

ESTABLISHMENT OF MILITARY JUSTICE—PROPOSED AMENDMENT OF THE ARTICLES OF WAR.

FRIDAY, SEPTEMBER 26, 1919.

UNITED STATES SENATE,
SURCOMMITTEE ON MILITARY AFFAIRS,
Washington, D. C.

The subcommittee met, pursuant to adjournment, in the room of the Committee on Appropriations, at 2.30 o'clock p. m., Senator Francis E. Warren presiding.

Present, Senators Warren (chairman), Lenroot, and Chamberlain.

STATEMENT OF LIEUT. COL. W. C. RIGBY—Resumed.

Senator WARREN. You may proceed, Colonel.

Lieut. Col. RIGBY. I was asked yesterday to put into the record statistics concerning the restoration to the colors of men from the disciplinary barracks. These statistics we do not have complete in the office. They have been telegraphed for, and we can get them in time, so that if desired we can put them in my testimony when it is being written up.

Senator WARREN. At the proper place, where we made the inquiry?

Lieut. Col. RIGBY. Yes, sir.

Senator WARREN. Very well.

Lieut. Col. RIGBY. And the same thing is true also of the statistics that were desired as to the recommendations of the Judge Advocate General. Those statistics were made up one time last winter for one year during the war, but we can have them ready to insert in the same way covering the entire period of the war.

As to the form of the French trial, it occurred to me that the quickest way perhaps to put that before the committee would be to write out the form of an actual trial as it would take place in a French court, and for the purpose of comparison I took the testimony of the record in the Ledoyen case, one of the cases spoken of as the "four French death cases." That is already in your record, I think. I turned that into the form of a proceeding in a French court in the armies on active service.

Senator WARREN. That would be not as to what judgments the judges would give, but as to the *modus operandi*.

Lieut. Col. RIGBY. The complete showing on it, making it with the same judgment that our judges gave, but the complete showing.

Senator CHAMBERLAIN. Why did you not take an actual French case?

Lieut. Col. RIGBY. Simply in order to get the absolute comparison. I could put in also, if desired, the record of some actual French cases which I attended, and of which we got stenographic reports.

Senator WARREN. Would you like to have one of these?

Senator CHAMBERLAIN. I do not care.

Lieut. Col. RIGBY. If desired, I would be glad to put that in.

(The form of record of trial prepared by Lieut. Col. Rigby, referred to, is here printed in the record as follows:)

MEMORANDUM SHOWING THE COURSE OF PROCEDURE IN THE FRENCH CONSEIL DE GUERRE IN THE ARMIES ON ACTIVE SERVICE; ASSUMING THE TRIAL OF A CASE LIKE THAT OF PRIVATE OLEN LEDOYEN, C. M. No. 110751.

1. The accused, Private Olen Ledoyen, is charged with disobedience, the morning of December 14, 1914, of an order from First Lieut. Fred M. Logan to get his equipment and fall in for drill, in France, in the zone of operations at the front near the front lines in time of war. We will assume that this happened in a French organization.

2. The offense occurred at 8 o'clock in the morning, December 14. Ledoyen is immediately placed in arrest. Lieut. Logan telephones the company commander and the latter telephones the colonel, who directs the captain to investigate the circumstances and report. During the forenoon the captain procures written statements about the occurrence from Lieut. Logan and from a sergeant and a corporal who were present. He also has another lieutenant interview the accused in the guard house. The accused is sharply cross-questioned and is not warned of his right to refuse to answer. (Technically he has that right, but in practice really not.) The accused admits that he received the order from Lieut. Logan and that he did not obey it; that he refused to obey; says that the lieutenant "had us out on the hill yesterday, and we nearly froze to death, and this morning I was so stiff that I could not drill."

The captain sends the statement to the colonel about 1 o'clock with a memorandum that the accused has already been punished four times (by summary disciplinary punishment, not put on his service record) for failing to appear for drill at the appointed time and for disobedience of orders. The colonel receives the papers in the course of the next half hour and forwards them to the division headquarters through channels. They arrive by 3 o'clock and are referred to the chief of the section of military justice, immediately examined and an order prepared for the signature of the commanding general referring the case for trial by "direct order" (under section 156 of the code) without any formal investigation. The general signs the order directing trial at 5 o'clock the same afternoon before a special court-martial (emergency war court) under the presidential decree of September 6, 1914. The court is composed of a major, a first lieutenant, and a regimental sergeant major. The major is president of the court. A captain is appointed "commissaire" (judge advocate), and a young lawyer who is a private soldier is appointed counsel for the accused, by the same order referring the case to trial. The accused is immediately notified and served with a copy of the order, which contains the charges against him, and is advised of the appointment of his counsel and asked whether he desires to choose any other counsel for himself. He says no; he does not know anyone else whom he wants as counsel; and he is given an opportunity to talk the case over with his counsel.

3. Promptly at 5 o'clock the court convenes. At one end of the room is a high bench for the judges, at their left hand is a desk for the commissaire, in front are a few benches, behind that a rail partly across the room, and behind that half a dozen benches and a small open space. At the rear of the room eight soldiers are drawn up at attention with fixed bayonets. The court file in, wearing side arms, and take their seats. The commissaire takes his seat and the greffier (clerk of the court) is seated at a little desk at the right hand of the court. A noncommissioned officer is in charge of the guard of soldiers and another noncommissioned officer is at the door.

4. The procedure is as follows:

PRESIDENT. The court is open. Guard, bring in the prisoner.

(The prisoner is brought in under guard of two soldiers and is seated between them on a bench in front of the court; his guards have their bayonets

fixed. His counsel, wearing an advocate's robe over his private soldier's uniform, is seated on the first bench behind the rail—not inside the rail.)

PRESIDENT. Clerk, read the order convening the court and appointing the judges.

(The clerk reads the convening order.)

PRESIDENT. Accused, stand up. What is your surname—your first name?

ACCUSED. Olen Ledoyen.

PRESIDENT. Your age?

ACCUSED. 19 years.

PRESIDENT. Where were you born?

ACCUSED. Marseilles.

PRESIDENT. Are you married?

ACCUSED. No.

PRESIDENT. Your business?

ACCUSED. Mechanic.

PRESIDENT. Where was your last home?

ACCUSED. Marseilles.

PRESIDENT. Your rank?

ACCUSED. Private.

PRESIDENT. Your regiment?

ACCUSED. 111th (French) Infantry.

PRESIDENT. Sit down. Mr. Clerk, read the order referring the case for trial and the names of the witnesses.

(The clerk reads the order referring the case for trial, and the names of the witnesses, and then says:)

CLERK. The only witness called by the commissaire is Lieut. Sidney M. Logan.

PRESIDENT. Guard, see that the witness retires.

(Lieut. Logan, who has been sitting in the rear of the room, retires.)

PRESIDENT. Mr. Clerk, read the report of the rapporteur.

CLERK. There is no report from the rapporteur, the case being here under a direct order from the general. The report of the company commander is here.

(He then reads the report of the company commander with the statements of the lieutenant, the sergeant, the corporal, and the accused's own statement.)

PRESIDENT. Ledoyen, stand up. [Accused rises.] It appears from these papers that you are charged with disobeying an order to drill given to you by First Lieut. Logan, your superior officer, at 8 o'clock this morning. The law gives you the right to say anything which you consider useful for your defense.

[Turning to accused's counsel.] I also warn you, Mr. Counsel, that nothing is to be said against your conscience nor against the respect due to the laws and that you must express yourself with decency and moderation. [Turning again to accused.] Ledoyen, you heard and understood the order given you by Lieut. Logan, did you not, and you knew that he was your superior officer, and that it was your duty to obey his orders?

ACCUSED. Yes, sir.

PRESIDENT. And you did not obey the order? You refused and stated that you refused?

ACCUSED. Yes, sir.

PRESIDENT. You were ordered to get your pack ready and get ready for drill with your squad?

ACCUSED. Yes, sir.

PRESIDENT. And Lieut. Logan gave you this order personally?

ACCUSED. Yes, sir.

PRESIDENT. Did you tell the lieutenant any reason why you refused to go to drill?

ACCUSED. No, sir.

PRESIDENT. The lieutenant repeated the order to you and you still refused, and then you were ordered under arrest?

ACCUSED. Yes, sir.

PRESIDENT (turning to commissaire). Mr. Commissaire Rapporteur, have you any questions to ask the accused?

COMMISSAIRE. No, Mr. President.

PRESIDENT (turning to the counsel for the accused). Mr. Counsel, have you any explanations to give or observations to offer?

ACCUSED'S COUNSEL. I have a few questions which I respectfully request the President to put to the accused.

PRESIDENT. State your questions.

ACCUSED'S COUNSEL. Please ask the accused why he was not willing to go to drill this morning.

PRESIDENT (to accused). You may answer that question.

ACCUSED. Lieut. Logan had us out on the hill yesterday, and we nearly froze to death; and this morning I was so stiff I could not drill.

PRESIDENT (to accused's counsel). Have you any further questions, Mr. Counsel?

ACCUSED'S COUNSEL. No, Mr. President.

PRESIDENT (to accused). You were able to walk this morning?

ACCUSED. Yes, sir.

PRESIDENT. You had not reported yourself on sick call?

ACCUSED. No, sir.

PRESIDENT. You did not give Lieut. Logan any reason for your refusal to obey the order?

ACCUSED. No, sir.

PRESIDENT (turning to commissaire). Mr. Commissaire Rapporteur, have you any further questions?

COMMISSAIRE. No, Mr. President.

PRESIDENT (turning to counsel for accused). Mr. Counsel, have you any further questions or any explanations to give or observations to make?

ACCUSED'S COUNSEL. No, Mr. President.

PRESIDENT (addressing his fellow judges). Gentlemen of the court, have you any questions to ask the accused?

(Both judges shake their heads.)

PRESIDENT. Ledoyen, sit down. [Addressing the guard.] Guard, have the witness, Lieut. Logan, come in.

(Lieut. Logan enters the court room, walks up to the railing, and stands facing the court.)

PRESIDENT. Raise your right hand. [Lieut. Logan raises his right hand.] You swear to speak without hatred and without fear, to tell the whole truth and nothing but the truth? Say, "I swear it."

Lieut. LOGAN. I swear it.

PRESIDENT. Put down your hand.

(Lieut. Logan lowers his hand.)

PRESIDENT. What are your surname and first name?

Lieut. LOGAN. Logan, Sidney M.

PRESIDENT. Your age?

Lieut. LOGAN. Twenty-six years.

PRESIDENT. Your rank?

Lieut. LOGAN. First lieutenant.

PRESIDENT. Your regiment?

Lieut. LOGAN. One hundred and eleventh Infantry (French).

PRESIDENT. Do you see the accused?

Lieut. LOGAN. Yes, Mr. President.

PRESIDENT. Did you know him before the occurrences with which he is charged?

Lieut. LOGAN. Yes, Mr. President.

PRESIDENT. Are you related to him in any way, by blood or marriage?

Lieut. LOGAN. No, Mr. President.

PRESIDENT. You have never been in his service, nor he in yours?

Lieut. LOGAN. No, Mr. President.

PRESIDENT. Give your testimony.

Lieut. LOGAN. This morning, about 8 o'clock, I gave the accused, Olen Ledoyen, an order to get his pack and get ready for drill with his squad. He did not obey that order. He refused and stated that he refused. He did not state any reason why he would not obey. He did it willfully and was warned at the time. I gave him the order in person, and he did not say anything as to why he disobeyed. He just said that he would not go to drill. I then told him of the consequences of such an act and gave him another opportunity to go get his pack and drill, and he again refused, saying, "I refuse to go to drill." I warned him of the consequences of his act.

PRESIDENT. State as nearly as you can remember, the exact words that you used in warning accused of the consequences of his act.

Lieut. LOGAN. I told him that he was making himself liable to trial by a court which might impose a very heavy penalty. There were four who first refused to go to drill, and two reconsidered and went to drill later. I asked the accused

if he understood what he was doing, and he and Pvt. Fishback refused to go to drill.

PRESIDENT. Did the accused know that the court might impose a death penalty for his act?

Lieut. LOGAN. I think not; I do not believe that I told him that.

PRESIDENT. You stated a heavy sentence?

Lieut. LOGAN. Yes, sir.

PRESIDENT. Did the accused offer any reason as to why he refused to drill?

Lieut. LOGAN. No, sir.

PRESIDENT. Was it simply a positive flat refusal with no excuses?

Lieut. LOGAN. Yes, sir.

PRESIDENT. Is it of the accused, here present in court, that you have been speaking?

Lieut. LOGAN. Yes, sir.

PRESIDENT (to the accused). Ledoyen, stand up. [Accused rises.] Have you any observations to make on the testimony of this witness?

ACCUSED. As I have already stated to the court, Lieut. Logan had us out on the hill yesterday and we nearly froze to death, and this morning I was so stiff that I could not drill.

PRESIDENT. Anything further?

ACCUSED. No, sir.

PRESIDENT. (turning to the commissaire). Mr. Commissaire-Rapporteur, have you any questions to ask the witness?

COMMISSAIRE. No, Mr. President.

PRESIDENT (addressing counsel for the accused). Mr. Counsel, have you any explanations to give or observations to offer on the testimony of this witness?

ACCUSED'S COUNSEL. No, Mr. President.

PRESIDENT (addressing the other judges). Gentlemen of the court, have you any questions to ask this witness?

(Both judges shake their heads.)

PRESIDENT (to witness). You may retire or be seated.

(Lieut. Logan salutes and retires.)

PRESIDENT. The commissaire du gouvernement has the floor.

COMMISSAIRE. I have no observations to offer, Mr. President.

PRESIDENT. The counsel for the accused has the floor.

(The counsel for the accused, standing in his place behind the railing, addresses the court for between 10 and 15 minutes. He makes an impassioned and rather flowery speech, appealing to the sympathy and mercy of the court, calling attention to the youth of the accused, his suffering the day before, his hard service for some time past, and his failure to understand the gravity of his offense and the nature of the punishment which it was within the power of the court to impose; and, admitting the technical guilt of the accused, pleads for as light a sentence as possible.)

PRESIDENT. Accused, stand up. [Accused rises.] Have you anything else to add in your defense?

ACCUSED. No, sir.

PRESIDENT. I declare the trial ended. Let the accused be removed.

(The accused is escorted out of the room by his guard; the judges retire to their private room. In about 10 minutes the judges return to the bench, the sitting is reopened, but the accused is not brought back into the room.)

(The president reads the judgment in the prescribed form, finding the accused guilty and sentencing him to be shot, reciting that the vote of the court is unanimous.)

PRESIDENT. The court is closed.

(It is then about 5.45 p. m., the trial having occupied about 45 minutes.)

The judges file out of the court room; the commissaire and the greffier go to the adjoining room where the prisoner is waiting with his guard and with half a dozen other prisoners under like guard who have been tried during the day. All of these prisoners are drawn up in line, and the greffier reads the various judgments and sentences in their different cases in the presence of all of them. Ledoyen is then removed by his guard to await the execution of his sentence.

5. The commissaire du gouvernement at about 8 o'clock the same evening, presents to the general a copy of the judgment of the court and an order for the general's signature, directing the execution of the sentence (no appeal lies from the judgment of the special court). The general carefully looks through the papers, asks the commissaire whether they are all in order and whether the commissaire recommends carrying out the sentence immediately, and upon

receiving the commissaire's affirmative reply signs the order, fixing the hour of execution at 7.30 the next morning.

6. At 7.30 the following morning the death sentence is carried into execution by a firing squad in the presence of accused's battalion. Immediately after the execution, while the body is lying on the ground, the battalion is marched past the body so that every man may have a close view of it for the purpose of impressing upon him the punishment meted out.

7. If instead of ordering the case before one of the emergency war courts (special courts), as above assumed, the commanding general had referred it to the regular conseil de guerre, the procedure on the trial would have been precisely the same, the only difference being that the accused would have been entitled to 24 hours' notice before the sitting of the court. In that case the court would have sat at 5 o'clock (or perhaps an hour earlier) on December 15. And in that case the accused would have had a right to appeal within 24 hours to the court of revision of the division, which would have resulted in 7 days delay in the execution, as follows:

1. One day for accused to pray appeal.
2. One day for papers to be filed with the clerk of the court of revision.
3. One day for accused's counsel to file his "memoir" with the court of revision.
4. Three days for the member of the court acting as rapporteur to examine the case and prepare his report for the court.
5. One day for the session of the court.

Upon affirmance by the court of revision, the judgment is carried into execution in the same way as above outlined.

Senator CHAMBERLAIN. This is for the purpose of showing that the American proceeding is more in detail than the French?

Lieut. Col. RIGBY. It is for the purpose of a comparison. With that I want to offer the form prescribed in the French "Guide Pratique et Sommaire" for the conduct of a case, upon which—together with my observation of the trial of cases—this is gotten up. That form occurs on pages 59 to 61 of the "Guide Pratique et Sommaire."

TRANSLATION OF PAGES 59-61 OF "GUIDE-PRACTIQUE ET SOMMAIRE DES CONSEILS DE GUERRE AUX ARMEES": 1914 EDITION.

[Model No. XVI.]

GUIDE FOR A SESSION OF THE COURT.

NOTE.—Words italicized are those which are to be said by the president.

The members of the court take their respective places; the president declares:

The session is open.

Guard, bring in the accused, X——.

Mr. Clerk, read the order appointing the judges.

(Identification of accused:)

Accused, stand up.

What are your surname and given name?

Your age?

Your birthplace?

Are you married? (If yes) How many children?

Your business?

Your last place of residence?

(If the accused is a military person:)

Your rank? To what regiment ("corps") do you belong?

Sit down.

Mr. Clerk, read the order referring the case for trial and call the witnesses.

Guard, see that the witnesses retire.

Mr. Clerk, read the report of the rapporteur.

Accused, stand up.

It appears from these documents that you are charged with [taking up the charges set out in the order referring the case for trial].

I advise you that the law gives you the right to say whatever you have that is useful for your defense.

I advise you also, Mr. Counsel ("M. le Défenseur"), that he ought not to say anything against his conscience nor against the respect due to the laws, and that he must express himself with decency and moderation.

The interrogation of the accused follows.

(At its end:)

Mr. Commissaire Rapporteur, have you any questions to put to the accused?

Mr. Counsel, have you any explanations to give or observations to offer?

Have any of the judges any questions to put to the accused?

(Examination of witnesses.)

Guard, bring in the witness X——.

(To the witness:)

Raise your right hand.

Do you swear to speak without hate and without fear, to speak the whole truth and nothing but the truth?

Say "I swear it." Put down your hand.

What are your surname and given name?

Your age?

Your business? (For military persons before entering the service.)

Your residence? (For military persons before entering the service.)

(For military persons only.) Your rank? Your regiment?

Do you see the accused?

Did you know him before the events out of which the charges grow?

Are you related to him by blood or marriage?

You are not in his employment, nor he in yours?

Give your testimony.

(At the end of the testimony.)

Is it assuredly of the accused here present that you have been speaking?

(To the accused.)

Accused, stand up.

Have you any observations to make upon the testimony of this witness?

The Commissaire du Gouvernement has the floor.

The counsel for the accused has the floor.

Accused, stand up.

Have you anything else to add in your defense?

I declare the trial ("les débats") finished.—Let the accused be removed.

THE COURT RETIRES TO DELIBERATE ON THE CASE.

(The court is reconvened and the president reads the judgment; Model I.)

(If there is no other accused to be tried.)

The session is closed.

(Otherwise.)

The session will continue.

Guard, bring in the accused, Y.

(For a recess.)

The session is suspended for — minutes.

Senator WARREN. Of course if you put in the actual French case, you would have to translate it, would you not?

Lieut. Col. RIGBY. I could do that also.

Senator WARREN. Unless the Senator feels that it is necessary you need not do that.

Lieut. Col. RIGBY. I will put in a translation of this form with my testimony.

Then I want to offer a report which Maj. Wells made to me of his attendance on a British field general court-martial in the Rhine district, together with the stenographic reports of those trials, and a letter to which I rather specially desire to call attention, or a carbon copy of the letter.

Senator WARREN. Those are trials in the American Army?

Lieut. Col. RIGBY. In the British army. The British field court-martial in the Cologne district.

(The report referred to is here printed in the record as follows:)

DESCRIPTION OF SITTING OF FIELD GENERAL COURT-MARTIAL OF THE BRITISH ARMY.

On Thursday, July 24, 1919, the undersigned, Maj. W. Calvin Wells, judge advocate, United States Army, accompanied by Army Field Clerk A. R. Hitchings, attending a sitting of a field general court-martial, held at Frankenfort, about 12 miles from Cologne, Germany. Brig. Gen. Mellor, deputy judge advocate general, stationed at Cologne, Germany, drove us out in his auto from Cologne to Frankenfort. Before going to the meeting place of the court, I had a conference with Capt. G. E. Sykes, a barrister in civilian life who in the army had been appointed as the legally qualified member of the field general court-martial. As hereinafter set forth, this legally qualified member really conducted the whole proceedings of the court, questioning the witnesses, there being practically no questions asked either by the prosecutor for the Government nor for the counsel for the accused.

The court was held in a pavilion or band stand in a beer garden which was a popular resort prior to the war for the citizens of Cologne. The band stand acted as a sounding board, having a solid back and the front being open toward the garden. The front of the band stand was curtained in by blankets and the court sat on one side and at the two ends of a table. The table covering and chairs were rough and crude and the blankets as curtains added to the roughness of the effect of the scene. The proceedings were entirely informal and without any pomp or ceremony whatsoever. The president of the court, a major, sat at the center of the side of the table, the two representatives of the American Army, myself and Mr. Hitchings, sat at the table at the right of the president, and at the right of Mr. Hitchings sat a member of the court, a captain, and at his right at the end of the table a first lieutenant sat. At the left of the president of the court sat Capt. Sykes, or legally qualified member of the court, and at the left of Capt. Sykes sat two officers of the British Army who were sitting for the purpose of instruction—at the left of those two officers sat the prosecutor at the end of the table, and at his left away from the table sat the counsel for the accused, a British officer who was not a lawyer or barrister. A noncommissioned officer, a sergeant, stood at the door and brought in the accused and witnesses during the progress of the sitting. This sergeant had in his hand a list of the cases to be tried and the names of the witnesses. Before calling the first case, the legally qualified member of the court swore the president of the court who in turn swore the members of the court. The legally qualified member also swore the two officers under instruction. The prosecutor was not sworn, whether this was an error or omission or not I do not know. The legally qualified member keeps a record of the proceedings in longhand. There is a folder with a printed form on the opening page and the concluding page, which was filled in by this legally qualified member with the names of the members of the court and certain other statements as to certain requirements of the statute. This folder is known as Army Form A-3, and a copy of the entire record of one of the cases, except the name of the defendant is entered as "A. B." is filed herewith marked Exhibit A hereto. There is also filed as Exhibit B for information, but having no connection with the field army trial here being described, the form for a general district and regimental court-martial, being Army Form A-9, which was given me by the president of the court. The legally qualified member of the court is used in a great many different courts and is ordered by telegram to go to the various courts to sit, and as above stated he practically conducted the court. A carbon copy of the telegram (in bad shape when handed me) addressed to Capt. Sykes is filed hereto marked Exhibit C. The original showed that the substance of the telegram was about the following: "Your services required at general headquarters 10th Queen's Royal Regiment, Frankenfort, on July 24 for the trial of five cases. You will be present at such G. H. Q." This telegram was sent from division headquarters, London, to Capt. Sykes at Cologne. When the court had been duly sworn and was ready to proceed to business, the legally qualified member directed the sergeant to bring in all of the accused, together with their guard and the witnesses for and against each accused. These were marked in by the sergeant and the accused appeared uncovered. The guards were covered and wore sidearms and the witnesses were covered. The members of the court, the prosecutor, and the counsel for the accused appeared unarmed and sat covered only uncovering when they were sworn in as members of the court. All of the accused and

witnesses, etc., were sent from the room after verification of their presence with the exception of the accused and his guard who was first to be tried. The charge was then read to the accused who plead not guilty. This first case tried was a charge of desertion, but as shown by the technical charge and specifications in the Exhibit A hereto, it appears to fail to charge anything more than absence without leave. I asked the legally qualified member about this and he stated that it was unnecessary in the pleadings to charge with a greater certainty than was done the charge of desertion, but that proof would establish the offense, to wit, desertion. Their pleadings appeared to be much less technical than ours. The witnesses against the accused were then called in and duly sworn by the interesting old common law custom of having the oath read to them by the legally qualified member while the witness held in his right hand the open Bible with his cap in his left hand, and at the conclusion of the reading to the witnesses, the witness repeated the words, "So help me God," and kissed the open Bible. The witness was then examined by the legally qualified member, who reduced the substance of his testimony to writing in longhand on paper to be placed in the folder, which testimony as so reduced to writing appears in Exhibit A hereto. At the completion of the questioning by the legally qualified member, he asked the prosecutor, the counsel for the accused, and the other members of the court if they had any questions to ask, and with the exception of two times during the whole trial no one else asked any questions. The proceedings were wholly informal and the questioning was efficiently done and a gist of the witnesses' knowledge on the subject quickly gained. Upon the completion of the testimony of the witness, he was marched from the room by the sergeant. There appears as an exhibit to the report to be made of the study of the English system an account of a preliminary hearing held in the Wellington Barracks in the Scots Guards in London where there was great pomp and ceremony and a tremendous noise made by the non-commissioned officers in giving their commands in marching the soldiers in before the court. There was none of this ceremony or noise before the trial in this field general court-martial. On the contrary, the orders of the sergeant directing the troops was in a low voice, and while witnesses were marched in and out, it was without ceremony and quietly done. The whole proceedings occupied about half an hour. The proceedings of this sitting of a field general court-martial as well as of others are so informal that it was difficult that we secured permission to have a stenographer present and take down a verbatim report of questions and answers as the British authorities thought it would give a misleading and wholly erroneous impression to any person who had not been present at the trial. After discussing the matter with Gen. Mellor, however, I secured permission to take this shorthand transcript of the testimony in one case, which testimony is filed herewith marked Exhibit D hereto. A carbon copy of the letter from the commander in chief of the British Army of the Rhine, answering the request of the war office at London to permit our presence at the sitting of the field general court-martial and take a stenographer verbatim report of the proceedings is filed herewith marked Exhibit E. It is easy to understand after seeing the informality of the quickness with which this case was tried, how the case described by Maj. Gen. Childs of the trial of a British soldier accused of cowardice on the retreat from Mons in France at the beginning of the war, could be actually brought to trial within an half hour after the commission of the offense, tried, sentenced to death, and executed and have the Germans marching over his grave within an hour after the commission of the offense. The value of such rapidity was emphasized and the righteousness of the proceeding was defended, and apparently satisfactorily, by Maj. Gen. Childs before the preliminary committee investigating court-martial procedure in the British Army. It appeared that some action was absolutely necessary at that time and the field general court-martial provided the means.

It is to be noted that on the conviction of the charge of desertion the penalty was 56 days' special punishment, which is field punishment No. 2, upon the finding of guilty by the court. Special punishment or field punishment No. 1, which provides for tying a prisoner to a wheel for so many hours each day for so many days, exposed to the public view, is not inflicted now since the armistice has been signed, though it can be inflicted by a field general court-martial still. It was very evident that the court, while finding the accused technically guilty, believed that the explanation made by the accused reduced the penalty to be inflicted to the minimum.

At the conclusion of the taking of the testimony the prosecutor made no arguments. The counsel for the accused made a short argument, clearly stating his position in very few words. The speech of the counsel for the accused was not reduced to writing and does not appear in the record. The prosecutor, who had the right to close the argument, did not do so.

The assistance rendered the court by the legally qualified member was very great, he practically conducting the entire proceeding; and being learned in the law, he permitted no evidence to be introduced which was not competent. If a witness undertook to state something which he did not know of his own knowledge, either for the prosecution or for the defense, he was stopped by him and told that such evidence was not competent and not to state it. He seemed desirous of getting at the exact truth in the briefest possible period of time, and after writing the substance of each witnesses' testimony, he read it over to the witness and had him approve it or change it according to his suggestion before the witness left the stand.

The accused was notified, just as in our courts, with reference to his rights to testify under oath or making an unsworn verbal or written statement, in which latter events he was informed that he could not be cross-examined, but that the unsworn statement would not have the same weight with the court as the testimony on oath. He was also told that he could do neither if he so desired. When the accused elected to be sworn and testify, he was directed to secure his cap and testify covered. The next case tried was one in which the accused pleaded guilty. He was fully informed that he did not need to do so, and if he did not plead guilty, all the testimony necessary to establish his guilt would have to be produced for the prosecution. Having stated that he still desired to plead guilty, there was placed in the record of the case the statements of the witnesses taken on the preliminary investigation of the case, and those statements went up as a part of the record and were read to the court in order that they might know what penalty to inflict.

This rough and ready court guided by a learned lawyer presented to me the best example of arriving at the truth in the least possible time of any court I have ever seen. To function properly and adequately protect the rights both of the Government and of the accused, it is absolutely necessary that the legally qualified member shall be a man learned in the law, of judicial temperament, and more concerned with arriving at the truth than in securing convictions, acquittals, or pursuing the fine shades of distinction between that which is competent and that which is incompetent. In the hands of a learned British lawyer of the above type it is a splendid instrument for enforcing justice; in the hands of another not so well qualified it could be made the instrument of oppression. If he desired to present only one side of the case in reducing to writing the substance of the testimony, he could omit such parts as were favorable to one side or the other, and all that he might reduce to writing be true, yet that which he omitted might be of the greatest weight and might in truth entirely change the sentence or finding which should be rendered in the case, and the reviewing authority would know nothing whatever of such testimony.

For the enforcing of discipline it is a wonderful instrument, but for the protection under all circumstances of the rights of the accused it can not be compared with the procedure of our general court-martial which protects in so many ways the rights of the accused, which protection does not appear before these field general courts-martial.

There is filed also herewith as Exhibit F a copy of a pamphlet styled "Circular Memorandum on Courts-Martial for Use on Active Service," given me by Capt. Sykes.

WILLIAM CALVIN WELLS,
Major, Judge Advocate.

EXHIBIT No. A.

Army Form A. 3. Form for assembly and proceeding of field general court-martial on active service. Proceedings.

On active service, this twentieth day of July, 1919.

Whereas it appears to me, the undersigned, an officer in command of Second London Rifles, on active service, that the persons named in the annexed schedule, being subject to military law, have committed the offences in the said schedule mentioned.

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary general court-martial.

I hereby convene a field general court-martial to try the said persons, and to consist of the officers hereunder named.

President: Rank, major; name, W. S. Hooker; regiment, L. R. Members: Rank, Capt. C. H. Long, Lieut. H. J. Tuffe, Corpl. G. Sykes; regiment, 10 Queens Reg.

(Signed) _____,

Commanding London Infantry Brigade, Convening Officer.

Schedule.—Number, rank, name, and unit of accused¹: No. 10026; Pte. A. B., 10th Queens. Offence charged: When on active service, "Absenting himself without leave" in that he in London on the 2d December, 1918, failed to rejoin his unit (on expiration of leave granted from 19/11/18 to 2/12/18) until surrendering himself to the garrison military police at Victoria Station at 23:50 hours 24/8/19 (section 15, 1A). Plea: Not guilty. Finding, and if convicted sentence²: Guilty; 56 days; S. P. No. 2.

(Signed) A. B. C.

(Signed) X. Y. Z.

COMMANDING LONDON INFANTRY BRIGADE,

*Convening Officer.*³

Maj. C. D., *President.*

COPY OF THE RECORD AS WRITTEN BY THE LEGALLY QUALIFIED MEMBER OF THE COURT WHICH CONSTITUTES ALL THAT WAS WRITTEN BY THE RECORD OF THE ATTACHED EVIDENCE.

Record of trial of No. ———; Private A. B., 10th Queens, 124th Tr. Mortar Battery; prosecutor, Second Lieutenant———; counsel for defense, Lieutenant

Prosecution:

First witness: No. ——— Sgt. ———, 124th Trench Mortar Battery.

On or about November 16, 1919 last, I saw accused pack up to go on leave to England. This was the last I saw of accused until July 15, 1919. I left the unit the day following I saw the accused packing up.

By the court: The unit broke up the day I left it.

Second witness: Captain———, ———.

Sworn stated: Accused belongs to the ———. He was attached to ——— when it broke up on or about November 19, 1918. Accused's duty was then to rejoin his unit. Accused reported to the battery on March 7, 1919. I produce certificate of surrender (marked A) signed and attached. I produce certificate of accused A. B. 103 (marked B), signed and attached.

By the court:

There were about nine other men of ——— in ———. These men all rejoined the battery.

Case for prosecution.

Defense:

The accused, duly warned and sworn, states:

I came to France in May, 1916, with ———. Before this leave I had one previous leave in October, 1917, from which I returned in proper time. I went on leave on November 19, 1918. I was due to return on December 2, 1918. I reported to the Victoria Station December 12, 1918, between ——— and ——— hours. I met a party of men coming away from the leave train. I was told by them that they had been granted an extension of leave and they were to await further orders. I thought it referred to me also, so I returned home. I expected to hear from the war office, and I waited a month. Then I went up to the war office and a noncommissioned officer told me to return home and await orders. I did so. Ultimately thought I had better return, so reported to the police at Victoria Station on June 24, 1919.

No. ———

By the court:

I do not know any of the men I spoke to on December 2, 1918. I took no steps to see an officer or the R. T. O. at Victoria Station to see if it was true,

¹ Unless unavoidable, not more than three names are to be entered on one form, and in very serious cases one only.

² Recommendation to mercy to be inserted in this column.

³ Must be signed by the same officer who signs on the first page, and all alterations in the first two columns of the schedule to be initialed by him.

thought I might return home and await orders. I did not go to the proper inquiry office at the war office, I went to the recruiting office. The men did tell me who had given them the extension. They said it was for 14 days. I wore a uniform all the time I was away. I returned with all my equipment. I was at the same address I had left with the orderly room all the time I was away.

No witness for defense.

Address for the defense: Addresses the court.

After finding the prosecutor sworn, produces certificate of accused's, signed and attached.

No evidence called as to character.

Particulars of service: Enlisted November 21, 1915; not wounded; age, 21 years; overseas, May 5, 1916; not married; civil occupation, rully man; attached Exhibits A and B, referred to above, and the qualification sheet of accused.

Another case.—Enclosed in the Army Form A 3; record of trial of Pvt. A. B. ———, Queens; prosecutor, Lieut. ———; plea, guilty. (Effect of plea explained to soldier). Summary of evidence read (marked A) signed and attached. After finding: Prosecutor sworn produces accused's certificates A. F. B. 122, signed and attached (2 sheets). Accused in mitigation says: I got with some men I did not know who gave me some drink and I remember nothing more.

Particulars of service: Enlisted February, 1915; wounded, Albert, 1915, and evacuated to England; returned to France, October, 1918; overseas, November, 1916; not married; age, 22 years; civil occupation, laborer.

For the defense: (Statement read by the officer.)

I certify that the above court assembled on the 24th day of July, 1919, and duly tried the persons named in the said schedule, and that the plea, finding, and sentence in the case of each such person were as stated in the third and fourth columns of that schedule.

I also certify that (1) the members of the court, (2) the witnesses, (4) the officers under instruction were duly sworn, (5) that S. S. 412 was laid before the court.

Signed this 24th day of July, 1919.

Maj. C. D.,
President of the Court-Martial.

EXHIBIT B.

A.

Army Form A. 9.

[All printed matter not applicable to the particular court being held should be struck out and initialed by the president.]

Form of proceedings for general, district, and regimental courts-martial.

Proceedings of a ——— court-martial held at ——— on the ——— day of ———, 19—, by order of ———, commanding, dated the ——— day of ———, 19—.

President.

Members.

Judge Advocate.

Trial of ——— ———.

At — o'clock the trial commences.

(1) The order convening the court is read and is marked ———, signed by the president, and attached to the proceedings.

The charge sheet and the summary of evidence are laid before the court.

The court satisfy themselves that ——— is not available to serve owing to

———, waiting member takes his place as a member of the court.

The court satisfy themselves as provided by rules of procedure 22 and 23.

(2) ——— appears as prosecutor and takes his place.

The above named, the accused, is brought before the court.

——— appears as counsel for the accused.

The names of the president and members of the court are read over in the hearing of the accused, and they severally answer to their names.

Question by the president to the accused. Do you object to be tried by me as president or by any of the officers whose names you have heard read over?

Answer by accused. _____

(N. B.—If objection is made it should be recorded, together with the decision of the court, on a separate sheet.)

The president, members, and judge advocate are duly sworn.

The following officers under instructions are duly sworn.

CHARGE SHEET.

(3) The charge sheet is signed by the president, marked B 2 and annexed to the proceedings.

(Instruction. If the accused has elected to be tried under Army act, sec. 46 (8), the fact should be here recorded.)

The accused is arraigned upon each charge in the above-mentioned charge sheet.

Question to the accused. Are you guilty or not guilty of the [first] charge against you, which you have heard read?

Answer. _____

Question. Are you guilty or not guilty of the second charge against you, which you have heard read?

Answer. _____

Question. Are you guilty or not guilty of the third charge against you, which you have heard read?

Answer. _____

The accused having pleaded guilty to _____ charge, the provisions of rule of procedure 35 (B) are here complied with.

Instruction. If the trial proceeds upon any charge to which there is a plea of "not guilty," the court will not proceed upon the record of a plea of "guilty" until after the finding on those other charges, such finding being recorded on Sheet E.

C.

PROCEEDINGS ON PLEA OF NOT GUILTY.

(5) The prosecutor makes the following address [hands in a written address, which is read, marked _____, signed by the president, and attached to the proceedings].

The prosecutor proceeds to call witnesses.

First witness for prosecution.

Being duly sworn, is examined by the prosecutor.

D.

The prosecution is closed.

DEFENSE.

Question to the accused. Do you apply to give evidence yourself as a witness?

Answer.

Question. Do you intend to call any other witness in your defense?

Answer.

Question. Is he a witness to character only?

Answer.

(7) [If the accused gives evidence himself, but calls on no other witness to the facts of the case, his evidence will now be taken on a separate sheet.]

(6 and 7) * [The prosecutor addresses the court upon the evidence for the prosecution (and the evidence of the accused) as follows:

(Hands in a written address, which is read, marked _____, signed by the president, and attached to the proceedings.)

Question to the accused. † (6, 7, and 8) Have you anything to say in your defense?

Answer.

The accused in his defense says:

[Hands in a written address, which is read, marked _____, signed by the president, and attached to the proceedings.]

Instruction. * If the accused calls other witnesses to the facts of the case, whether he himself gives evidence or not, this paragraph will be struck out, and the course laid down in R. P. Appendix II (8) will be followed.

† This question will always be asked, unless the accused has himself given evidence and is represented by counsel or by an officer having the rights of counsel, in which case such counsel or officer only will be entitled to address the court.

C:

PROCEEDINGS ON PLEA OF GUILTY.

To be struck out in case no plea of "Not guilty" has been proceeded with.

(4) The court having been reopened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.

The accused _____ is found guilty of _____.

The summary of evidence is read, marked _____, signed by the president, and attached to the proceedings.

Question to the accused. Do you wish to make any statement in mitigation of punishment?

Answer. The accused in mitigation of punishment says: _____ (or hands in a written statement, which is read, marked _____, signed by the president, and attached to the proceedings).

Instruction. If there is no summary of evidence, sufficient evidence to enable the court to determine the sentence and to acquaint the confirming officer with the facts of the case will be taken on a separate sheet in the same manner as on a plea of "Not guilty."

If from the statement of the accused or from the summary or abstract of evidence or otherwise it appears to the court that the accused did not understand the effect of his plea of "Guilty," the court shall alter the record and enter a plea of "Not guilty" and proceed with the trial accordingly.

Question to the accused. Do you wish to give evidence yourself or to call any witnesses as to character?

Answer. _____

Evidence as to character. _____

E.

FINDING.¹

(10) The court is closed for the consideration of the finding.

(10 and 11) The court find that the accused _____.

PROCEEDINGS ON CONVICTION BEFORE SENTENCE.

(12) The court being reopened, the accused is again brought before it.

Evidence of character, etc.: _____ is duly sworn.

Question by the president: Have you any evidence to produce as to the character and particulars of service of the accused? (Answer by the witness.)

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked _____, signed by the president, and annexed to the proceedings.

Question by the president: Is the accused the person named in the statement which you have heard read? (Answer by the witness.)

Question: Have you compared the contents of the above statement with the regimental books? (Answer.)

Question: Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries? (Answer.)

(Cross-examined by the accused.)

(Instruction: If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the court renders him liable to any exceptional punishment in addition to that to be awarded by the court (for instance, forfeiture or reduction of corps pay), the prosecutor must call the attention of the court to the fact, and the court must inquire into the nature and the amount of such additional punishment.)

Question to the accused: Do you wish to address the court? (Answer.)

The court is closed for the consideration of the sentence.

¹ To be omitted, except in cases of a plea of not guilty having been proceeded with.

F.

SENTENCE.

The court sentence the accused —————.

EXHIBIT D.

VERBATIM REPORT OF BRITISH FIELD COURT-MARTIAL HELD AT FRANKENFORT, NEAR COLOGNE, GERMANY, ATTENDED BY MAJ. W. CALVIN WELLS, JUDGE ADVOCATE.

[Transcribed by Army Field Clerk A. R. Hitchings.]

Questions by legally qualified member of the court:

Q. Your name, please?—A. Capt. C. H. Lawrence.

Q. Your unit?—A. Tenth Queens.

Q. Your name, please, lieutenant?—A. Lieut. H. J. Trythall, Tenth Queens.

Questions asked by legally qualified member to prosecuting attorney:

Q. Whom are you prosecuting?—A. Pvt. A. B., Eleventh Queens.

Questions asked by legally qualified member of accused:

Q. Do you object to being tried by me or any officer of the court?—A. No, sir.

The president of the court was sworn in by the legally qualified member; the members of the court were sworn in by the president; the officers under instruction were sworn in by the legally qualified member of the court, each holding the open Bible and kissing the Bible and repeating "So held me God" at conclusion of oath.

Questions by legally qualified member to accused:

Q. ———, Pvt. A. B.?—A. Yes, sir.

The charge was read by the legally qualified member of the court.

Question by legally qualified member to:

Q. Do you plead guilty or not guilty?—A. (Accused) Not guilty.

The prosecutor calls for witnesses.

First witness for prosecution called was Capt. S. W. Gilbert, who was sworn in by one of the officers under instruction.

The captain was sent out and another witness was called and questioned by the legally qualified member:

Q. Your name?—A. S. W. Martin.

Q. Will you give evidence, please?—A. On or about the 16th of November last I saw the accused packing up to go on leave to England. That was the last I saw of him until some evidence was taken.

Q. When was that taken, the 15th of July, I suppose there is no question about that.—A. None. The unit was smashed up the day I saw him packing up.

Q. Did you remain with the unit?—A. Until it was transferred.

Q. But on the 16th of November you were with the unit.—A. I left the unit the next day.

Q. The day you left the unit, was accused with the unit?—A. He proceeded on leave that day.

Q. Do you know that he was on leave that day?—A. I know his warrant had come.

Q. Did you see the warrant?—A. No.

The evidence as taken by the legally qualified member was read over to the witness and he replied that it was O. K. The court had no questions to ask.

Further questions asked of witness by legally qualified member:

Q. You know the accused had a warrant but you did not see it?—A. I can not say anything more about it. They were all congratulating him as usual as he was going on leave, that is all I can say.

The witness was excused and Capt. Gilbert was called in again.

Questions by legally qualified member:

Q. You are Capt. F. W. Gilbert, Tenth Queens?—A. Yes.

Q. Will you give your evidence?—A. The private was attached to One hundred and twenty-fourth Light Trench Mortar Battery of the Tenth Queens.

Q. At what time?—A. I don't know, but the battery broke up somewhere about the 20th of November and at that time he was attached to same. A message was received by the battalion.

Q. We can not accept that as evidence. Can you tell the court what his duty would be on the breaking up of the battery?—A. His duty was to rejoin his unit.

Q. I suppose the leave, if any, was granted by the One hundred and twenty-fourth Light Trench Mortar Battery.—A. Yes.

Q. When did you next see accused?—A. Not until he arrived back the 3d of July of this year.

Q. You saw him on that date?—A. Yes; about half hour after he arrived.

Q. Can you say whether or not he was with the unit at the time the battery broke up until the 3d of July?—A. He was not with the unit.

I produced a document, a certificate of surrender. This document was read to the court.

Q. Is that your evidence?—A. I produce a paper.

Q. This can not be accepted as evidence. You are entitled to put in a certified copy of the whole thing. This is not the original?—A. No; it is not.

There was introduced in evidence a copy of the record showing accused going on leave.

Q. Do you, if others came back to the unit?—A. Sergt. Martin was one that did come back.

That is all the evidence for the prosecution.

The charges were read to the accused, that he was absent without leave from expiration of leave to date of surrender.

By legally qualified member to accused: You need not necessarily say anything, but if you wish to make any statement, the statement may or may not be made on oath. If you make it on oath, you swear that it is true and it has more weight with the court. It has this disadvantage that you are likely to be asked questions. If you do not make a statement on oath you can not be questioned.

By the counsel for the defense: I am going to call him on oath.

By the legally qualified member to accused:

Q. You understand that you become a witness in your own defense?—A. I do.

The accused was sworn in same as the other witnesses.

Questions by counsel for defense to accused:

Q. How long have you been in France?—A. Since May, 1916.

Q. Did you come to France with the battery?—A. I joined the battery when first formed and came to France with it.

Q. Have you had any leave?—A. I had one previous leave before this one.

Q. And what date was it about—the previous one?—A. It was about 14 months before this one, about October 1917.

Q. You returned from that leave quite all right?—A. Yes.

Q. Now you went on leave on the 19th of November, 1918, you were due to return on the 2nd of December. Will you tell the court why you did not come back?—A. I returned back to Victoria Station when my leave expired, and there was a party of men coming off the train.

Q. At what time in the day?—A. About 8.30 or 9 in the morning. The party of men were returning back from the train.

Q. Do you mean from the leave train?—A. I was informed by them that they had been granted an extension of leave and that I was to await further orders. I thought that that referred to me as well, so I returned with them. I expected to hear from the War Office and I waited a month. After that month, about a month expired, so I went to the War Office. All the satisfaction I got was to return. I asked a noncommissioned officer and he said to return and await orders, and I returned back and then I thought it was best for me to come back and I reported to Victoria Station.

Q. You did return home to wait orders, and then—A. I thought it better to go back and report there to the police.

Q. What date was that—I suppose there is no question about the date, on the 24th of June?—A. Yes. That is all, sir.

His evidence was read back to him and he approved it.

Q. Did you know any of the men?—A. No.

Cross-examination by the legally qualified member:

Q. Did you yourself take any steps to go to the battalion or any officer on the 2nd of December to make sure that what these men told you was true?—A. No.

Q. Who did you see at the War Office?—A. There was a bunch of men there recruiting and I asked a noncommissioned officer and he told me to return back to await until I got orders.

Q. Where did you go to?—A. To the recruiting office, on the righthand side in Whitehall.

Q. You did not go to the proper inquiry at the War Office. Have you ever been there before?—A. No.

Q. And that would be about the end of January was it?—A. Yes; in January I do not know the exact date.

Q. You went home and waited for five months?—A. Yes.

Questions by a member of the court:

Q. When you saw these men coming from the leave train, did they say what the extension was?—A. I believe it was about 14 days.

The counsel for the defense wished to ask a question through the court:

Q. Were you wearing your uniform all the time?—A. Yes; I was dressed as I am now.

Q. You came back complete as a soldier?—A. Yes.

Q. What address did you stop at?—A. At my home.

Q. At the address you left in the orderly room?—A. Yes.

Q. Did you ever leave it?—A. No.

The accused then resumed his position as an accused.

Statement to the court by the counsel for the defense: You have got here a man who has been out to France the whole time of the battery; he goes on leave; after a certain time he returns all right; he remains with the battery until after the armistice, then goes on leave again, and he tells you he returned on the day that he was due. He meets a party of men who tell him he got an extension of leave. It was at the time of the trouble at Dover. He is a young soldier, he hears it, and he thinks it true. He does not hear after a month and goes to the war office. He had never been there before. The noncommissioned officer there told him to go home, and he waits at home. He keeps on his soldier's clothes. He goes to Victoria Station and reports to the police there. You have got two witnesses who can simply prove he went on leave and you have got the documentary evidence to show he reported at Victoria Station. You have got to believe his story just as much as you have the other two. I suggest to the court that there is not enough evidence in the case to prove this man guilty.

The court was closed.

The court was opened again.

Q. Is there anything in his record of previous convictions?—A. No; there is not.

Q. Will you give the court some proof of your service?—A. I joined the army the 21st of November, 1915.

Q. You came to France in May, 1916, the first time?—A. Yes.

Q. Have you been wounded?—A. No.

Q. How old are you?—A. I am 21 now.

Q. What were you before a soldier?—A. I was a carman.

The court was closed for a finding.

EXHIBIT E.

GENERAL HEADQUARTERS,
Cologne, July 8, 1919.

1. With reference to war office letter No. 0153/4572 (A. G. 3), dated July 6, 1919, I have the honor to inform you that I have no objection to the attendance at field general courts-martial of the members of the special mission. Col. Rigby should communicate, as regards details, with Brig. Gen. Mellor, D. J. A. G.

2. As regards your second paragraph, I do not consider it desirable that the course proposed should be followed in its entirety. It will be borne in mind that throughout the war attention has been continuously given to making a field general court-martial a tribunal whose sole object is to ascertain and act upon the truth with as little formality as possible, and all formalities beyond those which are strictly indispensable have been discouraged. In no case (with the possible exception of some colonial trials) has a shorthand note been taken of the proceedings, and I am of opinion that if any such course were followed on this occasion the very object of the special mission, which is assumed to be to ascertain our normal and ordinary method of procedure, would be defeated, inasmuch as the presence of a shorthand writer would be likely to embarrass the court and tend to disturb the normal course of procedure.

For the above reasons a verbatim report of the proceedings (which presumably it is intended to publish) would give a misleading and, in fact, a wholly erroneous impression to any person who had not been present at the trial. I am therefore entirely averse to the taking of a shorthand note.

As regards the proposal to supply (presumably for publication) a copy of the record, I have no objection to this, provided that the army council are prepared to depart from the established practice of refusing copies of proceedings to anyone except the person specified in section 124 of the army act. As at present advised, I am not prepared to supply copies without the express sanction of the army council. In any case, I consider that all proper names should be omitted.

I have the honor to be, sir,

Your obedient servant,

(Signed)

R. HUTCHISON, D. A. G.,
for General, Commanding in Chief,
British Army of the Rhine.

Senator CHAMBERLAIN. Did you in making a selection of the case choose one that is typical of all the others?

Lieut. Col. RIGBY. These are the only ones of which we have stenographic reports, and we simply attended the ones that happened to be there being tried on that day.

Senator CHAMBERLAIN. I know that the two you put in during the retreat of the British forces at Mons were extreme cases, and I think you admit that.

Lieut. Col. RIGBY. They were death cases, Senator, and I gave them to you because they were the only two that were released from this confidential status by Judge Advocate General Cassel, therefore the only ones that I could give you, and the only field general courts-martial that I have except those which we took ourselves, which were the ordinary cases, and in that way I give both sides of it.

Senator WARREN. Anyone who reads that would understand that the circumstances were extreme, because it speaks of it as being in the face of the enemy. Would not that be so?

Senator CHAMBERLAIN. Yes.

Lieut. Col. RIGBY. I may say that the letter of July 8, 1919, the carbon copy of which is attached to Maj. Wells's report, was received in London only on July 21, and that is the reason that I was not able to get over earlier and attend any of those courts, and had to send Major Wells after July 21, and when I was on my way home, all ready to sail.

Then I also want to offer Maj. Wells's report to me on the Belgian system, of which he made the examination covering the courts they have in Belgium and the administration of justice as he found it there.

(The report referred to is here printed in the record, as follows:)

PARIS, FRANCE, *June 16, 1919.*

From: Maj. William Calvin Wells, judge advocate, United States Army.

To: Lieut. Col. William C. Rigby, judge advocate, chief of special mission for study of court-martial practice and procedure of France, Great Britain, and other countries.

Subject: Study of the court-martial practice and procedure of Belgium.

1. Having completed the study of military practice, according to the practice and procedure of the military courts in Belgium, as directed by you, as completely as could be done by me in the time assigned for the investigation, I beg leave to report as follows, to wit:

MANNER OF INVESTIGATION.

1. Before proceeding to Belgium for study on the ground there I familiarized myself with the translation which had been prepared in the office of the special mission, of the Belgian military penal code, of the rules and regulations of

discipline, together with the decrees of Albert, King of Belgium, in which legislation was enacted with reference to military justice, together with the instructions issued by way of explanation of such decrees of the King, which decrees made changes in the military penal code which the experience of the war showed was necessary.

2. I proceeded to Brussels, Belgium, in company with you, where we were introduced by Maj. W. W. Hoffman, the American military attaché for the legation of the United States at Brussels, to M. Masson, minister of war; Gen. Merchie, chief of staff to the minister of war; Col. Cornell, chief of the first division, office of the minister of war; Maj. Michen, in the minister of war's office; Gen. Maglinse, assistant chief of staff, Belgian general headquarters; Lieut. Col. Hennon, third section, general headquarters. The introduction thus secured an entrée which assured a cordial reception to my efforts, and a whole-hearted cooperation by the Belgian officers in giving to me the information desired.

3. I requested compliance with the request for statistical information, according to the questionnaire previously prepared by you and sent to Maj. W. W. Hoffman, military attaché, some weeks prior to my visit to Brussels, and which he had already presented to the Minister of War.

4. I soon ascertained that, in the opinion of the Belgian officers, a thorough understanding of the Belgian system would be better obtained through interviews with Baron (Gen.) van Zuylen van Nyevelt, the Auditeur General of the Belgian Army, which position corresponds generally to the office of the Judge Advocate General of the American Army, and with such other officers, most of them serving in that branch of the army, as would be designated and introduced to me by Baron van Nyevelt. I therefore interviewed Baron van Nyevelt, after having been introduced to him, at great length. At his suggestion I also interviewed, at great length, Maj. Jacques van Ackere, Auditeur Militaire en Campagne, who is a distinguished member of the Brussels bar and who during the early stages of the war was assigned for the defense of a large number of accused before the courts-martial, and who in 1917 was appointed by the King, Auditeur Militaire, and from that time until the present time has filled that position, prosecuting for the Government before the military courts.

5. I also interviewed the Minister of War, M. Masson, General de Ceuninck, who is one of the most distinguished generals of the Belgian Army, considered perhaps their best disciplinarian, and Baron de Broqueville, Minister de l'Interieur, who is probably the most distinguished official in Belgium, having been Prime minister, Minister of Reconstruction, and now holds the position of Secretary of the Interior.

6. I talked with various other officials at times when I did not find it feasible, or whose conversations I did not deem of sufficient importance to have present a stenographer and have such statements taken down verbatim.

7. I visited, in company with Baron van Nyevelt, and sat through a session of a Judicial Commission, which is the tribunal where the preliminary judicial hearing is first had on each complaint of a Conseil de Guerre, one of the courts before which all soldiers and officers up to and including the rank of captain are tried, and of the Cour Militaire, the supreme court to which every case tried by a Conseil de Guerre may be appealed and the court of general jurisdiction for trial of general and field officers. At each of these courts I had present with me a Belgian stenographer, who was recommended as being the most expert obtainable in Brussels, who, as far as could be done, took down in shorthand in French the proceedings in each of these tribunals. As these courts do not have official stenographers who take down the testimony and proceedings as done in our courts, and as the acoustic properties of the halls where the courts sat were very poor, and as frequently several of those present at the trials were talking at the same time, and at a very high rate of speed, and as some of the witnesses spoke Flemish and frequently in such a low tone as not to be heard, the transcripts made by this stenographer were not a great success, but will indicate in a way the character of questions asked, etc. There was obtained also, to be filed with this report, a copy of a dossier, that is the individual papers contained in the folder which constitutes the record, of a case which was heard before the Judicial Commission, and also a copy of the dossier in a case before the Cour Militaire, the court of appeal, which record had previously been before the Conseil de Guerre. The original papers which appear in the dossier before the Judicial Commission where the case is first investigated, go up and constitute the dossier before the Conseil de Guerre, and that

same record with such additions as are made at the hearing before the Conseil de Guerre go to the Cour Militaire and compose the record upon which the Cour Militaire bases its decision. The copies of these dossiers are filed as exhibits to this report and will show the manner of procedure in all of these military tribunals.

BRIEF NARRATIVE FORM OF THE PRACTICE AND PROCEDURE OF MILITARY JUSTICE AS ADMINISTERED IN THE BELGIAN ARMY.

A complaint may be lodged against a soldier, on account of an offense, by a civilian or by a soldier. If lodged by a civilian it is referred to an *auditeur militaire* who, in addition to his duties as a member of the judicial commission, prosecutes before the *conseils de guerre*, who has the witnesses summoned before the judicial commission and has there a preliminary investigation, informal but thorough. If the commission does not think the offense with which the soldier is charged has been committed, the complaint is dismissed and this dismissal is final.

If the complaint is lodged by a soldier, it is placed in legal form corresponding roughly to our charge and specifications, by an officer over the soldier, usually his captain, who has the complaint investigated in an administrative way by two officers of the regiment. This investigation is not a judicial but rather an administrative investigation for the purpose of securing certain facts with reference to the antecedents of the accused, his criminal record, if any, and statements of his character as a soldier by his commanding officer and also his general character, etc. To the complaint there is attached a form on which are made indorsements by the captain of the company to which the soldier belongs, as to whether trial is recommended, which is in turn indorsed by the battalion commander and by the regimental commander and thus is transmitted to the commanding general who refers the complaint for investigation to the *auditeur militaire* of the judicial commission for the division to which the soldier belongs. The judicial commission then makes a very complete investigation of the charge. It summons before it the accused who, not on oath, practically always makes a full and complete statement of his side of the accusation. He is not compelled to make any statement but in practice, as above stated, always does so. He is not warned that anything he says may be used against him on trial, but the soldiers generally understand that this is true. After he has been very thoroughly examined by *auditeur militaire* in the presence of the other two military members of that tribunal, the substance of his statements is dictated by the *auditeur militaire* to the clerk or *greffier*, who writes down on a form prepared therefor this statement, after which it is read over carefully to the accused. If he wishes any changes made in the statement, or additions thereto, they are carefully made; whereupon the accused signs this statement and it is verified by the signatures of the *greffier*, the *auditeur militaire*, and the two military members of this tribunal. This statement forms the basis usually of the prosecution, in that it eliminates all undisputed elements of the offense and narrows the issue to the disputed point, which is usually very narrow. If the statement admits guilt it is practically the sole evidence used before the court-martial. The accused coming before that court is briefly questioned as to the statements contained therein, and, beyond character witnesses for the defense, usually very little more testimony is introduced. Where the accused only admits some of the elements of the offense on the trial before the court-martial only such witnesses are summoned on their testimony previously obtained and read, which go to the issue left before the court for determination.

After the statement of the accused before the judicial commission, the commission hears the testimony of any witnesses which the accused desires to be heard in his behalf, and also any witnesses which the injured person, if the offense has been committed against the person or property or any other person, desires to be heard. The hearing is not all at one time and may be taken up from time to time as the witnesses are available. Usually it is completed in a few hours, the *auditeur militaire* having had summoned for the sitting all the witnesses having knowledge of the facts with reference to the charge. After the completion of the hearing of the testimony the commission finds as to whether or not the complaint should be referred to the court-martial for trial, or dismissed. If trial is recommended the case is sent to the court-martial having jurisdiction, where it is tried in due course.

If it is recommended that the complaint be not so referred and the complaint has been referred to the judicial commission for investigation by the general commanding, the recommendation is made to him that trial be not had on the charges, but this is not conclusive, he is not bound by the recommendation, and, if the general insists, the trial must be had before a court-martial. Before that court, however, the *auditeur militaire* can recommend an acquittal, which practically invariably follows such a recommendation.

The judicial commission is composed of three members. The presiding officer is an *auditeur militaire* who must have the qualifications of being at least 30 years of age, also holding the degree of doctor of law, and he is appointed for an indefinite period by the King and is removable by him alone. This plan provides for the Government a skilled lawyer who investigates the case, prepares it for trial, and prosecutes in the name of the King. There are two other members of the judicial commission, a captain and a lieutenant of the army, who sit with him, advise, and vote with him in the final determination of the commission; but in practice the *auditeur militaire* does all of the work, but has the benefit of advice of these military members of the commission.

The questions and answers of the witnesses before the military commission are reduced to writing in longhand in as brief form as possible. On the trial before a court-martial the defendant has the right, and exercises it if he so desires, to have the witnesses present before the court, and there any witness may be cross-examined by the president of the court-martial at the suggestion of the counsel for the accused. Unless the testimony is important this is not done, however, and the time consumed in a trial before court-martial is very short by reason of this preliminary investigation and testimony so taken. It is thus possible for an accused to be tried and condemned to death without a single witness actually appearing and testifying personally.

If the case be referred for trial to a court-martial it is then docketed and in due course heard by that tribunal. There are seven permanent courts-martial for the various districts in Belgium in time of peace, and usually one for each division in time of war, with such others as are necessary for smaller bodies detached from the division. A court-martial consists of five members. The president and three others are officers in the army who are chosen to serve one month, unless sooner relieved by detail elsewhere, and are chosen by lottery from a list of each grade of officers available to serve on the court. Each must be a line officer serving in the body of troops over which the court has jurisdiction. The presiding officer is the ranking military member of the court. He presides and propounds all questions which are asked either of the accused, who is first examined during the trial, and of all the other witnesses.

The presiding officer sits in the center of the bench. On his right is the civil judge, a doctor of laws, and a magistrate who has had at least 10 years' experience as a judge on the civil bench, who sits in his black robe of office and is next in authority to the president of the court. He is appointed by the King for a period of three years. The other members of the court sit on the left of the presiding officer and on the right of the civil judge alternately, according to rank. The Government is represented, as above stated, by the *auditeur militaire* who has investigated and prepared the case for trial. The accused, while the regulations do not require that he be defended by a lawyer, in practice is almost invariably represented by a lawyer, either a civilian or soldier, but who always appears in his robes of office as an advocate. The accused may, if he is able, secure a lawyer of his own choosing for his defense, but if unable to do so, in time of peace one is detailed for his defense by the president of the bar association when requested to do so, and in time of war the president of the court secures an attorney either from the civil bar or from amongst the lawyers serving in the division or body of troops in which the accused belongs, and if thus chosen he must serve without compensation.

When a case against an accused is called before a court-martial the charge against him is read and no formal plea is entered. The president of the court reads to the court his report on the case, which is a statement of the charge and the evidence thereon. Evidence may then be taken of the witnesses for the Government. As many as are desired to do so appear personally, after which the testimony for the witnesses for the defendant may be heard.

During the examination of the witnesses for the State, frequently accused arose in his place and, while the witness was still upon the stand, denied statements made by the witness and was himself examined with reference thereto by the president of the court.

The witnesses, as stated above, are questioned by the president of the court, and after he concludes his interrogation he asks the auditeur militaire if he has any questions which he desires asked, and if there are any, they are propounded through the president. Likewise he asks the counsel for the accused if he has any questions, which, if any are propounded through the president of the court. The president also asks the accused if he has any questions to ask, and, frequently the accused denies statements made by the witness, and asks further questions through the president with reference to those facts.

After the testimony is all in the auditeur militaire argues the case for the King, is followed by the argument of the attorney for the accused, and the auditeur militaire has the right to conclude the argument, but frequently he does not exercise such right.

The court then retires to chambers to consider its finding and there the civil judge first casts his vote as to the guilt or innocence of the accused and also as to the penalty which should be imposed. During the war this was changed and voting on both questions was by secret ballot, the junior member of the court voting first.

During the interrogation of the witnesses and after the court retires to consider its verdict or finding, the civil judge advises the court with reference to the law and it usually accepts his statements of the law as correct, and acts thereon. This statement of the law is not reduced to writing and does not appear in the record. It is claimed that, in this way, very few errors creep into the record, especially errors of sufficient nature to cause a reversal of a case on appeal, and the cases are thus correctly tried in the first instance, in a large proportion of the cases. The proceedings on investigation as to the sanity of an accused resembles our own, but is not as complete.

The time consumed in the trial of the cases is very much shorter under this system than that consumed in our trials. The presence of the civil member of the court of the auditeur militaire, who is a skilled lawyer, and of the counsel for the accused, also a lawyer, minimizes the errors committed by the court to a very small percentage.

As soon as a verdict or decision of the court is reached, it is announced in open court, is final, subject only to appeal (except in case of trials before the cour militaire), and requires the approval of no officer of the army. The administration of military justice is entirely separate and distinct both in theory and practice in this system from control by executive officers.

Appeal may be taken from this decision by any one or all of three parties, to wit: by the accused, by the auditeur militaire or auditeur general for the government, or by the person injured. If taken by the last it operates only with reference to recompense, if any, ordered made to him, as the military courts have power under certain circumstances to order recompense made to the injured party for property wrongs. If appeal be taken by this third party, no change can be made by the court of appeals as to the punishment of the accused, but only as to such recompense.

The appeal, if any, must be taken by the auditeur militaire within three days, by the accused within three days, by the injured party within three days, and by the auditeur general within 15 days. After appeal, in actual practice, the time which elapses before the case is actually heard by the court militaire varies. It is frequently heard in two weeks, very often three weeks or more. The law requires the hearing and judgment of the court of appeals within a month, but there are no penalties attached for not concluding the hearing within the month.

On the hearing before the cour militaire, the final court of appeal, a synopsis of the case is presented in writing by the president of the court. Witnesses can be called before the court if desired, though in practice it is seldom done. The court hears the cases anew on the law and the facts. Usually at the conclusion of the report of the president of the court argument is made by the auditeur general, or one of his two assistants who appear before that court, the auditeur general appearing in person only in very important cases. After the argument by the auditeur general or one of his assistants, called the substitute auditeur general, the case is argued by an attorney for the accused chosen as before the court-martial, such counsel appearing, whether civilian or military (soldier or officer) in his robe as an advocate. In conclusion, the auditeur general or his assistant has the closing argument, but frequently does not exercise that right.

The *cour militaire* does not retire at the conclusion of the arguments of each case before it considers its finding or verdict therein, but waits until the sitting for the day is concluded, when it reaches its verdict in all of the cases heard at the sitting.

If the *auditeur militaire* has not taken an appeal the court of appeal (*cour militaire*) can not increase the sentence, but can only diminish it or approve it as it stands. If the *cour militaire* holds that the case was sufficiently well tried to arrive at the truth before the court-martial but void for some error of law, it may substitute its own judgment for the judgment appealed from. Or if reversed for an error of law, the case may be sent back to be taken up anew from the point where the mistake in law was made, and a new verdict is then rendered by the same court. In case there was no preliminary examination—that is, no judicial examination and the case was tried by a court-martial—the entire judgment of the court-martial is null and void, and the case would be retried from the beginning, before the same court which tried it first, that is, the court for the same district or division. For mistakes in form, where, for instance, a judge or clerk failed to sign some part of the record, the *cour militaire* will hold the judgment void and will substitute the missing part and enter final judgment in the *cour militaire*.

When the case is finally decided by the *cour militaire* the commanding general can suspend the enforcement of the sentence if he so desires, and, if the conduct of the soldier is not good, he may afterwards enforce the sentence. The *auditeur general* has no power to show clemency or in any way diminish the sentence, but he may propose clemency to the King, in which event, in practice, invariably the King acts upon recommendation of the *auditeur general* in conformity therewith.

During the present war, however, an act was ordained by the King (it being impossible for Parliament to assemble, hence the King was held to have power to legislate alone) by the terms of which suspension was had of all sentences inflicted in the war until the termination of the war.

The military members of the *cour militaire* are chosen by lottery from the eligible list made by the minister of war for each rank, from line officers of the army. The president of the court is appointed for life by the King, must be a lawyer and doctor of laws, and must be a counsellor of the civil court of appeals, and must have had 10 years' experience as judge on the bench. He is retired on pay at 72 years of age. The military members of the *cour militaire* serve for one month.

The *auditeur general* is appointed by the King for life, but may be made to resign by order of the King at any time. He is usually appointed from the civil bench and is of the very highest standing as a lawyer and a judge. The office is considered one of the most honorable in the gift of the King. Baron van Nyevelt, the present incumbent, was a judge on the highest civil court of appeals at the time of his appointment as *auditeur general*.

In brief the above is an outline of the machinery and of the procedure before the Belgian courts-martial.

COMMENTS ON THE BELGIAN SYSTEM.

1. Both under the Belgian Constitution, and under the settled belief of the people of Belgium that it should be so, there is no commingling of the executive power of an officer of the army with the judicial power in the courts-martial for trial of those subject to its jurisdiction. In fact, a provision of the penal code which was enforced at the beginning of this war, which code dated back to 1815 before the constitution of Belgium was adopted in 1830, was held by the courts null and void where it sought to bestow on a commanding officer some judicial authority or power over the court martial, it being held by the courts that the two powers were separate and distinct. The practice and procedure in force clearly keep in view this line of demarcation.

2. The Belgians are jealous of the manner in which their judges are chosen, in order that no judges be chosen for the purpose of inflicting any special verdict or form of punishment. Only one member of a court-martial is chosen by the King and the other four are chosen by lottery from lists. When an officer is drawn he serves for one month as a member of a court, and it must be recited of record that he was thus drawn by lot in conformity with law.

3. The Belgian conception of the court-martial is that in truth and in fact it is a court and not an aid to the commanding general in the administration of discipline. This is shown by the fact, first, that a civil judge is a member of

each court in order that its proceedings may be properly conducted as a court, and by the fact that the officer who prosecutes in the name of the King is a skilled lawyer, and by the further fact that the counsel who defends the accused is a lawyer and appears as such in his robes of office as an advocate.

4. The penalties inflicted in the courts-martial do not appear as severe as those inflicted in the other allied armies or those of its enemies. Full statistics are exceedingly difficult to obtain, because of the fact that practically all of Belgium was occupied by the enemy, and since the signing of the armistice the State of the nation has been so disturbed and disorganized that it has been almost impossible for the department of military justice to classify the records of its military proceedings. Nevertheless, from the statistics which have been obtainable the above fact is clearly shown. During the entire war only 123 death sentences were imposed for all military crimes, and of this number only 14 were executed and the other 112 either commuted or suspended. When it is recalled that for one military offense alone in the French Army it was stated to us by Capt. Emile Martz, director of military justice with the armies, over 1,500 French soldiers were sentenced to death and over 1,000 actually executed, the leniency of the Belgian courts is readily observed.

When we recall that in the American Army during the war not one soldier was executed for a military offense, we see that in severity of punishment our courts are not in a class with those of the European courts, nor even of Belgium.

The kindly treatment accorded the accused at the hearing before the judicial commission was especially impressive to me. It indicated apparently a desire to assist the accused to explain away the offense charged against him. On the wall of the office of the minister of war appears in French, in substance the following motto: "Speak, for a friendly living ear hears you, but be brief, for you deal with busy people."

IMPORTANT DIFFERENCES BETWEEN THE BELGIAN SYSTEM AND THE AMERICAN SYSTEM.

1. The elaborate investigation made in practice by the Belgian authorities is much more complete than the preliminary investigation made in actual practice under the requirements of our Manual of Courts-Martial. The fact that the *auditeur militaire* is appointed practically for life, and is a lawyer and a doctor of laws at least 30 years of age is important. The association with him on the commission of a captain and a lieutenant familiar with military service give to the lawyer the technical knowledge from the army standpoint. The fact that the witnesses are called and examined in this preliminary hearing in the presence of the accused, and the recording of the testimony of such witnesses to be submitted to a court-martial as a basis of the evidence for trial there requires careful preparation.

But this very careful preliminary investigation must of necessity and does carry with it a serious drawback, to wit, delay.

The figures with reference to the percentage of acquittals in the Belgian courts do not bear out the conclusion that a careful preliminary examination will necessarily reduce the proportion of acquittals to an inconsiderate number. The deduction drawn by some that a percentage of acquittals as high as 10 or 12 per cent is indicative of a victorious court-martial procedure I do not believe to be correct. My experience in civil life teaches me that the proportion to be expected is far above 10 per cent. I prefer to draw the deduction from such a proportion of acquittals that the members of the courts are dealing out justice to the accused as they see it, by acquitting them in that proportion of cases, dominated and controlled by no authority, save their own consciences.

2. Under the Belgian system there is a court of appeal of the type recognized in our civil courts, to which either the accused personally or by counsel, the government, or the person injured in his property may appeal (the latter for pecuniary recompense only). In our system the office of the Judge Advocate General performs functions such as are usually performed by a court of appeals; but his findings are recommendations. This is the logical result of the view held by British and American text writers on military law, to the effect that courts-martial in the armies of those countries are not courts in truth and in fact, but are aids to the commanding general for the purpose of enforcing discipline. If that view, as has been held in those two countries in all times past to be the correct view, is continued, then it logically follows that the functions of the judge-advocate general should be those of

an adviser to the military commander responsible for discipline and not the action of a court of last appeal. In this connection the views of Baron de Broqueville in his interview with me on June 13, 1919, should be carefully considered. As secretary of war of Belgium during a portion of the late war he had experiences which convince him, he stated, that the American system was the correct system. (See p. — of this statement.) I call your attention further to the statement made by Gen. Gouraud, one of the most distinguished French generals, to the same effect.

If our time-honored system is to be overturned and our courts-martial are to be strictly and solely courts, and not aids to discipline, then it follows logically that such courts should be entirely divorced from the control of the commanding generals, and a court of appeal in fact established for the reviewing of all trials in time of peace. In time of war it should be determined what, if any, cases should be permitted to be appealed. It is of interest further to note the statement of Baron de Broqueville on this subject also, if such court of appeal be founded. It is his settled belief that in time of war no appeal should be granted. Maj. van Ackere expressed his belief that no appeal should be granted in time of war, save those involving the question of the jurisdiction of the court.

3. A third difference between the military courts of the Belgian army and the court-martial of the American Army consists of the fact that in each of the Belgian courts one member is a civil judge of long experience, a doctor of laws, while in ours each member of the court is a commissioned officer in the Army.

Whether we continue our views of the province of the court-martial or whether we adopt the Belgian system of viewing courts-martial as pure courts of law, separate and distinct from executive power, it seems to me that less errors would be committed in the trials with such civil judge as a member of the court. If appeals be allowed, the number of reversals would be cut down. If no appeals be allowed, then more surely and certainly the action of the lower court would be right, and justice more certainly attained.

4. Likewise, the use of a trained lawyer as the prosecuting officer for the Government in our courts, under either view, would tend to the same end as that above described in having a civil judge as a member of the court.

5. The fifth difference lies in the fact that in our courts-martial, the accused seldom has the benefit of a trained lawyer in his defense. Usually he is some commissioned officer of low rank who is his friend, but who has no legal training. So long as the judge advocate prosecuting for the Government has no more legal training than has been the case in the past, the Government had little advantage over the accused, whether he be defended by a lieutenant or not. But should the officer representing the Government, and prosecuting the case, be a trained lawyer, the accused should have the benefit of a trained lawyer for his defense. It would be inequitable and unjust to have the case for the Government skillfully presented, and the case for the defendant unskillfully and illogically presented.

Every safeguard would be devised possible, however, to prevent the courts-martial being transformed into the farce of a maze of technicalities, such as has become, in large part, the modern criminal trial in civil courts of America. The adoption of the plan used in the Belgian *cour militaire*, by which (in original trials before that court) neither the prosecuting nor defending counsel questions the witnesses, but in which that duty rests upon the president of the court, a civil judge, would prevent many long and frivolous delays and quibbles which might otherwise ensue.

6. The sixth difference between the two systems, lies in the fact that the military members of the Belgian courts are chosen by lot from the list of eligibles of each rank who are line officers of the army, while under the American system they are chosen by the commanding general. This manner of choice illustrates clearly the different viewpoint of the two systems. Under the Belgian system, whoever happens to be chosen by lot serves, whether he be specially qualified, or not. The judge who tries the accused is chosen by chance. On the other hand, under the American system the members of the court are chosen for their special qualifications. If discipline be lax and morale be low in a division, and the commanding general who is responsible for the upholding of discipline and morale feels that officers who especially feel the responsibility of correcting such condition should be chosen, he is at liberty to do so. That which under our past system is considered a virtue, however, from the Belgian viewpoint is a vice. It follows, therefore, that each system is logical in its manner of choos-

ing judges. The system of choosing judges which is adopted for the American Army in the future should depend upon the viewpoint which shall control as to our military courts in the future.

7. The seventh difference noted is, that in the Belgian system, while the military members serve for only one month, the civil member of a court-martial serves for three years. In the American system all the members of the court are chosen for an indefinite period and may serve either less or more than a month, but usually more.

I can see neither especial advantage nor disadvantage in either the Belgian or American system with reference to length of service of the military members. As to the Belgian system of having one civil member sit for three years, although all the military members are constantly changing, it appears to me that this plan may have some virtue. Within that period of time the one member of the court who is permanently sitting should become very thoroughly familiar with the military laws, practice and procedure and much more apt to advise the other members of the court correctly than if he should change monthly or in very short periods of time.

8. The eighth difference is that officers in the Belgian army of the rank of major and above are tried only by the *cour militaire*, which is the court of appeals as to all soldiers and all other officers. In our Army no officer, unless unavoidable, is tried by a court consisting of members of the court who are junior in rank to the officer being tried. As the composition of the Belgian court-martial is usually composed in part of officers under the rank of major, it appears that in practice there is little difference between the two systems. Doubtless more dignity is had in the trial of an officer of high rank before the court of appeal than before the court usually of original jurisdiction.

9. The ninth distinction between the two systems noted is that after final decision by a court-martial in the Belgian Army, the judgment of the court is immediately announced, is final, and needs the approval of no executive officer to give it validity. Under the American system the decision of the court is kept secret until first reported to the commanding general, who is the reviewing officer, whose approval or disapproval is necessary to the finality of the judgment of the court-martial, and who has the power to return the record to the court, and to suggest a different verdict on the question of guilt or lack of guilt, and a different penalty. This power of the commanding general under the American system is the logical result of the viewpoint that the court-martial is merely an aid to assist him in the enforcement of discipline. So long as that viewpoint is held by us, it logically follows that the officer who is responsible should in a large measure have the determination of the guilt or innocence and amount of penalty meted out to the accused.

10. The tenth and last serious difference, speaking in broad terms, between the American and Belgian systems, is the fact that the Belgian court always consists of five members, who have each an alternate, and if any member be disqualified for any reason, the alternate sits in his place. The American system provides for not less than 5 members nor more than 13 members, with no alternates. This larger number of 12 or 13 may be founded upon the similarity to the number of jurors sitting in our time-honored petty-jury system, which we have from the common law of our English ancestry, which number is always 12. Personally, I see no sanctity in a court being composed of 12 men, where they have the right to decide issues of law as well as of fact. While it may seem illogical to cling to the jury of 12, and yet approve the court-martial of 5, I believe that justice would be quite as well attained with less disturbance to the military service if our general courts-martial consisted of 5, rather than from 5 to 13.

GENERAL OBSERVATIONS.

1. In considering a system of practice and procedure for military justice, it is necessary to consider the racial characteristics, traditions, and heritage of the people to be judged and tried thereby. One system which may be perfectly satisfactory to one race of people may be entirely unsuited to another. Our close kinship in habits of thought, systems of laws, racial characteristics, and inheritance may well cause us to look to the British system rather than that of any other nation. If the British system produces what is desired, to wit, morale and discipline with justice, it follows that more serious consideration should be given to that system than to other systems suited to other races different from, and adverse to, our race in the habits, customs, and traditions.

2. It is seriously questioned by many whether the Belgian Army had during the recent war the discipline which is desired in our Army. Many with whom we have talked do not seem to think that the Belgian Armies had such discipline. The answer to that question largely depends upon the viewpoint as to what good discipline is. Maj. W. W. Hoffman, American military attaché at Brussels, insists that the Belgian Army had discipline. As he aptly says, we must in viewing the question, consider the disadvantage under which the Belgians fought in this Great War. At the very outside their country was overrun by a neighboring country, overpowering in wealth and overwhelming in numbers. Their magnificent forts were, many of them, utterly destroyed in a few weeks by the most enormous guns ever used in warfare up to that time. Their whole country, save a very narrow strip, was overrun within the first few weeks of the war and held in the grasp of a powerful enemy. The Belgian soldiers for the most part were unable to know the fate of their loved ones at home. They held about 30 miles of the long battle line from the English Channel to Switzerland, which sector was located nearest the coast, in the lowest and most disagreeable portions of the trenches. All these things combine to destroy morale. More than that, over half of the Belgian people were Flemish, allied in a way by race with their enemies, who persistently sought to win them over in a clumsy sort of way. Nevertheless, and in spite of all of these disadvantages, the Belgians fought magnificently from the onset of the war, August 1, 1914, until the curtain fell on the drama by the armistice on November 11, 1918, and even afterwards, now when it was uncertain whether the peace treaty would be signed by the Germans, perhaps the Belgians stood ready more eagerly to continue the conflict than any of the other allied powers.

And yet in many ways the discipline of the Belgian Army is not what we desired and what we desire now in our Army.

As an illustration of this, one of the cases examined by the judicial commission the day it was attended by me in Brussels was that of a corporal, who during the period of hostilities was ordered to report in the rear, from the front line where he was serving, to a school for sergeants. Upon the completion of the course of training, he, a corporal, would have been promoted and made a sergeant. He refused to obey the order, and never did obey it. He stated, in refusing to obey the order, that he was well qualified to act as a corporal and could there best serve his Government in the front-line trenches, and that he did not want to go to the rear while fighting was in progress. A complaint was made against him, but no steps taken to prosecute until months later in June, 1919, the matter was investigated by this judicial commission. At the preliminary administrative inquiry in the regiment he was asked if he regretted his action in refusing to obey the order of his superior officer, and he replied that he did not. In one sense the refusal of the soldier to go to the rear to a place of safety and for the purpose of winning promotion was commendable, and yet if the inferior is to substitute his idea of the rightfulness or the wrongfulness of each order issued him, there could be no discipline in any army. Yet the *auditeur militaire* told me that unquestionably this man, although he must go to trial before a court-martial, would be acquitted.

3. A troublesome condition in connection with the administration of military justice in Belgium consists in the fact that all of their laws and regulations are written both in French and Flemish. Although a majority of the population is Flemish, most of those high in position of state, whether Flemish or Wallon, speak the French language and understand with difficulty the Flemish as it is spoken. The first question asked each accused on appearing before a military tribunal is whether he desires to be interrogated in French or Flemish. Each section of the population, with great determination, clings to its language.

CONCLUSION.

It is stated by Maj. Jacques van Ackere, whose observations appear as an exhibit to this report, that the system of punishment in force in each of the armies engaged in this great war proved to be a failure in time of war. Founded on the experience of the Belgians in this war, he has suggested a system of punishment for use only in time of war, which appears to me to be exceedingly logical and valuable. Briefly stated, it is as follows, to wit: For a few military crimes of heinous character, such as treason, spying, and the taking of deliberate steps to start a stampede of soldiers, the death penalty should be carried into execution without mercy. For practically all other military offenses and many civil offenses which do not in civil life require the

death penalty, on conviction of first offense the accused should be sentenced to serve for a term in a disciplinary battalion, where the accused may wipe out the disgrace of the trial and conviction and rehabilitate himself in his own eyes and in the eyes of his country. Whatever may be the term to which the accused on conviction may have been sentenced, he may rehabilitate himself in one of three methods and be restored to his former regiment and his colors, to wit: First, by some conspicuous act of bravery; second, by receiving a wound at the hands of the enemy; and, third, by good service for a period of eight months or a year. This service in the disciplinary battalion is to be served at the front, and not in the rear, in a place of greater safety than that in which the other and obedient soldiers are compelled to serve. If the soldier thus rehabilitates himself, the very fact of his conviction is wiped out, and across the face of the judgment on the judgment roll on which is recorded his guilt is written in red ink the word "rehabilitated," after which no reference to such judgment can ever be made, or copy of same obtained, nor can his decorations previously won, if any, be taken from him.

If, however, in the disciplinary battalion the soldier purposely again violates the laws, on conviction his arms should be taken from him and he should be placed at hard labor at the front in a penal battalion with all privileges taken from him, and this service should be rendered in the front-line trenches in places as dangerous or more dangerous than those occupied by good soldiers in their regular regiments.

Opportunity should be granted likewise to the soldier to win his way back from the corrective or penal battalion to the disciplinary battalion and thence to his regiment. If, however, the soldier in the penal or corrective battalion further violates the laws, military or civil, thus throwing away such opportunity of rehabilitation and showing evidence of being incorrigible, he should then be shot. A few executions would be all that would be necessary to curb such a spirit.

This system, in a way, was adopted and used toward the close of the war in the Belgian Army and proved highly efficacious, and, in the opinion of this distinguished soldier and lawyer, is the solution of the problem and the blazing of the way which will have to be followed in times of war in the future by other nations. It resembles in a marked degree, in a way, our disciplinary barracks, of which he had no knowledge, and apparently their system was worked out separately and apart from any knowledge of our system, above referred to, in the United States.

Whether we continue our present view of the status of courts-martial, or adopt the other view referred to hereinbefore repeatedly in this report, it appears to me that the system pointed out by Maj. van Ackere is worthy of serious consideration.

In your (Lieut. Col. W. C. Rigby's) report heretofore made and submitted to the Judge Advocate General, in the analysis of the practice and procedure of military justice, you have subdivided the subject matter into 26 subdivisions. By reason of the exhaustive nature of such analysis, and further by reason of the fact that by following such analysis in this report, anyone investigating the subject may easily find considered in the same numbered subheadings the same subject matter. I beg leave to present to you the result of my investigation under such subheadings:

I. PRELIMINARY INVESTIGATION OF THE ACCUSED.

In practice the preliminary examination in the Belgian system is very elaborate. It is performed by a commission styled a judiciary commission, or, as interpreted in some instances, judicial commission. The statutes creating such commission are found in articles 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 of the code of military penal procedure of the Belgian Army, the English translation of which code is file dwith this report, marked "Exhibit No. —"

This judicial commission is composed of three members. Two are line officers of the Belgian Army and one is a military auditeur who is appointed from civil life by the King, must be 30 years of age, and having the degree of doctor of laws. Each military auditeur is appointed for an indefinite period and is removable solely by the King.

The preliminary investigations made by these commissions are extremely exhaustive, full, and complete. They are made in an informal manner, being conducted practically entirely by the military auditeur, a trained lawyer, and the Belgian officers with whom I conferred think it of great benefit from many standpoints.

I attended a sitting of such commission in Brussels, Belgium, and immediately after leaving the commission dictated a complete description of the sitting of the commission, together with a statement of their practices and customs, which description I file herewith as Exhibit No. — for your consideration.

I was told, however, by these Belgian officers in interview with them, that while these complete preliminary investigations are exceedingly valuable, yet in time of war they have serious drawbacks and entail serious inconveniences. The chief of these is in the delay caused thereby. Every officer to whatever army he may belong, with whom I have discussed this matter of military discipline, places as the first and perhaps the prime requisite of such administration of military justice the having the punishment follow swiftly upon the commission of the offense. Delay in infliction of punishment causes it to lose a large portion of its disciplinary effect. Baron de Broqueville, former minister of war of Belgium, in his interview with me on June 13, 1919, made the following statement with reference thereto, to wit: "However, I wish to emphasize that there is a difference between courts-martial in war time and in peace time. The thorough preliminary investigation, while of the highest value in either time, must not cause any delay in war time in proceedings of justice." (See Exhibit No. —, p. —.)

Likewise Commandant Jacques van Ackere, *auditeur militaire en compagnie*, in his interview with me on May 29, 1919, had the following to say: "In examining this system of preliminary investigation, one must make a distinction between peace time and war time military justice. In time of peace, in the administration of military justice the proceedings were made as far as possible according to the law, in having the complete preliminary investigation; but in war time the system of having a preliminary investigation sometimes presents three serious inconveniences. In the first place, too much time may elapse before the accused is brought to trial—from 15 days to three weeks. The preliminary investigation may take place at a certain point and witness may be heard, but in the war of movement, the armies will have traveled, and before the accused is brought to trial the witnesses may have been taken away, and it may be difficult to bring them back. The second inconvenience is that in war time military justice must be rapid.

Punishment must be exemplary, especially in such infractions of discipline as desertion, cowardice, etc., which must be judged as rapidly as possible, so that judgment may be made. The third inconvenience that might be mentioned is that offenses in time of war consist mostly of having been caught in the act of sleeping on post, desertion, etc. In cases of that type, all the evidence is right at hand in the beginning, and it is not necessary to have a double preliminary investigation; but there are other cases which are delicate, and in those cases the judiciary inquiry is of value. The best system would be to have the *auditeur militaire* decide as to whether there should be a preliminary investigation. For instance, in cases of violation of military law such as desertion or sleeping on post, particularly when the accused acknowledges his having done so, the *auditeur militaire* should have the power to try the case immediately before the court-martial. In case the *auditeur militaire* decides that the case is not very clear he would bring the case before the Judiciary Commission for preliminary investigation. It could further be noted that when the court-martial finds that the case is not sufficiently clear it may order a further preliminary investigation before proceeding further." (See Exhibit No. —, p. —.) It seems to me that this last suggestion of Commandant van Ackere, coming as it does from such a distinguished lawyer in civil life and from a soldier with such extended experience as was had by him, both in defending accused before the military courts and later on during the war in prosecuting them, should have very great weight. I am inclined to believe that he states the basis for the correct procedure.

There has not yet been furnished to me the statistics asked for in your elaborate questionnaire of the Belgian Government. It is doubtful to me whether such statistics can ever be furnished in view of the disorder consequent upon the actual occupation of practically all of the Belgian territory by the enemy, and the destruction of all records upon which the enemy could lay their hands. The records of trials by courts-martial during the war in the field have been returned to Brussels, but are stored away in boxes and as yet the Government has not been able to find opportunity to analyze them. At my instance, however, a specific request was made from the various courts-martial for such statistics as they could give, showing the percentage of acquittals during the various years of the war, and one such report has been shown me, but this is not in my hands at this time. All of these reports will be turned in at one time. This report

showed during some years an extremely high rate of acquittals, running in some instances between 20 and 30 per cent, and practically none less than 10 per cent for any year. The estimate made by Commandant van Ackere was that the percentage of acquittals during the entire war would be somewhere between 10 and 20 per cent rather than 20. Apparently it does not follow, then, that the elaborate preliminary investigation cuts to a very low rate the percentage of acquittals.

My own experience of about 20 years in the criminal practice in the courts of my native State has led me to believe that 12 per cent of acquittals shown in the trials before our courts-martial during the war is very moderate, as it is far less than the percentage of acquittals in our State courts. There are many cases where the testimony for the prosecution and for the defense is in absolute conflict, and whether conviction of the accused is to be had or not depends upon the determination of the issue of fact which must be settled by the court. In the total number of cases tried the 12 per cent of acquittals represent some of the cases determined in favor of the accused. Rather to my mind that percentage indicates that the testimony of the accused is given due weight, and the accused is getting a fair deal rather than that convictions follow in practically all the cases in which charges are preferred by commissioned officers and which are referred to courts for trial.

It is also recommended by Maj. van Ackere that the services of the two military members of the military commission should be eliminated, and that the entire investigation be made by the military auditeur. In practice these two line officers take practically no part in the investigation. In time of war it is exceedingly difficult to obtain them, their time being so fully occupied by their other duties. In cases where it is necessary especially that military customs or procedure should be considered in connection with the evidence Commandant van Ackere recommends that the military auditeur call in line or staff officers as witnesses as experts on those questions. It is his belief that in the vast majority of cases the presence of the line officers is unnecessary and a useless consumption of their time. If this be true, the preliminary investigation becomes practically that provided for in our procedure, to wit, the investigation of the judge advocate of the division.

The practice in the Belgian Army, however, has been to make an elaborate investigation without detailed directions in the statute as to how it shall be done. In our own Army, according to my information, in some divisions the preliminary investigations have been carefully made while in others the work has not been so carefully done. The thoroughness with which the investigation was made depended upon the personnel of the judge advocate and the views of the commanding general whom he was to advise. It appears to me, therefore, that the recommendation made of elaborating the manner in which the preliminary investigation shall be made, as is done in the British procedure, would be a wise one.

(See Military Penal Code, Ex. 107, Title II, Chapter I; see articles 35 to 44. See Military Penal Code; Ex. 107, Title II, Chapter III.)

II. SUMMARY DISCIPLINARY PUNISHMENT BY COMMANDING OFFICER, WITHOUT THE INTERVENTION OF A COURT-MARTIAL.

The powers granted to commanding officers of summary disciplinary punishment in the Belgian Army are very extensive. They are set forth in the Rules and Regulations of Discipline, an English translation of which book is filed herewith, marked Exhibit No. —. The punishments which may be thus inflicted are as follows, to wit:

For officers, whatever their rank, article 28.—(1) Reprimand; (2) arrest for a period not longer than 21 days; (3) arrest under close confinement for a term not exceeding 2 weeks.¹

For noncommissioned officers, article 29.—(1) Reprimand; (2) confinement to camp for a term not exceeding 21 days; (3) confinement to quarters for a term not exceeding two weeks; (4) placing in solitary confinement ("cachot," not exceeding a week.

For all other soldiers, article 30.—(1) Reprimand; (2) confinement to camp for a term not exceeding 21 days; (3) confinement in the guardhouse for a term not exceeding two weeks; (4) placing in solitary confinement ("cachot," dungeon) for a term not exceeding a week.

¹ This punishment shall not be inflicted on Chiefs of Corps or on Commandants of Detachments. (See Art. 57.)

Article 31.—(a) Soldiers who, by reiterated infractions, prove that they are not amenable by means of simple discipline, and who per-vere in spreading trouble and giving a continual bad example in the corps to which they belong, shall be placed in the special corps;¹ (b) those who give proof that they are absolutely incorrigible or unworthy of wearing the uniform shall be cashiered from the army.¹

(The above is an exact copy from the Code of Discipline.)

In 1830 corporal punishment was abolished in the Belgian army by governmental decree. Prior to that time, corporal punishment could be inflicted as summary disciplinary punishment without the intervention of a court-martial. The following are the provisions of the code of such rules of discipline with reference to who can inflict the above punishment:

The right to punish.—(a) The right to determine punishments for soldiers of all grades belongs to general officers; to commanders of divisions, brigades, regiment, battalion, company, district, or mobile force of the gendarmerie, each one for the fraction or the part of the service that is commanded by him, be it normally, on occasional service, or temporarily.

Reprimands and provisional arrests may be inflicted by any superior on his inferior.

Confinement to camp for a term not exceeding a week may be inflicted on officers by the commander of the company, or by the officers on inferiors. Confinement to camp over a week and up to three weeks may be inflicted by commanders of battalions or by higher authorities.

Arrest under confinement for officers, guardhouse sentences for noncommissioned officers, and solitary confinement for all other soldiers may be inflicted only by chiefs of corps, commanders of brigades and divisions, or authorities that have equal power, and by generals.

An elaborate system of reports upon such disciplinary punishment is prescribed. It is further provided that "in every case before being punished, the culprit shall be allowed to give an explanation and to defend himself either orally or in writing, according to the circumstances."

Additional disciplinary measures which may be inflicted summarily are the following, to wit:

Disciplinary measures—Article 55.—Independently of the punishments mentioned in chapter 3, the following disciplinary measures may be inflicted:

A. To officers.—(1) Reprimand; (2) reprimand by the minister of war; (3) erasure of name from the active list; (4) suspension; (5) loss of office; (6) loss of grade.

B. To sergeants.—(1) Deprivation of high pay; (2) temporary deprivation of supplementary remuneration; (3) deprivation of certain favors and advantages; (4) deprivation of extra pay, and additional pay for reenlistment; (5) demotion; (6) reduction to ranks; (7) recall and maintenance under arms.

C. To corporals.—(1) Deprivation of high pay; (2) temporary deprivation of supplementary remuneration; (3) deprivation of certain favors and advantages; (4) deprivation of extra pay and additional pay for reenlistment; (5) demotion and maintenance under arms.

D. To soldiers.—(1) Deprivation of high pay; (2) temporary deprivation of supplementary remuneration; (3) deprivation of certain favors and advantages; (4) deprivation of extra pay and additional pay for reenlistment; (5) deprivation of the right to be either drummer or trumpeter; (6) incorporation in the special corps; (7) maintenance under arms; (8) dishonorable discharge.

A commanding officer may have the advice of a court of discipline in inflicting his punishment, the provisions governing which are as follows, to wit:

Article 33.—Courts of discipline (disciplinary courts) charged with the advising upon such matters as the deprivation of grade and demotion of sergeants and sergeant majors (under officers), the incorporation of soldiers into the special corps or dishonorable discharge, shall be composed of the following personnel: One major (presiding), one captain, two lieutenants, one sergeant major or sergeant senior to the offender.

If the offender is the highest ranking sergeant major of the corps, this last shall be replaced by a lieutenant.

These places shall be filled by each officer and noncommissioned officer in turn.

Those designated by the commandant of the place shall be those that belong to the corps or troop of the garrison.

¹ See chapter 4.

Article 84.—In no case may the following fill any of the places in such court: (a) The officer commanding the detachment; (b) the officer commanding the battalion nor the officers of the offender's company; (c) officers directly over the offender; (d) the officer or noncommissioned officer who reported the infraction and caused the offender to appear before the court. In default of a major the disciplinary court may have two captains, the senior of which shall preside.

The rules and regulations for the procedure of such courts of discipline are provided in extenso.

All soldiers punished with disciplinary punishment summarily have a right of appeal to the higher officers, such procedure being set forth in articles 101, 102, and 110 of the Rules and Regulations of Discipline, hereinbefore mentioned as Exhibit No. — hereto

In the opinion of the Belgian officers interviewed, this system of summary disciplinary punishment is of the very largest and highest benefit in the enforcement of discipline. The fact that the punishment follows practically immediately on the commission of the offense, even though the punishment be not as severe as that meted out by a court-martial, makes such punishment exceedingly effective and efficacious.

Maj. van Ackere is of the opinion that even the broad punishment provided in these rules and regulations of discipline may be further enlarged with benefit to the discipline of the service, and it is his opinion that, inasmuch as appeals are freely granted, no injustice will be done in such punishment of infractions of discipline.

Certain it is that the power to punish summarily to such a large degree must, in practice in the Belgian Army, and does cut down very extensively the number of trials by courts-martial, with all the attending circumstances of delay and inconvenience to the service in the taking of the time of officers in hearing the trial of such offenses.

I believe that changes leading to such a system may well be carefully considered as to its advisability for introduction into the penal system of the armies of the United States. (See Rules and Regulations of Discipline, Ch. III.)

III. CONSIDERATION OF, AND REPORT UPON, PRELIMINARY INVESTIGATION; ATTENDANT REQUIREMENTS; ORDERING ACCUSED TO TRIAL.

As pretty fully set forth hereinbefore in this report (see pp. to pp. inclusive), the report of the judicial commission recommending trial is made to the commanding officer for the division in which accused is serving. Such commanding officer is not bound to follow the recommendation made by such commission, but in practice practically always does so.

In case the accusation was made by a civilian, a finding of the judicial commission that the accused should not be prosecuted is final and no trial can be had upon such charge.

In case, however, of a charge preferred through military channels, such a recommendation, however, to the commanding general, to the effect that the accused should not be tried, need not be followed by the commanding general and he is at liberty to order the case for trial in spite of the adverse finding of the judicial commission. This is seldom done, but has been done. The *auditeur militaire* who sat upon the judicial commission, and makes the recommendation, is the same *auditeur militaire* who prosecutes the case before the court-martial, if ordered there for trial. He has full authority, and sometimes uses that authority, to advise the court-martial to bring in a verdict of acquittal when the case has been ordered for trial by the commanding general over the adverse finding of the judicial commission. (See Military Penal Code, Ch. V.)

IV. COMPOSITION OF THE COURT.

(a) *Permanence.*—The military officers composing the judicial commission, the court-martial, and the *cour militaire*, sit for a period of one month, unless sooner relieved, because of change of station or disqualifications for any other cause. The *auditeur militaire* as a member of the judicial commission sits indefinitely, being appointed for an indeterminate time. For the permanent courts this means appointment for life.

The civil member of the court-martial sits for a period of three years.

The civil member of the *cour militaire*, being appointed for life, sits for an indefinite period with that court.

(b) *Personnel.*—The personnel of the court making the preliminary investigation—the judicial commission—is, first, the auditeur militaire, who presides and questions the witnesses; and second, two army officers, a captain and a lieutenant.

The court-martial (conseil de guerre) consists of five members, four of whom are army officers of the line, of rank usually lieutenant colonel and less, and one civil member who in authority is next to the president of the court.

The cour militaire is composed of five members, four of whom are army officers of the line and one a civil judge appointed for life, who is entitled to the honors due to a general and who in practice wears the uniform of a general. The army officers have the following rank, to wit: One lieutenant general or one major general, one colonel or lieutenant colonel, and two majors.

(c) *Independence of convening authority.*—The members of the three courts of Belgium are absolutely independent of any convening authority. No executive officer can exercise any authority whatsoever over them, and if any officer undertook to influence the decision of a court in any case he would be subject to punishment for so doing. The courts are absolutely, in theory and practice, independent of any executive authority. Nevertheless, the convening general has the power, if he sees fit, to suspend any sentence imposed by the court.

(d) *Qualifications of judges, experience, rank, time in service, previous instruction.*—Each of these subheads has been answered above under heads (a), (b), and (c), except that the civil judges appointed to serve on these courts must have had 10 years' experience as a judge on the civil bench and have the degree of doctor of laws. (See Military Penal Code, Ch. II.)

V. ASSESSOR TO THE COURT: JUDGE ADVOCATE OR COMMISSAIRE.

(a) *Appointment.*—The Belgian officer corresponding to the above titles appearing before the court-martial is termed an auditeur militaire and the officer appearing before the cour militaire, so corresponding, is the auditeur general or his assistants, termed substitute auditeurs general. These are appointed by the King for life.

(b) *Position, duties, impartiality.*—The position of auditeur militaire is an honorable one, and carries with it the rank of a field officer. The position of auditeur general is one of the highest in dignity and authority, and the present auditeur general, when appointed, had long been a civil judge of the highest civilian court of appeals in Belgium. The duties of the auditeur militaire are to investigate cases as a member of the judicial commission, and to prosecute such cases before a court-martial. He is subject to the direction of the auditeur general and reports to him. The auditeur general not only has the direction of the auditeurs militaire, but either personally or through his assistants, prosecutes all cases on appeal before the cour militaire, and all cases triable there as a court of original jurisdiction. He also recommends to the King what, if any, clemency, shall be shown those convicted, upon their application for clemency. In practice the King accepts the recommendations of the auditeur general and practically always does as recommended by him with reference to such clemency. While the auditeur militaire and the auditeur general are apparently in no sense, in their prosecutions, vindictive, they in truth and in fact, represent the Government and the interests of the accused are looked after by the advocate who represents him.

(c) *Legal attainments required.*—As above set forth, the auditeur militaire must be 30 years of age or above and a doctor of laws. The auditeur general must be a doctor of laws and 35 years of age.

(d) *Powers, including power to give authoritative advice to the court.*—The auditeur militaire and the auditeur general are held in the highest esteem, as to their legal learning and generally, by the court; but the civil member of the court-martial and of the cour militaire, in practice, advises the court upon the legal principles and practice and procedure on the questions arising before the court, they being especially appointed for that purpose. The power of the prosecuting officers for the government, then, do not include the right to decide for the court what the law is, but they may submit their opinions of the law to the court, just as can the advocate for the accused. (See Military Penal Code, Title II, Ch. IV.)

VI. PROSECUTOR.

(a) *Appointment, powers, duties.*—The prosecution is conducted in the court-martial by the auditeur militaire and before the cour militaire by the auditeur

general or one of his assistants. Their appointment, powers, and duties are all described in subdivision 5.

(b) *Is he also a judicial officer or representative of the government or of the department of justice?*—The *auditeur militaire* and the *auditeur general* are not judicial officers in the sense that they are members of the court or that their advice on questions of law must be taken by the court. They represent the government in the prosecution, and the *auditeurs militaires* are under the direction and supervision of the *auditeur general*, who is the head of the department of justice of the army. (See Military Penal Code, Title II, Ch. IV.)

VII. COUNSEL FOR ACCUSED.

The counsel for the accused, though not required so to be by the statutes, is, in practice, always a practicing lawyer or advocate. The accused may employ his own advocate if he be able financially to do so. If not, in time of peace, an advocate is designated by the *battonnier*, or president of the bar association, for his defense, and, in time of war, an advocate is designated by the president of the court sitting for the trial of the accused, usually a lawyer serving in the division of the accused, but sometimes a civilian advocate is secured by such president of the court. When so designated by the *battonnier* or the president of the court, the advocate serves without compensation. The advocate in practice appears in his black robes of office and, whether soldier or civilian, appears as an advocate. The question of rank of the advocate, if any, in the army, seems to cut no figure whatsoever.

VIII. CLOSING COURT FOR FINDINGS AND SENTENCE.

(a) *Vote required.*—The guilt or innocence of the defendant, the existence of aggravating circumstances or of extenuating circumstances, is controlled by a majority vote. Formerly the vote was taken openly, the civil judge who is a member of the court first expressing his opinion on each of these questions, and then afterwards the military officials, beginning with the junior in rank. (See p. —, Exhibit No. —, interview with Gen. de Ceuninck.) During the progress of the war, however, a law decree was entered by Albert, King of the Belgians (see Exhibit No. —), of which article 8 is as follows, to wit:

"ART. 8. The decisions of the military court and courts-martial are taken by majority of votes. Voting must be done by secret ballot, as much for the principal fact and the aggravating circumstances as for the existence of extenuating circumstances, and the application, if need be, of the conditional condemnation. Each judge gives his opinion by depositing in the ballot box a bulletin bearing the words 'Yes' or 'No.'"

(b) *Method of taking the vote.*—This subhead is answered by the quotation just last above made on article 8.

IX. CHARACTER OF SENTENCES.

Although the statistics with reference to the sentences imposed during the last war are not yet available for the Belgian Armies for the reasons heretofore set forth in this report, it is manifest that the sentences were not so severe as those of their allies, but was greater than those imposed by the courts-martial of the United States Army in some respects. For purely military offenses there were imposed 126 death sentences of which 14 were actually carried into effect, and 112 commuted by the King. The sentences to imprisonment appeared not to have been for the length of time imposed in the armies of the United States. This seems, however, not to have been due to any tenderness toward the accused, but rather to the desire to have the soldier back in the line where he could render active service to his country, so sorely beset, at the earliest possible date. To serve a sentence in prison at hard labor was less of a hardship in actual suffering than that endured by the good soldier, fighting desperately in the flooded trenches held by the Belgians near the English Channel. So unjust did it appear to the Belgian officials that the malefactors should work in safety in the rear in prison in large numbers, while the brave and good soldiers who had committed no offenses should sustain greater hardships at the front, that before the termination of the war by the armistice, a decree was promulgated by the King suspending the enforcement of all imprisonment of offenders until the conclusion of the war. By this de-

cree thousands of soldiers were returned to the ranks where they were so sorely needed by the Belgian Government. The system of punishment suggested by Maj. van Ackere, hereinbefore set forth in time of war, I repeat, is worthy of the most serious consideration. (See p. — of this report.)

X. ANNOUNCEMENT (OR NOT) OF SENTENCE AT CONCLUSION OF TRIAL.

- (a) Of acquittal.
- (b) Of conviction.

Immediately at the conclusion of the trial before either the courts-martial or the cour militaire in cases of original jurisdiction, the decision of the court is announced.

XI. AUTHENTICATION OF RECORD.

There is no such record of each trial by courts-martial or the cour militaire as is prepared of the trials before our general courts-martial. There is no stenographer who takes down in shorthand the testimony and afterwards transcribes it as a part of the record. The record consists of a dossier which comprises a large number of original papers in a folder such as is commonly used for the filing of papers in the filing cabinet of a lawyer in America. (For an exact copy of such dossier see Exhibit — to this report.)

XII. APPROVAL OR CONFIRMATION.

- (a) Necessity of (yes or no).
- (b) By whom.

The judgment of the courts-martial and of the cour militaire requires the approval or confirmation of no one. It is a decree, final in effect, unless appealed from in the case of the courts-martial. However, the commanding general has the right to suspend the execution of the sentence if he so desires.

XIII. APPEAL, AND REVIEW.

APPEAL.

(a) *Right to.*—The right to appeal exists in all cases in first, the accused, second in the Government, whether the decree be a conviction or an acquittal, and third, where some person is injured in his property, appeal may be taken by such person with reference to the recompense to be made to him as to his property rights, but such a person can not take an appeal which can operate, on appeal, to change or modify in any way, the guilt or innocence, or extent of punishment, of the accused.

(b) *Necessity of.*—Any one of the three parties named above need not appeal unless he so desires. If not appealed from, however, there is no automatic appeal or revision by any court or officer.

(c) *Time allowed for.*—The appeal if taken by the accused, the auditeur militaire for the Government, or the person injured in his property rights, must be taken within three days. If the appeal be by the Government through the auditeur general, such appeal must be perfected within 15 days.

REVIEW WITHOUT APPEAL.

There is no review without appeal in the Belgian system.

XIV. COURT OF REVIEW.

(a) *Approving or confirming authority.*—As above stated there is no approving or confirming authority, the decree of the court being final.

(b) *Judge advocate general.*—The auditeur general, corresponding in a way to the Judge Advocate General of the United States Army, has no power of review nor power to equalize sentences, nor power to reverse or remand any case.

(c) *Formal court of revision.*—Under subhead 4 above entitled composition or review nor power to equalize sentences, nor power to reverse or remand any is set forth the fact that the cour militaire is in fact and in truth, in theory and in practice, a court of appeal. (See also description of this court in brief

narrative description of the Belgian system hereinbefore in this report, page —thereof.)

XV. STAY OF EXECUTION DURING REVIEW.

Death sentences are not executed pending review before the *cour militaire*. Accused, sentenced in the courts-martial to imprisonment, remain in prison pending the appeal. (For time usually elapses pending appeal see report hereinbefore, p.—.)

XVI. EXECUTION OF THE SENTENCE.

Unless suspended by the commanding general of the division of the accused, or stayed by appeal, the sentence is immediately put into execution.

XVII. MAXIMUM LIMITS OF PUNISHMENT.

(a) *In peace*.—At the beginning of the present war in Belgium, the limits were fixed in a good many cases, not only maximum but minimum. By reason of the experience had during the war, however, in 1918 the law was changed so that the court could fix the penalty from the maximum, which might be death, down to any minimum. It was found especially that to have a minimum penalty which was higher than the court thought should be inflicted caused the court to stultify itself in its findings. For instance, where there were violations which took place in the presence of the enemy, and the minimum penalty for same was heavy, the court would arbitrarily find that the offenses did not take place in the presence of the enemy, so as to save the soldier the minimum penalty, which they believed too severe, when, in fact, they did take place in the presence of the enemy. Maj. van Ackere was decidedly of the opinion, based on his experiences during the war, that the maximum should be that fixed by the law and there should be no minimum less than that fixed by the law, and that the greatest elasticity in punishment and discretion in the court should exist. He believed this absolutely necessary in order that the penalties which the varying circumstances of the cases demanded might be adjudged. (See p. —, Exhibit No. —, interview with Maj. van Ackere.)

(b) *In war*.—For (1) military offenses; (2) ordinary crimes and offenses. This subhead has been discussed under subhead (a) above.

STATISTICS OF ACTUAL PUNISHMENT AWARDED.

(a) *In peace*.

(b) *In war*.

Statistics on this subject have not been submitted to us, although requested. If furnished prior to delivery of this report to you, they will be marked "Exhibit — to this report."

XVIII. STANDARDIZATION OF PUNISHMENTS.

(a) *Existence*.—There appears to be no effort made, after the infliction of punishment by the courts-martial, to standardize such punishments. Appeals may be taken to the *cour militaire*, but usually not for the purpose of complaining of the severity of the punishment. In practice, appeals for clemency are made to the King, who acts upon the same upon the advice of the *auditeur general*.

(b) *Means for assuring*.—As stated above, the only means for assuring standardization of punishment is by appeal for clemency to the King, and apparently such appeals are not based on the ground of standardization but of mitigation of such punishment.

(c) *Desirability*.—According to Maj. van Ackere, punishments can not and should not be standardized, either by limitations of punishment, by maximum and minimum, or any other way. Exactly the same offenses committed under different circumstances make it necessary that the punishments should widely differ if justice is to be properly administered. For instance, it was his opinion that even the sleeping on post of a sentry in the face of the enemy in time of war on an active sector should sometimes be very lightly punished, where the soldier had a good record for military service and in civil life, and where he had performed exhausting laborious duties the previous day, to such an extent that he was absolutely physically exhausted and was, by the most

powerful exertion of his will power, unable to maintain consciousness. Although frequently the death sentence was pronounced and executed in the armies of Europe in this present war for such an offense, under the above circumstances it was Maj. van Ackere's idea that practically no punishment whatsoever should be inflicted. This illustration of his makes clear his contention and settled belief, based upon the experiences of this war, that standardization of punishments is not the wisest plan with which to reach exact justice or the nearest possible approach to that standard.

XIX. REVISION OR REVIEW OF ACQUITTALS.

The Government, through the *auditeur militaire* within three days, or through the *auditeur general* in 15 days, may appeal from a decision of the courts-martial to the *cour militaire* against an acquittal of an accused. The *auditeur general*, Baron van Nyevelt believed that such right was of the greatest benefit to the Government and no wrong whatsoever to the accused. He gave as an illustration of the wisdom and justice of such right, a case where the courts-martial held an improper belief as to the law controlling some certain acts as not constituting treason, such as the selling of gold to the German authorities in Belgium. The possession of this gold was absolutely necessary to Germany in order to pay the bills contracted in foreign countries in the prosecution of the war, and to form a reserve for the protection of the paper money issued by the Government. An acquittal by a courts-martial on such charge was followed by an appeal by the Government to the *cour militaire*, which court reversed the ruling of the lower court. Thus, in a very large class of offenders by the reversal, they were tried and the trials resulted in the punishment of the guilty parties. If the Government had not the right of appeal, the entire class of offenders described above would have gone unwhipped of justice.

XX. INCREASING PUNISHMENT—WEIGHT OF SENTENCE.

(a) *On revision.*—There is no revision of a judgment of a Belgian military court.

(b) *On new trial.*—On an appeal by the accused or the person injured in his property rights, the *cour militaire* can not increase the penalty inflicted over that pronounced by the courts-martial. On an appeal taken by the Government, however, the *cour militaire* can increase the penalty adjudged over that adjudged by the courts-martial. Likewise, if a new trial is ordered by the courts-martial in its entirety on an appeal taken to the *cour militaire* for the Government, an increased punishment can be adjudged by said courts-martial upon the new hearing.

XXI. NEW TRIAL.

(a) *Right.*—At the present time (and at the conclusion of the war by the signing of the armistice on November 11, 1918), the absolute right exists in the Government, the accused and the person injured in his property rights to appeal from the decision of the courts-martial to the *cour militaire*. However, as above stated, herein before, the right of the person injured in his property is only entitled to a revision of such pecuniary compensation to him and not to any chance of the punishment of the offender. During a short period of the war, on account of the exigencies of the service, the right of appeal was limited to certain classes of cases, but the right was soon extended so that all classes of cases were appealable.

(b) *Conditions.*—The right of appeal as set forth in above head (a) is unconditional except as to the time limit, to wit, such appeal must be taken by the accused, the person injured in his property rights or the Government acting through the *auditeur militaire* within three days, while an appeal for the Government taken by the *auditeur general* must be taken within 15 days.

(c) *Desirability.*—It is the belief of most of the Belgian officials, including Maj. van Ackere, based upon their experience in this war, that, in time of war, it is not desirable to grant appeals at all except, if any exception be made, on the question of the jurisdiction of the court. Baron de Broqueville, former minister of war, on this subject stated as follows, to wit, "It is my firm conviction that in time of war there should be no appeal at all from any courts-martial decision; but I wish to emphasize again that in time of war the preliminary instruction (investigation) should be very thorough, so that the court

would have all the necessary information and would proceed in a careful and just way. In that way there should be no necessity for any appeals in war time. It has been my personal observation during the present war that appeals from courts-martial have a bad influence on the discipline of the army. However, in peace time, appeals should be allowed to a higher court from courts-martial." (See Exhibit —, p. —, interview with Baron de Broqueville, June 13, 1919.)

XXII. SECURITY AGAINST SECOND TRIAL FOR SAME OFFENSE.

(a) "*Once in jeopardy.*"—There appears to be no statutory or constitutional provision that prevents the trial of the accused a second time for the same offense where the decision of the court in the first instance was reversed upon appeal.

XXIII. JURISDICTION OF COURTS-MARTIAL OVER CIVIL OFFENSES COMMITTED BY PERSONS SUBJECT TO MILITARY LAW.

(a) *In time of peace.*—The provisions of Belgian law with reference to this subject are quite elaborate, being found in chapter 2 of the Code of Military Penal Procedure of the Belgian Army, articles 21 to 34, inclusive. (See Exhibit — hereto.) Briefly stated the military courts have full jurisdiction to try all soldiers for violation of civil offenses with the exception of the following matters, to wit:

"1. For anything concerning public taxes, direct or indirect.

"2. In matters concerning hunting and fishing.

"3. For the infractions of the laws and regulations concerning public roads, carriages, coach officers, post offices, gates, railway police, rural or forestry police; also for the infractions of the provincial and criminal regulations.

"4. In matters concerning duels, when a soldier fought with a nonmilitary person, even when the latter will not be prosecuted. The infractions indicated under No. 3 remain, however, subject to the military jurisdiction when they have been committed during the service, or by a soldier billeted by a particular person, upon request of the public authorities, or being a part of a troop marching on campaign."

Under some limited circumstances, the military courts have jurisdiction over civilians attached to the army, and joint offenders with military persons.

(b) *In time of war.*—The same provisions as above quoted seem to apply in time of war as well as in time of peace. However, in time of war, the jurisdictions of the courts-martial are greatly extended, particularly as to persons not in the military service. Practically during the present war all penal matters of both civilians and soldiers were settled by the military tribunals.

XXIV. INSANITY.

The code of military penal procedure seems to be silent on military procedure in cases of insanity. The practice is described by Baron van Nyevelt in his interview (see Exhibit No. —, p. —) in the following to wit:

"Q. If a question of the insanity of the accused arises, is that question of insanity settled at this preliminary hearing, or is that settled before the courts-martial; and if so, in either case, what method of procedure do they so ascertain the sanity or insanity of the accused?—A. In the beginning of the preliminary inquiry, the question is always put as to whether the man is sane or insane, and it is a medical officer belonging to his regiment who gives the first decision as to his sanity or insanity.

"Q. Are any other medical experts called in if the matter is still in doubt in addition to the surgeon of the regiment?—A. If during the preliminary hearing the question is raised as to the man's sanity, the judiciary commission has the right to name experts who are generally medical officers to examine as to the man's sanity.

"Q. This commission determines before taking this testimony that the accused is sane. Is his counsel permitted to raise the question later before the courts-martial or is that prohibited?—A. Yes; he has the right to raise the question again."

XXV. OFFICERS.

(a) Conduct unbecoming an officer and gentleman: I find no specific charge in the Belgian Code of Military Penal Procedure or in the rules and regula-

tions of discipline or in the military penal code corresponding to the charge under the ninety-fifth article of war of "Conduct unbecoming an officer and a gentleman." In many of the cases of officers in our Army during the present war, charged under the ninety-fifth article, the specification therein set forth drunkenness in public and gross immorality. Not only does such misconduct in the Belgian Army not call for dismissal from service, but usually it is punished without the intervention of a courts-martial by summary disciplinary action, which punishments are described in article 28 and article 55 of the rules and regulations of discipline. (Exhibit No. — hereto.) Without in any wise expressing my own personal opinion in the matter, it is very evident that there is a very wide difference of opinion held in the Belgian service and in the American service as to what conduct is unbecoming an officer and a gentleman in the sense in which we use it under the ninety-fifth article of war. In private conversation with Belgian officers, not reduced to writing, and not filed as exhibits to this report, great astonishment was expressed at our dismissing from the Army in time of war an officer for being drunk and disorderly and being guilty of immoral conduct. It is my opinion that entirely too many cases against officers in the American Army were charged under the ninety-fifth article of war, and most of them should have been charged under the ninety-sixth article of war, where dismissal was not mandatory upon conviction. If the armies of our allies had proceeded upon the theory upon which we acted, with reference to this conduct, according to my best information, they would have deprived themselves in this conflict of some, and perhaps I may say very many, of their most competent officers. I do not wish to be understood in any way as condoning such misbehavior in an officer, but I do wish to be most thoroughly understood as believing that some other punishment than dismissal in most cases should be the penalty therefor.

(b) What charged as.

(c) Mandatory dismissal for.

Both of these subheads have been discussed under subhead (a) last above.

XXVI. DEATH SENTENCES—VOTE REQUIRED.

I am informed, as above stated in this report, that during the entire war only 126 death sentences were pronounced against soldiers of the Belgian Army, and that of these only 14 were carried into execution and the other 112 being commuted by the King. These death sentences I have reference to were solely for military offenses. You will recall that President Wilson, for our Army, did not permit any death sentences to be carried into effect during this war for strictly military offenses. The number of death sentences pronounced in the Belgian Army, however, for military offenses alone seems to have been infinitely less even proportionately than that in the armies of our other Allies. Their statistics as to death sentences in the Belgian Army are not available as yet.

There seems to be no difference in the vote required for the infliction of the death penalty from that for any other punishment—the majority vote being all that is required. (See art. 8, law decree, dated Feb. 24, 1917, Exhibit No. —.)

IN CONCLUSION.

From what I have learned in this investigation the administration of military justice in the Belgian Army during the present Great War has been carried on with distinguished ability, and the personnel of the department of military justice well deserve the bestowal of the distinguished-service medal at the hands of our Government. Especially is this true with reference to Baron (Gen.) van Zuylen van Nyevelt, auditeur general, and Maj. Jacques van Aekere, auditeur militaire, both of whom are men of distinguished ability and learning, and who have been indefatigable in their service to me in this investigation. I trust you may see it consistent with your duty to recommend to the Secretary of War, therefore, the bestowal of this medal upon each of the above-named officers.

I file as exhibits to this report the following documents, to wit:

Translation into English of Code of Military Penal Procedure of the Belgian Army, marked "Exhibit No. 1."

Translation into English of Rules and Regulations of Discipline of the Belgian Army, marked "Exhibit No. 2."

Translation into English of reports to the King from the department of military justice asking for changes in the penal code, decree of the King therein, including all modifications of penal code made during the war, marked "Exhibit No. 3."

Copy of interview of W. Calvin Wells, major, judge advocate, United States Army, with (Gen.) Baron van Zuylen van Nyevelt, auditeur general, marked "Exhibit No. 4."

Copy of interview of W. Calvin Wells, major, judge advocate, United States Army, with Maj. Jacques van Ackere, auditeur militaire of the Belgian Army, marked "Exhibit No. 5."

English translation of interview of W. Calvin Wells, major, judge advocate, United States Army, with M. Masson, minister of war of Belgium, marked "Exhibit No. 6."

French transcript of shorthand notes of interview of W. Calvin Wells, major, judge advocate, United States Army, with M. Masson, minister of war of Belgium, marked "Exhibit No. 7."

English translation of transcript of report in shorthand of verbal statements of proceedings before the cour militaire, sitting in Brussels, Belgium, May 31, 1919, marked "Exhibit No. 8."

French transcript of verbal statements of proceedings before the cour militaire, sitting in Brussels, Belgium, May 31, 1919, marked "Exhibit No. 9."

English translation of transcript of report of verbal statement of proceedings before the commission judiciaire, held June 5, 1919, marked "Exhibit No. 10."

French transcript of verbal statements of proceedings before the commission judiciaire, held June 5, 1919, marked "Exhibit No. 11."

English translation of file of papers, composing dossier in case investigated by the commission judiciaire, June 5, 1919, marked "Exhibit No. 12."

File of papers in French, composing dossier in case investigated by the commission judiciaire, June 5, 1919, marked "Exhibit No. 13."

English translation of proceedings taken in shorthand at the sitting of the courts-martial, May 30, 1919, marked "Exhibit No. 14."

French transcript of shorthand notes of verbal statements taken at the sitting of the courts-martial, May 30, 1919, marked "Exhibit No. 15."

Copy of interview of W. Calvin Wells, major, judge advocate, United States Army, with Gen. de Ceuninck, June 6, 1919, as translated by the interpreter in English, marked "Exhibit No. 16."

Transcript of interview in French of W. Calvin Wells, major, judge advocate, United States Army, with Gen. de Ceuninck, June 6, 1919, marked "Exhibit No. 17."

English translation of transcript of interview of W. Calvin Wells, major, judge advocate, United States Army, with Gen. de Ceuninck, June 6, 1919, marked "Exhibit No. 18."

Description of sitting of the judicial commission held June 5, 1919, marked "Exhibit No. 19."

Description of the cour militaire held May 31, 1919, marked "Exhibit No. 20."

Description of the courts-martial, held May 30, 1919, marked "Exhibit No. 21."

Interview as interpreted into English, of W. Calvin Wells, major, judge advocate, United States Army, with minister of war, M. Masson, June 6, 1919, marked "Exhibit No. 22."

English version as translated of interview of W. Calvin Wells, major, judge advocate, United States Army, with Commandant Jacques van Ackere, auditeur militaire, on May 29, and subsequent dates, marked "Exhibit No. 23."

Original French transcript of record taken in shorthand and transcribed as changed and improved by Maj. Jacques van Ackere of interview of W. Calvin Wells, major, judge advocate, United States Army, with Commandant Jacques van Ackere, auditeur militaire, marked "Exhibit No. 24."

Interview as interpreted in English of Maj. W. Calvin Wells, judge advocate, United States Army, with the minister of the interior, Baron Ch. de Broqueville, taken June 13, 1919, marked "Exhibit No. 25."

English version of shorthand transcript in French of interview of Maj. W. Calvin Wells, judge advocate, United States Army, with the minister of the interior, Baron Ch. de Broqueville, taken June 13, 1919, marked "Exhibit No. 26."

Original French transcript of notes of interview of W. Calvin Wells, major, judge advocate, United States Army, with the minister of the interior, Baron Ch. de Broqueville, taken June 13, 1919, marked "Exhibit No. 27."

Picture of Palais de Justice, Brussels, Belgium, in which we attended sittings of the courts-martial and cour militaire, filed as exhibits to this report and marked "Exhibit No. 28."

File of papers in French composing complete dossier of trial beginning with the administrative inquiry in the company and showing all papers in file before military commission, the conseil de guerre and cour militaire in case of Georges Poindavoine, marked "Exhibit No. 29."

WILLIAM CALVIN WELLS,
Major, Judge Advocate, United States Army.

Lieut. Col. RIGBY. As to the plan of suspending the sentence, which has particular reference to the provision of Senate bill 64 providing for a suspension of sentence by the trial judge advocate—and I may say I know of no other system providing that—I should like to put in evidence the British suspended sentence acts of 1915 and 1916; really the act of 1915 and the amendment of 1916. I had typewritten copies of them prepared here.

(The act referred to is here printed in the record, as follows:)

CHAPTER 23. AN ACT TO AUTHORIZE THE SUSPENSION OF SENTENCES OF PENAL SERVITUDE AND IMPRISONMENT PASSED ON SOLDIERS ENGAGED IN ACTIVE SERVICE BEYOND THE SEAS DURING THE PRESENT WAR. (MAR. 16, 1915.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) Where a soldier employed on active service beyond the seas during the present war is sentenced to penal servitude or imprisonment, the confirming authority to whom the sentence is submitted for confirmation may, when confirming the sentence, direct that the soldier be not committed to prison until the orders of a superior military authority have been obtained.

(2) A superior military authority may in the case of any such soldier so sentenced—

(a) Direct that a committal to prison shall not be issued until his orders have been obtained.

(b) Suspend the sentence whether or not the soldier has already been committed to prison.

(3) Where a sentence of penal servitude or imprisonment is suspended under this section before the soldier has been committed to prison the soldier if in custody shall be released, and, notwithstanding anything in the army act, the sentence shall not begin to run until the soldier is committed to prison under that sentence.

(4) Where a sentence of penal servitude or of imprisonment is suspended under this section after the soldier has been committed to prison he shall be discharged and the currency of the sentence shall be suspended until he is again committed to prison under the same sentence.

(5) Where a sentence has been suspended under this section the case may at any time, and shall at intervals of not less than three months, be reconsidered by a competent military authority, and if on any such reconsideration it appears to the competent military authority that the conduct of the soldier since his conviction has been such as to justify a remission of the sentence he shall remit it.

(6) A superior military authority may at any time, whilst a sentence is suspended under this section, order that the soldier be committed to prison, and thereupon the sentence shall cease to be suspended.

(7) Where a soldier, whilst a sentence on him is so suspended, is sentenced to penal servitude or imprisonment for any other offence, then, if that sentence is also suspended under this section, the authority ordering the suspension may direct that the two sentences shall run either concurrently or consecutively, so, however, that the aggregate term of imprisonment served under two or more sentences or imprisonment shall not exceed two consecutive years; and where the sentence for such other offence is a sentence of penal servitude, then, whether or not that sentence is suspended, any previous sentence or imprisonment which has been suspended shall be avoided.

(8) The powers conferred by this section shall be in addition to and not in derogation of any powers as to the mitigation, remission, commutation, or suspension of sentences conferred by the Army act, and a superior military authority under this act shall, as respects soldiers so employed as aforesaid, be an authority having power to mitigate, remit, or commute sentences of penal servitude or imprisonment under subsection (2) of section 57 of the army act.

(9) In this act the expression "superior military authority" means the officer commanding in chief of any force employed on active service beyond the seas, or any general officer commanding an army comprised in that force; the expression "competent military authority" means a superior military authority, or any general or other officer not below the rank of field officer duly authorized by a superior military authority.

2. This act may be cited as the army (suspension of sentences) act, 1915, and shall be construed as one with the army act.

CHAPTER 103, AN ACT TO AMEND THE ARMY (SUSPENSION OF SENTENCES) ACT, 1915. (JANUARY 27, 1916.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. (1) The army council, and any general officer whom the army council may appoint for the purpose, shall be a superior military authority within the meaning of the army (suspension of sentences) act, 1915.

(2) Subsection (5) of section 1 of that act shall have effect, and shall be deemed always to have had effect, as if for the words "intervals of not less than three months" there were substituted the words "intervals of not more than three months," and subsection (8) as if for the words "superior authority" there were substituted the words "superior military authority."

2. This act may be cited as the army (suspension of sentences) amendment act, 1916, and the army (suspension of sentences) act, 1915, and this act may be cited together as the army (suspension of sentences) acts, 1915 and 1916.

Lieut. Col. RIGBY. Those acts were drawn, I was told, by Maj. Gen. Childs, and he says in his statement, which is already in evidence, that by the operation of these acts between 30,000 and 40,000 men were restored to the colors during the war.

Senator WARREN. That was before the armistice?

Lieut. Col. RIGBY. Before the armistice; yes, sir. They were very well pleased with the results of the operation of this act. It is the act of 1915 and the amendment of 1916 which they call the "cat and mouse act." The gist of that plan is that the soldier sentenced, perhaps for a long term of confinement, has no certainty that he is thereby getting out of danger. He might be sentenced to a long period of imprisonment and suddenly find himself ordered to the front line, and then back into prison, and then perhaps again to the front line. He never had any feeling of safety from danger by reason of the fact that he had been sentenced to confinement, and the result was that they found after the men were ordered to the front once or twice that they were perfectly content to do their duty, and almost all of them made good soldiers.

Senator WARREN. The idea was that if they felt that they were redeemed they would suspend the sentence?

Lieut. Col. RIGBY. Yes.

Senator WARREN. Now, right there: How does that compare with the American troops? Was there any such percentage or any such number of sentences suspended?

Lieut. Col. RIGBY. No, Senator. I think I can give you the total number of suspensions. Of course it was much smaller, because we were just barely getting into it in a way, whereas the British had an army of four or five million men for the whole war.

Senator WARREN. Had we the same or, if not the same, something that corresponded with that procedure?

Lieut. Col. RIGBY. We could not suspend and then order back to prison and then suspend again and so bring the men back and forth, as they could. We did not have the "cat and mouse power," as they call it, and of which they think a great deal.

Senator WARREN. And in our case, if it was desired to put the men back into service and expose them to danger at the front, the sentence would be carried out in the first instance?

Lieut. Col. RIGBY. The sentence may be suspended at the time of its approval; but we do not have the right to send a man to prison and then take him out and send him to the front, and then to send him back the second time, and play with him, which was the object of the British suspended-sentence act, of which they think very highly.

I might say in connection with the figures on the restoration to duty from our disciplinary barracks which I have furnished, that every restoration from the barracks, as I am informed—of course I am only speaking now from information—with, I think, one exception—represents an actual shortening of the term. When a man is allowed to serve out his full term, of course, the dishonorable discharge takes effect at the end of his term, and he goes out of the service; and there has been only one case where he was allowed to serve until within one day before his term expired and was then restored to the colors. In one case they let him come back into the service in that way, without being discharged.

Senator CHAMBERLAIN. Where a man is restored to the colors, there is no provision of law which would prevent the War Department from then honorably discharging him the next day, is there?

Lieut. Col. RIGBY. Oh, no, sir; but it would be an honorable discharge.

Senator WARREN. Is it fair for us to assume that every one of these men who have gone to the disciplinary barracks afterwards received an honorable discharge?

Lieut. Col. RIGBY. You are speaking of men restored to the colors in this way. That depends on the men, when they come back. There is this "blue ticket;" and under the 139th and 150th Army Regulations, if he is an undesirable man, there is a way of letting him go without dishonorable or honorable discharge; simply "discharge."

Senator WARREN. He will not be fit for a soldier, but that does not debar him from getting the benefit of his service if there is anything accruing to him?

Lieut. Col. RIGBY. Not at all.

Senator CHAMBERLAIN. If a man is sentenced to dishonorable discharge from the Army and forfeits his pay, that carries with it deprivation of citizenship?

Lieut. Col. RIGBY. Yes.

Senator CHAMBERLAIN. Now, in such a case, if a man is restored to the colors and gives a good account of himself, and then he is honorably discharged from the Army, that wipes out the former conviction, does it?

Lieut. Col. RIGBY. Yes, of course, Senator. Or, rather, in that case the sentence of dishonorable discharge never takes effect. That

is the value of the suspension of the dishonorable discharge. With the suspended sentence there is the opportunity for the man if he makes good to get back into the service and simply wipe the dishonorable discharge out. It never does take effect.

Senator CHAMBERLAIN. Suppose the sentence is dishonorable discharge from the Army, and forfeiture of pay for a certain length of time, and imprisonment in the penitentiary for a given number of years. Now, in that event, while the man is restored to the colors and makes good, do you mean to say that that wipes out the dishonorable discharge.

Lieut. Col. RIGBY. Of course, Senator, you are putting a case that is not likely to happen; that is, his restoration to the colors from the penitentiary. Almost invariably when a man is sentenced to the penitentiary, the sentence of dishonorable discharge is not suspended, but is executed, so that when he gets through his service in the penitentiary he is out of the Army.

Senator CHAMBERLAIN. Suppose before his time of imprisonment expires he is given permission to restore himself. Is it ever done? Do they ever say to a man in the penitentiary, "I will release you to the colors; you may reenlist"?

Lieut. Col. RIGBY. They do sometimes transfer men in the penitentiary to the disciplinary barracks if they think they are worthy of it for any reason, and then give them the opportunity to get back from the disciplinary barracks.

Senator CHAMBERLAIN. Does that wipe out the sentence of dishonorable discharge?

Lieut. Col. RIGBY. Where there has been an executed sentence of dishonorable discharge, where it was not suspended in the first place; no, it does not, as I understand it; but the man is given an opportunity to reenlist. The sentence that is absolutely wiped out is the suspended sentence, and almost all of the men who are sent to the disciplinary barracks are sent under a suspended sentence of dishonorable discharge. So that if they are restored, the sentence of dishonorable discharge never takes effect. As I remember, last year, the latter part of the year, it was running something like 65 per cent of all the dishonorable discharges were suspended, including in the total the penitentiary cases. Of course, in the case of a man who is sent to the penitentiary for a civil crime, like a crime against nature, or burglary, or something of that sort, the ordinary criminal that is sent to the penitentiary, that sentence is not very often suspended. Those men are not desirable for the Army; and the plan is, after they have served their sentence, to let them go.

Senator CHAMBERLAIN. Could you put in the record, without too much trouble, the number of men who are now serving in prison and where?

Lieut. Col. RIGBY. Yes; I could do that, and I could, if desired, elaborate that and show the number in at the beginning of the war, and the number received, and the number discharged, and the number now in prison, if that is desired.

Senator CHAMBERLAIN. With the terms of sentence?

Lieut. Col. RIGBY. I think with the terms of sentence—well, to put in all the terms of sentence would make an enormously big set of figures.

Senator CHAMBERLAIN. I would like to know the main facts.

Lieut. Col. RIGBY. Of course we could give the average term of sentence and divide that up among different offenses and not make too long a table.

Senator WARREN. Well, I should say elaborate as much as you can without making it so long that we shall not even read it.

Lieut. Col. RIGBY. I will be glad to do that. I will consult with Col. Dinsmore and get the authority of Gen. Kreger to put it all in. The number in confinement at the beginning of the war, or rather, to be exact, on April 1, 1917, in the various institutions, disciplinary barracks, and penitentiaries, and the number so in confinement on August 30, 1919, are shown in this table: -

	Disciplinary barracks.					Penitentiaries.			
	Fort Leavenworth.	Fort Jay.	Alcatraz.	Fort Douglas.	Total.	Leavenworth.	Atlanta.	McNeil Island.	Total.
In confinement on Apr. 1, 1917.....	1,368	280	452	2,100	212	212
In confinement on Aug. 30, 1919.....	1,862	1,087	660	119	3,728	676	128	51	855

The British restored from their detention barracks during the war 54,000 men, roughly.

Senator CHAMBERLAIN. Many of them died in battle?

Lieut. Col. RIGBY. Undoubtedly many of them died in battle. They found their system working very successfully. They are really very proud of it.

Now as to the punishment, just a word as to the plan adopted in Senate bill 64. The theory of the whole scheme of punishment in the bill seems to be to put definite maximum sentences in terms of confinement for offenses, which is a radical change from the present plan, which leaves the quantum of the sentence to the judgment of the court-martial, with few exceptions.

That is different also from the British plan; and it comes from the theory that, as I understand it, the punishment should be adjudged, having in view simply the individual man, and his individual sentence, and not with reference, or much reference, to the circumstances of the Army, the purposes of discipline; and is part of a theory that as I understand it is expressed sometimes that the courts ought not in any sense to be agencies of discipline. I think possibly it is easy to get confused somewhat in the use of the word "discipline," and the term "agencies of discipline." It seems to me that there are two aspects of the judgment of the court-martial, and really of every court. In the first place, the determination whether or not a man is guilty is purely judicial. One ought never to be willing to sacrifice the question of guilt or innocence to any question of expediency or the needs of discipline in the Army, and I do not understand that anyone desires to do so. *But when a man has been found guilty, then a guilty man has no vested interest in the quantum of punishment that shall be adjudged to him; and the quantum of punishment is the thing in which the commander of*

the Army is directly and vitally interested for disciplinary purposes. And that is really not so different in substance from the administration of justice in the civil courts; because I know, in Iowa, in the time of my grandfather's first settlement there, back in the thirties, they used to hang a man who would steal a horse.

Now, it does seem to me that that is a rather vital consideration in fixing the punishment. The man who stole a horse, a horse thief, in Iowa, in 1836, or in Wyoming and other places later than that, was not, perhaps morally—looking at the act simply by itself—any more guilty than the man who steals a horse in Iowa to-day. But a man who stole a horse in Iowa to-day would not be hanged for the act. In other words, the object of punishment in civilian life, as well as in the Army, is primarily to deter others; rather than as vengeance for the act that is done, and the court necessarily, and the Army commanders in the Army, in determining the quantum of the punishment, can not look inside a man's mind and absolutely find out just how guilty he was or just what his motives were, but must fix the punishment in relation to the surrounding circumstances. Now, the act, for instance, of going absent without leave, looked at solely from the standpoint of the man, is no more serious in one division of the Army than another; maybe no more wrong near the front than in a place 3,000 or 4,000 miles away from the front. But its effect upon the discipline of the Army, which is just another way of saying its effect upon the citizenship of the Nation, is very different; depending on the circumstances, or the morale of the other men in that division, and on other things which no one else can judge nearly as well as the commander who is charged with the responsibility of maintaining the discipline in the division and of making that division an effective fighting machine. He knows better than any one else possibly can know—and the military men and officers under him know, as no outsider can know—the men who have the responsibility on them—how serious that act is, judged under the circumstances at the time. And for that reason, there being in the man who has once been found guilty, no vested right, it seems to me, in a particular punishment, it is right, as well as necessary for the purposes of the Army, to leave the determination of the quantum of the punishment in the hands of the officer responsible for making a success of the organization; and we ought not, as it seems to me—at any rate it would be an experiment which has never been tried so far as I know in any other Army—to take that determination of the weight and severity of the punishment out of the hands of the military commanders responsible for the success of the outfit, and put it in the hands of civilian lawyers, or a man like the proposed judge advocate, who is really a civilian, although temporarily clothed with a uniform.

Senator WARREN. Right on that point, are those the maximum that are named in the proposed measure—what is their weight? Are they very extreme, providing that in all trials under them the accused should be given the limit, or are they too moderate for some cases that might arise?

Lieut. Col. RIGBY. Senator, it seems to me that they vary.

Senator WARREN. What is the general trend of them?

Lieut. Col. RIGBY. The general trend of them, it seems to me, would be to unduly reduce the possible sentence that might be ad-

judged under extreme circumstances. On the other hand, it might tend to cause an undue severity of sentence under ordinary circumstances; because, for instance, where you provide a maximum punishment, fix, I think it is, six months for striking an officer, as provided in one article here, manifestly, it seems to me under many circumstances that is unduly lenient to say the least. On the other hand, circumstances might arise off duty, away from the front—

Senator WARREN. A man might get a drink or two in him?

Lieut. Col. RIGBY. Precisely, where the court ought not to have held up to it the suggestion of six months in the statute—the idea that the six months ought to be given. I fear that if you put down those limits in the statutes it would tend to a kind of rigidity, and that the court in every case would tend to give that sentence.

Senator WARREN. We are to understand, then, from that, that you fear that in many cases it would be too severe, I assume with officers not experienced, and so forth, while in other cases you fear it would not be severe enough. What would be the proportion? About even? Or would the less extreme predominate?

Lieut. Col. RIGBY. That would be hard to estimate, depending on whether we were at war or whether it was in time of peace.

Senator WARREN. In view of what has happened?

Lieut. Col. RIGBY. It would seem as though this act had been in force during the past two years, it would have tended in many cases, where the troops were in training, to too severe sentences. On the other hand, with the troops actually on the battle front, it might be a handicap to the giving of a sentence that would really deter a man from committing an offense for the mere purpose of getting out of danger.

Senator WARREN. Perhaps I have misread the testimony, but the testimony of those who have been at the front has seemed to indicate fully as much leniency, perhaps more, except in those special cases, than what the testimony shows as to the trials here. In fact, I think that the trials here, as I have read the testimony, taking into consideration the distance and the fact that one was at the front and the other in training, have been more severe at this end of the line.

Lieut. Col. RIGBY. I think that is true. But it is at the front, Senator, that the need must always be to apply in cases of necessity the severe deterrent, and it would be at the front, I would fear, that a comparatively low maximum would operate most injuriously by handicapping and preventing the deterrent effect of the few heavy sentences being given.

Senator CHAMBERLAIN. Colonel, could the British system be woven into our Articles of War, with their suspended sentence system, without much dislocation of our Articles of War?

Lieut. Col. RIGBY. I see no reason why it could not be, Senator.

Senator CHAMBERLAIN. You know, the British system that you have talked of, as it is described in your testimony, appeals largely to me.

Senator WARREN. It does to me; even this cat and mouse business.

Senator CHAMBERLAIN. Yes. Would it be much trouble for you to formulate the British system, of the judge advocate general and the judge advocates under the British system, giving their suspended sentence system, and present it to the committee?

Lieut. Col. RIGBY. I would be very glad to do that, Senator.

Senator CHAMBERLAIN. The judge advocate there is a civilian?

Lieut. Col. RIGBY. Yes.

Senator CHAMBERLAIN. While he has not the jurisdiction to review appeals and to reverse or to modify them under the system there, his opinions are pretty generally followed, and it does not interfere with the discipline in the army. The commanding officer in the British army still has the power of command. Why could not that system of appointing judge advocates be adopted in this country, and their functions over there as the adviser of the court be made part of our law here?

Lieut. Col. RIGBY. The only real difference, as I understand it, between their system and ours is the fact that their judge advocate general is a civilian. The court-martial officers, as they call them, could be introduced here just as they were there, merely by general order. You see they introduced it simply by a war-office order, which corresponds to a general order, in 1916. There is no reason why we could not do the same thing.

Senator CHAMBERLAIN. The great trouble about leaving it to an order is the fact that incoming judge advocates, where the office is not a permanent one, show a disposition to change it all the time, so that while one judge advocate general might approve of a certain order, another comes in and changes it. But where it is crystallized into a statute, that is not possible.

Lieut. Col. RIGBY. It is true that in order to increase the personnel of the Judge Advocate General's department, that must be by statute.

Senator CHAMBERLAIN. You know there is a general feeling among enlisted men with whom I have come in contact that justice has not been squarely administered; that there is too much of the military in it. If that impression could be removed by introducing into the system something of the civilian kind, you would better the morale of the Army by making them feel that there is not that strict military method of enforcing the law.

Lieut. Col. RIGBY. I do think that something—for instance, the British, instead of using a hard-and-fast plan of punishment fixed by statute, had a standing order, one of the Rules of Procedure, which was simply a cautionary order cautioning the commanding generals that, while the court-martial has power to award a sentence within its discretion, yet ordinarily, and unless there is some special reason seeming to require a heavier sentence, that the sentence ought not to exceed so and so; and then follow provisions like we have in our Executive order for use in time of peace. That stands always with them.

Senator WARREN. I was going to ask if they changed it from time to time?

Lieut. Col. RIGBY. They do from time to time, but it is always in effect, and it is always cautionary; so that if an emergency arises the commanding general does have the power to approve a heavier sentence under special circumstances; and I have thought, I see no reason why, if our forty-fifth article of war was simply amended by omitting the words "in time of peace," the President could not, by an Executive order, which he might change from time to time, provide, not necessarily the same uniform maximum punishments to be

inflicted everywhere always—for instance, there could have been during the past year, so far as I can see, a standing order effective within the United States, and another standing order effective with the Expeditionary Forces in France, and if necessary or advisable, still a different order for the Expeditionary Forces in Siberia, and those could be molded so as to fit the circumstances in each army, and as they changed from time to time; so as to prevent unduly severe sentences, while at the same time allowing the necessary latitude in emergent circumstances.

Senator CHAMBERLAIN. I would like, Colonel, to have you prepare a bill, embodying our old articles of war in it, and as a part of it a system like the British system so far as the Judge Advocate General is concerned and the judge advocates in the Army, making the Judge Advocate General a civilian and the judge advocates with the field corps, and having practically the same powers as the British officers. Secondly, I would like to have a bill prepared embodying our articles of war with such amendments as you have in mind all along the line, but providing for an appellate tribunal here, with one or more civilians on it, the court to consist of three or five, and if of five, then with two civilians on it, so that that appellate tribunal would have the power to revise and to reverse or to modify or to set aside the sentence of the court-martial. With those two measures before us, I think that our committee will be aided very much in thrashing out a modification of the articles to some extent.

Lieut. Col. RIGBY. I will be very glad to prepare them for you, Senator.

Continuing what I was saying as to the fixed punishment, just as an illustration, I want to call the committee's attention to a provision of article 67 of Senate bill 64, providing that as to quarrels, affrays, and disorders—giving the power which is substantially the same as that given by the corresponding article of the present Articles of War—68 is the present article—the power to any officer to part and quell quarrels, frays, and disorders, and providing punishment for anyone who “refuses to obey such officer or noncommissioned officer, or draws a weapon upon or otherwise threatens or does violence to him.”

The present article of war provides that such a person shall be punished as a court-martial may direct. The proposed article 67 provides that such person shall be punished by confinement for not more than one year. To take an extreme case of what might happen under that, a soldier at the front might draw a weapon on Gen. Pershing, or might do violence to Gen. Pershing, and could only be punished by confinement for not more than one year. That does, to my mind, illustrate what I mean, as to the danger of fixed punishments in all cases of these military offenses.

I have this suggestion that I want to bring to the attention of the committee. Of course, the matter of punishment and the length of confinement, where confinement is used, and as to the character of the punishment to be given in war, in emergencies, is a problem in other armies as well as in our own. The great danger, the great trouble, is that there are men in time of stress, and, particularly, if for any reason the morale of the organization has weakened, there are quite a good many men who will inflict wounds on themselves

for the purpose of getting confined in prison and getting away from danger at the front; who will go absent without leave; who will commit other offenses, for the purposes of getting safety. We, during this war, were compelled to meet those cases by long terms of imprisonment. The long term of imprisonment gets to the point where it rather loses effect sometimes. There is a point beyond which you really do not add any deterrent effect by piling on further years to the nominal term of imprisonment. For practical purposes, I do not believe a 40-year term means any more than a 10-year term.

Senator WARREN. It is simply absurd.

Lieut. Col. RIGBY. It is simply absurd. If anybody stops to think of it, he knows that it will not be carried out. The British have met that problem to some extent by their plan of what they call field punishment No. 1, which they substituted in 1881 for the old plan of flogging; which is to tie a man up an hour a day to a fixed object, and in a public place more or less, where it is not only mighty unpleasant, but exposes him to contempt of his fellow soldiers. Of course our people would not, we all know, stand for that kind of punishment being introduced. But it is interesting in a way, because the question as to that being an inhuman punishment, and the need of it, has been raised in the British Army, and you will find attached to the statement of Gen. Childs, which I put in evidence, copies of letters from Field Marshal Haig, and from Gen. Allenby, and from all of the other commanders in chief of the British Army throughout the world, on that subject, in answer to a circular letter which went out from the war office on the 18th of last April as the result of an inquiry in Parliament.

Senator WARREN. I was going to ask whether that was considered desirable or not, but I presume you will get at it there?

Lieut. Col. RIGBY. It is all very fully discussed.

I desire particularly to call attention to the suggestion of Gen. Shaw, the commander in chief in Ireland, who in one paragraph of his letter—the whole letter is interesting—says this, speaking of the punishment No. 1:

It is not clear that any substitute is really necessary and it is very difficult to suggest one for what is after all only a portion of field punishment No. 1.

The main consideration is that any form of field punishment should be equal in its incidence, and that the delinquent should not escape the risks suffered by his comrades by reason of his bad behavior. In a large Army, such as the British Army in France, it was found in practice very difficult to secure these conditions.

The only method of doing so was to send men behind the line and therefore out of immediate danger. Consequently many men preferred to do severe field punishment well behind the line; than to run the risks attendant on the so-called period of "rest" in close support of the trench line, where long and arduous night working parties under fire, caused the soldier to prefer his tour of duties in the trenches to that of his short tour of "rest."

I think a solution might be found in the formation of penal companies or battalions, to which all men with sentences of 14 days field punishment or upward would be sent.

These penal units could be used for working parties in the dangerous zone, and moreover, could be given a special diet without luxuries of any description. As long as a man remains with his unit, a special diet is impracticable.

I consider that if a penal company formed part of each division, it would be possible to adopt the system for any form of warfare.

Senator WARREN. It would make a lot of trouble, handled that way.

Lieut. Col. RIGBY. It would, and the question would be whether it could be worked.

Senator CHAMBERLAIN. Why could it not be worked by accepting the advantages mentioned?

Lieut. Col. RIGBY. Of course, it is an old, old plan simply to order the men to the front without trial, and our commanders used that this last year. I believe Gen. O'Ryan testified to his use of it and its effectiveness. The difficulty with it in so many cases seems to be that—well, the Germans tried it, for instance, last fall; and the spirit of their army, the morale of the army, was injured by mixing up those men with good soldiers right in the regular organizations. One of the things stated, for instance, is that the sailors from Kiel sent to the front infected many of their organizations with Bolshevism. And then it is a nuisance to have along with your organization those men who ought to be punished.

In Belgium, there has been the suggestion—and you will find it in Maj. Wells's report elaborately worked out by Maj. Van Ackere, Auditeur Militaire, and with the approval of the Belgian authorities—of a plan rather elaborately to form separate penal battalions. So that if the men are sentenced to those battalions, or if sentenced to confinement, the commanding general would have the right to take the men from confinement and to put them in that penal battalion, which would be given the most disagreeable and dangerous work; and then with the opportunity, if a man made good in the penal battalion, to have his sentence entirely wiped out. They planned three ways for him to make good in the penal battalion: He could distinguish himself by exceptional gallantry, which would ordinarily give him the *croix de guerre*, and that would of itself wipe out the record of a sentence. They had a plan of writing across it in red ink "redeemed by gallantry."

Senator CHAMBERLAIN. Many of those men who commit these petty crimes are the bravest men in the Army.

Lieut. Col. RIGBY. Precisely. Then they would also allow him to serve for a time, I think for four months, in the penal battalion, and if he did his duty regularly and bravely, they would restore him to his place in the regular outfit, and wipe out the effect of his sentence. Or if he was killed in the penal battalion in the course of his duty, that would wipe out the sentence so that there would be no dishonorable record against him for his family. On the other hand, if in the penal battalion a man committed an offense, then it was a very short shrift for him, usually a sentence of death. That same plan was to some extent in force in the French Army by a provision providing for penal battalions which was introduced into the French system, but I was not able to get very much information as to how it worked. But the same problem, you see, has been meeting all of the armies, to find something that would be effective, would not take man-power away from the army, and that would not give a man an opportunity by committing an offense to go to prison and thereby to safety.

Senator CHAMBERLAIN. Did we not amend the articles last year so as to reach that? Did we not provide in some way, did we not place a power in the commanding general over there, to utilize these men?

Lieut Col. RIGBY. By the amendment of the 50th Article of War you provided a broader power to commute sentences, and by amendments to the fifty-second and fifty-third articles of war extended the power to suspend sentences.

Senator CHAMBERLAIN. That was the purpose of it, really, to enable him to handle those men and not lose them from the firing line.

Lieut. Col. RIGBY. The vital difference between that and the suggestion made here is that this would keep the men under sentence and in separate battalions where they would be recognized as men undergoing a sentence, where they could not, in case of a hard situation, infect other men by their grievances. I only call your attention to it as a matter that has come up and has been discussed in those other armies.

I think that is all that I have to offer to the committee.

Senator CHAMBERLAIN. Colonel, we have been very much edified by your testimony, and I shall be glad indeed if you will formulate those bills and let me look them over.

(Thereupon, at 3.40 o'clock p. m. the subcommittee adjourned until to-morrow, Saturday, September 27, 1919, at 2.30 o'clock p. m.)