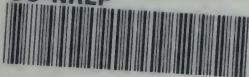


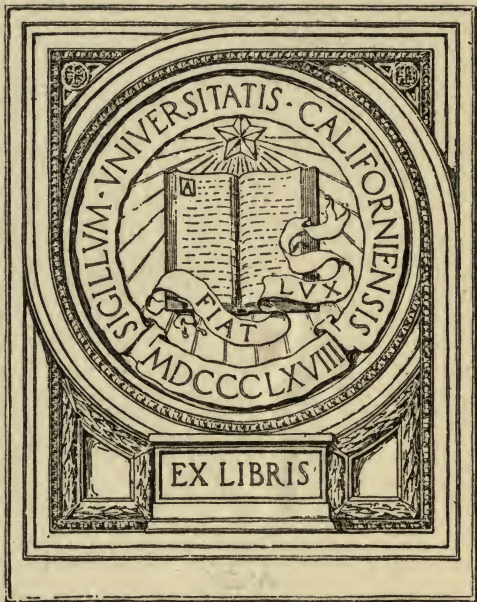
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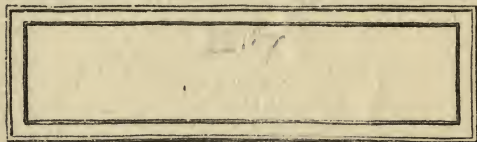
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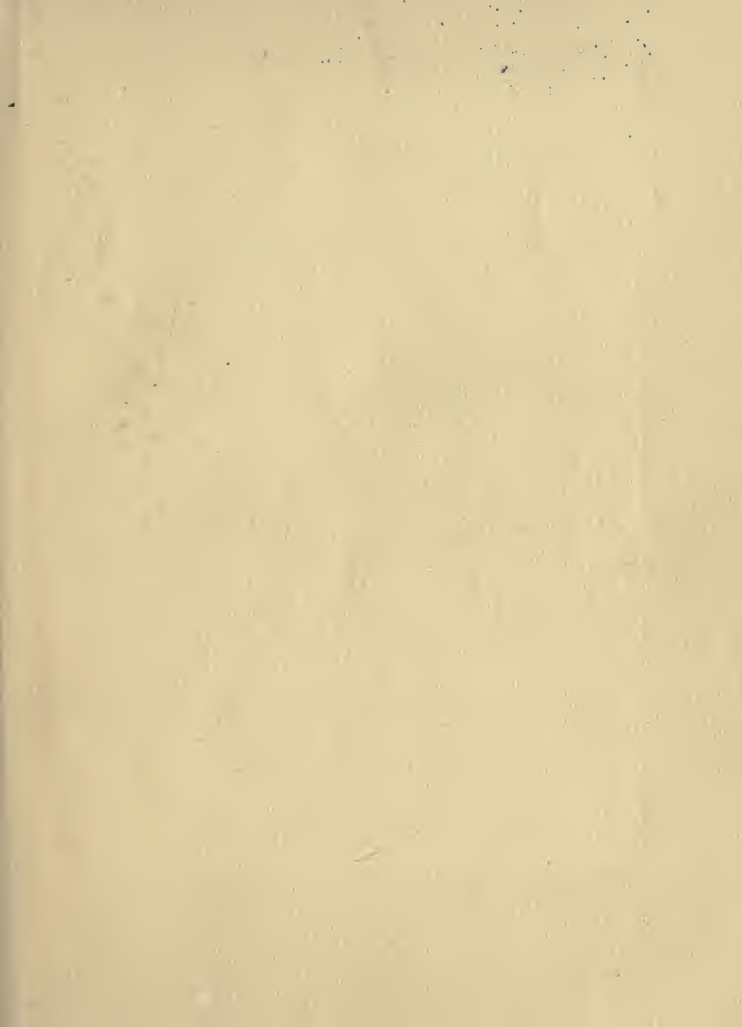
Digest of
Davis' Military Law

BALL



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DIGEST
OF
DAVIS' MILITARY LAW

OF THE
UNITED STATES

AND
The Manual for Courts-Martial

INCLUDING
THE ARTICLES OF WAR

REVISED TO AUGUST 29, 1916

BY

H. G. BALL

FIRST LIEUTENANT OF INFANTRY

1917

FRANKLIN HUDSON PUBLISHING COMPANY
Kansas City, Mo.

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DAVIS' MILITARY LAW

UNITED STATES

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THE ARTICLES OF WAR



W. O. HALL

U.S. GOVERNMENT PRINTING OFFICE

C.

PREFACE.

This little compilation has been prepared for the purpose of presenting succinctly certain basic facts of Military Law and the procedure of courts-martial which the lapse of time frequently renders hazy. It consists of a Digest of Davis' Military Law of the United States, of Questions and Answers on the Manual for Courts-Martial, and the Articles of War as revised to August 29, 1916. Paragraph topics are identical with those in the original. The number preceding each paragraph corresponds to the number of the page on which may be found the same subject in the original.

For those who may be said to have graduated in military law the information contained in the following pages will be found useful as an aid to the memory in quick preparation for an examination. It is hoped this little work may serve the convenient end of reducing to a minimum the drudgery of reading many pages of subject-matter with which the student is already presumed to be familiar.

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Military Law of the United States.

CHAPTER I.

2. Origin and History.—In great part derived from rules of discipline in the British Army at the outbreak of the American Revolution. These rules had the following origin and development:

2. From Norman Conquest to Accession of James I.—During this period rules for government of military forces were established by the king and enforced by the following tribunals:

(a) Constable's and Marshal's Court;

(b) Court of Chivalry.

The last intruded on the jurisdiction of the common law and ceased to exist in the reign of Henry VIII.

2. Military Law Subsequent to the Revolution of 1688; Mutiny Act.—All matters affecting discipline not provided for in the Mutiny Act (authorized trial of mutiny and desertion by court-martial) were left to be regulated by the sovereign as commander-in-chief, in accordance with the body of rules called "Articles of War." In 1879 the Mutiny Act and the Articles of War were merged into the Army Discipline Act, re-enacted in 1881.

3. Mutiny Act; Articles of War.—Between 1689 and 1881 military discipline in England was regulated by:

- (a) Mutiny Act: statutory in character; contained more important disciplinary provisions and also power to appoint military tribunals.
- (b) The Articles of War, issued by the sovereign, were non-statutory and contained a great body of rules for the government and discipline of military forces.

4. **Classification of Military Law.**—As a considerable part of the military law of the United States is derived from usages and customs of the service, these laws are classified, according to form, into written and unwritten laws.

The written law consists of:

- (a) **Enactments of Congress Respecting Military Establishment.**—RULES AND ARTICLES OF WAR.—A body of statutory rules, enacted under authority of the Constitution, and contain the greater part of the military law of the United States. Other enactments: Revised Statutes and Statutes at Large.

DISTINCTION BETWEEN MILITARY AND MARTIAL LAW.—*Military Law* is, in part, statutory and regulates the conduct of military persons at all times within as well as without territorial jurisdiction of the United States. It "follows the flag," not only in time of peace, but in time of war.

Martial Law is not statutory in character,

and always arises out of strict military necessity. It comes into being in hostile territory in time of war or in a part of the United States territory where the civil authority is unable to exercise its functions.

- (b) **Decisions of Courts.**—The Federal courts interpret laws; their decisions are of highest authority upon the subjects to which they relate.
- (c) **Decisions of the President; Opinions of the Attorney General, of the Secretary of War, and the Judge-Advocate General, etc.**

6. Army Regulations.—Next in authority to (a) and (b) above are the General Regulations and Standing Orders of the Army—administrative rules relating to military affairs issued by the President. They have the obligatory force of law, but shall not conflict with the enactments of Congress.

7. Conformity to Statutes.—Army regulations are executive or administrative rules and directions as distinguished from statutes.

Regulations, like statutes, are intended to operate in the future.

- 8. Classification.**—Regulations are classified:
- (a) Those which have received the sanction of Congress; Army Regulations.
 - (b) Those made pursuant to and in aid of a statute; examination and promotion of

enlisted men; executive order prescribing limits of punishment.

9. Military Orders.—Orders are authoritative directions, respecting the military service, issued by military commanders with a view to regulate the conduct of military persons, or control the movements or operations of individuals or organizations under their several commands.

10. Unwritten Military Law, the Custom of War, and the Customs of Service.—Unwritten military law is made up of customs of the service or of “the custom of war.” It is followed in cases in which the written law is silent or to which its provisions do not apply. Where sentence is discretionary, a court-martial may impose any punishment sanctioned by the custom of the service.

10. Conditions Essential to the Validity of a Custom of the Service.—Usage is an act or practice which, by constant and regular repetition, has gradually acquired the force of law.

Custom applies to the legal sanction developed by long-continued adherence to a particular usage, and must fulfill the following conditions:

- (a) It must be long continued;
- (b) It must be generally known and invariably observed by those who are subject to its operation;
- (c) It must be compulsory;
- (d) It must not be in opposition to the terms of a statute.

12. Usages.—The fact that usages exist can never be pleaded in justification of conduct otherwise criminal, nor relied upon as a complete defense in a trial by court-martial.

CHAPTER II.

MILITARY TRIBUNALS; COURTS-MARTIAL; THEIR ORIGIN AND FUNCTION.

14. The Earl Marshal.—The earl marshal was a military officer next in rank to the constable, and his duties resembled those now performed by the Adjutant General. When the office of constable ceased to exist, his duties were performed by the earl marshal, and the court of the constable came to be known as the “marshal’s court” or, in the modern form, as the “court-martial.”

15. Courts-Martial, Their Authority and Function.—Military Law is enforced by courts-martial. Their sentences are in the nature of recommendations merely until approved by reviewing authority.

15. Courts-Martial Executive Agencies.—Courts-martial are not part of the judiciary of the United States, but simply instrumentalities of the executive power. They are creatures of orders. Their judgments are not subject to be appealed from, set aside, or reviewed by any civil court.

16. Military Tribunals Courts of Honor.—They try many accusations based upon acts unknown to civil courts as criminal offenses.

16. Classification.—Courts-martial, according to jurisdiction, are classified:

- (a) General Courts-Martial;
- (b) Inferior Courts - Martial—Special Courts-Martial and Summary Courts.

CHAPTER III.

THE CONSTITUTION OF COURTS-MARTIAL; THE GENERAL COURT-MARTIAL.

18. Military Commanders.—The following are empowered to appoint general courts-martial:

- (a) The President;
- (b) The commanding officer of a territorial division or department;
- (c) The Superintendent of the Military Academy;
- (d) The commanding officer of an army, field army, army corps, a division, or separate brigade;
- (e) Any commanding officer when so empowered by the President.

Except in certain cases, an officer or soldier cannot demand a court-martial in his own case.

18. Nature of Authority.—The authority to order a court-martial is an attribute of *command* and cannot be delegated to a subordinate.

19. Appointing an Officer as Accuser or Prosecutor.—No officer is eligible to sit as a member of a court-martial when he is the accuser or a material witness for the prosecution.

Where a commander *initiates* a charge out of a hostile *animus* toward the accused or a personal interest adverse to him, he is deemed an "accuser" or "prosecutor."

THE INFERIOR COURTS-MARTIAL.

23. The Special Court-Martial may be appointed by the commanding officer of a district, garrison, fort, camp, or other place where troops are on duty; or by the commanding officer of a brigade, regiment, detached battalion, or other detached command; or by superior authority when deemed desirable.

25. The Summary Court may be appointed by the commanding officer of a garrison, fort, camp, or other place where troops are on duty, or by the commanding officer of a regiment, detached battalion, detached company, or other detachment; or by superior authority when deemed desirable.

25a. Power to Punish:

- (a) General courts - martial may impose any punishment authorized to be imposed by a military tribunal in the Articles of War.
- (b) Special courts-martial have power to adjudge punishment not to exceed six months' confinement or forfeiture of six months' pay, or both, and, in addition thereto, reduction in case of non-commissioned officers and first-class privates.
- (c) Summary courts have power to adjudge punishment not to exceed three months' confinement or forfeiture of three months' pay, or both, and reduction in addition thereto.

When the summary court is also the commanding officer, punishment in excess of one month will not be executed until approval by superior authority.

CHAPTER IV.

THE COMPOSITION OF COURTS-MARTIAL.

26. Composition in General.—Must be composed of commissioned officers on the active list.

27. Courts-Martial for the Trial of the Militia.—Courts-martial for the trial of officers or men of the militia shall be composed of militia officers only. Officers of militia may sit on courts-martial for the trial of officers or enlisted men of the regular Army.

27. Volunteers.—Courts-martial for the trial of volunteers must be composed of volunteer officers.

27a. Number of Members.—General courts-martial are composed of from five to thirteen, inclusive.

30. Composition of Inferior Courts-Martial.—Special courts are composed of from three to five, inclusive.

38. Counsel for Accused.—The accused is not entitled as of right to counsel, but the privilege is invariably conceded, and where unreasonably refused, such refusal may constitute ground for disapproval of the proceedings.

39. Counsel for Enlisted Men.—The privilege of counsel does not apply in summary court cases.

41. Interpreters are entitled to pay and allowances of civilian witnesses.

41. Clerks.—An enlisted man employed as stenographer is entitled to five cents for each one hundred words taken in shorthand and transcribed.

CHAPTER V.

THE JURISDICTION OF COURTS-MARTIAL.

42. Sources.—The jurisdiction of courts-martial is conferred by the Articles of War and other similar enactments of Congress.

42. Military Jurisdiction of Courts-Martial is *exclusively criminal* in character and has no jurisdiction over property or property interests. It is *exclusive* as to military offenses.

43. Concurrent Jurisdiction.—Civil and military courts can never have it in its strict sense.

43. Classification.—Military jurisdiction, according to its relation to:

- (a) Place,
- (b) Time,
- (c) Persons, or
- (d) Offenses.

43. Jurisdiction as to Place.

(a) Not being restricted as to territory, it covers all military offenses, committed by military persons, within or beyond the territorial limits of the United States.

(b) **RESTRICTION UPON CONVENING AUTHORITY.**—Convening officers may convene courts-martial only within their territorial command; the President and Secretary of War, at any place within the jurisdiction of the United States.

44. Jurisdiction in Point of Time.

- (a) The Statutes of Limitation operate to deprive the courts of power to try certain offenses when a period of time, expressly stated in the statute, has elapsed since their commission. To become effective, it should be pleaded and proved.
- (b) **Limitations at Military Law.**—Two Statutes of Limitation form part of the military law of the United States. One is, no person shall be liable to trial and punishment for an offense committed more than two years before issuing the order for such trial, unless he is not amenable to justice during that period by reason of absence from military jurisdiction.
- (c) The Statute of Limitation in Desertion is the other and refers to time of peace only.

46. Jurisdiction as to Persons.

- (a) **Amenability in General.**—No person can be subjected to military jurisdiction without his consent, as evidenced by his voluntary entrance into the military service.
- (b) **To What Persons Applicable.**—Military law in general is applicable to military persons alone.
- (1) The regular and volunteer forces of the United States.
 - (2) The Militia is composed of all able-bodied male citizens between 18 and 45 years.

- (3) Retainers to the camp, camp-followers, and civilian employees. The statute is restricted in its operation to persons accompanying armies in the field in time of war.
 - (4) Relieving or giving intelligence to the enemy; and certain persons become subject to military jurisdiction as a consequence of committing certain offenses in time of war, as: those who relieve the enemy with money, victuals, ammunition, or knowingly protect him; those who hold correspondence with or give intelligence to the enemy; spies.
 - (5) Inmates of Soldiers' Homes and of the National Home for Disabled Volunteer Soldiers are subject to the Rules and Articles of War.
- (c) **The Period of Amenability** begins with the voluntary entry into the service.
 - (d) **Enlistment** consists in the execution of a contract, to which the United States and the enlisted man are parties.
 - (e) **Termination of Liability.**—The enlistment contract is normally terminated at the expiration of the period of enlistment by a formal discharge.
 - (f) **Jurisdiction Ceases After Expiration of Service.**—The enlisted man ceases to be

amenable to military jurisdiction for offenses committed while in the service after he has been separated therefrom and has become a civilian.

59. Jurisdiction as to Offenses.—It embraces offenses defined in the Articles of War, and the offense of military persons trading with the enemy, and that of fraudulently enlisting in the service of the United States.

60. Persons Exclusively Triable by General Courts-Martial.—General courts-martial have exclusive jurisdiction over officers and cadets; over enlisted men they have concurrent jurisdiction with the inferior courts, and exclusive jurisdiction over all offenses punishable capitally.

60a. Appellate Jurisdiction.—The jurisdiction of courts-martial, being final, cannot be subject of appeal to a higher military tribunal or to a civil court.

CHAPTER VI.

ARREST AND CONFINEMENT; THE ARREST OF OFFICERS.

61. Arrest of Commissioned Officers.—The arrest may be accomplished by the commanding officer in person; usually by a staff officer, by means of oral or written order. Only the commanding officer can place officers in arrest. The court cannot interfere to cause a close arrest to be enlarged.

NOTE: An arrest is not necessarily an essential preliminary to trial.

62. Status of Arrest.—An officer in arrest is without power to perform any duties incident to his rank or station. He has no right to demand a court-martial. All his requests are to be made in writing. The status of arrest does not affect his right to receive pay.

64. Restrictions upon the Durations of Arrests.—Officers in arrest are served with a copy of the charges within eight days after the arrest; trial to follow within ten days after arrest, unless prevented by the necessities of the service, when an additional period of thirty days is allowed, making a period of forty days after arrest.

CHAPTER VII.

CHARGES AND SPECIFICATIONS.

69. The Charge is the instrument in which the military offense against an accused person is set forth. A military charge properly consists of two parts—the technical “charge” and the “specification.” The former designates by its name the alleged offense, the latter sets forth the facts of such offense.

70. The Specifications should fulfill the following conditions:

- (a) The offender to be described as a member of a military establishment or as amenable to military discipline.
- (b) The facts of the offense should be set forth.
- (c) An allegation of criminal intent by the use of words—willfully, knowingly, etc.

It is held to be sufficient as a legal basis for trial and sentence if the charge and specification, taken together, amount to a statement of a military offense.

71. Exclusion of Evidence from Specifications.—The specifications should contain facts constituting the offense, not evidence by which such facts are supported.

71. General Terms; Specific Articles.—A charge expressed in too general terms is faulty and imperfect, so too is a charge expressed in the alternative, as either, under Article 83 or Article 94, is irregular and defective.

Where the offense is clearly defined in a specific article, it is improper to charge it under another specific article.

72. Charges Under Several Forms.—The prosecu-

tion may charge an act under two or more forms where it is doubtful under which it will more properly be brought by the testimony.

72. Allegations as to Persons.—The accused should be described by his true name, rank, and station in the military service.

75. Joint Charges.—To warrant joining of several persons in the same charge and trying them together, the offense must be such as requires a combination of action, committed by the accused in concert or in pursuance of a common intent; concert is not necessarily established by the mere fact of their committing the same offense together at the same time.

76. By Whom Preferred.—By any officer. The fact that he is himself under charges or in arrest does not disqualify him from preferring charges.

79. Action of Post Commander.—Upon receipt of charges, he is required to personally investigate them to satisfy himself—

- (a) Whether the case is one in which a trial is necessary to the interests of discipline;
- (b) If he believes trial necessary, whether the evidence will support a conviction.

A summary court is without jurisdiction to try a non-commissioned officer if he objects to such trial, save with the authority of the officer competent to order his trial by general court-martial.

80. Service of Charges upon the Accused.—It is the duty of the judge-advocate to furnish the accused with a copy of the charges within a reasonable time previous to trial.

CHAPTER VIII.

THE INCIDENTS OF THE TRIAL.

82. Meeting of Court-Martial.—If less than a statutory quorum is present, the court cannot transact business, but may adjourn from day to day to await the arrival of absent members.

NOTE: Communications from convening authority as such should be made to the president as its organ; communications relating to the conduct of the prosecution should be made to the judge-advocate.

85. Clerk to Assist the Judge-Advocate.—The convening authority may detail an enlisted man to assist the judge-advocate of a general court-martial in the preparation of the record when the services of a reporter are not deemed necessary.

CHALLENGES.

85. Procedure.—Only one member at a time will be challenged.

85. Nature of the Right.—This is restricted in two particulars:

(a) A member may be challenged only for cause stated to the court.

(b) "Challenges to the array"—*i. e.*, objection to the entire membership—are forbidden.

NOTE: There is no authority for challenging a judge-

advocate. He is disqualified as such when personally interested as accuser or prosecutor.

The court cannot excuse a member in the absence of a challenge.

A member not challenged, but considering himself disqualified, can be relieved only by application to the convening authority.

It is not necessary for members to withdraw on being challenged, but it is customary.

86. Classification of Challenges.

(a) **Principal Challenge.**—A challenged member is excused from sitting when ground of challenge has been established.

(b) **A Challenge to the Favor.**—One alleging bias, prejudice, or interest to exist. It may or may not be sustained.

87. Waiver of Challenge.—As a rule, objection to the competency of a member must be brought before arraignment, and if the accused is aware of it at that time and fails to bring it forward, he will be deemed to have waived his right of challenge.

Should ground for objection be developed at a later stage, it being unknown to the accused before arraignment, the court may permit the objection to be raised at any stage of the trial.

87. Challenges by Judge-Advocate may be made in behalf of the United States.

87. Incompetency, How Established.—Incompetency is established by:

(a) Voluntary admission of the member;

(b) Testimony of witnesses;

(c) Examination of a member on his *voir dire*.

88. The Accuser; Material Witnesses.—It is sufficient ground to challenge a member if he is the accuser or a material witness. The mere fact that he is a witness or preferred the charges is not generally sufficient ground.

89. Opinion, to disqualify, must be positive and decided in character and formed after deliberation upon facts in the case and conversation with witnesses or reports of testimony.

89. Bias or Prejudice; Rank of Member.—An officer cannot successfully challenge a member merely because of being of a rank inferior to his own.

CONTINUANCES.

90. Procedure.—A motion for a *continuance* must be supported by evidence, usually in affidavit form.

90. Causes for Postponement.—In advance of the trial, application for postponement should be made to the convening authority.

THE ARRAIGNMENT.

96. Pleadings.—A *pleading* is a statement, in logical and legal form, of facts constituting a particular cause of action or ground of defense. *Charges* and *specifications* are part of pleadings in a case, to which the accused is required to make answer, known as the "plea." If the plea is "guilty" or "not guilty," the accused is said to plead the "general issue."

The reading of the charges and "pleas" thereto constitute the *arraignment*, during which the judge-advocate, accused, and counsel stand.

96. Classification of Pleas as to their nature and effects:

- (a) To the jurisdiction;
- (b) In bar of trial;
- (c) In abatement;
- (d) To the "general issue."

96. Pleas to the Jurisdiction.

- (a) The court must have been properly constituted;
- (b) The accused must be subject to its jurisdiction;
- (c) The crime must be a military offense.

97. Objections to Constitution of the Court.—It may be alleged that the convening officer is without authority to convene the court.

97. Convening Officer as Accuser.—Where he himself initiates the charge out of a hostile *animus* toward the accused or a personal interest adverse to him, he is deemed an "accuser" or "prosecutor."

98. Amenability of Accused to Trial.—The person accused should be amenable to military jurisdiction. Civilians are amenable to trial by court-martial in time of war in the immediate theater of operations only.

100. Plea in Bar of Trial admits jurisdiction as to class of cases and general amenability of the accused, but, for reasons stated, denies the right of the court to try the particular case before it. A plea in bar of trial is appropriate in the following cases:

100. A Previous Acquittal or Conviction of the Same Offense.

- (a) The accused, having been duly convicted or acquitted, cannot be subjected to a second military trial for the same offense except by and upon his own waiver and consent.

102. New Trials.

- (b) New trials are only authorized where sentence has been disapproved by the reviewing authority and the accused has asked for a second trial.

After sentence has been approved and has taken effect, the granting of a new trial is beyond any power.

Where an accused, who has been tried by a civil court for a criminal offense, is brought to trial by a court-martial for a military offense involved in a criminal act, he cannot plead "a former trial" (and *vice versa*).

103. Pardon.

- (c) A pardon is an act of grace, which exempts the individual upon whom it is conferred from the punishment which the law inflicts for the crime he has committed.

A pardon must be pleaded—that is, submitted to the court—in accordance with the rules regulating the production of documentary evidence, in order that the court may give it effect in support of a plea.

105. Pardoning Power, How Exercised.—*First*, by the proclamation of pardon or amnesty, which originates with the President, and has been issued in several instances in behalf of deserters and absentees without leave; *second*, by the remission of a military sentence, which relieves the person from punishment or the unexecuted portion of a sentence; *third*, the offense may be pardoned—that is, *condoned*—before prosecution has commenced, by restoration to duty, without trial.

106. Constructive Pardon is a condonation of an offense by the action of a military superior, the effect of which is to abandon or desist from the prosecution of a particular offender. Where a military person who is under charges is released from arrest or confinement and restored to duty by authority competent to order his trial, there is said to be a “constructive pardon,” which may be pleaded in bar of trial. A constructive pardon will ordinarily be proved by testimony of witnesses as to its source and authority.

PLEAS IN ABATEMENT.

107. Nature and Character.—It is a motion to abate—that is, to set aside—a particular specification to which it is addressed, on the ground that it contains some defect, which is alleged to be fatal to the maintenance of the action. Such pleas serve only to defer a particular trial and are not favored in military practice.

Pleas in abatement usually relate to *misnomers* in the specifications; to *false additions*, as when the accused is incorrectly described; and to cases described by the term *idem sonans*, where the name of the accused in the plea

and specifications, though spelled differently, are substantially identical in sound.

It is not essential to state in a specification the full Christian name; only such name or initial need be given as will unmistakably identify the party. A misnomer in a charge consisting of an erroneous middle name or initial may be disregarded without affecting the validity of the finding.

108. Where Charges upon Which an Accused Person Is Arraigned Differ Materially from Those Served upon Him.

- (a) This may be taken advantage of by a plea in abatement.

109. Name of Accuser or Prosecutor.

- (b) The accused is entitled to know the name and designation of the accuser in the case.

109. Other Objections to Charges, How Disposed of.

- (c) Objections to charges in matters of form should be taken advantage of by pleas in abatement. Such are objections to specifications, as "inartificial," "indefinite," or "redundant"; or as misnaming the accused or misdescribing him as to his rank or office; or as containing insufficient allegations of time or place, etc.

Where the accused pleads "guilty" or "not guilty" to a specification in which he is incorrectly named or described, such plea is an admission of his identity with the person thus designated.

109. Failure to Serve Charges.

(d) An accused person is entitled to receive a copy of the charges in sufficient time to enable him to secure attendance of the witnesses and prepare his defense.

110. Procedure in Respect to Pleas.—A plea that is substantiated may operate to cause the charge or specification to which it is addressed to be stricken out or materially amended.

The matter should be logically and concisely stated by the accused in support of his plea, which should be submitted in writing.

The accused is entitled to be first heard in its support.

111. Statutes of Limitation in criminal cases are enactments which, if pleaded in defense, operate to deprive the State of the power to try and punish an offender after the lapse of a specific period since the offense was committed.

113. Demurrers.—The office of a demurrer is to raise an issue of law, as distinguished from the issue of fact, which arises when resort is had to any of the special pleas already mentioned; and the issue of law so raised must be decided by the court before the trial can be further proceeded with. A specification to which a demurrer is addressed must be defective in some essential respect in regard to the definition or description of the particular military offense, or must fail to set forth facts sufficient to constitute an offense at military law.

114. Judgment on Demurrer.—If the demurrer is sustained, the accused is not required to plead to the

particular specification to which the demurrer has been addressed.

THE GENERAL ISSUE.

114. Pleas to the General Issue.—When any of the several pleas already described have been submitted in behalf of the accused and have been decided adversely, the accused is required to plead to the *general issue* as distinguished from the *special issues* raised by pleas in bar, etc.

115. Statements Inconsistent with Plea of Guilty.—In such a case the court will counsel accused to plead “not guilty,” and, this plea being entered, will proceed to a trial.

115. Withdrawal of Plea.—A court - martial may permit the accused to withdraw a plea of “not guilty” and substitute another, and *vice versa*.

115. Introduction of Testimony After a Plea of Guilty.—Where the plea is “guilty,” and where the specifications do not fully set forth the facts of the case, the prosecution should be instructed by the court to introduce evidence of the circumstances of the offense, for the reason that the court may be better enabled to estimate the measure of the punishment, and further, that the reviewing authority may be better enabled to comprehend the entire case; but it does not apply where sentence is not discretionary with the court.

Wherever, in connection with a plea of “guilty,” a statement is made by the accused from which it is to be gathered that evidence exists constituting a defense to the

charge, the court will call upon the judge-advocate to introduce such evidence.

118. Nolle Prosequi.—The United States, through the Secretary of War, or through the convening authority, may require or authorize the judge-advocate to enter a *nolle prosequi* in a case on trial—that is, discontinue the prosecution as to any particular charge or specification, or to all of them.

THE HEARING.

THE PROSECUTION.

119. Introduction of Witnesses.—NOTE: When the judge-advocate himself takes the witness-stand, he is sworn by the president of the court.

120. Objections to Competency.—Witnesses are not permitted to appear in court, or to listen to testimony (save in case of an expert), until they have testified. While waiting to give their testimony, witnesses are separated, if need be.

120. Methods of Examination.—The first question is put to determine the identification of the accused; the second, to show that the witness was so placed as to personally know the facts; and the other interrogatories, to elicit all the facts.

After cross-examination, the witness may be re-examined by the judge-advocate, after which he may be re-examined by the accused.

121. Leading Questions.—In the examination in chief, leading questions—that is, questions which suggest answers which it is desired to have the witness make, or

which, embodying a material fact, may be answered by "Yes" or "No"—if objected to by the opposite party, are rejected by the court. However, they may be permitted during cross and direct examinations in respect to matters introductory to the material part of the inquiry, or when the witness appears to be hostile to the party calling him, or makes an omission in his testimony through want of recollection which a suggestion may assist.

122. Objections to Testimony.—A question may be objected to upon the ground that it is leading, irrelevant, or that the answer called for is hearsay or in the nature of an opinion.

122. Questions by the Court, as a whole, are not subject to objection. Questions by a member may be objected to.

123. Conduct of Prosecution.—The judge-advocate should advise the accused, when ignorant and unassisted by counsel, of his rights in defense.

THE DEFENSE.

DEFENSES.

124. Nature and Character.—The matter offered by an accused in opposition to or in rebuttal of the case established by the prosecution is called the "*defense.*" Defense is *complete* where the testimony submitted in behalf of the accused is sufficiently strong to negative the allegations of the charges (not always necessary).

The accused is entitled to acquittal where the prosecution is unable to establish guilt beyond a reasonable doubt.

124. Want of Criminal Capacity to commit crime may be due to any of the following causes:

- (a) **Infancy.**—Children under seven years of age.
- (b) **Idiocy.**—An idiot is a person mentally defective; idiocy is regarded in law as an absence of mind. A person born deaf, dumb, and blind is regarded as in the same state as an idiot.
- (c) **Insanity or Lunacy.**—Impairment of the mental faculties—casual and occasional, rather than permanent, with periods of mental soundness, called "*lucid intervals.*"

125. Test of Capacity in Case of Insanity.—If the accused had the power to distinguish right from wrong, and the power to adhere to the right and avoid the wrong, he is responsible for the consequences of his act.

126. Drunkenness.—Where it is shown that the accused became drunk in the company of a military superior, who drank with him or exerted no authority to prevent his indulging to excess, this fact should operate to mitigate the sentence.

128. Ignorance or Mistake of Fact is *voluntary*, and not susceptible of being pleaded as a defense for crime when one by reasonable exertion might have acquired knowledge of his act.

Involuntary ignorance occurs where a man intending to do a lawful act does that which is unlawful. When admitted, it is held to affect the intent, and the burden rests upon the accused of showing want of knowledge.

129. The Alibi is a term employed to describe that method of defense to a criminal prosecution in which the accused undertakes to show that he could not have committed the offense, by evidence showing that he was in another place at the time of its commission.

130. Testimony as to Character may be introduced—

- (a) In disproof of the particular offense with which the accused is charged;
- (b) With a view to affect the punishment, as to kind or amount.

The prosecution cannot attack the character of the accused till the latter has introduced evidence to sustain it and has thus put it in issue.

131. Member or Judge-Advocate as Witness.—The accuser or a witness for the prosecution is ineligible to sit as a member of the court. If that fact is not disclosed until the trial has been entered upon, it is sufficient ground of challenge, and the member should be excused when objected to.

A member may testify as a witness for the defense.

132. Accused as a Witness.—A sworn statement by the accused should not be admitted *in evidence* by the court.

132. Statements and Arguments.—An accused person may be permitted to reflect in his statement, within reasonable limits, upon the apparent *animus* of his accuser.

Interlocutory questions are objections to witnesses on the ground of competence; to the admission, exclusion, or relevancy of testimony, etc.

135. Adjournments.—A court-martial is authorized to adjourn to the quarters, at the same post, of a sick witness, and there take his testimony.

139. Contempt of Court is:

(a) *Direct* or criminal contempt; the act or omission constituting the offense must have taken place in the actual presence of the court itself; or,

(b) *Constructive* contempt, which applies to similar conduct committed outside the presence of the court.

140. Procedure.—When contempt has been committed, the offending party is given an opportunity to be heard in explanation. If not satisfactory, the action taken is summary, a formal trial not being required; the punishment imposed by the court being carried into effect by the commanding officer of the post.

140. The Finding.—In arriving at a finding, it becomes necessary for members of a court-martial to ascertain, *first*, what is alleged against the accused, and, *second*, whether the allegations contained in the charges have been proved beyond a reasonable doubt.

141. Reasonable Doubt is an honest, substantial misgiving, generated by the insufficiency of the proof; it is a doubt which reasonably flows from the evidence or want of evidence.

141. Voting.—Where, upon the finding, the vote on a charge or specification is *tied*, the accused is, in law, found *not guilty* thereon.

142. Basis of Finding.—No matter how many specifications there may be, it requires a finding of “guilty” or

“not guilty” on but one specification to support a similar finding upon the charge.

144. Finding as to Lesser Kindred or Included Offense.—There may be a finding of “not guilty” as to the major or principal offense charged, and a finding of a lesser kindred and included offense. The most familiar instance is the finding of “guilty of absence without leave” under a charge of desertion.

The converse of the proposition is not true, and a conviction of a graver offense in lieu of that charged is not sanctioned.

THE SENTENCE.

148. Mandatory and Discretionary Sentences.

- (a) A *mandatory sentence* is one determined in kind and amount by the express terms of a statute, and no other sentence may lawfully be imposed.
- (b) A *discretionary sentence* is one in which an appropriate punishment is determined by the court.

156. Recommendations to Clemency are not part of the official record of trial and should not be incorporated with the record proper, but should be appended to or transmitted with the same as a separate and independent paper.

PROCEEDINGS IN REVISION.

158. Revision of Findings and Sentence.—Findings and sentence are subject to revision and amendment so long as they continue in legal custody of the court.

159. Procedure in Revision.—When the record has been returned by the reviewing authority for correction, at least five members of the court who acted upon the trial and the judge-advocate must be present. It is not necessary that the accused be present.

160. Publication and Execution.—The word “month” employed in a sentence is to be construed as meaning *calendar* month.

161. Cumulative Sentences.—A second sentence is to be regarded as *cumulative* upon the first and its execution commences when the first is completed.

162. Adding to Punishment.—No military authority can add to a punishment as imposed by a court-martial.

A legal sentence of a court-martial, when once duly approved and executed, cannot be reached by a pardon, nor revoked, recalled, modified, or replaced by a milder punishment or other proceeding, either by the Executive or by Congress.

CHAPTER IX.

PUNISHMENTS.

163. Prohibited Punishments.—Military duty is honorable, and to impose it in any form as a punishment must tend to degrade it to the prejudice of the best interests of the service. A sentence cannot impose “guard duty” or “extra duty.”

PUNISHMENTS.

165. Death sentence requires a two-thirds vote.

166. Publication.—When an officer has been dismissed for cowardice or fraud and the sentence has been published, it shall be scandalous for an officer to associate with him.

NOTE: A sentence “to be cashiered” is now equivalent to a sentence of dismissal.

167. Disqualification for Office is no longer regarded as an appropriate penalty in cases of commissioned officers.

167. Imprisonment.—An officer or soldier may be sentenced to a term of confinement merely, without the addition of “hard labor.” Omission of the words “hard labor” in the sentence of a court-martial shall not be construed as depriving the authority executing such sentence of the power to require hard labor in any case where it is authorized.

Confinement shall be considered as commencing at the date of the promulgation of the sentence in orders.

170. Confinement to Limits is recognized by custom as an appropriate punishment for commissioned officers.

171. Suspension from Rank includes suspension from command. It does not involve a loss of pay for the period of suspension, but it deprives the officer of the right to *promotion* for the period of suspension and of the right to select quarters.

173. When Suspension Is Operative.—Suspension, like dismissal, takes effect upon notice to the officer of approval of the sentence officially communicated to him.

175. Fines.—A fine is a pecuniary penalty imposed by a court-martial, requiring payment of a specific sum to the United States, and bears no relation to the pay of the offender.

177. Forfeitures are pecuniary penalties which become operative—

(a) By operation of law, upon conviction of certain military offenses; or,

(b) In conformity to and in execution of the sentence of a lawfully constituted military tribunal.

A *forfeiture* operates to retain from the offender the whole or a part of his current pay or allowances during a period of time expressly set forth in the sentence.

A sentence of forfeiture of "all pay and allowances" includes "extra duty pay."

178. Stoppages are administrative deductions of pay, made in pursuance of authority conferred by statute

or regulation, with a view to reimburse the United States for stores or property purchased or used, lost or destroyed.

Fines, forfeitures, and stoppages are not synonymous.

179. How Stoppages Are Made.—Stoppages are usually entered upon the muster- and pay-rolls. If the rolls be signed without protest, such signing will operate as an implied waiver of objection to the justice or correctness of the charge.

ENLISTED MEN.

183. Dishonorable Discharge terminates the service of a soldier, and his discharge should be dated as of the day on which approval of the sentence is officially published, or the order promulgating such approval is received, at the post where the soldier is held.

185. Imprisonment; Confinement.—Such punishments may be executed—

- (a) In a State prison or penitentiary, when the offense of which convicted would, by some statute or by the common law, subject such convict to such conviction and punishment; or,
- (b) In the United States Disciplinary Barracks, or at a military post, as a "general prisoner"; and,
- (c) By simple confinement, as a "garrison prisoner," in the guard-house.

187. Confinement with Ball and Chain.—The sentence should set forth the weight of the ball, the length of the chain, etc.

187. Solitary Confinement shall not exceed four-

teen days at one time nor be repeated until fourteen days have elapsed, and shall not exceed eighty-four days in one year.

188. Execution of Sentence.—The confinement shall be considered as commencing at the date of the promulgation of the sentence in orders.

A sentence of confinement is *executed* by sending the party under proper guard to the place of confinement, duly designated, and at the same time transmitting to the officer in command a copy of the order publishing the sentence, together with such other papers as are required.

CHAPTER X.

THE RECORD.

192. Separate Record of Each Case Tried.—The record of each case should be complete in itself and separate and distinct from every other record.

193. Organization of the Court.—*First essential*, that there assembled at the time and place indicated in the order at least five of the officers detailed as members; *second essential*, that the convening order was read to the accused and that the privilege of challenge was extended to him.

197. Copies of Records to Accused Persons.—The judge-advocate mails a carbon copy to the Judge-Advocate General of the Army, and the latter furnishes the same to the accused upon application properly made. The statute confers the right in case of general court-martial only.

CHAPTER XI.

THE REVIEWING AUTHORITY.

200. Approval by President.—In cases of sentences of death, dismissal, together with sentences respecting “general officers,” the President is the *final* reviewing officer.

202. Power of Reviewing Authority—He cannot correct the record of the court by striking out any part of the finding or sentence, nor can he change the order in which the different penalties are adjudged by the court, nor can he add to the punishment imposed by the court.

A military commander cannot delegate to an inferior or other officer his functions as reviewing authority of the proceedings or sentences of courts-martial.

THE PARDONING POWER.

REMISSION, MITIGATION, AND COMMUTATION.

204. The Pardoning Power.—The power to pardon offenses against the United States is vested by the Constitution in the President.

A qualified form of the pardoning power, extending to remission or mitigation of sentences, is conferred by statute upon certain military commanders, who are authorized by law to carry into effect sentences of courts-martial.

205. Effects of Pardons.—It is the effect of a full pardon to remove all penal consequences, except, of course, executed penalties and all disabilities attached to the offense or to the conviction or sentence.

206. Continuing Punishments.—The pardoning power extends to *continuing* punishments or punishments which are never fully executed, remitting in each case the punishment from and after the taking effect of the pardon.

Examples of continuing punishments:

- (a) The punishment of disqualification to hold military or public office.
- (b) Reduction in "files" in the list of officers or the offender's grade.

206. Conditional Pardons.—Are granted upon a condition precedent or subsequent, as the President's proclamation of March 11, 1865, granting pardon to all deserters on certain conditions.

207. Constructive Pardons.—The promotion of an officer while under arrest on charges has been viewed as a constructive pardon of the offense on account of which he has been arrested.

207. Pardon Not Retroactive.—It cannot remit an executed punishment or restore an executed forfeiture resulting either by operation of law or sentence.

208. Remission is a partial exercise of the pardoning power, relieving the person from a *punishment* or the unexecuted portion of a punishment, but not pardoning the *offense* as such.

209. Mitigation is a form of pardoning power vested in the reviewing authority, which authorizes him, if he deems a punishment too severe, to reduce it in quan-

tity or quality without changing its species. Imprisonment, fine, forfeiture, and suspension may be mitigated.

210. Commutation is a form of conditional pardon, vested in the President alone and not shared with the reviewing authorities. Where sentence imposes death, dismissal, or dishonorable discharge, clemency can only be exercised by way of commutation.

CHAPTER XIII.

COURTS OF INQUIRY.

218. Object and Purpose.—A court of inquiry is an agency created by statute for the purpose of investigating questions of fact and of giving its opinion upon the merits of the case. It is not a court in the strict sense of that term; it cannot compel the attendance of witnesses nor require them to testify.

218. Constitution and Composition.—A court of inquiry is rarely convened by any less authority than that competent to convene a general court-martial; it can only be convened upon application of the officer or soldier whose conduct is to be investigated. It is composed of one to three members.

219. Challenges.—The right of challenge is accorded. Members of courts of inquiry are sworn, and the procedure is similar to that of courts-martial.

220. The Record consists of two parts:

- (a) The testimony of witnesses, including documentary evidence, arguments, and statements.
- (b) The report proper, consisting of a statement of the facts in the form of a narrative.

221. Use of Record in a Subsequent Trial is authorized as evidence in cases not capital nor extending to dismissal of an officer, *provided* that the circumstances are such that oral testimony cannot be obtained.

CHAPTER XIV.

MILITARY BOARDS.

225. Boards; Constitution, Powers, Etc.—A board is a committee of commissioned officers called together with a view to conducting an examination and, if called upon, to submit recommendations. Unless specially authorized, it cannot summon witnesses, nor can it swear witnesses or its own members. It may act upon evidence submitted in the form of affidavits. Affidavits, being *ex parte* in character, cannot be properly offered as evidence in a trial by court-martial.

226. Rules of Procedure; Reports.—Are similar to that of courts-martial, except proceedings are usually signed by all the members.

RETIRING BOARDS.

237. Procedure.—Its duty is to inquire into facts as to disability of any officer who appears to be incapable of performing his duties; to determine—

- (a) The extent of the disability;
- (b) Whether such disability is or is not incident to the service.

The procedure is the same as that of other military tribunals.

238. Record is signed by the members and the recorder and transmitted to the Secretary of War for the action of the President.

238. Approval of Finding.—Retired officers are, in fact, pensioners. They do not hold public office. Any officer “wholly retired” ceases to be an officer of the Army.

BOARDS OF SURVEY.

239. Jurisdiction.—A surveying officer is a tribunal created by Army Regulations for the purpose of investigating questions of property responsibility. A board of survey is without power to call or swear witnesses, but may receive and file evidence in the form of affidavits.

241. No Power to Condemn.—A surveying officer cannot condemn public property; his action is purely advisory.

242. Boards of Survey in Cases of Desertion are called—

(a) To determine whether Government property has been lost, and to fix the exact accountability of the soldier;

(b) To ascertain the cause of desertion.

243. Boards to Determine the Character Given to Discharged Enlisted Men may be convened by a commanding officer to determine whether a soldier's reenlistment should or should not be recommended and the kind of discharge to be given him. Notification to soldier should be made at least thirty days prior to discharge.

CHAPTER XV.

EVIDENCE.

244. Evidence is a term which includes all matters of fact which a court of justice permits to be submitted in the trial of a case, with a view to prove or disprove the existence of a fact in issue.

245. How Obtained.—Evidence is obtained by application of a system of rules, called “rules of evidence.”

245. Witnesses are persons who relate in court, under oath, such facts pertaining to a particular case as they have become cognizant of through the medium of their senses.

245. Purpose of Rules of Evidence is to determine

- (a) The *competency* of witnesses;
- (b) The *credibility* of witnesses.

WITNESSES.

245. Duty of Witness to Testify; Appearance.—Every person upon whom a subpoena has been duly served must appear and testify or render himself liable to punishment for contempt.

245. Appearance of Military Persons.—The attendance of military persons is secured by the issuance of orders from the proper military authority. Failure to obey such summons, if not explained, constitutes the offense of disobedience of orders.

245. Appearance of Civilians.—To obtain the attendance of a civilian as a witness, a formal *subpœna* is issued by the judge-advocate. If the witness has in his possession a document which is material as evidence, a writ called a *subpœna duces tecum* issues, commanding him to produce the document described in court on a certain day.

246. Service of Process.—A summons may legally be served either by a military or a civil person, but will perferably be served by an officer or non-commissioned officer of the Army.

246. Method of Service.—To constitute service, the original is shown to the witness, or, if two copies are furnished, the duplicate is delivered to him; a certificate of service is then indorsed upon the original writ, which is returned to the judge-advocate.

247. Operation of the Writ.—The power to issue writs of *subpœna* is vested by statute—not in the court-martial itself, but in the judge-advocate. Such writs are operative anywhere within the territorial jurisdiction of the United States.

247. Time of Service.—The service of a *subpœna* upon a witness ought always to be made at least one day before the trial.

THE WRIT OF ATTACHMENT.

248. Nature and Purpose.—The writ of attachment is a compulsory process to compel the attendance of a witness; it authorizes the officer charged with its execution to arrest the person named and compel his appearance in court, using such force as is necessary.

248. Application in Court-Martial Procedure.—The power to issue a writ of attachment is vested exclusively in the judge-advocate and cannot be exercised by the court.

248. Limitation of the Power to Issue Writs of Attachment.—The power of the judge-advocate to issue writs of attachment is restricted to the State, Territory, or District in which the court is sitting.

249. Service of Process of Attachment.—To authorize a resort to an attachment, there must have been a formal summons duly issued and served upon the witness and not complied with. The judge-advocate is authorized only to *initiate* the process of attachment.

Whenever it becomes necessary to enforce the attendance of a witness, the judge-advocate will issue a warrant of attachment, directing and delivering it for execution to an officer designated by the department commander. When necessary, the nearest post commander will furnish a military detail sufficient to execute the process.

The person entrusted with the service of a writ of attachment should be provided with the following papers:

- (a) The order convening the court;
- (b) A copy of the charges;
- (c) The original subpoena, with affidavits and certificates of service;
- (d) An affidavit from the judge-advocate that the party has failed to appear, that he is a necessary witness, and that no valid excuse has been fixed for such failure to appear.

250. The Rules of Evidence observed in civil courts should in general apply in trials by courts-martial.

COMPETENCY OF WITNESSES; CREDIBILITY.

251. Competency of a Witness is his legal capacity to testify, and is determined by enactments of Congress or by the common law.

The *credibility* of a witness is his worthiness of belief, and is determined by his character, by the acuteness of his powers of observation, by the accuracy and retentiveness of his memory, and by his capacity for lucid expression. The court determines questions of competency, and if decided adversely, the witness is not permitted to testify.

GROUNDINGS OF INCOMPETENCY.

252. Grounds of Incompetency are:

- (a) Infamy;
- (b) Interest in the subject of litigation;
- (c) Want of understanding;
- (d) Want of religious belief.

(a) INFAMY.

252. Nature of the Disqualification.—The crimes involving infamy are *treason*, *felony*, and the *crimen falsi*.

252. Treason consists in adhering to the enemies of the United States, in giving them aid or comfort, or in levying war against the United States. A person convicted of this crime forfeits such rights as attach to citizenship.

252. Felony was the peculiar status occupied by a person who had been convicted of certain crimes at common law—rather a consequence of crime than a crime it-

self. Any offense which at common law was punishable capitally or with forfeiture of land and goods was a felony, and a person convicted thereof became infamous.

253. Practice of the United States Courts.—There is no status of felony under the laws of the United States unless an offense has been declared felonious or infamous by statute, or unless the punishment attached thereto is such as to render one who has undergone it infamous.

Imprisonment in the State prison or penitentiary is considered infamous punishment.

NOTE: Desertion (except desertion in time of war and repeated desertion in time of peace), is not a felony and does not render a witness incompetent before a court-martial; but conviction of desertion may impair his credibility.

253. Crimen Falsi at common law was any offense involving falsehood and which might injuriously affect the administration of justice by the introduction of falsehood or fraud; and any person guilty of such an offense was regarded as incompetent to testify. Such offenses include forgery, perjury, subornation of perjury, suppression of testimony by bribery, etc.; each of which involves the repudiation of the sanction of an oath.

254. Procedure in Case of Incompetency from Infamy.—Incompetency from infamy is established by the production or proof of the judgment itself. Incompetency based upon conviction of an infamous offense does not operate to produce incompetency beyond the jurisdiction in which the conviction was had. Such convictions may be established in evidence with a view to affect credibility.

(b) INTEREST.

254. Reason for the Disqualification.—It was a rule of the common law that in a civil action a party who was interested in the result of the litigation was permitted to testify against his interest, but was regarded as incompetent to give evidence in his own behalf. It was regarded as expedient to remove from the path of a witness every temptation to commit perjury.

255. Testimony Against Interest.—A party is competent to testify voluntarily against himself at any time and in any case. He may do this under oath, or by means of confessions, or declarations against interest, made out of court in a matter relating to the offense with which he is charged.

255. The Accused in a Criminal Case.—The party actually injured by the commission of a criminal offense, who is known as the *prosecutor*, or *prosecuting witness*, is always a competent witness.

255. Competency of Accused Restored by Statute.—If he declines to appear as a witness, his failure to appear shall create no presumption against him; if he avails himself of the privilege, his status is the same as that of any other witness.

257. Accomplices and Codefendants.—The testimony of accomplices, codefendants, and the like is, as a rule, excluded; but sometimes it is necessary to obtain such testimony in a case in which a serious offense would otherwise go unpunished. An accomplice or codefendant is incompetent: first, because of infamy; second, because of interest. The first accrues upon conviction; the second

when an indictment has been obtained or prosecution begun.

257. Husband and Wife; Exceptions.—Either is incompetent to testify for or against the other in any action. An exception exists in the case of a crime committed by a husband against the person of his wife.

(c) WANT OF UNDERSTANDING.

258. Want of Understanding becomes a ground of incompetency. Under this head fall young children, the deaf and dumb, idiots, the insane, and persons under the influence of drugs or liquors. But if the cause be temporary, and lucid intervals should occur, the competency is restored.

259. Insanity.—If the facts were observed and testimony given during *lucid intervals*, competency will be presumed.

(d) WANT OF RELIGIOUS BELIEF.

259. Want of Religious Belief.—The particular form of religious belief is not material, so long as it contemplates the existence of a Supreme Being to whom the witness acknowledges a moral accountability.

An oath may be defined as an “outward pledge given by the person taking it that his promise is made under an immediate sense of his responsibility to God.”

260. Procedure in Cases of Incompetency.—The question of competency should, in general, be raised and decided before the witness is sworn, but may come up at any time when his competency becomes apparent.

NOTE: The president or any member of a court-martial, as also the judge-advocate, may legally give tes-

timony before the court, and the fact that the court is composed of but five members will not affect the validity of the proceedings.

260. The Voir Dire.—When interest or want of religious belief is alleged as a ground of incompetency, the fact may be established by the testimony of witnesses, or by the admission of the proposed witness, or by his own testimony given under the sanction of a peculiar form of oath known as the *voir dire*. If the evidence offered *aliunde*, to prove interest, is rejected as inadmissible, the witness may then be examined on the *voir dire*.

OPINIONS; EXPERT TESTIMONY.

261. Opinion; Experts.—As a rule, testimony in the nature of opinion is excluded, but there are two exceptions to this general rule:

(a) Any intelligent witness may testify as to opinions which are themselves conclusions drawn from numerous facts within the daily observation and experience of all intelligent persons.

(b) The opinion of experts in an art, trade, or profession in which they have attained especial proficiency.

262. Procedure.—The party who introduces expert witnesses must show that they are experts in fact.

RULES OF EVIDENCE.

262. Purpose of Rules of Evidence.—They have to do with determining the competency of witnesses and

the exclusion of certain testimony upon the ground that it is likely to mislead or to confuse the main issue.

263. Oral and Written Testimony.—*Oral testimony* is that given *viva voce* in open court; *written testimony* is composed of matter in the nature of documents, either originals or copies.

263. Direct and Indirect; Real Evidence.—Oral testimony, as to its nature and character, is classified as:

- (a) *Direct or original* when the witness testifies to facts observed by him through his senses.
- (b) *Indirect* when the witness derives his knowledge from the observation of others and testifies to their statements — called *hearsay* testimony.

Real evidence consists in the production in court of objects or articles that pertain to the case in hearing. Evidence is *circumstantial* when the existence of a fact is inferred from the existence or non-existence of other facts established in evidence by the testimony of witnesses.

The rules of evidence also serve to determine:

- (a) The *relevancy* of testimony—its relation to the issues raised by the pleadings.
- (b) The *burden of proof*—the obligation of establishing the truth of each issue raised during the trial.
- (c) The *quality* of evidence which requires the *best evidence*.
- (d) The *amount* of evidence necessary to establish the facts.

(a) RELEVANCY OF EVIDENCE.

264. Relevancy of Evidence.—Evidence must be relevant—that is, must bear directly upon the issue.

264. Relevancy of Facts.—A fact is said to be relevant when it is the cause or the effect of another fact. Testimony objected to as irrelevant may be admitted upon the statement of the person producing it that its relevancy will appear at a later stage of the proceedings.

265. Circumstantial Evidence.—In a case depending upon circumstantial evidence, the court, in order to convict, must find the circumstances to be satisfactorily proved *as facts*, and must also find that those facts clearly imply the guilt of the accused and cannot reasonably be reconciled by any hypotheses of innocence.

265. Character; Reputation.—*Character* of a person cannot be established by testimony of witnesses. *Reputation*, which is the outward manifestation of character, is susceptible of observation by neighbors and others who may testify to such reputation in a proper case.

Evidence of good character, record, and services of the accused is admissible in all military cases. The prosecution cannot attack the character of the accused until the latter has introduced evidence to sustain it.

266. Reputation, How Established.—Persons who know the reputation of the accused in the community in which he lives can testify as to the reputation which he there enjoys for sobriety, integrity, morality, etc.

(b) THE BURDEN OF PROOF.

266. How Determined.—The *burden of proof*—that

is, the task of establishing the truth of a proposition outlined in the pleadings—rests upon the one who alleges a fact.

267. Burden of Proof in a Criminal Trial rests upon the prosecution of establishing in evidence the facts of the offense as set forth in the indictment. In collateral issues as to the competency of witnesses, the admissibility of testimony, etc., the burden of proof rests upon the party making the allegations.

(c) THE BEST EVIDENCE.

267. The Best Attainable Evidence Must Be Submitted.—If a witness testify as to facts which he has heard or seen, or if the original of a document be produced, such testimony is the best attainable, and is said to constitute primary evidence. If, on the other hand, the witness testifies to facts the knowledge of which he has gained from another, or if a copy of a document be submitted, such evidence is not the best, and is said to be “secondary” or “derivative.”

268. Hearsay testimony is that obtained from a witness who has not himself observed the facts to which he testifies, and is objectionable for several reasons:

1. Because it is secondary.
2. The real witness is not testifying in court under oath.
3. The opposite party has no opportunity to be confronted with the witnesses against him or to exercise the right of cross-examination.

The Principal Exceptions Are:

268. (1) Confessions may be made by a plea of

“guilty,” or by a statement made in open court by or in behalf of the accused; if made elsewhere, they may be testified to by those who heard them, if made under such circumstances as to make it clear that the admissions of guilt were entirely voluntary.

Corroboration.—A mere confession, not made in open court, or otherwise corroborated, will not justify conviction.

Proof of Facts obtained through an inadmissible confession is both competent and receivable.

269. (2) Declarations; Admissions Against Interest.—Acts, declarations, and conduct of the accused on the occasion of the commission of an offense are to be considered as *indicia* of his guilt or innocence.

Dying Declaration is an *ante-mortem* statement made by the declarant in relation to the injury from which he is suffering. The sense of impending death is held to replace the sanction of an oath, but the statement will not be received if it appears that the declarant cherishes any hope of ultimate restoration to health.

RES GESTÆ.

270. Res Gestæ is a form of testimony which consists of the admissions, statements, and other utterances of accused persons or interested parties which are testified to by those who heard them.

271. Rule as to Admission.—The rule governing the admission of such statements is that they are receivable when they are strictly contemporaneous with and form an essential part of the event to which they relate, and not otherwise.

Example: If B stabs C and as he inflicts the wound exclaims, "Take that!" or words of similar effect, such exclamation is an essential ingredient of the offense.

SUBSTANCE OF THE ISSUES; DEPARTURES.

271. The Substance of the Issue Only Need Be Proven.—In the application of this rule a distinction is made between matter of substance, which pertains to an issue, and matter of description. The latter must be proved as alleged; the former, as to its legal or material part only.

272. Judicial Notice.—There are certain facts of which all courts take what is called *judicial notice*—that is, accept them without proof, as they are alleged or referred to in pleading or argument during the progress of a trial.

272. The Revised Statutes; Supplements.—The law of the United States, which is applied by courts-martial in military trials, is contained in the Revised Statutes and the authorized Supplements thereto, and in the biennial volumes of Statutes at Large.

273. The Statutes at Large consist of twelve volumes containing the public and private statutes enacted since December 1, 1873, together with all treaties and conventions with foreign powers.

PUBLIC DOCUMENTS.

275. Public Documents.—For evidential purposes, a *public* document may be defined as any written instrument emanating from or filed or recorded in any office or department of the Government.

275. Production of, in Evidence; How Secured.—When it becomes necessary to produce a public document in court, secondary evidence of its contents in the form of copies is usually furnished, and authenticated by the seal of the office.

DOCUMENTARY EVIDENCE.

276. Documents.—A *document* is a statement of fact in a written instrument, or anything upon which inscriptions, characters, or signs have been recorded and which is susceptible of use as evidence. Written instruments [are classified, according to their source and authority, into *public* and *private documents*, and, according to the formality attending their execution, into *specialties*, or *instruments under seal*, and writings or *documents not under seal*, a term which includes all other writings.

A written instrument is regarded as of the highest authority upon the subject to which it relates; and, as a rule, cannot be varied or contradicted by parol testimony.

276. Primary and Secondary Evidence.—Written evidence is derived from documents, and is said to be either *primary* or *secondary* in character, depending upon its originality. The former consists in the production of the document itself; the latter consists of copies of the original, or in parol testimony as to its contents, derived from witnesses familiar therewith.

The production of written evidence is *voluntary*, when done by a party in his own interest, or *compulsory*, when required by the court.

277. Copies of Public Documents.—The principal forms are:

1. *Exemplifications*—that is, transcripts of records or judgments under the great seal of the State or the seal of the court. These have the same evidential value as would the production of the original itself.
2. *Certified or office copies*, made by an officer specially authorized by statute to perform that duty.
3. *Sworn copies*, transcripts of public records made under oath. *Examined copies* are those which have been compared with the original.

PRIVATE DOCUMENTS.

283. How Produced; How Proved.—*Private documents* differ from public documents chiefly as to the kind and amount of testimony necessary to establish their identity. If a sealed instrument, its execution must be proved by the testimony of at least one subscribing witness, unless the document is in the hands of the opposite party, or be over thirty years old and comes from the proper custodian, in which case it is said to prove itself.

283. Notice to Produce; Proof of Handwriting.—The production of a paper, if in the hands of the opposite party, is obtained by a formal *notice to produce*. If the paper is in the hands of a third party, not a party in interest, its production is compelled by a *subpœna duces tecum*. When the paper cannot be produced by the above methods, secondary evidence may be submitted as

to its contents. When written copies are submitted, witnesses are called to prove handwriting, and they testify

- (a) From having seen the document written;
- (b) From having seen writings personally admitted by the writer to be genuine; and
- (c) By a comparison of writings.

NOTE: A *descriptive list* is but secondary evidence, and not admissible to prove the facts recited therein.

284. Production of Telegrams.—Beyond the power of a court-martial to compel a telegraph operator, against his will, to surrender a dispatch, or copy, to be used as evidence.

ALTERATIONS AND ERASURES.

284. Nature and Effect.—*Interlineations* consist of words inserted between the lines; *erasures* are effected by striking out words. The effect of such alterations, if material and unexplained, is to invalidate the instrument.

EXAMINATION OF WITNESSES.

285. Cross - Examination.—The right to cross examine is, in general, limited to matters stated by a witness in his direct examination. If a party wishes to examine a witness of the opposite side with regard to new matter not introduced by the opposite party, he must make the witness his own by introducing him at a subsequent stage of the trial.

The purpose of cross-examination is to test the credibility of the witness.

286. Leading Questions.—In order to test the credibility of the witness, leading questions may be put in

cross-examination, together with questions not otherwise relevant, the purpose of which is to test his powers of observation, the accuracy of his memory, and his correctness of statement.

PRIVILEGED QUESTIONS.

287. Nature of Privilege.—Witnesses are permitted to decline to answer certain questions, called *privileged questions*. The principal cases of privilege are:

- (a) **State Secrets.**—This privilege has its origin in the belief that the public interests would suffer by a disclosure of certain facts relating to the administration of State affairs.
- (b) **Attorney and Client.**—The disclosures made by a client to his counsel are privileged during the entire period within which the relation of attorney and client exists.
- (c) **Husband and Wife.**—The law forbids either to testify as to any confidential communications made during the continuance of the marriage relation.
- (d) **Criminating Questions; By Whom Determined.**—The witness is privileged to decline to answer a question which would criminate him or expose him to a penalty or forfeiture, the court determining whether or not the question shall be answered; nor can the witness be compelled to produce documents which would tend to criminate him, or be re-

quired to make "profert of the person"—that is, to expose any part of his body usually covered by his clothing.

- (e) **Questions Tending to Disgrace Witness.**—A witness is privileged to decline to answer a question which tends to disgrace him, unless the answer would bear directly upon the issue.

CREDIBILITY OF WITNESSES.

290. Credibility in General.—The credibility of a witness is his worthiness of belief, and is determined by the court.

Where one witness testifies positively and another negatively, both being credible, greater weight is to be given to the former.

291. Conflicting Testimony.—In case of conflict, the greater weight should be given to the testimony of those witnesses whose position gave them the best opportunity for observation.

291. Impeaching Credit.—The *credibility* of a witness may be attacked in cross-examination; so, too, his reputation for veracity may be impeached.

291. Reputation and Character.—Testimony impeaching credibility is usually addressed to the person's reputation for veracity. When the reputation of a witness in this regard has been established in evidence, it is permitted in some cases to ask the witness whether he would believe such a person on his oath.

292. Inconsistent Statements.—Witnesses may be shown, by their own testimony or that of others, to have

made statements out of court, not consistent with, and in some cases opposed to, those made in their sworn testimony.

REFRESHING MEMORY.

292. When Permissible.—A witness while undergoing examination may refresh his memory from notes made by himself at the time of the transaction to which he testifies, if he can swear that they were made or read by him at the time when the events occurred.

ADMISSION OF FACTS WITHOUT PROOF.

292. Admissions.—The existence of a fact may be admitted by either party, or by an agreement between both parties.

NUMBER OF WITNESSES.

292. When Important.—As a general rule, the testimony of a single competent and credible witness is sufficient to establish a fact in evidence, unless otherwise provided by the Constitution or a statutory provision. In cases of perjury the testimony of two witnesses is necessary to convict.

293. Cumulative Evidence is further or additional proof as to a point or fact which has already been established by the testimony of competent and credible witnesses, and, if objected to, will, in general, be rejected.

DEPOSITIONS.

294. Depositions in Evidence.—A *deposition* is a written declaration under oath, made upon notice to the

adverse party for the purpose of enabling him to attend and cross-examine, or make use of written interrogatories for that purpose.

294. Distinguished from Affidavits.—*Affidavits* are voluntary oaths attesting correctness of certain facts contained in a written instrument—*ex parte* in character—not admissible in the practice of courts-martial.

Depositions are instruments of evidence, and constitute means by which guilt or innocence may be determined.

295. Depositions in Court - Martial Procedure.—Depositions cannot be received in capital cases, and in other cases *only* when the witness resides *without* the State, Territory, or District in which the court may be ordered to sit.

296. Procedure.—*Interrogatories* are drawn up by the party who desires the testimony of the witness, and *cross-interrogatories* are framed by the opposite party. After both lists have been accepted by the court, the judge-advocate prepares duplicate subpoenas requiring the witness to appear in person at a time and place to be fixed by the officer who is to take the deposition. The judge-advocate will then send the interrogatories and subpoenas to the convening authority, with a request that the deposition be secured.

297. Evidential Value.—Objections to the competency of a deponent should be raised prior to the reading of his deposition. Should the deponent be found to be incompetent, his deposition is rejected by the court. One party cannot withhold a deposition against the consent of the other.

NOTE: It has been held that a deposition, duly taken, cannot be rejected by the court merely upon the ground that "in all criminal prosecutions the accused shall enjoy the right to be confronted with the witnesses against him"; this constitutional provision having no application to courts-martial.

PRESUMPTIONS.

298. Nature and Character. — Presumptions are either legal assumptions, or logical inferences from the existence of certain facts, as to the existence or non-existence of facts in issue.

If logical inferences, they are *presumptions of fact*; if legal assumptions, they are *presumptions of law*.

298. Presumptions of Fact are based upon facts which must be derived from the evidence submitted and irreconcilable with any reasonable theory of innocence.

298. Presumptions of Law are assumptions of the truth of certain facts without proof of their existence; they assume a certain fact or set of facts to exist as a probable consequence of the existence of other facts.

Presumptions of law are classified into conclusive or absolute presumptions and disputable presumptions.

(a) A *conclusive, absolute, or indisputable presumption* is one which assumes a fact or condition of fact to exist, and forbids all proof to the contrary.

(b) A *disputable presumption* consists in the assumption of the truth of a fact until the contrary is proven.

CHAPTER XVI.

MARTIAL LAW.

300. Military Government; Military Commissions.

—*Martial law* is a term applied to the temporary government by military authority of a place or district in which, by reason of the existence of civil disorder or a state of war, the civil government is unable to exercise its functions.

NOTE: Not synonymous with *military law*, which is a department of the municipal law applicable to a small portion of the people engaged in a special service.

Martial law may be regarded from several points of view:

- (a) **300. In Its Application to the Occupied Territory of an Enemy in War** it is called "*the law of hostile occupation.*"

WHEN APPLICABLE.—It applies to territory over which the Constitution and laws of the United States have no operation and in which the guarantees which are contained in that instrument are entirely inoperative.

The municipal laws of a conquered country continue in force during the military occupation by the conqueror, except in so far as the same may necessarily be suspended.

(b) **301. Application to Territory of the United States in Insurrection or Rebellion.**—

When a state of public war exists, the participants in such insurrection become public enemies, and the territory constituting the theater of operations becomes the territory of the enemy.

(c) **303. Application of Martial Law to Domestic Territory in Case of Civil Disorder, or of Resistance to the Execution of the Laws,** where the civil authorities,

by reason of civil disturbances, are unable to preserve the peace or to afford adequate protection to life and property.

304. Declaration or Recognition; Source of Authority.—Martial law is not created by law; it exists *as a matter of fact*, but its existence is recognized solely as a matter of necessity. It cannot be created or terminated by any authority conferred by the Constitution.

305. When in Existence; By Whom Recognized.—Martial law comes into being as a *question of imperative necessity*. Its existence can only be justified by the emergency of an existing situation, when life and property can only be protected by the use of military force.

305. How Declared or Recognized to Exist.—In the event of a sufficient emergency, martial law may be declared to exist by proclamation issued by the President or by the proper military commander. It should describe the emergency and define the limits within which it exists, and should prescribe such rules of conduct for the guidance

of individuals as are warranted by the necessities of the case.

306. Extent of Its Application.—As the emergency may be in the nature of an insurrection, or in resistance to the execution of a single law, the employment of force must be in direct proportion to the emergency.

306. By Whom Exercised.—Martial law is executed by the general commanding the military forces, under direction of the President, in conformity with the usages of war, as determined by the character of an existing emergency.

307. Rules for Its Exercise.—The civil laws are not annulled, but temporarily suspended, and should be conformed to in spirit. No measures involving restraints on personal liberty can be resorted to unless warranted by an existing emergency. Every step taken must be with a view to the restoration of order and the replacement of the civil authority.

MILITARY COMMISSIONS.

307. Authority and Function.—Military commissions are criminal war-courts, resorted to for the reason that the jurisdiction of the courts-martial, created as they are by statute, is restricted by law, and cannot be extended to include certain classes of offenses which in war would otherwise go unpunished.

309. Constitution and Composition.—Same rules that govern the constitution, composition, and procedure of general courts-martial apply in general in these particulars to military commanders.

309. Composition.—Usage has fixed the minimum of members at three.

309. Jurisdiction of military commissions is exercised over two classes of offenses:

(a) Violations of the laws of war.

(b) Civil crimes: when such offenses are committed by civilians or military persons, either

(1) In the enemy's country, or

(2) In a locality in which martial law has been established by a competent authority.

313. Sentences should award criminal punishment.

A judgment of debt or damages, on conviction of a criminal offense, would be irregular, and would be properly disapproved.

CHAPTER XVII.

HABEAS CORPUS.

314. Purpose and Effect.—The purpose of the writ of *habeas corpus* is to furnish a summary remedy for all cases in which the person of a citizen is subjected to unlawful restraint or imprisonment. Both Federal and State courts have power to issue the writ. It is issued by State courts in a much greater number of cases.

314. Jurisdiction of the Federal Courts.—The law confers power upon the Supreme Court and the several Circuit and District Courts of the United States, also the several justices and judges of said courts, to issue writs of *habeas corpus* for the purpose of inquiring into the cause of restraints upon liberty.

315. Character of the Restraint.—The restraint may consist in the actual arrest or confinement of a military person, or in the confinement of a citizen by the military authority. The legality of enlistment of a minor without proper consent may be made the subject of inquiry.

316. Procedure.—The parties to the writ are the *petitioner*, in whose behalf the writ was issued, and the *respondent*, the officer to whom the writ is addressed. The usual procedure is for the court, on the application of the prisoner for a writ of *habeas corpus*, to issue the writ and, on its return, to hear and dispose of the case.

317. Return.—Where the writ issues from a Federal court, it is the duty of the officer holding the prisoner in custody to bring him into the presence of the court, and to make a return in writing, setting forth reasons for the restraint, and submitting to the court the whole question of authority and discharge.

318. Conflicts of Jurisdiction Between the State and Federal Courts.—The jurisdiction of State and Federal courts being limited by statute, neither court may issue a writ of *habeas corpus* properly falling within the jurisdiction of the other.

A State court has no jurisdiction by *habeas corpus* to release a prisoner held by order of a Federal court; it has no jurisdiction by such a writ over the detention of an enlisted soldier of the United States.

320. Suspension of the Privilege of the Writ of Habeas Corpus.—It shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it.

CHAPTER XIX.

THE ARTICLES OF WAR.

367. Musters (Article 56).—A muster is the periodical assembling of organized commands for review and personal inspection, with a view to the verification of their numbers and equipment, and the presence and identity of their individual members.

378. False Muster may be said to consist in any acquiescence on the part of the mustering officer in false or fraudulent presentation or enumeration of any person or article of property presented for muster on the official muster-rolls.

379. Orders; Nature and Character (Article 64).—Orders are authoritative directions in respect to the military service issuing from a competent military superior.

380. Essential Elements.—The subordinate is not permitted to question either the propriety or legality of an order.

A lawful order is a command, issued by a military superior to a person under his command, requiring an act to be done which is permitted or justified by law.

Except where the illegality of an order is glaringly apparent on the face of it, a subordinate is compelled to a strict obedience.

382. When Operative.—An order becomes operative where military notice of its existence and contents has been communicated to the persons concerned.

The notice of the order, to affect the officer, should be a *personal* notice, actual or constructive, and it should be an *official* notice.

382. Disobedience of Orders.—The offense of disobedience of orders consists in a refusal or neglect to comply with a specific order to do or not to do a particular thing. A mere failure to perform a routine duty is properly chargeable under Article 96, as also a breach of an Army regulation.

A non-compliance by a soldier with an order emanating from a non-commissioned officer is charged under the 96th Article.

383. Character of Disobedience.—Disobedience may be either *negative* or *positive*. In the *first*, the orders might be of no immediate urgency or of no great importance, or the disobedience might arise out of simple negligence, as the non-observance or neglect of orders of long standing. In none of these cases is there implied any bold or wanton defiance of authority, or any more serious offense than is provided against in the 96th Article.

In the *second*, the absolute resistance of or refusal of obedience to a present and urgent command, either oral or written, by the non-compliance with which some immediate and necessary act might be impeded or defeated, is properly chargeable under the 64th Article.

384. Specific Character of the Mandate.—The disobedience of orders contemplated by the 64th Article is a positive and willful disobedience of an order specially or directly given to the accused, and not a mere neglect or omission of general duty.

385. Channels of Communication.—An official com-

munication made to the accused by any commissioned officer, stating that the superior directs him to do so and so, is an order. The agent communicating the orders should state that he does so by the order, or by the direction or request, of the superior.

387. Striking a Superior Officer, Etc.—The offense contemplated in the article consists in the infliction of any bodily injury, however slight, upon the person of a military superior, such superior being a commissioned officer; or in an attempt to inflict such injury by drawing or lifting up any weapon, attended by such circumstances as denote an intention to inflict injury.

388. Being in the Execution of His Office.—It is an essential element of the offense that the officer should be in the execution of his office.

389. Drawing and Lifting Up Any Weapons; Offering Violence.—The words “draws or lifts up any weapon, or offers any violence against him,” import an “assault,” which may be defined as an unlawful attempt to do injury to the person of another, coupled with the capacity to inflict the injury at the instant when the violence is offered.

389. Article 66.—Mutiny may be defined to be an unlawful opposing or resisting of lawful military authority, with intent to subvert the same or to nullify it for the time. The offense here defined will be a concerted proceeding; the concert itself going far to establish the intent necessary to the legal crime.

396. Challenges (Article 91).—To establish that a challenge was sent, there must appear to have been communicated by one party to the other a deliberate invita-

tion in terms or in substance to engage in a personal combat with deadly weapons, with a view to obtaining satisfaction for wounded honor.

402. Article 61.—The offense of absence without leave is chargeable under this article in the case of an enlisted man, and under the 96th Article in the case of an officer.

If, upon returning from an unauthorized absence, an officer or soldier is placed upon or allowed to perform full duty, such action operates as a waiver of the charge of absence without leave.

408. On Duty; Off Duty.—The words “on duty,” as used in the 58th Article and as applied to the commanding officer of a post, or of an organization, or of a detachment in the field, the senior officer present, in the actual exercise of command, is constantly on duty; the term being here used in contradistinction to “on leave.”

408. Nature of Intoxicant.—It is immaterial whether the drunkenness be voluntarily induced by spirituous liquor or by opium or other intoxicating drug.

The drunkenness need not be such as totally to incapacitate the party for duty; it is sufficient if it be such as materially to impair the full and free use of his mental or physical abilities.

420. Definition (Article 58).—Desertion is an unauthorized absenting of himself from the military service by an officer or soldier, with the intention of not returning. The essential elements of the offense are the *fact* of the unauthorized voluntary withdrawal and the *intent* permanently to abandon the service.

427. Statutory Consequences of Desertion.—Cer-

tain statutory consequences follow upon *conviction* of the offense of desertion. These are:

- (a) The obligation to make good the time lost;
- (b) Forfeiture of the rights of citizenship;
- (c) Incapacity to hold office under the United States;
- (d) Forfeiture of retained pay and deposits.

439. Safeguards (Article 78).—A *safeguard* is a written instrument issued by a general commanding an army in the field, for the purpose of affording protection to the person or property of a non-combatant within the theater of active military operation.

439. Forcing a Safeguard.—The offense is committed by a military person, who, with a knowledge of its existence, does any act of violence or spoliation in or upon the premises protected, or willfully disregards the protection offered by the instrument.

440. Application of the Article (Article 93).—In imposing punishment, the court should be governed by the local law, although the offense was committed in a State whose ordinary relations to the general government had been suspended by a state of war.

441. Arson is the malicious and willful burning of the house of another.

It is sufficient if the wood of the house be charred in a single place so as to destroy its fiber.

442. Assault and Battery.—The offense of *assault and battery* is composed of the two elements named, which, taken together, constitute the complete offense. An *assault* is an attempt with force and violence to do corporal injury to another, as by striking at him with a weapon.

Even striking at a person, though no blow be inflicted, or raising the arm to strike, or holding up one's fist at him, if done in anger or in a menacing manner, are considered by law as assaults.

Battery is the unlawful beating or wounding of another. A battery, from the nature of the offense, includes an assault, and is therefore charged as "assault and battery"; but there may be an assault without battery, which is regarded by the law as a criminal offense.

442. Assault and Battery with Intent to Kill.—The proof under a charge of "assault with intent to kill" must be such as to show that, if death had been caused by the assault, the assailant would have been guilty of murder.

443. Burglary is the breaking and entering of a dwelling-house *by night* with intent to commit a felony therein, whether such felonious intent be executed or not. The breaking is either *actual*, as where the person makes a hole in a door or opens a window, or *in law* (constructive), as where he obtains an entrance by threats, or fraud, or by collusion with some one in the house.

444. The Building.—Every dwelling-house is a habitation in which burglary may be committed, and also all out-houses attached to the dwelling and intended for the comfort and convenience of the family.

445. The Intent will, in general, be proved from the circumstances attending the commission of the offense.

445. Murder; Degrees.—Murder is the willful killing of a human being in the peace of the country, with malice aforethought, either express or implied. Premeditation or malice aforethought is an essential ingredient of the offense.

446. Manslaughter is the unlawful killing of a human being without malice, express or implied. It is *voluntary* when committed with a design to kill under the influence of sudden or violent passion, caused by great provocation. It is *involuntary* when committed by accident or without any intention to take life.

This crime, when committed by a military person, may be taken cognizance of by a court-martial, in time of peace, under Article 96, as "conduct to the prejudice of good order and military discipline."

447. Homicide is a term embracing every mode by which the life of one man is taken by another.

Criminal or felonious homicide consists in the unlawful taking by one human being of the life of another in such a manner that he dies within the space of a year and a day from the time of the giving of the mortal wound.

447. Justifiable Homicide consists in the taking of human life in obedience to the law under such circumstances as to warrant the inference that the act was done without malice or criminal intention.

Homicide in obedience to law includes the execution of criminals and the killing of enemies in war.

448. Excusable Homicide is that which results from *accident* or *misadventure* in the doing of a lawful act or in a proper and reasonable exercise of the right of *self-defense*.

448. Self - Defense.—A man may repel force by force in the defense of his person, his family, or property against any one who manifestly endeavors by violence or

surprise to commit a felony—as murder, robbery, or the like.

449. Larceny is the wrongful or fraudulent taking and carrying away of things personal, with the intent to deprive the owner of the same. There must not only be a taking, but a carrying away.

450. Robbery is the felonious taking of goods from the person of another, or in his presence, by violence or by putting him in fear, and against his will.

450. Embezzlement is a species of larceny in the nature of a criminal breach of trust, and consists in the fraudulent conversion of property to his own use by an agent, clerk, servant, or in general by any person acting in a fiduciary capacity.

453. Mayhem.—At the common law the offense consisted in the act of unlawfully and violently depriving another of the use of such of his members as might render him less able, in fighting, either to defend himself or annoy his adversary. In most of the States the scope of this offense has been extended so as to include all malicious injuries to the person.

453. Forgery is the false or fraudulent making or alteration of an instrument, with intent to defraud or to prejudice the right of another.

454. Perjury may be defined as “false swearing,” and includes the breach of the solemn sanction of an oath or the making of a false oath.

When a witness to whom a lawful oath has been administered in a judicial proceeding swears falsely in a matter material to the issue, he is said to commit perjury. The fact sworn to should be material; for if such fact have

no bearing upon the issue, the administration of justice has not been affected injuriously and there has not been perjury.

Subornation of perjury is the offense of procuring another to take such a false oath as constitutes perjury in the principal.

455. Perjury in Military Practice.—False swearing by a military person before a court-martial is “conduct to the prejudice of good order and military discipline,” and is cognizable and punishable under Article 96. And a charge of “perjury” in connection with a specification setting forth a false swearing upon a court-martial will constitute a sufficient allegation of an offense under this article.

False Swearing before a court-martial not being perjury at common law, the rules as to the character and amount of evidence necessary to sustain an indictment for perjury need not govern the proof of the *military* offense; such offense will ordinarily be established by the written record.

473. Neglects and Disorders (Article 96).—A “neglect” is an omission or forbearance to do a thing that can be done or that is required to be done. Law, regulations, orders, and, where these are silent, the custom of service prescribe the several military duties and obligations the neglect of which is chargeable under this article. The term “disorder” is more comprehensive than when used in reference to civil affairs, and includes not only disorders in the sense of quarrels and the like, but all interruptions of the good order which should prevail in camp or garrison.

551. Remission (Article 50) is a partial exercise of

the pardoning power, relieving the person from a punishment or the unexecuted portion of a punishment, but not pardoning the offense as such, or removing the disabilities or penal consequences attaching thereto.

551. Mitigation is a reduction by the reviewing authority of a punishment in quantity or quality, without changing its species. Imprisonment, fine, forfeiture, and suspension are capable of mitigation. A punishment in itself illegal is not capable of mitigation.

552. Commutation is a substitution of some other punishment for that named in the sentence, where, as in the case of a sentence of death, dismissal, or dishonorable discharge, there is no lesser form or degree of the same punishment to which a sentence can be reduced by way of mitigation, mercy, or clemency.

553. Procedure Under Article 111.—Applications for copies of the proceedings and sentence of a court-martial may be, and in practice commonly are, addressed to the Judge-Advocate General, who thereupon furnishes the copy certified by him as correct, provided the application is made by the accused or in his behalf.

A person applying for the copy in behalf of the accused should exhibit some satisfactory evidence that he duly represents the accused.

A copy of the proceedings and sentence cannot properly be furnished until the same have been finally acted upon and such action has been promulgated in the usual manner.

Questions and Answers on Manual for Courts-Martial

(Numbers Refer to Pages.)

Q. 5. What are the four kinds of Military Jurisdiction? Define each.

- A. (a) **Military Law** is the legal system that regulates the government of the military establishment. It is a branch of the municipal law.
- (b) **The Law of Hostile Occupation** is the military power exercised by a belligerent, by virtue of his occupation of an enemy's territory, over such territory and its inhabitants.
- (c) **Martial Law at Home** is the military power exercised in time of war, insurrection, or rebellion, in parts of the country retaining their allegiance, and over persons and things not ordinarily subjected to it.
- (d) **Martial Law Applied to the Army** is the military power extending in time of war, insurrection, or rebellion over persons in the military service, as to obligations arising out of such emergency and not falling within the domain of military law nor otherwise regulated by law.

Q. 6. What is the source of Military Jurisdiction?

A. The Constitution.

Q. 6. What are the written sources of Military Law?

A. The Articles of War; other statutory enactments relating to the military service; Army Regulations; general and special orders and decisions promulgated by the War Department and by department, post, and other commanders.

Q. 6. What is the **unwritten** source of Military Law?

A. The "custom of war," consisting of the customs of the service both in peace and in war.

Q. 6. Name the three kinds of Military Tribunals.

A. (a) **Courts-Martial**, for the trial of offenders against the military law;

(b) **Courts of Inquiry**, for examining transactions against officers or soldiers;

(c) **Military Commissions**, for the trial of offenders against the laws of war and under martial law, founded in necessity.

Q 6. When only will non-commissioned officers be confined in the guard-house?

A. In aggravated cases or where escape is feared.

Q. 8. What means of restraint is authorized in the case of soldiers against whom charges may be preferred for trial by summary court?

A. They will not be confined in the guard-house, but will be placed in arrest in quarters.

Q. 9. What is the duty of an officer authorizing the arrest or confinement of a soldier?

A. He will, as soon as practicable, report the fact to the soldier's company commander.

Q. 11. What class of officers of the regular Army are ineligible for detail for the trial of offenders belonging to the regular Army?

A. Those on the retired list, contract surgeons, veterinarians, and chaplains—in practice.

Q. 11. Are officers of the regular Army eligible to sit on courts for the trial of offenders belonging to other forces?

A. No; but officers of the Marine Corps, when detached for duty with the Army, are so eligible.

Q. 11. When are volunteer and militia officers competent to act as members of courts for the trial of regular officers and soldiers?

A. When called into the service of the United States.

Q. 11. What is the rule with respect to the membership of courts-martial for the trial of the militia?

A. The majority of membership must be composed of militia officers.

Q. 12. Name the Inferior Courts-martial.

A. Special and Summary Courts-martial.

Q. 12. How many members may a general court-martial consist of?

A. Not less than five or more than thirteen and a judge-advocate.

Q. 12. What is the procedure when a general court is reduced below five members?

A. The judge-advocate is directed to report that fact to the convening authority, and the court adjourns to await further orders. In such a case new members may be added; but if any testimony has been taken, the court should preferably be dissolved.

Q. 12. Who may appoint general courts-martial?

A. (a) The President as Commander-in-chief of the Army.

(b) Any general officer commanding an army, a territorial division, or a department, or colonel commanding a separate department; but when any such commander is the accuser or prosecutor of any *officer* under his command, the court must be appointed by the *President*.

(c) The Superintendent of the United States Military Academy.

Q. 13. Have courts-martial jurisdiction to try acts which, besides constituting military offenses, are also civil crimes?

A. Yes; but in this case the military ordinarily gives precedence to the civil court. In general, however, that jurisdiction which has *first fully attached* is properly allowed to have precedence.

Q. 14. What is the jurisdiction of courts-martial *as regards persons*?

A. Courts-martial have jurisdiction at all times and in all places over officers and soldiers of any troops mustered and in the pay of the United States, including retired officers and soldiers. Military offenses are not territorial.

Q. 14. What are the exceptions to the rule that military jurisdiction ends when a soldier is discharged?

A. Discharged officers and soldiers guilty of fraud against the United States under the 94th Article of War; discharged officers and soldiers granted trial after summary dismissal, under Section 1230, R. S.; and general prisoners.

Q. 15. What is the jurisdiction of courts-martial *as regards offenses*?

A. It embraces the offenses defined in the Articles of War, the offense of military persons trading with the enemy, and that of fraudulently enlisting in the service of the United States.

Q. 15. With reference to other courts-martial, over what classes of persons have general courts-martial exclusive jurisdiction?

A. Officers, cadets, and candidates for promotion.

Q. 15. Over what persons concurrent jurisdiction with the inferior courts?

A. Enlisted men, candidates for promotion, and general prisoners.

Q. 15. May a non-commissioned officer be brought to trial before a summary court-martial if he objects to such trial?

A. He will be tried by general or special court-martial unless trial is otherwise directed by the officer competent to appoint general courts-martial.

Q. 16. *As regards offenses*, what is the nature of general court-martial jurisdiction?

A. They have exclusive *jurisdiction* over all offenses punishable capitally, and over those set forth in the 92nd and 93rd Article, when committed in time of war. Over other offenses they have *concurrent* jurisdiction with the inferior courts.

Q. 16. What are the two parts of a military charge?

A. (a) The technical *charge*, which designates the alleged offense in general terms;

(b) The *specification*, which sets forth the facts constituting the same.

Q. 16. What is the requisite form for each?

A. (a) The *charge* must be laid under the proper Article of War or other statute;

(b) The *specification* must set forth facts sufficient to constitute the particular offense.

Q. 19. When will commanding officers cause the accused to sign a statement that he consents to trial by a summary court?

A. Before referring the charges to the summary court for trial, where the maximum kind of punishment that may be awarded is greater than one month's forfeiture and confinement.

Q. 19. What papers should be forwarded with general court-martial charges?

A. Statement of service, statement of evidence expected from

each witness, and evidence of previous convictions. In case of a deserter, the surgeon's report required by Par. 125, A. R., will also be forwarded.

Q. 20. What does the authority appointing a court-martial designate?

A. The place for holding the court, the hour of meeting, the members of the court, and the judge-advocate.

Q. 21. How do members of a court take their seats?

A. The president sits at the head of the table, the other members at his right and left alternately—according to rank; the judge-advocate sits at the foot of the table.

Q. 21. In court-martial procedure, what is the custom as regards standing?

A. During the reading of the order convening the court and the arraignment, the judge-advocate and the accused should stand; while the court and the judge-advocate are being sworn, all stand; when a reporter, an interpreter, or a witness is being sworn, he and the judge-advocate should stand; and when the judge-advocate, the accused, or his counsel addresses the court, he should rise.

Q. 22. When is the organization of the court complete?

A. On the swearing-in of the members and the judge-advocate.

Q. 22. What effect has a tie vote on *the findings*?

A. "Not guilty." A tie vote on a proposed sentence or on any objection or motion is a vote in the negative.

Q. What are the duties of the judge-advocate with respect to the accused?

A. He should acquaint the prisoner with accusations against him, inform him of his right to have counsel and to testify in his own behalf, and furnish him with a copy of the charges, if desired. When the accused determines to plead "guilty," the judge-advocate should inform him of his right to introduce evidence in explanation of the offense, and should assist him in securing it. When the accused is without counsel, the judge-advocate should take care that he does not suffer from any ignorance of his legal rights.

Q. 26. What compensation is allowed a stenographic reporter?

A. When the court sits less than three hours the first day, \$3.00 a day or \$1.00 an hour for a longer period; fifteen (15) cents for each 100 words of the original record; no allowance is made for the first carbon copy; ten (10) cents for each 100 words for copying

papers material to the inquiry, and two (2) cents for each 100 words for each carbon copy of the same, when ordered; two (2) cents for each 100 words for the second and each additional carbon copy of the record, when authorized. One copy of the record of a special court-martial will be required, for which the reporter will receive thirteen (13) cents for each 100 words.

Q. 27. What is done with the carbon copy?

A. It is furnished to the accused, if he desires it, after being corrected and certified as a true copy, except as to findings, sentence, and exhibits not copied. When this is done, a certificate to that effect will accompany the record; otherwise, it will be transmitted direct to the Judge-Advocate General of the Army.

Q. 28. Who else besides the accused may challenge members of a court-martial?

A. The judge-advocate may challenge for cause, under custom of the service.

Q. 29. Is the judge-advocate challengeable?

A. No.

Q. 31. To whom should application for a postponement be made?

A. To the convening authority.

Q. 23. What is the procedure in the case of a prisoner who, from obstinacy or deliberate design, stands mute or answers foreign to the purpose?

A. The court will proceed to trial and judgment as if the prisoner had pleaded "Not guilty."

Q. 44. What compensation is allowed a civilian who appears as a witness before a military court?

A. For each day of his actual attendance, \$1.50; for transportation, 5 cents a mile.

In the States of Wyoming, Montana, Washington, Oregon, California, Nevada, Idaho, Colorado, Utah, New Mexico, and Arizona he will receive \$3.00 a day and 15 cents a mile by stage or private conveyance and 5 cents a mile by railroad or steamship.

Q. 45. How are copies of records or papers in the War Department or at the headquarters of any army, division, department, etc., authenticated?

A. By the impressed stamp of the bureau or office having custody of the originals.

Q. 46. When only are affidavits admissible as evidence before a military court?

A. Only when expressly consented to by the accused with full knowledge of his rights.

Q. 46. What is the rule in respect to statement made by the accused?

A. The accused may make an oral or written statement, but it should not be sworn to, and if sworn to, it should not be received as evidence by the court.

Q. 47. In a case of virtual acquittal, what is the correct expression to be used?

A. "Find the facts as charged, but attach no criminality thereto." The term "guilty" should be employed only when the accused has been convicted of a crime deserving punishment.

Q. 48. What evidence of previous convictions may be considered by courts-martial?

A. Previous convictions of offenses within one year preceding the date of any offense charged and during the current enlistment which have been referred to a court-martial by the reviewing authority.

Q. 48. When the proof of previous conviction is the copy furnished to the company or other commander, what disposition of the same should be made after trial?

A. It will be returned to the company or other commander and a copy of it attached to the record.

Q. 49. What punishments are forbidden?

A. Flogging, branding, marking, or tattooing on the body; being required to carry a heavy log; imposing extra tours of guard duty.

Q. 50. What restriction is placed on confinement on bread-and-water diet?

A. It shall not exceed fourteen days at a time, nor be again enforced until a period of fourteen days has elapsed, nor shall it exceed eighty-four days in one year.

Q. 65. By whom is an amendment to the record authorized to be made?

A. By the court only when duly reconvened for the purpose, and, when made, must be *the act of the court as such*.

Q. 65. How are omissions to the record supplied?

A. The page and line on which they occur will be stated and the corrections given in full. The original record will not be interlined nor altered in any way?

Q. 66. Who has power to mitigate the punishment adjudged by court-martial?

A. The officer authorized to order such court-martial.

Q. 67. In whom is the power to commute sentences vested?

A. The President of the United States.

Q. 68. When may the United States Penitentiary at Fort Leavenworth, Kansas, be designated as the place of confinement?

A. When the term of confinement is more than one year.

Q. 70. How will enlisted men who have been tried be designated?

A. Prior to promulgation of the result, as "awaiting result of trial"; those serving sentences of confinement not involving dishonorable discharge, as "garrison prisoners"; those sentenced to dishonorable discharge, as "military convicts."

Q. 70. When may prisoners be placed in irons?

A. Pursuant to the sentence of a court-martial, or when, in the judgment of the commanding officer, a prisoner is a desperate or dangerous character.

Q. 71. When a prisoner is transferred to another post for confinement, what papers are required to be forwarded to the commanding officer of the place where the sentence is to be executed?

A. Discharge papers if discharged, descriptive list, orders promulgating and modifying sentences, statement of conduct while under sentence to date of transfer, and a list of clothing in possession of the prisoner when forwarded.

Q. How much abatement of term of confinement is allowed military convicts for good conduct?

A. Those serving over three months and not over twelve months, five days for each complete period of twenty-five days; but such abatement in any case shall not have the effect of reducing the sentence below three months.

Those serving sentences exceeding one year will be allowed the foregoing abatement for the first year, and thereafter ten days for each complete period of twenty days.

Q. 72. When does the term of confinement begin?

A. When not expressly fixed by the sentence, it begins on the date of the order promulgating it.

Q. 75. Who is the custodian of the records of the proceedings of all general courts-martial?

A. The Judge-Advocate General of the Army.

Q. 76. Who is the custodian of the reports of cases tried by summary courts and of all proceedings of special courts-martial?

A. Judge-advocates of departments.

Q. 78. Who is the summary court when but one commissioned officer is present with a command?

A. The commanding officer. No order will be issued appointing the court, but the officer will enter on the record that he is the "only officer present with the command."

Q. 78. How may the accused be tried when he refuses to consent in writing to trial by summary court?

A. He may be tried either by general or special court-martial; or by summary court, in which case the sentence cannot exceed confinement and forfeiture for more than one month.

Q. 79. What power has the summary court?

A. To administer oaths, to hear and determine cases; to adjudge punishment.

Q. 80. What is the procedure of summary courts?

A. The accused will be arraigned and allowed to plead according to court-martial practice. When the accused pleads "Not guilty," witnesses will be sworn and evidence received, the accused being permitted to testify in his own behalf and make a statement, but the evidence and statement will not be recorded.

Q. 81. What is the limit of the punishing power of summary courts?

A. Punishment may be awarded not to exceed three months' confinement and forfeiture, and, in addition thereto, in the case of non-commissioned officers, reduction to the ranks, and, in the case of first-class privates, reduction to second-class privates.

Q. 86. By whom and when may a court of inquiry be convened?

A. By the President or by any commanding officer upon a demand by an officer or soldier whose conduct is to be inquired of.

Q. 86. What is the jurisdiction of a court of inquiry?

A. A court of inquiry is convened to examine into the nature

of any transaction of, or accusation or imputation against, any officer or soldier, and the inquiry is confined to those actually in the service.

It will not give an opinion on the merits of the case unless ordered to do so.

Q. 87. What is the composition of a court of inquiry?

A. It shall consist of one or more officers, not exceeding three, and a recorder. Where the court is composed of two or more members and the number is reduced by casualty or challenge, the court may proceed with the reduced number.

Q. 87. By what is the procedure of a court of inquiry governed?

A. By the general principles of military law, applying the analogies of a court-martial where they are applicable.

Q. 106. How should the disobedience of the order of a contract surgeon, of a dental surgeon, of a veterinarian, and a non-commissioned officer be charged?

A. It should be charged under the 96th Article of War; also the disobedience of an order by a military convict.

Q. 135. How should a simple neglect to comply with a standing order be charged?

A. Under the 96th Article, and not under the 64th, which implies a willful defiance of authority.

Q. 144. When any of the elements of perjury are lacking, how will the offense be properly charged?

A. As "false swearing."

Q. 146. How are erasures or interlineations in the record authenticated?

A. By the initials of the president or the judge-advocate.

Q. 146. What will the index of the record refer to?

A. Everything essential to the organization and jurisdiction of the court; to the pages where each witness was sworn and recalled, and the pages where each document was introduced.

Q. 148. How will members and the judge-advocate be recorded as present or absent?

A. By name.

Q. 148. In the record of the proceedings of subsequent proceedings of the same case, what is the form of words to be used?

A. "Present, all the members of the *court* and the judge-advocate."

Q. 148. If a member is absent by an order emanating from the convening or higher authority, how is this authority recorded?

A. By giving the number, date, and source of the order.

Q. 148. If a member is absent from some other cause, how should the authority for such absence be shown?

A. If absent by telegraphic authority, a post order, etc., a copy of the authority should be appended to the record; if absent sick, a surgeon's certificate of sickness and inability to attend will be appended to the record.

Q. 150. Should the signature and rank of the officer preferring the charges be copied into the record?

A. No.

Q. 155. How are documents and papers made part of the proceedings?

A. In the order of their introduction, after the space left for the remarks of the reviewing authority, and marked in such a manner as to afford easy reference.

Q. 155. How should statements of the accused, or arguments in his defense, and all pleas to the jurisdiction in bar of trial or in abatement, when in writing, be authenticated?

A. By the signature of the accused.

Q. 156. When the judge-advocate records the findings and sentence by the use of a typewriting machine, what certificate is required immediately after the authentication of the record?

A: "I certify that I recorded the findings and sentence of the court.

"Judge-Advocate."

Q. 157. What is done with the record when completed?

A. The judge-advocate will forward it without delay to the convening authority as an inclosure to the indorsement of the judge-advocate returning the original charges.

Q. 158. How is a court-martial usually reconvened?

A. By indorsement on the original record, returning it to the president of the court with the directions of the convening authority.

Q. 158. Who should be present at a revision?

A. At least five members of the court who acted upon the trial must, and the judge-advocate should, be present.

Q. 159. How will the record of revision be appended to the original proceedings?

A. It will follow them immediately, before the exhibits, and the whole indorsed by the president of the court and forwarded to the convening authority.

Q. 187. How is a reporter for a court-martial paid?

A. On reporter's pay-vouchers, properly filled out, signed by the judge-advocate, and forwarded to the quartermaster, accompanied by copies of the order appointing the court.

Q. 237. What abatement of their terms of confinement will be allowed garrison prisoners?

A. When serving sentences of one month, five (5) days for good conduct; on sentences exceeding one month they will be allowed the foregoing abatement for the first month and thereafter ten (10) days for each complete period of twenty days.

Q. 239. Whenever a commanding officer places an officer in arrest without preferring charges, what report will he make?

A. He will make a written report of his action to the department commander. In case of officers belonging to a brigade or Coast Artillery district, the report will be made to the Coast Artillery district commander, who will call upon the officer for any explanation he may desire to make, and take such other action within his authority as he may think necessary, forwarding the papers to the department commander.

Q. 241. When a military commander is the accuser or the prosecutor of the person or persons to be tried by a court-martial ordered by him, by whom shall such court be appointed?

A. By superior competent authority.

Q. 241. When are officers not eligible to sit as members of a court-martial?

A. No officer shall be eligible to sit as a member of such court when he is the accuser or a material witness for the prosecution.

Q. 243. Whose decision is final as to whether or not the accused should be tried by special or summary court-martial?

A. That of the officer exercising special court-martial jurisdiction over the command to which the accused belongs.

Q. 243. What information should be included in the commanding officer's indorsement forwarding charges?

A. The name of the officer investigating the case, and a statement as to whether or not, in his opinion, the charges can be sustained.

Q. 244. What evidence of previous convictions will be considered by general and special courts-martial?

A. Only such as are referred to them by the convening authority.

Q. 244. Who will detail a counsel for any person who is to be tried by a general or special court-martial?

A. The commanding officer of the post where such court is convened, will detail a suitable officer as counsel for the defense. If there be no such officer available, that fact will be reported to the authority appointing the court for his action.

Q. 245. What in general are the duties of a counsel for a soldier before a general or a special court-martial?

A. He should guard the interests of the accused by all honorable and legitimate means known to law, in so far as they are not inconsistent with military relations. He should not obstruct the proceedings with frivolous and manifestly useless objections.

Q. 246. How much time is allowed the reporter to furnish the typewritten record of the proceedings of each session of the court?

A. Not later than twenty-four hours after the adjournment of that session. The complete record will be finished and ready for authentication not later than forty-eight hours after the completion of its action by the court.

Q. 246. What extra pay is allowed an enlisted man detailed to serve as a stenographic reporter?

A. Not to exceed five cents for each 100 words taken in shorthand and transcribed. No person in the military or civil service can lawfully receive extra compensation for clerical duties performed for a military court, except as above stated.

Q. 247. How only can a member not challenged, but who thinks himself disqualified, be relieved from sitting on the trial of a case?

A. By application to the convening authority; except where a member who is or believes himself to be the accuser in the case, when he will formally announce that fact to the court, after the ac-

cused is brought before the court and before the court is sworn, whereupon he will be excused.

Q. 247. Under what other circumstances may a member be excused?

A. When the accused, his counsel, the judge-advocate, or any member of the court, at any time before the finding, shall have reason to believe that any member thereof may be the accuser or may be a witness for the prosecution, such belief shall be communicated to the court, and if the court, after hearing the facts, find that such member is the accuser or a witness for the prosecution, he shall be excused.

No member who has been absent during the taking of evidence shall thereafter take part in the trial.

Q. 248. What is the procedure when a civilian witness duly subpoenaed before a general court-martial refuses to appear or qualify as a witness?

A. He will at once be tendered or paid by the nearest paymaster one day's fee and mileage for the journeys to and from the court, and will thereupon be again called upon to comply with the requirements of the law. The fees and mileage of civilian witnesses residing beyond the limits of the State in which the court-martial is held will not be paid in advance, as such witnesses cannot be punished if they refuse to obey the summons.

Q. 248. To whom will the judge-advocate forward the interrogatories for a deposition in the case of a military or civilian witness not stationed or residing at or near a post, command, or detachment?

A. To the commanding general of the department in which the witness resides.

Q. 249. To whom will the interrogatories be forwarded when the witness resides at or near a military post, command, or detachment?

A. Direct to the commanding officer of the post, command, or detachment.

Q. 249. In the case of a civilian witness, what will accompany the interrogatories?

A. The proper subpoenas and account for a civilian witness and a request that the proper data be supplied in the account for civilian witness and that the post-office address of the witness be

given, so that the account may be certified by the judge-advocate and transmitted to the proper paymaster for payment.

Q. 252. How does the record of a special court-martial differ from that of a general court?

A. In the record of a special court-martial statements and arguments made before the court will not be recorded, nor will the testimony taken before such court be reduced to writing unless directed by the authority referring the case to the court for trial.

Q. 256. How many officers may a special court-martial consist of?

A. Any number from three to five, inclusive, and a judge-advocate.

Q. 257. What is the extent of jurisdiction of special courts-martial?

A. They have power to try any person subject to military law, except officers and candidates for promotion, for any crime or offense not capital made punishable by the Articles of War.

Q. 257. What is the limit of punishing power of special courts-martial?

A. They have power to adjudge punishment not to exceed six months' forfeiture and confinement, and, in addition thereto, reduction to the ranks in cases of non-commissioned officers, and reduction in classification in the cases of first-class privates.

Questions and Answers on General Order No. 70, War Department, 1914.

Q. 1. In cases of desertion, what may the sentence be?

A. Dishonorable discharge and forfeiture of all pay and allowances due and to become due.

Q. 1. What is the limit of the term of confinement for desertion in case of surrender?

A. (a) When the deserter surrenders himself after an absence of not more than thirty days, one year.

(b) When the surrender is made after an absence of more than thirty days, eighteen months.

Q. 1. In case of apprehension?

A. (a) When at the time of desertion the deserter shall not have been more than six months in the service, eighteen months.

(b) When he shall have been more than six months in the service, two and one-half years.

Q. 6. What substitutions for punishments mentioned in this order are authorized?

A. Forfeiture of one day's pay for confinement at hard labor for one day, or the reverse.

Q. 6. What may the court adjudge in lieu of forfeiture of pay?

A. It may adjudge detention of pay at the rate of detention of one and one-half day's pay for each day of pay the forfeiture of which is authorized; but no sentence shall adjudge the detention of more than two-thirds of the soldier's pay per month for three months.

Q. 6. What may the court adjudge in lieu of confinement at hard labor?

A. Hard labor without confinement at the rate of one and one-half days of hard labor without confinement for each day of confinement at hard labor authorized; but no sentence shall adjudge

hard labor without confinement for a greater period than three months.

Q. 6. What is the limit of detention or forfeiture that may be adjudged against a soldier who is retained in the service?

A. Detention or forfeiture of more than two-thirds of his pay for any one month shall not, by a single sentence, be adjudged against a soldier who is retained in the service, except when such retention is under a suspended sentence of dishonorable discharge.

Q. 7. When may a soldier be sentenced to dishonorable discharge when convicted of an offense for which dishonorable discharge is not authorized?

A. Upon proof of five previous convictions.

Q. 7. What is the effect of pay detained pursuant to the sentence of a court-martial?

A. It will be detained by the Government until the soldier is discharged from his current enlistment, at which time the authority for the detention and the amount thereof will be noted on the final statement and the amount detained paid to him out of the appropriation for the pay of the Army.

Q. 11. Enumerate the punishments in order of their severity.

- A. (a) Detention of pay;
(b) Forfeiture of pay;
(c) Reduction;
(d) Hard labor without confinement;
(e) Confinement at hard labor;
(f) Dishonorable discharge.

Q. 15. What explanation should be made by the president of the court when the accused enters a plea of "guilty" in a case tried by a general court-martial; and in a case tried by special court-martial, when the evidence is reduced to writing?

A. It shall appear of record that the meaning of his plea and the extent of his punishment was adequately explained to the accused, and that the accused was, after such explanation, asked if he desires to have the plea of "guilty" stand. If he replies in the affirmative, the plea of "guilty" will stand; otherwise, a plea of "not guilty" will be entered.

Q. 15. What is the rule in each case tried by a general court-martial, or by a special court-martial when the evidence is reduced

to writing, when the accused does not testify or make any statement in his behalf?

A. It shall appear of record that the president of the court explained to the accused that he may testify in his own behalf if he so desire, or make a statement to the court in denial, in explanation, or in extenuation of the offense with which he stands charged.

Q. 16. How are recommendations to clemency by a court-martial, or any member thereof, submitted?

A. Such recommendations will be signed by each member of the court desiring to participate therein. The communication carrying the recommendation will include a statement in succinct form of the reasons upon which the recommendation is based and will be appended to the record of trial.

Q. 16. What reports are required to be made by trial judge-advocates?

A. On Saturday of each week he will report, through the president of the court and the post commander, to the convening authority, a list of charges on hand, showing the date of receipt of each; and if any case has been in the hands of the judge-advocate for one week or more and the record of trial has not been forwarded, the report will include a statement of the reasons for the delay.

Q. 17. What rules will be observed when the accused is an enlisted man and without counsel?

A. In so far as such action may be taken without prejudice to the rights of the accused, any advice given him by the judge-advocate should be given or repeated in open court; and in any case in which the accused has been advised by the judge-advocate, that fact and the general nature of the advice will be noted upon the record of trial.

The Revised Articles of War.

(Revised August 29, 1916.)

SECTION 1342. The articles included in this section shall be known as the Articles of War and shall at all times and in all places govern the armies of the United States.

I. PRELIMINARY PROVISIONS.

ARTICLE 1. **Definitions.**—The following words when used in these articles shall be construed in the sense indicated in this article, unless the context shows that a different sense is intended, namely:

- (a) The word "officer" shall be construed to refer to a commissioned officer;
- (b) The word "soldier" shall be construed as including a non-commissioned officer, a private, or any other enlisted man;
- (c) The word "company" shall be understood as including a troop or battery; and
- (d) The word "battalion" shall be understood as including a squadron.

ART. 2. **Persons Subject to Military Law.**—The following persons are subject to these articles and shall be understood as included in the term "any person subject to military law," or "persons subject to military law," whenever used in these articles: Provided, That nothing contained in this act, except as specifically provided in Article 2, subparagraph (c), shall be construed to apply to any person under the United States naval jurisdiction, unless otherwise specifically provided by law:

- (a) All officers and soldiers belonging to the Regular Army of the United States; all volunteers from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted, or ordered into, or to duty or for training in, the

said service, from the dates they are required by the terms of the call, draft, or order to obey the same;

- (b) Cadets;
- (c) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President: Provided, That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment ceases;
- (d) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the territorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;
- (e) All persons under sentence adjudged by courts-martials;
- (f) All persons admitted into the Regular Army Soldiers' Home at Washington, District of Columbia.

II. COURTS-MARTIAL.

ART. 3. **Courts-Martial Classified.**—Courts-martial shall be of three kinds—namely: first, general courts-martial; second, special courts-martial; and third, summary courts-martial.

(a) COMPOSITION.

ART. 4. ***Who May Serve on Courts-Martial.**—All officers in the military service of the United States, and officers of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any persons who may lawfully be brought before such courts for trial.

ART. 5. **General Courts-Martial.**—General courts-martial may consist of any number of officers from five to thirteen, inclusive;

*Articles marked * are effective immediately. See Section 4.

but they shall not consist of less than thirteen, when that number can be convened without manifest injury to the service.

ART. 6. **Special Courts-Martial.**—Special courts-martial may consist of any number of officers from three to five, inclusive.

ART. 7. **Summary Courts-Martial.**—A summary court-martial shall consist of one officer.

(b) BY WHOM APPOINTED.

ART. 8. **General Courts-Martial.**—The President of the United States, the commanding officer of a territorial division or department, the Superintendent of the Military Academy, the commanding officer of an army, an army corps, a division, or a separate brigade, and, when empowered by the President, the commanding officer of any district or of any force or body of troops, may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.

ART. 9. **Special Courts - Martial.** — The commanding officer of a district, garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a brigade, regiment, detached battalion, or other detached command, may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable; and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution.

ART. 10. **Summary Courts-Martial.**—The commanding officer of a garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a regiment, detached battalion, detached company, or other detachment, may appoint summary courts-martial; but such summary courts-martial may in any case be appointed by superior authority when by the latter deemed desirable: Provided, That when but one officer is present with a command, he shall be the summary court-martial of that command and shall hear and determine cases brought before him.

ART. 11. **Appointment of Judge-Advocates.**—For each general

or special court-martial, the authority appointing the court shall appoint a judge-advocate, and for each general court-martial one or more assistant judge-advocates when necessary.

(c) JURISDICTION.

ART. 12. **General Courts - Martial.**—General courts-martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles and any other person who by the law of war is subject to trial by military tribunals: Provided, That no officer shall be brought to trial before a general court-martial appointed by the Superintendent of the Military Academy.

ART. 13. ***Special Courts - Martial.** — Special courts - martial shall have power to try any person subject to military law, except an officer, for any crime or offense not capital made punishable by these articles: Provided, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of special courts-martial any class or classes of persons subject to military law.

Special courts-martial shall not have power to adjudge dishonorable discharge, nor confinement in excess of six months, nor to adjudge forfeiture of more than six months' pay.

ART. 14. ***Summary Courts - Martial.** — Summary courts-martial shall have power to try any person subject to military law, except an officer, a cadet, or a soldier holding the privilege of a certificate of eligibility to promotion, for any crime or offense not capital made punishable by these articles: Provided, That non-commissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring them to trial before a general court-martial: Provided further, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

Summary courts-martial shall not have power to adjudge confinement in excess of three months, nor to adjudge the forfeiture of more than three months' pay: Provided, That when the summary court officer is also the commanding officer, no sentence of such summary court-martial adjudging confinement at hard labor or forfeiture

*Effective immediately.

of pay, or both, for a period in excess of one month shall be carried into execution until the same shall have been approved by superior authority.

ART. 15. ***Not Exclusive.**—The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect to offenders or offenses that by the law of war may be lawfully triable by such military commissions, provost courts, or other military tribunals.

ART. 16. **Officers; How Triable.**—Officers shall be triable only by general courts-martial, and in no case shall an officer, when it can be avoided, be tried by officers inferior to him in rank.

(d) PROCEDURE.

ART. 17. **Judge-Advocate to Prosecute.**—The judge-advocate of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of its proceedings. The accused shall have the right to be represented before the court by counsel of his own selection for his defense, if such counsel be reasonably available, but should he, for any reason, be unrepresented by counsel, the judge-advocate shall from time to time throughout the proceedings advise the accused of his legal rights.

ART. 18. **Challenges.**—Members of a general or special court-martial may be challenged by the accused, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

ART. 19. **Oaths.**—The judge-advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: "You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried; and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom

*Effective immediately.

of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the judge-advocate and assistant judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the judge-advocate and to each assistant judge-advocate, if any, an oath or affirmation in the following form: "You, A. B., do swear (or affirm) that you will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed by the same. So help you God."

All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: "You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: "You swear, (or affirm) that you will truly interpret in the case now in hearing. So help you God."

In case of affirmation, the closing sentence of adjuration will be omitted.

ART. 20. Continuances.—A court-martial may, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just.

ART. 21. Refusal to Plead.—When the accused, arraigned before a court-martial, from obstinacy and deliberate design, stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if he had pleaded "not guilty."

ART. 22. Process to Obtain Witnesses.—Every judge-advocate of a general or special court-martial and every summary court-martial shall have power to issue the like process to compel

witnesses to appear and testify which courts of the United States, having criminal jurisdiction, may lawfully issue; but such process shall run to any part of the United States, its territories and possessions.

ART. 23. Refusal to Appear or Testify.—Every person not subject to military law who, being duly subpoenaed to appear as a witness before any military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States or in a court of original criminal jurisdiction in any of the territorial possessions of the United States, jurisdiction being hereby conferred upon such courts for such purpose; and it shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, on the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprisonment not to exceed six months, or both, at the discretion of the court: Provided, That the fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States, shall be duly paid or tendered said witness, such amounts to be paid out of the appropriation for the compensation of witnesses.

ART. 24. Compulsory Self-incrimination Prohibited.—No witness before a military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry, or board, shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him.

ART. 25. Depositions—When Admissible.—A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry

or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or District in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing: Provided, That testimony by deposition may be adduced for the defense in capital cases.

ART. 26. Depositions—Before Whom Taken.—Depositions to be read in evidence before military courts, commissions, courts of inquiry, or military boards, or for other use in military administration, may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths.

ART. 27. Courts of Inquiry—Records of, When Admissible.—The record of the proceedings of a court of inquiry may be read in evidence before any court-martial or military commission in any case not capital nor extending to the dismissal of an officer, and may also be read in evidence in any proceeding before a court of inquiry or a military board: Provided, That such evidence may be adduced by the defense in capital cases or cases extending to the dismissal of an officer.

ART. 28. Resignation without Acceptance Does Not Release Officer.—Any officer who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to absent himself permanently therefrom shall be deemed a deserter.

ART. 29. *Enlistment without Discharge.—Any soldier who, without having first received a regular discharge, again enlists in the Army, or in the militia when in the service of the United States, or in the Navy or Marine Corps of the United States, or in any foreign army, shall be deemed to have deserted the service of the United States; and, where the enlistment is in one of the forces of the United States mentioned above, to have fraudulently enlisted therein.

ART. 30. Closed Sessions.—Whenever a general or special court-martial shall sit in closed session, the judge-advocate and the

*Effective immediately.

assistant judge-advocate, if any, shall withdraw; and when their legal advice or their assistance in referring to the recorded evidence is required, it shall be obtained in open court, and in the presence of the accused and of his counsel, if there be any.

ART. 31. Order of Voting.—Members of a general or special court-martial, in giving their votes, shall begin with the junior in rank.

ART. 32. Contempts.—A court-martial may punish at discretion, subject to the limitations contained in Article 14, any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder.

ART. 33. Records—General Court - Martial.—Each general court-martial shall keep a separate record of its proceedings in the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the judge-advocate; but in case the record cannot be authenticated by the judge-advocate by reason of his death, disability, or absence, it shall be signed by the president and an assistant judge-advocate, if any; and if there be no assistant judge-advocate, or in case of his death, disability, or absence, then by the president and one other member of the court.

ART. 34. Records—Special and Summary Courts-Martial.—Each special court-martial and each summary court-martial shall keep a record of its proceedings, separate for each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may from time to time prescribe.

ART. 35. Disposition of Records—General Courts-Martial.—The judge-advocate of each general court-martial shall, with such expedition as circumstances may permit, forward to the appointing authority or to his successor in command the original record of the proceedings of such court in the trial of each case. All records of such proceedings shall, after having been finally acted upon, be transmitted to the Judge-Advocate General of the Army.

ART. 36. Disposition of Records—Special and Summary Court-Martial.—After having been acted upon by the officer appointing the court or by the officer commanding for the time being, the record of each trial by special court-martial and a report of each trial by summary court-martial shall be transmitted to such general headquarters as the President may designate in regulations, there

to be filed in the office of the judge-advocate. When no longer of use, records of special and summary courts-martial may be destroyed.

ART. 37. Irregularities — Effect of. — The proceedings of a court-martial shall not be held invalid, nor the findings or sentence disapproved, in any case on the ground of improper admission or rejection of evidence or for any error as to any matter of pleading or procedure unless in the opinion of the reviewing or confirming authority, after an examination of the entire proceedings, it shall appear that the error complained of has injuriously affected the substantial rights of an accused: Provided, That the act or omission upon which the accused has been tried constitutes an offense denounced and made punishable by one or more of these articles: Provided further, That the omission of the words "hard labor" in any sentence of a court-martial adjudging imprisonment or confinement shall not be construed as depriving the authorities executing such sentence of imprisonment or confinement of the power to require hard labor as a part of the punishment in any case where it is authorized by the Executive order prescribing maximum punishments.

ART. 38. President May Prescribe Rules.—The President may by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals: Provided, That nothing contrary to or inconsistent with these articles shall be so prescribed: Provided further, That all rules made in pursuance of this article shall be laid before the Congress annually.

(e) **LIMITATIONS UPON PROSECUTIONS.**

ART. 39. As to Time.—Except for desertion committed in time of war or for mutiny or murder, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the arraignment of such person: Provided, That for desertion in time of peace or for any crime or offense punishable under Articles 93 and 94 of this code the period of limitations upon trial and punishment by court-martial shall be three years: Provided further, That the period of any absence of the accused from the jurisdiction of the United States, and also any period during which by reason of some manifest

impediment the accused shall not have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitation: And provided further, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law.

ART. 40. **As to Number.**—No person shall be tried a second time for the same offense.

(f) PUNISHMENTS.

ART. 41. **Certain Kinds Prohibited.**—Punishment by flogging, or by branding, marking, or tattooing on the body, is prohibited.

ART. 42. ***Places of Confinement—When Lawful.**—Except for desertion in time of war, repeated desertion in time of peace, and mutiny, no person shall, under the sentence of a court-martial, be punished by confinement in a penitentiary unless an act or omission of which he is convicted is recognized as an offense of a civil nature by some statute of the United States, or at the common law as the same exists in the District of Columbia, or by way of commutation of a death sentence, and unless, also, the period of confinement authorized and adjudged by such court-martial is one year or more: Provided, That when a sentence of confinement is adjudged by a court-martial upon conviction of two or more acts or omissions any one of which is punishable under these articles by confinement in a penitentiary, the entire sentence of confinement may be executed in a penitentiary: Provided further, That penitentiary confinement hereby authorized may be served in any penitentiary directly or indirectly under the jurisdiction of the United States: Provided further, That persons sentenced to dishonorable discharge and to confinement not in a penitentiary shall be confined in the United States Disciplinary Barracks or elsewhere as the Secretary of War or the reviewing authority may direct, but not in a penitentiary.

ART. 43. **Death Sentence—When Lawful.**—No person shall, by general court-martial, be convicted of an offense for which the death penalty is made mandatory by law, nor sentenced to suffer death except by the concurrence of two-thirds of the members of said court-martial and for an offense in these articles expressly made punishable by death. All other convictions and sentences, whether by general or special court-martial, may be determined by a majority of the members present.

*Effective immediately.

ART. 44. Cowardice; Fraud—Accessory Penalty.—When an officer is dismissed from the service for cowardice or fraud, the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp and in the State from which the offender came or where he usually resides, and after such publication it shall be scandalous for an officer to associate with him.

ART. 45. Maximum Limits.—Whenever the punishment for a crime or offense made punishable by these articles is left to the discretion of the court-martial, the punishment shall not, in time of peace, exceed such limit or limits as the President may from time to time prescribe.

(g) ACTION BY APPOINTING OR SUPERIOR AUTHORITY.

ART. 46. Approval and Execution of Sentence.—No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer appointing the court or by the officer commanding for the time being.

ART. 47. *Powers Incident to Power to Approve.—The power to approve the sentence of a court-martial shall be held to include:

- (a) The power to approve or disapprove a finding and to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to approve, the evidence of record requires a finding of only the lesser degree of guilt; and
- (b) The power to approve or disapprove the whole or any part of the sentence.

ART. 48. Confirmation—When Required.—In addition to the approval required by Article 46, confirmation by the President is required in the following cases before the sentence of a court-martial is carried into execution; namely:

- (a) Any sentence respecting a general officer;
- (b) Any sentence extending to the dismissal of an officer, except that in time of war a sentence extending to the dismissal of an officer below the grade of brigadier general may be carried into execution upon confirmation by the commanding general of the army in the field or by the commanding general of the territorial department or division;

*Effective immediately.

- (c) Any sentence extending to the suspension or dismissal of a cadet; and
- (d) Any sentence of death, except in the cases of persons convicted in time of war of murder, rape, mutiny, desertion, or as spies; and in such excepted cases a sentence of death may be carried into execution upon confirmation by the commanding general of the army in the field or by the commanding general of the territorial department or division.

When the authority competent to confirm the sentence has already acted as the approving authority, no additional confirmation by him is necessary.

ART. 49. *Powers Incident to Power to Confirm.—The power to confirm the sentence of a court-martial shall be held to include:

- (a) The power to confirm or disapprove a finding, and to confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to confirm, the evidence of record requires a finding of only the lesser degree of guilt; and
- (b) The power to confirm or disapprove the whole or any part of the sentence.

ART. 50. Mitigation or Remission of Sentences.—The power to order the execution of the sentence adjudged by a court-martial shall be held to include, *inter alia*, the power to mitigate or remit the whole or any part of the sentence; but no sentence of dismissal of an officer and no sentence of death shall be mitigated or remitted by any authority inferior to the President.

Any unexecuted portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint for the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence extending to the dismissal of an officer or loss of files, no sentence of death, and no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority.

The power of remission and mitigation shall extend to all uncollected forfeitures adjudged by sentence of a court-martial.

ART. 51. Suspension of Sentences of Dismissal or Death.—The authority competent to order the execution of a sentence of dismissal of an officer or a sentence of death may suspend such sentence until the pleasure of the President be known, and in case of such suspension a copy of the order of suspension, together with a copy of the record of trial, shall immediately be transmitted to the President.

ART. 52. Suspension of Sentence of Dishonorable Discharge.—The authority competent to order the execution of a sentence including dishonorable discharge may suspend the execution of the dishonorable discharge until the soldier's release from confinement; but the order of suspension may be vacated at any time and the execution of the dishonorable discharge directed by the officer having general court-martial jurisdiction over the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the soldier is held, or by the Secretary of War.

ART. 53. Suspension of Sentences of Forfeiture or Confinement.—The authority competent to order the execution of a sentence adjudged by a court-martial may, if the sentence involve neither dismissal nor dishonorable discharge, suspend the execution of the sentence in so far as it relates to the forfeiture of pay or to confinement, or to both; and the person under sentence may be restored to duty during the suspension of confinement. At any time within one year after the date of the order of suspension such order may, for sufficient cause, be vacated and the execution of the sentence directed by the military authority competent to order the execution of like sentences in the command, exclusive of penitentiaries and the United States Disciplinary Barracks, to which the person under sentence belongs or in which he may be found; but if the order of suspension be not vacated within one year after the date thereof, the suspended sentence shall be held to have been remitted.

III. PUNITIVE ARTICLES.

(a) ENLISTMENT; MUSTER; RETURNS.

ART. 54. Fraudulent Enlistment.—Any person who shall procure himself to be enlisted in the military service of the United States by means of willful misrepresentation or concealment as to

his qualifications for enlistment, and shall receive pay or allowances under such enlistment, shall be punished as a court-martial may direct.

ART. 55. Officer Making Unlawful Enlistment.—Any officer who knowingly enlists or musters into the military service any person whose enlistment or muster in is prohibited by law, regulations, or orders shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

ART. 56. Muster-Rolls—False Muster.—At every muster of a regiment, troop, battery, or company the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent non-commissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster-rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster-rolls, shall be transmitted by the mustering officer to the Department of War as speedily as the distance of the place and muster will admit. Any officer who knowingly makes a false muster of man or animal, or who signs or directs or allows the signing of any muster-roll knowing the same to contain a false muster or false statement as to the absence or pay of an officer or soldier, or who wrongfully takes money or other consideration on mustering in a regiment, company, or other organization, or on signing muster-rolls, or who knowingly musters as an officer or soldier a person who is not such officer or soldier, shall be dismissed from the service and suffer such other punishment as a court-martial may direct.

ART. 57. False Returns—Omission to Render Returns.—Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. Every officer whose duty it is to render to the War Department or other superior authority a return of the state of the troops under his command, or of the arms, ammunition,

clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct; and any officer who, through neglect or design, omits to render such return shall be punished as a court-martial may direct.

(b) DESERTION; ABSENCE WITHOUT LEAVE.

ART. 58. **Desertion.**—Any person subject to military law who deserts or attempts to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.

ART. 59. **Advising or Aiding Another to Desert.**—Any person subject to military law who advises or persuades or knowingly assists another to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct.

ART. 60. **Entertaining a Deserter.**—Any officer who, after having discovered that a soldier in his command is a deserter from the military or naval service or from the Marine Corps, retains such deserter in his command without informing superior authority or the commander of the organization to which the deserter belongs shall be punished as a court-martial may direct.

ART. 61. **Absence without Leave.**—Any person subject to military law who fails to report at the fixed time to the properly appointed place of duty, or goes from the same without proper leave, or absents himself from the command, guard, quarters, station, or camp without proper leave, shall be punished as a court-martial may direct.

(c) DISRESPECT; INSUBORDINATION; MUTINY.

ART. 62. **Disrespect Toward the President, Vice-President, Congress, Secretary of War, Governors, Legislatures.**—Any officer who uses contemptuous or disrespectful words against the President, Vice-President, the Congress of the United States, the Secretary of War, or the governor or legislature of any State, Territory, or other

possession of the United States in which he is quartered shall be dismissed from the service or suffer such other punishment as a court-martial may direct. Any other person subject to military law who offends shall be punished as a court-martial may direct.

ART. 63. Disrespect Toward Superior Officer.—Any person subject to military law who behaves himself with disrespect toward his superior officer shall be punished as a court-martial may direct.

ART. 64. Assaulting or Willfully Disobeying Superior Officer.—Any person subject to military law who, on any pretense whatsoever, strikes his superior officer or draws or lifts up any weapon or offers any violence against him, being in the execution of his office, or willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct.

ART. 65. Insubordinate Conduct Toward Non-commissioned Officer.—Any soldier who strikes or assaults, or who attempts or threatens to strike or assault, or willfully disobeys the lawful order of a non-commissioned officer while in the execution of his office, or uses threatening or insulting language, or behaves in an insubordinate or disrespectful manner toward a non-commissioned officer while in the execution of his office, shall be punished as a court-martial may direct.

ART. 66. Mutiny or Sedition.—Any person subject to military law who attempts to create or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct.

ART. 67. Failure to Suppress Mutiny or Sedition.—Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or knowing or having reason to believe that a mutiny or sedition is to take place, does not without delay give information thereof to his commanding officer, shall suffer death or such other punishment as a court-martial may direct.

ART. 68. Quarrels; Frays; Disorders.—All officers and non-commissioned officers have power to part and quell all quarrels, frays, and disorders among persons subject to military law, and to order officers who take part in the same into arrest, and other persons subject to military law who take part in the same into arrest or confinement, as circumstances may require, until their proper superior

officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or non-commissioned officer or draws a weapon upon or otherwise threatens or does violence to him shall be punished as a court-martial may direct.

(d) ARREST; CONFINEMENT.

ART. 69. Arrest or Confinement of Accused Persons.—An officer charged with crime or with a serious offense under these articles shall be placed in arrest by the commanding officer, and in exceptional cases an officer so charged may be placed in confinement by the same authority. A soldier charged with crime or with a serious offense under these articles shall be placed in confinement, and when charged with a minor offense he may be placed in arrest. Any other person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; and when charged with a minor offense such person may be placed in arrest. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer who breaks his arrest or who escapes from confinement before he is set at liberty by proper authority shall be dismissed from the service or suffer such other punishment as a court-martial may direct; and any other person subject to military law who escapes from confinement or who breaks his arrest before he is set at liberty by proper authority shall be punished as a court-martial may direct.

ART. 70. Investigation of and Action upon Charges.—No person put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled. When any person is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested person be not brought to trial, as herein required, the arrest shall cease. But persons released from arrest, under the provisions of this article, may be tried, when-

ever the exigencies of the service shall permit, within twelve months after such release from arrest: Provided, That in time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him.

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

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

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

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

service or suffer such other punishment as a court-martial may direct.

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

(e) WAR OFFENSES.

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

ART. 76. Subordinates Compelling Commander to Surrender.—If any commander of any garrison, fort, post, camp, guard, or other command is compelled, by the officers or soldiers under his command, to give it up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death or such other punishment as a court-martial may direct.

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

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

ART. 79. Captured Property to Be Secured for Public Service.—All public property taken from the enemy is the property of the United States and shall be secured for the service of the United States, and any person subject to military law who neglects to

secure such property or is guilty of wrongful appropriation thereof shall be punished as a court-martial may direct.

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

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

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

(f) MISCELLANEOUS CRIMES AND OFFENSES.

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

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

ART. 85. Drunk on Duty.—Any officer who is found drunk on

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

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

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

ART. 88. Intimidation of Persons Bringing Provisions.—Any person subject to military law who abuses, intimidates, does violence to, or wrongfully interferes with any person bringing provisions, supplies, or other necessaries to the camp, garrison, or quarters of the forces of the United States shall suffer such punishment as a court-martial may direct.

ART. 89. Good Order to Be Maintained and Wrongs Redressed.—All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or willfully destroys any property whatsoever (unless by order of his commanding officer), or commits any kind of depredation or riot, shall be punished as a court-martial may direct. Any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, in so far as the offender's pay shall go toward such reparation, as provided for in Article 105, shall be dismissed from the service, or otherwise punished, as a court-martial may direct.

ART. 90. Provoking Speeches or Gestures.—No person subject

to military law shall use any reproachful or provoking speeches or gestures to another; and any person subject to military law who offends against the provisions of this article shall be punished as a court-martial may direct.

ART. 91. **Dueling.**—Any person subject to military law who fights or promotes or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall, if an officer, be dismissed from the service or suffer such other punishment as a court-martial may direct; and if any other person subject to military law, shall suffer such punishment as a court-martial may direct.

ART. 92. ***Murder; Rape.**—Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace.

ART. 93. **Various Crimes.**—Any person subject to military law who commits manslaughter, mayhem, arson, burglary, robbery, larceny, embezzlement, perjury, assault with intent to commit any felony, or assault with intent to do bodily harm shall be punished as a court-martial may direct.

ART. 94. **Frauds Against the Government.**—Any person subject to military law who makes or causes to be made any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures or advises the making or use of any writing or other paper, knowing the same to contain any false or fraudulent statements; or

*Effective immediately.

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof makes, or procures or advises the making of any oath to any fact or to any writing or other paper, knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures or advises the use of any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States; or

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof; or

Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same;

Shall, on conviction thereof, be punished by fine or imprisonment or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid while in the military service of the

United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

ART. 95. Conduct Unbecoming an Officer or Gentleman.—Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.

ART. 96. General Article.—Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court.

IV. COURTS OF INQUIRY.

ART. 97. When and by Whom Ordered.—A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer; but a court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into.

ART. 98. Composition.—A court of inquiry shall consist of three or more officers. For each court of inquiry the authority appointing the court shall appoint a recorder.

ART. 99. Challenges.—Members of a court of inquiry may be challenged by the party whose conduct is to be inquired into, but only for cause stated to the court. The court shall determine the relevancy and validity of any challenge and shall not receive a challenge to more than one member at a time. The party whose conduct is being inquired into shall have the right to be represented before the court by counsel of his own selection, if such counsel be reasonably available.

ART. 100. Oath of Members and Recorder.—The recorder of a court of inquiry shall administer to the members the following oath: "You, A. B., do swear (or affirm) that you will well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope

of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You, A. B., do swear (or affirm) that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

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

ART. 101. Powers; Procedure.—A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocate thereof. Such witnesses shall take the same oath or affirmation that is taken by witnesses before courts-martial. A reporter or an interpreter for a court of inquiry shall, before entering upon his duties, take the oath or affirmation required of a reporter or an interpreter for a court-martial. The party whose conduct is being inquired into, or his counsel, if any, shall be permitted to examine and cross-examine witnesses so as fully to investigate the circumstances in question.

ART. 102. Opinion on Merits of Case.—A court of inquiry shall not give an opinion on the merits of the case inquired into unless specially ordered to do so.

ART. 103. Record of Proceedings — How Authenticated. — Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and the recorder thereof, and be forwarded to the convening authority. In case the record cannot be authenticated by the recorder, by reason of his death, disability, or absence, it shall be signed by the president and by one other member of the court.

V. MISCELLANEOUS PROVISIONS.

ART. 104. Disciplinary Powers of Commanding Officers.—Under such regulations as the President may prescribe, and which he may from time to time revoke, alter, or add to, the commanding officer of any detachment, company, or higher command may, for minor offenses not denied by the accused, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

The disciplinary punishments authorized by this article may

include admonition, reprimand, withholding of privileges, extra fatigue, and restriction to certain specified limits, but shall not include forfeiture of pay or confinement under guard. A person punished under authority of this article who deems his punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a crime or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

ART. 105. Injuries to Person or Property — Redress of. —

Whenever complaint is made to any commanding officer that damage has been done to the property of any person or that his property has been wrongfully taken by persons subject to military law, such complaint shall be investigated by a board consisting of any number of officers from one to three, which board shall be convened by the commanding officer and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

Where the offenders cannot be ascertained, but the organization or detachment to which they belong is known, stoppages to the amount of damages inflicted may be made and assessed in such proportion as may be deemed just upon the individual members thereof who are shown to have been present with such organization or de-

tachment at the time the damages complained of were inflicted as determined by the approved findings of the board.

ART. 106. Arrest of Deserters by Civil Officials.—It shall be lawful for any civil officer having authority under the laws of the United States, or any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States.

ART. 107. Soldiers to Make Good Time Lost.—Every soldier who in an existing or subsequent enlistment deserts the service of the United States, or without proper authority absents himself from his organization, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or through intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall with the time he may have served prior to such desertion, unauthorized absence, confinement, or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve.

ART. 108. Soldiers — Separation from the Service.—No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs, or by the commanding officer when no such field officer is present; and no enlisted man shall be discharged from said service before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.

ART. 109. Oath of Enlistment.—At the time of his enlistment every soldier shall take the following oath or affirmation: “I, ———, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders

of the officers appointed over me, according to the Rules and Articles of War." This oath or affirmation may be taken before any officer.

ART. 110. Certain Articles to Be Read and Explained.—Articles 1, 2, and 29, 54 to 96, inclusive, and 104 to 109, inclusive, shall be read and explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States.

ART. 111. Copy of Record of Trial.—Every person tried by a general court-martial shall, on demand therefor, made by himself or by any person in his behalf, be entitled to a copy of the record of that trial.

ART. 112. Effects of Deceased Persons—Disposition of.—In case of the death of any person subject to military law, the commanding officer of the place or command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters, and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects; and said summary court shall have authority to convert such effects into cash, by public or private sale, not earlier than thirty days after the death of the deceased, and to collect and receive any debts due decedent's estate by local debtors; and as soon as practicable after converting such effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposit, accompanied by any will or other papers of value belonging to the deceased, an inventory of the effects secured by said summary court, and a full account of his transactions to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of the accounts of deceased officers or enlisted men of the Army; but if in the meantime the legal representative or widow shall present himself or herself to take possession of decedent's estate, the said summary court shall turn over to him or her all effects not sold and cash belonging to said estate, together with an inventory and account, and make to the War Department a full report of his transactions.

The provisions of this article shall be applicable to inmates of the United States Soldiers' Home who die in any United States military hospital outside of the District of Columbia where sent from the Home for treatment.

ART. 113. Inquests.—When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States, any person shall have been found dead under circumstances which appear to require investigation, the commanding officer will designate and direct a summary court-martial to investigate the circumstances attending the death; and for this purpose such summary court-martial shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death.

ART. 114. Authority to Administer Oaths.—Any judge-advocate or acting judge-advocate, the president of a general or special court-martial; any summary court-martial, the judge-advocate or any assistant judge-advocate of a general or special court-martial, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant of any command shall have power to administer oaths for the purposes of the administration of military justice and for other purposes of military administration; and in foreign places where the Army may be serving shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and all other forms of notarial acts to be executed by persons subject to military law.

ART. 115. Appointment of Reporters and Interpreters.—Under such regulations as the Secretary of War may from time to time prescribe, the president of a court-martial or military commission, or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. Under like regulations, the president of a court-martial or military commission, or court of inquiry, or a summary court, may appoint an interpreter, who shall interpret for the court or commission.

ART. 116. Powers of Assistant Judge - Advocates.—An assistant judge-advocate of a general court-martial shall be competent to perform any duty devolved by law, regulation, or the custom of the service upon the judge-advocate of the court.

ART. 117. Removal of Civil Suits.—When any civil suit or criminal prosecution is commenced in any court of a State against any officer, soldier, or other person in the military service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed in Section 33 of the act entitled "An act to codify, revise, and amend the laws relating to the judiciary," approved March 3, 1911, and the cause shall thereupon be entered on the docket of said district court and shall proceed therein as if the cause had been originally commenced in said district court and the same proceedings had been taken in such suit or prosecution in said district court as shall have been had therein in said State court prior to its removal, and said district court shall have full power to hear and determine said cause.

ART. 118. Officers—Separation from Service.—No officer shall be discharged or dismissed from the service except by order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a court-martial or in mitigation thereof; but the President may at any time drop from the rolls of the Army any officer who has been absent from duty three months without leave or who has been absent in confinement in a prison or penitentiary for three months after final conviction by a court of competent jurisdiction.

ART. 119. Rank and Precedence Among Regulars, Militia, and Volunteers.—That in time of war or public danger, when two or more officers of the same grade are on duty in the same field, department, or command, or of organizations thereof, the President may assign the command of the forces of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade. In the absence of such assignment by the President, officers of the same grade shall rank and have precedence in the following order, without regard to date of rank or commission as between officers of different classes—namely: first, officers of the regular Army and officers of the Marine Corps detached for service with the Army by order of the President; second, officers of forces

drafted or called into the service of the United States; and, third, officers of the volunteer forces: Provided, That officers of the regular Army holding commissions in forces drafted or called into the service of the United States or in the volunteer forces shall rank and have precedence under said commissions as if they were commissions in the regular Army; the rank of officers of the regular Army under commissions in the National Guard as such shall not, for the purposes of this article, be held to antedate the acceptance of such officers into the service of the United States under the commissions.

ART. 120. Command When Different Corps or Commands Happen to Join.—When different corps or commands of the military forces of the United States happen to join or do duty together, the officer highest in rank of the line of the regular Army, Marine Corps, forces drafted or called into the service of the United States, or volunteers, there on duty, shall, subject to the provisions of the last preceding article, command the whole and give orders for what is needful in the service, unless otherwise directed by the President.

ART. 121. Complaints of Wrongs.—Any officer or soldier who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to the general commanding in the locality where the officer against whom the complaint is made is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon.

SEC. 4. The provisions of Section 3 of this act shall take effect and be in force on and after March 1, 1917: Provided, That Articles 4, 13, 14, 15, 29, 42, 47, 49, and 92 shall take effect immediately upon the approval of this act.

SEC. 5. That all offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking effect of this act, under any law embraced in or modified, changed, or repealed by this act, may be prosecuted, punished, and enforced in the same manner and with the same effect as if this act had not been passed.

SEC. 6. All laws and parts of laws in so far as they are inconsistent with this act are hereby repealed.

Approved August 29, 1916.

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1	-----	32	61	63	2	96	4
2	109, 110	33	61	64	2	97	4
3	54	34	61	65	69	98	4
4	108	35	61	66	69	99	11
5	56	36	-----	67	71	100	4
6	56	37	-----	68	72	101	-----
7	57	38	85	69	73	102	4
8	57	39	86	70	70	103	3
9	11	40	61	71	70	104	4
10	-----	41	75	*72	8	105	4
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12	56	43	76	74	11	107	4
13	56	44	77	*75	5	108	4
14	56	45	81	76	-----	109	4
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*Old articles 72, 73, 75, 81, 82, and 83 were replaced by the articles of March 2, 1913 (Public—No. 401, pp. 21 and 22), effective July 1, 1913.

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