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

For this opportunity to appear before you in support of H. R. 2498, I thank you personally and in behalf of the Committee which drafted it at the request of Secretary Forrestal. In the hope of putting before you in the shortest time the essential features of the Code, I have prepared a statement, which I regret to say is rather long, but which I find impossible to shorten since the bill covers the entire field of military justice. With your permission I shall read it.

H. R. 2498 is the result of an intensive study of the present systems and practices of the several departments or branches of the military forces, of the complaints that have been made against both the structure and operation of the existing military tribunals, of the explanations and answers of the Services to those complaints, of the various suggestions that have been made for

modification or reform and of the arguments of representatives of the Services as to the practicability of each proposal. In some instances we found helpful, information concerning the practices of foreign military establishments. (Copies of data compiled by the staff of the Committee under the direction of Mr. Larkin, Assistant General Counsel, Secretary of Defense, have been supplied for your use.)

Our directive, which we endeavored to obey, was to create a code that would be applicable to all the armed forces--Army, Navy, Air Force and Coast Guard; a code that would operate uniformly for the unified Military Establishment. We have also tried to phrase the Code in modern legislative language and to arrange its provisions in orderly sequence, so that it would be understandable to laymen and to civilian lawyers as well as to men learned in military law.

The Code is designed to supersede (a) the Articles of War including the Amendments contained in the Selective Service Act of 1948, (b) the Articles for the Government of the Navy, and (c) the Disciplinary Laws of the Coast Guard. As you know, there are at present no separate articles governing the Air Force or the Marine Corps. If passed, the Code will be the sole statutory authority embodying both the substantive and the procedural law governing military justice and its administration. There will be the same law and the same procedure governing all personnel in the armed services. That this should be so is the settled conviction

of most people and I believe no argument is necessary to demonstrate its validity.

In the same way that all persons in this country are subject to the same Federal laws and triable by the same procedure in all Federal courts, so it will be in the Armed Forces. The original trial of an accused will be in a court of his own service, except in certain circumstances where he is a member of a force acting jointly with another. The departmental review will follow a similar course. But the procedure before trial, at the trial, and on review will be the same as if the case had occurred in either of the other armed forces. The final review on the law will be made by the same tribunal for all the Departments of the Military Establishment. The objective is to make certain not only that justice be done to the accused but that there be no disparities between the services. A civilian lawyer will have no difficulty in conducting any case at any stage of the proceeding.

You will doubtless consider each of the 140 Articles contained in the Code and compare it, by cross-reference, with the corresponding provision in the Articles of War and the Articles for the Government of the Navy which it supplants. Inasmuch as a large portion of the Code has its foundation in those two statutes, in many instances there is very little that is new in the Uniform Code except the language. There are a number of provisions, however, which were not heretofore contained in either the Articles of War or the Articles for the Government of the Navy and to which you will probably wish to give special consideration. By a brief summary of

the contents of each Part of the Uniform Code, starting at the beginning, I can indicate to you those Articles which are incorporations of present provisions and practices, those which are incorporations of the amendment of last year to the Articles of War, and those Articles which are new.

Part I of the Code concerns itself with general provisions which are usually found in modern penal laws. This Part contains, in addition to definitions, the general jurisdictional provisions of military law. There is little in this Part which is entirely new.

Article 4, however, is a noteworthy change for the Army and Air Force in that it provides that, in cases where an officer is dismissed by the President without trial and in the event he is later exonerated, he may be restored to active duty. Article 6 extends to the Navy the provisions passed by the Congress at the last session requiring assignments for duty of judge advocates and legal officers to be subject to the approval of the appropriate Judge Advocate General and requiring consultation by convening authorities with staff judge advocates or legal officers in matters relating to the administration of military justice.

Part II, which consists of Articles 7 through 14, covers the general subject of apprehension and restraint. It is new only to the extent that the conflicting definitions of the terms used and the different processes have been simplified and made more

orderly. Attention is drawn, specifically, to Article 12, which continues the provision enacted by the 80th Congress in connection with confinement of members of the armed forces with enemy prisoners.

Part III consists of one Article only -- Article 15, which deals with non-judicial punishment imposable by commanding officers. This is commonly called company punishment in the Army, and punishment at mast in the Navy. As you will notice, the Article lists all the punishments now so imposable by both the Army and the Navy. The present practice of the Army differs from that of the Navy. The permitted punishments are different. The Army practice has been to impose less severe punishment and to give the accused an option to demand trial by court-martial. The Navy has imposed somewhat more severe penalties and has given the accused no option. This diversity in practice is due to two factors: (1) men on shipboard are necessarily in a different situation with reference to freedom of motion and availability of replacement than men in camp; (2) the punishment is imposed at mast by the Captain, and a summary court consists of an inferior officer, while in the Army such an incongruity in rank between a commanding officer and a summary court would be virtually unknown. The Committee concluded that these factors justified a difference in treatment. Consequently Article 15, first, subjects the imposition of these non-judicial penalties to complete regulation by the President, and, second, gives the Secretary of each Department discretionary power to put additional limitations upon them and to provide for an option to the

accused to demand a court-martial. One further provision of interest in this Article is subdivision (d) which strengthens the present system of appeals from non-judicial punishment and permits reviewing authorities not only to remit the unexecuted portion of punishment, but to restore rights adversely affected.

Part IV in its Article 16 creates three classes of courts-martial -- general, special and summary. These correspond to the present courts in the Army. The special court-martial under present Navy practice is called a summary court, and the summary court is called a deck court. The chief difference from the present Army provision is the requirement that a general court shall consist of at least five members and a law officer.

Most of the Articles consist of a rewording and revision of provisions found at present in both the Articles of War and the Articles for the Government of the Navy. Article 17, however, is new in that it provides reciprocal jurisdiction of courts-martial. By its terms, each armed force shall have court-martial jurisdiction over all persons subject to the Uniform Code. There is thus provided authority for an Army court-martial to try either its own personnel or the personnel of the Navy, the Air Force or the Coast Guard. It is felt that this provision is necessary in the light of unification and by virtue of the tendency to have military operations undertaken by joint forces. Inasmuch as it is not possible at this time to forecast the different forms of joint operation which will take place in the future, the exercise of the reciprocal jurisdic-

tion of one armed force over the personnel of other Services has been left to the regulations of the President. In this way a desirable flexibility is attained which will enable the President to prescribe the types of operations in which reciprocal jurisdiction will be exercised.

Part V, which has to do with the appointment and composition of courts-martial, includes Articles 22 through 29. These fix the qualifications of the persons who may convene general, special and summary courts and the persons who may serve on courts-martial. Article 25 provides for the service of enlisted men on courts which try enlisted men and follows the provision of Public Law 759 of the 80th Congress. Article 26 and Article 27 deserve special mention. The former, which provides for a law officer on general courts-martial, changes the practice of the Navy which has heretofore had no judge on its courts. It also changes the practice of the Army, which has had a law member, in that this official will now act solely as a judge and not as a member of the court, which becomes much like a civilian jury. The law officer will not retire with the court.

Article 27, which provides for the appointment of trial counsel and defense counsel, changes present Army and Navy law in that it makes it mandatory for each counsel before a general court-martial to be either a judge advocate or a law specialist, or a person admitted to practice in the Federal or the highest court of a State, and to be certified by the Judge Advocate General as competent. Heretofore, lawyers acted as counsel only if they were found available

by the convening authority. The Committee believes that the provisions of these two Articles will tend to make the general court-martial a more independent tribunal staffed by competent and efficient lawyers.

Part VI covers the provisions governing pre-trial procedure and, in the main, the Articles in this Part follow present Army practice as prescribed in the amendment of 1948. The Navy practice of pre-trial investigation is less formal than that of the Army. By the new provisions, both of them will be the same.

Part VII, Articles 36-54, covers trial procedure and follows closely the present Army and Navy practices. A good many of the provisions, however, now make uniform a number of minor differences which have heretofore existed. Article 37 continues the provision passed by the Congress last year prohibiting unlawful influence on the actions of courts-martial. The Committee believed it most desirable to continue this salutary prohibition, which will do much to eliminate so-called command control. Article 41, which provides one peremptory challenge of members of general and special courts, follows present Army practice, but changes Navy practice, which heretofore had no provision for peremptory challenges. Another example of uniformity is found in Article 51, which covers the question of voting and rulings. As set out by the provisions of the Article, the law officer now becomes more nearly an impartial judge in the manner of civilian courts. In addition to ruling on interlocutory questions of law during the course of the trial, the law

officer is now required to instruct the court, on the record, before it retires as to the elements of the offense and to charge the court on presumption of innocence, reasonable doubt and burden of proof. In Article 52, you will notice that the number of votes required for both conviction and sentence have been made uniform for all the Services.

Part VIII, Articles 55-58, deals with sentences and has nothing new in it except an authorization to the respective Secretaries to make regulations for carrying into execution any sentence of confinement in any correctional or penal institution under the control of the United States. This was drafted after consultation with the correctional branches of the Services and its purpose is to make available more adequate facilities for rehabilitation of offenders.

Part IX, Articles 59-76, provides for the appellate review of court-martial cases. It makes a number of innovations in which I am sure you will be interested. When the Committee considered the whole subject of appellate review, it found that the present procedures of the Army and Navy differed widely. The Army system is exceedingly complex. To the review by the convening authority and the Board of Review, further review was added last year by Congress by a Judicial Council composed of three general officers. The course of review for several types of case is painstakingly spelled out in the Articles of War by reference to and in conjunction with the respective functions of approving and

confirming authorities, and is difficult for the uninitiated to diagram or understand. In studying this system, the Navy felt that it was wholly impracticable for its operations. The Navy system of review, on the other hand, is far more informal and, in the main, rests ultimately with the Secretary of the Navy. It provides a review by the convening authority, a review in the office of the Judge Advocate General, and an additional review on sentence by the Bureau of Personnel and by a Sentence Review Board. The action of all these agencies, however, is advisory only. The Army thought this system unsuited to its needs. The Committee felt obliged to devise a system that would be useful and practical for all Services, and would be consonant with the plan of unification.

In essence, the appellate review proposed in the Uniform Code is as follows: There is an initial review by the convening authority covering law, facts, credibility of witnesses and a review of the sentence. In this respect, it is in all essentials the same as the first review provided at the present time by both the Army and the Navy. In so far as the convening authority has affirmed a finding or sentence against the accused, a review is provided by a Board of Review in the Office of the Judge Advocate General of the Department of which accused is a member. This Board of Review is a counterpart of the present Board of Review of the Army. As the Amendment of 1948 provides, it reviews the record of the trial for law, facts and sentence. To this extent, the Navy system is changed. Following this review, there is a review for

These cover the definitions of a "principal," "an accessory after the fact," "attempts to commit crimes," "conspiracies" and "solicitations." You will notice as you study the punitive Articles that we have consolidated a number of them in the same fashion as we have consolidated a number of other provisions throughout the rest of the Code. An example of this is the crime of desertion, which is now contained in Article 85. The same material was heretofore found in Articles of War 28 and 58 and in Articles for the Government of the Navy 10, 4 (paragraph 6), and 8 (paragraph 21).

In addition, we have made specific several offenses which were previously punishable under the General Article. One of them we designate as "missing movement," which is contained in Article 87. This is an aggravated type of absence without leave and is designed to meet conditions encountered in World War II. The experience of World War II indicates that a large number of military personnel who were legitimately on leave or who left without permission returned after their unit or ship had moved or sailed. This misconduct caused so much trouble that it was felt necessary to make it a subject of a specific Article. Article 105, entitled "Misconduct as Prisoner," is also new and provides for punishment of anyone subject to the Code, who while in the hands of the enemy in time of war, either for the purpose of securing favorable treatment for himself or while in a position of authority, mistreats others who are confined with him. You will recall that a number of instances of this type came to light after the war. They justify

the enactment of this specific offense.

The last Part, namely Part XI, contains a number of miscellaneous Articles such as those regulating the procedures before courts of inquiry, those providing for authority to administer oaths, and for complaints against superiors, and for redress for damage done to private property by members of the Armed Forces.

One important concern of the Committee throughout its deliberations was the position of military command in the court-martial system. Secretary Forrestal, in his precept to the Committee, instructed us to draft a Uniform Code, to be uniform in substance and uniform in interpretation and construction, which would protect the rights of persons subject to the Code without undue interference with appropriate military functions. It was recognized from the beginning by the Committee that a system of military justice which was only an instrumentality of the commander was as abhorrent as a system administered entirely by a civilian criminal court was impractical. We had before us, as I have told you, studies made by various committees in the past and also the testimony presented to this Committee in the last Congress. We were aware of the criticisms which had been made against the court-martial system and the defenses that have been put forward in its behalf. We were convinced that a Code of Military Justice cannot ignore the military circumstances under which it must operate but we were equally determined that it must be designed to administer justice. We, therefore, aimed at

providing functions for command and appropriate procedures for the administration of justice. We have done our best to strike a fair balance, and believe that we have given appropriate recognition of each factor. Because of the military nature of courts-martial, we have left the convening of the courts, the reference of the charges, and the appointment of members to the commander. For the same reason, we have preserved the initial review of the findings and the sentence by the commander. Having done this, we examined ways and means of restricting the commander to his legitimate functions. We have tried to prevent courts-martial from being an instrumentality and agency to express the will of the commander. To make the action of courts-martial and the procedure for review free from his influence we have set up an impartial judge for the court-martial, made it mandatory that lawyers represent the parties in the general court-martial cases, required the commander to consult before and after trial with his staff judge advocate or law specialist, and prohibited him from either censuring or reprimanding the court. We have set up a system which resembles the independent civilian court, but we have placed it within the framework of military operations. At the trial and in the review of facts the men who function as counsel, trial judge and intermediate appellate judges will be skilled in law and in military matters. They will be independent of command and subject to a supreme civilian tribunal on questions of law.

I am aware that there are many schools of thought on

military justice, ranging all the way from those who sponsor complete military control, to those who support a complete absence of military participation. I do not believe either of these extremes represents the proper solution.

In closing my formal remarks, I would like to state again that I strongly support the Uniform Code and urge its approval by the Congress. As Secretary Forrestal told you, there was a remarkable unanimity among the members of the Committee. The Code as submitted is not exactly what any one of us would have drawn had he been alone and starting without precedent. Many of the provisions on which there was unanimity were compromises. I support all these unanimous decisions, and I also support the decisions made by Secretary Forrestal.

If you have any questions on any of the Articles, I shall be glad to try to answer them.

THANK YOU.