Volume 2

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ESTABLISHMENT OF MILITARY JUSTICE

HEARINGS

BEFORE THE

SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

FIRST SESSION

ON

S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

PART 1

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

SATURDAY, AUGUST 30, 1919.

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

The subcommittee met, pursuant to adjournment, in the room of the Committee on Appropriations in the Capitol, at 10 o'clock a. m., Senator Irvine L. Lenroot presiding.

Present: Senators Lenroot (acting chairman) and Chamberlain.

STATEMENT OF MR. SAMUEL T. ANSELL—Resumed.

Senator LENROOT. I do not remember just what point you had reached at the last session, General, do you?

Mr. ANSELL. If the committee please, yesterday I had said that Great Britain had recognized the necessity of at least a partial civil control, in the last analysis, over courts-martial. I had shown that their law requires a law officer with the powers of a judge to sit with each general court-martial, though, as I said—and ought to have said, in fairness—those powers, like so many things British, were not well defined and fixed. Probably, de jure they are advisory; de facto, they are controlling.

That with each field general court-martial, which is their agency for enforcing discipline when they are in actual campaign, so far as enlisted men are concerned, as a rule, the law does not require this judge to sit with the court-martial; but by regulations it is required, and it has worked out to the absolute satisfaction of all, the only complaint being it should go farther and be fixed by statute.

I had shown that the head of the Judge Advocate General's Department, who is the chief of the bureau of military justice there, is a civilian, had at one time been a member of the Government, still has a close relationship both to Crown and Parliament, and, most significant of all, he is not subject to any military supervision whatever.

I had also adverted to the fact, previously, that there was far greater opportunity there for the civil courts of the Kingdom to review the judgments of courts-martial than here, the sole remedy here being by way of the writ of habeas corpus; except, of course, in a suit for trespass, which, as you know, seldom or never is re-

sorted to, for the very obvious reason, I suppose, that you had to prove that a member of the court has maliciously and flagrantly violated his duty in order to do injury to the accused. Certainly that would have to be proved before damage could be recovered. Such actions are not brought here.

In France it is significant likewise that, military as that people is, the judge advocate general of the army there is a civilian, and a most distinguished one. In my travels there I met no lawyer who impressed me more than he.

Senator CHAMBERLAIN. What is his title?

Mr. ANSELL. Undersecretary of State for Military Justice, with a seat in Parliament.

In the French Army in time of peace there is a very large appellate system. Many of their cases can go to the supreme court of France, the Court of Cassation, of Paris; and in time of peace there is a court of military appeals, as well; and in time of war the law provides for a court of appeals with each army, but, as I understood their practice, perhaps a court of appeals was not maintained at the headquarters of each army, but rather, administratively, at some central point, as at Paris, where it could take care of more than one jurisdiction.

Senator LENROOT. But is maintained?

Mr. ANSELL. But is maintained. That is the point. My recollection of it is that in time of war they may have, and do have usually, on their court of military appeals men who are commissioned in the army; that is, army men. Of course there the distinction between the professional soldier and the citizen soldier is not so marked as it is here. If there is one thing more impressive about the French Army than another, it is the unity observable in their military establishment, a unity which we do not have here, but which I hope that we may some day have.

Senator LENROOT. You mean it is more democratic throughout?

Mr. ANSELL. Yes. Senator, I went to France, of course, with the utmost sympathy and admiration for the French people, but not so much with the idea that the French were really a democratic people. Whatever may be said for any other institution, that institution which is usually in all nations least democratic was in the case of the French most democratic; that is, their army. I said in my report, and I repeat, that whenever we shall change, let us not change toward the British or what might be called the northern nations' view of maintaining discipline, because I think probably this system whereby discipline is maintained by the great gulf between enlisted man and officer by erecting the officer as a sacresanct thing far above him belongs rather to the northern races—to ourselves, to the British, and to others. Let us, if we can, incline to the French system, where, without loss of dignity and without any infringement of proper prerogatives, the relationship between officer and enlisted man is a remarkable one, a most helpful one, and causes, I think, a Frenchman to love his army as every citizen ought to love an army that gives him protection.

I am not going to compare the French Army with the British or our own. We have qualities, Mr. Chairman, that are, of course, remarkable, and they are remarkable in the Army also. But the relationship—the disciplinary relationship—between the officers and men really might be improved upon.

The French take the discipline of their men much to heart. Justice to the enlisted man is very much on their conscience, and the first thing that a colonel of a regiment does when he comes to his orderly room in the morning is to look over the delinquency book and to go into it with the greatest of care. A man may not be court-martialed there until a quasi-judicial officer does look over the charges, and does look over the evidence to see whether there is a prima facie case; and such officer is not under the control of military authority either. And after a man is tried, as I have indicated, he gets this review. It should be conceded that French courts-martial, like French civil courts, do not adhere to the technical rules of evidence, for instance, and other rules of procedure, as we do.

In Italy there is established the system of appeals, it seems to me, on a much more elaborate scale than in any other country. It seemed to me too elaborate, indeed.

I discovered in Paris a book which I regarded as very valuable. It was a report made by a Norwegian judge advocate, sent by his Government to investigate the systems of military justice obtaining in all the European countries; and later he extended that to our own country and some of the South American countries. It is the only comprehensive study, so far as I know, that has ever been made of such a thing. It is old, however. But after I got back home I found there was one copy of that book in this country, and I got it from Harvard University. I have let another officer have it temporarily, and have not been able to get it back, but I wanted to assure the committee that I have read the report of that officer, and that report reveals clearly that this system of military appeals is established throughout Europe, and that the system of having a specially qualified law officer sitting with each general court-martial is established throughout Europe. That officer comments on the fact that Spain, Prussia, Russia, England, and the United States are the ones who do not have it. There, I believe, is some sort of review in Prussia—was at that time—that I am not familiar with at all. But even in Spain there is a more thorough review by the judge advocate general than there is here; and most especially does he comment on the fact that the British system and the American system make no provision for an authoritative review whatever. So that this talk about a reviewing body being a new thing, detrimental to discipline, is disproved by the fact that it is an established institution in Europe, where armies, of course, are far more significant things in government and closer to the people than they are here.

Senator CHAMBERLAIN. May I ask you if, in your visit to France, you compared the maximum penalties imposed in the French army with the maximum penalties imposed in the American Army?

Mr. ANSELL. Yes, Senator; and the French punishments are comparatively very light, indeed.

Senator LENROOT. Could you secure for us for this record a copy or a translation of the French law?

Mr. ANSELL. A translation? I could do it myself, if I could get a little time.

Senator CHAMBERLAIN. I think we could ask the legislative board for that.

Mr. ANSELL. I will try and get it for you if I can.

Senator LENROOT. All right; and will you also secure for us a copy of the British law?

Mr. ANSELL. Yes. Our War Department has not yet advanced as far as the British had advanced at the beginning of this war. During the war the British have grown quite liberal. I wish to call attention to the fact that Great Britain is in process of advancing some more now. But then, above all, why should we limit ourselves, with our citizenship of the very highest grade and our liberal institutions, to the systems of Great Britain and of Europe?

The bill that is before you I do not think need be gone through in detail, and, in any event, I have spent so much time in discussion that I can not go into it in detail, but I think we can sum it up in this way: If the committee should be, for instance, in favor of having a government by legal principle rather than trusting so much to this power of military command, they could only disagree with the bill in mere matters of detail.

If, on the other hand, they agree with the War Department and the Kernan report, for instance, that courts-martial are the agencies of military command, then really you could not agree with anything—you could not agree with the fundamental principles—of that bill, and I hope that I have made that clear.

One theory is that courts-martial are governed by military command throughout.

The other theory is that they are governed by fixed principles of law and the statutes enacted by Congress, throughout.

Now, if you believe in the first principle, why, I do not know that anybody could find any great fault with our system. I could not. If military command is to be permitted to exercise all this control, I know our men are good men, and they want to do what is right, and though they do their best, we may expect the results that we have. I disagree with the results, and I attribute them to the system that we have.

Senator LENROOT. Are there not two fundamental propositions involved? Is there not one other than you have mentioned? First, there is the unlimited control of military command, within the law; secondly, the broad discretion vested in the law, in military command?

Mr. ANSELL. Yes; I think that is true. I intended to include them both. I do not say that that is so in the sense that they have not authority for what they do under the Articles of War. It seems to me that they can do almost anything.

Senator LENROOT. Is not that a proposition quite separate from their having unlimited control of military command, within the law; in other words, unlimited discretion as to punishment?

Mr. ANSELL. Yes; they have unlimited discretion as to punishment.

Senator CHAMBERLAIN. They practically make the law as to punishment.

Mr. ANSELL. Yes; of course that is true. Congress has delegated the power.

Senator LENROOT. Yes.

Mr. ANSELL. And it seems to me never before has a legislative body delegated any such power. It is true that in this bill there are of

course means—methods—advanced that are open to disagreement. We can always disagree as to means and methods, but the contending principles I think we have got a fairly good idea of now. For instance, in this bill that I have drafted, one of the things, I believe—I speak with great frankness—that shocks the Regular Army officer, and maybe officers of the new Army, more than any other one thing, is the fact that the bill provides for the detail of a number of enlisted men on general courts-martial—three out of eight, for instance. Well now, the very moment you mention that to a Regular Army officer he at once replies, "You have taken out of the hands of the officer the power of the enforcement of discipline and handed it over to the enlisted man." Of course he is going right back, there, to his fundamental theory that officers are the governing element and must have their way. But under this bill it must be remembered, and I call the attention of the committee to that particularly, the court is really a jury finding the facts, and the officer of the law sitting with that court is the judge. I, myself, do not believe that there is a thing to the argument that you can not intrust one of the enlisted men of our Army with a proper determination of facts; and I will go further than that and say that even if they were to determine the law, were to be judges of both law and fact, from my judgment of the enlisted men of the Army as they now are, and from my knowledge of our citizenship, I will not say that the discipline of the Army is going to be destroyed by permitting enlisted men to sit on those courts and do justice under their oaths. I do not believe that, no matter what anybody else says.

Senator CHAMBERLAIN. It is just like a jury drawn from the body of the community.

Mr. ANSELL. Yes; and it is a very high-grade one. We may call the jury a cross-section of citizenship. We get some inferior men; but surely it has got to be said that there never has been an army in any country in the world that compared with the Army that we have to-day, for intelligence and probity and everything that goes to make up character in a man that will impel him to perform his duty.

Senator LENROOT. Right there, because that is a very material point in this whole matter: You have described at great length the feeling generally existing, and the condition of caste between the officers and the men. Now, is it your opinion that when charges are made by an officer against an enlisted man, generally speaking, it would require no stronger evidence to convict with enlisted men sitting as members of the court than with a jury in civil life trying a man for a like offense?

Mr. ANSELL. That it would require no stronger evidence to convict an enlisted man?

Senator LENROOT. Yes. That is, would an enlisted man be as free to convict a fellow enlisted man upon charges made by an officer, as a jury in civil life would be to convict a defendant charged with a like offense?

Mr. ANSELL. Mr. Chairman, I believe that our enlisted men, situated as they are, would, as nearly as they could, do absolute justice, and I do not believe that they would permit the fact that an officer had preferred charges against an enlisted man to create a sort of rebellious attitude, a feeling against convicting that man.

Senator LENROOT. That is the point. Of course, I was assuming that they would try to do absolute justice; but the point would be whether there would be any prejudice.

Mr. ANSELL. Of course, you would find a man here and there; but I think that we can always say this, with the knowledge of any system or hierarchy, that the lower the man is in the hierarchy the greater respect and deference he actually has for the men above him. We can not get rid of that. The abuse of the caste system, I think, is apt to be from the higher man downward rather than from the lower man upward; and if you take a lower man and put him on a higher plane, I think he will do his duty regardless of his condition in other respects. That is, for the time being an enlisted man, pro hac vice, becomes an administrator of the law, does he not?

Senator LENROOT. Taking it during this war, would you say that the enlisted man did have that high respect for his officers, generally?

Mr. ANSELL. For his officers as persons, why, yes; but there were so many officers that did not do well, that did not treat them well, that did not have the fullest respect of their men, I think not. The system creates distrust.

On the other hand, if a set of charges came before a court in which there was a small sprinkling of enlisted men—they are to be chosen, of course, by the man who convenes the court, who is an officer—I should think that if those enlisted men were affected at all, as they might be, it would, nevertheless, be in the direction of that great equity which is necessary to doing all justice.

Senator CHAMBERLAIN. It would not decrease the morale, because the enlisted man would then feel that he had a man on the court who could see his viewpoint.

Mr. ANSELL. I feel strongly that it has great advantages, and that it would not be abused except as all administration is once in a while abused. But here is a man who feels that he is a part of the Army, he is trusted as a part of the Army; he has got a part of its authority upon him. Under such circumstances enlisted men would feel that their station had been very much elevated, and that they were eligible to be chosen for this high duty at any time; and the accused would feel, as you said, that he had a fair man on that court in the sense that such member of the court knew his difficulties.

Senator LENROOT. Before you get away from that I would like to ask you, at the other extreme, whether in your opinion, because a court is made up wholly of officers and the charges have been preferred by an officer, there is any tendency of the court to sustain a fellow officer?

Mr. ANSELL. I answer yes, sir; there is such a tendency. I have heard this. I have sat on just as many courts-martial as any man in the Army, and if any man has ever had a full experience in the administration of military justice it must be myself. You have this all the time. Here sits the officer, member of the court, and here is a set of charges against an enlisted man. He looks on that set of charges and what does he see? He sees, "Preferred by an officer." Then he sees an indorsement on that set of charges by the post commander, the organizational commander, to the effect, "I have investigated these charges and I believe they can be sustained. I do not believe they can be dealt with properly other than by court-martial." That is signed, usually, by a colonel. Then he sees a second indorsement referring these charges to the court-martial, which, in effect, means the same thing, that the major general believes that these charges ought to be tried; that is, he believes the man is guilty. That is signed "major general."

Now, here come the charges. Frequently, after you have gotten in the evidence it is perfectly patent to all that the evidence is very flimsy; but I have heard this statement made, I believe literally, a thousand times, "Well, you know, there is something to this case or it would never have gotten here to us. It has come up through all these authorities." You hear officers of the Army say, "Well, if a man's charges are referred to a court for trial, you may bet your bottom dollar he is guilty."

Senator LENROOT. You think that is true to a greater extent than in civil life, where in spite of the presumption of innocence the jurymen are very apt to think that if a man has been indicted by a grand jury there is something to it?

Mr. ANSELL. Sometimes I think such may be the juryman's vague and general first impression, but when he gets into the trial, with lawyers and the judge, too—as they must, of course—required to assume innocence until guilt is proved, no matter what they may think as mere men when they get into the box, by reason of the grand jury having functioned, before they get through with the thing I think they are universally given a mental slant toward the accused.

Senator LENROOT. I think that is true. And you do not think that is true in courts-martial?

Mr. ANSELL. I think it is just the opposite there.

Senator CHAMBERLAIN. A man comes before the court with a presumption of guilt against him, for the reason that the superior officer has said it ought to be investigated?

Mr. ANSELL. I am sorry to say, Senator, that is the truth. If you were really to change the law now in courts-martial and say that a man should be presumed guilty until he has proved himself innocent, I doubt very much if the results would be changed.

I do not mean to say that these officers sitting on courts deliberately go out to convict men, although I think we have got these traditions—these professional preachments—so well grounded in us that it is difficult for us to do justice strictly in accordance with law.

Take the case of a very splendid young man tried for an offense out in the Middle West. A brigadier general was the commanding officer and prosecuting witness. He was called by the judge advocate to testify, and a very bright young lawyer from New York—a second lieutenant—defended the enlisted man, who was a sergeant—I think a candidate for a commission. Here is what happened during the trial: The brigadier general testified against the youngster, and the second lieutenant began to cross-examine to test the credibility by the usual proper questions.

Senator CHAMBERLAIN. The credibility of the brigadier general?

Mr. ANSELL. Yes; the legal credibility I am referring to, of course. There was some evidence that the brigadier general did have it in for this man, because there were two men involved in the

same transaction, and he let one of them off and insisted on court-martialing the accused. Now, obviously there was a chance to go into the commanding officer's attitude toward the accused and toward the case generally, and this young counsel undertook to do it, and the record will show that he did it most respectfully; but when he came to about the second question the brigadier general said to him, "What, sir, do you mean by asking me these questions?" Perhaps a bit unfortunately the youngster resorted to legal language and said, "I am trying to test your credibility"; whereupon the brigadier general thought that was a reflection upon his veracity and integrity, and said, "I will not permit you to ask me any such questions that reflect upon my credibility." But the youngster insisted that he had such a right; and the brigadier general jumped up, excited, and said to the counsel, "If you insist on asking any question that is designed to reflect upon my veracity and capacity and disposition to tell the truth in this case, I will put in charges immediately and have you haled before this court."

Well, as usual in such rumpuses as that, the court was closed. You see, there was an objection made by the witness to making answer. When the court was closed everybody went out, and when they were called in to hear the decision of the court the court had decided that the brigadier general was right.

Senator CHAMBERLAIN. That is a case of record?

Mr. ANSELL. That is a case of record. I could name you the brigadier general. He is a very good man, but he just did not understand. Now that is shocking to us as lawyers. I will assure you that is not shocking to Army men. It is not shocking. I have been counsel for men too many times not to know that. I have a very distinct recollection of myself having defended a signal sergeant to acquittal—I think he was a signal sergeant—and I made a pretty vigorous and sometimes technical defense—certainly, what Army men would call a technical defense, but, nevertheless, a proper defense—and friends of mine on the court would come to me at recess and say to me, "Why don't you stop this? You know your man is guilty. You are getting yourself in dutch with this court;" and all of that kind of thing. Now, they did not mean to do wrong.

Senator CHAMBERLAIN. Practically prejudging the case?

Mr. ANSELL. Oh, yes. If a judge had told you that in a civil forum you know what would have happened. But it just shows you.

I will give you another example. A lieutenant, a quartermaster, was put to making a trap for an enlisted man out in the western department, to catch him, to see if he was not stealing some goods out of a storehouse, and he set the trap and he said that he caught the man; which I very much doubt. He preferred charges against the man. He was, of course, the prosecuting witness; and then he was made judge advocate of the court; and then he was assigned by the commanding officer as counsel for the accused, and he functioned in all capacities, prosecuting witness, judge advocate, and counsel for the accused!

When that case got to me, I said very briefly that this man had not been fairly tried, and it went back to the commanding general of this particular department, and he, as though hurt, said "The Acting Judge Advocate General is actually criticizing our system";

which of course I was, if it was under our system permissible for that man to be all that he was. In other words, your present articles of war make your judge advocate the prosecutor, and also to a great extent the counsel for the accused. If there is any one thing that I hope the committee may very carefully consider, it is that we have a judge advocate. Notice the title, "judge advocate." He is the advocate for the court, and prosecutor. He is the judge for the court. He is their legal adviser. He is also counsel for the accused when the accused has no counsel, and if the accused has counsel, he is directed to see that the interests of the accused do not suffer. Now, that sounds as though it was all for the benefit of the accused. I will assure you that it is not. We ought to abolish the judge advocate as a prosecutor and make him a real judge before that court, according to the general system of Europe, and have a special prosecutor for the Government.

Now, these cases that I have used for illustration, they are not isolated cases. They are not.

Senator LENROOT. General, if this plan were adopted, to what extent, in your judgment, would it be necessary to increase the force in the Judge Advocate General's office, with the present-sized Army?

Mr. ANSELL. With the present-sized Army, I do not think we would have to increase it at all, Mr. Chairman. You see, we would have less review up here. I would have you to get that point. We wait now until all these errors have accumulated from the bottom to the top, and then we do our best to correct; and look at the reviewing force! One hundred and eight men we have had here; and we must have a very large number now. Of course I am not connected with the department now, but I doubt if it has decreased very much. One hundred and eight lawyers, with the vast number of clerks, going all the time. They are not all engaged on this work, but a large proportion of them are engaged on it.

Senator LENROOT. What was the number of the personnel prior to the war?

Mr. ANSELL. We had 13 officers under the national defense act, and then when we expanded under the national defense act when war was first declared—you remember that filled up—we got 29 or 30, and that is our law department.

Senator LENROOT. Altogether?

Mr. ANSELL. Yes; and then when the big Army came on we ran up to 450. But Col. Weeks, as executive officer, and I worked out a scheme last October which was designed to put one law officer with each court and prevent error, if we could, right at the source; and we believed that by sending many of our reviewing officers here and putting them on courts-martial and preventing error at the source, we could get along with fewer men, and I am convinced we can get along with fewer men.

But there is another element that would work toward getting along with fewer men. We have got to do something to decrease the number of trials. It must be obvious to everybody that we have too many trials by court-martial. Now, a man may do something, but every time that a man does something in violation of the law he should not be haled before a court.

Take the methods of investigation. I say if you require, as this bill does require, the most thorough investigation before a man shall be

court-martialed, and then you require the law officer, who is already on the staff of the convening authority, to go into the evidence and say that the evidence is sufficient to constitute a prima facie case, and then go into the charges and determine their legal sufficiency, I say this, Mr. Chairman, based upon my experience, and I notice that Gen. Wood agrees with me in this—and I really believe that up until the time we got into this controversy nine out of ten Army officers would have agreed with me; probably not now, because we have all gotten into a sort of controversial mood or excited—that you can reduce by more than 50 per cent the number of trials in the Army, which reduction in and of itself will tend greatly to the benefit of discipline by requiring these thorough investigations and legal tests before we arraign these men before courts-martial.

Senator LENROOT. Did I understand you to say that you thought after we got to a peace basis, 30 men in that office would be sufficient to carry out the duties?

Mr. ANSELL. I never thought that 30 were sufficient, because we relied upon getting judge advocates then by detailing men from the line.

Senator LENROOT. Yes, I understand. That is what I am getting at.

Mr. ANSELL. Oh, no. But I say this, that for the same number of men we had before the war, I mean with the same sized Army and the same number of men that we used on legal work—they were not all judge advocates—I believe we can do this same task. But it would be necessary to decrease the number of courts-martial as we would decrease them under this bill.

Senator LENROOT. The number that would be required would depend very largely upon the policy that we would hereafter pursue with reference to the consolidation of Army posts, would it not?

Mr. ANSELL. Yes. Of course the court-martial system does largely depend upon that; but it is not indissolubly connected with it. There is no reason why a court-martial should be sitting at each post. I think it is bad to take some 13 officers, with the stenographers. clerks, the attachés, and all that, and have them sitting in each Army post. Of course if an Army post had a division there, that would be an economical legal unit; but if I were a major general commanding a department, I would not have all these courts-martial sitting in all these posts. It is not necessary. I believe, just as much as I am sitting here, that an itinerant court would have been one of the most valuable things, and certainly on the battle front. Take the men to be tried; they might be partially sick, or wounded. With a good Judge Advocate, a law officer, a prosecutor, if you had let him go from place to place and let them try these men there, I believe that would have been a good thing. But, of course, under the present system, every little commander has his court-martial.

Senator CHAMBERLAIN. If he is the commander of a garrison he has his court?

Mr. ANSELL. Oh, yes.

Senator LENROOT. Your bill does contemplate that?

Mr. ANSELL. The bill permits the President himself to convene courts-martial and give them any jurisdiction with respect to territory that he pleases. But if we did ever once get this system of law-controlled courts, with the commanding general largely cut out of it,

of course there would not be, Mr. Chairman, the same necessity to resort to a court-martial at every little place.

Senator CHAMBERLAIN. That is, you mean a general court-martial?

Mr. ANSELL. A general court-martial.

Senator CHAMBERLAIN. If we had one general court-martial.

Mr. ANSELL. Yes, sir.

Senator CHAMBERLAIN. We have the Eastern Department and the Western Department——

Mr. ANSELL. I was up there as judge advocate at the Eastern Department, and we had scores of courts going at every one of the little stations, taking up the time of the officers from training their troops. It is ridiculous, but it is according to the old army traditions. We have not moved a peg.

Now, the Confederacy departed from this system immediately after the opening of the Civil War. They had what, we must confess, was a rather better military system than the Union Army. They broke away from this system almost from the beginning.

Senator CHAMBERLAIN. They realized the character of their citizenship down there. They would not have stood for it, I think.

Mr. ANSELL. Of course I think that is perfectly true. We all understand the differences between the two armies.

Senator CHAMBERLAIN. At the first of the war?

Mr. ANSELL. Yes. It is a very important matter.

Senator CHAMBERLAIN. I will put this question to you: There are four departments, the Eastern, the Western, the Central——

Mr. ANSELL. I think there are more now. We have the Northeastern and the Southeastern Departments.

Senator CHAMBERLAIN. There were only four departments. Now, with one general court, why could not that court function in each of these departments, and would it not become more efficient?

Mr. ANSELL. It would work out beautifully, I have no doubt in the world.

Mr. CHAMBERLAIN. Would it cause delays and long imprisonment of men?

Mr. ANSELL. No, sir.

Senator CHAMBERLAIN. They now keep a man confined sometimes four or five months before he gets a trial.

Mr. ANSELL. After all, when you make an officer of the Army realize that he is governed by a legal system, you are going to get a good result. Officers of the Army are not lawless men. When a court sits, they are going to do their duty.

Senator CHAMBERLAIN. Civil courts do that very thing; they go from one district to another and try cases.

Mr. ANSELL. Yes. I wanted to call attention to one phase of the placing of enlisted men on that court, because you will hear more of that later. It is that which has led to the suggestion in the Kernan report, as you may have observed, that this proposition is one of bolshevism. I would like to sum up with respect to this matter and say that its main provisions are that a commanding general can not court-martial a man at will. These two things must have been done; his law officer must have said, "The investigation that has been made has produced evidence that justifies a trial"; that is, prima facie proof; and, too, the law officer must have said that the charges

as drafted are legally sufficient to allege an offense against the Articles of War.

Now, then, after that the commanding general may or may not, as he pleases, court-martial the man.

Second, an officer may not prefer a charge against a man simply upon the general obligation of his office, but he has got to do so under the special obligation of an oath, on proper information. That will greatly reduce the number of charges.

Then, when we come to the trial, the man is entitled to his challenges, both for cause and peremptory challenges, and in the usual cases to challenges to the array. But, of course, in the case of challenges to the array the commanding general has the entire Army under his command to create a new panel with.

When we come to trial, the principal thing about the trial is that there is a judge and there is a jury, in fact.

Lastly, the commanding general does not confirm the proceedings, but they come to this court of appeals; and there is a court of appeals.

Now, as to the details, I presume gentlemen can dispute about them. I know they can.

I wanted to invite the attention of the committee to the Kernan report. I have studied the report with some considerable thoroughness, though not the actual amendments that they have suggested to the Articles of War; but it is obvious from the character of the report that the amendments that they suggest are but slight changes of the existing system. Observe that their great text, Mr. Chairman, is that this proposition here in the Chamberlain bill, or the bill that I drafted, or the propositions that you have heard me advocating here, will result in the transfer of discipline to the hands of lawyers. "The transfer of discipline"; that is the way it is put.

Now, let us just examine that. Let us see where a lawyer comes in. A lawyer can do no more than say that there is a prima facie case here; that as a matter of law the charges are legally sufficient. Where does discipline come in there? Are not those questions inherently questions of law? Are the charges good, and is the evidence sufficient to justify trial in accordance with the lawyer's well-known conception of what evidence is sufficient? He has got to know the elements of the evidence and the kind of testimony that it takes to prove it. Is that not a question of law?

Now, let us see what the opposite to that means; and it reveals the whole situation. The opposite side is this, that a man ought to be tried if the commanding general so wills it, even though the charges are not, as a matter of law, legally sufficient—that is true; that is their contention—and that a man ought to be tried if the commanding general so wills it, notwithstanding the fact that the investigation has not revealed sufficient evidence to justify the prosecution.

The statement that this bill or this proposition transfers discipline to the hands of lawyers is not true; it does no more than transfer pure questions of law to the hands of lawyers.

Now, when we come to the trial, I am going to quote the British barrister that I once referred to, away back there in 1849, Warren, and I am going to quote this Scotch barrister, writing in Blackwoods, and then I am going to appeal to our common sense. When we take from 5 to 13 of these unskilled tryers, these military men, who certainly have not acquired any capacity for judicial determination by

reason of the fact that they wear shoulder straps, and make them judges of both law and fact, may we not expect all sorts of errors of law? Would you trust 5 to 13 unskilled Army officers to determine questions of law any more quickly that you would trust 5 to 13 pure lawyers, and nothing else, to come down here and make the plans of the Army for an invasion of Germany or Mexico, or some other strategical military proposition? I would not. And it is not logical and it is not common sense; and we have never done it in any other institution of our Government. What is there about an Army officer——

Senator LENROOT. May I ask you here, so that I can follow you a little more intelligently: Do I understand that the only jurisdiction that you propose to confer upon this court of appeals is to review for errors of law?

Mr. ANSELL. To review for errors of law. I think that is the jurisdiction that is conferred upon all courts of error. They are not to retry the facts. The facts, once determined, I think should be permitted to rest, when they are legally determined under instructions by a judge, just as facts are determined in lower courts of the United States.

Senator LENROOT. In your bill, after reciting the review for the correction of errors, in article 52, the language is as follows:

> Said court shall review the record of the proceedings of every general court or military commission which carries a sentence involving death, dismissal, or dishonorable discharge or confinement for a period of more than six months, for the correction of errors of law evidenced by the record and injuriously affecting the substantial rights of an accused without regard to whether such errors were made the subject of objection or exception at the trial; and such power of review shall include the power—
>
> (*a*) To disapprove a finding of guilty and approve only so much of a finding of guilty of a particular offense as involves a finding of a lessor included offense.

Mr. ANSELL. Yes.

Senator LENROOT (continuing reading):

> (*b*) To disapprove the whole or any part of a sentence.
>
> * * * * * * *
>
> And said court of military appeals shall have like jurisdiction to review and revise any sentence of death, dismissal, or dishonorable discharge approved for any offense committee and tried since the 6th day of April, 1917, and any sentence of death, dismissal, or discharge in the case of any person now serving confinement as a result of such sentence.

Now, it would seem to me that that empowers this court of military appeals to pass upon the facts as disclosed by the record as well as the law.

Mr. ANSELL. Not prospectively, because the last clause that you have read there was giving it a retrospective jurisdiction, to try to correct what had been done.

Senator LENROOT. That is true as to that, but in the first paragraph I read you say such powers shall include the power to disapprove a finding of guilty.

Mr. ANSELL. Yes; where it is a matter of law, and that is the only case where you could.

Senator LENROOT. I do not think you say so. It seems to me that language would permit the military court of appeals to substitute its judgment for the judgment of the court-martial upon the facts.

Mr. ANSELL. Of course, we are following there rather the existing law governing the convening authority, and it may be that in deference to that language I may have gone afield. I have not read the bill recently. I am inclined to think you will find it so upon thorough study that if the court should find—let us say that the man was charged with murder and convicted of murder—if the court should find that the evidence as a matter of fact was sufficient only to sustain a charge of manslaughter—that is, the malice was not proved—then they would be permitted to substitute the finding of manslaughter for that of murder as a matter of law.

Senator LENROOT. Yes; that would be a matter of law.

Mr. ANSELL. Yes; or if in any case the evidence failed to establish a particular element of offense, the absence of which specific element would reduce it from one grade to another, then the court would be justified in reducing it to that grade.

Senator LENROOT. I want to thoroughly understand you there. If the bill does not confine the jurisdiction of the court to the review for errors of law, it is your view that it should be so confined?

Mr. ANSELL. It is.

Senator LENROOT. And that it should not permit the court of appeals to substitute its judgment upon the facts for the judgment of a court-martial?

Mr. ANSELL. Only when the judgment upon the facts becomes a question of law.

Senator LENROOT. Oh, yes; I understand that; when the facts——

Mr. ANSELL. Are not reasonably sufficient to sustain any judgment.

Senator LENROOT. Certainly.

Mr. ANSELL. On any particular element of its finding.

Senator LENROOT. Then, one other question: If the sentence imposed by the court-martial was within the jurisdiction of the court-martial to impose, upon a proper finding of guilt, it is not your intention to permit the court of appeals to revise that sentence because it may think it excessive, although within the jurisdiction of the court?

Mr. ANSELL. Not at all, sir. I would not favor a retrial of the facts, nor would I favor permitting this court to substitute its judgment as to what the punishment upon a proper finding of guilty of an offense ought to be.

Senator LENROOT. That is what I wanted to understand.

Mr. ANSELL. In other words, I would do no more than to confer upon this appellate court the usual power that an appellate court has to correct for errors of law, except that we get a sort of modification in military procedure when we have so many offenses that are composed of included elements, as in civil life we have the various degrees of murder and manslaughter, and in the military procedure you have desertion and the lesser included offense of absence without leave, and so on. We take larceny; it may not be larceny, but it may be prejudicial conduct—trespass. The intent to steal may not be there. We have many offenses of that sort that are rather peculiar to the Military Establishment. Now, I insist, Mr. Chairman, that the statement made in the Kernan report that the effect and the purpose of the proposition that is advanced by that bill is to transfer discipline to the hands of the lawyers is not correct. It does no more than transfer the determination of pure questions of law to the lawyers; pure questions of law, and nothing else.

Senator LENROOT. That was the point I had in mind in my questions, General.

Mr. ANSELL. Yes; I quite appreciate that. I believe that was so in the minds of myself and of every other officer who participated in the drafting of that bill. We consulted jurisdictions of courts, and the English systems, and all of that, and we have the language there; but I again say, having declared what our purpose is and the intended effect, what we want to do is to create a court of appeals here that will correct for errors of law; and we do want to give to this judge, who sits with the trial court, the power to control that jury on questions of pure law; and that is the only way, I think, that the discipline of the Army can be made a discipline regulated by law. The discipline of the Army now is not regulated by law, because the disciplinarians are judges of both the law and the facts, and they have no standard in the code. Their argument is an argument ad hominem. They say that the line officers should be entrusted with this great power of discipline. They take this abstract and rather resultant term, discipline—of course discipline ought surely to be a result of the application of law of some kind—they take that abstract term and say that should be left for the fighting man. Of course, the Constitution left it to Congress to prescribe the rules of discipline, and those rules are law. Let discipline be left to the fighting man, but let it be discipline governed by law.

Now, is the line officer, the fighting man, any more competent to determine these legal questions? Of course, they divide the Army into two classes, the fighting man and the legal man. But in such armies as we are going to have, are we justified in making that hard and fast distinction between the law man and the so-called fighting man? I will assure you that I saw the law man in the battle line, in quite dangerous positions, and I saw many fighting men as safe from the zone of operations as we are, sitting right here. Let us look at this argument straight. Gen. Pershing himself, commanding general of the A. E. F., was in no more danger than you are here, except when, occasionally, he did go to the battle line to inspect some organization. The headquarters of the A. E. F. never saw an air raid. It was not in the danger zone half as much as Paris was. It was absolutely free from it, as, in fact, it ought to have been; and the very general who is chairman of the committee that made this report, Gen. Kernan, was sitting away back at Tours, 150 or 200 miles from the nearest gun, and he never heard or saw a gun.

Now, are we not paying too much attention to mere labels? We had 200,000 officers in this Army. Of the old Regular officers there were somewhere between 8,000 and 10,000, and we will presume that some two or three thousand of them had heard a bullet, and that is about all. Then we took the other 190,000 from civil life and we divided them up into line and staff; and one lawyer belongs to the line and another belongs to the staff. Now, Mr. Chairman, I am not going to concede that merely because you label this new-made officer a "line officer," he becomes, ipso facto, qualified to pass upon all these questions of discipline so-called, unregulated, or unadvised,

or uninformed, or anything else. It does not get anybody anywhere. But what this report is really predicated on is the sharp distinctions between the professional and the nonprofessional officer, I think. They are talking about the old-time army, where the man who served with troops was supposed to be this rough-and-ready soldier who was ready to fire at any minute, who served with his troops all the time, and who knew nothing but his troops. Well, I say I think one of our great mistakes is that we adopt and maintain in time of peace a system that always falls down in time of war because it was not made for war. Our Army systems are not made for war, that is certain. Every time we have a war they have to change the whole scheme of things, and if we are going back to this system that they seem to think was fine for the Regular Army—I do not, but they seem to think so—this old-type sort of mercenary establishment, the old school, then when we come to war again I will assure you that the Senate and the House will try to remodel the thing after war has begun.

Senator CHAMBERLAIN. Has this archaic system of the Army had much to do with the prevention of young civilians enlisting in the Army?

Mr. ANSELL. I have no doubt of that. I believe I have always been a little closer in touch with civil thought, for one reason or another, than the ordinary orthodox Regular Army officer. I am orthodox enough. The time will come when your boy and mine are going to war. I think about it a great deal. I want mine to go to war, and they are going; but I shall feel very much better satisfied with any system of military instruction that you are going to have if I know that when these youngsters of mine or yours come to camp for instruction or for battle training they are going to be met rather sympathetically, and by a set of men who know that they are citizens, that they are not this professional type of soldier. If one should go absent without leave for two hours, I do not want him sent to the penitentiary or to a disciplinary barracks for 25 years.

Senator CHAMBERLAIN. I know that the civilian point of view has been obtained from observations at near-by garrisons. A young civilian goes there, or the father or mother of a civilian goes there, and finds your soldier doing menial duty, waiting upon an officer, holding a horse at the door, standing around until the officer is ready to go, and the general impression is that the soldier is acting as a servant, and they go away from there and report that to the civilian population. Have you not found that so?

Senator LENROOT. Absolutely.

Mr. ANSELL. While I was at West Point there was a very decided effort made there—I can not say that it succeded, because I can not recall—to bar the enlisted man, when accompanied by a woman—that is, a soldier when walking with his girl or a married soldier with his wife—from the front walks, and to make them go through the alleys. I served right here at Washington Barracks as a mere boy when this order was issued. During the parade, the daily ceremony, everybody from Washington could come there, everybody, and could stand on the front walks and observe the parade, but the soldiers had to confine themselves to back alleys, etc. Now, that is not going to do. I will tell you this, West Point is one of the great-

est institutions in this world, it is second to none as a military institution, but it has its very serious faults. It inculcates these wrong views, I think, in our officers. We West Point men do establish the system, the standards, of our Army. There are only about 30 per cent of us of the old Regular Army, but for reasons that may be well appreciated, we establish the standard of the Army. The others conform.

Now, I can recall how this thing struck me as a cadet. Here was an enlisted man, well-dressed—because they have to be well-dressed there—soldierly, walking a sentry post up there, as you have seen. They guard the institution on the river front. I remember, when I was a fourth classman, asking an upper classman for some direction, and he said, "Go ask that bum." Seeing that I did not know what he meant, he said, "That bum soldier over there"—the enlisted man walking the post. It was quite common, I found out afterwards, for the young gentlemen at the Military Academy in training to become officers to refer to the enlisted men as "bums." I understand that it is claimed that the word is a derivative of "bombardier," and they were bombardiers who formerly guarded the post; but I can only say that too frequently the suggestion was of the lower order of things. Now, there ought not to be that kind of spirit. Of course, we are not talking about social equality and that sort of thing. That is not the point. Of course not. But we want a considerateness on the part of the officer for the enlisted man and a complete realization that an enlisted man is doing, at a far greater risk and disadvantage, just what the officer is doing; he is serving as a citizen and performing a military duty as a citizen, and we ought to look out for him. As I say, the whole fault with the Kernan report is that it does not visualize the fact that our armies are and must be armies of citizens.

Now look at this report, gentlemen. It bears careful perusal. It is well written, succinctly stated. But do you notice that they say it was necessary to have all these courts-martial and all these long punishments because our men were green men and it was necessary to whip them into shape as soldiers in just a few months? Of course, it was necessary to make the best soldiers out of them possible in a few months. But does not the whole report proceed upon the predicate that we got discipline through terrorism? Of course it does. And you do not get discipline, in any rightful sense of that term, through terrorism. Whatever discipline we got, I will assure you, into the Army of the United States during this war, was discipline that was based upon a high regard for citizenship. The quality of the American Army, its fighting quality, was an incident of the appreciation of its citizenship. The Army of the United States in France had a spirit that was second to the spirit of no army that this world has ever seen.

Now, you can not make anybody believe that that spirit was put into those men in the few months' time they were in training camp. It was not put there by terrorization. It was an antecedent, based upon moral considerations and appreciations; it was not pumped into them in a few months in the training camp.

Senator CHAMBERLAIN. Do you remember the story of the little sergeant major from the Argonne, who said that a man told a false-

hood if he said that he was not afraid when he went over the top; and he said, "Whenever I felt afraid of getting afraid, I thought of the folks at home"?

Mr. ANSELL. Yes, Senator. I am not going to confess that the thing that makes me stand up in front of a bullet is the fact that somebody has terrorized me, Senator. That is not so. It is a different quality from that.

I will lay it down as a fundamental proposition, and I think everybody here will agree with me, that you do not get discipline through fear. Of course you have got to punish men, but to set out to get discipline by trying every man who has violated the regulations, and giving him a maximum punishment, will never do. The higher the appreciation the soldier has for his citizenship, the closer he sticks to his duty. Our successful soldier will ever be actuated by patriotism rather than the fear of his officer. When we come to rely upon terrorism to win battles, then we shall have dropped to the point where we have got, in fact, an army of cowards, who have never won anything yet.

Just see how far these Kernan gentlemen will go, Mr. Chairman. They say that disobedience of orders is disobedience of orders regardless of the character of the order, the time, the place, or the circumstances of its commission. Now, is that reasonable? Are we going to legislate upon any such proposition as that? Is Congress going to permit the Army to be governed upon any such lawless, senseless principle as that? We have these cases. A young soldier guarding a park of artillery down in southwest Texas, exhausted, and having just come out of the hospital, still sick, sat down on post, as he ought not to have done, and fell asleep. The nearest German—so far as I know, the nearest enemy—was 4,000 miles away, with the Atlantic Ocean between. To be sure, it was necessary to guard those guns. It would probably be far better done by watchmen, but we can train soldiers that way. Now, to sentence that man to death, Mr. Chairman, simply upon this hard and fast principle that sleeping on post is sleeping on post, no matter where it is, I say is inconsistent with our natural sense of justice and what military necessities require.

They say that this boy who would not give up his cigarette must be most severely punished, because disobedience of orders like that will grow like canker or gangrene throughout the military establishment. Now, that sounds all right; but it is predicated upon the idea that we have got a set of people who are set like tinder, ready to catch fire from every bad breeze that blows in an army—and you know that we have not! Men do not want to disobey orders. Take that same man up against a German, after he has been given some instruction as a soldier, and if you went and told that man to charge the German, or to shoot at a German, or to advance on a machine-gun nest, and then he deliberately and knowingly and intentionally refused to do it, why, to say that that case is such as that case was up here in the New Jersey camp is quite absurd.

They speak contemptuously of a soldier, however new he may be in the Army, following the natural human impulse and inclination, or human sentiments. They say, and they are quoting the War Department for this, "Why, are you going to let a man go home to see his sick mother, or a dying brother, and let him stay two or three days, and then not sentence him to death when he comes back? If so, the Army will disintegrate, and the instinct will be far greater, when you get in front of the Germans, not to charge a German trench." In other words, let a soldier follow the ordinary human impulse or sentiment in the least degree, you must not take that sentiment or impulse into account in the least degree as an extenuating circumstance. Sentiment is apt to be good; it should not be crushed out; it should simply be directed.

I do not think that our Army can ever take its proper place in the affections of the people if you are going to have a set of Army officers who are strict adherents to the theory that if I am impelled to go home to see my dying mother, and those are the facts, conceded, after I get back I should be shot, and that the great call of the human heart is not to be considered as an extenuating circumstance. That is too hard and fast. I have already told you that this report largely consists of a legal argument to the effect that you gentlemen—I mean the Congress of the United States—can not create a court of appeals. Now, consider the clause of the Constitution itself, and I do not think that the question admits of any dispute or argument. You have just as much right to create a superior military court as you have the summary court. You have just as much right to create this military court of appeals as you have the general court-martial. And certainly everybody has known from the beginning, and the Supreme Court of the United States has said time and time again, that courts-martial of the United States are purely the creatures of Congress, as you make them, whatever you make them. You may have one kind of court or ten kinds of court; you may vest final jurisdiction in the summary court or the special court or the general court, or you can vest final jurisdiction in an appellate court. Really, that is not worth arguing, although seven pages of this report is taken up with that proposition.

They say that you must not divorce discipline from the hands of the commanding general. I have never insisted that you should. I have only insisted that the disciplinary measures that are to be handled by a commanding general should be regulated by the law of the land.

Now, that whole report is right in theory with that celebrated editorial that appears in the Congressional Record of February 15 last, I think it was, taken from the Chicago Tribune, read into the Record by the present distinguished chairman of the House Committee on Military Affairs, evidently expressive of his views, at the request of the Judge Advocate General of the Army of the United States. The editorial is very brief, indeed, but it speaks a volume. It is the text of this Kernan report; it is the text of the War Department attitude. I say that this committee's report proceeds exactly along the line of this editorial, which I believe was expressive of the views of the gentlemen in the other House, and which I want to read here, because it is brief. [Reading:]

ARMY DISCIPLINE.

"For I am a man under authority, having under myself soldiers; and I say to this one, Go, and he goeth; and to another, Come, and he cometh; and to my servant, Do this, and he doeth it." (St. Matthew, vii, 9.)

When a soldier goes absent without leave, deserts his post of duty to see a dying father, he does so because his own personal desires are stronger than his sense of responsibility to his country. It may be a hard thing to give up seeing a dying father, but it is a harder thing to give up running away in the face of the enemy.

That is what military justice is about. The sole preoccupation of an Army, wherever it is, is to train its men and keep them trained to obey the will of the commander under the most trying possible circumstances, and serve the will of the nation. If disobedience had been tolerated in the United States, our Army in Europe would not have captured the St. Mihiel salient nor fought six weeks in the Argonne.

The reason that the National Guard made good in this war and failed in our previous wars was that from the time it was inducted into the Federal service it was subjected to Regular Army discipline. In previous wars it kept its own "discipline."

An Army, to be successful in the field, must from the moment it begins to train at home have absolute control of its discipline. The commanding general is everything. He must bear the three keys. He must have final control. He must be the judiciary, the legislature, and the executive. If he were not, he would not have an army. He would have a collection of armed individuals.

It so happens—and I looked it up—that the text of this editorial is the statement made by the centurion when he came to Christ at Capernaum and apologetically asked Christ to save his child, saying, "I represent the power of the whole Roman Empire, and yet over these moral and spiritual things I have no control, and you have so much." That was the Roman theory, to say to the soldier, "Go, and he goeth," and to another, "Come, and he cometh;" and the centurion had absolute control. We found the Roman theory in the German Army; hard and fast iron discipline. And yet that German Army was fairly pitted—more than fairly pitted—against the liberal armies of the world, especially our own, when our Army was not the best equipped army—when it was not the best led army from the standpoint of professional soldiers; but we saw that kind of discipline pitted against this higher appreciation and conception that an American soldier has of his duty as a soldier, and we saw the result.

We overcame the German troops in front of us, not because we had had this long system of Regular Army training and this hard and fast discipline, but because of these other qualities that I have referred to; and we succeeded, to an extent, in spite of the system of discipline that we had and not because of it. We succeeded, in a word, because of the American spirit that those men took there with them. It was because of the spirit and not because of this hard and fast senseless discipline that we won against the Romano-German methods.

The gentlemen again in their report referred to the fact that the new Army officer is responsible. Responsible for what, I do not know, because the report is an approval of the result of the administration. But as I said the other morning, conceding harsh punishments, the statement is not so; and even if it were so, we ought not to have a system that permits a new officer to abuse his force. It should be controlled by law rather than by the untrained judgment and unrestrained power of this new man.

But I said that the fact was that the convening authorities were not untrained officers; they had the authority; and they ought not to pass the buck to any new officer.

The Kernan board say that they have actually heard from 255 officers, and that rather more than half of those officers approved of

the system, and that the old officers in the service in large percentage approve of it, and that the other officers go from absolute, flat disapproval to a mild approval or disapproval. Of course the gentlemen of the Regular Establishment who have been trained to this system do approve in large percentage, but this is a fact, and is one that speaks loudly: You take an officer at his retirement time, or an officer after he has retired—a Regular officer—and see what he says about it. You will find him quite a liberal-minded man. He has got back into civil life; he is no longer in the hierarchy and subject to it; he has taken a calm survey of his life's work. If they have 255 letters from officers of the Army at large, I have got seven times that many letters from officers of the Army at large and very nearly that many letters from officers of the Regular Army on the retired list and who are about to go on the retired list, saying that something ought to be done about this system. The board say that it is noticeable that the gentlemen who have been on the battlefront, out of these 255 officers, advocate the present system because they have seen how necessary it was to have this German hard and fast system applied to our troops. If that is so, if they saw on the battlefield how necessary it was, they must have seen it through observing the derelictions of our men. Now, we did not have that kind of wholesale dereliction on the battlefield. I went over to Europe and commanding generals there argued with me that they had to have more power to shoot men, and I said to one of them: "It seems to me that I must infer from your insistence that for the first time we have an army with a very considerable number of cowards in it." "No, no; nothing of that kind." "Where, then, is the necessity for this thing?" Then they began to tell me about our allies, how our allies took men and stood them up and shot them before breakfast. And I investigated our allies' administration in that respect, and it did not bear out that statement at all. When I came back from Europe, I said to the Secretary of War that an enlisted man of our Army has poorer protection than the enlisted man in any army with which we were asociated. It is true. A man could not be executed in the French Army by a commander in the field in this ruthless way. It was passed upon by the supreme authorities of the land.

I have already adverted to the fact that the report concludes, following Col. Wigmore's letter, as you remember, that if you loosen up on this system of discipline, as you call it, you are bound to have bolshevism. That is the bugaboo now. There will never be a bit of reform or a bit of progressive legislation proposed but that the people who insist on being static will label it bolshevism.

Senator CHAMBERLAIN. The only indication of bolshevism in the American Army that I have seen comes from the mouths of the men who have been unjustly punished in Europe, and they are very bitter at the treatment they received.

Mr. ANSELL. Of course, if it is as reactionary as I have said it is, and there ever should be bolshevism, I think logically we could attribute the bolshevistic spirit to the oppressive treatment. Now, the idea of Mr. Wigmore coming along, and in the spirit which this report adopts, saying that that is the way they have in bolshevist

armies, and that this will lead to bolshevism. Does anybody believe that bolshevism, or whatever else it is indicating lawlessness in Russia, is due to too much liberalism and too much democracy, to too high a regard upon the part of the officers of their Army for the enlisted man? Is bolshevism, this great upheaval, or whatever it is, traceable to an overdose of liberalism or is it, indeed, traceable to the fact that it is a break up of the old reactionary system that they have had there?

It is not a fair argument to come here and argue against the bill that if you require discipline to be regulated according to law, the consequence, must be bolshevism. It is one of those arguments ad hominem, and a foolish one at that.

I got a letter yesterday from a New York lawyer. It was in reply to a postal card I had sent out asking the American Bar Association would they please be careful, in passing upon the report of that bar association committee, so that the American bar might not be said to espouse the retention of this system, and this New York lawyer wrote a letter. He said, "Oh, I will admit that lawyers have a great influence; but it may not be in the direction you want it in. We have got bolshevism on every hand, and the whole country is lawless, and we have got to come out and show people, and if necessary we have got to hang them. There is going to be a terrible time, it is certain. That is the line of reform we want in this country, and more and more needed."

Well, that is his view of it. When I was discussing point No. 1 the other morning, I had started on showing this committee the spirit with which that revision of 1916 was undertaken. I had put in one exhibit, but I was switched off, as I have been very frequently—switched off of my own accord—to another subject, before I put in another exhibit, which I would like to do now. I think it is very brief. It is just some statements made by the Judge Advocate General and the Secretary of War before the committee, to show conclusively that they rejected absolutely the liberalization of this system at this time, as they still do.

I desire to thank this committee for their extreme patience in hearing me, and their extreme courtesy at all times. I have had a full and fair hearing, and I want to thank you for your interest and attention.

Senator LENROOT. We are very much obliged to you.

Senator CHAMBERLAIN. May I suggest the names of some other witnesses whom we would like to hear?

Senator LENROOT. Yes.

Senator CHAMBERLAIN. There is a gentleman here from Detroit, who served as an enlisted man through the war, and had some experience of court-martials. Can we hear him on Monday?

Senator LENROOT. Are you going away, Mr. Thomas?

Mr. THOMAS. I have been very anxious to go. I have been waiting over, Senator, in order to make my statement.

Senator LENROOT. On Tuesday, then, we will hear you.

Senator CHAMBERLAIN. There is also Col. Chantland, of the Department of Justice. Will you hear him?

Mr. ANSELL. Mr. Chantland is away, and will not be back for over a week.

Senator LENROOT. We will hear you, then, Mr. Thomas, on Tuesday at 10 o'clock.

Senator CHAMBERLAIN. Mr. Thomas, I would say, did not come here to testify. He was here in Washington on some business, and I met him and was talking to him. I thought the committee would be interested to hear him.

(Thereupon, at 12.30 o'clock p. m., the subcommittee adjourned until Tuesday, September 2, 1919, at 10.30 a. m.)

ESTABLISHMENT OF MILITARY JUSTICE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

FIRST SESSION

ON

S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

PART 3

Printed for the use of the Committee on Military Affairs

WASHINGTON
GOVERNMENT PRINTING OFFICE
1919

ESTABLISHMENT OF MILITARY JUSTICE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

FIRST SESSION

ON

S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

PART 4

Printed for the use of the Committee on Military Affairs

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1919

ESTABLISHMENT OF MILITARY JUSTICE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

FIRST SESSION

ON

S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

PART 5

Printed for the use of the Committee on Military Affairs

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1919

ESTABLISHMENT OF MILITARY JUSTICE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS
FIRST SESSION

ON

S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

PART 6

Printed for the use of the Committee on Military Affairs

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ESTABLISHMENT OF MILITARY JUSTICE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS
FIRST SESSION

ON

S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

PART 7

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ESTABLISHMENT OF MILITARY JUSTICE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS
FIRST SESSION

ON

S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

PART 8

Printed for the use of the Committee on Military Affairs

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1919

ESTABLISHMENT OF MILITARY JUSTICE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

FIRST SESSION

ON

S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

PART 9

Printed for the use of the Committee on Military Affairs

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ESTABLISHMENT OF MILITARY JUSTICE

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS UNITED STATES SENATE

SIXTY-SIXTH CONGRESS

FIRST SESSION

ON

S. 64

A BILL TO ESTABLISH MILITARY JUSTICE

PART 10

Printed for the use of the Committee on Military **Affairs**

WASHINGTON
GOVERNMENT PRINTING OFFICE
1919

66TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 940.

TO AMEND THE ARTICLES OF WAR.

MAY 7, 1920.—Referred to the House Calendar and ordered to be printed.

Mr. CRAGO, from the Committee on Military Affairs, submitted the following

REPORT.

[To accompany H. R. 13942.]

The Committee on Military Affairs, to whom was referred the bill (H. R. 13942) to amend section 1342 of the Revised Statutes of the United States, known as the Articles of War, and for other purposes, having considered the same, report thereon with a recommendation that it do pass with the following amendments:

Page 14, line 8, strike out the period and insert the following:

Provided further, That every person not subject to military law, who before any court-martial, military tribunal, or military board, or in connection with, or in relation to any proceedings or investigation before it or had under any of the provisions of this act, is guilty of any of the acts made punishable as offenses against public justice by any provision of chapter 6 of the act of March 4, 1909, entitled "An act to codify, revise, and amend the penal laws of the United States" (volume 35, United States Statutes at Large, page 1088), or any amendment thereof, shall be punished as therein provided.

Page 32, line 6, after the word "found" insert the word "not," so that the sentence will read "found not guilty."

THE COURT-MARTIAL CONTROVERSY.

During the late war, and since its close, there has been much controversy in the public press and in both branches of Congress regarding the system of military justice as administered in our armies. Many of the critics of the present system have overlooked the fact that the present Articles of War were enacted into law only four years ago. At that time a subcommittee of the Committee on Military Affairs of the House was considering a complete revision of the then existing Articles of War, with the intention of recommending to the House certain changes. Before these hearings were completed the Senate attached to the Army appropriation bill of that year what was then called a revision of the Articles of War, and these provisions were enacted into law.

No thorough consideration at that time could be given the matter, at least by the House, and as it was thought the adoption of the proposed revision would meet the requirements at that time it was enacted into law.

Since the close of the war attention has been frequently called to the fact that our present code is archaic and out of date; that we have not kept pace with other nations in such matters, and that we were going too far back into the past for our plan of administering military justice.

These arguments as to age, etc., have but little weight when we consider the fact that the fundamental principles upon which we base the law of our land, under which our civil population is governed, date back far beyond that of the so-called Articles of War.

However, the many, many instances of apparent injustice which have been brought to the attention of the American people have convinced us that some radical changes in the matter of administering military justice should be made. An investigation of many of the cases cited as showing unfairness in the administration of military justice in the past will disclose the fact that the personal element entered too largely into these cases.

In order to give to the Army a more modern interpretation of military justice, and furnish it with a medium by which more exact justice may be administered, your committee, having given this matter careful consideration, has presented this bill.

To persons who are interested in following this matter more in detail than it would be possible to give it in this report, we would recommend a reading of the hearings before a subcommittee of the Committee on Military Affairs of the United States Senate, Sixty-sixth Congress, first session, being hearings conducted on Senate 64, a bill to establish military justice, and also to the hearings held before a subcommittee of the Committee on Military Affairs of the House, held on May 4, 1920.

These hearings have been printed and are available for the use of persons desiring to use them.

In this connection it might not be amiss to remark that the bill here recommended for passage has the approval of the War Department and the representatives of organizations composed of men who have seen service in the late war, as evidenced by the testimony before our subcommittee of a member of the legislative committee of the American Legion.

Your attention is called especially to the following salient features of the revision proposed:

SALIENT FEATURES OF THE REVISION.

1. A charge must be preferred under oath, by any person subject to military law.
2. Speedy but thorough and impartial preliminary investigation will be had in all cases.
3. Under the proposed revisions commanding officers will be brought more frequently into personal contact with alleged offenders.
4. Disciplinary punishments, properly limited, are preferred to trial.

5. Neither trial nor punishment on trivial charges, no action by a court when disciplinary action is sufficient, no trial by either special or general court-martial when an inferior court can properly dispose of the case.
6. Junior officers made subject to disciplinary punishment as well as enlisted men.
7. Punishing power of summary courts reduced to one month, in order the sooner to return offenders to a duty status.
8. Summary and special courts' power of forfeiture reduced to two-thirds of soldier's monthly pay in order that funds for laundry, toilet necessaries, etc., may be available.
9. Maximum limitations of membership in court in special and general courts-martial removed, to prevent technical reversals in some cases; not to increase the size of courts, as quality is more important than quantity.
10. All members of the various courts to be the best available for the duty—age, training, and judicial temperament considered.
11. Law member of general courts-martial provided.
12. The right to counsel fully recognized. Defense counsel and assistant defense counsel, when needed, provided.
13. The oath of the trial judge advocate is changed to insert an allegation to faithfully and impartially perform his duty.
14. It provides for one peremptory challenge for each side, the law member, however, being subject to challenge only for cause.
15. Embodies in statutory form the existing practice requiring reference to a staff judge advocate for his action and advice before referring charges to a general court-martial or acting on the proceedings thereof.
16. Death sentence to require a unanimous vote of the court.
17. For convictions other than death, two-thirds vote instead of a majority vote required.
18. Acquittals to be announced by the court.
19. No reconsideration of acquittals, and no increase of sentence on revision or new trial.
20. Certain convictions, under regulations, to be announced by the court.
21. The proposed revision authorizes the President to prescribe limits of punishment in time of war as well as in time of peace.
22. Provides for an adequate legal review of all trials by general courts-martial and for effective appellate power.
23. Provides that persons not subject to military law, who commit acts in connection with any court-martial, made punishable by the provisions of chapter 6 of the act of March 4, 1909, United States Statutes at Large, shall be punished as provided in said act.

○

COURTS-MARTIAL

AMENDMENTS TO ARTICLES OF WAR

HEARING

BEFORE A

SPECIAL SUBCOMMITTEE OF THE COMMITTEE ON MILITARY AFFAIRS

HOUSE OF REPRESENTATIVES

SIXTY-SIXTH CONGRESS

SECOND SESSION

MAY 4, 1920

TESTIMONY OF

MAJ. GEN. E. H. CROWDER
BRIG. GEN. E. A. KREGER
LIEUT. COL. WM. C. RIGBY
HON. T. W. MILLER

WASHINGTON
GOVERNMENT PRINTING OFFICE
1920

179324

SUBCOMMITTEE ON MILITARY AFFAIRS.

THOMAS S. CRAGO, Pennsylvania, *Chairman.*

HARRY E. HULL, Iowa.
CHARLES C. KEARNS, Ohio.
JAMES W. WISE, Georgia.
THOMAS W. HARRISON, Virginia.

HOWARD F. SEDGWICK, *Clerk.*

COURTS-MARTIAL.

SUBCOMMITTEE OF THE
COMMITTEE ON MILITARY AFFAIRS,
HOUSE OF REPRESENTATIVES,
Tuesday, May 4, 1920.

The committee met at 10.30 o'clock a. m., Hon. Thomas S. Crago, presiding.

Mr. CRAGO. Gen. Crowder, this subcommittee of the Committee on Military Affairs was appointed to consider proposed revisions of the Articles of War, and we have met this morning to take up with you and the other persons present, who are interested in the revision of the Articles of War, the proposed revision as incorporated by the Senate in the Army reorganization bill, as they appear in that bill, beginning at page 169.

We will be glad to have any suggestions you would like to make in connection with the revision of the Articles of War, and particularly the Senate amendment added to the House bill for the reorganization of the Army, and any further suggestions you may have to make in connection with that subject.

STATEMENTS OF MAJ. GEN. ENOCH H. CROWDER, JUDGE ADVOCATE GENERAL, ACCOMPANIED BY BRIG. GEN. E. A. KREGER, ASSISTANT JUDGE ADVOCATE GENERAL, AND LIEUT. COL. WILLIAM C. RIGBY, OFFICE OF THE JUDGE ADVOCATE GENERAL.

Gen. CROWDER. Mr. Chairman, I suppose the committee has in mind the history of the Senate bill. It followed very long hearings held by a subcommittee of the Senate Committee on Military Affairs, consisting of Senator Warren, Senator Chamberlain, and Senator Lenroot. These hearings concluded in the latter part of November, 1919, and it was the understanding that the subcommittee, upon the reassembling of Congress on December 6 last, would make a study of the testimony and report a revision. That duty was not performed until quite recently, when Senator Chamberlain gave notice in the open session of the Senate that he would offer his bill, in the absence of any reported bill from the committee, as a rider to the Army reorganization bill. Whereupon the Senate subcommittee assembled hastily and in a session of an hour and a quarter as I am informed reported a revision of the Articles of War, which was presented to the full committee and indorsed favorably, and found its place upon the Army reorganization bill as a rider constituting section 2 of that bill.

I suppose, Mr. Chairman, you want to get at the very vitals of this revision in the most direct way possible.

Mr. CRAGO. That is our desire, General, and I think the easiest way to get at it, inasmuch as we have the bill before us, will be to confine ourselves as closely as we can to the articles as proposed in the Senate bill.

Gen. CROWDER. Yes. But I want to invite your attention to the three principal changes in the present law that have been made in this bill. The first is found in the provision made in respect of excessive sentences of courts-martial; the second is the provision for safeguarding the trial below against reversible error; and the third is the provision for an adequate appellate review for the detection of reversible error prior to the case being finally acted upon.

The provision in regard to excessive sentences is found in a single article, and a very brief one, article 45. If I can have your attention to that, I will make my statement.

Let me say, Mr. Chairman, when I joined the Army from West Point in 1881 there were no safeguards in the then existing code against excessive sentences by courts-martial, except that it was provided in the code that the death sentence should never be adjudged, except where it was expressly authorized. From that time, in 1881, for a period of 11 years Army courts-martial functioned without any guidance whatever as to the maximum punishment of offenses that remained punishable at the discretion of the court.

The situation was a bad one. There was a great lack of uniformity in sentences adjudged in normal peace-time conditions, where you would naturally expect some uniformity in punishment.

Congress responded to that situation in 1892 and passed a law which provided that in time of peace punishments adjudged by courts-martial for offenses for which the punishment lay within their discretion should never exceed a limit established by the President. That legislation was limited to times of peace.

In pursuance of that authority the President issued a maximum punishment order in which he specified offenses punishable at the discretion of the court and announced limits of punishment for each. There have been many revisions of the order, and all the revisions effective since 1911 I prepared. I remember very well the last one submitted to President Wilson. He returned it, asking if the punishments were not excessive, that in looking over the order certain punishments seemed to be harsh. I was able to reply that that order, like the preceding ones, did not prescribe limits of punishment in excess of those provided by the Federal Penal Code, which governs the civil courts. That is true of the maximum punishment order that was in force at the time this war broke out; but, of course, with the advent of war the statute ceased to operate, and courts-martial had a discretion as to punishments, in the exercise of which we have been furnished during the past year with many examples of what appeared to be excessive punishments.

Now, this revision comes along with a remedy by making the statute of 1892 applicable both in peace and in war. I must say to you, Mr. Chairman and gentlemen, in explanation of it, that the remedy has met with some opposition within the Army, and that opposition was more forcibly expressed by a civilian lawyer holding high command in the American Expeditionary Forces than by

any other who spoke on the subject. His illustration was a very forceful one. He said, "Take two divisions, fighting side by side on the front. In one of them straggling is a serious and frequent offense, while the other division has reached a state of discipline where straggling is a very rare offense." He said obviously in the former division we must have the deterrent effect of punishment and a higher sentence than in the division where the offense was comparatively unknown. He argued the difficulty and inadvisability of prescribing maximum punishment in time of war.

My answer to that is that this is an authorization to the President; that he need not go into the zone of combat in the exercise of the discretion proposed to be given him and prescribe limits of punishment. But there was no time during the progress of the World War he could not have exercised that authority and control as to the Army remaining in the United States, the quantum of punishment; that he might have found certain sections of the theater of war where it would have been safe to make those limits applicable, also in France or in Siberia. What you are doing here is to authorize him to establish maximum punishment in time of war; you do not command him to do so.

I do not know that there is anything I can say that will elucidate that subject further.

Mr. WISE. What was the reason for making it applicable heretofore in time of peace only?

Gen. CROWDER. I tried without success to get that information, and searched the Congressional Record of that time. I can not tell you whether it was a War Department proposition or not. It may have had congressional origin. I do not know. But my opinion has been always that it was safe to give the President this authority in time of war as well as in time of peace. I know of no other way to meet the situation.

Mr. WISE. Why should it be left to the President at all to fix the limits? Why should not they be fixed in the law itself?

Gen. CROWDER. The very reasons mentioned by Gen. O'Ryan, who is the officer to whom I referred and who was in command of the Twenty-seventh New York Division, would apply and furnish the answer to your question. How can Congress fix the limits of punishments that should govern on a battlefield, and with the same rigidity it fixes them in a statute operating in this country to fix punishments that should be adjudged by the civil courts?

Mr. WISE. I had in mind this fact, that our civil courts in practically all the States have a limit of punishment, and the judges in the different circuits do not always enforce the same punishments for the reasons you have given. In some cases they do not need to apply the limit of punishment, while in others they do. It is left to their discretion, within certain limits. Why should not that apply in this case?

Gen. CROWDER. The legislators who enacted those laws contemplated certain definite conditions of society within State limits, and I can see how a legislator could reach a reasonable conclusion as to maximum limits. But taking the exigencies of war, the situations produced in the different theaters of war, in the different zones of combat, it seems to me the legislative branch would hesitate to con-

stitute itself a judge, unless they fixed the limits so high there would be no protection.

Mr. WISE. Would not the President do that very thing? The argument you make is that different localities would require different principles. Would not the President fix a uniform maximum during the time of war?

Gen. CROWDER. He would not be required to under this legislation.

Mr. CRAGO. I think you will find that all our civil laws contemplate that the time might come when the civil courts would cease to function, and you would have to go to the next step in law, which would be the suspension of the civil administration of justice and the turning of it over to the Army.

Mr. WISE. That same rule applies to the Federal courts as well as to the State courts. It is not only a matter in connection with the State courts.

Mr. CRAGO. I was speaking of the civil courts. That would include both courts.

Mr. WISE. I do not quite see why the President would fix the maximum punishment at any more than it would be fixed in any Federal statute.

Mr. CRAGO. I think it contemplates something beyond the normal condition, and of course, the civil courts contemplate only a normal condition.

Gen. CROWDER. I wonder if you would be interested in seeing a copy of the maximum punishment order which is in force to-day. You can see how comprehensive it is. I have a copy of it here. [Producing copy of maximum punishment order.] That is the way the President has exercised his discretion in the past. He has heretofore established a uniform limit that is operative at all times and in all places.

Mr. HULL. I presume the President is always advised by the high command of the Army as to what that should be?

Gen. CROWDER. Yes. He has always received a revision from the War Department, accompanied by an explanatory memorandum.

Mr. HULL. I guess when those conditions arise he would undoubtedly consult the War Department?

Gen. CROWDER. That would be the natural way of doing it.

If the committee has all the information it cares to have on the general subject, there are some changes I would like to suggest.

Mr. CRAGO. I would like to ask you in a general way, whether the revision proposed in the Senate amendment meets with your approval?

Gen. CROWDER. Yes; in a general way, it does.

Mr. CRAGO. You regard those changes as a great improvement on our present code?

Gen. CROWDER. Yes. I will now ask your attention to the safeguards established by this revision against reversible error in the trial below. The last paragraph of article 8 reads as follows:

> The authority appointing a general court-martial shall detail as one of the members thereof a law member, who shall be an officer of the Judge Advocate General's Department, except that when an officer of that department is not available for the purpose the appointing authority shall detail instead an officer of some other branch of the service selected by the appointing authority as specially qualified to perform the duties of law member. The law member, in addition to his duties as a member, shall perform such other duties as the President may by regulations prescribe.

Then I will ask you to consider the related article, 31, which defines the law officer's duties, especially the last sentence in that section, which reads:

> The law member of the court, if any, or if there be no law member of the court, then the president, may rule in open court upon interlocutory questions, other than challenges, arising during the proceedings.

In my revision I had after that a proviso reading as follows:

> *Provided*, That if any member object to such ruling the court shall be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank.

Let me say with that proviso in the article we have the English provision on the same subject. They have a law member, but he is placed in an advisory relation to the court.

When the Senate committee struck out my proviso they gave the law member the authority to conclude the court upon all these interlocutory questions. When I noticed that, I set out, in a memorandum to Senator Lenroot, of the Senate subcommittee, the objections to vesting the law member with the power to conclude the court upon all inetrlocutory questions arising.

I submitted to him a list of interlocutory questions that might arise, and I will read that to the committee:

(*a*) Pleas:
1. To the competency or legality of the court;
2. To the regularity of the organization of the court;
3. To the jurisdiction, including that—
   (a)—of the subject matter of the offense,
   (b)—of the person of the accused;
4. Of the statute of limitations;
5. Of a former trial;
6. Of a former conviction;
7. Of a former acquittal;
8. Of a pardon, including that of (1) special pardon, (2) general pardon (3) constructive pardon.

(*b*) Questions of procedure arising upon any of these pleas, as for instance,
1. Whether evidence should be heard upon the plea;
2. Whether depositions may be received;
3. Whether an adjournment or a continuance should be had to permit time for the presentation of evidence thereon.

(*c*) Motions, as, for instance,
To quash the charge or the proceedings;
2. To strike out certain charges or specifications;
3. (By the trial judge advocate.) To amend the charges or specifications.
   (*a*) And, if such amendment be allowed. whether a motion by the accused for a continuance should be granted;
4. For a separate trial by one or more of the accused;
5. For a continuance (on any one of a multitude of grounds; as. for instance, to take depositions, because of surprise, because of the absence or illness of a witness or counsel, because of lack of time to prepare, or because of any other of the many reasons which may be urged as grounds for continuance.)

(*d*) Whether on any motion evidence should be heard, or a continuance or adjournment allowed for the purpose of procuring evidence.

(*e*) The order of the introduction of witnesses and other evidence.

(*f*) The recall of witnesses for further examination.

(*g*) Application of the rules of evidence; rulings upon objections to testimony, involving a great multitude of various kinds of questions, and not infrequently the virtual determination of the case,

(*h*) Whether expert witnesses should be admitted or called upon any question.
(*i*) Whether the court should view the premises where the offense is alleged to have been committed.
(*j*) Competency of witnesses; as, for instance, of children, witnesses alleged to be mentally incompetent, etc.
(*k*) Insanity of accused, whether the existence of mental disease or mental derangement on the part of the accused has become an issue in the trial in such sense that a medical board should be appointed under paragraph 219 of the Manual for Courts-Martial.
(*l*) Whether accused's confession should be received; whether accused should be required to submit to physical examination.
(*m*) Whether any argument or statement of counsel for the accused, or of the trial judge advocate, is improper.

On all such questions, and on all other questions of every kind arising at the trial prior to the final findings of guilt or innocence, except rulings on challenges, the decision of the law member or of the president of the court, as the case may be, will absolutely control the court, if article 31 be enacted into law in the form it passed the Senate.

Senator Lenroot, upon consideration, thought that perhaps that would be wrong, and said he would take up with the Senate conferees an amendment of the article which would limit the law member of the court ruling upon questions of evidence, and let him rule on these other questions subject to revisory action by a majority of the court. That was accomplished in an interview between the Senator and Col. Rigby, of my office. But Senator Lenroot said he would insist upon the right of the law member to conclude the court upon questions of the admissibility of evidence. I then went to see the Senator and asked his attention to the application of the article to an assumed case. I asked him to consider that we had the Fitz John Porter case to try over again, the charge being failure to support Pope at the second Battle of Bull Run. The law member selected as skilled in the law, but in the usual case without line experience, would find himself surrounded by a court composed of corps and division commanders designated to determine that issue. The evidence is all strategical or tactical, and action on the battlefield has to be interpreted. I asked him if in such a case the law member would not be embarrassed in ruling upon the relevancy of the evidence. He had to admit that he probably would be in many instances.

He then authorized me to draw a still further exception which he would undertake to present to the Senate conferees, reserving to the court the right to pass upon evidence of a strategical or tactical character or military questions. When we got that far I said, "What is there left? Would it not be better to take the whole step and place the law member in an advisory relation to the court, and require the court to enter of record any instance where they failed to follow the advice of the law member?" He said no, he would insist upon the law member having the right to conclude the court on all questions of admissibility of evidence other than those of a strategical or tactical character, or military questions.

My own opinion is that it would be better, in taking this step, to adopt the English precedent. I will be ready to take the full step if and when it is shown to be advisable. But my mind is not informed to the extent that I am willing to take the whole step now.

Mr. CRAGO. Right along that line, General, what is the necessity for a closed session of the court to pass on the admission of evidence and other questions provided for in a closed session? That is not the practice in civil courts, even in our most celebrated cases in civil courts.

Gen. CROWDER. The objections are found within the general field of the discipline of an army, the extent to which military relations might be impaired by publicity. I can think of no other reason for distinguishing our jurisprudence from the civil jurisprudence. But we provide here for all these rulings to be made by the law member in open court, and then when they undertake to revise that ruling they go into closed session. Do you know any other reason, Gen. Kreger?

Gen. KREGER. No; except that in a civil court when the bench is composed of two or more judges, all difference of opinion is usually disposed of in chambers and not in the presence of counsel and jury.

Mr. CRAGO. They are acting here in the dual capacity of court and jury. The only reason I have raised the question is because it is a matter of physical discomfort. It is somewhat of a nuisance to be constantly rising and clearing the room, and it throws about the proceedings a sort of an air of secrecy that is capable of so many interpretations, and we are trying to get away from that very thing.

Gen. KREGER. When you provide for rulings in open court except when they are challenged, you have got rid of that procedure.

Mr. CRAGO. The former practice, it seemed to me, was rather unnecessary, and in a great many cases it brought about an air of mystery that was capable of wrong construction.

Gen. CROWDER. This proviso reserves the power to the court-martial to overrule the law member. It says:

Provided, That unless such ruling be made by the law member of the court, if any member object thereto the court shall be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *And provided further*, That if any such ruling be made by the law member of the court upon any interlocutory question other than an objection to the admissibility of evidence offered during the trial, and any member object to the ruling, the court shall likewise be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in in rank: *Provided further, however*, That the phrase "objection to the admissibility of evidence offered during the trial," as used in the next preceding proviso hereof, shall not be construed to include questions as to the order of the introduction of witnesses or other evidence, nor of the recall of witnesses for further examination, nor as to whether expert witnesses shall be admitted or called upon any question, nor as to whether the court shall view the premises where an offense is alleged to have been committed, nor as to the competency of witnesses, as, for instance, of children, witnesses alleged to be mentally incompetent, and the like, nor as to the insanity of the accused, or whether the existence of mental disease or mental derangement on the part of the accused has become an issue in the trial, nor whether accused's confession shall be received in evidence, or accused required to submit to physical examination, nor whether any argument or statement of counsel for the accused or of the trial judge advocate is improper, nor any ruling in a case involving military strategy or tactics or correct military action; but, upon all those and similar questions arising on the trial, if any member object to any ruling of the law member, the court shall be cleared and closed and the question decided by majority vote of the members, in the manner aforesaid.

Mr. CRAGO. That reserves the tactical feature to the court.

Gen. CROWDER. Yes. That, I think, the Senate was ready, perhaps, to accept.

Mr. WISE. What is there left after that?

Gen. CROWDER. Suppose you are trying a common-law or statutory offense in which courts-martial have concurrent jurisdiction with civil courts, such as murder, manslaughter, embezzlement, larceny, and so forth. The law member would have that power, except in regard to the order of the introduction of testimony, the mental derangement of the accused, the competency of witnesses, and that sort of thing. But no military question would arise, perhaps, in a trial of a common-law or statutory offense. So that as to the extent that the jurisdiction is concurrent between civil and military courts to that extent there would be reserved to the law member considerable power.

Mr. WISE. There would be no appeal from his decision?

Gen. CROWDER. No.

Mr. WISE. Why should there not be?

Gen. CROWDER. Somebody has got to speak with finality in the trial. There is provided later on a review in the next subdivision that I will refer to. There is a final review in the Judge Advocate General's Office, where any error which he thinks may need correction may be corrected.

Now, gentlemen, I have meant in this statement, which I have tried to make, briefly to put before you the essentials of this important change in the Articles of War. I do not think of any omission on my part to state anything that is particularly relevant to the discussion.

Mr. CRAGO. Have you any other amendment to suggest?

Gen. CROWDER. Yes; I have a third, and perhaps the principal, reform to bring to your attention.

I will ask you to turn to article 50½, on page 96. Article 50½ establishes the appellate jurisdiction. Perhaps I should say that appellate review, except for jurisdictional error, as distinguished from reversible, prejudicial error was unknown to the military service prior to the commencement of this war, except in so far as the convening authority took cognizance of reversible error.

But I mean here in Washington there was no such thing as appellate review, except for jurisdictional error, that would lead to a decree of nullity. We had not gotten into this war very far until we saw that, with the new and inexperienced personnel administering military justice, there was going to be a great deal of reversible error. The necessity for appellate power was recognized by everybody. There was no question about it. We acted promptly, requesting legislation from Congress. That was done in January of 1918. But we did not get that legislation, and in default of it we established an appellate review by what has become known to the country as General Order No. 7.

The President, in that order, took the responsibility of saying to the convening authorities below that in certain classes of cases they should suspend the final orders of execution of sentences until the case could be reviewed for prejudicial error here; and to meet the situation in France he established a branch office of the Judge Advocate General in France for the review of cases, and required the same kind of suspension of the execution of certain classes of sentences—that is, the graver ones—until there could be an appellate review by the branch office.

The system has worked well, and the effort here is to put it into the form of statute law. A majority of the committee—in fact, I may say the entire committee—of the American Bar Association that has investigated the subject of the administration of military justice expressed themselves favorably toward the kind of appellate review we had established in orders, viz, a board of review advising the Judge Advocate General.

With that preliminary statement, Mr. Chairman, I want to take up article 50½, the first paragraph of which provides for just such a board of review; the second paragraph of which provides for those cases in which the President is the confirming authority or the reviewing authority, and which reach him under any circumstances.

The third paragraph is the one to which I want to call the especial attention of the committee so that I may explain the system as well as I can. Passing over the first part of that paragraph, which is a prohibition, we reach line 1, on page 197. From line 1 to line 8, on page 197, we have presented the case where this board of review, appointed in my office, holds, with the approval of the Judge Advocate General, that the record in a case in which the order of execution has been withheld under the provision of this paragraph is legally sufficient to support the findings and sentence; and in that case it is provided that "The Judge Advocate General shall so advise the reviewing or confirming authority from whom the record was received, who may thereupon order the execution of the sentence." This is the case where the board of review, in concurrence with the Judge Advocate General—perhaps I should put it in just the contrary way—where the Judge Advocate General in concurrence with the board of review finds the proceedings regular; that is, that the case is free from reversible error. Without referring that case to the Secretary of War or the President he returns it to the reviewing authority for the execution of the sentence. That is point No. 1.

Point No. 2 provides for the case where there is a finding by the Judge Advocate General in concurrence with the board of review of insufficiency in the record. The provision reads as follows, commencing on line 8, page 197:

> When in a case in which the order of execution has been withheld under the provisions of this paragraph, the board of review holds the records of trial legally insufficient to support the findings or sentence, either in whole or in part, or errors of law have been committed substantially affecting the rights of the accused, and the Judge Advocate General concurs in such holding of the board of review, such findings and sentence shall be vacated and the record shall be transmitted through the proper channels to the convening authority for a rehearing or such other action as may be proper.

In this case, as in the first one, you have the board of review acting in concurrence with the Judge Advocate General, and in both cases review by the Secretary of War or the President is precluded.

That brings us to the third class of cases. It is the case where the Judge Advocate General "shall not concur in the holding of the board of review, the Judge Advocate General shall forward all the papers in the case, including the opinion of the board of review and his dissent therefrom, directly to the Secretary of War for the action of the President, who may confirm the action of the reviewing authority or confirming authority below, in whole or in part, with or

without remission, mitigation, or commutation, or may disapprove, in whole or in part, any finding of guilty and may disapprove or vacate the sentence, in whole or in part."

As to this third class of cases, the revisory power of the President and Secretary is preserved intact.

The important thing to remember is this: That in the first two classes of cases the revising power of the President, through the Secretary of War, is not preserved intact. I am not responsible for that change. That was put in by the Senate committee. I had recommended the President's revisory action in every case.

My presentation is complete with this statement: That the bills that have been before the country have sought to civilianize military justice, but here is a provision which destroys the civilian supervision which is possible through the President or Secretary of War and turns over the discipline of the Army in this large class of cases to the Army itself.

Mr. CRAGO. Are you going to suggest an amendment to that?

Gen. CROWDER. No; and for this purpose: I went into conference with the Secretary of War on the subject, and he authorized me to say to the committee that he was willing to trust the Army of the United States with its own discipline and to be shut off from this revisory action in the two classes of cases I have mentioned, but that I owed it to the committee to be frank with them and state just what the article accomplishes. My individual opinion is this: I have always hesitated to erect within the Military Establishment an autonomous jurisdiction that would be beyond the revision of the constitutional Commander in Chief of the Army. I know I am in the attitude, when I say that, of resisting a grant of authority which would greatly magnify the importance of my office. I told the Senate committee I was not going to object to this because it puts me very largely in control of the discipline of the Army in so far as the discipline of the Army is kept up through the agency of courts-martial.

Mr. CRAGO. Would it, as a matter of fact, preclude the President, who is the constitutitonal Commander in Chief of the Army and the Navy, from taking whatever action he might think proper in reference to any of these cases, where he initiated the action, calling for review?

Gen. CROWDER. No; and I suspect the President would not be without some resource in cases which he did not initiate, because if the Judge Advocate General pursued an obstructive course it would be easy to put him on waiting orders. I presume the President would find some way of meeting the situation.

Mr. WISE. Would not the President hesitate to do that thing?

Gen. CROWDER. I think probably he would. It would be a good deal like the old story that is told about Gen. Grant, who threatened to get a new comptroller who would pass some vouchers he wanted passed. But he never exercised the authority to dismiss one comptroller and appoint another for such a reason.

Mr. CRAGO. I recall reading of an incident in connection with President Lincoln, when he reversed one of the courts-martial of his time when they tried some man on the charge of embezzling $100,000 and found him guilty of embezzling $7,500, and the President wiped out the whole proceedings.

Gen. CROWDER. If you accept the idea in the Senate bill making this considerable delegation of authority to the Judge Advocate General when he is in accordance with the board of review, there will be necessary some revision of the language which does not disturb the idea but which is necessary to express it in legal form.

Mr. WISE. So far as I am concerned, I agree with the point of view of giving that authority to the Judge Advocate General and the board of review, but I do not agree with the proposition to make it final. I think in 90 per cent of the cases that will be the end of it.

Gen. CROWDER. I asked Senator Lenroot if he would be willing to give a sort of military certiorari, the President upon being advised of some case of great importance, which might be a case on a par with the Fitz John Porter case, would issue an order to the Judge Advocate General that, irrespective of the conclusions he had reached in the case, he would certify up the proceedings. But he said this he would not do.

Mr. WISE. Something that would give authority such as we have in all courts for final review.

Gen. CROWDER. Yes. Those are the three principal things I wanted to bring to the attention of the committee. When you have functioned on them, you have functioned on what is really important.

But there are some amendments to specific articles made necessary by this fact. The Senate amendment, in a brief session, tacked this provision on to the pending reorganization bill, which changed the organization of the Army to a very considerable extent and introduced new terminology, and without any attempt to conform the terminology of these articles to the terminology of the pending bill. Our task is to report the verbal changes necessary to accommodate one act to the other, and I want to take up a number of articles which illustrate the necessity for that. It is really the kind of work that a committee on style would do.

Mr. CRAGO. We will be glad to have you do that, and put it in a form which will conform to the proposed reorganization legislation.

Gen. CROWDER. Some of the principal changes in substance I will ask Gen. Kreger to take up with you.

Mr. WISE. I would like to ask Gen. Crowder one question in reference to this section. Take the first paragraph. Would that limit you or the board of review purely to the legal proposition in a case, or would they have the right to review the facts?

Gen. CROWDER. You are answered from the text. When the Judge Advocate General, in concurrence with the board of review, "holds the record of trial legally insufficient"—for what—"to support the findings or sentence, either in whole or in part, or errors of law have been committed substantially affecting the rights of the accused." Under that provision he would certainly consider the evidence, and if he found it legally insufficient to support the findings and sentence he would have a corrective power there.

Mr. WISE. The first part reads: "When the board of review, with the approval of the Judge Advocate General, holds the record of a case in which the order of execution has been withheld under the provisions of this paragraph legally sufficient to support the findings and sentence," then execution shall proceed.

Gen. CROWDER. That is the first part of it.

Mr. WISE. I know in civil cases our supreme courts very often have a proposition before them, and they say there is enough evidence to support the findings, but if they had any authority to review the facts they would not find from the evidence what the jury did find. Suppose the board of review did not believe a man was guilty, but there was enough evidence to warrant the findings?

Gen. CROWDER. I raised that precise point with Senator Lenroot, and he said he thought it would be encumbent upon the board of review and the Judge Advocate General to respect the theory that governed in civil courts of appellate jurisdiction, namely, that they would not disturb a finding of facts below except in the case of absence of proof as to some essential of the offense.

Mr. WISE. That is the rule in civil courts—if there is no evidence to sustain the finding, they will reverse it.

Gen. CROWDER. Then I said to him, "It is going to be very difficult, because if there is any system of jurisprudence which more than another needs a review of the evidence, it is, perhaps, the court-martial system, because of the haste with which evidence is taken." And I want to say to you I have reviewed many cases at the request of Members of Congress, and the familiar ground which they urge is that the evidence did not reasonably support the findings. They are going to be very much disappointed when I tell them that a law has been passed which requires me to respect the findings below.

Mr. WISE. Would you object to an amendment which would give the board of review that authority?

Gen. CROWDER. I would not; but I know that there would be very determined opposition to it on the other side.

Mr. CRAGO. Mr. Casey, of Pennsylvania, was here a while ago, and this is the proposition he wanted to submit to you, whether or not it was possible in the Articles of War to provide some rule which would meet a case like this. He had a case where the boys in one of the companies from his district had intrusted several hundred dollars to the captain of their company. He had it for several months, and on the ship coming home the boys, being a little suspicious, demanded their money, and he gave them a check on a bank in one of the southern cities. The captain was mustered out of service and given an honorable discharge. The boys were mustered out before the check came back marked "No funds." That captain has defrauded those boys to the extent of several hundred dollars, and he is walking around with an honorable discharge from the United States service. Of course, the Government has a right to protect itself from anything the captain owes the Government. It would not fall within the province of the Articles of War to provide for a remedy in a case of that kind?

Gen. CROWDER. No. The boys want to be protected against the loss they had sustained.

Mr. CRAGO. Yes; but what Mr. Casey was after was some provision by which it would be impossible for an officer who, of course, gains the confidence of his men and is intrusted with valuable property, who is mustered out of the service and has a clean bill of health, as it were, and an honorable discharge from the United States Army and who at the same time has defrauded the members of his company.

Gen. CROWDER. There has been some protection extended to the Government against an act of that kind in the old Articles of War, which made persons who had committed frauds against the Government which were undiscovered during the period of their service liable to trial by court-martial for that offense for a period of two years after discharge.

I concede that the power of Congress is just as broad in the protection of the individual rights of soldiers as it is in protecting the Government Treasury, and I doubt whether the authority could be questioned if it exercised it to enact legislation of that character in the class of cases you have brought to my attention. The usual protection, where officers are charged by law with the custody of funds, is to require a bond, and to have the bond large enough to cover the amount of money in his possession.

Mr. CRAGO. There could be some regulation by which every officer would be bonded to a certain extent, to account for all funds in his hands, not only those belonging to the Government but those belonging to the men in his command.

Gen. CROWDER. I do not know that that could be done by authority or regulations alone, but it could be done by authority of law.

Mr. CRAGO. I just wanted to know whether we could pass legislation which would authorize a regulation of that sort. I merely brought the matter up because I know Mr. Casey wanted to get the opinion of the General on that subject.

Gen. CROWDER. I think, Mr. Chairman, if we commence at the beginning of the articles and turn to certain pages we can make better progress in that way by inviting your attention to specific amendments, and I will ask Gen. Kreger to take those matters up with you now.

Gen. KREGER. What I have to mention, Mr. Chairman, relates to comparatively unimportant details. I want to refer first to page 170, subsection (a) of article 2. Subsection (a) provides that all officers and soldiers in the Regular Army of the United States shall be included among those subject to the Articles of War.

At the top of the same page the words "officer" and "soldier" are defined in such a way as not to include certain personnel mentioned in the pending reorganization bill, namely, members of the Army Nurse Corps, warrant officers, band leaders, Army field clerks, and field clerks, Quartermaster Corps.

Mr. CRAGO. That is one of the changes Gen. Crowder called attention to.

Gen. KREGER. That personnel should also be mentioned in article 14. In articles 47 and 49 certain powers incident to the power to approve and the power to confirm are mentioned. In view of the proposed statutory provision in case of appeal, there should be added to each article a paragraph (*c*), substantially to the following effect:

(*c*) The power to remand a case for rehearing under the provisions of article 50½.

On page 206, article 65, one of the punitive articles which penalizes insubordinate conduct toward a noncommissioned officer, in view of the provision for the new grade of warrant officer, there ought to be included language that would cover warrant officers.

For the same reason that certain additional personnel was specially mentioned in article 2. such personnel should be specially mentioned in article 68, page 207.

Those are the particular items Gen. Crowder asked me to mention.

Col. RIGBY. In connection with article 14 this is one of the suggestions to which Senator Lenroot, on behalf of the Senate committee, has agreed. The Senate committee changed the form of the punishing power of the summary court-martial, as stated in article 14 of the revision submitted by the Judge Advocate General, by making it mandatory, and therefore exclusive, in form, instead of negative, as it had been drawn by the Judge Advocate General, the result being that the court would have no power to impose any punishment under any circumstances unless it was within the letter of the language of the grant of power there stated. For instance, such a minor punishment as extra guard duty could not be awarded.

On calling that to Senator Lenroot's attention, he agreed to throw it back into the negative form, to make it read, from line 19 to line 25, page 176, "Summary courts shall not have power to adjudge confinement for more than one month, restriction to limits for more than three months, or forfeiture or detention of more than two-thirds of one month's pay."

Then, in connection with article 18, on page 178, relative to challenges the Senate committee, again departing from the recommendation of The Judge Advocate General, provided, in lines 9 and 10, page 178, that each side shall be entitled to one peremptory challenge. In providing that, they apparently forgot that that would allow a peremptory challenge of the law member, and might remove him from membership on the court simply on the whim of either side. So Senator Lenroot has consented, so far as he—and he thinks the Senate committee—are concerned, to add to that, at the end of line 10, "But the law member of the court shall not be challenged except for cause." Then the next change is in article 21, at the end of article 21, lines 19 and 20, on page 180: Article 21 being the article which provides that "When an accused arraigned before a court-martial fails or refuses to plead or answers foreign to the purpose," etc. The Senate committee, departing from The Judge Advocate General's language, provided that in such a case as that the court shall enter a plea of "not guilty" and shall thereupon proceed accordingly.

But, upon its being called to Senator Lenroot's attention that the court might forget to put the formal entry of the plea of "not guilty" upon the record, and thereby require disapproval of an otherwise perfectly proper sentence, he suggested that the language be changed to read as follows: "The court shall proceed to trial and judgment as if he had pleaded not guilty," which is the present language of the corresponding article of war.

Gen. CROWDER. I would like to make an observation, interrupting Col. Rigby for a moment. In an early case decided by the Supreme Court of the United States, Dynes *v.* Hoover (20 How., 65, p. 80), the court held that to give effect to the sentence of a court-martial all of the statutory regulations governing its proceedings must be complied with. Here is a statutory regulation governing the procedure, and if there should be an inadvertance upon the part of the court, in failing to incorporate a requirement of that character, we might have to disapprove the finding; so, if it can be stated that they shall proceed as if a plea of not guilty had been entered, we will avoid the chance for an error which is classified by the Supreme

Court of the United States as a jurisdictional error. Perhaps in other courts, other than a military court—courts of general jurisdiction—that would be regarded as a prejudicial error, and not a jurisdictional error.

Mr. CRAGO. That would be more in accordance with the facts in the case, anyway, unless a court under this provision would say by direction of the court, or the court enters a plea of not guilty, you would have no way of distinguishing between whether the man himself pleaded not guilty or whether the court pleaded that for him. By doing it in the other way the record would show the fact.

Col. RIGBY. The next change is in article 27, page 183, line 17. It is a mere clerical correction, where the word "defendant" has been inadvertently used by the Senate committee. That is an unusual word in a military pleading. The word should be "accused" to have it conform with the language of the other articles.

Then, on pages 184 and 185, in article 30, there is a suggested change in line 1 of page 185. The Senate committee put in the words "their advice or," not quite understanding, perhaps, the reason why those words had not been put into the Judge Advocate General's draft. That is the article that provides that whenever a court is in closed session the trial judge advocate and the assistant judge advocate, if any, shall withdraw. The Judge Advocate General's draft had provided this language: "and when 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." The Senate committee put in the words "their legal advice or."

I called to Senator Lenroot's attention the fact that that would seem to be unfair to the counsel for the accused, that the legal advice of the prosecutor could be asked for; and that, if that were to be done, the court ought to be allowed to ask for the legal advice of the counsel for the accused, too. So he agreed to strike out the words "their legal advice or."

Then there is a small change in article 35, on page 186. In line 15 the word "trial" should be inserted before the words "judge advocate," simply to follow the usual phraseology adopted in this revision, in order to distinguish the trial judge advocate from the staff judge advocate. Then in line 20 the word "finally" should be struck out. Senator Lenroot for himself and for the Senate committee, so far as he could represent them, agrees to that, because the action by the reviewing authority below will not be final action at all, since you are establishing an appellate review, and we do not want the record to wait until final action before being forwarded, and so the word "finally," in line 20, should go out.

Then in article 52, on page 201, there is a very small amendment I want to submit. The use of the word "dishonorable," the first word in line 15 on page 201, is a misprint. The word should be "honorable." It shall read, "The death or honorable discharge of a person under a suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence."

Then in article 56, pages 202 and 203, in order to conform to the present method in use in the Army since June, 1918, under which the old bimonthly muster of troops has been discontinued and reports

are made to The Adjutant General direct by the personnel officers, the first sentence of that article should be omitted and the title should be changed by omitting the words "muster rolls," in line 15, on page 202, and then the three sentences, beginning with the word "At," in line 15, on page 202, and ending with the word "admit," on line 4, on page 203, should be omitted. Those are the sentences which make provision for the old muster plan, which is no longer in use.

Mr. CRAGO. That article, then, would begin with the words "Any officer who knowingly makes," on line 4, page 203?

Col. RIGBY. Yes. Then, in article 57, page 203, for the same reason, the first sentence should be omitted, down to and including the word "same," the first word in line 20, on page 203.

I think that is everything I have to suggest, except the changes which Gen. Crowder spoke about in article 50½. I have the form to present, clarifying the apparent intent of the Senate committee as to article 50½. That reads as follows:

ART. 50½. REVIEW; REHEARING.—The Judge Advocate General shall constitute, in his office, a board of review consisting of not less than three officers of the Judge Advocate General's Department.

Before any record of trial in which there has been adjudged a sentence requiring approval or confirmation by the President under the provisions of article 46, (or) article 48, or article 51 is submitted to the President, such record shall be examined by the board of review. The board shall submit its opinion, in writing, to the Judge Advocate General, who shall transmit the record and the board's opinion, with his recommendations, directly to the Secretary of War for the action of the President.

Except as herein provided, no authority shall order the execution of any other (*a*) sentence of a general court-martial involving the penalty of death, dismissal not suspended, dishonorable discharge not suspended, or confinement in a penitentiary, unless and until the board of review shall, with the approval of the Judge Advocate General, have held the record of trial upon which such sentence is based legally sufficient to support the sentence; except that the proper reviewing or confirming authority may upon his approval of a sentence involving dishonorable discharge or confinement in a penitentiary order its execution if it is based solely upon findings of guilty of a charge or charges and a specification or specifications to which the accused has pleaded guilty.

When the board of review, with the approval of the Judge Advocate General, holds the record in a case in which the order of execution has been withheld under the provisions of this paragraph legally sufficient to support the findings and sentence, the Judge Advocate General shall so advise the reviewing or confirming authority from whom the record was received, who may thereupon order the execution of the sentence. When, in a case in which the order of execution has been withheld under the provisions of this paragraph, the board of review holds the record of trial legally insufficient to support the findings or sentence, either in whole or in part, or errors of law have been committed (substantially) injuriously affecting the substantial rights of the accused, and the Judge Advocate General concurs in such holding of the board of review, such findings and sentence shall be vacated in whole or in part in accord with such holding and the recommendations of the Judge Advocate General thereon, and the record shall be transmitted through the proper channels to the convening authority for a rehearing or such other action as may be proper. In the event that the Judge Advocate General shall not concur in the holding of the board of review (or if the board of review shall confirm the findings or sentence), the Judge Advocate General shall forward all the papers in the case, including the opinion of the board of review and his own (concurrence therein or) dissent therefrom, directly to the Secretary of War for the action of the President, who may confirm the action of the reviewing authority or confirming authority below, in whole or in part, with or without remission, mitigation, or commutation, or may disapprove, in whole or in part, any finding of guilty, and may disapprove or vacate the sentence, in whole or in part.

When the President or any reviewing or confirming authority disapproves or vacates a sentence the execution of which has not theretofore been duly ordered, he may authorize or direct a rehearing. Such rehearing shall take place before a court composed of officers not members of the court which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court, and no sentence in excess of or more severe than the original sentence shall be enforced unless the sentence be based upon a finding of guilty of an offense not considered upon the merits in the original proceeding; *Provided*, That such rehearing shall be had in all cases where a finding and sentence have been vacated by reason of the action of the board of review approved by the Judge Advocate General holding the record of trial legally insufficient to support the findings or sentence, or that errors of law have been committed substantially affecting the rights of the accused, unless, in accord with such action, and the recommendations of the Judge Advocate General thereon, the findings or sentence are approved in part only, or the record is returned for revision, or unless the case is dismissed by order of the reviewing or confirming authority. After any such rehearing, on the order of the President, the record of trial shall, after examination by the board of review, be transmitted by the Judge Advocate General, with the board's opinion and his recommendations, directly to the Secretary of War for the action of the President.

STATEMENT OF HON. THOMAS W. MILLER, OF WILMINGTON, DEL., CHAIRMAN NATIONAL LEGISLATIVE COMMITTEE OF THE AMERICAN LEGION, ACCOMPANIED BY MR. JOHN THOMAS TAYLOR, WASHINGTON, D. C., AND MR. KENNETH McRAE, OF NEBRASKA, MEMBERS OF THE NATIONAL LEGISLATIVE COMMITTEE AMERICAN LEGION.

Mr. MILLER. Mr. Chairman and gentlemen, the American Legion believes that legislation should be passed immediately by the Congress changing the Articles of War and the courts-martial regulations of the United States Army. The legislation introduced by Senator Chamberlain, of Oregon, and Congressman Royal C. Johnson, of South Dakota, known as the Chamberlain-Johnson bill, approaches nearest to the ideas of the American Legion, and we heartily indorse that bill or that amendment. The Minneapolis convention of the American Legion adopted resolutions urging the immediate revision of the Articles of War, and the following resolution was unanimously adopted:

Resolved, That the American Legion urges the immediate revision of the Articles of War and court-martial laws of the United States.

This resolution was adopted by our convention in Minneapolis on November 13, 1919. The legislation you have under consideration to-day is the Chamberlain-Johnson bill in practically the form in which it was introduced, and this is an amendment to the Army reorganization bill which the conferees of the House and Senate are now considering.

The representatives of the American Legion were greatly interested in hearing the Judge Advocate General of the Army, Gen. Crowder, and his assistants, who have just testified. It is true, they have suggested a number of changes in the bill, but they have, as far as we can see, in no way disapproved the general principle, namely, that there should be a revision both of the Articles of War and the court-martial regulations. The changes suggested by them are, as we take it, merely administrative, and we are very glad to see that that branch of the War Department practically has approved, in principle, the changes suggested by the so-called Chamberlain-Johnson amendment.

We want to call attention briefly to the kind of treatment given certain classes of men in the Military Establishment, the treatment meted out to conscientions objectors by the direction of the Secretary of War personally by which those conscientious objectors were given practically what amounted to honorable discharges and pay as soldiers, while they were undergoing confinement or objecting to service, and on the other hand the treatment of many American soldiers who had fine battle records and who had faced the enemy in action, and who after the armistice infringed certain regulations and were sent to military prisons and were then discharged dishonorably and forfeited their pay. That is a high point of the whole system that not only the men who have been in the service object to, but the American people object to, and it is all coming out now.

During the war there were approximately 325,000 summary courts-martial and 25,000 general courts-martial. We think that such a number of men running afoul of the regulations to that extent shows that a change must me made in the Articles of War and in the court-martial regulations because surely, gentlemen, a system that practically brings 10 per cent of your force during a war before a court is obviously wrong.

Mr. HULL. How many did you say?

Mr. MILLER. There were approximately 325,000 summary court cases and 25,000 general court cases.

Mr. CRAGO. By the average individual the summary court is not really understood. That is composed of one officer who is more of a disciplinarian than anything else, and many of those cases were simply minor infractions of the regulations and not of the kind like a great number of the general courts-martial cases. Those summary court cases are the ones where the number is so high.

Mr. MILLER. It has been said that this legislation is not germane to such a bill. I am not going to make a parliamentary argument, but simply remind you that certain of the Articles of War which are to-day authorized by law are on the statute books because they were put on as riders to the military and other appropriation bills, usually. Surely then a bill which has for its purpose the reorganization of the Army, carrying out the lessons learned in this war, should contain among its provisions a reorganization of the law under which discipline is maintained in the Army.

Mr. CRAGO. We have already crossed that bridge. While under the parliamentary situation in the House it was ruled out of order at the time, it is now in order.

Mr. MILLER. It is now in the reorganization bill as it passed the Senate and is now in conference.

Mr. Chairman, 92 per cent of the charges preferred during the war were tried, and 89½ per cent of the men tried were convicted. The records shows that for all offenses, including the most trivial, the average sentence to confinement was upward of seven years.

Mr. HULL. Have you any figures showing the discrepancy, if there was any, between the National Army and certain National Guard units which went through the war under their regular officers?

Mr. MILLER. No, sir; I have not.

Mr. CRAGO. You will find in the hearings before the Senate committee some reference to that situation. Gen. O'Ryan told us the other day of the very few he had in his division.

Mr. MILLER. It was my privilege to serve from the grade of private up to the rank at which I was discharged, and I was in two divisions, the Twenty-ninth, a National Guard division, and the Seventy-ninth, a National Army division, and I can substantiate what Gen. O'Ryan has said.

Mr. HULL. Col. Chipperfield, of the Thirty-third Division, told members of the Military Committee of the House, on their way home from France, that there had been very few cases in that division.

Mr. WISE. I was interested in your statement of the large number of general courts-martial cases. Of course, the summary courts-martial are simply disciplinary. In reference to the number of general court-martial cases, which amounted to about 25,000, how does that number compare with the number of general courts-martial in other wars, taking into consideration the number of men engaged in the wars?

Mr. MILLER. I can not answer that authentically, Mr. Wise. But, in so far as the summary courts-martial is concerned, you can not make too light of it——

Mr. WISE (interposing). I had no intention of making light of it.

Mr. MILLER (continuing). Because a man who goes through the mill of a summary court is ofttimes started on the wrong road by the treatment he has received there.

Mr. MILLER. Would not that depend on the officer who holds the court? The officer holding the summary court would hear the evidence, and he could either punish the man or not punish him. What percentage of those cases involved sentences?

Mr. MILLER. A lot of the miscarriage of justice in the summary court is due to the point you have referred to. But this measure provides that officers shall be picked and selected who have a judicial temperament—who have at least some of the milk of human kindness in them. You can find plenty of such officers qualified. Our court-martial system and our Articles of War were inherited from the old British code in effect at the time of the Revolution, and that was a close derivative of the articles of war of the ancient Romans. Our allies—France, Italy, and Belgium—have completely modernized their military court-martial systems within the past 75 years, and England has made many changes in this direction. But the United States was as unprepared to carry out military justice toward the men in the Army as it was to carry on a war in 1917. In other words, we were as unprepared in that line as we were in other lines.

Mr. CRAGO. I would like to have the record show at this point the exact situation we were in. In 1917, early in the year, a subcommittee of this committee was appointed to redraft the Articles of War. Congressman Gordon, of Ohio, was chairman of that subcommittee, and I was a member of that subcommittee. We had started to hold hearings, taking up the Articles of War paragraph by paragraph, and we had Gen. Crowder before us for several days, when all of a sudden, without any consideration by either House, Senator Chamberlain and some of those associated with him on the other side, attached to the Army appropriation bill what they claimed was a modern revision of the Articles of War, and the work in really revising the Articles of War was stopped by that sudden action of the Senate. So it was the Articles of War adopted as a

rider on the appropriation bill at that time under which we waged this war. That is the exact situation as it occurred.

Mr. MILLER. Mr. Chairman, my statement is merely a general one, because we feel so encouraged by the passage by the Senate of the Chamberlin-Johnson amendment and its favorable consideration by your subcommittee that all we ask of you, as the representative of a large number of ex-service men, is that you recommend to your conferees that this be incuded in the bill as agreed upon by the conferees. If the revision of the court-martial laws and regulations should come about as provided for in this bill, it will not result in the letting down of discipline nor destroy the efficiency of the Army, as has been maintained; but, on the other hand, it will increase the morale and the confidence of the private soldier and the morale and confidence of the private soldier in his officers, and the treatment he is going to get from them is as essential as any part of his military training and discipline, because if you do not have the private soldier in that frame of mind you are going to lose your fighting and battle efficiency.

Mr. HULL. As I understand it, you have reviewed the Articles of War as proposed here, and you agree that they are all right?

Mr. MILLER. We agree that, representing the American Legion, we are in thorough accord with this amendment, and merely want to come before you formally and tell you that we are in favor of this proposed legislation.

Mr. HULL. Have you any objection to any of the changes proposed by Gen. Crowder?

Mr. MILLER. So far as the changes suggested by him are concerned we have no objection to them. We realize that they are largely administrative, and we are very glad to know by his testimony and that of his assistants given here this morning that they have agreed to the changes proposed in the amendment.

Mr. WISE. What do you think of the proposition discussed by Gen. Crowder in regard to the final power being taken away from the Secretary of War and the President to review these cases?

Mr. MILLER. As Col. Crago stated, the President is the constitutional Commander in Chief of the Army and the Navy, and as such he has the final authority anyway. I was rather nonplused at the time to understand just why the Judge Advocate General's Department should be holding up their hands and saying they did not want this proposition; but knowing Gen. Crowder to be the man that he is, we merely thought he wanted that change in article 50½ so as to round out the administrative features of the bill.

Mr. HULL. That really is the crux of the whole situation?

Mr. MILLER. Yes. Following Mr. Wise's question, it is well known that when the President and the Secretary of War act on any of these cases——

Mr. WISE (interposing). But they will not act when this becomes law.

Mr. MILLER. I know; but it is merely practically what the Judge Advocate General says it is, and it is sent up to him, anyway.

Mr. WISE. If somebody who is interested finds that an injustice has been done, they could still have a hearing before a civil authority, such as the Secretary of War or the President.

Mr. HULL. But that is one of the dangers. That means that the man who knows how to get hold of somebody up here may get justice, and the man who does not realize that he has any chance at all will not have that.

Mr. CRAGO. It is open to the objection, of course, that it brings in political influence.

Mr. HULL. I have no objection to the political influence, because I think they are strong enough to resist that. But there are classes of cases in which the men never realize that they have any one in Congress to whom they can appeal.

Mr. MILLER. If you will favorably report this amendment, it will be a most cheering word to hundreds of thousands of men in the ranks, men who were in this war and who want to see some change made so the American soldier will not have to undergo what some of them had to undergo during this war.

Mr. CRAGO. I think you can assure those men that the legislation will be enacted into law in a short time.

Mr. MILLER. That is very fine. We thank you very much, Mr. Chairman.

Mr. CRAGO. We are very glad to have had you here this morning.

(Thereupon, the subcommittee adjourned.)

APRIL 27, 1920.

Memorandum for Senator Lenroot:

Subject: Revision of Articles of War, article 31 (H. R. 12775, as passed by the Senate April 20, 1920, p. 185, lines 5–14.

1. The committee amendments, adopted by the Senate, follow, as to article 31, the revision proposed by the Judge Advocate General, except that the following important proviso at the end of the article is omitted:

"*Provided*, That if any member object to such ruling the court shall be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank."

2. The purpose of article 31, as drafted by the Judge Advocate General, taken in connection with the proposed change in article 8 (adopted by the Senate), providing for a law member of general courts-marial, was to constitute such law member an impartial legal adviser to the court, with advisory powers only, like the law member of the British field geneal court-martial. The purpose was stated in the "Introductory Comment" to the "Comparative Print" of the revision, as submitted to the committee by the Judge Advocate General last December, as follows:

"VIII. It is as necessary to establish safeguards against reversible error in the trial below as in the appellate review above. This is accomplished in the revision herewith submitted by the detail to the court of a law member with advisory powers in respect of all questions of law that arise in the progress of the trial, following the English precedent. Out of deference to the preceding principle, this revision rejects the theory of the pending bill (S. 64) that a court judge advocate should be appointed with full power to rule upon affidavits of prejudice, challenges, admissibility, and rejection of evidence—in short, all law questions arising in the progress of the trial, and also with revisory power over the court's findings and absolute power to sentence."

3. The Senate's omission of the important final proviso from article 31, as drafted by the Judge Advocate General, revolutionizes the character of the functions intended to be assigned to the law member of the court and converts him from an adviser to the court into a judge, clothed with power and authority to control the court by his decisions on all questions except rulings on challenges and findings and sentences; thus investing him with powers wholly different from those of the law member of the British field general court-martial and similar to (although much more limited than) those proposed to be given by the Chamberlain-Ansell bill to the autocratic "court judge advocate" proposed in article 12 of that now discarded bill.

4. The omission by the Senate of the final proviso above quoted from article 31 as drafted by this office results in making (1) the rulings of the law member of the general court-martial, (2) if there be no law member present, then those of the president of the general court, and (3) those of the president of a special court-martial, in all cases final and binding upon the court (although they may be opposed to the opinion of every other member of the court) on all "interlocutory questions" (other than challenges) "arising during the proceedings."

Such "interlocutory questions" may include, among others, such questions as the following:

(*a*) Pleas.
1. To the competency or legality of the court;
2. To the regularity of the organization of the court;
3. To the jurisdiction, including that—
of the subject matter of the offense;
of the person of the accused;
4. Of the statute of limitations;
5. Of a former trial;
6. Of a former conviction;
7. Of a former acquittal;
8. Of a pardon, including that of (1) special pardon, (2) general amnesty, (3) constructive pardon.

(*b*) Questions of procedure arising upon any of these pleas, as, for instance:
1. Whether evidence should be heard upon the plea;
2. Whether depositions may be received;
3. Whether an adjournment or a continuance should be had to permit time for the presentation of evidence thereon.

(*c*) Motions, as, for instance:
1. To quash the charges or the proceedings.
2. To strike out certain charges or specifications.
3. (By the trial judge advocate.) To amend the charges or specifications.
(*a*) And, if such amendment be allowed, whether a motion by the accused for a continuance should be granted.
4. For a separate trial by one or more of the accused.
5. For a continuance (on any one of a multitude of grounds; as, for instance, to take depositions, because of surprise, because of the absence or illness of a witness or counsel, because of lack of time to prepare, or because of any other of the many reasons which may be urged as grounds for continuance).

(*d*) Whether on any motion evidence should be heard, or a continuance or adjournment allowed for the purpose of procuring evidence.

(*e*) The order of the introduction of witnesses and other evidence.

(*f*) The recall of witnesses for further examination.

(*g*) Applications of the rules of evidence: Rulings upon objections to testimony involving a great multitude of various kinds of questions and not infrequently the virtual determination of the case.

(*h*) Whether expert witnesses should be admitted or called upon any question.

(*i*) Whether the court should view the premises where the offense is alleged to have been committed.

(*j*) Competency of witnesses, as, for instance, of children, witnesses alleged to be mentally incompetent, etc.

(*k*) Insanity of accused, whether the existence of mental disease or mental derangement on the part of the accused has become an issue in the trial in such sense that a medical board should be appointed under paragraph 219 of the Manual for Courts Martial.

(*l*) Whether accused's confession should be received; whether accused should be required to submit to physical examination.

(*m*) Whether any argument or statement of counsel for the accused, or of the trial judge advocate, is improper.

5. On all such questions, and on all other questions of every kind arising at the trial prior to the final findings of guilt or innocence (except rulings on challenges), the decision of the law member, or of the president of the court as the case may be, will absolutely control the court, if article 31 be enacted into law in the form it passed the Senate.

6. The procedure thus instituted would be radically different, not only from that contemplated in the proposals of the Judge Advocate General, but also from that approved by experience in the British Army. The law member of the British field general court-martial has no power to control the decisions of his fellow members. He is strictly an adviser. The British regulations provide that the law member—

"will advise the court on all points of law and procedure. His opinion will have the same weight as that of a judge advocate (see R. P. 103 F)."—(Circular memorandum on Courts Martial for Use on Active Service, Aug., 1918, Sec. 12 (*d*))—

referring to paragraph (F) of Rule 103 of the British Rules of Procedure, which provides:

"Upon any point of law or precedure which arises upon the trial which he attains, the court should be guided by his opinion, and not overrule it, except for very weighty reasons. The court are responsible for the legality of their decisions, but they must consider the grave consequences which may result from their disregard of the advice of the judge advocate on any legal point. The court, in following the opinion of the judge advocate on a legal point, may record that they have decided in consequence of that opinion" (British Manual of Military Law, p. 629). (Hearings on S. 64, pp. 390–391, 414.)

E. H. CROWDER,
Judge Advocate General.

(For insertion after the word "proceedings," at the end of article 31, in line 14, page 185, H. R. 12775, as passed by the Senate:)

"*Provided*, That, unless such ruling be made by the law member of the court, if any member object thereto the court shall be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *And provided further*, That if any such ruling be made by the law member of the court upon any interlocutory question other than an objection to the admissibility of evidence offered during the trial, and any member object to the ruling, the court shall likewise be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *Provided further, however*, That the phrase "objection to the admissibility of evidence offered during the trial," as used in the next preceding proviso hereof, shall not be construed to include questions as to the order of the introduction of witnesses or other evidence, nor of the recall of witnesses for further examination, nor as to whether expert witnesses shall be admitted or called upon any question, nor as to whether the court shall view the premises where an offense is alleged to have been committed, nor as to the competency of witnesses, as, for instance, of children, witnesses alleged to be mentally incompetent, and the like, nor as to the insanity of accused, or whether the existence of mental disease or mental derangement on the part of the accused has become an issue in the trial, nor whether accused's confession shall be received in evidence, or accused required to submit to physical examination, nor whether any argument or statement of counsel for the accused or of the trial judge advocate is improper, nor any ruling in a case involving military strategy or tactics or correct military action; but upon all those and similar questions arising on the trial, if any member object to any ruling of the law member, the court shall be cleared and closed and the question decided by majority vote of the members in the manner aforesaid.

THE

ARTICLES OF WAR

APPROVED JUNE 4, 1920

SEPTEMBER, 1920

WASHINGTON
GOVERNMENT PRINTING OFFICE
1920

WAR DEPARTMENT,
WASHINGTON, *September 8, 1920.*

Chapter II of the act approved June 4, 1920 (Bul. No. 25, W. D., 1920), comprising the new Articles of War, is published for the information and guidance of all concerned.

By a provision contained in section 2 of said Chapter II, the new Articles of War are to become effective February 4, 1921, with the exception of articles 2, 23, and 45, which became effective immediately.

These new Articles of War comprise the Articles of War revised by the act approved August 29, 1916 (39 Stat. 619—Bul. No. 32, W. D., 1916), referred to as the Code of 1916, as amended by the acts of Congress approved July 9, 1918 (40 Stat. 882—Bul. No. 43, W. D., 1918), with reference to articles 52, 53, and 57; February 28, 1919 (40 Stat. 1211—Sec. III, Bul. No. 11, W. D., 1919), with reference to article 50; November 19, 1919 (41 Stat. 356—Sec. V, Bul. No. 41, W. D., 1919), with reference to article 112; and June 4, 1920 (41 Stat. 787—Bul. No. 25, W. D., 1920), with reference to a number of articles.

The existing amendments to the Code of 1916 as set forth in the acts approved July 9, 1918 (arts. 52, 53, 57), February 28, 1919 (art. 50), and November 19, 1919 (art. 112), are printed in *italics*, and the amendments or changes made by the act of June 4, 1920, are printed in **bold-faced type**. The matter existing as originally contained in the Code of 1916 is printed in ordinary roman type.

Where matter appearing in a former article has been omitted in the new article, reference is made thereto in a note following the new article, and where the new article is so changed in substance or form that it is impossible clearly to indicate the changes in this matter, the old article, or as much of it as necessary, is reproduced in the note. It is therefore possible in every case where the former article, as it existed immediately prior to the taking effect of the Code of 1920, is not given in a note to reconstruct the same by omitting the matter in bold-faced type in the new article and making the changes to the remaining text called for by the note.

The article numbers in the new code correspond to those of the Code of 1916, except that article 29, Code of 1916, is in new article 28, and articles 29 and 50½, Code of 1920, are entirely new.

An index follows the text of the articles.

[300.2 A. G. O.]

BY ORDER OF THE SECRETARY OF WAR:

PEYTON C. MARCH,
Major General, Chief of Staff.

OFFICIAL:
P. C. HARRIS,
The Adjutant General.

CHAPTER II.

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 noncommissioned 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, members of the Army Nurse Corps, warrant officers, Army field clerks, field clerks Quartermaster Corps, 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-martial;

(f) All persons admitted into the Regular Army Soldiers' Home at Washington, District of Columbia.

This article became effective on June 4, 1920.

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. When appointing courts-martial the appointing authority shall detail as members thereof those officers of the command who, in his opinion, are best qualified for the duty by reason of age, training, experience, and judicial temperament; and officers having less than two years' service shall not, if it can be avoided without manifest injury to the service, be appointed as members of courts-martial in excess of the minority membership thereof.

ART. 5. GENERAL COURTS-MARTIAL.—General courts-martial may consist of any number of officers not less than five.

Art. 5, Code of 1916, read following word "officers": "from five to thirteen, inclusive; 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 not less than three.

Art. 6, Code of 1916, read following word "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.

The authority appointing a general court-martial shall detail as one of the members thereof a law member, who shall be an officer of the Judge Advocate General's Department, except that when an officer of that department is not available for the purpose the appointing authority shall detail instead an officer of some other branch of the service selected by the appointing authority as specially qualified to perform the duties of law member. The law member, in addition to his duties as a member, shall perform such other duties as the President may by regulations prescribe.

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 TRIAL JUDGE ADVOCATES AND COUNSEL.—For each general or special court-martial the authority appointing the court shall appoint a trial judge advocate and a defense counsel and for each general court-martial one or more assistant trial judge advocates and one or more assistant defense counsel when necessary: *Provided, however*, That no officer who has acted as member, trial judge advocate, assistant trial judge advocate, defense counsel, or assistant defense counsel in any case shall subsequently act as staff judge advocate to the reviewing or confirming authority upon the same case.

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: *Provided further*, That the officer competent to appoint a general court-martial for the trial of any particular case may, when in his judgment the interest of the service shall so require, cause any case to be tried by a special court-martial notwithstanding the limitations upon the jurisdiction of the special court-martial as to offenses set out in article 13; but the limitations upon jurisdiction as to persons and upon punishing power set out in said article shall be observed.

ART. 13. SPECIAL COURTS-MARTIAL.—Special courts-martial shall have power to try any person subject to military law for any crime or offense not capital made punishable by these articles: *Provided*, That the President may, by regulations, 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 confinement in excess of six months, nor to adjudge forfeiture of more than two-thirds pay per month for a period of not exceeding six months.

Art. 13, Code of 1916, read as follows:

"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 member of the Army Nurse Corps, a warrant officer, an Army field clerk, a field clerk Quartermaster Corps, a cadet, or a soldier holding the privileges of a certificate of eligibility to promotion, for any crime or offense not capital made punishable by these articles: *Provided*, That noncommissioned 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, 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 one month, restriction to limits for more than three months, or forfeiture or detention of more than two-thirds of one month's pay.

The words "which he may modify from time to time," which followed the word "regulations," in the second proviso of the first paragraph, have been omitted. The second paragraph of art. 14, Code of 1916, read as follows:

"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 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. **JURISDICTION** 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 of offenders or offenses that by statute or by the law of war may be triable by such military commissions, provost courts, or other military tribunals.

The word "lawfully" appeared in the former article, preceding the word "triable."

ART. 16. OFFICERS; HOW TRIABLE.—Officers shall be triable only by general and special 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. **TRIAL** JUDGE ADVOCATE TO PROSECUTE; **COUNSEL TO DEFEND.**—The trial 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 in his defense before the court by counsel of his own selection, civil counsel if he so provides, or military if such counsel be reasonably available, otherwise by the defense counsel duly appointed for the court pursuant to article 11. Should the accused have counsel of his own selection, the defense counsel and assistant defense counsel, if any, of the court, shall, if the accused so desires, act as his associate counsel.

Article 17, Code of 1916, read as follows:

"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 or the trial judge advocate 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. Challenges by the trial judge advocate shall ordinarily be presented and decided before those by the accused are offered. Each side shall be entitled to one peremptory challenge; but the law member of the court shall not be challenged except for cause.

The words "but only" appeared in the former article, preceding the words "for cause" in the first sentence.

ART. 19. OATHS.—The trial 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 of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority or duly announced by the court, except to the trial judge advocate and assistant trial judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial upon a challenge or upon the findings or sentence, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

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 trial judge advocate and to each assistant trial judge advocate, if any, an oath or affirmation in the following form: "You, A. B., do swear (or affirm) that you will faithfully and impartially perform the duties of a trial judge advocate, and will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed. So help you God."

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.

The words "by the same" concluded the first sentence of the second paragraph of the former article.

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 OR FAILURE TO PLEAD.—When an accused arraigned before a court-martial fails or refuses to plead, or answers foreign to the purpose, or

after a plea of guilty makes a statement inconsistent with the plea, or when it appears to the court that he entered a plea of guilty improvidently or through lack of understanding of its meaning and effect, the court shall proceed to trial and judgment as if he had pleaded not guilty.

Art. 21, Code of 1916, read as follows:

"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 trial 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 subpœnaed 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 subpœnaed 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: *Provided further*, That every person not subject to military law, who before any court-martial, military tribunal, or military board, or in connection with, or in relation to any proceedings or investigation before it or had under any of the provisions of this act, is guilty of any of the acts made punishable as offenses against public justice by any provision of chapter 6 of the Act of March 4, 1909, entitled "An Act to codify, revise, and amend the penal laws of the United States" (volume 35, United States Statutes at Large, page 1088), or any amendment thereof, shall be punished as therein provided.

This article became effective on June 4, 1920.

ART. 24. COMPULSORY SELF-INCRIMINATION PROHIBITED.—No witness before a military court, commission, court of inquiry, or board, or before any officer conducting an investigation, 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, or before an officer conducting an investigation, shall be compelled to incriminate himself or to answer any question the answer to which may tend to incriminate him, or to answer any question not material to the issue when such answer might tend to degrade him.

Art. 24, Code of 1916, read as follows:

"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, with the consent of the accused, 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. **CERTAIN ACTS TO CONSTITUTE DESERTION.**—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.

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.

Any person subject to military law who quits his organization or place of duty with the intent to avoid hazardous duty or to shirk important service shall be deemed a deserter.

The first paragraph is the same as art. 28, Code of 1916, except that the former title of that article was "Resignation without acceptance does not release officer." The second paragraph is the same as art. 29, Code of 1916. The third paragraph is new.

ART. 29. **COURT TO ANNOUNCE ACTION.**—Whenever the court has acquitted the accused upon all specifications and charges, the court shall at once announce such result in open court. Under such regulations as the President may prescribe, the findings and sentence in other cases may be similarly announced.

ART. 30. CLOSED SESSIONS.—Whenever a general or special court-martial shall sit in closed session, the trial judge advocate and the assistant trial judge advocate, if any, shall withdraw; and when 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.

The words "their legal advice or" appeared in the former article, following the word "when."

ART. 31. METHOD OF VOTING.—Voting by members of a general or special court martial upon questions of challenge, on the findings, and on the sentence shall be by secret written ballot. The junior member of the court shall in each case count the votes, which count shall be checked by the president, who will forthwith announce the result of the ballot to the members of the court. The law member of the court, if any, or if there be no law member of the court, then the president, may rule in open court upon interlocutory questions, other than challenges, arising during the proceedings. *Provided*, That unless such ruling be made by the law member of the court if any member object thereto the court shall be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *And provided further*, That if any such ruling be made by the law member of the court upon any interlocutory question other than an objection to the admissibility of evidence offered during the trial, and any member object to the ruling, the court shall likewise be cleared and closed and the question decided by a majority vote, viva voce, beginning with the junior in rank: *Provided further, however*, That the phrase, "objection to the admissibility of evidence offered during the trial," as used in the next preceding proviso hereof, shall not be construed to include questions as to the order of the introduction of witnesses or other evidence, nor of the recall of witnesses for further examination, nor as to whether expert witnesses shall be admitted or called upon any question, nor as to whether the court shall view the premises where an offense is alleged to have been committed, nor as to the competency of witnesses, as, for instance, of children, witnesses alleged to be mentally incompetent, and the like, nor as to the insanity of accused, or whether the existence of mental disease or mental derangement on the part of the accused has become an issue in the trial, or accused required to submit to physical examination, nor whether any argument or statement of counsel for the accused or of the trial judge advocate is improper, nor any ruling in a case involving military strategy or tactics or correct military action; but, upon all these questions arising on the trial, if any member object to any ruling of the law member, the court shall be cleared and closed and the question decided by majority vote of the members in the manner aforesaid.

Art. 31, Code of 1916, read as follows:
"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 military tribunal may punish as for contempt any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder: *Provided*, That such punishment shall in no case exceed one month's confinement, or a fine of $100, or both.

Art. 32, Code of 1916, read as follows:
"ART. 32.—CONTEMPTS.—A court-martial may punish at discretion, subject to the limitations contained in article fourteen, 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 COURTS-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 trial judge advocate; but in case the record can not be authenticated by the president and trial judge advocate, by reason of the death, disability, or absence of either or both of them, it shall be signed by a member in lieu of the president and by an assistant trial judge advocate, if there be one, in lieu of the trial judge advocate; otherwise by another member of the court.

Art. 33, Code of 1916, following the semicolon, read as follows:
"but in case the record can not 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 trial 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 acted upon, be transmitted to the Judge Advocate General of the Army.

The word "finally" appeared in the former article, preceding the word "acted."

ART. 36. DISPOSITION OF RECORDS—SPECIAL AND SUMMARY COURTS-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 summary courts-martial may be destroyed.

The words "special and" appeared in the former article, preceding the word "summary" in the last sentence.

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, which regulations shall, in so far as he shall deem practicable, apply the rules of evidence generally recognized in the trial of criminal cases in the district courts of the

United States: *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 ninety-three and ninety-four 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, without his consent, be tried a second time for the same offense; but no proceeding in which an accused has been found guilty by a court-martial upon any charge or specification shall be held to be a trial in the sense of this article until the reviewing and, if there be one, the confirming authority shall have taken final action upon the case.

No authority shall return a record of trial to any court-martial for reconsideration of—

(a) An acquittal; or

(b) A finding of not guilty of any specification; or

(c) A finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some article of war; or

(d) The sentence originally imposed, with a view to increasing its severity, unless such sentence is less than the mandatory sentence fixed by law for the offense or offenses upon which a conviction has been had.

And no court-martial, in any proceedings on revision, shall reconsider its finding or sentence in any particular in which a return of the record of trial for such reconsideration is hereinbefore prohibited.

F. PUNISHMENTS.

ART. 41. **CRUEL AND UNUSUAL PUNISHMENTS** PROHIBITED.—Cruel and unusual punishments of every kind, including flogging, branding, marking, or tattooing on the body, are prohibited.

Art. 41, Code of 1916, read as follows:

"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 and so punishable by penitentiary confinement for more than one year by some statute of the United States, of general application within the continental United States, excepting section 289,

Penal Code of the United States, 1910, or by the law of 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 more than one year: *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.

The language between the words "offense of a civil nature" and the first proviso in Art. 42, Code of 1916, read as follows: "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:"

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 all the members of said court-martial present at the time the vote is taken, and for an offense in these articles expressly made punishable by death; nor sentenced to life imprisonment, nor to confinement for more than ten years, except by the concurrence of three-fourths of all of the members present at the time the vote is taken. All other convictions and sentences, whether by general or special court-martial, may be determined by a two-thirds vote of those members present at the time the vote is taken. All other questions shall be determined by a majority vote.

ART. 43, Code of 1916, read as follows:

"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."

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 exceed such limit or limits as the President may from time to time prescribe: *Provided*, That in time of peace the period of confinement in a penitentiary shall in no case exceed the maximum period prescribed by the law which, under article 42 of these articles, permits confinement in a penitentiary, unless in addition to the offense so punishable under such law the accused shall have been convicted at the same time of one or more other offenses.

This article became effective on June 4, 1920. The words "in time of peace" appeared in the former article, preceding the word "exceed."

G. ACTION BY APPOINTING OR SUPERIOR AUTHORITY.

ART. 46. **ACTION BY CONVENING AUTHORITY.**—Under such regulations as may be prescribed by the President every record of trial by general court-martial or military commission received by a reviewing or confirming authority shall be referred by him, before he acts thereon, to his staff judge advocate or to the Judge Advocate General. 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.

The former article was entitled, "Approval and execution of sentence."

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.

(c) The power to remand a case for rehearing, under the provisions of article 50½.

ART. 48. CONFIRMATION—WHEN REQUIRED.—In addition to the approval required by article forty-six, 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:

(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, subject to the provisions of article 50½, 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.

(c) The power to remand a case for rehearing, under the provisions of article 50½.

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.

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 approved or confirmed by the President shall be remitted or mitigated by any other authority, *and no approved sentence of loss of files by an officer shall be remitted or mitigated by any authority inferior to the President, except as provided in the fifty-second article.*

When empowered by the President so to do, the commanding general of the Army in the field or the commanding general of the territorial department or division, may approve or confirm and commute (but not approve or confirm without commuting), *mitigate, or remit and* then *order executed as* commuted, *mitigated, or remitted any sentence which under these articles requires the confirmation of the President before the same may be executed.*

The power of remission or mitigation shall extend to all uncollected forfeitures adjudged by sentence of court-martial.

The last sentence of the former article read: "The power of remission and mitigation shall extend to all uncollected forfeitures adjudged by sentence of a court-martial."

ART. 50½. **REVIEW; REHEARING.**—The Judge Advocate General shall constitute, in his office, a board of review consisting of not less than three officers of the Judge Advocate General's Department.

Before any record of trial in which there has been adjudged a sentence requiring approval or confirmation by the President under the provisions of article 46, article 48, or article 51 is submitted to the President, such record shall be examined by the board of review. The board shall submit its opinion, in writing, to the Judge Advocate General, who shall, except as herein otherwise provided, transmit the record and the board's opinion, with his recommendations, directly to the Secretary of War for the action of the President.

Except as herein provided, no authority shall order the execution of any other sentence of a general court-martial involving the penalty of death, dismissal not suspended, dishonorable discharge not suspended, or confinement in a penitentiary, unless and until the board of review shall, with the approval of the Judge Advocate General, have held the record of trial upon which such sentence is based legally sufficient to support the sentence; except that the proper reviewing or confirming authority may upon his approval of a sentence involving dishonorable discharge or confinement in a penitentiary order its execution if it is based solely upon findings of guilty of a charge or charges and a specification or specifications to which the accused has pleaded guilty. When the board of review, with the approval of the Judge Advocate General, holds the record in a case in which the order of execution has been withheld under the provisions of this paragraph legally sufficient to support the findings and sentence, the Judge Advocate General shall so advise the reviewing or confirming authority from whom the record was received, who may thereupon order the execution of the sentence. When in a case in which the order of execution has been withheld under the provisions of this paragraph, the board of review holds the record of trial legally insufficient to support the findings or sentence, either in whole or in part, or that errors of law have been committed injuriously affecting the substantial rights of the accused, and the Judge Advocate General concurs in such holding of the board of review, such findings and sentence shall be vacated in whole or in part

in accord with such holding and the recommendations of the Judge Advocate General thereon, and the record shall be transmitted through the proper channels to the convening authority for a rehearing or such other action as may be proper. In the event that the Judge Advocate General shall not concur in the holding of the board of review, the Judge Advocate General shall forward all the papers in the case, including the opinion of the board of review and his own dissent therefrom, directly to the Secretary of War for the action of the President, who may confirm the action of the reviewing authority or confirming authority below, in whole or in part, with or without remission, mitigation, or commutation, or may disapprove, in whole or in part, any finding of guilty, and may disapprove or vacate the sentence, in whole or in part.

When the President or any reviewing or confirming authority disapproves or vacates a sentence the execution of which has not theretofore been duly ordered, he may authorize or direct a rehearing. Such rehearing shall take place before a court composed of officers not members of the court which first heard the case. Upon such rehearing the accused shall not be tried for any offense of which he was found not guilty by the first court, and no sentence in excess of or more severe than the original sentence shall be enforced unless the sentence be based upon a finding of guilty of an offense not considered upon the merits in the original proceeding: *Provided*, That such rehearing shall be had in all cases where a finding and sentence have been vacated by reason of the action of the board of review approved by the Judge Advocate General holding the record of trial legally insufficient to support the findings or sentence or that errors of law have been committed injuriously affecting the substantial rights of the accused, unless, in accord with such action, and the recommendations of the Judge Advocate General thereon, the findings or sentence are approved in part only, or the record is returned for revision, or unless the case is dismissed by order of the reviewing or confirming authority. After any such rehearing had on the order of the President, the record of trial shall, after examination by the board of review, be transmitted by the Judge Advocate General, with the board's opinion and his recommendations, directly to the Secretary of War for the action of the President.

Every record of trial by general court-martial, examination of which by the board of review is not hereinbefore in this article provided for, shall nevertheless be examined in the Judge Advocate General's Office; and if found legally insufficient to support the findings and sentence, in whole or in part, shall be examined by the board of review, and the board, if it also finds that such record is legally insufficient to support the findings and sentence, in whole or in part, shall, in writing, submit its opinion to the Judge Advocate General, who shall transmit the record and the board's opinion, with his recommendations, directly to the Secretary of War for the action of the President. In any such case the President may approve, disapprove, or vacate, in whole or in part, any findings of guilty, or confirm, mitigate, commute, remit, or vacate any sentence, in whole or in part, and direct the execution of the sentence as confirmed or modified, and he may restore the accused to all rights affected by the findings and sentence, or part thereof, held to be invalid; and the President's necessary orders to this end shall be binding upon all departments and officers of the Government.

Whenever necessary, the Judge Advocate General may constitute two or more boards of review in his office, with equal powers and duties.

Whenever the President deems such action necessary, he may direct the Judge Advocate General to establish a branch of his office, under an Assistant Judge Advocate General, with any distant command, and to establish in such branch office a board of review, or more than one. Such Assistant Judge Advocate General and such board or boards of review shall be empowered to perform for that command, under the general supervision of the Judge Advocate General, the duties which the Judge Advocate General and the board or boards of review in his office would otherwise be required to perform in respect of all cases involving sentences not requiring approval or confirmation by the President.

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 SENTENCES.—The authority competent to order the execution of *the* sentence *of a court-martial* may, *at the time of the approval of such sentence,* suspend the execution, *in whole or in part, of any such sentence as does not extend to death, and may restore the person under sentence to duty during such suspension,* and the Secretary of War or the commanding officer holding general court-martial jurisdiction over any such offender, may at any time thereafter, while the sentence is being served, suspend the execution, in whole or in part, of the balance of such sentence and restore the person under sentence to duty during such suspension. *A sentence, or any part thereof, which has been so suspended may be remitted, in whole or in part, except in cases of persons confined in the United States Disciplinary Barracks or its branches, by the officer who suspended the same, by his successor in office, or by any officer exercising appropriate court-martial jurisdiction over the command in which the person under sentence may be serving at the time, and, subject to the foregoing exceptions, the same authority may vacate the order of suspension at any time and order the execution of the sentence or the suspended part thereof in so far as the same shall not have been previously remitted,* subject to like power of suspension. *The death or honorable discharge of a person under a suspended sentence shall operate as a complete remission of any unexecuted or unremitted part of such sentence.*

ART. 53. *EXECUTION OR REMISSION—CONFINEMENT IN DISCIPLINARY BARRACKS.—When a sentence of dishonorable discharge has been suspended until the soldier's release from confinement, the execution or remission of any part of his sentence shall, if the soldier be confined in the United States Disciplinary Barracks, or any branch thereof, be directed by the Secretary of War.*

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. FALSE MUSTER.—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.

This article is the same as the last sentence of art. 56, Code of 1916. The portion of the former article not retained read as follows:

"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 noncommissioned 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."

ART. 57. FALSE RETURNS—OMISSION TO RENDER RETURNS.—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.

This article is the same as art. 57, Code of 1916, except that the first sentence of the former article, reading as follows, has been omitted:

"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."

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 repair at the fixed time to the properly appointed place of duty, or goes from the same without proper leave, or absents himself from his 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 so 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 NONCOMMISSIONED OFFICER.—Any soldier who strikes or assaults, or who attempts or threatens to strike or assault, or willfully disobeys the lawful order of a warrant officer or a noncommissioned officer while in the execution of his office, or uses threatening or insulting language, or behaves in an insubordinate or disrespectful manner toward a warrant officer or a noncommissioned 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, members of the Army Nurse Corps, warrant officers, Army field clerks, field clerks, Quartermaster Corps, and noncommissioned 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, nurse, band leader, warrant officer, field clerk, or noncommissioned 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.—Any 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; but when charged with a minor offense only such person shall not ordinarily be placed in confinement. 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 or cadet who breaks his arrest or who escapes from confinement, whether before or after trial or sentence and 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, whether before or after trial or sentence and before he is set at liberty by proper authority, shall be punished as a court-martial may direct.

Art. 69, Code of 1916, reads as follows:

"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. CHARGES; ACTION UPON.—Charges and specifications must be signed by a person subject to military law, and under oath either that he has personal knowledge of, or has investigated, the matters set forth therein, and that the same are true in fact, to the best of his knowledge and belief.

No charge will be referred for trial until after a thorough and impartial investigation thereof shall have been made. This investigation will include inquiries as to the truth of the matter set forth in said charges, form of charges, and what disposition of the case should be made in the interest of justice and discipline. At such investigation full opportunity shall be given to the accused to cross-examine witnesses against him if they are available and to present anything he may desire in his own behalf either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after such investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides.

Before directing the trial of any charge by general court-martial the appointing authority will refer it to his staff judge advocate for consideration and advice.

When any person subject to military law is placed in arrest or confinement immediate steps will be taken to try the person accused or to dismiss the charge and release him. Any officer who is responsible for unnecessary delay in investigating or carrying the case to a final conclusion shall be punished as a court-martial may direct. When a person is held for

trial by general court-martial the commanding officer will, within eight days after the accused is arrested or confined, if practicable, forward the charges to the officer exercising general court-martial jurisdiction and furnish the accused a copy of such charges. If the same be not practicable, he will report to superior authority the reasons for delay. The trial judge advocate will cause to be served upon the accused a copy of the charges upon which trial is to be had, and a failure so to serve such charges will be ground for a continuance unless the trial be had on the charges furnished the accused as hereinbefore provided. 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. 70, Code of 1916, read as follows:

"ART. 70. INVESTIGATION OF AND ACTION UPON CHARGES.—No person put in arrest shall be continued in confinement more than 8 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 8 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, whenever 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.—Any officer or soldier who, before the enemy, misbehaves himself, runs away, or shamefully abandons or delivers up or by any misconduct, disobedience, or neglect endangers the safety of 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.

The words preceding the word "fort" in art. 75, Code of 1916, were as follows: "Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons or delivers up any"; otherwise the same.

ART. 76. SUBORDINATES COMPELLING COMMANDER TO SURRENDER.—Any person subject to military law who compels or attempts to compel any commander of any garrison, fort, post, camp, guard, or other command, to give it up to the enemy or to abandon it shall be punishable with death or such other punishment as a court-martial may direct.

Art. 76, Code of 1916, read as follows:

"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 other 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, CORRESPONDENCE WITH, OR AIDING THE ENEMY.—Whosoever relieves or attempts to relieve the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death or such other punishment as a court-martial or military commission may direct.

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.—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 found 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, housebreaking, robbery, larceny, embezzlement, perjury, forgery, sodomy, assault with intent to commit any felony, assault with intent to do bodily harm with a dangerous weapon, instrument, or other thing, 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

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. And if any officer, being guilty, while in the military service of the United States, of embezzlement of ration savings, post exchange, company, or other like funds, or of embezzlement of money or other property intrusted to his charge by an enlisted man or men, receives his discharge, or is dismissed, or is dropped from the rolls, 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 been so discharged, dismissed, or dropped from the rolls.

ART. 95. CONDUCT UNBECOMING AN OFFICER AND 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 RECORDERS.—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 trial 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 can not 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, the commanding officer of any detachment, company, or higher command may, for minor offenses, 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 for not exceeding one week, extra fatigue for not exceeding one week, restriction to certain specified limits for not exceeding one week, and hard labor without confinement for not exceeding one week, but shall not include forfeiture of pay or confinement under guard; except that in time of war or grave public emergency a commanding officer of the grade of brigadier general or of higher grade may, under the provisions of this article also impose upon an officer of his command below the grade of a major a forfeiture of not more than one-half of such officer's monthly pay for one month. 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.

This article omits matter which appeared in the first paragraph of art. 104, Code of 1916, as follows: After the words "President may prescribe," the words "and which he may from time to time revoke, alter, or add to," and after the words "minor offenses" the words "not denied by the accused." The first sentence of the second paragraph of the former article read as follows:

"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."

ART. 105. INJURIES TO 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 can not be ascertained, but the organization or detachment to which they belong is known, stoppages to the amount of damages inflicted may be made and assessed in such proportion as may be deemed just upon the individual members thereof who are shown to have been present with such organization or detachment at the time the damages complained of were inflicted as determined by the approved findings of the board.

The words "person or" appeared in the title of the former article, preceding the word "property."

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 of 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 the 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 to every soldier at the time of his enlistment or muster in, or within six days thereafter, and 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 the 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 of 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 collect and receive any debts due decedent's estate by local debtors and to pay the undisputed local creditors of decedent in so far as any money belonging to the deceased which may come into said summary court's possession under this article will permit, taking receipts therefor for file with said court's final report upon its transactions to the War Department; *and as soon as practicable after the collection of such effects said summary court shall transmit such effects and any money collected, through the Quartermaster Department, at Government expense, to the widow or legal representative of the deceased, if such be found by said court, or to the son, daughter, father, provided the father has not abandoned the support of his family, mother, brother, sister, or the next of kin in the order named, if such be found by said court, or the beneficiary named in the will of the deceased, if such be found by said court, and said court shall thereupon make to the War Department a full report of its transactions; but if there be none of the persons hereinabove named, or such persons or their addresses are not known to or readily ascertainable by said court, and the said court shall so find, said summary court shall have authority to convert into cash, by public or private sale, not earlier than thirty days after the death of the deceased, all effects of deceased except sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes;* 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 deposits, any will or other papers of value belonging to the deceased, *any sabers, insignia, decorations, medals, watches, trinkets, manuscripts, and other articles valuable chiefly as keepsakes, together with* an inventory of the effects secured by said summary court, and a full account of its transactions, to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of accounts of deceased officers and enlisted men of the Army.

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 trial judge advocate or any assistant trial 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 TRIAL JUDGE ADVOCATE AND OF ASSISTANT DEFENSE COUNSEL.—An assistant trial 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 trial judge advocate of the court. An assistant defense counsel shall be competent likewise to perform any duty devolved by law, regulation, or the custom of the service upon counsel for the accused.

ART. 117. REMOVAL OF CIVIL SUITS.—When any civil 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 general 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.

Same as first sentence of art. 119, Code of 1916. The omitted portion read as follows: "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 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 said 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. 2. That the provisions of Chapter II of this Act shall take effect and be in force eight months after the approval of this Act: *Provided*, That articles 2, 23, and 45 shall take effect immediately.

Sec. 3. That all offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking effect of Chapter II of this Act, under any law embraced in or modified, changed, or repealed by Chapter II of 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. 4. That section 1342 of the Revised Statutes of the United States be, and the same is hereby, repealed, and all laws and parts of laws in so far as they are inconsistent with this Act are hereby repealed.

R. S. 1342 contained the former Articles of War.

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